



## **Supplementary Capacity Agreement**

**Australian Energy Market Operator Limited**

**and**

**[name]**

Australian Energy Market Operator Limited  
ABN 94 072 010 327  
Level 22, 530 Collins Street  
Melbourne VIC 3000

# Supplementary Capacity Agreement

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# Supplementary Capacity Agreement

## Details

<b>Parties</b>	<p><b>Australian Energy Market Operator Limited</b> ABN 94 072 010 327 of Level 22, 530 Collins Street, Melbourne VIC (<b>AEMO</b>)</p> <p>and</p> <p>[Insert entity name] ABN [insert] of [insert address] (<b>Capacity Provider</b>)</p>
<b>Term</b>	the period beginning on the <i>commencement date</i> and ending on the Expiry Date.
<b>Commencement Date</b>	[1 December 2022]
<b>Expiry Date</b>	[insert]
<b>Liability Cap:</b>	<b>AEMO's Liability Cap:</b> <i>availability charges and activation charges due under clause 10</i>
	<b>Consultant's Liability Cap:</b> \$10 million
<b>Insurance Cover:</b>	Professional Indemnity Insurance: \$5 million per occurrence Public Liability Insurance \$10 million per occurrence
<b>Governing law</b>	Western Australia
<b>Address for Service of Notices</b>	<p><b>AEMO:</b> Attention: Manager – WA Reserve Capacity Email: wa.capacity@aemo.com.au</p> <p>Cc: Attention: General Counsel Address: GPO Box 2008, Melbourne VIC 3001 Email: reception.melbourne@aemo.com.au</p> <p><b>Capacity Provider:</b> Attention: [insert] Address: [insert] Email: [insert]</p>
<b>Recitals</b>	<p>A AEMO is responsible for managing the Wholesale Electricity Market in accordance with the <i>WEM Rules</i>.</p> <p>B AEMO has determined for the purposes of clause 4.24.1 of the <i>WEM Rules</i> that inadequate Reserve Capacity will be available in the South West interconnected system ("SWIS") to maintain Power System Security and Power System Reliability for [insert relevant year].</p> <p>C Pursuant to section 4.24 of the <i>WEM Rules</i>, AEMO has selected the <i>Capacity Provider</i> to be a provider of <i>eligible services</i>.</p> <p>D The <i>Capacity Provider</i> agrees to provide the <i>Services</i> in accordance with the terms and conditions of this Agreement.</p>

# Supplementary Capacity Agreement

## Operative Provisions

### 1. Interpretation

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#### 1.1. Definitions

Unless a contrary intention appears, these meanings apply in this document:

“**activation charge**” is the amount determined under **clause 10.2(d)**.

“**activation price**” is specified in **Item 2** of the **Schedule**.

“**authority**” means any Commonwealth, State, Territory or local government or regulatory department, body, instrumentality, minister, agency or other authority, but does not include AEMO.

“**available**” means that the *Services* are, capable of being provided by the *Capacity Provider* in accordance with this Agreement at any time.

“**availability charge**” is the amount determined under **clause 10.2(c)**.

“**availability price**” is specified in **Item 2** of the **Schedule**.

“**AWST**” means Australian Western Standard Time.

“**billing period**” means a Trading Month commencing with the Trading Interval ending at 08:30 hours (*AWST*) on first day of the calendar month, provided that:

- (a) the first *billing period* commences when this Agreement commences; and
- (b) the last *billing period* ends when this Agreement ends.

“**capacity**” means the capacity associated with the *reserve equipment* and may be:

- (a) the capacity of a *generating unit* to produce electricity and send it out into a Network forming part of the SWIS; or
- (b) *load reduction*, being the capability of a *load* to reduce the consumption of electricity at its connection point;

and is further described in **Item 3** of the **Schedule**.

“**Capacity Provider**” is specified in the **Details**.

“**charges**” means the *availability charge* and the *activation charge*.

