



15 July 2013

The Manager
Company Announcements Office
Australian Securities Exchange
20 Bridge St
Sydney NSW 2000

AGL Energy Limited recommended off-market takeover offer for Australian Power & Gas Company Limited

- **Recommended cash takeover offer at 52 cents per APG share**
- **AGL has entered into agreements for the outright acquisition of 19.9% of APG's issued shares from APG's 3 major shareholders**
- **APG's 3 major shareholders have announced their intention to accept the Offer for the balance of their shareholdings (~37% of issued shares) by no later than the business day after the Offer becomes unconditional in the absence of a superior proposal**
- **APG's Independent Board Committee recommends APG shareholders accept the Offer in the absence of a superior proposal and subject to the independent expert concluding the Offer is reasonable**
- **Separate recommended Offer to be made for APG Options (subject to obtaining regulatory relief). Option Offer recommended by Independent Board Committee in the absence of a superior proposal and subject to the independent expert concluding the Option Offer is reasonable. APG Directors and major shareholders intend to accept the Option Offer by no later than the business day after the Option Offer becomes unconditional in the absence of a superior proposal**

The Board of Australian Power & Gas Company Limited (ASX: APK) is pleased to announce that it has entered into a Bid Implementation Agreement (BIA) with AGL Energy Limited (AGL), under which AGL (through a wholly owned subsidiary) has agreed to make recommended cash offers for:

- all of the shares in Australian Power & Gas that AGL does not already own (Share Offer) at \$0.52 per share (Share Offer Price); and
- subject to AGL and APG obtaining required regulatory modifications and consents, all options to subscribe for Australian Power & Gas's shares currently on issue (Option Offer) at the Option Offer price detailed in Schedule 5 of the BIA (Option Offer Price).

AGL's Share Offer will be conditional on certain requirements, including:

- AGL having a relevant interest in at least 90% of the Australian Power & Gas shares by the end of the Share Offer;
- ACCC notification that it does not intend to oppose the acquisition; and
- no material adverse change.

The conditions for the Share Offer are set out in Schedule 2 of the BIA. A copy of the BIA is attached to this announcement.

The Share Offer consideration of \$0.52 cash per share to Australian Power & Gas shareholders reflects:

- a significant 33.3% premium to the closing market price of Australian Power & Gas shares on Friday 12 July 2013; and
- a significant 51.2% premium to the volume weighted average price of Australian Power & Gas shares in the three months to Friday 12 July 2013.

The Option Offer consideration reflects a valuation report that AGL has had prepared by BDO, which AGL intends to include in its Option Bidder's Statement.

The Option Offer is conditional on certain regulatory approvals and will be conditional upon the Share Offer becoming unconditional and AGL having a relevant interest in at least 90% of Options at the end of the Option Offer period.

The Board of Australian Power & Gas has appointed an Independent Board Committee comprising two Directors who have carefully considered the advantages and disadvantages of the Offers.

The Independent Board Committee unanimously recommends that:

- Australian Power & Gas shareholders accept the Share Offer, in the absence of any superior proposal and subject to the Independent Expert concluding the Share Offer is reasonable; and
- if AGL makes the Option Offer, Australian Power & Gas optionholders accept the Option Offer, in the absence of a superior proposal and subject to the Independent Expert concluding the Option Offer is reasonable.

All Directors of Australian Power & Gas intend to accept the Share Offer in respect of any shares held or controlled by them by no later than the business day after the Share Offer is or becomes unconditional, in the absence of a superior proposal. If AGL makes the Option Offer, all Directors of Australian Power & Gas also intend to accept the Option Offer in respect of any Australian Power & Gas options held or controlled by them by no later than the business day after the Option Offer is or becomes unconditional, in the absence of a superior proposal.

AGL has announced today that it has entered into agreements for the outright acquisition of 19.9% of the issued shares in Australian Power & Gas from its three largest shareholders – Nippon Gas, The Cobra Group, and interests associated with Richard Poole. Each of these shareholders have advised Australian Power & Gas that its intention is to accept the Share Offer and the Option Offer in respect of any shares or options held or controlled by them by no later than the business day after the Share Offer or Option Offer (as applicable) is or becomes unconditional, in the absence of a superior proposal. Each of these shareholders has authorised Australian Power & Gas to make this statement of their intention in this announcement.

Bid Implementation Agreement

AGL and Australian Power & Gas have entered into a BIA under which the parties have given certain undertakings to each other in order to facilitate the implementation of the Share Offer and the Option Offer (if made).

The BIA contains certain terms usual for a transaction of this nature including customary deal protection mechanisms such as “no shop”, “no talk” and “no due diligence” restrictions as well as a right for AGL to match a competing proposal. A break fee is also payable by Australian Power & Gas to AGL in certain circumstances.

Under the BIA, AGL will not be required to make the Option Offer unless it obtains the required regulatory modifications and consents from ASIC.

Transaction timing

AGL has announced that it anticipates its Bidder's Statement will be despatched to Australian Power & Gas shareholders and options holders (if applicable) by early August. Australian Power & Gas will dispatch its Target's Statements to Australian Power & Gas shareholders and optionholders shortly thereafter. Australian Power & Gas has engaged Grant Thornton as Independent Expert to consider the Offers.

Australian Power & Gas shareholders and optionholders are not required to take any action at this stage. The Bidder's Statements and Target's Statements will provide detailed information on the Share Offer and the Option Offer (if made), the recommendations of the Directors of Independent Board Committee and advantages and risks associated with the Offers, and the Independent Expert's Report.

Commenting on the recommended offer, Australian Power & Gas Chief Executive Officer James Myatt said:

"Since establishing Australian Power & Gas seven years ago, the company has rapidly grown to become the leading independent energy retailer in Australia. Our customer base of over 354,000 retail customers has substantial strategic value".

"The Offer is priced at a significant premium to the company's current market price and volume weighted average price over the past three months. It represents an attractive opportunity in the current market environment for Australian Power & Gas shareholders to realise the value inherent in our business."

Australian Power & Gas has been advised by Arthur Phillip, Finflex and Corrs Chambers Westgarth.

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About Australian Power and Gas:

Australian Power and Gas Company Limited (ASX: APK) is Australia's leading independent ASX-listed energy retailer, and one of the country's fastest growing companies. It holds a full suite of gas and electricity retail licences in Victoria, New South Wales, ACT, South Australia and Queensland and has been approved to operate by AEMO, the Australian Energy Market Operator. Australian Power and Gas was announced as the fastest starting company in the 2011 Business Review Weekly Annual Fast Starters List for a second year in a row, and was placed first on the Business Review Weekly Fast100 list for 2010.



Bid Implementation Agreement

Australian Power and Gas Company Limited

ABN 96 077 206 583

and

AGL Energy Limited

ABN 74 115 061 375

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THIS Agreement is made on 15 July 2013

BETWEEN:

- (1) **Australian Power and Gas Company Limited** ABN 96 077 206 583 whose registered office is at Level 9, 341 George Street, Sydney NSW 2000 ("**APK**"); and
- (2) **AGL Energy Limited** ABN 74 115 061 375 whose registered office is at Level 22, 101 Miller Street, North Sydney NSW 2060 ("**AGL**").

RECITALS

- (A) AGL proposes to make the Bid and the Recommending Directors propose to recommend that APK Shareholders accept the Offer in respect of their APK Shares subject to the qualification that no Superior Proposal emerges; and
- (B) AGL and APK have agreed to certain matters in relation to the conduct of the Bid as set out in this document.

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

"Agreed Announcements" means the announcements to be made by each of AGL and APK in the form set out in Schedule 1.

"Agreed Bid Terms" means the terms set out in Schedule 2.

"Announcement Date" means the date of release of the Agreed Announcements.

"APK Board" means the board of directors of APK.

"APK Director" means a director of APK.

"APK Group" means APK and each of its Related Bodies Corporate.

"APK Options" means the options in respect of APK Shares as listed in Schedule 3.

"APK Optionholder" means a holder of an APK Option.

"APK Share" means a fully paid ordinary share in the capital of APK.

"APK Shareholder" means a holder of an APK Share.

"ASIC" means the Australian Securities and Investments Commission.

"ASIC Relief" means the following modifications to the Corporations Act granted by ASIC in respect of the Option Bid:

- (a) section 605(2), to allow AGL to treat the different classes of APK Options as one class for the purpose of the Option Bid;
- (b) section 619(2), to allow AGL to offer different consideration for each class of APK Option under the Option Bid; and

- (c) section 618(1) and Chapter 6A, to allow AGL to cancel non-transferable APK options under the Option Bid and as part of the compulsory acquisition process,

and any other modifications or relief that AGL reasonably considers it requires to make the Option Bid or to exercise rights of compulsory acquisition in respect of all outstanding APK Options following the Option Bid.

"ASX Waiver" means a waiver of Listing Rule 6.23.2 to allow APK Options to be cancelled for consideration under the Option Bid without APK needing to obtain shareholder approval and any other waiver from ASX that is necessary to make the Option Bid apply to all APK Options on issue (whether vested or unvested).

"Bid" means an off-market takeover bid by AGL for all APK Shares under Chapter 6 of the Corporations Act.

"Bidder's Statement" means the bidder's statement to be issued by AGL in respect of the Bid.

"Business Day" means a day (other than Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

"Claim" means, in relation to a person, any claim, allegation, cause of action, proceeding, liability, suit or demand made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

"Compensating Amount" has the meaning given to it in clause 8.3.

"Competing Proposal" means any proposal, transaction, arrangement or offer (whether from a person with whom APK has previously been in discussions or not) that:

- (a) would, if completed substantially in accordance with its terms, result in any person or persons other than AGL:
 - (i) acquiring:
 - (A) directly or indirectly, an interest in all or a substantial part of the assets of APK; or
 - (B) a relevant interest in more than 10% of the voting shares of APK or otherwise acquire control of APK within the meaning of section 50AA of the Corporations Act; or
 - (ii) otherwise acquiring or merging with APK whether by way of takeover offer, scheme of arrangement, shareholder approved acquisition, capital reduction, share buy back, sale or purchase of assets, joint venture, reverse takeover, dual listed company structure or other synthetic merger or any other transaction or arrangement; or
- (b) may materially reduce the likelihood of success of the Bid.

"Conditions" mean the conditions to the Offer set out in section 1.1 of Schedule 2.

"Confidentiality Agreement" means the confidentiality agreement entered into by the parties as subsequently extended, varied or amended by the parties from time to time.

"Corporations Act" means the *Corporations Act 2001* (Cth) as modified by any relevant exemption or declaration by ASIC.

"Customer Engagement Strategy" means a strategy agreed between APK and AGL (acting reasonably), for the uniform communication of relevant matters in connection with the Bid to APK's customer or supplier base.

"ESOP" means the Australian Power and Gas Company Limited Employee Share Option Plan adopted by the APK Board on 23 January 2007, as amended by the APK Board from time to time.

"Exclusivity Period" means the period beginning on the date of this document and ending on the earlier of:

- (a) the end of the Offer Period;
- (b) termination of this document; and
- (c) the Longstop Date but only if the Offer remains subject to defeating conditions at this time.

"Independent Expert" means the independent expert proposed to be engaged by the Recommending APK Directors for and on behalf of APK to express an opinion on whether the Bid is fair and reasonable to APK Shareholders and, additionally, whether the Option Bid is fair and reasonable to APK Optionholders.

"Law" means all statutes, regulations, statutory rules, orders, and terms and conditions of any grant of approval, permission, authority or license of any Public Authority.

"Listing Rules" means the listing rules of ASX.

"Longstop Date" means 15 November 2013, or such later date as AGL and APK may agree in writing.

"Offer" means each offer to acquire APK Shares to be made by AGL to APK Shareholders in connection with the Bid.

"Offer Period" means the period during which Offers are open for acceptance.

"Option Bid" means an off-market takeover bid by AGL for all APK Options under Chapter 6 of the Corporations Act on terms and conditions (subject to the ASIC Relief being obtained) no less favourable than those set out in Schedule 5.

"Public Authority" means any federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, administrative, statutory or judicial entity, arbitral body, commission, board, bureau or authority or agency.

"Recommending APK Directors" means those directors of APK who comprise the independent subcommittee of the APK Board appointed pursuant to a resolution of the APK Board passed on 7 June 2013, and being James Myatt and Ian McGregor.

"Representative" of a person means an employee, agent, officer, director, adviser or financier of the person and, in the case of advisers and financiers, includes employees, officers and agents of the adviser or financier (as applicable).

"Superior Proposal" means a Competing Proposal received by APK after the date of this document but during the Exclusivity Period which:

- (a) is bona fide and in writing and, in the determination of the Recommending APK Directors acting in good faith, is reasonably capable of being valued and

completed, taking into account all aspects of the Competing Proposal (including its terms and conditions and the identity of the person or persons making it); and

- (b) in the determination of the Recommending APK Directors acting in good faith and reasonably in order to satisfy what the Recommending APK Directors consider to be their fiduciary or statutory duties (based on specific legal and any other appropriate advice), would, if substantially completed in accordance with its terms, be more favourable to APK shareholders than the Proposal, taking into account all aspects of the Competing Proposal.

"Target's Statement" means the target's statement to be issued by APK in respect to the Bid.

"Timetable" means the indicative timetable for the Bid set out in Schedule 4.

"Unacceptable Circumstances" has the meaning given in section 657A of the Corporations Act.

