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ASX release

AGL Energy Subordinated Notes

2 March 2012

Attached is an executed copy of the Trust Deed in relation to the AGL Energy Subordinated Notes (Notes).

A prospectus in relation to the Notes was lodged with ASIC and ASX on 28 February 2012.



Paul McWilliams
Company Secretary

About AGL

AGL is one of Australia's leading integrated renewable energy companies and is taking action toward creating a sustainable energy future for our investors, communities and customers. Drawing on over 170 years of experience, AGL operates retail and merchant energy businesses, power generation assets and an upstream gas portfolio. AGL has Australia's largest dual fuel customer base. AGL has a diverse power generation portfolio including base, peaking and intermediate generation plants, spread across traditional thermal generation as well as renewable sources including hydro, wind, landfill gas and biomass. AGL is Australia's largest private owner and operator of renewable energy assets and is looking to further expand this position by exploring a suite of low emission and renewable energy generation development opportunities.

Deed

Trust Deed

AGL Energy Limited

Australian Executor Trustees Limited

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Trust Deed

Date ► 28 February 2012

Between the parties

Company **AGL Energy Limited**
ABN 74 115 061 375 of Level 22, 101 Miller Street, North Sydney,
New South Wales
(Company)

Trustee **Australian Executor Trustees Limited**
ABN 84 007 869 794 of Level 22, 207 Kent Street, Sydney, New
South Wales
(Trustee)

Recitals 1 The Company wishes to issue subordinated, unsecured notes
under this deed.
2 The Trustee has agreed to act as trustee on behalf of the holders
of the Notes on the terms and conditions contained in this deed.

This deed witnesses as follows:

1 Definitions and interpretation

1.1 Definitions

The meanings of capitalised terms used in this deed are set out below. Capitalised terms which are not set out below have the meaning given to them in the Terms of Issue.

| Term | Meaning |
|----------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Authorisation | includes: <ol style="list-style-type: none">1 any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval (including any planning approval), authority or exemption from, by or with a Government Agency (including, without limitation, the Foreign Investment Review Board of Australia); or2 in relation to anything which could be fully or partly prohibited or restricted by law if a Government Agency intervenes or acts in any way within a specified period the expiry of that period without intervention or action. |
| CHESS Approved Securities | securities in respect of which approval has been given by ASX Settlement Pty Limited in accordance with ASX Settlement Operating Rules. |
| Company | AGL Energy Limited ABN 74 115 061 375. |
| Confidential Information | all information and other material (other than information or material in the public domain) provided to or obtained by the Trustee, or any officer, employee, delegate, adviser or other consultant of the Trustee under, in connection with or related to this deed or any obligation, duty or power of the Trustee under this deed. |
| Costs | includes costs, charges, fees, expenses (including expenses of advisors), commissions, liabilities, losses, damages and Taxes and all amounts payable in respect of any of them or like payments. |
| Default | an Event of Default or event which, with the giving of notice or lapse of time, would become an Event of Default. |
| Government Agency | any government or any governmental, semi governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity. |

| Term | Meaning |
|--------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------|
| GST | any goods and services tax, consumption tax, value added tax or any similar tax, impost or duty. |
| Joint Holders | has the meaning in clause 3.3. |
| Meeting | a meeting of Holders convened in accordance with this deed. |
| Official List | the Official List of the ASX. |
| Officially Quoted | has the meaning in clause 3.4(b). |
| Power | a right, power, authority, discretion or remedy conferred on the Trustee by this deed or the Terms of Issue or by law. |
| Subsidiary | a subsidiary of an entity as defined in section 46 of the Corporations Act. |
| Terms of Issue | the terms of issue of the Notes, being the terms set out in Schedule 1. |
| Trust | the trust established by this deed. |
| Trustee | the trustee for the time being of the Trust (being initially the person named as party to this deed as Trustee) in its capacity as such trustee. |
| Trustee Company | a body corporate eligible under section 283AC of the Corporations Act to act as a trustee for the holders of unsecured notes offered to the public. |

1.2 Interpretation

In this deed, headings and boldings are for convenience only and do not affect the interpretation of this deed and, unless the context otherwise requires:

- (a) the singular includes the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) other parts of speech and grammatical forms of a word or phrase defined in this deed have a corresponding meaning;

- (d) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency;
- (e) terms defined in the Corporations Act have the same meaning in this deed;
- (f) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (g) an annexure, exhibit or schedule to this deed forms part of this deed;
- (h) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to a part and clause of, and a party, annexure, exhibit and schedule to, this deed, a reference to this deed includes any schedule, annexure or exhibit;
- (i) a reference to a statute, regulation, proclamation, ordinance or by law includes all statutes, regulations, proclamations, ordinances or by laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by laws issued under that statute;
- (j) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (k) a reference to a party to a document includes that party's successors and permitted assigns;
- (l) no provision of this deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this deed or that provision;
- (m) a reference to an agreement other than this deed includes an undertaking, deed, agreement or legally enforceable arrangement or understanding whether or not in writing;
- (n) a reference to an asset includes all property of any nature, including, but not limited to, a business, and all rights, revenues and benefits;
- (o) a reference to a document includes any agreement in writing, or any certificate, notice, instrument or other document of any kind;
- (p) a reference to a body, other than a party to this deed (including, without limitation, an institute, association or authority), whether statutory or not:
 - (1) which ceases to exist; or
 - (2) whose powers or functions are transferred to another body,is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (q) a reference to liquidation includes official management, appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding up, dissolution, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death; and
- (r) a reference to 'wilful default' in relation to the Trustee means any wilful failure to comply with, or wilful breach by, the Trustee of any of its obligations under this deed or at law other than a failure or breach which:
 - (1) is in accordance with a lawful court order or direction or required by law; or
 - (2) is in accordance with any proper instruction or direction of the Holders given at a Meeting of Holders convened pursuant to clause 11 of this deed.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the succeeding Business Day.

1.4 Compliance with law

- (a) This deed applies subject to all applicable laws.
- (b) Without limiting the generality of clause 1.4(a), to the extent a provision of this deed breaches or contravenes, or if complied with would result in a breach or contravention of any requirement of the law this deed is taken not to contain that provision.
- (c) Without limiting clause 1.4(a), this deed and the Terms of Issue are to be construed so as to not limit the Trustee's liability for breach of section 283DA, or entitle the Trustee to be indemnified against that liability, to any extent that would be void under section 283DB of the Corporations Act.
- (d) This clause 1.4 prevails over all other provisions of this deed including any that are expressed to prevail over it.

2 Appointment of Trustee and declaration of trust

2.1 Appointment

The Trustee is hereby appointed by the Company trustee for the Holders subject to and in accordance with this deed.

2.2 Declaration of trust

The Trustee declares that it enters into this deed as trustee for the Holders, and will hold the benefit of:

- (a) this deed;
- (b) the right to enforce the Company's duty to repay the Notes;
- (c) the right to enforce all other duties of the Company under the Terms of Issue, the provisions of this deed and Chapter 2L of the Corporations Act; and
- (d) any other Powers and any other property which the Trustee may receive or which may be vested in the Trustee,

in trust for the Holders subject to and in accordance with this deed and the Terms of Issue.

3 Issue, ownership and transfer of Notes

3.1 Issue

- (a) The Company may issue Notes to any person by causing that person to be entered in the Register as the Holder of those Notes.
- (b) Upon the issue of a Note in accordance with clause 3.1(a) the Note will be duly constituted as a debt obligation by, and owing under, this deed.

- (c) Despite clause 3.1(b), the issue of a Note will be void, and the Note will confer no rights against the Company on the Holder or any other person, unless the Company has received payment in cleared funds in full of the moneys due on application for the Note.
- (d) The Company may pay a commission, procuration fee, brokerage or any other fees to any person for subscribing or underwriting the subscription of or subscription for the Notes.

3.2 Ownership

- (a) Notes are regarded as issued or transferred to a person if and when the person's name is recorded in the Register as the holder of the Notes in accordance with this deed.
- (b) Title to a Note vests in the Holder of the Note. The Company and the Trustee may treat Holders as the absolute beneficial owners of Notes held by them and are not bound by or obliged to recognise any other person as having any right or interest in any Note whether or not they have notice of such right or interest.
- (c) Despite clause 3.2(a), the Holder's title to a Note is subject to rectification of the Register for fraud or error.

3.3 Joint ownership

Where two or more persons are registered as the holders of a Note (**Joint Holders**):

- (a) the Joint Holders are deemed to hold the Notes as joint tenants and, except as provided below, a reference in this deed to the Holder of the Note means all of those persons;
- (b) on the death of a Joint Holder, the survivor or survivors are the only person or persons whom the Company or the Trustee will recognise as having any title to the Notes (but the Company or the Trustee may require any evidence of death which it thinks fit);
- (c) the Joint Holders are counted as a single holder of the Note for the purposes of calculating the number of Holders or requisitioners who have requested a Meeting of Holders;
- (d) the giving of notice to, or receipt of notice for, any one of the Joint Holders is taken to be the giving of notice to, or receipt of notice for, all of the Joint Holders; and
- (e) any one of the Joint Holders may give an effective receipt for payment on the Notes and a payment to any one of the Joint Holders will discharge the Company's liability with respect to that payment.

Subject to the ASX Settlement Operating Rules but despite any other provision of this deed or the Terms of Issue, the Company is not required to recognise or cause the registration of more than 3 persons as Joint Holders of a Note.

3.4 Transfer

- (a) Subject to this deed, the Notes are transferrable in whole in accordance with this clause but not otherwise.
- (b) So long as the Notes are quoted on the Official List (**Officially Quoted**), all transfers of the Notes must be effected in accordance with the ASX Settlement Operating Rules.
- (c) If at any time the Notes are not Officially Quoted, all transfers of the Notes must be effected by a proper instrument of transfer and in a manner approved by the

Company. The Company may decline to register a transfer of Notes under this clause 3.4(c) unless the instrument of transfer:

- (1) is duly stamped; and
 - (2) is accompanied by such evidence as the Company requires to prove the title of the transferor.
- (d) A transferor of Notes remains the Holder until the transfer is registered and the name of the transferee is entered in the Register in respect of the Notes.
- (e) The Company may refuse to register a transfer of Notes in the circumstances in which it is permitted to do so under the Listing Rules or ASX Settlement Operating Rules. The Company must not otherwise refuse to register a transfer of Notes which complies with this deed.

3.5 Restricted securities

Despite any other provisions of this deed:

- (a) restricted securities (as defined in the Listing Rules) cannot be disposed of during the escrow period referred to in the Listing Rules except as permitted by the Listing Rules or ASX;
- (b) subject to the ASX Settlement Operating Rules in respect of CHESS Approved Securities, the Company must refuse to acknowledge a disposal (including registering a transfer), of restricted securities during the escrow period except as permitted by the Listing Rules or ASX; and
- (c) in the event of a breach of the Listing Rules in relation to Notes which are restricted securities, the Holder holding the Notes in question ceases to be entitled to any payment of interest and to any voting rights in respect of those Notes for so long as the breach subsists.

3.6 Death, legal disability

- (a) Subject to clause 3.3, if a Holder dies, becomes subject to a legal disability, becomes bankrupt or is liquidated the legal personal representative or the person entitled to Notes as a result of bankruptcy or liquidation, will be recognised as being entitled to require the transfer to it of Notes registered in the Holder's name.
- (b) The Company need not register any transfer or transmission under this clause unless the transferee provides evidence of its entitlement satisfactory to the Company and an indemnity in favour of the Company in a form determined by the Company in respect of any consequence arising from the transfer or transmission.

3.7 Holders bound

The Holders and any persons claiming through any of them are deemed to have notice of, and are bound by, all the provisions of this deed and the Terms of Issue.

4 Terms of Notes

4.1 Terms of Issue

The Notes are issued on and subject to the terms and conditions set out in the Terms of Issue and the Company undertakes to perform its obligations in respect of each Note under the Terms of Issue.