“**commencement date**” means the later of the Commencement Date specified in the Details and the date on which the last *condition precedent* is either satisfied or waived.

“**communication**” means any notice, demand, approval, consent, request or other communication required or given by a party to another party under this Agreement.

“**condition precedent**” means a condition described in **clause 2.2**.

“**contracted levels of performance**” are specified in **clause 5**.

“**Corporations Act**” means the *Corporations Act 2001* (Cth).

“**disablement**” means the cessation of the provision of *Services* required by an *operating instruction* and, in the case of *load reduction* involves resuming the taking of electricity supply.

“**dispatch constraint**” means the constraints outlined in **Item 4 0** of the **Schedule**.

“**dispose**” means assign, transfer or otherwise dispose of any legal or equitable estate, whether by sale, lease, declaration or creation of trust or otherwise.

“**eligible services**” is defined in the *WEM Rules*.

“**enablement**” means preparing *reserve equipment* for dispatch.

“**enablement lead time**” means the maximum period required by the *Capacity Provider* to enable the *reserve equipment* in response to an *operating instruction* requiring *enablement* and is specified in **Item 3.1** of the **Schedule**.

“**Energy Legislation**” means:

- (a) the *WEM Regulations* and *WEM Rules*;
- (b) the *Gas Services Information Regulations 2012 (WA)*;
- (c) any other statute or legislative instrument of the Commonwealth or a State or Territory providing for the establishment, operation or administration of a market for energy or an energy system; and
- (d) any instrument or procedure made under any of the foregoing.

“**generating unit**” means a facility or component of a facility that is able to provide an *eligible service*, other than load reduction.

“**GST**” has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

“**insolvency event**” means, in relation to a party, the happening of any of these events:

- (a) it is (or states that it is) insolvent or under administration; or
- (b) it has a controller (as defined in the *Corporations Act*) appointed, is in liquidation, in provisional liquidation, under administration, wound up or has had a receiver (or receiver and manager) appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the other party);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that party, which is preparatory to or could result in any of the events detailed in **paragraphs (a), (b) or (c)**;
- (e) it is otherwise unable to pay its debts when they fall due; or
- (f) something having a substantially similar effect to the events detailed in **paragraphs (a) to (e)** happens in connection with that party under the law of any jurisdiction.

“**legislation**” means Acts of Parliament, regulations, rules, statutory instruments and codes, and includes any licence, order, official policy, directive, request, requirement or guideline of an *authority* whether or not it has the force of law.

“**load**” means a connection point at which electricity is delivered from a distribution system or transmission system to a *Capacity Provider*.

“**load reduction**” means measures to reduce a *Capacity Provider*’s consumption of electricity supplied through the *SWIS*.

“**Maximum Capacity**” means the amount of *Services* the *Capacity Provider* agrees to provide under this Agreement, as specified in **Item 1.3** of the **Schedule** and as adjusted by **clause 8.9** or **clause 8.10**, where applicable.

“**NMI**” or “**national metering identifier**” means a distinct and universal identifier or code for each connection point in an electricity market.

“**nonavailability refund**” means the amount payable by the *Capacity Provider* to AEMO where it is not *available* during the *term* calculated in accordance with **clause 10.5**.

“**operating instruction**” means a direction issued by AEMO to a *Capacity Provider* directing that the *Capacity Provider* vary the output or consumption of its *reserve equipment*.

“**representative**”, in relation to a party, means any officer, employee, agent, adviser, trustee, permitted assignee, liquidator, administrator, or third party contractor of that party or of a related body corporate (as that term is defined in the *Corporations Act*) of that party.

“**reserve equipment**” means the *generating unit* or *load* and any other equipment used to provide the *Services* as described in the **Schedule**.

“**Services**” means the *eligible services* to be provided by the *Capacity Provider* under this Agreement, as defined in the **Schedule**.

“**term**” means the period beginning on the *commencement date* and ending on the Expiry Date specified in the Details.