1.2 Rules for interpreting this document

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) Words and phrases which are defined by the Corporations Act have the same meaning in this document. If a special meaning is given for the purposes of Chapter 6 or 6A or a provision of Chapter 6 or 6A of the Corporations Act the word or phrase has that meaning.
- (b) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a successor in title, permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (c) A singular word includes the plural, and vice versa.
- (d) A word which suggests one gender includes the other genders.
- (e) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (f) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

- (g) The expression "**this document**" includes the agreement recorded in this document.
- (h) This document includes all Schedules to it.

2. **THE BID**

2.1 **The Bid**

- (a) AGL agrees to make the Bid on terms no less favourable than those set out in Schedule 2.
- (b) AGL and APK agree to make the Agreed Announcements to ASX immediately following execution of this document.
- (c) AGL must, in accordance with the Corporations Act:
 - (i) lodge an Offer together with the Bidder's Statement with ASIC under section 633 of the Corporations Act; and
 - (ii) give a copy of an Offer and the Bidder's Statement to APK.

2.2 **AGL may use subsidiary**

- (a) AGL may satisfy its obligations under clause 2.1 by causing a wholly owned subsidiary to do the things referred to in paragraphs 2.1(a),(b) and 2.1(c). If AGL does that, references to:
 - (i) the Bid are references to the takeover bid by the subsidiary; and
 - (ii) AGL making the Bid are references to AGL causing the subsidiary to make the Bid.
- (b) If paragraph 2.2(a) applies, AGL:
 - (i) must procure that its relevant subsidiary performs AGL's obligations under this document; and
 - (ii) guarantees to APK the performance of those obligations by that subsidiary.

2.3 **APK recommendation**

- (a) APK represents and warrants to AGL that:
 - (i) the independent subcommittee of the APK Board comprising the Recommending APK Directors has been duly appointed by the APK Board and has been provided with the necessary authority to effect all required matters in connection with this document (including with respect to its execution) and each Recommending APK Director has informed the APK Directors that he will recommend that APK Shareholders accept the Offer in respect of their APK Shares, in the absence of a Superior Proposal;
 - (ii) the APK Directors who are not Recommending APK Directors have determined that they do not consider it appropriate to give a recommendation to APK Shareholders in connection with the Offer (**Non-Recommending Directors**) and each Non-Recommending Director has informed the APK Board that he will not make any recommendation to APK Shareholders in connection with the Offer or make any other public

statement or recommendation to APK Shareholders in connection with the Offer;

- (iii) no APK Director will withdraw, revise, revoke or make any public announcement inconsistent with the matters described in clauses 2.3(a)(i) and 2.3(a)(ii) unless:

- (A) Superior Proposal:

- (aa) a Superior Proposal emerges (that was not procured or obtained by APK though a breach of clause 7 of this document);

- (bb) the matching right procedure in clause 7.8 has been fully complied with by APK; and

- (cc) that APK Director has determined, acting in good faith and based on specific legal and any other appropriate advice, that the APK Directors' fiduciary duties require them to take the action which is proposed to be taken under this paragraph; or

- (B) the opinion of the Independent Expert fails to include that the Bid is reasonable (or having given an opinion which includes that the Bid is reasonable, changes that opinion for any reason to include a conclusion that that the Bid is not reasonable);

- (iv) each APK Director intends to accept the Offer in respect of all APK Shares held or controlled by them no later than the Business Day after the Offer becomes free of defeating conditions, in the absence of a Superior Proposal; and

- (v) each APK Director has confirmed to APK in writing each of the matters set out in paragraphs (i) to (iv) inclusive.

- (b) APK must procure that each of the APK Directors acts in accordance with this clause.

- (c) For the avoidance of doubt, the parties acknowledge and agree that if the opinion of the Independent Expert does not include that the Option Bid is reasonable, this circumstance will not be a basis upon which any APK Director may withdraw, revise, revoke or make any public announcement inconsistent with the recommendation matters described in this clause 2.3 above in connection with the Offer.

3. FACILITATING THE BID

3.1 Access to information

- (a) To facilitate the Bid, APK will use its reasonable endeavours to provide AGL with reasonable access to:

- (i) the books and records of APK;

- (ii) any information reasonably requested by AGL (provided always that the provision of any such information continues to be made in accordance with, and subject to, the terms of the Confidentiality Agreement); and

- (iii) APK's senior management (being the CEO and his direct reports), external auditors and accountants and other advisers.

- (b) Without limiting clause 3.1(a):
 - (i) each party agrees to provide the other party, on a timely basis, with assistance and information that may be reasonably required to assist in the preparation of the Bidder's Statement or the Target's Statement (as applicable); and
 - (ii) APK agrees to provide to AGL on the Business Day after the date of this document and thereafter as reasonably required until the end of the Offer Period, at no cost to AGL, such information about APK Shareholders as reasonably requested by AGL to make the Offer and solicit acceptances, including the register of APK Shares kept by APK.
- (c) Without limiting clause 3.1(a), from the later of the date that AGL acquires a relevant interest in 50% or more of the APK Shares and the Offer is or has become unconditional to the first to occur of the date the Offer Period closes or the date when this document is terminated (both inclusive), APK will, and will cause the members and senior management of the APK Group to, provide AGL and its Representatives (subject to the same provisos as set out in paragraph 3.1(a)(ii) above) with reasonable access to such other documents and information which AGL reasonably requires for the purposes of implementing the Offer or preparing for controlling the conduct of the business of APK following implementation.
- (d) Nothing in this clause requires a party to act at the direction of another party. The business of each party will continue to operate independently of the other parties until the date on which the Offer becomes free of defeating conditions. The parties agree that nothing in this document shall constitute the relationship of a partnership or a joint venture between them.

3.2 **Bidder's Statement and Target's statement**

- (a) AGL must prepare the Bidder's Statement in compliance with the Corporations Act and in a manner which is consistent with the Agreed Announcements.
- (b) AGL agrees to give APK a reasonable opportunity (as set out in the Timetable) to review an advanced draft of the Bidder's Statement in respect of the Bid, and will consult in good faith with APK with respect to any comments APK (including its external legal and financial advisers) may have on that Bidder's Statement.
- (c) APK must prepare the Target's Statement in compliance with the Corporations Act and consistently with the Agreed Announcements.
- (d) APK agrees to give AGL a reasonable opportunity (as set out in the Timetable) to review an advanced draft of the Target's Statement in respect of the Bid, and will consult in good faith with AGL with respect to any comments AGL (including its external legal and financial advisers) may have on that Target's Statement.
- (e) APK must ensure that the Target's Statement:
 - (i) prominently displays the recommendation of the Recommending APK Directors referred to in clause 2.3(a)(i) (including, without limitation, on the cover of the Target's Statement); and
 - (ii) explains why the Non-Recommending Directors referred to in clause 2.3(a)(ii) are not giving a recommendation to APK Shareholders; and
 - (iii) includes a statement that each APK Director intends to accept the Offer in respect of all APK Shares held or controlled by them no later than the

Business Day after the Offer becomes free of defeating conditions, in the absence of a Superior Proposal.

3.3 Early dispatch of offers

For the purposes of item 6 in section 633(1) of the Corporations Act, APK agrees that offers under the Bid may be sent to APK Shareholders on the day on which the Bidder's Statement for the Bid is sent to APK or within 28 days after that day.

3.4 Dispatch of Bidder's Statement and Target's Statement

Provided that a Superior Proposal has not been received in the interim and the opinion given by the Independent Expert includes that the Bid is reasonable to APK Shareholders, APK must use its best endeavours to despatch the Target's Statement to holders of APK Shares within 5 Business Days from the date on which the Bidder's Statement is sent to holders of APK Shares.

3.5 Timetable

- (a) Without prejudice to the remainder of the obligations contained in this clause 3, each party must use all reasonable endeavours to comply with the Timetable.
- (b) If any date in the Timetable becomes unachievable due to events beyond their control, the parties will consult in good faith to agree necessary amendments to the Timetable.

3.6 Promoting the Bid

- (a) During the Exclusivity Period, APK agrees:
 - (i) not to make any public statement that could suggest that the Bid is not unanimously recommended by the APK Directors; and
 - (ii) to the extent reasonably requested to do so by AGL during the Offer Period, support the Bid and participate in efforts reasonably required by AGL to promote the merits of the Bid by using reasonable efforts to meet with key APK Shareholders, analysts, management and other parties mutually agreed with AGL (to the extent reasonably) in relation to the Bid,but only to the extent that the APK Board considers it may do so without breaching its legal or fiduciary duties.
- (b) Without limiting clause 3.6(a), as soon as practicable after the date of this document APK and AGL agree to cooperate in good faith to agree (each party acting reasonably) an appropriate Customer Engagement Strategy for APK customers in connection with the Bid which shall apply to all relevant communications to APK customers from the date that the Customer Engagement Strategy is agreed.

3.7 Conditions

- (a) Without limitation to clause 8, each of the parties must, to the extent within its power to do so, use its reasonable endeavours to ensure that the Conditions are satisfied as soon as reasonably practicable after the date of this document and that no Conditions are breached.
- (b) APK agrees not to do (or omit to do) anything which will, or is likely to, result in any of the Conditions being breached save to the extent that APK is compelled to do, or refrain from doing, any such thing by a Court of competent jurisdiction.

- (c) APK must promptly (and in any event within 3 Business Days of a request being made), provide AGL with all information and assistance reasonably requested by it in connection with the satisfaction of any Condition (including by making supporting submissions in connection with the Bid to any Public Authority).
- (d) Nothing in this clause 3 prevents APK, the APK Board or the Recommending APK Directors from taking, or failing to take, action where to do otherwise would, in the reasonable opinion of the APK Board or the Recommending APK Directors as the case may be and based on specific legal and any other appropriate advice, constitute a breach of the duties of the directors of APK. To avoid any doubt, in this document a reference to a Condition being breached includes a reference to a Condition not being, or not being capable of being, satisfied.
- (e) If any event occurs or becomes apparent to a party which would cause any of the Conditions to be breached, that party must, to the extent it is actually aware of such information, immediately notify the other party in writing of the event.

3.8 Application to ASX – release of escrow restrictions

- (a) Subject to clause 3.8(b), APK must apply to ASX as soon as practicable after, but in any event within 5 Business Days of, the date of this document in relation to any APK Shares or APK Options (as the case may be) that are subject to escrow restrictions and seek ASX's consent in accordance with Listing Rule 9.17 for the holders of all such APK Shares or APK Options to accept the Offer or the Option Bid (as applicable).
- (b) APK must give AGL a reasonable opportunity to review an advanced draft of the application to ASX under clause 3.8(a) and incorporate any reasonable comments received from AGL on that draft.

3.9 APK Options

- (a) AGL must apply to ASIC for the ASIC Relief as soon as practicable after, but in any event within 5 Business Days of, the date of this document (after giving APK a reasonable opportunity to review an advanced draft of such application and after incorporating any reasonable comments received from APK on the advanced draft). The parties must use reasonable endeavours to procure the granting of the ASIC Relief including, but not limited to, providing such further information and assistance as ASIC may reasonably require in determining whether to grant the ASIC Relief.
- (b) Subject to AGL obtaining the ASIC Relief, AGL agrees to announce the Option Bid as soon as practicable after the date that ASIC Relief is granted and in any event within 5 Business Days of receipt of that ASIC Relief.
- (c) APK must apply to ASX for the ASX Waiver as soon as practicable after the date of this document but in any event within 5 Business Days of the date of this document (after giving AGL a reasonable opportunity to review an advanced draft of such application and after incorporating any reasonable comments received from AGL on the advanced draft).
- (d) Subject to AGL being granted the ASIC Relief but without limiting in any way clause 2.3(c), APK and AGL agree that clauses 2.2 2.3, 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 5.1, 5.2 and 6 of this document will apply mutatis mutandis to the parties in connection with the Option Bid as if the references to:
 - (i) the Bid and the Offer are references to the Option Bid;

- (ii) APK Shares and APK Shareholders are references to APK Options and APK Optionholders respectively;
 - (iii) the Bidder's Statement and the Target's Statements are references to the bidder's statement and target's statement to be issued by AGL and APK respectively in connection with the Option Bid; and
 - (iv) the Timetable is a separate timetable for the Option Bid agreed between the parties in good faith as soon as practicable after the date of this document.
- (e) If, despite AGL's compliance with clause 3.9(a), the ASIC Relief is not granted by 31 August 2013 or such later date as is mutually agreed between AGL and APK, then APK and AGL must consult in good faith to determine whether AGL may acquire or cancel, or make offers to acquire or cancel, the APK Options by alternative means or methods so as to achieve a commercial outcome for AGL and APK Optionholders equivalent to the Option Bid.