4.2 Payments

- (a) Without limiting clause 4.1, the Company must pay to the Trustee when due all amounts stated or determined to be payable on a Note under the Terms of Issue. The Trustee directs the Company to pay the amounts referred to in this clause 4.2(a) to the Holders, in accordance with their rights and entitlements unless the winding up of the Company has commenced in which case the payment must be made to the Trustee.
- (b) Payment of an amount payable in respect of a Note to the Holder of the Note (or to the person who was the holder at the time the entitlement to the payment is determined under the Terms of Issue) discharges the Company's obligation to pay that amount to the Trustee under clause 4.2(a).
- (c) Payment of an amount payable in respect of a Note to the Trustee discharges the Company's obligation to pay that amount to the Holder of the Note (or to the person who was the Holder at the time the entitlement to the payment is determined under the Terms of Issue) under the Terms of Issue.
- (d) Subject to all applicable law, where the Company is unable to make a payment or relieved from the obligation to make a payment under clause 6.3 of the Terms of Issue, the amount is to be held by the Company for the Holder in a non-interest bearing deposit with a bank selected by the Company until the first of the following to occur:
 - (1) the Holder or a legal representative of the Holder (or the person who was the Holder at the time the entitlement to the payment is determined under the Terms of Issue) claims the amount and provides evidence of its entitlement and details for payment to be effected to the satisfaction of the Company;
 - (2) the Company pays the amount in accordance with the law relating to unclaimed money; and
 - (3) the claim for payment of the amount becomes void under the Terms of Issue.
- (e) The Company's obligations to make payments in respect of the Notes are subject to all applicable laws. If a payment could not lawfully be made to a particular Holder due to any circumstance or matter affecting the Holder without the approval of a Government Agency or the satisfaction of some other condition then the Holder is not entitled to receive that payment, and the Company is not obliged to make that payment, unless that approval has been obtained or that other condition is satisfied. The Company is not obliged to pay any further interest to the affected Holder in such circumstances on account of the delay.
- (f) If the Company has determined that a person other than the Holder is or may be entitled to be registered as a Holder and receive a payment in respect of a Note, the Company may withhold the payment until it has established the respective entitlements of those persons to its satisfaction and (if applicable) the persons entitled have been registered as Holder and provided details for the

payment to be effected to the satisfaction of the Company. The Company is not obliged to pay any further interest on account of the delay.

4.3 Subordination

Without limiting clause 4.1 or 4.2:

- (a) the Notes constitute subordinated unsecured notes of the Issuer.
- (b) the Company's obligation to pay amounts due on the Notes is subject to, and subordinated on the terms set out in, clause 2 of the Terms of Issue; and
- (c) clause 2 of the Terms of Issue is binding on the Trustee in relation to any amount due on the Notes that it recovers or seeks to recover and applies to the Trustee as if references to the Holders in that clause were references to the Trustee.

To avoid doubt, this clause does not affect the Trustee's entitlement to be paid any amount under clause 9.

5 Undertakings of Company

Subject to this deed, the Company undertakes to the Trustee that for so long as any principal or interest due on Notes remains outstanding, it will:

- (a) comply with its obligations under the Notes, this deed, and Chapter 2L and section 318 of the Corporations Act;
- (b) ensure that any financial statements provided to the Trustee:
 - (1) comply with generally accepted accounting practice in Australia, except to the extent disclosed in the financial statements; and
 - (2) comply with all applicable laws;
- (c) use all reasonable endeavours to procure official quotation of the Notes on the Official List of the ASX and to procure such quotation is maintained;
- (d) do all things which are reasonably requested by the Trustee to enable the Trustee to comply with the Trustee's obligations under this deed, the Corporations Act (or any other laws binding on the Trustee with respect to the trust or the Notes), the Listing Rules or the ASX Settlement Operating Rules;
- (e) provide to the Trustee:
 - (1) at the same time as their issue, all documents sent to Holders;
 - (2) at the same time as their issue, all documents lodged with ASX in relation to the Notes;
 - (3) promptly, all other information requested by the Trustee which is reasonably required for the purposes of discharging the duties, trusts and powers of the Trustee under this deed or law;
- (f) promptly, after becoming aware of any Event of Default (or any other breach of any term or condition binding on the Company under this deed or the Terms of Issue) that is continuing, notify the Trustee; and
- (g) promptly after cancelling any Notes, confirm details of that cancellation to the Trustee (including, if applicable, of any redemption).

6 Enforcement of this deed

6.1 Enforcement by Trustee

- (a) Subject to clause 6.3, the Trustee and only the Trustee is entitled to take any action in relation to a Default or to otherwise enforce this deed or the Terms of Issue.
- (b) The Issuer is not liable in damages for breach of any provision of this deed other than in respect of the Trustee's remuneration and expenses due and payable under clause 9 or any other loss suffered by the Trustee in its personal capacity. This does not affect the Company's obligations or liabilities under or in respect of the Terms of Issue to pay the principal amount, interest, redemption amount or other amounts payable in respect of the Notes and Costs and other amounts due to the Trustee.

6.2 Enforcement on direction by Holders

The Trustee must take action in relation to a Default or to otherwise enforce this deed where all the following conditions are met:

- (a) the Trustee has been directed to take that action;
 - (1) by a Special Resolution; or
 - (2) in the case of the making of a declaration under clause 5.2 of the Terms of Issue, in writing by Holders who hold 20% or more of the Notes;
- (b) the Trustee is indemnified to its reasonable satisfaction:
 - (1) for all actions, proceedings, claims and demands to which the Trustee may render itself liable by taking such action;
 - (2) in respect of all costs, charges, damages and expenses which the Trustee may thereby incur; and
 - (3) in respect of the costs of all management time spent by employees or officers of the Trustee in relation to such action in the amount required under clause 9 of this deed; and
- (c) the Trustee is not restricted or prohibited from taking such action by any order of any competent court or any applicable law.

If the Trustee forms the view that action it has been directed to take is or could be inconsistent with this deed, the Terms of Issue or any applicable law or is or could be otherwise objectionable, it may take steps to seek (and, if the court so determines, to obtain) as soon as reasonably practicable a court direction or order to set aside or vary the direction and, while those steps are underway, the Trustee is not obliged to take any action or proceedings it has been directed to take.

For the avoidance of doubt, the Trustee may take action in relation to a Default or to otherwise enforce this deed or the Terms of Issue in any other circumstances and in its absolute discretion but is not obliged to act unless the conditions of this clause are satisfied.

6.3 Enforcement by Holder

A Holder is entitled to take any action that the Trustee could take in relation to a Default or to otherwise enforce this deed if and only if the Trustee, having become bound to take that action under clause 6.2, fails to do so within a reasonable period and that failure is continuing. Any such action may be taken by a Holder:

- (a) in the name of the Trustee; and
 - (b) following the giving to the Trustee of an indemnity satisfactory to it,
- but not otherwise. The Company may plead this clause in bar to any proceedings brought against it that are not permitted by this clause.

6.4 Distribution of proceeds

All money received by the Trustee or by a Holder acting in its name under clause 6.3 in respect of amounts payable under this deed must be held by the Trustee on trust to be applied in the following order:

- (a) firstly, in payment of all Costs incurred by or other amounts owing to the Trustee under or in connection with this deed (including all remuneration and other amounts payable to the Trustee under this deed);
- (b) secondly, in or towards payment equally or rateably of all arrears of interest remaining unpaid in respect of the Notes and all principal due in respect of the Notes; and
- (c) thirdly, in payment of the balance (if any) to the Company.

7 Powers, duties and discretions of Trustee

7.1 Powers generally

Subject to this deed, the Trustee has in acting as trustee of the Trust and in relation to all property of the Trust all the powers of a natural person or which it is otherwise possible to confer on a trustee.

7.2 Duties

- (a) The Trustee must:
 - (1) act honestly and in good faith and comply with all laws in performing its duties and in the exercise of its Power;
 - (2) exercise such diligence and prudence as a person qualified to be a trustee under the Corporations Act in the position of the Trustee would exercise in performing its duties and in the exercise of its Power;
 - (3) if and to the extent the Trustee holds Trust assets, keep accounting records which correctly record and explain all amounts paid and received by the Trustee in its capacity as trustee under this deed; and
 - (4) if and to the extent the Trustee holds Trust assets, keep the assets of the Trust separate from all other assets of the Trustee which are held in a capacity other than trustee under this deed.
- (b) The Trustee must not interfere with the conduct of the ordinary business of the Company unless required to do so in order to comply with its duties under the Corporations Act.
- (c) The Trustee has no obligations or duties except those expressly set out in this deed and those imposed on it by any law that cannot be excluded.

7.3 Discretions

The Trustee may:

- (a) **(delegation)** by power of attorney or otherwise, authorise:
- (1) a Related Body Corporate of the Trustee; or
 - (2) any other person (including, without limitation, the Company and persons associated with the Company),
- to do anything which the Trustee may lawfully do (on such terms and conditions as the Trustee may think fit) including, without limitation, holding any trust property and executing documents on its behalf;
- (b) **(directions)** apply to court for directions in relation to any question arising either before or after Notes become repayable and assent to and approve of or oppose any application to any court made by or at the instance of any Holder;
- (c) **(reliance)** rely and act upon (without enquiry) any communication or document that it reasonably believes to be genuine and correct and to have been signed or sent by the appropriate person or persons;
- (d) **(expert advice)** engage and rely and act upon (without enquiry) the advice or opinion of or information of any barrister, solicitor, accountant, auditor, actuary, valuer or other consultant or adviser of the Company or the Trustee;
- (e) **(certificates)** accept as conclusive evidence and act upon:
- (1) a certificate which purports to be signed by any two directors of the Company as to any fact or matter, including without limitation as to whether or not any particular dealing, transaction, step or thing is commercially desirable or detrimental to the interests of the Holders or whether any circumstance exists entitling the Company to redeem the Note prior to the Maturity Date; and
 - (2) any information, report, accounts, certificate or statement supplied by the Company, or the auditor or solicitor of the Company, including without limitation, any statements or opinions contained therein.
- The Trustee is not required to call for further evidence or information and is not responsible for any loss occurring as a result of such reliance, except to the extent that its reliance amounts to fraud, negligence or wilful default;
- (f) **(documents)** accept as conclusive evidence and act upon, any document, communication, information, report, balance sheet, profit and loss account, certificate or statement supplied by the Company or any Subsidiary or by any director, secretary, auditor, solicitor or duly authorised officer of the Company or any Subsidiary (including any electronic transmission);
- (g) **(statements)** accept as conclusive evidence and act upon, all statements (including statements made or given to the best of knowledge and belief or similarly qualified) contained in any statement, certificate, report, balance sheet or profit and loss account given pursuant to the provisions of, or in any way in relation to, this deed;
- (h) **(determinations)** determine as between itself and the Holders all questions and matters of doubt arising in relation to this deed (whether made upon a question actually raised or implied in acts or proceedings of the Trustee);
- (i) **(exercise of powers)** determine in any manner it thinks fit whether to exercise, and the manner, mode and time of exercise of, the Trustee's Powers. Unless it is fraudulent, negligent or wilfully defaults, the Trustee is not liable in its personal capacity for any loss, cost, claim, damage or expense which may result from the exercise or failure to exercise any of its Powers; and
- (j) **(waiver)** waive, so long as it is in writing, at any time and on any terms or conditions, any breach by the Company under this deed or the Terms of Issue but where a breach is the failure of the Company to redeem or repay any Notes in accordance with the Terms of Issue, or to the extent required by this deed,

the Trustee may waive the breach only if the Holders have consented to or authorised the waiver, or the breach has been remedied.

7.4 Holders bound

The exercise by the Trustee of the Powers (including the discretions referred to in clause 7.3) binds all the Holders, whether or not the Holders concurred in their exercise.

8 Trustee protections

8.1 Trustee not responsible for certain matters

Except to the extent required by the Corporations Act or otherwise provided by this deed, the Trustee:

- (a) **(application moneys)** has no responsibility in respect of moneys subscribed by applicants for Notes or to see to the application of those moneys.
- (b) **(form of documents)** has no responsibility for the form or contents of this deed and will have no liability arising as a result of or in connection with any inadequacy, invalidity or unenforceability of any provision of this deed except insofar as it relates to the Trustee or to any representation or warranty given by the Trustee;
- (c) **(monitoring)** is not required to:
 - (1) provide to any person any information concerning the business, financial condition, status or affairs of the Company;
 - (2) investigate the adequacy, accuracy or completeness of any information provided by the Company;
 - (3) assess, investigate or keep under review the business, financial condition, status or affairs of the Company;
 - (4) monitor compliance by the Company of its obligations under this deed or take any steps to ascertain whether a Default has occurred (and will not be deemed to have knowledge that such has occurred until it has received written notice from the Company or a Holder in relation to such);
 - (5) investigate or consider whether any issue of Notes or any payment in respect of a Note will be an unfair preference or other similar voidable transaction for the purposes of Chapter 5 of the Corporations Act;
- (d) **(notice)** is not required to notify any person of the execution of this deed or the occurrence of any Default or breach of this deed or any other document relating to the Notes;
- (e) **(exercise Powers)** has no obligation to exercise any Power in a particular manner or at all; or.
- (f) **(notices)** subject to the Corporations Act, has no obligation to provide Holders with notices, documents or other information it has received from the Company.

8.2 Knowledge of the Trustee

The Trustee:

- (a) will only be considered to have knowledge or notice of or be aware of any matter or thing if the Trustee has knowledge, notice or awareness of that matter

- or thing by virtue of the actual notice or awareness of the officers or employees of the Trustee who have day to day responsibility for the administration of the Trust; and
- (b) will be taken not to have knowledge of the occurrence of a Default unless the Trustee has received written notice from a Holder or the Company stating that a Default has occurred and describing it.

8.3 Confidential information

Nothing in this deed requires the Trustee to disclose information or provide documents relating to the Company or any other person if the Trustee reasonably believes that to do so would constitute a breach of law or duty of confidentiality.