“**WEM Regulations**” means the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WA) made under the *Electricity Industry Act 2004* (WA).

“**WEM Rules**” means the Wholesale Electricity Market Rules made under the *WEM Regulations*.

## 1.2. Interpretation

Unless a contrary intention appears in this document, a reference to:

- (a) this Agreement includes any schedules, attachments and annexures;
- (b) a document (including this Agreement) includes the document as novated, varied, or replaced, and despite any change in the identity of the parties;
- (c) unless otherwise stated in this Agreement, a clause, paragraph, schedule, or annexure is a reference to a clause, paragraph, schedule, or annexure to this Agreement;
- (d) a clause is a reference to all its subclauses;
- (e) an “Item” is a reference to a provision in a schedule;
- (f) *legislation* includes subordinate legislation and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them;
- (g) the singular includes the plural and vice versa and a gender includes all genders;
- (h) the word “person” includes a firm, a body corporate, a partnership, joint venture, trust, an unincorporated association, any *authority* and any successor entity to those persons;
- (i) the words “includes” or “including” or “such as” are not words of limitation, and when introducing an example, do not limit the meaning of the words to which the example relates or to examples of a similar kind;
- (j) a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (k) a party includes, where the context requires it, that person’s directors, officers, employees, contractors, agents and any other persons authorised by that party;
- (l) an agreement, representation or warranty;
- (m) in favour of two or more persons is for the benefit of them jointly and each of them severally;
- (n) by two or more persons binds them jointly and each of them severally;
- (o) a thing (including an amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively, and to each of them individually;
- (p) writing includes any mode of representing or reproducing words in tangible and permanently visible form;
- (q) a month is a reference to a calendar month;

- (r) a day is a reference to a period of time commencing at midnight and ending at the following midnight; and
- (s) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day and, if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day.

### 1.3. Construction

- (a) All terms capitalised, but not defined in this Agreement or otherwise capitalised under the conventions of the English language, have the meaning given to that term in the *WEM Rules*.
- (b) Headings are inserted for convenience and do not affect the interpretation of this Agreement.
- (c) If a word or phrase is defined in this Agreement, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (d) No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

### 1.4. Symbols

The following abbreviations have the meaning as set out below:

Term	Meaning
MW	Megawatt
MWh	Megawatt hour
\$	Australian dollars

### 1.5. Schedules

- (a) The Schedules, Annexures and Attachments form part of this Agreement.
- (b) If a Schedule contains any provisions that impose additional obligations to those set out in the Operative Provisions, the provisions in the Schedule apply in respect of the *Service* the subject of that Schedule, as if the provision was an Operative Provision.

### 1.6. *WEM Rules* prevail

If, and to the extent of, any inconsistency between an obligation of a party under this Agreement and an obligation of a party to this Agreement under the *WEM Rules*, the obligation under the *WEM Rules* will prevail over the obligation under this Agreement.

## 2. Term

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### 2.1. *Term of this Agreement*

- (a) **Clauses 1, 2, 11, 13.3, 13.4, 13.5, 13.6, 14, 15, 17 and 18** of this Agreement come into effect upon execution.
- (b) Upon satisfaction or waiver of the last *condition precedent*, the remaining clauses of this Agreement will become valid and of full force and effect and the *term* will commence.

- (c) Subject to **clause 2.1(b)**, and to earlier termination in accordance with this Agreement, this Agreement continues until midnight at the end of the Expiry Date.