4. CONDUCT OF BUSINESS

4.1 Conduct of APK's business

- (a) Nothing in this clause 4.1:
 - (i) requires APK to act in a manner that would breach its existing contractual obligations or financial covenants; or
 - (ii) prevents APK from acting in a manner which is contrary to the terms of this clause 4.1 with respect to any particular matters where, prior to the date of this document, AGL has given its prior written consent for APK to act in that manner.
- (b) During the Exclusivity Period, APK must, and must cause each of its related bodies corporate to, conduct their respective businesses only in, and not take any action except in, the ordinary course and consistent with past practice or as contemplated by this document or otherwise agreed by AGL (such agreement not to be unreasonably withheld or delayed).
- (c) Without limiting paragraph (a), to the extent that the same is within its power, APK must use reasonable endeavours to ensure that it and each of its related bodies corporate:
 - (i) maintain their businesses, assets and customer acquisition activities consistent with past practice; and
 - (ii) preserve their relationships with customers, suppliers, licensors, licensees, partners, Public Authorities and others with whom they have business dealings.
- (d) Without limiting paragraph (a), APK must not and, to the extent that the same is within its power, must ensure that each of its related bodies corporate do not without the prior written consent of AGL (such consent not to be unreasonably withheld or delayed):
 - (i) dispose or agree to dispose of any securities, business, asset, interest in a joint venture, entity or undertaking, the value of which exceeds \$100,000, to any person other than another related body corporate of APK, other than the assignment by APK (or a subsidiary of APK) to a third party of its rights to recover debt (relating to closed accounts with amounts owing of over 180 days past due) from a customer under customer contracts;

- (ii) acquire or agree to acquire any securities, business, asset, interest in a joint venture, entity or undertaking from any person other than another related body corporate of APK, excluding capital expenditure which does not exceed \$100,000;
- (iii) terminates, agrees to terminate, waives, foregoes any rights, assigns, disposes of, encumbers or otherwise deals with any rights under any contract, commitment or other arrangement, or gives its consent to any other party or parties to terminate, waive, forego any rights, assign, dispose of, encumber or otherwise deal with their respective rights under any contract, commitment or other arrangement where:
 - (A) the term of the contract, commitment or arrangement is greater than 12 months; or
 - (B) the contract, commitment or arrangement involves APK or a subsidiary of APK incurring expenditure or being entitled to receive revenue (or additional expenditure or revenue in the case of an amendment) in excess of \$100,000 per annum,

other than:

 - (C) a valid termination of a mass market or SME customer contract; or
 - (D) the assignment by APK (or a subsidiary of APK) to a third party of its rights to recover debt (relating to closed accounts with amount owing of over 180 days past due) from a customer under customer contracts;
- (iv) either:
 - (A) enters into any new employment arrangements with an existing or potential employee other than to replace staff or fill any vacant positions and where the total annual remuneration and other benefits of such replacement employee under the employment arrangement is less than \$100,000 per annum; or
 - (B) increases the remuneration of or otherwise varies the employment arrangements with any of the APK Directors or any of the employees of the APK Group;
- (v) settles or compromises any claim, proceeding, demand or investigation or consents to any orders being made against APK or a subsidiary of APK other than in respect of a claim involving a mass market customer where the settlement or compromise to be paid by APK does not exceed \$10,000 for any individual claim and the total amount paid for all claims does not exceed \$250,000;
- (vi) commence any litigation, arbitration or other legal proceedings;
- (vii) borrows or agrees to borrow any money (except for temporary borrowing from its financiers in the ordinary course of business) or prepays or seeks to prepay any amounts under, or amends or agrees to amend any contract, commitment or other arrangement in connection with the existing facility or borrowing arrangements between APK or a subsidiary of APK and the financiers, other than, where first consented to in writing by AGL (such consent not to be unreasonably withheld or delayed), any guarantee (other than a guarantee provided to the Australian Energy Market Operator to comply with prudential requirements) or borrowing required for APK (or a

subsidiary of APK) to comply with prudential requirements of the electricity market, the gas market, under a gas supply agreement as disclosed by APK in writing to AGL prior to the Announcement Date, or use of system, distribution or transportation agreement disclosed by APK in writing to AGL prior to the Announcement Date;

- (viii) exercise any rights to prepay any borrowings under any of APK's existing debt facilities with Macquarie Bank Limited, the Loan Facility Agreement dated 4 April 2013 between Nippon Gas Co., Ltd and APK or any other borrowing arrangements with its financiers; or
 - (ix) amend any arrangement with its financial advisers in respect of the transactions contemplated by this document; or
 - (x) authorise, commit or agree to do any of the matters set out above.
- (e) Nothing in this paragraph 4 restricts the ability of APK to act in a manner which:
- (i) is required by this document or the Bid; or
 - (ii) is required by law or by an order of a court of competent jurisdiction or Public Authority.

4.2 **Amendment to ESOP**

- (a) As soon as practicable after the date of this document, the APK Board must exercise its powers under clause 13.1 of the ESOP and resolve to amend clause 5.3 of the ESOP so that the current formula referred to in that clause is deleted in its entirety and replaced by " $SC = OU - (EP \times OU/VWAP)$ ", such amendment being resolved by the APK Board to correct a manifest error in the drafting of the original formula.
- (b) APK must confirm to AGL within 5 Business Days after the date of this document that the APK Board has resolved to amend the ESOP on the basis referred to in clause 4.2(a) above and, at the same time, provide AGL with a certified copy of the:
 - (i) APK Board resolution evidencing the passing of the resolution referred to in clause 4.2(a); and
 - (ii) updated ESOP rules containing the amended formula in clause 5.3.

4.3 **AGL to be kept informed**

During the Exclusivity Period:

- (a) APK must keep AGL fully informed of:
 - (i) the conduct and progress of any litigation or Claims affecting APK or any of its Subsidiaries or their respective businesses, including litigation or Claims that are threatened or pending other than in respect of a claim involving a mass market customer where the settlement or compromise to be paid by APK does not exceed \$10,000 for any individual claim and the total amount paid for all such mass market customer claims does not exceed \$250,000 (**Litigation Matters**);
 - (ii) any notice or communication including from any Public Authority that in any material manner affects APK or any of its Subsidiaries or their respective businesses;

- (iii) any Claim being made against APK, or APK or any of the APK Directors become aware of any event, matter or circumstance, which is or may reasonably be likely to give rise to a Claim,

and APK must promptly provide to AGL all information and details that are available to APK about any of the above matters that may be requested by AGL;

- (b) other than to the extent expressly agreed by the parties to the contrary in writing, APK must consult with and take into account the views and comments of AGL in relation to the conduct of the Litigation Matters or any Claim; and
- (c) other than to the extent expressly agreed by the parties to the contrary in writing, APK must consult with AGL and take into account the views and comments of AGL in relation to any communications by APK or any of its Subsidiaries with any Public Authorities.

5. TAKEOVER OFFER

5.1 Variation

AGL may:

- (a) vary the Agreed Bid Terms in any manner permitted by the Corporations Act; and
- (b) adjust the Bid consideration by the amount of any dividends or distributions paid to APK Shareholders after the Announcement Date.

5.2 Waiver of conditions and extension

Subject to the provisions of the Corporations Act, AGL may declare the Bid to be free from any Condition or extend the Bid at any time.

5.3 Appointment of directors

APK represents and warrants to AGL that each APK Director has confirmed to it that he or she will, and APK must procure that the APK Board will:

- (a) take all actions necessary to ensure the nominees of AGL are lawfully appointed as directors of APK and APK Directors nominated by AGL resign such that AGL nominees represent a majority of the APK Board once AGL acquires a relevant interest in excess of 50% of the APK Shares and the Offer has become or is declared unconditional; and
- (b) as soon as practicable after AGL acquires a relevant interest in 90% or more of APK Shares and the Offer becomes or is declared unconditional, ensure that all of the non-AGL nominees on the APK Board resign,

provided that a proper board is constituted at all times and that AGL procures that its appointees to the APK Board do not participate in decisions of APK in relation to the Offer until after the end of the Offer Period.

6. PUBLIC ANNOUNCEMENTS

- (a) Subject to clause 6(b), each party must use its best endeavours to consult with the other party prior to making any public announcements or communications to shareholders in connection with Bid (other than the Agreed Announcements).
- (b) Where a party is required to make an announcement by applicable Law or in accordance with the Listing Rules or make any disclosure relating to the Bid

(including any supplementary Bidder's Statement or Target's Statement) it may do so only after it has:

- (i) given the other party as much notice as is reasonably practicable; and
- (ii) consulted with the other party as to the content of that announcement or disclosure.

7. EXCLUSIVITY

7.1 Cease existing discussions

- (a) APK represents and warrants to AGL that immediately following the execution of this document it will:
 - (i) unconditionally cease and terminate any discussions or negotiations with all third parties relating to any Competing Proposal that have been conducted prior to the date of this document; and
 - (ii) immediately require all persons (other than AGL) to whom it has provided non-public information between the period commencing on 1 March 2013 and the date of this document in connection with a Competing Proposal to immediately return such information to it or destroy it (which request APK is entitled to make, and the third party is obliged to comply with, under the terms of binding confidentiality arrangements entered into with those parties).
- (b) APK must, by no later than 24 hours after this document is executed, notify AGL in writing that the notifications required by this clause 7.1 have been given.

7.2 No Shop

- (a) During the Exclusivity Period APK must not and must ensure that its Representatives do not directly or indirectly solicit, initiate, invite or encourage any inquiries, proposals, discussions or negotiations, or communicate any intention to do any of these things, regarding any Competing Proposal.
- (b) Nothing in paragraph (a) prevents APK from continuing to make normal presentations to, and respond to enquiries from brokers, portfolio investors, analysts, shareholders and media in the ordinary course in relation to the Bid or its business generally provided those communications do not concern or relate to a Competing Proposal.

7.3 No talk

Subject to clause 7.6, during the Exclusivity Period, APK must not and must ensure that its Representatives do not directly or indirectly participate in any discussions or negotiations with any person regarding, or that could reasonably be expected to lead to, a Competing Proposal, even if:

- (a) those discussions or negotiations were not directly or indirectly encouraged, solicited, invited or initiated by APK; or
- (b) that person has publicly announced a Competing Proposal.

7.4 No due diligence

- (a) Subject to clause 7.6, during the Exclusivity Period, APK must not and must ensure that its Representatives do not, make available to any other person or permit any

other person to receive non-public information relating to APK, in connection with such person formulating, developing or finalising, or assisting in the formulation, development or finalisation of, a Competing Proposal ("**Diligence Information**").

- (b) Where, in reliance on clause 7.6, APK or any of its Representatives proposes to provide any Diligence Information to any third party in connection with or for the purposes of a current or future Competing Proposal, it must, to the extent that AGL has not previously been provided with the information, provide AGL with a complete copy of that information at the same time as it is provided to the third party.

7.5 **APK to notify AGL**

- (a) During the Exclusivity Period, APK must immediately notify AGL in writing if it proposes, in circumstances permitted by clause 7.6, to take any action of a kind that is set out in clause 7.3 or 7.4.
- (b) During the Exclusivity Period, APK must promptly notify AGL in writing if in circumstances permitted by clause 7.6:
 - (i) APK enters into discussions or negotiations with a party that has proposed (or may reasonably be expected to propose) a Competing Proposal; or
 - (ii) APK makes available to any person, or permits any person to receive, any Diligence Information.
- (c) A notice given under this clause 7.5 must be accompanied by all material details of the relevant event, including:
 - (i) the identity of the person or persons making the approach or request or on whose behalf any such action was taken ("**Rival Bidder**");
 - (ii) the terms and conditions of any Competing Proposal (to the extent known); and
 - (iii) the circumstances in which any discussions or negotiations are held with a Rival Bidder or information is provided to the Rival Bidder.

7.6 **Fiduciary exception**

The restrictions in clauses 7.3 and 7.4 and the notification obligations in clause 7.5(b) do not apply to the extent that they restrict APK, the Recommending APK Directors or the APK Board from taking or refusing to take any action with respect to a bona fide Competing Proposal (which was not encouraged, solicited, invited or initiated by APK or one of its Representatives in contravention of clause 7.2) provided that in the opinion of each of the Recommending APK Directors or the APK Board as the case may be, reasonably formed in good faith and for a proper purpose:

- (a) the Competing Proposal is bona fide and is made in writing by or on behalf of a person that the APK Board considers is of reputable commercial standing;
- (b) the Competing Proposal if substantially completed in accordance with its terms, would, or would reasonably be expected to lead to, a transaction which is more favourable to APK Shareholders than the Bid, after taking into account all aspects of the Competing Proposal; and
- (c) taking or failing to take the action with respect to the Competing Proposal would, or would be likely to, involve a breach of the fiduciary or statutory duties of the directors of APK, where the opinion of the APK Board or the Recommending APK

Directors (as the case may be) is based on specific legal and any other appropriate advice.

7.7 Provision of information

- (a) Without limiting APK's obligations under clauses 7.5, if any APK Director proposes to (whether or not subject to conditions) change his or her recommendation of the Offer so that he or she can recommend a Competing Proposal ("**Rival Transaction**"), APK must give AGL written notice ("**Relevant Notice**") of such proposed change of recommendation.
- (b) A Relevant Notice must include:
 - (i) all the material terms and conditions (including price) of the Rival Transaction;
 - (ii) a copy of any material confidential information concerning the APK Group provided to any person associated with the Rival Transaction which has not previously been provided to AGL; and
 - (iii) details of the basis on which the APK Director intends to change his or her recommendation.

7.8 Matching Right

- (a) AGL will have the right, but not the obligation, at any time during the period of two Business Days following receipt of a Relevant Notice ("**Matching Right Period**") to amend the terms of the Offer (including, but not limited to, increasing the amount of consideration offered under the Bid or proposing any other form of transaction (each a "**Counter Proposal**")), and if it does so then the APK Directors must review the Counter Proposal in good faith. If a majority of the APK Directors determine that the Counter Proposal would be as favourable to APK Shareholders as the Rival Transaction (each an "**APK Recommending Director**"), then APK and AGL must use their best endeavours to, as soon as practicable, enter into the necessary documentation to give effect to the revised Offer and APK must ensure that each of the APK Recommending Directors recommends the Counter Proposal to APK Shareholders and does not recommend the Rival Transaction.
- (b) During the Matching Right Period:
 - (i) no APK Director is permitted to change his or her recommendation of the Offer or to make any public statement to the effect that he or she may do so at some further point in time; and
 - (ii) APK must not enter into any agreement, arrangement or understanding in respect of the Rival Transaction.
- (c) For the purposes of this clause 7.8, each successive material modification to a Rival Transaction will constitute a new Rival Transaction in respect of which APK must comply with its obligations under this clause 7.8.