8.4 Capacity as Holder

If the Trustee is also a Holder, then in its capacity as a Holder it:

- (a) has the same rights and obligations as the other Holders; and
- (b) may exercise those rights and agrees to comply with those obligations independently from its role as Trustee as if it were not the Trustee.

8.5 Other dealings with Company

The Trustee may, without being liable to account to the Company or any Holder:

- (a) hold Notes, shares or any other marketable securities issued by the Company in any capacity;
- (b) represent or act for, or contract with, individual Holders in any capacity;
- (c) deal in any capacity with the Company or any of its Related Bodies Corporate or associates; or
- (d) act in any capacity in relation to any other trusts,

provided that to do so would not preclude the Trustee from acting as Trustee under the Corporations Act.

8.6 Exclusions of liability

Neither the Trustee nor any of its directors, officers, employees, agents or attorneys or Related Bodies Corporate will be responsible for or liable to the Company or any Holder or any other person for loss caused by:

- (a) the Trustee's acts or omissions in accordance with the terms of this deed in reliance on:
 - (1) the Register;
 - (2) information or documents supplied by the Company or any agent of the Company;
 - (3) the authenticity of any document it reasonably believes to be genuine and correct;
 - (4) opinion, advice or information of any consultant or adviser of the Trustee;
 - (5) acting on any instruction or direction properly given to it by the Company or Holders under this deed;

- (b) any loss arising due to the acts or omissions of any delegate, attorney or agent of the Trustee (other than a Related Body Corporate of the Trustee), unless the Trustee fails to use reasonable care in selecting and monitoring them;
- (c) any act, omission, neglect or default of the Company or any other person under or in connection with this deed or the Notes;
- (d) any act or omission required by law or by any court of competent jurisdiction;
- (e) anything required to be done or omitted to be done in accordance with an instruction or direction given to it by the Holders at a Meeting;
- (f) any act or omission of an operator of any securities title, transfer or holding system or any absence of, or defect in, the title of the Company to any asset;
- (g) any payment having been made to any fiscal authority; or
- (h) the Trustee waiving or excusing, subject to any conditions that the Trustee thinks fit, any breach by the Company of the Company's obligations under this deed.

8.7 Limitation of liability

- (a) Subject to clause 8.7(d), a liability to the Holders arising under or in connection with this deed is limited to and can be enforced by the Holders against the Trustee only to the extent to which it can be satisfied out of the Assets against which the Trustee is actually indemnified in respect of the liability incurred by it as trustee of the Trust. This limitation of the Trustee's liability applies despite any other provision of this deed and extends to all Obligations in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (b) The Company and the Holders may not
 - (1) have recourse to the Trustee, or enforce their rights against the Trustee arising from breach or non-performance of the Obligations by the Trustee, beyond the Assets against which the Trustee is actually indemnified; or
 - (2) seek the appointment of a receiver, a liquidator, an administrator or any other similar person to the Trustee (except in relation to property of the Trust) or prove in any liquidation of or affecting the Trustee (exception in relation to the property of the Trust).
- (c) The Holders and the Company may only enforce any rights they may have against the Trustee arising from the breach or non-performance of the Obligations only to the extent to which it can be satisfied out of the Assets against which the Trustee is actually indemnified in respect of the liability incurred by it as trustee of the Trust.
- (d) The provisions of this clause will not apply to any obligation or liability of the Trustee to the extent arising as a result of the Trustee's fraud, negligence or wilful default.
- (e) The Company acknowledges that it is responsible under this deed and the Terms of Issue for performing a variety of obligations under this deed and the Terms of Issue. No act or omission of the Trustee (including any related failure to satisfy its obligations or breach of representation or warranty under this deed) will be considered fraud, negligence or wilful default of the Trustee for the purposes of this clause to the extent to which the act or omission was caused or contributed to by any failure of the Company or any other person to fulfil its obligations relating to the Trust or by any other act or omission of the Company or any other person.

- (f) No attorney, agent or delegate appointed in accordance with this deed has authority to act on behalf of the Trustee in any way which exposes the Trustee to any liability which is not limited in the manner set out in this clause and no act or omission of any such person will be considered fraud, negligence or wilful default of the Trustee for the purpose of this clause.
- (g) For the purposes of this clause:
- Obligations** means all obligations and liabilities of whatever kind undertaken or incurred by, or devolving upon, the Trustee under or in respect of this deed; and
- Assets** includes all assets, property and rights (real and personal) of any value whatsoever.

9 Trustee's remuneration and indemnities

9.1 Remuneration

- (a) The Company must pay to the Trustee by way of remuneration for its services as trustee under this Deed a fee or such other remuneration as may be agreed between the parties, and in the manner notified by the Trustee to the Company, from time to time.
- (b) If the Trustee is required at any time to:
- (1) undertake duties which relate to enforcement action in relation to the Notes or this deed upon a default by any other party under the terms of the Notes or this deed; or
 - (2) undertake duties which are agreed by the Company to be of an exceptional nature or otherwise outside the scope of the normal duties of the Trustee,
- the Company agrees to pay to the Trustee on demand, such additional remuneration as shall be commensurate with any additional duties and responsibilities performed or undertaken by the Trustee in consequence of taking such action, as shall from time to time be agreed between the Company and the Trustee.
- (c) In the absence of agreement in relation to the additional remuneration referred to in clause 9.1(b) above, the Trustee shall be entitled to charge the Company reasonable hourly rates for time spent by the Trustee's officers and employees in relation to such enforcement action. Such hourly rates shall:
- (1) reflect the level of expertise required to perform the work; and
 - (2) be commensurate with and referable to the hourly rates charged at the relevant time by members of the Insolvency Practitioners Association of Australia for work of the kind being performed by the Trustee's officers and employees.

9.2 Reimbursement

- (a) The Company must pay to the Trustee on demand all reasonable Costs properly incurred by or on behalf of the Trustee in connection with:
- (1) the negotiation, preparation and execution of this deed and any subsequent consent, agreement, approval, waiver or amendment required under this deed;
 - (2) the carrying out or exercise or the purported carrying out or exercise by the Trustee of any duty, obligation or power imposed or conferred

- expressly or impliedly by this deed on the Trustee or upon Holders or by law;
- (3) any breach or default in the observance or performance by the Company of any of the covenants, obligations, conditions and provisions of this deed;
 - (4) the convening and holding of any Meeting of Holders and the carrying out of any proper directions or resolutions of Holders; or
 - (5) all actions taken under this deed in relation to complying with any notice, request or requirement of any Government Agency and any investigation by any Government Agency into the affairs of the Company.
- (b) If the Company or any of its assets are placed in liquidation, the Trustee is entitled to claim and receive from any receiver, receiver and trustee, official trustee, liquidator, administrator or similar official amounts by way of reimbursement of all costs, charges, fees and expenses incurred by the Trustee (including on its own account) in connection with any enforcement or other action taken by it as trustee of the Trust.

9.3 Other indemnities

- (a) Except as otherwise agreed with any Holder or Holders in connection with the taking of any action by the Trustee, the Trustee is not entitled to be indemnified by any Holder personally.
- (b) Subject to clause 9.3(a), the Trustee's rights under clause 9.2 are in addition to any right of indemnity that may be conferred on the Trustee by law.

9.4 Priority and survival

All remuneration and Costs referred to in this clause 9 shall be paid in priority to any claim by any Holder and continue to be payable until paid notwithstanding that this deed or the Trust may be terminated, or the Trust may be wound up or subject to administration by or under the order of any court. This priority of the Trustee will subsist whether or not a receiver, receiver and trustee, official trustee, liquidator, administrator or similar official is appointed to the Company or any of its assets or the Trust is in the course of administration by or under the order of any court.

9.5 GST

The Company must pay to the Trustee on demand any goods and services tax, value added tax or any like tax (GST) which is payable as a consequence of any supply made or deemed to be made or other matter or thing done under or in connection with this deed by the Trustee (together with any fine, penalty or interest payable because of a default by the Company). The amount paid by the Company to the Trustee on account of the GST must be sufficient to ensure that the economic benefit to the Trustee of this deed remains the same whether or not GST applies. The Trustee will give the Company a tax invoice.

10 Retirement and removal of Trustee

10.1 Retirement

Subject to compliance with the relevant statutory requirements for the time being, the Trustee may retire by giving notice to the Company, but such retirement will not be effective until the last to occur of the following:

- (a) the day which is 60 days after the date of the notice (or such shorter period as the Trustee and the Company may agree); and
- (b) the day upon which the appointment of a new Trustee becomes effective under clause 10.3.

10.2 Removal

- (a) Subject to compliance with the relevant statutory requirements for the time being, the Trustee must retire as trustee for the Holders under this deed and the Company may by written notice remove the Trustee if:
 - (1) the Trustee is in material breach of its obligations under this deed and has not rectified the breach within 10 Business Days of receiving a written notice from the Company to rectify the breach;
 - (2) the Trustee ceases to carry on business or ceases or refuses to act as Trustee under this deed;
 - (3) the Trustee has not been validly appointed;
 - (4) the Trustee is placed in liquidation or is wound up or dissolved;
 - (5) a receiver, receiver and trustee, official trustee, liquidator, administrator or similar official is appointed to the Trustee;
 - (6) any licence, consent, Authorisation, permit or similar thing the Trustee is required to hold to carry out its obligations and duties under or in respect of this deed is revoked or not renewed;
 - (7) the Company reasonably believes that any of the things referred to in section 283BD of the Corporations Act have occurred;
 - (8) the Trustee ceases to be a person who can be appointed a trustee under section 283AC(1) of the Corporations Act;
 - (9) the Trustee cannot continue to act as Trustee because of the operation of section 283AC(2) of the Corporations Act; or
 - (10) the Company is authorised or requested to do so by a Meeting of the Holders called in accordance with clause 11.
- (b) Any removal of the Trustee by the Company under this clause 10.2 will only take effect upon the appointment of a new Trustee under clause 10.3.
- (c) On the retirement or removal of the Trustee, the Trustee must at the cost of the Company do all such things and execute all such deeds and assurances as are necessary for the purpose of vesting in a new trustee all money, property, rights, powers, authorities and discretions vested in the Trustee under this deed.

10.3 Appointment of new Trustee

- (a) Subject to section 283AC of the Corporations Act, the Company may appoint a Trustee Company to be a new Trustee following the retirement or removal of the Trustee in accordance with this clause 10, but if the Company fails to do so within 60 days after receiving a notice from the Trustee under clause 10.1 then the Trustee may appoint a new Trustee (or, if possible, apply to the court for the appointment of a new Trustee).
- (b) A new Trustee may be appointed by deed executed under seal by the new Trustee and the Company or the Trustee (as applicable) and such execution shall by force of this clause 10.3 vest in the new Trustee all Powers and all right title and interest of the Trustee in this deed and the Terms of Issue.

10.4 Release

- (a) When the Trustee retires or is removed, the Trustee is by force of this clause 10.4 discharged and released from its obligations, covenants and liabilities under this deed arising after the date it retires or is removed. The Company must then, if required by the Trustee, execute a confirmation of release in favour of the Trustee in a form and substance reasonably acceptable to the Trustee.
- (b) The retirement, removal or departure of the Trustee does not prejudice any accrued right or obligation of the Trustee (including, without limitation, its right of indemnity or entitlement to be paid fees that continue to accrue up to the date of appointment of the new trustee).

11 Meetings of Holders

11.1 Meetings of Holders

- (a) Subject to the Corporations Act, the Trustee or the Company may at any time convene a Meeting.
- (b) The Company must convene a Meeting on receipt of a direction in writing by Holders who hold 10% or more of the Notes stating the object of the Meeting and the terms of any proposed resolution. The Company must serve a copy of the direction on the Trustee together with all other relevant information and comply with the Corporations Act.
- (c) The provisions of Part 2L.5 of the Corporations Act and Schedule 1 of this deed apply to any Meeting of Holders.
- (d) The Trustee may do all things (including executing documents) it reasonably considers necessary or desirable under or in connection with any Holder Resolution or Special Resolution.

11.2 Passing of resolution

A resolution passed at a Meeting of Holders held in accordance with this deed is binding on all Holders.

12 Register

12.1 Maintenance of the Register

- (a) The Company must establish and maintain (or cause to be established and maintained) the Register and enter (or cause to be entered) on the Register:
 - (1) all information required by section 171 of or as otherwise required under the Corporations Act;
 - (2) any payment instructions or account details notified by the relevant Holder (or by the Company in respect of the relevant Holder) to the Registrar, for the purpose of receiving payments in relation to the Notes held by such Holder; and
 - (3) any other particulars which the Company or Trustee thinks fit or that it is required to include on the Register under this deed.