## 2.2. Conditions Precedent (~~\*delete conditions that do not apply~~)

This Agreement is subject to and conditional on the *Capacity Provider*:

- (a) \*providing to AEMO (in the manner and form specified by AEMO), a copy of any contracts, authorisations, licences, permits, consents, certificates, authorities and approvals necessary to enter into this Agreement, to perform its obligations under this Agreement and to allow those obligations to be enforced or evidence to support the *Capacity Provider's* expectation that these documents will be granted, executed or provided to the *Capacity Provider* before the *commencement date*.
- (b) demonstrating to AEMO's reasonable satisfaction that the required notifications, resulting from the issuing of an *operating instruction*, can be provided to the operator of each part of the *reserve equipment* in sufficient time to allow the *Service* to be dispatched in accordance with the *contracted levels of performance*. Dispatch is not required as part of this demonstration.
- (c) \*providing evidence satisfactory to AEMO that:
- (i) costs have been incurred to enable the provision of the *Services* through the installation of physical equipment;
  - (ii) the *capacity* is in addition to the sent out capacity of the *generating unit*, or the maximum amount of *load* that can be curtailed, that existed prior to the installation of the physical equipment; and
  - (iii) it has installed telemetry equipment that will enable AEMO to remotely monitor and measure the real-time, or near real-time, power demand or power generation at the location and *NMI* associated with the *Service*;
- (d) doing everything reasonably necessary to enable AEMO to issue it with recipient created tax invoices; and
- (e) conducting and completing a successful test in accordance with **clause 2.3**.

## 2.3. Testing

- (a) Prior to the Commencement Date specified in the Details or at the earliest opportunity thereafter, AEMO will request and the *Capacity Provider* must complete a test of the *enablement*, dispatch and *disablement* of the *reserve equipment* under instruction from AEMO to AEMO's reasonable satisfaction.
- (b) The test required under **clause 2.3(a)** requires the *reserve equipment* to perform the following actions in sequence (failure to perform these actions in sequence will constitute a failure to complete this test satisfactorily):
- (i) enable the *reserve equipment* within the *enablement lead time* outlined in **Item 3.1** of the **Schedule**; and
  - (ii) generate at a level or provide *load reduction* in accordance with *operating instructions* issued by AEMO; and
  - (iii) disable under *operating instructions* from AEMO.
- (c) During a test undertaken for the purposes of **clauses 2.3(a)** or **8.8** Error! Reference source not found.:
- (i) if automatic control systems are installed, a *generating unit* must be operated under the control of these automatic control systems;



- (ii) where relevant, all automatic control systems, must be operated in their automatic regulating mode;
- (iii) the *reserve equipment* must be operated in a constant and stable manner; and
- (iv) where available to the *Capacity Provider*, data relating to the performance of the *reserve equipment* must be provided to AEMO as evidence of completion of this test.

### 3. Appointment of Capacity Provider

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#### 3.1. Appointment and Acceptance

AEMO appoints the *Capacity Provider* as a supplementary capacity provider in accordance with this Agreement and the *Capacity Provider* accepts that appointment.

#### 3.2. Acknowledgement

The *Capacity Provider* acknowledges that:

- (a) AEMO is not required by anything in this Agreement, any *legislation*, or requirement of any government *authority* to activate the *Service*;
- (b) this Agreement is not exclusive and AEMO may procure *eligible services* from other persons during the *term*;
- (c) if it is a Market Participant, it must not offer a Demand Side Programme to provide *Services* if the Demand Side Programme has had its Capacity Credits reduced under clause 4.25.4F of the *WEM Rules* for any part of that Capacity Year.

#### 3.3. Capacity Provider Undertakings

The *Capacity Provider* undertakes that for the duration of the *term*, the *Maximum Capacity* associated with the *Service* to be provided to AEMO under this Agreement will not be committed under other mechanisms, including:

- (a) any STEM Submission, NCESS Contract, Balancing Submission, LFAS Submission or LFAS Enablement, Ancillary Service Contract, Dispatch Support Service Contract or Network Control Service Contract; or
- (b) to the Wholesale Electricity Market through any other means; or
- (c) any other arrangement or agreement, including any demand side management arrangement or agreement.