8. COMPENSATING AMOUNT

8.1 APK acknowledgment

- (a) APK acknowledges that, if AGL enters into this document and the Bid does not succeed, AGL will have incurred significant costs and losses, including significant opportunity costs.

- (b) APK acknowledges and agrees that the costs and losses actually incurred by AGL under this clause 8 will be of such nature that they cannot accurately be ascertained, but that the Compensating Amount is a genuine and reasonable pre-estimate of the costs and losses that would actually be suffered by AGL in such circumstances and has been calculated to reimburse AGL for such costs and losses.
- (c) APK represents and warrants that:
 - (i) it has received legal advice on this document and the operation of this clause 8; and
 - (ii) it considers this clause 8 to be fair and reasonable and that it is appropriate to agree to the terms in this clause 8 in order to secure the significant benefits to it (and APK Shareholders) resulting from the Bid.

8.2 Undertaking given by APK

Subject to clause 8.3, APK must pay the Compensating Amount to AGL if at any time after the date of this document the following occurs:

- (a) a Competing Proposal is announced or made during the Exclusivity Period and is completed at any time prior to six months after the end of the Offer Period and, as a result, a person other than AGL or Related Body Corporate of AGL:
 - (i) acquires a legal, beneficial or economic interest in, or control of, 50% or more of APK Shares; or
 - (ii) agrees to acquire (whether or not that agreement is conditional), the whole or a substantial or significant part of APK's assets, business or property; or
- (b) APK accepts or enters into or offers to accept or enter into, any agreement arrangement or understanding regarding a Competing Proposal before the end of the Offer Period; or
- (c) any:
 - (i) Recommending APK Director does not recommend the Bid other than in the circumstance referred to in clause 2.3(a)(iii)(B);
 - (ii) APK Director withdraws or adversely modifies an earlier recommendation or statement given in relation to a recommendation of the Bid other than in the circumstance referred to in clause 2.3(a)(iii)(B);
 - (iii) APK Director approves or recommends or makes an announcement in support of a Competing Proposal; or
 - (iv) APK Director announces an intention to do any of these acts; or
- (d) AGL validly terminates this document under clause 10.1.

8.3 **Compensating Amount**

The Compensating Amount is:

- (a) in the case where the Compensating Amount is payable in accordance with clause 8.2(a), 8.2(b) or 8.2(c), A\$1,000,000; and
- (b) in the case where the Compensating Amount is payable in accordance with clause 8.2(d), the lesser of A\$1,000,000 and AGL's bona fide external costs and expenses in connection with the transactions referred to in this document,

plus, in each case, the amount of any GST payable.

8.4 **Demand for payment**

Any demand by AGL for payment of the Compensating Amount must be in writing and APK must pay the Compensating Amount to AGL by the later of 1 October 2013 and within 30 Business Days of receipt of the demand.

8.5 **Compliance with law**

- (a) **Unlawful Amount** means all or any part of the payment required to be made under clause 8.1 that is found by the Takeovers Panel or a Court to be unlawful, involve a breach of director's duties or to constitute Unacceptable Circumstances.
- (b) If the Takeovers Panel or a Court determines that that the payment of the Compensating Amount in accordance with this clause involves an Unlawful Amount and the period for lodging an application for review or a notice of appeal of that decision has expired without such application or notice having been lodged or if an application for review or a notice of appeal has been lodged with the Takeovers Panel or a Court within the prescribed period and the relevant review Panel or Court confirms the Unlawful Amount then:
 - (i) the undertaking under clause 8.1 does not apply to the extent of the Unlawful Amount; and
 - (ii) AGL must refund any Unlawful Amount paid to it under this document.

8.6 **Refund**

If, despite the occurrence of any of the events referred to in clause 8.2, AGL becomes the holder of not less than 50% of the APK Shares in issue at the date of this document as a result of the Bid or otherwise within six months of the date of this document, AGL must repay to APK any amount received by it under this paragraph 8.

9. **WARRANTIES**

9.1 **APK warranties**

- (a) APK represents and warrants to AGL that each of the warranties set out in clause 9.1(b) is true and correct:
 - (i) as at the date of this document; and
 - (ii) in the case of all warranties except for the warranties in clauses 9.1(b)(x) and 9.1(b)(xi), on each day from the date of this document until the end of the Offer Period.

(b) APK represents and warrants that:

- (i) it and each of its subsidiaries is a company limited by shares under the Corporations Act;
- (ii) it has the power and authority to enter into this document and perform and observe all its terms;
- (iii) this document constitutes its legal, valid and binding agreement enforceable against it in accordance with its terms;
- (iv) neither it nor any of its subsidiaries is bound by any contract which may restrict its right or ability to enter into or perform the agreement contained in this document;
- (v) no resolutions have been passed and no other step has been taken or legal proceedings commenced or threatened against it or any of its subsidiaries for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets and no regulatory action has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this document;
- (vi) other than any matters expressly disclosed to AGL prior to the date of this document, as far as the APK Directors are aware, there are no breaches or failures to comply with APK's (or any of APK's subsidiaries') existing facilities or borrowing arrangements with its financiers that have not been duly waived;
- (vii) so far as the APK Board and APK senior management are aware after having made all due and proper enquiries, the information contained in the APK due diligence material is accurate in all material respects. None of the information is misleading in any material particular whether by inclusion of misleading information or the omission of material information or both;
- (viii) as far as the APK Directors are aware after having made all due and proper enquiries, APK has complied with Listing Rule 3.1 in relation to continuous disclosure and has to date and will continue to comply with Division 4 of Part 6.5 and Chapter 6B of the Corporations Act and following the release of the Agreed Announcements, APK is not relying on the carve-out in Listing Rule 3.1A to withhold any information from disclosure;
- (ix) APK is not aware of any act, omission, event or fact that would result in one or more of the conditions set out in schedule 2 being triggered, except as fully, fairly and accurately disclosed by APK before the Announcement Date in a public filing with ASX or fully, fairly and accurately disclosed by APK in writing to AGL before the Announcement Date, provided that in each case such disclosure was not misleading or deceptive in any material respect (including by omission);
- (x) no regulatory action of any nature has been taken as at the date of this document which would prevent, inhibit or otherwise have a material adverse effect on APK's ability to fulfil its obligations under this document;
- (xi) as at the date of this document, APK has the securities on issue set out in Schedule 3 and has no other issued securities; and

- (xii) neither APK nor any of its subsidiaries has issued, granted or agreed to issue or grant any other shares or securities convertible into shares, other than the securities referred to in Schedule 3.

9.2 **AGL warranties**

- (a) AGL represents and warrants to APK that each of the warranties set out in clause 9.2(b) is true and correct:
 - (i) as at the date of this document; and
 - (ii) in the case of all warranties except for the warranty in clause 9.2(b)(vi), from the date of this document until the end of the Offer Period.
- (b) AGL represents and warrants to APK that:
 - (i) it is a company limited by shares under the Corporations Act;
 - (ii) it has the power and authority to enter into this document and perform and observe all its terms;
 - (iii) this document constitutes its legal, valid and binding agreement enforceable against it in accordance with its terms;
 - (iv) it is not bound by any contract which may restrict its right or ability to enter into or perform the agreement contained in this document;
 - (v) no resolutions have been passed and no other step has been taken or legal proceedings commenced or threatened against it for its winding up or dissolution or for the appointment of a liquidator, receiver, administrator or similar officer over any or all of its assets and no regulatory action has been taken which would prevent, inhibit or otherwise have a material adverse effect on its ability to fulfil its obligations under this document;
 - (vi) no regulatory action of any nature has been taken as at the date of this document which would prevent, inhibit or otherwise have a material adverse effect on AGL's ability to fulfil its obligations under this document.

10. **TERMINATION**

10.1 **Termination for material breach**

A party (the **Terminating Party**) may terminate this document at any time by notice to the other party if:

- (a) the other party is in breach of this document, which breach is material in the context of the Bid;
- (b) the Terminating Party has given notice to the other party setting out full details of the material breach and stating an intention to terminate this document; and
- (c) the material breach has continued to exist for 5 Business Days from the time such notice was given.

10.2 Other termination rights

- (a) AGL may terminate this document at any time by notice to APK if:
 - (i) a Competing Transaction is made or publicly announced for APK by a third party;
 - (ii) any Recommending APK Director does not recommend the Bid be accepted by APK Shareholders or, having recommended the Bid, changes his or her recommendation in relation to the Bid;
 - (iii) a person other than AGL or one of its Related Bodies Corporate obtains voting power in APK of 10% or more, or a person that has voting power in APK of 10% or more increases their voting power by more than 3%, and that person is not a funds manager, bare trustee or custodian (other than a bare trustee or custodian that is acting for or on behalf of a trade or strategic investor);
- (b) APK may terminate this document at any time by notice to AGL if:
 - (i) AGL fails to lodge the Bidder's Statement with ASIC or dispatch offers under the Bid to APK Shareholders in accordance with the Corporations Act; or
 - (ii) The Recommending APK Directors or the APK Board as the case may be recommends a Competing Proposal.
- (c) Either party may terminate this document at any time by notice in writing to the other party if AGL withdraws the Offer for any reason or the Offer lapses for any reason, including for non-satisfaction of a Condition.
- (d) This document automatically terminates on the earlier of (i) the date on which the Offer Period ends and (ii) the Longstop Date but only if the Offer remains subject to defeating conditions at this time.

10.3 Effect of termination

In the event of termination of this document by either APK or AGL pursuant to clause 10, the document will have no further effect, other than in respect of:

- (a) rights that accrue before the date of termination;
- (b) any liability for antecedent breach of this document; and

this clause 10 and clauses 1 (Interpretation), 8 (Compensating Amount), 11 (Notices), 13 (General) and any other clause which is expressed to survive termination of this document.

11. NOTICES

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail, fax or in electronic form (such as email). If it is sent by mail, it is taken to have been received 3 Business Days after it is posted. If it is sent by fax or electronic form, it is taken to have been received when the addressee actually receives it in full and in legible form.
- (b) A person's address, fax number and email address are those set out below, or as the person notifies the sender:

APK

Address: Level 9, 341 George Street, Sydney NSW 2000
Fax number: 02 8908 2702
Email: jmyatt@auspg.com.au
Attention: James Myatt

AGL

Address: Level 22, 101 Miller Street, North Sydney NSW 2060
Fax number: 02 9921 2241
Email: pmcwilliams@agl.com.au
Attention: Paul McWilliams

12. AMENDMENT AND ASSIGNMENT**12.1 Amendment**

This document can only be amended or replaced by another document executed by the parties.

12.2 Assignment

A party may only assign, declare a trust over or otherwise deal with its rights under this document with the written consent of the other party.

13. GENERAL**13.1 Governing law**

- (a) This document is governed by the law of New South Wales.
- (b) Each party submits to the jurisdiction of the courts of New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document.

13.2 Liability for expenses

Subject to clause 8, each party must pay its own expenses incurred in negotiating, executing, stamping and registering this document.

13.3 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver; and

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

13.4 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty

relating to that subject matter is replaced by this document and has no further effect.

- (b) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

13.5 **GST on claims**

- (a) Words defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) have the same meaning in this clause.
- (b) If APK pays AGL the Compensating Amount under this document and that gives rise to a liability for GST, APK must pay and indemnify AGL on demand against the amount of that GST.
- (c) If a party provides a payment for or any satisfaction of a claim or a right to claim under or in connection with this document (for example, for a breach of any warranty or under an indemnity) that gives rise to a liability for GST, the provider must pay, and indemnify the recipient on demand against, the amount of that GST.
- (d) If a party has a claim under or in connection with this document for a cost on which that party must pay an amount for GST, the claim is for the cost plus the amount for GST (except any amount for GST for which that party is entitled to an input tax credit).

13.6 **Counterparts**

This document may be executed in counterparts.

SCHEDULE 1

Agreed Announcements

ASX & Media Release



AGL announces recommended takeover offer for Australian Power and Gas Company Limited

15 July 2013

AGL Energy Limited¹ (**AGL**) today announced that it has entered into agreements for the outright acquisition of 19.9% of the issued shares of Australian Power and Gas Company Limited (**APG**), and that it intends to make an off-market takeover offer to acquire all of the issued shares of APG (**APG Shares**) that it does not currently have an interest in at \$0.52 cash per share (the **Offer**).

The 19.9% interest is to be acquired by AGL from each of APG's three largest shareholders – Nippon Gas (~5.2%), The Cobra Group (~5.2%) and the Poole Interests² (~9.5%). These shareholders have also announced their intention to accept the Offer, by no later than the business day after the Offer becomes unconditional and in the absence of a superior proposal, in respect of their remaining APG Shares, which equate to a further 36.9% of APG Shares. An independent Board committee established by APG to evaluate the transaction has recommended that APG shareholders accept the offer, in the absence of a superior proposal and subject to the independent expert appointed by APG concluding that the Offer is reasonable.

The proposed price represents a 33% premium to APG's closing price of 39.0 cents on 12 July 2013 and a 51% premium to APG's 3 month volume weighted average price of 34.4 cents. It implies a total enterprise value of \$158 million³.

The acquisition will be 100% financed from cash reserves and existing debt facilities. AGL anticipates the acquisition will be modestly accretive to underlying earnings per share from FY14⁴.

AGL's Managing Director, Michael Fraser, said: "The acquisition of APG will further strengthen AGL's retail business. It will increase our total customers by approximately 10%, effectively achieving our goal of 800,000 electricity customers in New South Wales."