- (b) The Company must promptly, on receipt of details of any change of name or address of a Holder notified in writing and accompanied, in the case of change of name, by any evidence which the Company may reasonably require, alter (or cause to be altered) the details recorded on the Register in respect of that Holder.
- (c) At any time the Company may (on such terms as it thinks fit) appoint a person to establish and maintain the Register and may terminate such appointment, however the Company will remain responsible for ensuring the Register is maintained in accordance with this deed. The Company must notify the Trustee of the name of any entity (and relevant contact details, including the location of the Register) that the Company has appointed to establish or maintain the Register under this clause.
- (d) Where a Holder transfers some but not all of its Notes, the transfer may be recorded in the Register in respect of any of the Holder's Notes.

12.2 Closed periods

On giving a notice by advertisement or otherwise as may be required by law, or the requirements of the Listing Rules, the Company may from time to time close any Register for any period or periods not exceeding in any one year the maximum period permitted by law or those requirements in aggregate in any calendar year. The Company is not required to register any transfer during any period in which the Register is closed.

12.3 Notice of trust

No notice of any trust (whether express, implied or constructive) will be entered in the Register except as may be ordered by a court of competent jurisdiction.

12.4 Copy of Register

The Company must give a copy of the Register to the Trustee within 48 hours of a request by the Trustee for a copy of the Register.

12.5 Register conclusive

- (a) In the absence of fraud or manifest error or proven error, each recording in the Register in respect of a Note constitutes sufficient and conclusive evidence to all persons and for all purposes that the person whose name is so recorded is the registered owner of the Note.
- (b) Neither the Company nor the Trustee is liable for any mistake in the Register or in any purported copy except to the extent that the mistake is attributable to its own fraud, negligence or wilful default.
- (c) If:
 - (1) an entry is omitted from the Register;
 - (2) an entry is made in the Register otherwise than in accordance with this deed;
 - (3) an entry wrongly exists in the Register;
 - (4) there is an error or defect in any entry in the Register; or
 - (5) default is made or unnecessary delay takes place in entering in the Register that any person has commenced, or ceased, to be the holder of Notes,

then the Company may rectify the same and is not liable for any loss, costs or liability incurred as a result of any of the foregoing occurring provided that it is not as a result of the Company's fraud or wilful default.

12.6 Holding statements and certificates

- (a) So long as the Notes are Officially Quoted, the Company or the Register (as applicable) must issue to each Holder a holding statement as soon as reasonably practicable after the issue or transfer of the Notes.
- (b) Any holding statement in respect of Notes is no guarantee that any amounts will be paid to the Holder.
- (c) Certificates will not be issued to evidence the Notes unless required by law or otherwise determined by the Company.

12.7 Transaction advice after transfer

If the Company accepts a transfer the Company may issue a transaction advice for:

- (a) the Notes which have been transferred; and
- (b) the balance of any Notes which were not transferred.

12.8 Participation in transfer systems

The Company may determine that Notes which are Officially Quoted will participate in the 'Clearing House Electronic Sub-register System' or any other computerised or electronic system of transfer or registration. The Company may with the approval of ASX, create rules to facilitate such participation which may be additional to or may override this clause.

12.9 Location of Notes

The Notes are to be treated as located where the Register is kept.

13 Amendments to deed

13.1 Alteration without consent

- (a) Subject to paragraph 13.1(b) below, and to complying with all applicable laws, the Company may, by an instrument in writing and without the authority, assent or approval of Holders, alter this deed or the Terms of Issue if such alteration is, in the opinion of the Trustee:
 - (1) of a formal, minor or technical nature;
 - (2) made to cure any ambiguity or correct any manifest error;
 - (3) made to increase the Maximum Level or reduce the Minimum Level; or
 - (4) necessary or expedient for the purpose of enabling the Notes to be:
 - (A) listed for quotation, or to retain quotation, on any stock exchange; or
 - (B) offered for subscription or for sale under the laws for the time being in force in any place,

and the Company has provided to the Trustee an opinion of independent legal advisers of recognised standing in New South Wales that such alteration is otherwise not materially prejudicial to the interests of Holders as a whole;

- (5) necessary to comply with:
- (A) the provisions of any statute or the requirements of any statutory authority; or
 - (B) the ASX Listing Rules or the listing or quotation requirements of any stock exchange on which the Company may propose to seek a listing or quotation of the Notes,

and the Company has provided to the Trustee an opinion of independent legal advisers of recognised standing in New South Wales that such alteration is otherwise not materially prejudicial to the interests of Holders as a whole; or

- (6) is not, and is not likely to become, taken as a whole and in conjunction with all other amendments to be made contemporaneously with that amendment, materially prejudicial to the interests of Holders generally,

and in any case, unless a Rating Agency Event has occurred, the Company confirms to the Trustee that it is satisfied that the amendments will not cause the Notes to cease to have a High Equity Content classification assigned to them by the Rating Agency.

- (b) Prior to making an amendment to this deed in the manner outlined in paragraph 13.1(a):
- (1) the Company must provide the Trustee with a copy of the proposed alteration and draft legal opinion (or the Trustee may obtain its own opinion) in reasonably sufficient time to allow the Trustee to consider and consent to the proposed amendments;
 - (2) the proposed alteration must not without the approval of the Trustee alter or conflict with any of the rights and obligations of the Trustee;
 - (3) the Trustee may obtain the relevant opinion of an independent legal adviser; and
 - (4) the Trustee may request the Company to, and the company shall provide, its opinion in relation to whether the proposed alteration to the deed comes within a category described in clause 13.1(a),

and this clause 13.1(b) will apply to clause 9.1 of the Terms of Issue as if references to 'clause 13.1(a)' were references to 'clause 9.1'.

13.2 Alteration by Special Resolution

Without limiting clause 13.1, the Company may by an instrument in writing alter this deed or the Terms of Issue provided the alteration does not alter or conflict with, without its consent, any of the rights and obligations of the Trustee and subject to compliance with the Corporations Act and all other applicable laws and if a Special Resolution is passed in favour of such alteration.

13.3 Alteration

In this clause 13, 'alter' includes modify, cancel, amend or add to.

14 Termination and release

14.1 Termination of trust

This deed terminates on the earlier of:

- (a) the date the last of the following occurs:
 - (1) the redemption of all Notes;
 - (2) payment of all amounts of principal and distributions due on Notes;
 - (3) payment of all Costs reasonably and properly incurred by the Trustee; and
 - (4) the satisfaction or waiver of all other obligations or liabilities of the Company to the Trustee and Holders;
- (b) the date on which Holders unanimously determine that the Trust be wound up; or
- (c) the date required by law.

14.2 Disposal of assets

If the Trust is terminated in accordance with clause 14.1, the Trustee must distribute the balance of any income and capital in accordance with clause 6.4.

14.3 Confirmation of release

- (a) At any time after the Company's obligations have been discharged under clause 14.1, either party (**Released Party**) may request the other to execute in favour of the Released Party, certification that the Released Party is released from the obligations under this deed and the other party must provide the Released Party with the confirmation and release so requested.
- (b) Without limiting the generality of clause 7.3(e), where the Trust terminates following satisfaction of the conditions in clause 14.1(a), neither party is required to execute a release in favour of the Released Party unless and until the Company has procured an auditor of the Company to certify the satisfaction of the conditions specified in clause 14.1(a) (**Termination Certificate**), and the Trustee may rely and act on the Termination Certificate.

15 Confidentiality

15.1 Confidential information

The Trustee acknowledges that all Confidential Information is confidential to the Company and must not be disclosed to any person except as permitted by clause 15.2.

15.2 Permitted disclosure

The Trustee may disclose Confidential Information:

- (a) to the extent required by this deed or by law, but only to the extent so required;
- (b) to its officers, employees and professional advisers, but only to the extent that such disclosure is necessary in order for the Trustee to perform its obligations (including exercising the Powers) under this deed; or

- (c) with the prior written consent of the Company (which may be given or withheld in its absolute discretion).

15.3 Disclosure to third parties

The Trustee must use its best endeavours to ensure that every person to whom it provides Confidential Information under clause 15.2 gives a confidentiality undertaking in favour of the Company in the same terms as this clause 15 and performs its obligations under such undertaking.

16 Representations and warranties

The Trustee and the Company each represents and warrants to the other that as at the date of this deed:

- (a) **(incorporation)** it is duly incorporated and has the power to own its property and to carry on its business as it is now being conducted;
- (b) **(requirements)** in the case of the Trustee only, it meets the requirements of a trustee as provided in sections 283AC(1) and 283AC(2) of the Corporations Act;
- (c) **(authority)** it has full power and authority to enter into, deliver and perform its obligations under this deed;
- (d) **(authorisations)** it has taken all necessary action to authorise the execution, delivery and performance of this deed in accordance with its terms;
- (e) **(documents binding)** this deed constitutes (or will, when signed and delivered constitute) legal, valid and binding obligations enforceable against it in accordance with its terms, subject to stamping and any necessary registration and except as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganisation, moratorium or trust or general principles of equity or other similar laws affecting creditors' rights generally.

Each representation and warranty in this clause is deemed to be repeated by the Company and the Trustee on each date Notes are issued with reference to the facts and circumstances existing on that date.

17 General

17.1 Notices

Any notice or other communication including, but not limited to, any demand, consent or approval to or by a party under this deed:

- (a) must be in legible writing and in English addressed as shown below:
 - (1) if to the Company:

| | |
|------------|-------------------------------------------------------|
| Address: | Level 22, 101 Miller Street North Sydney, NSW 2060 |
| Attention: | Company Secretary |
| Facsimile: | (02) 9921 2301 |
| Email: | companysecretary@agl.com.au |
 - (2) if to the Trustee:

Address: Level 22, 207 Kent Street,
Sydney, 2000
Attention: Corporate Trust
Facsimile: (02) 9028 5942
Email: corptrustnotes@aetlimited.com.au

- or to any other address specified to the sender by any party by notice;
- (b) must be signed by an officer or under the common seal of the sender;
 - (c) is deemed to be given by the sender and received by the addressee:
 - (1) when delivered by hand to the street address during the hours of 9.00 am to 5.00 pm on a Business Day;
 - (2) within Australia, on the day following the day on which the envelope containing the same was posted with postage prepaid to the postal address and, outside Australia, on the seventh day following the day on which the envelope containing the same was posted with postage prepaid to the postal address; and
 - (3) if sent by facsimile transmission, when receipt of a legible transmission has been acknowledged, unless that local time is not on a Business Day, or is after 5.00 pm on a Business Day, when that communication is taken to be received at 9.00 am on the next Business Day; and
 - (4) if sent by email, on production of a report by the system by which the email is sent indicating that the email has been transmitted to the correct electronic address and without error. However, if the time of the deemed receipt is after 5:00 pm local time on a Business Day at the address of the recipient it is deemed to have been received at the commencement of business on the next Business Day; or
 - (5) if a notice is published in a newspaper, on the first date that publication has been made in all the required newspapers; and
 - (d) any information provided by the Company to the Trustee under clause 5 may be sent by email to the Trustee's email address specified in clause 17.1(a). In addition, any communication (including notices, consents, approvals, requests and demands) under or in connection with this deed to the Company or the Trustee may be given by email unless the recipient has notified the other party in writing that such communication or communications of a certain type may not be given to it by email. Any communication sent by email in accordance with this clause 17.1(d) is deemed to have been received on the date the email is received (unless the sender receives notice that there has been an error with the transmission of the email to the intended electronic address). However, if the time of the deemed receipt is after 5:00 pm local time on a Business Day at the address of the recipient it is deemed to have been received at the commencement of business on the next Business Day.

17.2 Service of notices by the Company to any Holder

Without limiting anything else in this deed or the Terms of Issue, a notice may be given by the Company to any Holder, or in the case of Joint Holders to the Holder whose name appears first in the Register, personally, by leaving it at the Holder's registered address or by sending it by prepaid post (airmail if posted to a place outside Australia) or facsimile transmission addressed to the Holder's registered address or, in any case, by other electronic means determined by the Company. If the notice is signed, the signature may be original or printed.

17.3 Service of notices by the Trustee to the Holders

- (a) A notice may be given by the Trustee to any Holder, or in the case of Joint Holders to the Holder whose name appears first in the Register, personally, by leaving it at the Holder's address as shown on the Register or by sending it by prepaid post (airmail if posted to a place outside Australia) or facsimile transmission to the Holder's address or fax number (as the case may be) as shown on the Register or, by publishing such notice in the Australian Financial Review, The Australian or any other newspaper of national circulation in Australia or in any case, by email to an electronic address nominated by the Holder for such communication. If the notice is signed, the signature may be original or printed.
- (b) The Trustee may also post notices to Holders on its own internet website but such action shall not discharge the Trustee's obligation to give Holders a notice under this deed.
- (c) Where a notice is given by the Company to Holders generally, a copy of the notice must also be given to ASX.