#### 3.4. Third party capacity

- (a) The *Capacity Provider* must obtain written confirmation from each third party or end user, contracted by the *Capacity Provider* to provide *load reduction* or generation on behalf of the *Capacity Provider*, confirming that the *Maximum Capacity* associated with the *Service* is not and will not be:
  - (i) offered to the Wholesale Electricity Market through any other means or mechanism; or
  - (ii) provided or *available* to be provided pursuant to any other arrangement or agreement, including any demand side management arrangement or agreement, during the *term*.
- (b) In respect of *Services* provided through *load reduction*, if there is any change during the *term*, the *Capacity Provider* must provide to AEMO an updated list of *NMIs* to be used to provide *capacity* in accordance with this Agreement.

## 4. Provision of Services

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### 4.1. Obligation to make *available* and supply the *Services*

The *Capacity Provider* will:

- (a) make *available* the *reserve equipment*; and
- (b) when directed, supply the *Services* with due care and skill and in accordance with the *contracted levels of performance*,

during the *term* and in accordance with the terms and conditions of this Agreement.

### 4.2. Obligation to comply with *contracted levels of performance*

All *Services* provided under this Agreement must meet the *contracted levels of performance*.

### 4.3. Service activation

- (a) AEMO may (but is not obliged to) request the *Capacity Provider* to activate the *Service* by issuing an *operating instruction* in accordance with **clauses 4.4 to 4.6** and **clause Error!**  
Reference source not found..
- (b) The *Capacity Provider* must comply with an *operating instruction*.

### 4.4. Timing of activation

After receiving an *operating instruction* from AEMO, the *Capacity Provider* must within the *enablement lead time*:

- (a) activate the *Service*; and
- (b) commence providing the *Service*.

### 4.5. Maximum and minimum period of activation

- (a) The *Capacity Provider* must provide the *Service* for the period specified in the *operating instruction*.
- (b) If the *Service* is activated, the maximum duration of each single activation will be the period beginning when the *Service* is activated by the *Capacity Provider* in response to an *operating instruction* by AEMO and ending:
  - (i) when the maximum number of hours each day that the *Service* can be *available* as set out in **Item 2** of the **Schedule** is reached; or
  - (ii) when directed by AEMO,whichever occurs first.

### 4.6. Limits to activation

- (a) AEMO may only activate the *Service* in accordance with the restrictions and limitations outlined in the **Schedule**.
- (b) The *Capacity Provider* is only required to provide the *Service* subject to the restrictions and limitations outlined in the **Schedule**.

- (c) The *Capacity Provider* represents and warrants that the restrictions in the **Schedule** are the only restrictions on the provision of the *Services*.

#### 4.7. What AEMO may Request

At any time during the *term*, subject to **clauses 4.5** and **4.6**, AEMO may request the provision of *Services* up to the *Maximum Capacity*.

#### 4.8. Method of Requests

- (a) AEMO may issue *operating instructions* to the *Capacity Provider* or their *representative* by telephone call and email to the number and address outlined in **Item 5.1** of the **Schedule**.
- (b) Any *operating instructions* issued by telephone will be recorded by AEMO.
- (c) The *Capacity Provider* must confirm activation by telephone call and email to AEMO's *representative* at the number and address outlined in **Item 5.1** of the **Schedule**.

#### 4.9. Direction to activate

- (a) The *Capacity Provider* acknowledges and agrees that:
  - (i) an *operating instruction* to activate the *Service* may be given by AEMO; and
  - (ii) that *operating instruction* requires the *Capacity Provider* to provide *Services* in the time, manner and form specified by AEMO in that *operating instruction*.
- (b) The *Capacity Provider* must comply with any *operating instruction* given by AEMO regarding the activation of the *Service* and the supply of *capacity*.