"We will create value by leveraging our lower cost-to-serve across the APG customer base. The transaction provides compelling value to APG shareholders and will enable APG customers to obtain enhanced products and services."

Table 1 APG Customer numbers⁵

(000's)	Electricity	Gas	Total
Victoria	121	107	228
New South Wales	74	26	100
Queensland	22	4	26
Total	217	137	354

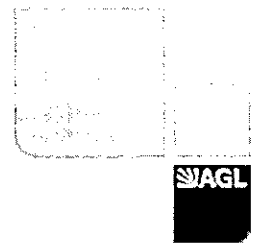
1 The acquisition is by a wholly owned subsidiary of AGL

2 Nippon Gas means Nippon Gas Co., Ltd; Cobra Group means The Cobra Group Pty Ltd, Cobra Investment BV and Barton Holdings Limited; Poole Interests means Richard Poole, Arthur Phillip, Arthur Phillip Nominees Pty Ltd, Amanda Poole and Haxby Pty Ltd

3 Based on estimated net debt of \$55 million as at 30 June 2013

4 Excluding significant items of \$36 million after tax

5 As at 30 June 2013 and rounded to nearest thousand



Indicative timing and other information

The transaction is expected to complete by the end of October 2013. AGL anticipates dispatching its Bidder's Statement for the Offer by early August.

AGL's Offer is conditional upon a number of matters, including:

- > Minimum acceptances of 90%;
- > ACCC notification that it does not intend to oppose the acquisition; and
- > No material adverse change.

The conditions of AGL's Offer are set out in full in the attachment.

A separate offer will be made by AGL to acquire all of the outstanding options in APG for cash (the Options Offer), subject to certain relief being obtained from ASIC and ASX. Details of the Options Offer will be set out in the Options Offer Bidder's Statement in due course.

Conference call

AGL will hold a conference call at 10.30am today to discuss the presentation lodged with the Australian Securities Exchange outlining the Offer. Questions will be taken at the conclusion of the presentation.

Dial-in details:

Toll Free (Australia): 1800 801 825 (passcode "6900262")
International: +61 2 8524 5042 (passcode "6900262").

Further inquiries:

Investors

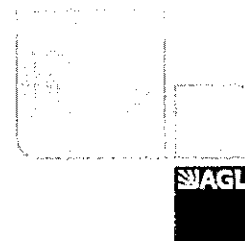
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About AGL

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 175 years of experience, AGL operates retail and merchant energy businesses, power generation assets and an upstream gas portfolio. AGL has one of Australia's largest retail energy and dual fuel customer bases. 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.



ATTACHMENT – CONDITIONS TO AGL'S OFFER

1.1 Defeating Conditions

The Offer and any contract resulting from its acceptance, is subject to the Defeating Conditions set out below.

(a) Minimum acceptance condition

At the end of the Offer Period, AGL has a relevant interest in more than 90% (by number) of the APK Shares on issue at that time.

(b) ACCC Approval

Before the end of the Offer Period, none of the following events happening:

- (i) the ACCC having given notice in writing to AGL or APK that it has decided to oppose the acquisition of the APK Shares under the Offer;
- (ii) the ACCC notifying AGL or APK in writing that it will not approve the acquisition of the APK Shares under the Offer unless AGL agrees to conditions or undertaking and those conditions or undertaking are not acceptable to AGL (acting reasonably);
- (iii) the ACCC taking action or give notice to AGL or APK in writing of its intention to take action, to prevent or restrain the acquisition of the APK Shares under the Offer; or
- (iv) the ACCC commencing legal proceedings seeking orders to prevent or restrain the acquisition of APK Shares under the Offer.

(c) No prescribed occurrences

Between the date the Bidder's Statement is given to APK and the end of the Offer Period none of the following events happen:

- (i) APK converts all or any of its shares into a larger or smaller number of shares;
- (ii) APK or a subsidiary of APK resolves to reduce its share capital in any way;
- (iii) APK or a subsidiary of APK:
 - (A) enters into a buy-back agreement; or
 - (B) resolves to approve the terms of a buy-back agreement under Section 257C(1) or 257D(1) of the Corporations Act;
- (iv) APK or a subsidiary of APK issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option, other than pursuant to the vesting under the ESOP or ESP of any existing APK Shares or APK Options or as agreed by AGL in writing prior to the Announcement Date;
- (v) APK or a subsidiary of APK issues, or agrees to issue, convertible notes;
- (vi) APK or a subsidiary of APK disposes, or agrees to dispose, of the

whole, or a substantial part, of its business or property;

- (vii) APK or a subsidiary of APK grants, or agrees to grant, a security interest in the whole, or a substantial part, of its business or property;
- (viii) APK or a subsidiary of APK resolves to be wound up;
- (ix) the appointment of a liquidator or provisional liquidator of APK or of a subsidiary of APK;
- (x) a court makes an order for the winding up of APK or of a subsidiary of APK;
- (xi) an administrator of APK, or of a subsidiary of APK, is appointed under Section 436A, 436B or 436C of the Corporations Act;
- (xii) APK or a subsidiary of APK executes a deed of company arrangement; or
- (xiii) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of APK or of a subsidiary of APK.

(d) **No prescribed occurrences between announcement and service**

None of the events listed in sub-paragraphs (i) to (xiii) of paragraph (c) happens during the period beginning on the Announcement Date and ending at the end of the day before the Bidder's Statement is given to APK.

(e) **No action by Public Authority adversely affecting the Offer**

During the Condition Period:

- (i) there is not in effect any preliminary or final decision, order or decree issued by a Public Authority (excluding the ACCC);
- (ii) no action or investigation is instituted, or threatened by any Public Authority (excluding the ACCC) with respect to APK or any subsidiary of APK; or
- (iii) no application is made to any Public Authority (excluding the ACCC) (other than an application by AGL or any company within the AGL group, an application under Section 657G of the Corporations Act, or an application commenced by a person specified in Section 659B(1) of the Corporations Act in relation to the Offer),

in consequence of, or in connection with, the Offer, which restrains or prohibits or threatens to restrain or prohibit, or may otherwise materially adversely impact upon, the making of the Offer or seeks to require the divestiture by AGL of any APK Shares, or the divestiture of any assets by APK or by any subsidiary of APK or by any company within the AGL group.

(f) **Non-existence of certain rights under agreements or instruments**

During the Condition Period, there is no person entitled to exercise, exercising or purporting to exercise, stating an intention to exercise (whether or not that intention is stated to be a final or determined decision

of that person), or asserting a right to exercise, any rights under any provision of any agreement or other instrument to which APK or any of its subsidiaries is a party, or by or to which APK or any of its subsidiaries or any of its assets or businesses may be bound or be subject, which results, or could result, to an extent which is material in the context of APK and its subsidiaries taken as a whole in:

- (i) any moneys borrowed by APK or any of its subsidiaries being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
- (ii) any such agreement or other such instrument being terminated or modified or any action taken or arising thereunder (including the acceleration of the performance of any obligations thereunder);
- (iii) any assets, shares or business of APK or any of its subsidiaries being sold, transferred or offered for sale or transfer, including under any pre-emptive rights or similar provisions; or
- (iv) the business of APK or any of its subsidiaries with any other person being adversely affected,

other than in relation to any agreement or instrument:

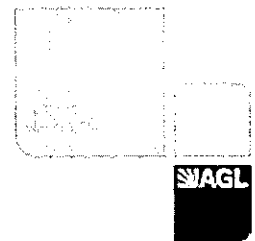
- (v) previously disclosed before the Bid Announcement Date by APK in a public filing with the ASX;
- (vi) disclosed in writing by APK to AGL before the Announcement Date,

provided in each case such agreement or instrument and such entitlement to exercise, actual or purported exercise, intention to exercise or assertion was fully, fairly and accurately disclosed, and such disclosure was not misleading or deceptive in any material respect (including by omission).

(g) Conduct of APK's business

During the Condition Period, none of APK, or any body corporate which is or becomes a subsidiary of APK, without the prior written consent of AGL (such consent, in the case of sub-paragraphs 1.1(g)(iv) - 1.1(g)(xvi), 1.1(g)(xx) and 1.1(g)(xxii), not to be unreasonably withheld or delayed):

- (i) announces, makes, declares, distributes or pays any distribution (whether by way of dividend, bonus, capital reduction or otherwise and whether in cash or in specie);
- (ii) issues or grants options over, or agrees to issue or grant options over, or otherwise makes any commitments regarding any shares or other securities, or alters its capital structure or the rights attached to any of its shares or other securities, or issues or agrees to issue any convertible notes or any other securities that are convertible into shares;
- (iii) makes any changes in its constitution or passes any special resolution;
- (iv) enters into, amends or agrees to enter into or amend, any contract, commitment or other arrangement with a related party of APK or



issues a notice of termination, terminates or agrees to terminate, waives or otherwise foregoes any rights under any such arrangement;

(v) enters into, amends or agrees to enter into or amend, any contract, commitment or other arrangement where:

(A) the term of the contract, commitment or arrangement is greater than 12 months; or

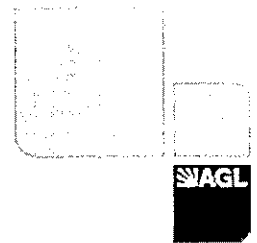
(B) the contract, commitment or arrangement involves APK or a subsidiary of APK incurring expenditure or being entitled to receive revenue (or additional expenditure or revenue in the case of an amendment) in excess of \$100,000 per annum,

other than:

- a mass market or SME customer contract on materially the same terms as the current pro-forma standard form customer contracts which have been disclosed by APK in writing to AGL before the Announcement Date; or
- any financial instruments to manage market movements in the electricity and gas markets in accordance with any facility agreement disclosed by APK in writing to AGL prior to the Announcement Date, any financial instrument or trading contract to manage APK's (or a subsidiary of APK's) renewable energy target obligations or the extension of any gas supply agreements disclosed by APK in writing to AGL prior to the Announcement Date, provided that:
 - the financial instrument or trading contract is on arm's length terms; and
 - AGL is offered a last right of refusal to provide the financial instrument or trading contract on the same terms and conditions as APK proposes to enter into with the third party and AGL has not accepted that offer in respect of a gas contract within 3 Business Days or in the case of an electricity contract within 1 Business Day, of the offer being received and if AGL has not accepted the offer, APK enters into the financial instrument or trading contract with the third party on terms and conditions that are identical to those offered to AGL;

(vi) terminates, agrees to terminate, waives, foregoes any rights, assigns, disposes of, encumbers or otherwise deals with any rights under any contract, commitment or other arrangement, or gives its consent to any other party or parties to terminate, waive, forego any rights, assign, dispose of, encumber or otherwise deal with their respective rights under any contract, commitment or other arrangement where:

(A) the term of the contract, commitment or arrangement is

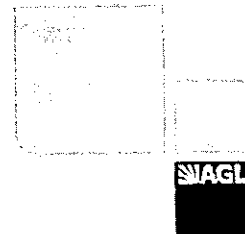


greater than 12 months; or

- (B) the contract, commitment or arrangement involves APK or a subsidiary of APK incurring expenditure or being entitled to receive revenue (or additional expenditure or revenue in the case of an amendment) in excess of \$100,000 per annum,

other than:

- a valid termination of a mass market or SME customer contract; or
 - the assignment by APK (or a subsidiary of APK) to a third party of its rights to recover debt (relating to closed accounts with amount owing of over 180 days past due) from a customer under customer contracts;
- (vii) settles or compromises any claim, proceeding, demand or investigation or consents to any orders being made against APK or a subsidiary of APK other than in respect of a claim involving a mass market customer where the settlement or compromise to be paid by APK does not exceed \$10,000 for any individual claim and the total amount paid for all claims does not exceed \$250,000;
- (viii) changes (by agreement or unilaterally) the services, service levels, service level credits, products to be sold or provided or territories that apply under any existing agreement, arrangement or undertaking under which the counterparty is providing services to APK or a subsidiary of APK such that the change (taken with any other such previous change) which would result in APK or a subsidiary of APK incurring additional expenditure or a reduction in revenue in excess of \$100,000 per annum;
- (ix) enters into a contract or commitment restraining it from competing with any person or conducting activities in any market;
- (x) acquires or disposes of, or enters into, agrees to enter into or announces any agreement for the acquisition or disposal of, any company, asset or business in excess of \$100,000, other than the assignment by APK (or a subsidiary of APK) to a third party of its rights to recover debt (relating to closed accounts with amounts owing of over 180 days past due) from a customer under customer contracts;
- (xi) voluntarily changes any accounting policy applied by it to report its financial position;
- (xii) gives or agrees to give any Encumbrance over any of its assets otherwise than in the ordinary course of business other than as contemplated under any facility agreement disclosed by APK in writing to AGL prior to the Announcement Date, in relation to any "repos" provided to an existing lender disclosed by APK in writing to AGL prior to the Announcement Date; or any guarantee or borrowing required for APK (or a subsidiary of APK) to comply with prudential requirements of the electricity market, the gas market, under a gas supply agreement as disclosed by APK in writing to AGL prior to the Announcement Date, or use of system, distribution or transportation



agreement disclosed by APK in writing to AGL prior to the Announcement Date;