17.4 Service of notices by the Holders to the Trustee

A notice given by a Holder to the Trustee must:

- (a) be in writing and signed by a person duly authorised by the sender; and
- (b) be left at, or sent by prepaid post (airmail if posted from a place outside Australia) to the address set out in clause 17.1 or the address last notified by the Trustee, or sent by facsimile transmission or email to the fax number or email set out in clause 17.1 or the fax number or email last notified by the Company or the Trustee.

Notices are considered to be received at the times set out in clause 17.1(c) and 17.1(d).

17.5 Notice to transferor binds transferee

Every person who, by operation of law, transfer or any other means, becomes entitled to be registered as the holder of any of the Notes is bound by every notice which, prior to the person's name and address being entered in the Register, was properly given to the person from whom the person derived title to those Notes.

17.6 Notices when Company is in liquidation

If the Company or any of its assets are placed in liquidation, then the receiver, receiver and trustee, official trustee, liquidator, administrator or similar official appointed to the Company or its assets (as applicable) must:

- (a) if the Trustee has not already done so, notify the Holders of each relevant Event of Default and of the receiver's, receiver and trustee's, official trustee's, liquidator's, administrator's or similar official's appointment; and
- (b) provide regular updates to the Trustee and the Holders as to the status of the liquidation and any other material developments affecting the Company or its assets.

17.7 Service on deceased Holders

A notice served in accordance with this clause 17 is (despite the fact that the Holder is then dead and whether or not the Company has notice of the Holder's death) considered to have been properly served in respect of any of the Notes, whether held solely or jointly with other persons by the Holder, until some other person is registered in the Holder's

place as the Holder or Joint Holder. The service is sufficient service of the notice or document on the Holder's legal personal representative and any person jointly interested with the Holder in the Notes.

17.8 Prohibition and enforceability

- (a) Any provision of, or the application of any provision of, this deed which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.
- (b) If any clause is void, illegal or unenforceable, it may be severed without affecting the enforceability of the other provisions in this deed.

17.9 Governing law and submission to jurisdiction

- (a) This deed is governed by the laws of New South Wales.
- (b) The Company and the Trustee submits to the exclusive jurisdiction of the courts of the New South Wales for the purpose of any legal proceedings arising out of this deed.

17.10 Waivers

- (a) Waiver of any right arising from a breach of this deed or of any Power arising upon default under this deed must be in writing and signed by the party granting the waiver.
- (b) A failure or delay in exercise, or partial exercise, of:
 - (1) a right arising from a breach of this deed; or
 - (2) a Power created or arising upon default under this deed,does not result in a waiver of that right or Power.
- (c) A party is not entitled to rely on a delay in the exercise or non exercise of a right or Power arising from a breach of this deed or on a default under this deed as constituting a waiver of that right or Power.
- (d) A party may not rely on any conduct of another party as a defence to exercise of a right or Power by that other party.

17.11 Cumulative rights

The rights, powers, authorities, discretions and remedies arising out of or under this deed are cumulative and do not exclude any other right, power, authority, discretion or remedy.

17.12 Further assurances

Each party must do all things and execute at the Company's cost all further documents necessary to give full effect to this deed.

17.13 To the extent not excluded by law

The rights, duties and remedies granted or imposed under the provisions of this deed operate to the extent not excluded by law.

17.14 Counterparts

This deed may be executed in any number of counterparts. All counterparts, taken together, constitute one instrument. A party may execute this deed by signing any counterpart.

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Terms of Notes

1 Form, denomination and title

1.1 Form

The Notes are subordinated unsecured notes of the Issuer, constituted by the Trust Deed and issued in registered form by entry in the Register.

1.2 Denomination

Each Note is issued fully paid and with a principal amount of \$100.

1.3 Title and transfer

Title to all Notes will be determined, and the Notes may be transferred, as provided in the Trust Deed. Except as provided in the Trust Deed or required by law, the Issuer will not recognise any person other than the registered Holder as having any title to, or interest in, a Note.

1.4 Quotation

The Issuer must use all reasonable endeavours and furnish any documents, information and undertakings as may be reasonably necessary in order to ensure that the Notes are, and remain until redeemed by the Issuer, quoted on ASX.

1.5 Evidence of holdings

The Issuer must provide to each Holder such statements of the holdings of the Notes of the Holder as the Issuer is required to give under the Corporations Act, the Listing Rules and the ASX Settlement Operating Rules. Note certificates will not be issued unless the Issuer determines that certificates should be made available or are required to be made available by law.

1.6 Trust Deed

Holders are entitled to the benefit of, and are bound by the provisions of, the Trust Deed. The Trust Deed has been lodged with ASIC, and is available for inspection by Holders at the office of the Trustee.

1.7 No other rights

The Notes confer no rights on a Holder:

- (a) to vote at any meeting of shareholders of the Issuer;
- (b) to subscribe for new securities or to participate in any bonus issues of securities of the Issuer; or

- (c) to otherwise participate in the profits or property of the Issuer, except as set out in these Terms of Issue or the Trust Deed.

2 Status and ranking

- (a) The Notes are direct, unsecured debt obligations of the Issuer which rank equally without preference among themselves and are subordinated to other obligations of the Issuer in the manner specified in these Terms of Issue and the Trust Deed.
- (b) In the event of the Issuer being wound up, the rights of the Holders to be repaid the principal amount of the Notes and to be paid any accrued but unpaid interest (including any Outstanding Interest) (**Noteholder Claims**), will rank:
 - (1) junior to the rights and claims of all Senior Creditors of the Issuer;
 - (2) equally with each other and with the rights and claims of any Parity Creditors and holders of Parity Shares of the Issuer; and
 - (3) senior to the rights and claims of holders of the Issuer's shares other than Parity Shares.
- (c) For the purposes of giving effect to clause 2(b), in any winding up of the Issuer the Noteholder Claims:
 - (1) are subordinated and postponed and subject in right of payment to payment in full of the rights and claims of Senior Creditors of the Issuer, and may only be proved as a debt which is subject to and contingent upon prior payment in full of the rights and claims of Senior Creditors of the Issuer (including in respect of any entitlement of the Senior Creditors to interest on their claims in a winding up of the Issuer); and
 - (2) are further limited as to the amount provable in the winding up to the extent necessary to ensure that (after the satisfaction of the Noteholder Claims, as so limited) the holders of the Parity Shares receive a distribution payable in respect of their rights and claims as holders of the Parity Shares equal to the amount that would be payable to them if the Parity Amount in respect of such shares was a debt provable in the winding up which ranked equally with the Noteholder Claims.
- (d) A Holder may not set off any amounts owing by it to the Issuer against claims owing by the Issuer to the Holder in respect of the Notes except to the extent that the set off occurs by mandatory operation of law.
- (e) Each Holder by subscribing for or acquiring the Notes irrevocably agrees:
 - (1) that its claims in respect of the Notes are subject to the subordination provided for in this clause 2;
 - (2) not (in its capacity as a Holder) to exercise any voting rights as a creditor in the winding up of the Issuer until after all Senior Creditors have been paid in full or otherwise in a manner to defeat the subordination contemplated by this clause 2; and
 - (3) that the operation of this clause 2 is not affected by any act or omission of the Issuer or a Senior Creditor which might otherwise affect it at law or in equity or by the winding up of the Issuer.
- (f) Nothing in this clause 2:
 - (1) is intended to confer on any Senior Creditor any rights or any interest in any rights of the Holders; or

- (2) requires the consent of any Senior Creditor to any amendment of these Terms of Issue.

3 Interest

3.1 Interest

The Issuer must (subject to clause 3.4) pay interest on the principal amount of each Note from (and including) the Issue Date to (but excluding) its Redemption Date.

3.2 Interest rate

- (a) The Issuer must (subject to clause 3.4) pay interest on each Note during each Interest Period at the Interest Rate for that Interest Period.
- (b) The Interest Rate for each Interest Period is determined in accordance with the following formula:

Interest Rate = Market Rate + Margin

where:

Market Rate is the Bank Bill Rate on the first day of the Interest Period; and

Margin for an Interest Period commencing before the First Optional Redemption Date, the Initial Margin and for an Interest Period commencing on or after the First Optional Redemption Date, the Step-up Margin.

- (c) The Issuer must determine the Interest Rate for an Interest Period as soon as practicable after the start of the Interest Period.

3.3 Interest payments

- (a) Subject to clause 3.4, the Issuer must pay interest on each Note in respect of each Interest Period on the last day of the Interest Period.
- (b) The amount of interest payable on each Note for an Interest Period is calculated according to the formula:

Interest payment = $\frac{\text{Interest Rate} \times \$100 \times N}{365}$

where:

Interest Rate is the Interest Rate for the Interest Period; and

N is the number of days in the Interest Period.

- (c) The Issuer must determine the amount of interest to be paid on each Note for an Interest Period as soon as practicable after it determines the Interest Rate for the Interest Period and must promptly notify the Trustee and ASX of both those determinations. The notice must also specify that payment of interest is subject to the deferral condition in clause 3.4 of these Terms of Issue.

3.4 Deferral of interest payments

- (a) If the Mandatory Deferral Condition subsists on the 16th Business Day prior to an Interest Payment Date, the interest which would otherwise be due and payable on a Note on that Interest Payment Date (including any Deferred Interest Payment

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arising from any prior operation of this clause 3.4(a)) is automatically deferred and does not become due and payable until the earliest of the following dates:

- (1) the first Interest Payment Date falling at least 16 Business Days after the first day on which the Mandatory Deferral Condition is no longer subsisting;
 - (2) the date which is the fifth anniversary of the date on which any of the then outstanding Deferred Interest Payments was initially deferred;
 - (3) the date on which the Trustee serves a notice pursuant to clause 5.2(a) in respect of an Event of Default; and
 - (4) the Maturity Date or any earlier Redemption Date for the Note.
- (b) If interest that would otherwise be due on an Interest Payment Date is deferred under this clause, the Issuer must notify the Trustee and ASX of that fact as soon as practicable and in any event not later than the 15th Business Day prior to the Interest Payment Date.
- (c) The deferral of any interest payment under clause 3.4(a) will not constitute a default by the Issuer for any purpose.

3.5 Interest on Deferred Interest Payments

- (a) The Issuer must pay interest on each Deferred Interest Payment from (and including) the Interest Payment Date on which the Deferred Interest Payment first arose to (but excluding) the date of actual payment.
- (b) Interest payable on a Deferred Interest Payment under clause 3.5(a):
- (1) accrues from time to time at the same rate as interest accrues on the principal amount of the Notes;
 - (2) compounds and is added to the Deferred Interest Payment (so as to thereafter itself bear interest under this clause) on each Interest Payment Date; and
 - (3) is payable at the same time as the Deferred Interest Payment.

3.6 Accrual and calculation of interest

- (a) Interest on the Notes (including interest on Deferred Interest Amounts) accrues on a daily basis and is to be calculated on the basis of a 365 day year and the number of days elapsed.
- (b) All calculations of interest will be rounded to four decimal places. Any fraction of a cent in the payment of any interest in respect of a Holder's aggregate holding of the Notes will be disregarded.

3.7 Issuer's determination final

The determination by the Issuer of all amounts, rates and dates required to be determined by it under these Terms of Issue is, in the absence of manifest error, final and binding on the Trustee, the Registrar and each Holder.

4 Redemption and purchase

4.1 Redemption on Maturity Date

The Issuer must redeem each Note on the Maturity Date at its principal amount plus any Outstanding Interest on the Note at that date unless:

- (a) the Note has been previously redeemed; or
- (b) the Note has been purchased by the Issuer and cancelled.

4.2 Early redemption at Issuer's election

(a) **(Early Redemption – Issuer's optional redemption)**

- (1) The Issuer may on the First Optional Redemption Date or any Interest Payment Date thereafter redeem all (but not part) of the Notes at their principal amount plus any Outstanding Interest by giving not less than ten Business Days' notice of such redemption to the Trustee, the Holders and ASX.
- (2) The Issuer may give notice under this clause before the First Optional Redemption Date provided the redemption date specified in the notice falls on a Business Day on or after the First Optional Redemption Date.