#### 4.10. Enablement operating instruction

- (a) Subject to any *dispatch constraints* outlined in **Item 40** of the **Schedule**, where relevant, AEMO may issue an *enablement operating instruction* at any time during the *term* requiring the *Capacity Provider* to:
  - (i) synchronise and increase the *reserve equipment's* output to the minimum operating level outlined in **Item 3** of the **Schedule**; or
  - (ii) prepare the *reserve equipment* to be ready to synchronise and increase output as instructed up to the *Maximum Capacity* amount.
- (b) AEMO may also request a time earlier than the *enablement lead time* by which the *reserve equipment* is to reach its minimum operating level outlined in **Item 3.1** of the **Schedule** or *Maximum Capacity*. The *Capacity Provider* must use reasonable endeavours to comply with the request.
- (c) The issue of an *enablement operating instruction* does not imply that an *operating instruction* will be issued.
- (d) Subject to any *dispatch constraints*, AEMO may issue an *enablement operating instruction* at any time during the *term* requiring the *Capacity Provider* to prepare the *reserve equipment* for dispatch. An *enablement operating instruction* must specify:
  - (i) the proposed dispatch start time and the proposed dispatch end time; and
  - (ii) the amount of *capacity* (in MWh) the *Capacity Provider* must prepare for dispatch for each Trading Interval, which unless agreed otherwise between the parties, must not be greater than the *Maximum Capacity*.

- (e) For a facility providing *load reduction* with an *enablement lead time* of zero, an *enablement operating instruction* will not be required and the *load reduction* shall be taken to be constantly in a state of readiness to act on an *operating instruction* issued by AEMO.

#### 4.11. Operating instructions

- (a) Subject to any *dispatch constraints*, AEMO may issue an *operating instruction* to the *Capacity Provider* at any time during the *term* requesting the *Capacity Provider* to dispatch, vary or disable the *reserve equipment*. An *operating instruction*:
  - (i) must specify the dispatch start time and the dispatch end time;
  - (ii) must specify the *capacity* to be dispatched for each Trading Interval (in MWh) from the dispatch start time to the dispatch end time, which unless agreed otherwise between the parties, must not be more than the *Maximum Capacity*; and
  - (iii) must not require the *reserve equipment* to generate below the minimum amount of *Service* specified in **Item 3.1** of the **Schedule** unless the *operating instruction* is an instruction to disable or as agreed otherwise between the parties.
- (b) The amount of *capacity* the *Capacity Provider* must dispatch for each Trading Interval (in MW) from the dispatch start time to the dispatch end time, which unless otherwise agreed between the parties, must not be more than the *Maximum Capacity*.
- (c) The *Capacity Provider* must comply with an *operating instruction* that complies with the requirements in this **clause 4**.

#### 4.12. Terminating operating instruction

- (a) At any time prior to the dispatch start time (taking into account the *enablement lead time*) specified in an *operating instruction*, AEMO may issue an *operating instruction* to the *Capacity Provider* terminating the previous *operating instruction* if AEMO, acting reasonably, considers that the *Service* to be provided pursuant to that *operating instruction* is not required.
- (b) Taking into account the *enablement lead time*, the *Capacity Provider* must comply with an instruction under **clause 4.12(a)**.

## 5. Contracted Levels of Performance

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The provision of *capacity* by the *reserve equipment* up to the *Maximum Capacity* must conform to the requirements of this **clause 5** (the *contracted levels of performance*)

### 5.1. Minimum Technical Requirements

- (a) The *Services* must be capable of being dispatched by *operating instructions* to a single point of contact with operational responsibility for the *reserve equipment*.
- (b) The *reserve equipment* must be capable of being dispatched as a block of not less than 1 MW, which may be made up of smaller components that are managed by the *Capacity Provider*.
- (c) The *reserve equipment* must be capable of providing the *Services* for at least one hour.
- (d) When providing the *Services* and performing its obligations under this Agreement, the *Capacity Provider* must comply with:

- (i) the Technical Rules made under chapter 12 of the *Electricity Networks Access Code 2004* (WA); and
- (ii) good electricity industry practice.