- (xiii) borrows or agrees to borrow any money (except for temporary borrowing from its financiers in the ordinary course of business) or prepays or seeks to prepay any amounts under, or amends or agrees to amend any contract, commitment or other arrangement in connection with the existing facility or borrowing arrangements between APK or a subsidiary of APK and the financiers, other than, where first consented to in writing by AGL (such consent not to be unreasonably withheld or delayed), any guarantee (other than a guarantee provided to the Australian Energy Market Operator to comply with prudential requirements) or borrowing required for APK (or a subsidiary of APK) to comply with prudential requirements of the electricity market, the gas market, under a gas supply agreement as disclosed by APK in writing to AGL prior to the Announcement Date, or use of system, distribution or transportation agreement disclosed by APK in writing to AGL prior to the Announcement Date;
- (xiv) gives or agrees to give financial accommodation in excess of \$100,000 other than to other members of the APK Group;
- (xv) releases, discharges or modifies any substantial obligation to it of any person, firm or corporation or agrees to do so;
- (xvi) has appointed any additional director to its board of directors whether to fill a casual vacancy or otherwise;
- (xvii) increases the remuneration of or otherwise varies the employment arrangements with any of the APK Directors of or any of the employees of the APK Group (collectively, **Relevant Employees**);
- (xviii) other than for bonuses accrued in APK's balance sheet as at 31 May 2013 as disclosed by APK in writing to AGL prior to the Announcement Date, pays any bonus to a Relevant Employee where the aggregate amount of all such bonuses exceeds \$250,000;
- (xix) pays any of the Relevant Employees termination or retention payments (other than to the extent disclosed by APK in writing to AGL prior to the Announcement Date);
- (xx) enters into any new employment arrangements with an existing or potential employee other than to replace staff or fill any vacant positions and where the total annual remuneration and other benefits of such replacement employee under the employment arrangement is less than \$100,000 per annum;
- (xxi) conducts its business otherwise than in the ordinary course;
- (xxii) has threatened or commenced against it any material claims or proceedings in any court or tribunal (including a petition for winding up or an application for appointment of a receiver or receiver and manager), other than as fully, fairly and accurately disclosed by APK or its advisers in writing to AGL or its advisers before the Announcement Date, and such disclosure was not misleading or

deceptive in any material respect (including by omission);

(xxiii) executes a deed of company arrangement or passes any resolution for liquidation, or has appointed or becomes susceptible to the appointment of an administrator, a receiver, a receiver and manager or a liquidator, or becomes subject to investigation under the *Australian Securities and Investments Commission Act 2001* (Cth) or any corresponding legislation; or

(xxiv) agrees to do any of the matters set out in sub-paragraphs 1.1(g)(i) to 1.1(g)(xxiii) above.

(h) **No material adverse change**

(ii) During the Condition Period no event, matter or thing occurs or information is disclosed by APK concerning any event, matter or thing which will or is reasonably likely to have a material adverse effect on the assets and liabilities, financial position and performance, profitability or prospects of APK and its subsidiaries, including any event, matter or thing which will or is reasonably likely to:

- (A) have the effect of diminishing the consolidated net assets of the APK Group as set out in its consolidated balance sheet of APK at 31 May 2013 as disclosed by APK in writing to AGL prior to the Announcement Date by at least \$2,500,000; or
- (B) reduces or adversely affects the EBITDA of the APK Group for any 12 month period by at least \$1,500,000,

except it does not include any event, change, condition, matter or thing which:

- (C) was fully, fairly and accurately disclosed by APK before the Announcement Date in a public filing with ASX or fully, fairly and accurately disclosed by APK in writing to AGL before the Announcement Date, provided that in each case such disclosure was not misleading or deceptive in any material respect (including by omission);
- (D) is required by the Bid Implementation Agreement or is expressly consented to in writing by AGL for the purposes of this condition; or
- (E) is, results from or is attributable to:
 - (1) any change or movement in exchange rates;
 - (2) a reduction in consumption of gas or electricity by APK's customers due to prevailing weather conditions;
 - (3) mark to market movements of financial instruments as a result of changes in the electricity or gas markets; or
 - (4) projects or the establishment of any new business or new places of business by a competitor of the APK Group or the entry of a new entrant in any market in which the

APK Group operates.

- (iii) The Target's Statement contains a statement expressed to be made with the approval of the APK Board, which confirms to the best of the knowledge and belief of the APK Board after having made due enquiry, that the number of APK's retail customer accounts is not less than 340,500 (**Customer Confirmation**).
- (iv) The Target's Statement contains a statement that the APK Board will issue a supplementary Target's Statement if the Customer Confirmation ceases to be correct at any time prior to the close of the Offer and no supplementary Target's Statement that varies, qualifies or revokes the Customer Confirmation is issued by the APK Board during the Condition Period.

1.2 Glossary

The following definitions apply in interpreting the Defeating Conditions:

"ACCC" means the Australian Competition and Consumer Commission.

"AGL" means AGL Energy Limited ABN 74 115 061 375.

"Announcement Date" means 15 July 2013.

"APK" means Australian Power and Gas Company Limited ABN 96 077 206 583.

"APK Board" means the APK Directors acting together as a board of APK.

"APK Director" means a current director of APK.

"APK Group" means APK and each of its related bodies corporate.

"APK Options" means any options to acquire APK Shares that have been granted by APK.

"APK Optionholder" means a person who is registered as the holder of APK Options in the Register.

"APK Shares" means fully paid ordinary shares in APK.

"APK Shareholder" means a person who is registered as the holder of APK Shares in the Register.

"ASIC" means the Australian Securities and Investments Commission.

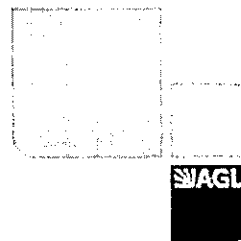
"ASX" means ASX Limited ABN 98 008 624 691.

"ASX Listing Rules" means the listing rules of ASX.

"Bid" means an off-market takeover bid by AGL for all APK Shares under Chapter 6 of the Corporations Act.

"Bid Implementation Agreement" means the Bid Implementation Agreement between AGL and APK dated 15 July 2013.

"Bidder's Statement" means the bidder's statement to be issued by AGL in



respect of the Bid.

"Business Day" means a day (other than Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

"Condition Period" means the period beginning on the Announcement Date and ending at the end of the Offer Period.

"Corporations Act" means the *Corporations Act 2001* (Cth) as modified by any relevant exemption or declaration by ASIC.

"Customer Confirmation" has the meaning given in section 1.1(h)(iii) of the Defeating Conditions.

"Defeating Condition" means each condition set out in section 1.1.

"EBITDA" means earnings before interest, tax, depreciation and amortisation.

"Encumbrance" means:

- (a) a PPS Security Interest;
- (b) any other mortgage, charge, pledge or lien;
- (c) an easement, restrictive covenant, caveat or similar restriction over property;
- (d) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property (including a right to set off or withhold payment of a deposit or other money);
- (e) a right of any person to purchase, occupy or use an asset (including under an option, agreement to purchase, licence, lease or hire purchase);
- (f) any other thing that prevents, restricts or delays the exercise of a right over property, the use of property or the registration of an interest in or dealing with property; or
- (g) an agreement to create anything referred to above or to allow any of them to exist.

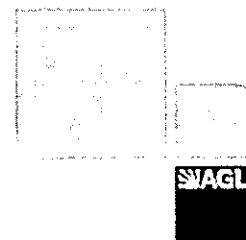
"ESOP" means the Australian Power and Gas Company Limited Employee Share Option Plan adopted by the APK Board on 23 January 2007, as amended by the APK Board from time to time.

"ESP" means the Australian Power and Gas Company Limited Employee Share Scheme.

"Offer" means each offer to acquire APK Shares to be made by AGL to APK Shareholders in connection with the Bid.

"Offer Period" means the period during which Offers are open for acceptance.

"PPS Security Interest" means a security interest that is subject to the PPSA.



"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"Public Authority" means any federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, administrative, statutory or judicial entity, arbitral body, commission, board, bureau or authority or agency.

"Register" means the register of APK Shareholders and APK Optionholders maintained by APK in accordance with the Corporations Act.

"Relevant Employees" has the meaning given in section 1.1(g)(xvi) of the Defeating Conditions.

"SME" means small and medium sized enterprises.

"Target's Statement" means the target's statement to be issued by APK in respect to the Bid.

1.3 Interpretation

- (a) Words and phrases to which a meaning is given by the Corporations Act or the ASX Listing Rules have the same meaning in this document unless that meaning is inconsistent with the context in which the word or phrase is used.
- (b) Headings are for convenience only, and do not affect interpretation of this document.
- (c) The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply:
 - (i) a singular word includes the plural, and vice versa;
 - (ii) a word which suggests one gender includes the other genders;
 - (iii) if a word is defined, another part of speech has a corresponding meaning;
 - (iv) unless otherwise stated references in this document to sections, paragraphs and sub-paragraphs are to sections, paragraphs and sub-paragraphs of this document;
 - (v) a reference to a person includes a body corporate; and
 - (vi) a reference to \$ is to the lawful currency in Australia unless otherwise stated.
- (d) References to time are references to time in Sydney, Australia on the relevant date, unless stated otherwise.



15 July 2013

The Manager
Company Announcements Office
Australian Securities Exchange
20 Bridge St
Sydney NSW 2000

AGL Energy Limited recommended off-market takeover offer for Australian Power & Gas Company Limited

- **Recommended cash takeover offer at 52 cents per APG share**
- **AGL has entered into agreements for the outright acquisition of 19.9% of APG's issued shares from APG's 3 major shareholders**
- **APG's 3 major shareholders have announced their intention to accept the Offer for the balance of their shareholdings (~37% of issued shares) by no later than the business day after the Offer becomes unconditional in the absence of a superior proposal**
- **APG's Independent Board Committee recommends APG shareholders accept the Offer in the absence of a superior proposal and subject to the independent expert concluding the Offer is reasonable**
- **Separate recommended Offer to be made for APG Options (subject to obtaining regulatory relief). Option Offer recommended by Independent Board Committee in the absence of a superior proposal and subject to the independent expert concluding the Option Offer is reasonable. APG Directors and major shareholders intend to accept the Option Offer by no later than the business day after the Option Offer becomes unconditional in the absence of a superior proposal**

The Board of Australian Power & Gas Company Limited (ASX: APK) is pleased to announce that it has entered into a Bid Implementation Agreement (BIA) with AGL Energy Limited (AGL), under which AGL (through a wholly owned subsidiary) has agreed to make recommended cash offers for:

- all of the shares in Australian Power & Gas that AGL does not already own (Share Offer) at \$0.52 per share (Share Offer Price); and
- subject to AGL and APG obtaining required regulatory modifications and consents, all options to subscribe for Australian Power & Gas's shares currently on issue (Option Offer) at the Option Offer price detailed in Schedule 5 of the BIA (Option Offer Price).

AGL's Share Offer will be conditional on certain requirements, including:

- AGL having a relevant interest in at least 90% of the Australian Power & Gas shares by the end of the Share Offer;
- ACCC notification that it does not intend to oppose the acquisition; and
- no material adverse change.

The conditions for the Share Offer are set out in Schedule 2 of the BIA. A copy of the BIA is attached to this announcement.

The Share Offer consideration of \$0.52 cash per share to Australian Power & Gas shareholders reflects:

- a significant 33.3% premium to the closing market price of Australian Power & Gas shares on Friday 12 July 2013; and
- a significant 51.2% premium to the volume weighted average price of Australian Power & Gas shares in the three months to Friday 12 July 2013.

The Option Offer consideration reflects a valuation report that AGL has had prepared by BDO, which AGL intends to include in its Option Bidder's Statement.

The Option Offer is conditional on certain regulatory approvals and will be conditional upon the Share Offer becoming unconditional and AGL having a relevant interest in at least 90% of Options at the end of the Option Offer period.

The Board of Australian Power & Gas has appointed an Independent Board Committee comprising two Directors who have carefully considered the advantages and disadvantages of the Offers.

The Independent Board Committee unanimously recommends that:

- Australian Power & Gas shareholders accept the Share Offer, in the absence of any superior proposal and subject to the Independent Expert concluding the Share Offer is reasonable; and
- if AGL makes the Option Offer, Australian Power & Gas optionholders accept the Option Offer, in the absence of a superior proposal and subject to the Independent Expert concluding the Option Offer is reasonable.

All Directors of Australian Power & Gas intend to accept the Share Offer in respect of any shares held or controlled by them by no later than the business day after the Share Offer is or becomes unconditional, in the absence of a superior proposal. If AGL makes the Option Offer, all Directors of Australian Power & Gas also intend to accept the Option Offer in respect of any Australian Power & Gas options held or controlled by them by no later than the business day after the Option Offer is or becomes unconditional, in the absence of a superior proposal.

AGL has announced today that it has entered into agreements for the outright acquisition of 19.9% of the issued shares in Australian Power & Gas from its three largest shareholders – Nippon Gas, The Cobra Group, and interests associated with Richard Poole. Each of these shareholders have advised Australian Power & Gas that its intention is to accept the Share Offer and the Option Offer in respect of any shares or options held or controlled by them by no later than the business day after the Share Offer or Option Offer (as applicable) is or becomes unconditional, in the absence of a superior proposal. Each of these shareholders has authorised Australian Power & Gas to make this statement of their intention in this announcement.

Bid Implementation Agreement

AGL and Australian Power & Gas have entered into a BIA under which the parties have given certain undertakings to each other in order to facilitate the implementation of the Share Offer and the Option Offer (if made).

The BIA contains certain terms usual for a transaction of this nature including customary deal protection mechanisms such as “no shop”, “no talk” and “no due diligence” restrictions as well as a right for AGL to match a competing proposal. A break fee is also payable by Australian Power & Gas to AGL in certain circumstances.