(b) **(Early Redemption - Early Redemption Event)**

- (1) If:
 - (A) a Change of Control Event occurs;
 - (B) a Capital Event occurs;
 - (C) an Accounting Event occurs; or
 - (D) a Tax Event occurs,

the Issuer may redeem all (but not some) of the Notes at any time before the Maturity Date for:

- (E) unless paragraph (F) applies, the principal amount of the Notes plus any Outstanding Interest; or
 - (F) in the case of a redemption before the First Optional Redemption Date pursuant to paragraph (B) or (C) above, an amount equal to 101% of the principal amount of the Notes plus any Outstanding Interest.
- (2) The Issuer may only redeem a Note under paragraph (b) if:
 - (A) the Issuer has given at least ten Business Days' (and no more than 45 Business Days') notice to the Trustee, the Holders and ASX;
 - (B) before the Issuer gives the notice under paragraph (D), the Trustee has received a certificate signed by two Directors of the Issuer that the event or circumstances constituting the relevant Early Redemption Event has or have occurred;
 - (C) the proposed Redemption Date nominated by the Issuer is an Interest Payment Date; and
 - (D) in the case of redemption under paragraph (C), the Redemption Date falls not later than the second Interest Payment Date falling after the later of:

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- the date of publication of the first audited financial statements of the Issuer that have been prepared on the basis of the change to Current Accounting Practice that has given rise to the Accounting Event; and
 - the date on which the Accounting Event occurred.
- (c) **(Early Redemption – clean up option)**
- (1) If at any time the aggregate principal amount of the Notes Outstanding is less than 20% of the aggregate principal amount of the Notes originally issued, the Issuer may redeem all (but not some) of the Notes that remain outstanding at any time before the Maturity Date at their principal amount plus any Outstanding Interest.
 - (2) The Issuer may only redeem a Note under paragraph (c) if:
 - (A) the Issuer has given at least ten Business Days' (and no more than 45 Business Days') notice to the Trustee, the Holders and ASX; and
 - (B) the proposed Redemption Date nominated by the Issuer is an Interest Payment Date.
- (d) **(Effect of notice)**
- Notice under this clause 4.2 is irrevocable and on the day specified in the notice the Issuer must redeem each Note at its principal amount plus all Outstanding Interest. The accidental or inadvertent failure to give notice to an individual Holder will not invalidate notice under this clause.

4.3 Early redemption at Holders' election - Change of Control Event

- (a) If a Change of Control Event occurs, and the Issuer has not within 45 days after the occurrence of the Change of Control Event given notice under clause 4.2 electing to redeem the Notes, the Holder of a Note may require the Issuer to redeem all (but not some) of its Notes on the Change of Control Event Redemption Date at their principal amount plus any Outstanding Interest.
- (b) On or before the first day of the Change of Control Event Redemption Period, if the Issuer has not given notice under clause 4.2 electing to redeem the Notes, the Issuer must give notice of the Change of Control Event to the Trustee, the Holders and ASX (a **Change of Control Event Notice**). The Change of Control Event Notice will contain a statement informing Holders of their right to require redemption of the Notes pursuant to this clause 4.3 and will also specify:
 - (1) the material facts constituting the Change of Control Event;
 - (2) the closing price of the Notes on the day that the Notes were trading on ASX immediately prior to the occurrence of the Change of Control Event;
 - (3) the form of the exercise notice (**Change of Control Event Redemption Exercise Notice**);
 - (4) the last day of the Change of Control Event Redemption Period; and
 - (5) such other information relating to the Change of Control Event as the Trustee may reasonably require.
- (c) To exercise the right under paragraph (a), a Holder must deliver to the Registrar (as agent for the Issuer) a duly completed and signed Change of Control Event Redemption Exercise Notice, in the form attached to the Change of Control Event Notice (or, if the Issuer does not give a Change of Control Event Notice to the

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Trustee, the Holders and ASX as required under this clause 4.3 on or before the first day of the Change of Control Event Redemption Period, in such form containing sufficient details to enable the Issuer to redeem the Notes as may be approved by the Trustee) at any time in the Change of Control Event Redemption Period.

- (d) A Change of Control Event Redemption Exercise Notice is irrevocable, and the Issuer must redeem all Notes the subject of the Change of Control Event Redemption Exercise Notice on the relevant Change of Control Event Redemption Date for their principal amount plus any Outstanding Interest.

4.4 Failure to redeem

If the Issuer fails to redeem the Notes when due, interest will continue to accrue on the Notes at the rate applicable to them on their Redemption Date and must be paid to the relevant Holders upon redemption of the Notes.

4.5 Purchase

- (a) The Issuer and any of its Related Bodies Corporate may at any time on or after the fifth anniversary of the Issue Date purchase Notes in the open market or otherwise and at any price.
- (b) Notes purchased under this clause 4.5 may be held, resold or cancelled at the discretion of the purchaser (and, if the Notes are to be cancelled, the Issuer), subject to compliance with any applicable law or requirement of ASX.

4.6 Cancellation

Notes redeemed, or purchased by the Issuer or a Related Body Corporate which the Issuer elects to cancel, will be cancelled by the Issuer and may not be resold.

5 Events of Default

5.1 Events of Default

Each of the following is an Event of Default in relation to the Notes (whether or not it is in the control of the Issuer):

- (a) subject to clause 3.4, the Issuer fails to pay any principal or interest or other amounts due and payable in respect of the Notes or any of them in full within 30 days of its due date; or
- (b) an order is made (other than an order successfully appealed or permanently stayed within 30 days) by a State or Federal Court in the Commonwealth of Australia or a resolution is passed by the shareholders of the Issuer for the winding up of the Issuer (other than for the purposes of the Solvent Reorganisation of the Issuer).

5.2 Consequences of an Event of Default

- (a) If any Event of Default occurs which is continuing in relation to the Notes then the Trustee may by written notice to the Issuer declare the principal amount together with all Outstanding Interest applicable to each Note held by the Holders to be due

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and payable immediately or on such other date specified in the notice, or take any other action permitted by the Trust Deed.

- (b) The Trustee is not bound to take any of the actions referred to in paragraph (a) to enforce the obligations of the Issuer in respect of the Notes or any other action pursuant to or in connection with the Trust Deed or the Notes unless:
- (1) it shall have been so directed by a Holder Resolution or so requested in writing by the Holders of at least one-fifth of the aggregate of the principal amount of all Notes Outstanding (ignoring any Notes held by the Issuer or any of its Related Bodies Corporate and not cancelled); and
 - (2) it shall have been indemnified to its satisfaction (acting reasonably) in respect of all liabilities, costs, charges, damages and expenses (including any management time) which it may incur, as more fully set out in the Trust Deed.

5.3 Enforcement by Trustee, Holders

The rights of the Trustee and the Holders to take action against the Issuer to enforce the Notes or the Trust Deed are limited as provided in the Trust Deed.

5.4 Notification

The Issuer must promptly, after becoming aware of an Event of Default that is continuing, notify the Trustee and ASX of that Event of Default.

6 Payments

6.1 Payment of principal

Payments of principal in respect of a Note (together with all payments of interest due on redemption of the Note) will be made to the person registered at 10:00am on the Maturity Date or relevant Redemption Date (as applicable) as the Holder of that Note.

6.2 Payment of interest

Payments of interest in respect of a Note (other than payments of interest due on redemption of the Note) will be made to the person registered at the Record Date as the Holder of that Note.

6.3 Manner of payment

- (a) Amounts payable to a Holder in respect of the Notes will be paid by direct credit to an account nominated by the Holder at an Australian financial institution by notice to the Registry not less than eight calendar days before the date for payment.
- (b) Where a payment cannot be made in accordance with paragraph (a) because a Holder has not provided account details, or the Issuer determines that the account details are incorrect or the relevant account has been closed, the Issuer is under no obligation to make the relevant payment until correct account details have been provided.
- (c) Where a payment cannot be made in accordance with paragraph (a) on the due date because a financial institution is not open for business (or is not open for

business in the place where the account is kept) on that date, the Issuer is under no obligation to make the relevant payment until the payment can be made.

- (d) The Holder is not entitled to any interest or other amount in respect of a delay in payment under paragraphs (b) or (c).

6.4 Payments net of deductions

- (a) The Issuer may deduct from any interest or other amount payable to a Holder the amount of any withholding or other tax, duty or levy required by law to be deducted in respect of such amount.
- (b) The Issuer shall pay the full amount required to be deducted to the relevant revenue authority within the time allowed for such payment without incurring penalty under the applicable law and shall, if required by any Holder, deliver to that Holder the relevant receipt issued by the revenue authority without unreasonable delay after it is received by the Issuer.

6.5 Payments generally

Payments in respect of the Notes will be made in accordance with the provisions relating to payment set out in clause 4.2 of the Trust Deed.

7 Further issues

The Issuer may from time to time, without the consent of the Holders, issue further notes under the Trust Deed on different terms so as to form part of a separate series of notes as the Notes, or issue any other bonds, notes, shares or any other form or type of securities, or incur or guarantee any indebtedness, upon such terms as it may think fit in its sole discretion.

8 Time limit for claims

A claim against the Issuer for a payment under the Notes is void unless made within five years after the date on which payment first became due.

9 Amendments

9.1 Amendments without consent

At any time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer and Trustee may without the consent of the Holders, amend these Terms of Issue or the Trust Deed if the Trustee is of the opinion that such alterations are:

- (a) of a formal or technical or minor nature;
- (b) made to cure any ambiguity or correct any manifest error;
- (c) made to increase the Maximum Level or reduce the Minimum Level;
- (d) necessary or expedient for the purpose of enabling the Notes to be:

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- (1) listed for quotation, or to retain quotation, on any stock exchange; or
 - (2) offered for subscription or for sale under the laws for the time being in force in any place,
 - (3) and (in the case of each of paragraph (1) and (2) above) the Issuer has provided to the Trustee an opinion of independent legal advisers of recognised standing in New South Wales that such alteration is otherwise not materially prejudicial to the interests of Holders as a whole;
- (e) necessary to comply with:
- (1) the provisions of any statute or the requirements of any statutory authority; or
 - (2) the ASX Listing Rules or the listing or quotation requirements of any stock exchange on which the Issuer may propose to seek a listing or quotation of the Notes,
 - (3) and (in the case of each of paragraph (1) and (2) above) the Issuer has provided to the Trustee an opinion of independent legal advisers of recognised standing in New South Wales that such alteration is otherwise not materially prejudicial to the interests of Holders as a whole; or
- (f) not, and not likely to become, taken as a whole and in conjunction with all other amendments to be made contemporaneously with that amendment, materially prejudicial to the interests of Holders generally,

and in any case, unless a Rating Agency Event has occurred, the Issuer confirms to the Trustee that it is satisfied that the amendments will not cause the Notes to cease to have a High Equity Content classification assigned to them by the Rating Agency.

9.2 Amendments with consent

At any time and from time to time, but subject to compliance with the Corporations Act and all other applicable laws, the Issuer may with the approval of the Trustee amend these Terms of Issue or the Trust Deed if a Special Resolution is passed in favour of such alteration.

10 Notices

Notices under these Terms of Issue are to be given in accordance with the provisions of the Trust Deed.

11 Governing law and jurisdiction

11.1 Governing law

The Notes and these Terms of Issue are governed by the laws of New South Wales, Australia.

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11.2 Submission to jurisdiction

The Issuer, the Trustee and each Holder submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, Australia in connection with matters concerning the Notes or these Terms of Issue. The Issuer, Trustee and each Holder waive any right they have to object to an action being brought in those courts, or to claim that the action has been brought in an inconvenient forum, or to claim those courts do not have jurisdiction.

12 Definitions and interpretation

12.1 Defined Terms

The following defined terms apply in these Terms of Issue:

Accounting Event occurs if there is a change in Current Accounting Practice after the Issue Date and the Rating Agency confirms publicly or in writing to the Issuer that as a result of the change the Mandatory Deferral Condition no longer satisfies the criteria for the Notes to receive a High Equity Content classification under the methodology applied by the Rating Agency.

Adjusted Net Debt in relation to a Testing Date, total current and non-current interest bearing liabilities, adjusted to remove any fair value adjustments on borrowings in hedge relationships, less cash and cash equivalents, all as disclosed in the more recent of:

- 1 the audited full year consolidated financial statement of the Issuer (and its controlled entities) for the full year ended on the immediately prior 30 June; and
- 2 the reviewed consolidated interim financial statements of the Issuer (and its controlled entities) for the half year ended on the immediately prior 31 December,

or, if not disclosed in the audited consolidated financial statements or reviewed consolidated interim financial statements of the Issuer (and its controlled entities), as otherwise publicly disclosed to Holders.

ASIC the Australian Securities and Investments Commission.

ASX ASX Limited (ABN 98 008 624 691) or the market it operates.

ASX Settlement ASX Settlement Pty Ltd (ABN 49 008 504 532).

ASX Settlement Operating Rules the settlement operating rules of ASX Settlement from time to time.

Australian Tax Act the *Income Tax Assessment Act 1936* (Cth) and, where applicable,

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the *Income Tax Assessment Act 1997* (Cth).

Bank Bill Rate for the relevant Interest Period, the average mid rate for Bills having a tenor of three months as displayed on the "BBSW" page of the Reuters Monitor System on the first Business Day of the Interest Period. However, if the average mid rate is not displayed or the Issuer determines that there is an obvious error in that rate, **Bank Bill Rate** means the rate determined by the Issuer in good faith at approximately 10:30am on that day having regard, to the extent possible, to the rates otherwise bid and offered for bank accepted Bills of that tenor at or around that time (including any displayed on the "BBSY" or "BBSW" page of the Reuters Monitor System).

Bill has the meaning it has in the *Bills of Exchange Act 1909* (Cth) and a reference to the acceptance of a Bill is to be interpreted in accordance with that Act.