## 5.2. Performance Criteria

- (a) The *Capacity Provider* must be capable of:
  - (i) after receiving an *enablement operating instruction* from AEMO (if required), enabling the *reserve equipment* within the *enablement lead time*;
  - (ii) after receiving an *operating instruction* from AEMO, generating or *load reduction* at a rate of change as required by the *operating instruction*, unless agreed otherwise between the parties; and
  - (iii) unless required to continue to provide *capacity* by an Operating Instruction issued under the *WEM Rules*, upon receiving an *operating instruction* from AEMO to disable, disabling the *reserve equipment*.
- (b) No part of the *Services* shall be dispatched prior to receipt of a relevant *operating instruction* without AEMO's prior consent.
- (c) Dispatch of the *reserve equipment* must not lead to any consequent increase in the rate at which electricity is taken from the Network by any other equipment or process unless this effect has been deducted from the *Services* to be provided.

## 6. Availability

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### 6.1. Ad hoc availability advice

AEMO may request advice on the availability of the *reserve equipment* on an ad hoc basis. If requested by AEMO, the *Capacity Provider* must provide the requested information by the time and in the form and manner notified by AEMO. Information that may be requested by AEMO includes the following:

- (a) for each Trading Interval falling within the period requested by AEMO, the availability of *capacity* (in MWh);
- (b) a statement of the maximum level of *capacity* that can be achieved up to the *Maximum Capacity* for each Trading Interval for the period requested (in MW);
- (c) details of any maintenance proposed for the period requested that may affect the *reserve equipment*;
- (d) details of any *reserve equipment* unavailability in the period requested;
- (e) details of any known problems with the *reserve equipment* or ability to provide the *Services*. For each problem, the *Capacity Provider* must provide, to the best of its knowledge, an assessment of the risk that the problem may escalate or improve;
- (f) a description of any tests the *Capacity Provider* intends to conduct in the period requested and the proposed timing of each test and any impact on the availability of the *Services* associated with each test; and
- (g) such other information concerning the availability of the *Services* as AEMO may reasonably request.

### 6.2. Unavailability of reserve equipment

- (a) If, at any time during the *term*, the *Capacity Provider* considers that *reserve equipment* is, or will become, incapable of providing the *Service* or if any amount of the *Maximum Capacity* is not available or will not be available at any time in the future in accordance with this Agreement, it must notify AEMO immediately by email and telephone specifying:
  - (i) when the *reserve equipment* became, or will become, incapable of providing the *Service*;
  - (ii) how long the *Capacity Provider* expects the incapability to continue; and
  - (iii) the cause of the incapability.

If a *Capacity Provider* issues a notice to AEMO in accordance with **clause 6.2(a)**, then the *reserve equipment* will be considered to be not *available* for the period specified in the notice.

### **6.3. Reserve equipment taken to be not available**

The *reserve equipment* is also taken to be not *available* for a Trading Interval if:

- (a) the quantity of *capacity available* during any Trading Interval (in MW) on that day due to reasons other than a relevant *dispatch constraint* is less than the total quantity of *capacity* specified, or taken to be specified, in **Item 3** of the **Schedule** on that day;
- (b) an *operating instruction* has been issued for a Trading Interval on the day and the *reserve equipment* has been unable to generate or reduce *load* to more than 80% of the level requested by the *operating instruction* for that Trading Interval; or
- (c) the *Capacity Provider* does not respond to an ad hoc request from AEMO for advice on the availability of the *reserve equipment* by the time and in the form and manner notified by AEMO.

### **6.4. Unavailability**

If a *Capacity Provider* fails to supply *Services* or the *Service* is not *available* in accordance with **clauses 6.2 or 6.3** of this Agreement, then the *Capacity Provider* will be in default and must pay a *nonavailability refund* to AEMO for the period determined in accordance with **clause 6.5**.