Under the BIA, AGL will not be required to make the Option Offer unless it obtains the required regulatory modifications and consents from ASIC.

Transaction timing

AGL has announced that it anticipates its Bidder's Statement will be despatched to Australian Power & Gas shareholders and options holders (if applicable) by early August. Australian Power & Gas will dispatch its Target's Statements to Australian Power & Gas shareholders and optionholders shortly thereafter. Australian Power & Gas has engaged Grant Thornton as Independent Expert to consider the Offers.

Australian Power & Gas shareholders and optionholders are not required to take any action at this stage. The Bidder's Statements and Target's Statements will provide detailed information on the Share Offer and the Option Offer (if made), the recommendations of the Directors of Independent Board Committee and advantages and risks associated with the Offers, and the Independent Expert's Report.

Commenting on the recommended offer, Australian Power & Gas Chief Executive Officer James Myatt said:

"Since establishing Australian Power & Gas seven years ago, the company has rapidly grown to become the leading independent energy retailer in Australia. Our customer base of over 354,000 retail customers has substantial strategic value".

"The Offer is priced at a significant premium to the company's current market price and volume weighted average price over the past three months. It represents an attractive opportunity in the current market environment for Australian Power & Gas shareholders to realise the value inherent in our business."

Australian Power & Gas has been advised by Arthur Phillip, Finflex and Corrs Chambers Westgarth.

For further information please contact:

Corporate:

James Myatt
Chief Executive Officer
Australian Power & Gas
P: 02 8908 2700

Investors and media:

Ronn Bechler
Managing Director
Market Eye
P: 0400 009 774

About Australian Power and Gas:

Australian Power and Gas Company Limited (ASX: APK) is Australia's leading independent ASX-listed energy retailer, and one of the country's fastest growing companies. It holds a full suite of gas and electricity retail licences in Victoria, New South Wales, ACT, South Australia and Queensland and has been approved to operate by AEMO, the Australian Energy Market Operator. Australian Power and Gas was announced as the fastest starting company in the 2011 Business Review Weekly Annual Fast Starters List for a second year in a row, and was placed first on the Business Review Weekly Fast100 list for 2010.

SCHEDULE 2

Agreed Bid Terms

AGL offers to each APK Shareholder \$0.52 for every APK Share held.

1.1 Defeating Conditions

The Offer and any contract resulting from its acceptance, is subject to the Defeating Conditions set out below.

(a) Minimum acceptance condition

At the end of the Offer Period, AGL has a relevant interest in more than 90% (by number) of the APK Shares on issue at that time.

(b) ACCC Approval

Before the end of the Offer Period, none of the following events happening:

- (i) the ACCC having given notice in writing to AGL or APK that it has decided to oppose the acquisition of the APK Shares under the Offer;
- (ii) the ACCC notifying AGL or APK in writing that it will not approve the acquisition of the APK Shares under the Offer unless AGL agrees to conditions or undertaking and those conditions or undertaking are not acceptable to AGL (acting reasonably);
- (iii) the ACCC taking action or give notice to AGL or APK in writing of its intention to take action, to prevent or restrain the acquisition of the APK Shares under the Offer; or
- (iv) the ACCC commencing legal proceedings seeking orders to prevent or restrain the acquisition of APK Shares under the Offer.

(c) No prescribed occurrences

Between the date the Bidder's Statement is given to APK and the end of the Offer Period none of the following events happen:

- (i) APK converts all or any of its shares into a larger or smaller number of shares;
- (ii) APK or a subsidiary of APK resolves to reduce its share capital in any way;
- (iii) APK or a subsidiary of APK:
 - (A) enters into a buy-back agreement; or
 - (B) resolves to approve the terms of a buy-back agreement under Section 257C(1) or 257D(1) of the Corporations Act;
- (iv) APK or a subsidiary of APK issues shares or grants an option over its shares, or agrees to make such an issue or grant such an option, other than pursuant to the vesting under the ESOP or ESP of any existing APK Shares or APK Options or as agreed by AGL in writing prior to the Announcement Date;
- (v) APK or a subsidiary of APK issues, or agrees to issue, convertible notes;

- (vi) APK or a subsidiary of APK disposes, or agrees to dispose, of the whole, or a substantial part, of its business or property;
- (vii) APK or a subsidiary of APK grants, or agrees to grant, a security interest in the whole, or a substantial part, of its business or property;
- (viii) APK or a subsidiary of APK resolves to be wound up;
- (ix) the appointment of a liquidator or provisional liquidator of APK or of a subsidiary of APK;
- (x) a court makes an order for the winding up of APK or of a subsidiary of APK;
- (xi) an administrator of APK, or of a subsidiary of APK, is appointed under Section 436A, 436B or 436C of the Corporations Act;
- (xii) APK or a subsidiary of APK executes a deed of company arrangement; or
- (xiii) a receiver, or a receiver and manager, is appointed in relation to the whole, or a substantial part, of the property of APK or of a subsidiary of APK.

(d) No prescribed occurrences between announcement and service

None of the events listed in sub-paragraphs (i) to (xiii) of paragraph (c) happens during the period beginning on the Announcement Date and ending at the end of the day before the Bidder's Statement is given to APK.

(e) No action by Public Authority adversely affecting the Offer

During the Condition Period:

- (i) there is not in effect any preliminary or final decision, order or decree issued by a Public Authority (excluding the ACCC);
- (ii) no action or investigation is instituted, or threatened by any Public Authority (excluding the ACCC) with respect to APK or any subsidiary of APK; or
- (iii) no application is made to any Public Authority (excluding the ACCC) (other than an application by AGL or any company within the AGL group, an application under Section 657G of the Corporations Act, or an application commenced by a person specified in Section 659B(1) of the Corporations Act in relation to the Offer),

in consequence of, or in connection with, the Offer, which restrains or prohibits or threatens to restrain or prohibit, or may otherwise materially adversely impact upon, the making of the Offer or seeks to require the divestiture by AGL of any APK Shares, or the divestiture of any assets by APK or by any subsidiary of APK or by any company within the AGL group.

(f) Non-existence of certain rights under agreements or instruments

During the Condition Period, there is no person entitled to exercise, exercising or purporting to exercise, stating an intention to exercise (whether or not that intention is stated to be a final or determined decision of that person), or asserting a right to exercise, any rights under any provision of any agreement or other instrument to which APK or any of its subsidiaries is a party, or by or to which APK or any of its subsidiaries or any of its assets or businesses may be bound or be subject, which results, or could result, to an extent which is material in the context of APK and its subsidiaries taken as a whole in:

- (i) any moneys borrowed by APK or any of its subsidiaries being or becoming repayable or being capable of being declared repayable immediately or earlier than the repayment date stated in such agreement or other instrument;
- (ii) any such agreement or other such instrument being terminated or modified or any action taken or arising thereunder (including the acceleration of the performance of any obligations thereunder);
- (iii) any assets, shares or business of APK or any of its subsidiaries being sold, transferred or offered for sale or transfer, including under any pre-emptive rights or similar provisions; or
- (iv) the business of APK or any of its subsidiaries with any other person being adversely affected,

other than in relation to any agreement or instrument:

- (v) previously disclosed before the Bid Announcement Date by APK in a public filing with the ASX;
- (vi) disclosed in writing by APK to AGL before the Announcement Date,

provided in each case such agreement or instrument and such entitlement to exercise, actual or purported exercise, intention to exercise or assertion was fully, fairly and accurately disclosed, and such disclosure was not misleading or deceptive in any material respect (including by omission).

(g) Conduct of APK's business

During the Condition Period, none of APK, or any body corporate which is or becomes a subsidiary of APK, without the prior written consent of AGL (such consent, in the case of sub-paragraphs 1.1(g)(iv) - 1.1(g)(xvi), 1.1(g)(xx) and 1.1(g)(xxii), not to be unreasonably withheld or delayed):

- (i) announces, makes, declares, distributes or pays any distribution (whether by way of dividend, bonus, capital reduction or otherwise and whether in cash or in specie);
- (ii) issues or grants options over, or agrees to issue or grant options over, or otherwise makes any commitments regarding any shares or other securities, or alters its capital structure or the rights attached to any of its shares or other securities, or issues or agrees to issue any convertible notes or any other securities that are convertible into shares;
- (iii) makes any changes in its constitution or passes any special resolution;
- (iv) enters into, amends or agrees to enter into or amend, any contract, commitment or other arrangement with a related party of APK or issues a notice of termination, terminates or agrees to terminate, waives or otherwise foregoes any rights under any such arrangement;
- (v) enters into, amends or agrees to enter into or amend, any contract, commitment or other arrangement where:
 - (A) the term of the contract, commitment or arrangement is greater than 12 months; or

- (B) the contract, commitment or arrangement involves APK or a subsidiary of APK incurring expenditure or being entitled to receive revenue (or additional expenditure or revenue in the case of an amendment) in excess of \$100,000 per annum,

other than:

- a mass market or SME customer contract on materially the same terms as the current pro-forma standard form customer contracts which have been disclosed by APK in writing to AGL before the Announcement Date; or
- any financial instruments to manage market movements in the electricity and gas markets in accordance with any facility agreement disclosed by APK in writing to AGL prior to the Announcement Date, any financial instrument or trading contract to manage APK's (or a subsidiary of APK's) renewable energy target obligations or the extension of any gas supply agreements disclosed by APK in writing to AGL prior to the Announcement Date, provided that:
 - the financial instrument or trading contract is on arm's length terms; and
 - AGL is offered a last right of refusal to provide the financial instrument or trading contract on the same terms and conditions as APK proposes to enter into with the third party and AGL has not accepted that offer in respect of a gas contract within 3 Business Days or in the case of an electricity contract within 1 Business Day, of the offer being received and if AGL has not accepted the offer, APK enters into the financial instrument or trading contract with the third party on terms and conditions that are identical to those offered to AGL;

- (vi) terminates, agrees to terminate, waives, foregoes any rights, assigns, disposes of, encumbers or otherwise deals with any rights under any contract, commitment or other arrangement, or gives its consent to any other party or parties to terminate, waive, forego any rights, assign, dispose of, encumber or otherwise deal with their respective rights under any contract, commitment or other arrangement where:

- (A) the term of the contract, commitment or arrangement is greater than 12 months; or

- (B) the contract, commitment or arrangement involves APK or a subsidiary of APK incurring expenditure or being entitled to receive revenue (or additional expenditure or revenue in the case of an amendment) in excess of \$100,000 per annum,

other than:

- a valid termination of a mass market or SME customer contract; or
- the assignment by APK (or a subsidiary of APK) to a third party of its rights to recover debt (relating to closed accounts with amount owing of over 180 days past due) from a customer under customer contracts;

- (vii) settles or compromises any claim, proceeding, demand or investigation or consents to any orders being made against APK or a subsidiary of APK other than in respect of a claim involving a mass market customer where the settlement or compromise to be paid by APK does not exceed \$10,000 for any individual claim and the total amount paid for all claims does not exceed \$250,000;
- (viii) changes (by agreement or unilaterally) the services, service levels, service level credits, products to be sold or provided or territories that apply under any existing agreement, arrangement or undertaking under which the counterparty is providing services to APK or a subsidiary of APK such that the change (taken with any other such previous change) which would result in APK or a subsidiary of APK incurring additional expenditure or a reduction in revenue in excess of \$100,000 per annum;
- (ix) enters into a contract or commitment restraining it from competing with any person or conducting activities in any market;
- (x) acquires or disposes of, or enters into, agrees to enter into or announces any agreement for the acquisition or disposal of, any company, asset or business in excess of \$100,000, other than the assignment by APK (or a subsidiary of APK) to a third party of its rights to recover debt (relating to closed accounts with amounts owing of over 180 days past due) from a customer under customer contracts;
- (xi) voluntarily changes any accounting policy applied by it to report its financial position;
- (xii) gives or agrees to give any Encumbrance over any of its assets otherwise than in the ordinary course of business other than as contemplated under any facility agreement disclosed by APK in writing to AGL prior to the Announcement Date, in relation to any "repos" provided to an existing lender disclosed by APK in writing to AGL prior to the Announcement Date; or any guarantee or borrowing required for APK (or a subsidiary of APK) to comply with prudential requirements of the electricity market, the gas market, under a gas supply agreement as disclosed by APK in writing to AGL prior to the Announcement Date, or use of system, distribution or transportation agreement disclosed by APK in writing to AGL prior to the Announcement Date;
- (xiii) borrows or agrees to borrow any money (except for temporary borrowing from its financiers in the ordinary course of business) or prepays or seeks to prepay any amounts under, or amends or agrees to amend any contract, commitment or other arrangement in connection with the existing facility or borrowing arrangements between APK or a subsidiary of APK and the financiers, other than, where first consented to in writing by AGL (such consent not to be unreasonably withheld or delayed), any guarantee (other than a guarantee provided to the Australian Energy Market Operator to comply with prudential requirements) or borrowing required for APK (or a subsidiary of APK) to comply with prudential requirements of the electricity market, the gas market, under a gas supply agreement as disclosed by APK in writing to AGL prior to the Announcement Date, or use of system, distribution or transportation agreement disclosed by APK in writing to AGL prior to the Announcement Date;
- (xiv) gives or agrees to give financial accommodation in excess of \$100,000 other than to other members of the APK Group;

- (xv) releases, discharges or modifies any substantial obligation to it of any person, firm or corporation or agrees to do so;
- (xvi) has appointed any additional director to its board of directors whether to fill a casual vacancy or otherwise;
- (xvii) increases the remuneration of or otherwise varies the employment arrangements with any of the APK Directors or any of the employees of the APK Group (collectively, **Relevant Employees**);
- (xviii) other than for bonuses accrued in APK's balance sheet as at 31 May 2013 as disclosed by APK in writing to AGL prior to the Announcement Date, pays any bonus to a Relevant Employee where the aggregate amount of all such bonuses exceeds \$250,000;
- (xix) pays any of the Relevant Employees termination or retention payments (other than to the extent disclosed by APK in writing to AGL prior to the Announcement Date);
- (xx) enters into any new employment arrangements with an existing or potential employee other than to replace staff or fill any vacant positions and where the total annual remuneration and other benefits of such replacement employee under the employment arrangement is less than \$100,000 per annum;
- (xxi) conducts its business otherwise than in the ordinary course;
- (xxii) has threatened or commenced against it any material claims or proceedings in any court or tribunal (including a petition for winding up or an application for appointment of a receiver or receiver and manager), other than as fully, fairly and accurately disclosed by APK or its advisers in writing to AGL or its advisers before the Announcement Date, and such disclosure was not misleading or deceptive in any material respect (including by omission);
- (xxiii) executes a deed of company arrangement or passes any resolution for liquidation, or has appointed or becomes susceptible to the appointment of an administrator, a receiver, a receiver and manager or a liquidator, or becomes subject to investigation under the *Australian Securities and Investments Commission Act 2001* (Cth) or any corresponding legislation; or
- (xxiv) agrees to do any of the matters set out in sub-paragraphs 1.1(g)(i) to 1.1(g)(xxiii) above.