Business Day has the same meaning as in the Listing Rules, but where used in the definitions of "Bank Bill Rate", "Change of Control Event Redemption Date", "First Optional Redemption Date", "Interest Payment Date", "Maturity Date" and in clause 4.2(a)(2), excludes a day on which major trading banks are not open for business in Sydney.

Capital Event occurs if the Notes cease to have High Equity Content as a result of a change occurring after the Issue Date in the methodology applied by the Rating Agency.

Change in Law

- 1 any amendment to, clarification of, or change (including any announced prospective change), in the laws or treaties or any regulations of Australia or any political subdivision or taxing authority of Australia affecting taxation;
- 2 any judicial decision, official administrative pronouncement, published or private ruling, regulatory procedure, notice or announcement (including any notice or announcement of intent to adopt such procedures or regulations) (**Administrative Action**); or
- 3 any amendment to, clarification of, or change in, an Administrative Action that provides for a position that differs from the current generally accepted position, in each case, by any legislative body, court, governmental authority or regulatory body, irrespective of the manner in which such amendment, clarification, change or Administrative Action is made known.

Change of Control Event occurs if after the Issue Date:

- 1 any person makes a takeover bid (as defined in the Corporations Act) to acquire some or all of the Issuer's ordinary shares and the offer is, or becomes, unconditional and the offeror is in, or becomes in, the position to cast more than one half of the maximum number of votes that may be cast at a general meeting of the Issuer;

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- 2 a court makes an order to approve a scheme of arrangement under Part 5.1 of the Corporations Act which, when implemented, will result in a person being in the position to cast more than one half of the maximum number of votes that may be cast at a general meeting of the Issuer; or
- 3 a person together with its associates (as defined in section 12 of the Corporations Act) acquires or comes to hold legally or beneficially more than 50% of the voting shares (as defined in the Corporations Act) in the capital of the Issuer,

(such other person or person together with its associates being a **Relevant Person**), provided that a Change of Control Event will not have occurred if the persons holding, directly or indirectly, more than 50% of the voting shares of the Relevant Person are also, or immediately prior to the event which would otherwise constitute a Change of Control Event were, persons who held, directly or indirectly, more than 50% of the voting shares of the Issuer.

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| Change of Control Event Redemption Date | the date which is 45 days after the expiry of the Change of Control Event Redemption Period or, if that date is not a Business Day, the next Business Day. |
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| Change of Control Event Redemption Period | the period beginning on the date falling 45 days after the occurrence of the Change of Control Event and ending on the date which is 45 days from that date. |
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| Corporations Act | <i>Corporations Act 2001 (Cth).</i> |
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| Credit Rating | <p>in relation to the Issuer at any time, the issuer corporate credit rating granted by the Rating Agency or (if applicable) a Subsequent Ratings Agency at that time to the Issuer.</p> <p>For this purpose, "Subsequent Ratings Agency" means, where the Rating Agency is no longer assigning a corporate credit rating for the Issuer for any reason, a ratings agency identified by the Issuer, being of equivalent market standing and capable of assigning a corporate credit rating in respect of the Issuer.</p> |
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| Current Accounting Practice | at a relevant time, means accounting principles and practices applying by law and otherwise generally accepted in Australia at that time, consistently applied. |
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| Deferred Interest Payment | at any time, any interest deferred under clause 3.4(a) which has not been paid at that time. |
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| Director | a Director of the Issuer. |
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| Early Redemption Date | means the date on which the Note is to be redeemed in accordance with clause 4.2. |
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| Early Redemption Event | a Capital Event, Change of Control Event or Tax Event. |
| Event of Default | has the meaning in clause 5.1. |
| First Optional Redemption Date | 8 June 2019, or, if that date is not a Business Day, the next Business Day. |
| High Equity Content | in relation to securities, a "high equity content" classification assigned to the securities by the Rating Agency in the sense used by the Rating Agency which is the same or a higher category of equity credit as was attributed to the Notes at the Issue Date. |
| Holder | in relation to any Note, a person whose name is for the time being registered in the Register as the holder of that Note. |
| Holder Resolution | <ol style="list-style-type: none">1 a resolution passed at a meeting of Holders duly called and held under the Meeting Provisions:<ul style="list-style-type: none">• by more than 50% of the persons voting on a show of hands (unless the second bullet point of this paragraph 1 applies); or• if a poll is duly demanded, then by a majority consisting of more than 50% of the votes cast; or2 if the meeting is by postal ballot or written resolution, then by Holders representing (in aggregate) more than 50% of the principal amount of all of the outstanding Notes. |
| Initial Margin | the rate expressed as a percentage per annum determined by the Issuer on the basis of the bids made under the bookbuild process as described in the prospectus issued by the Issuer on or about 28 February 2012 in respect of the Notes. |
| Interest Cover Ratio | means, in relation to a Testing Date, the ratio of Operating EBITDA to Relevant Net Interest Paid. |
| Interest Payment Dates | in relation to a Note: <ol style="list-style-type: none">1 each 8 June, 8 September, 8 December and 8 March, commencing on 8 June 2012 and falling on or before the Redemption Date of the Note; and2 the Maturity Date (unless earlier redeemed or cancelled in accordance with these Terms of Issue), or, if such date is not a Business Day, the following Business Day. |
| Interest Period | in respect of a Note: <ol style="list-style-type: none">1 the period from (and including) the Issue Date to (but excluding) |

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- the first Interest Payment Date; and
- 2 thereafter, the period from (and including) each Interest Payment Date to (but excluding) the first to occur of:
- the next Interest Payment Date; and
 - the Redemption Date in respect of that Note.

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| Interest Rate | for any Interest Period, the Interest Rate determined in accordance with clause 3. |
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| Issue Date | the date of issue of the Notes. |
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| Issuer | AGL Energy Limited (ABN 74 115 061 375). |
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| Listing Rules | the listing rules of ASX, as amended or replaced from time to time. |
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| Leverage Ratio | means, in relation to a Testing Date, the ratio of Relevant Net Debt (divided by two) to Operating EBITDA. |
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| Mandatory Deferral Condition | <p>starts to subsist on a Testing Date (the Commencing Testing Date) if:</p> <ol style="list-style-type: none">1 the Interest Cover Ratio is less than the Minimum Level; or2 the Leverage Ratio is above the Maximum Level and was above the Maximum Level on the immediately preceding Testing Date <p>and continues to subsist until the next Testing Date (the Ending Testing Date) on which:</p> <ol style="list-style-type: none">3 the Interest Cover Ratio is at or above the Minimum Level; and4 if the Mandatory Deferral Condition commenced under paragraph 2, or the Leverage Ratio has exceeded the Maximum Level on any two consecutive Testing Dates on or after the Commencing Testing Date, the Leverage Ratio is at or below the Maximum Level and was at or below the Maximum Level on the immediately preceding Testing Date. |
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| Maturity Date | 8 June 2039, or, if that date is not a Business Day, the next Business Day. |
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| Maximum Level | 4.0 times. |
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| Meeting Provisions | The provisions for meetings of the Holders set out in schedule 2 of the Trust Deed. |
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| Minimum Level | 3.0 times. |
| Net Interest Paid | <p>in relation to a Testing Date, the amount of interest paid, less the amount of interest received, by the Issuer (and its controlled entities) for the more recent of:</p> <ol style="list-style-type: none">1 the six month period ended on the immediately prior 30 June, as calculated by reference to the audited full year consolidated financial statement of the Issuer (and its controlled entities) for the full year ended on that date, less the equivalent items in the reviewed consolidated interim financial statements of the Issuer (and its controlled entities) for the half year ended on the prior 31 December; and2 the six month period ended on the immediately prior 31 December, as reported in the reviewed consolidated interim financial statements of the Issuer (and its controlled entities) for that period, <p>or, if not disclosed in the audited full year consolidated financial statement or reviewed consolidated interim financial statements of the Issuer (and its controlled entities), as otherwise publicly disclosed to Holders.</p> |
| Noteholder Claims | has the meaning in clause 2(b). |
| Notes | the redeemable subordinated notes issued or to be issued by the Issuer on these Terms of Issue. |
| Offshore Associate | <p>an associate (as defined in section 128F of the Australian Tax Act) of the Issuer that is either:</p> <ol style="list-style-type: none">1 a non-resident of Australia which does not acquire the Notes in carrying on a business at or through a permanent establishment in Australia; or2 a resident of Australia that acquires the Notes in carrying on a business at or through a permanent establishment outside Australia. |
| Operating EBITDA | <p>in relation to a Testing Date, the underlying earnings before interest, tax, depreciation and amortisation of the Issuer (and its controlled entities) for the more recent of:</p> <ol style="list-style-type: none">1 the six month period ended on the immediately prior 30 June, as calculated by reference to the note setting out the underlying results for the Issuer (and its controlled entities) contained within the audited full year consolidated financial statement of the Issuer (and its controlled entities) for the full year ended on that date, less the equivalent item in the reviewed consolidated interim financial statements of the Issuer (and its controlled entities) for the half year ended on the prior 31 December; and2 the six month period ended on the immediately prior 31 December, as reported in the notes setting out the underlying results for the Issuer (and its controlled entities) contained within the reviewed consolidated interim financial statements of the |

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Issuer (and its controlled entities) for that period, or, if not disclosed in the audited full year consolidated financial statement or reviewed consolidated interim financial statements of the Issuer, as otherwise publicly disclosed to Holders.

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| Outstanding | in relation to a Note means the Note has not been redeemed or repurchased and cancelled. |
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| Outstanding Interest | in relation to a Note at any time, the aggregate of: <ol style="list-style-type: none">1 any Deferred Interest Payment in respect of that Note at that time; and2 any other accrued and unpaid interest in respect of that Note at that time (including any interest accrued or compounded under clause 3.5). |
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| Parity Amount | in respect of a share is a reference to the maximum amount the holder of such a share would be entitled to receive (whether by way of return of capital, participation in any profits or surplus, payment of any debt due to the holder in its capacity as a member or otherwise) in respect of such share assuming the Issuer had sufficient assets to satisfy that entitlement after satisfaction of all claims ranking in priority to it. |
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| Parity Creditors | any unsecured, subordinated creditor of the Issuer whose claim is expressed to rank equally with the Issuer's obligations under the Notes. |
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| Parity Shares | preference shares in the capital of the Issuer that are expressed to rank equally with the Notes for return of capital. |
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| Rating Agency | Standard & Poor's (Australia) Pty Limited (ABN 62 007 324 852) or its successors. |
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| Rating Agency Event | <ol style="list-style-type: none">1 receipt by the Issuer of advice in writing from the Rating Agency that as a result of a change in the methodology applied by the Rating Agency the Notes no longer satisfy the criteria for receiving a High Equity Content classification from the Rating Agency; or2 the Issuer ceasing to hold a Credit Rating. |
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| Record Date | means for payment of interest: <ol style="list-style-type: none">1 the date which is eight calendar days before the Interest Payment Date upon which such interest actually falls due for payment; or2 such other date as is determined by the Directors in their absolute discretion and communicated to ASX not less than seven Business Days before the specified Record Date, |
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or in either case such other date as may be required by ASX.

Redemption Date in respect of any Note, the date for redemption of that Note in accordance with the Terms of Issue, including any Early Redemption Date or the First Optional Redemption Date.

Register the register of Holders (established and maintained in accordance with the Trust Deed) and, where appropriate, includes:

- 1 a sub-register conducted by or for the Issuer pursuant to the Corporations Act, the Listing Rules or ASX Settlement Operating Rules; and
- 2 any branch register.

Registrar Link Market Services Limited (ABN 54 083 214 537) in its capacity as registrar of the Notes or such other person appointed by the Issuer to maintain the Register on the Issuer's behalf from time to time.

Related Body Corporate has the meaning given to it in the Corporations Act.

Relevant Net Debt Adjusted Net Debt:

- 1 less 100% of the outstanding balance of Notes; and
- 2 less the Relevant Percentage of the outstanding balance of each other Relevant Security (if any),

in each case as expressed in Australian dollars on the same basis and for the same balance date as applies to the determination of Adjusted Net Debt and, if not disclosed in the audited full year consolidated financial statement or reviewed consolidated interim financial statements of the Issuer (and its controlled entities), as otherwise publicly disclosed to Holders.

Relevant Net Interest Paid Net Interest Paid:

- 1 less 100% of the interest paid on the Notes; and
- 2 less the Relevant Percentage of the interest paid on each other Relevant Security,

in each case for the same period and determined on the same basis as applies to the determination of Net Interest Paid and, if not disclosed in the audited full year consolidated financial statement or reviewed consolidated interim financial statements of the Issuer (and its controlled entities), as otherwise publicly disclosed to Holders.

Relevant Percentage means at any time, the percentage of equity credit attributed by the Rating Agency to a Relevant Security at that time.