(h) **No material adverse change**

- (ii) During the Condition Period no event, matter or thing occurs or information is disclosed by APK concerning any event, matter or thing which will or is reasonably likely to have a material adverse effect on the assets and liabilities, financial position and performance, profitability or prospects of APK and its subsidiaries, including any event, matter or thing which will or is reasonably likely to:
 - (A) have the effect of diminishing the consolidated net assets of the APK Group as set out in its consolidated balance sheet of APK at 31 May 2013 as disclosed by APK in writing to AGL prior to the Announcement Date by at least \$2,500,000; or
 - (B) reduces or adversely affects the EBITDA of the APK Group for any 12 month period by at least \$1,500,000,

except it does not include any event, change, condition, matter or thing which:

- (C) was fully, fairly and accurately disclosed by APK before the Announcement Date in a public filing with ASX or fully, fairly and accurately disclosed by APK in writing to AGL before the Announcement Date, provided that in each case such disclosure was not misleading or deceptive in any material respect (including by omission);
- (D) is required by the Bid Implementation Agreement or is expressly consented to in writing by AGL for the purposes of this condition; or
- (E) is, results from or is attributable to:
 - (1) any change or movement in exchange rates;
 - (2) a reduction in consumption of gas or electricity by APK's customers due to prevailing weather conditions;
 - (3) mark to market movements of financial instruments as a result of changes in the electricity or gas markets; or
 - (4) projects or the establishment of any new business or new places of business by a competitor of the APK Group or the entry of a new entrant in any market in which the APK Group operates.
- (iii) The Target's Statement contains a statement expressed to be made with the approval of the APK Board, which confirms to the best of the knowledge and belief of the APK Board after having made due enquiry, that the number of APK's retail customer accounts is not less than 340,500 (**Customer Confirmation**).
- (iv) The Target's Statement contains a statement that the APK Board will issue a supplementary Target's Statement if the Customer Confirmation ceases to be correct at any time prior to the close of the Offer and no supplementary Target's Statement that varies, qualifies or revokes the Customer Confirmation is issued by the APK Board during the Condition Period.

1.2 Glossary

The following definitions apply in interpreting the Defeating Conditions:

"ACCC" means the Australian Competition and Consumer Commission.

"AGL" means AGL Energy Limited ABN 74 115 061 375.

"Announcement Date" means 15 July 2013.

"APK" means Australian Power and Gas Company Limited ABN 96 077 206 583.

"APK Board" means the APK Directors acting together as a board of APK.

"APK Director" means a current director of APK.

"APK Group" means APK and each of its related bodies corporate.

"APK Options" means any options to acquire APK Shares that have been granted by APK.

"APK Optionholder" means a person who is registered as the holder of APK Options in the Register.

"APK Shares" means fully paid ordinary shares in APK.

"APK Shareholder" means a person who is registered as the holder of APK Shares in the Register.

"ASIC" means the Australian Securities and Investments Commission.

"ASX" means ASX Limited ABN 98 008 624 691.

"ASX Listing Rules" means the listing rules of ASX.

"Bid" means an off-market takeover bid by AGL for all APK Shares under Chapter 6 of the Corporations Act.

"Bid Implementation Agreement" means the Bid Implementation Agreement between AGL and APK dated 15 July 2013.

"Bidder's Statement" means the bidder's statement to be issued by AGL in respect of the Bid.

"Business Day" means a day (other than Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

"Condition Period" means the period beginning on the Announcement Date and ending at the end of the Offer Period.

"Corporations Act" means the *Corporations Act 2001* (Cth) as modified by any relevant exemption or declaration by ASIC.

"Customer Confirmation" has the meaning given in section 1.1(h)(iii) of the Defeating Conditions.

"Defeating Condition" means each condition set out in section 1.1.

"EBITDA" means earnings before interest, tax, depreciation and amortisation.

"Encumbrance" means:

- (a) a PPS Security Interest;
- (b) any other mortgage, charge, pledge or lien;
- (c) an easement, restrictive covenant, caveat or similar restriction over property;
- (d) any other interest or arrangement of any kind that in substance secures the payment of money or the performance of an obligation, or that gives a creditor priority over unsecured creditors in relation to any property (including a right to set off or withhold payment of a deposit or other money);
- (e) a right of any person to purchase, occupy or use an asset (including under an option, agreement to purchase, licence, lease or hire purchase);
- (f) any other thing that prevents, restricts or delays the exercise of a right over property, the use of property or the registration of an interest in or dealing with property; or

(g) an agreement to create anything referred to above or to allow any of them to exist.

"ESOP" means the Australian Power and Gas Company Limited Employee Share Option Plan adopted by the APK Board on 23 January 2007, as amended by the APK Board from time to time.

"ESP" means the Australian Power and Gas Company Limited Employee Share Scheme.

"Offer" means each offer to acquire APK Shares to be made by AGL to APK Shareholders in connection with the Bid.

"Offer Period" means the period during which Offers are open for acceptance.

"PPS Security Interest" means a security interest that is subject to the PPSA.

"PPSA" means the *Personal Property Securities Act 2009* (Cth).

"Public Authority" means any federal, provincial, state, regional, municipal, local or other government, governmental or public department, central bank, court, tribunal, administrative, statutory or judicial entity, arbitral body, commission, board, bureau or authority or agency.

"Register" means the register of APK Shareholders and APK Optionholders maintained by APK in accordance with the Corporations Act.

"Relevant Employees" has the meaning given in section 1.1(g)(xvi) of the Defeating Conditions.

"SME" means small and medium sized enterprises.

"Target's Statement" means the target's statement to be issued by APK in respect to the Bid.

1.3 Interpretation

- (a) Words and phrases to which a meaning is given by the Corporations Act or the ASX Listing Rules have the same meaning in this document unless that meaning is inconsistent with the context in which the word or phrase is used.
- (b) Headings are for convenience only, and do not affect interpretation of this document.
- (c) The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply:
 - (i) a singular word includes the plural, and vice versa;
 - (ii) a word which suggests one gender includes the other genders;
 - (iii) if a word is defined, another part of speech has a corresponding meaning;
 - (iv) unless otherwise stated references in this document to sections, paragraphs and sub-paragraphs are to sections, paragraphs and sub-paragraphs of this document;
 - (v) a reference to a person includes a body corporate; and
 - (vi) a reference to \$ is to the lawful currency in Australia unless otherwise stated.

- (d) References to time are references to time in Sydney, Australia on the relevant date, unless stated otherwise.

SCHEDULE 3

Securities

APK Shares

APK has 191,526,610 fully paid ordinary shares on issue.

APK Options

APK has 36,892,274 options on issue, categorised as follows:

Class of option	Number outstanding at the date of this document	Expiry date	Exercise price
ESOP (\$0.35)	513,031	01/10/2013	\$0.35
ESOP (\$0.40)	2,035,000	30/10/2014	\$0.40
ESOP (\$0.45)	1,500,000	30/10/2014	\$0.45
ESOP (\$0.50)	625,000	01/10/2014 (500,000); 30/10/2014 (125,000)	\$0.50
ESOP (\$0.55)	2,144,243	01/10/2014 (500,000); 30/10/2014 (125,000); 30/10/2015 (1,519,243)	\$0.55
ESOP (\$0.60)	925,000	30/10/2015	\$0.60
ESOP (\$0.70)	500,000	01/07/2015	\$0.70
Unlisted Options	18,900,000	31/12/2013	\$0.60
Fortress Options (1)	2,500,000	22/12/2014	The lower of \$0.40 and 30 day VWAP at the time of exercise
Fortress Options (2)	5,000,000	31/12/2013	\$0.55
Ian McGregor	1,000,000	1/07/2014	\$0.20
James Myatt	500,000	30/10/2013	\$0.70
James Myatt	500,000	30/10/2013	\$0.80
David Franks	250,000	31/03/2014	\$0.35

SCHEDULE 4

Timetable

Event	Date
Release of Agreed announcements	15 July 2013
AGL provides advanced draft Bidder's Statement to APK	18 July 2013
APK provides advanced draft Target's Statement to AGL	9 August 2013
AGL lodges Bidder's Statement with ASIC and ASX and serves it on APK	25 July 2013
APK lodges Target's Statement with ASIC and ASX and serves it on AGL	16 August 2013
AGL despatches Bidder's Statement	8 August 2013
APK despatches Target's Statement	23 August 2013
Offer Period opens	8 August 2013

SCHEDULE 5

Option Bid

1. OPTION BID CONSIDERATION

Class of option	Number outstanding at the date of this document	Expiry date	Exercise price	Option Bid consideration
ESOP (\$0.35)	513,031	01/10/2013	\$0.35	\$0.1647
ESOP (\$0.40)	2,035,000	30/10/2014	\$0.40	\$0.1592
ESOP (\$0.45)	1,500,000	30/10/2014	\$0.45	\$0.1303
ESOP (\$0.50)	625,000	01/10/2014 (500,000); 30/10/2014 (125,000)	\$0.50	\$0.1028 (expiry of 1/10/2014) \$0.1060 (expiry of 30/10/2014)
ESOP (\$0.55)	2,144,243	01/10/2014 (500,000); 30/10/2014 (125,000); 30/10/2015 (1,519,243)	\$0.55	\$0.0826 (expiry of 1/10/2014), \$0.0859 (expiry of 30/10/2014) \$0.0928 (expiry of 30/10/2015)
ESOP (\$0.60)	925,000	30/10/2015	\$0.60	\$0.0757
ESOP (\$0.70)	500,000	01/07/2015	\$0.70	\$0.0421
Unlisted Options	18,900,000	31/12/2013	\$0.60	\$0.0289
Fortress Options (1)	2,500,000	22/12/2014	The lower of \$0.40 and 30 day VWAP at the time of exercise	\$0.1479
Fortress Options (2)	5,000,000	31/12/2013	\$0.55	\$0.0440
Ian McGregor	1,000,000	1/07/2014	\$0.20	\$0.3174
James Myatt	500,000	30/10/2013	\$0.70	\$0.0052
James Myatt	500,000	30/10/2013	\$0.80	\$0.0013
David Franks	250,000	31/03/2014	\$0.35	\$0.1772

The Option Bid consideration is in accordance with a valuation of the APK Options obtained by AGL from BDO East Coast Partnership.

2. **CONDITIONS**

The Option Bid and any contract resulting from its acceptance, is subject to the conditions set out below:

(a) Minimum acceptance condition

At the end of the offer period for the Option Bid, AGL has a relevant interest in more than 90% (by number) of the APK Options on issue at that time.

(b) Share Offer declared unconditional

At the end of the offer period for the Option Bid, the Share Offer has become unconditional as a result of:

- (i) all conditions of the Share Offer (as set out in Schedule 2) being fulfilled according to their terms; or
- (ii) AGL declaring the Share Offer unconditional.

(c) ASX waiver

At the end of the offer period for the Option Bid, APK has received from ASX a waiver of or other relief from ASX Listing Rule 6.23 in respect of:

- (i) the cancellation of APK Options in respect of which AGL receives acceptances under the Option Bid; and
- (ii) any compulsory cancellation of APK Options under Chapter 6A of the Corporations Act.

EXECUTED as an agreement.

EXECUTED by **AUSTRALIAN POWER
AND GAS COMPANY LIMITED:**



Signature of director

Name

James Myatt

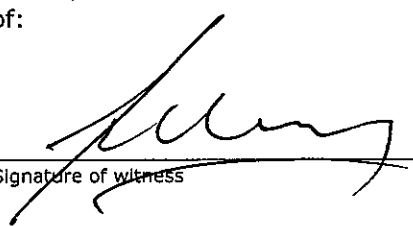


Signature of director/secretary

Name

JOANNE TSENG

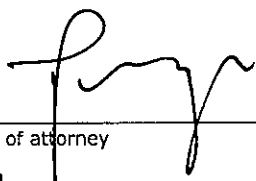
SIGNED for **AGL ENERGY LIMITED**
under power of attorney in the presence
of:



Signature of witness

Name

MEGAN MCGREGOR



Signature of attorney

Name

Paul Harrison

Date of power of attorney

12 / 7 / 13