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| Relevant Security | <p>means shares in the capital of, or any indebtedness in the form of or represented by notes, bonds, debentures or other securities issued by, the Issuer (or any of its controlled entities) other than the Notes that:</p> <ol style="list-style-type: none">1 is included in Adjusted Net Debt; and2 has been attributed with equity credit by the Rating Agency. |
| Senior Creditor | <p>all creditors (including subordinated creditors) of the Issuer other than the Trustee (in respect of the principal of and interest on the Notes), the Holders, any Parity Creditors and the holders of the Issuer's shares.</p> |
| Solvent Reorganisation | <p>with respect to the Issuer, a solvent winding-up, deregistration, dissolution, scheme of arrangement or other reorganisation of the Issuer solely for the purposes of a consolidation, amalgamation, merger or reconstruction, the terms of which have been approved by the shareholders of the Issuer or by a court of competent jurisdiction, under which the continuing or resulting corporation effectively assumes the obligations of the Issuer under the Notes and the Trust Deed.</p> |
| Special Resolution | <ol style="list-style-type: none">1 a resolution passed at a meeting of the Holders duly called and held under the Meeting Provisions:<ul style="list-style-type: none">• by at least 75% of the persons voting on a show of hands (unless the second bullet point of this paragraph 1 applies); or• if a poll is duly demanded, then by a majority consisting of at least 75% of the votes cast; or2 a resolution passed by postal ballot or written resolution by Holders representing (in aggregate) at least 75% of the principal amount of all of the outstanding Notes. |
| Step-up Margin | <p>the Initial Margin plus an additional 0.25% per annum.</p> |
| Tax | <p>means any tax, levy, impost, deduction, charge or withholding or duty (including stamp duty and transaction duty) imposed by any authority together with any related interest, penalties and expenses in connection with them.</p> |
| Tax Event | <p>occurs where, on or after the Issue Date, the Issuer receives an opinion of a nationally recognised legal counsel or other tax adviser in a relevant tax jurisdiction, experienced in such matters that, as a result of a Change in Law after the Issue Date, payment of interest would no longer, or within 90 calendar days of the date of that opinion will no longer, be fully deductible (or the entitlement to make such deduction shall be materially reduced) by the Issuer for the purposes of the Issuer's Australian tax purposes or the tax purposes of any other relevant tax jurisdiction.</p> |

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| Testing Date | any date on which the Issuer first releases to the public its audited full year consolidated financial statement in respect of a reporting period ended on 30 June or its reviewed consolidated interim financial statements in respect of a reporting period ended on 31 December of any given year. |
| Terms of Issue | these terms and conditions of issue. |
| Trust Deed | the Trust Deed dated on or about 28 February 2011 between the Issuer and the Trustee as amended from time to time. |
| Trustee | Australian Executor Trustees Limited (ABN 84 007 869 794). |

12.2 Interpretation

In these Terms of Issue, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (d) a reference to \$ or dollars is to Australian currency;
- (e) a reference to time is to Sydney, Australia time;
- (f) a reference to a person includes a reference to the person's executors, administrators, successors and permitted assigns and substitutes;
- (g) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (h) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (i) a reference to ASIC, ASX Settlement or ASX or another body:
 - (1) where that body ceases to exist; or
 - (2) where its powers or functions are transferred to another body,is a reference to the applicable body which replaces it or which substantially succeeds to its powers or functions;
- (j) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (k) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally; and

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- (l) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

Meetings of Holders

1 Notice of Meeting

- (a) At least 10 Business Days notice in writing (15 Business Days notice for a Special Resolution) of any Meeting must be given to the Trustee, the Company and the Holders by the party convening the Meeting.
- (b) If a Holder does not receive notice, the Meeting is still valid.
- (c) The party convening the Meeting must notify the Trustee, the Company and Holders (as the case requires) in writing of:
 - (1) the place, day and time of the Meeting; and
 - (2) the nature of the business to be transacted.
- (d) If either the Company or the Trustee omits to give notice under paragraph 1(c) or if either does not receive notice, the Meeting is invalid unless the person who did not receive notice waives the notice requirement.
- (e) For the purposes of any Meeting, or for determining whether any resolution is passed without holding a Meeting, any Notes held by the Company or any Related Body Corporate of the Company shall be treated as not being on issue.

2 Who may attend and address Meeting

Each Holder is entitled to attend and vote at any Meeting or any rescheduled Meeting (which was adjourned pursuant to paragraph 3(c)). The Trustee, the Company, any person invited by any of them and the Company's auditor is entitled to attend and address a Meeting or rescheduled Meeting of Holders.

3 Quorum

- (a) No business may be transacted at any Meeting unless a quorum of Holders is present at the time when the Meeting proceeds to business.
- (b) A quorum for any Meeting is at least 5 persons holding or representing by attorney, representative or proxy at least 10% of the Notes.
- (c) If a quorum is not present within half an hour from the time appointed for the Meeting, the Meeting must be adjourned as the chair directs.
- (d) At a rescheduled Meeting (which was adjourned pursuant to paragraph 3(c)) the Holders with at least 5% of the Notes who are present either in person or by proxy constitute a quorum and are entitled to pass the resolution.

4 Chair

- (a) Subject to the Corporations Act, a nominee of the Trustee (if any) may preside as chair at a Meeting of Holders.
- (b) If the Trustee does not appoint a person to be chairperson of a meeting, or the person does not appear within 15 minutes from the time appointed for the Meeting or is unwilling to act, the Holders present must elect one of their number to preside as chair.
- (c) The chair:
 - (1) need not be a Holder; and
 - (2) may be an officer or employee of the Company or the Trustee.

5 Voting

- (a) Subject to Holders being entitled to vote, any question submitted to a Meeting must be decided in the first instance by a show of hands, but a poll will be taken in any case where:
 - (1) it is required by this deed or by law that the question be decided by a majority which is to be measured by a percentage of the votes cast by those present; or
 - (2) either before or immediately after any question is put to a show of hands a poll is demanded by the chair of the Meeting, the Trustee, the Company, or at least 5 Holders, present personally or by proxy, representative or attorney, holding or representing by proxy, representative or attorney at least 5% of the Notes.
- (b) In the case of equality of votes, the chair of a Meeting of Holders has a casting vote in addition to his votes (if any) as a Holder both on a show of hands and on a poll.

6 Votes

At a Meeting:

- (a) on a show of hands each Holder present personally or by proxy, attorney or representative with the right to vote at that Meeting has one vote; and
- (b) on a poll each Holder present personally or by proxy, attorney or representative with a right to vote at that Meeting is entitled to one vote for each Note.

7 Voting by Joint Holders

- (a) If Notes are held jointly, the most senior Holder's vote either in person or by proxy is accepted to the exclusion of the other Joint Holders.
- (b) The most senior Holder is the person whose name appears first on the Register.

8 Voting by corporation

- (a) A corporation who is a Holder may vote through a representative authorised in writing.
- (b) The corporation's representative is regarded as a Holder and has the same rights as a Holder.

9 Voting by person of unsound mind

If a Holder is of unsound mind or is a person whose person or estate is liable to be dealt with in any way under the law relating to mental health, the Holder's committee or Trustee or other person who properly has the management of the Holder's estate may exercise any rights of the Holder in relation to a Meeting of Holders as if the committee, Trustee or other person were the Holder.

10 Objection to voter's qualification

- (a) An objection may be raised to the qualification of a voter only at the Meeting where the vote objected to is given or tendered.
- (b) An objection must be referred to the chair whose decision is final.
- (c) The chair may consult with any representative of the Company and the Trustee present at the Meeting.
- (d) A vote allowed at a Meeting is valid for all purposes.

11 Proxies

A Holder is entitled to appoint another person as his proxy to attend and vote at a Meeting. Any person including a Holder may act as a proxy, and that proxy has the same rights as the appointor to vote whether on a show of hands, to speak, and be reckoned in the quorum.

12 Proxy instrument

- (a) If the appointer of a proxy is an individual, the instrument of appointment must be in writing and signed by the appointer or the appointer's attorney authorised in writing.
- (b) If the appointer of a proxy is a corporation, the instrument of appointment must be:
 - (1) under its common seal; or
 - (2) under the hand of an officer or attorney who has been authorised by the corporation.

13 Voting authority to be deposited with Company

- (a) The instrument appointing a proxy or a facsimile copy of it and the original or certified copy of the power of attorney or authority under which it is signed or a facsimile copy of it must be deposited with the Company at least 48 hours, or any shorter period determined by the Company from time to time, before the time appointed for the Meeting at which the proxy proposes to vote. The original of any facsimile instrument provided under this paragraph 13(a) must be deposited with the Company before the time appointed for the Meeting.
- (b) If paragraph 13(a) is not complied with, the proxy is invalid.
- (c) An instrument appointing a proxy is only valid for 12 months from its execution date.

14 Effect of death or insanity on vote under proxy

- (a) A vote given under an instrument of proxy is valid even though the principal is insane at the time, has died or has revoked the proxy or the authority under which the proxy was executed.
- (b) Paragraph 14(a) does not apply if the Company has notice in writing of the death, insanity or revocation before the Meeting at which the proxy is to be used.

15 Adjournments

The chair may adjourn a Meeting with the consent of the majority of Holders present.

16 Declaration by chair of voting

Unless a poll has been demanded, a declaration by the chair that a resolution has been carried or lost by a particular majority is conclusive evidence of that fact.

17 Demand for a poll and manner of poll

- (a) A poll is to be conducted as directed by the chair at the Meeting or any adjournment of the Meeting.
- (b) The demand for a poll may be withdrawn by the person who demanded it.
- (c) The demand for a poll does not discontinue the Meeting except to decide the question for which the poll is demanded.
- (d) The result of the poll is regarded as the resolution of the Meeting.

18 Poll on election of chair or question of adjournment

A poll demanded on the election of a chair or on a question of adjournment must be taken forthwith.

19 Effect of resolution

A resolution passed at a Meeting of Holders held in accordance with this deed is binding upon all the Holders.

20 Minutes

- (a) The chair must ensure that minutes of proceedings at every Meeting of Holders are taken and entered in a minute book provided by the Company.
- (b) The signature by the chair of minutes of a Meeting is conclusive evidence of the matters stated in the minutes.
- (c) Unless there is proof to the contrary a minuted Meeting is regarded as properly held and a resolution passed at the Meeting is regarded as properly passed.

21 Resolution by postal ballot

- (a) A resolution of Holders may be passed by the Holders completing, signing and returning copies of a written resolution, which has been sent by the Company with the approval of the Trustee, within a period specified by the Company.
- (b) In respect of such a resolution each Holder is entitled to have one vote for each Note held.


22 Powers

- (a) Without derogating from the powers conferred on the Trustee by this deed, a Meeting of Holders may exercise the following powers by Special Resolution:
 - (1) power to authorise the Trustee to take or to refrain from taking any action which may be taken by the Trustee under any express or implied power or authority howsoever conferred;
 - (2) power to sanction the release by the Trustee or the Company from any obligation under this deed either unconditionally or upon such conditions as the Trustee may arrange with the Company;
 - (3) power to sanction agreement by the Trustee to any modification or compromise of any of the rights of all the Holders against the Company;
 - (4) power to authorise the Trustee to agree to the postponement of the repayment of the principal in respect of any part of the Notes beyond their due dates and to the suspension or postponement of the payment of interest on any part of the Notes;

- (5) power to authorise the Trustee to sanction on behalf of all the Holders any scheme for reconstruction of the Company or for the amalgamation of the Company with any other corporation;
 - (6) power to authorise the Trustee to accept on behalf of the Holders any other property or securities instead of any part of the Holder's rights and in particular any debt securities of the Company;
 - (7) power to approve the appointment of a new trustee in accordance with the provisions of this deed; and
 - (8) power to give any release or waiver in respect of anything done or omitted by the Trustee or any breach or default by the Company.
- (b) Without derogating from the powers conferred on the Trustee by this deed, a Meeting of Holders may, by Holder Resolution, do anything for which a Special Resolution is not required.

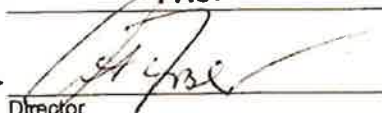
Executed as a deed

Signed sealed and delivered by
AGL Energy Limited
by

sign here ▶ 

Company Secretary/Director

print name **PAUL MCWILLIAMS**

sign here ▶ 

Director

print name **MICHAEL FRASER**

Executed as a deed

The Common Seal of Australian Executor Trustees Limited ABN 84 007 869 794 was
affixed with the authority of:

..... (signed)

..... (print name)

Authorised Officer

..... (signed)

..... (print name))

Authorised Officer

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Signing page

Executed as a deed

Signed sealed and delivered by
AGL Energy Limited
by

sign here ► _____
Company Secretary/Director

print name _____

sign here ► _____
Director

print name _____

Executed as a deed

The Common Seal of Australian Executor Trustees Limited ABN 84 007 869 794 was affixed with the authority of:

..... (signed)

Philip John Walter Joseph (print name)

Authorised Officer

..... (signed)

Yvonne Kelaher

..... (print name))

Authorised Officer