## 6.5. Period in which reserve equipment is taken to be not available

If the *reserve equipment* is taken to be not available under **clauses 6.2 or 6.3**, the *reserve equipment* is taken to be not available for the period commencing half-way between:

- (a) the time:
  - (i) at which the *operating instruction* was issued,
  - (ii) given under **clause 6.2(a)(i)** in the notification given to AEMO by the Capacity Provider under **clause 6.2(a)**; or
  - (iii) at which AEMO made an ad-hoc request under clause 6.1
- (b) the most recent to occur of:
  - (i) the last time the *reserve equipment* was successfully tested or dispatched; and
  - (ii) the *commencement date*;

and concluding when the *Capacity Provider* demonstrates to AEMO's reasonable satisfaction that the *reserve equipment* is available.

## 7. Measurement and verification

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### 7.1. Measurement

- (a) Measurement of each *Service* provided under this Agreement must be made in accordance with this **clause 7.1**.
- (b) Interval metering data provided by the Metering Data Agent will be used to determine the quantity of *capacity* provided by the *reserve equipment*.
- (c) The *Capacity Provider* must ensure it has:
  - (i) an interval meter installed; and
  - (ii) been assigned a *NMI* for,each metering point for the *reserve equipment* at least five Business Days prior to the commencement of the *term*.
- (d) The *Capacity Provider* must provide the *NMI* for each metering point to AEMO as soon as it is assigned.
- (e) The interval meter(s) must provide interval energy data and the *Capacity Provider* acknowledges and agrees that the interval energy data will be used by AEMO to:
  - (i) measure the *capacity* supplied by the *reserve equipment*; and/or
  - (ii) verify that the *Service* was activated and *capacity* was supplied by the *reserve equipment*.
- (f) The *Capacity Provider* must do all things necessary and convenient to ensure that the Metering Data Agent is able to access the interval energy data in the time, manner and form specified by AEMO or the Network Operator (as the case may be).
- (g) The *Capacity Provider* must provide to AEMO a list of *NMIs* used to provide *Services* in response to an *operating instruction* within two Business Days after dispatch.
- (h) The *NMIs* provided in the list by the *Capacity Provider* under **clause 7.1(g)** must only be *NMIs* that were notified to AEMO by the *Capacity Provider* under **clause 7.1(d)**.
- (i) The maximum level at which the *Service* is taken to have been dispatched is the level specified in a relevant *operating instruction*.

- (j) The parties acknowledge and agree that AEMO will quantify the amount of *Service* provided, where the *Service* has been provided as *load reduction*, by subtracting the historical median consumption during the 12 Trading Intervals, with the highest demand in the preceding Hot Season, from the data relating to the aggregate amount of the *capacity* actually supplied in accordance with an *operating instruction* from AEMO given under **clause 4.11** during Trading Intervals during the Trading Month, as measured in accordance with this **clause 7.1**.

## 7.2. Verification

- (a) AEMO may verify that the *Service* is being provided in accordance with this Agreement using the process contemplated in this **clause 7.2**.
- (a) Interval meter data will be used to verify the quantity of *capacity* dispatched under this Agreement. AEMO expects to receive interval energy data from the Metering Data Agent by the Interval Meter Deadline.
- (b) If AEMO requests further information relating to the measurement and determination of the dispatched *capacity*, the *Capacity Provider* must provide that information to AEMO within two Business Days of AEMO's written request.
- (c) The *Capacity Provider* will not be entitled to be paid the *activation charge* in relation to *Services* provided by a *NMI* that is also included as a *NMI* in a list provided by another capacity provider or Rule Participant.
- (d) AEMO will notify the *Capacity Provider* of any *NMI* included in a list provided by the *Capacity Provider* under **clause 7.1(g)**, which is included in a list provided by another capacity provider or Rule Participant.
- (e) The *Capacity Provider* will only be entitled to be paid the *activation charge* in relation to *Services* provided by *NMIs* that were notified to AEMO by the *Capacity Provider* under **clause 7.1(d)**.

## 8. Records, audits, inspections and testing

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### 8.1. Type of Records

The *Capacity Provider* must compile and maintain records concerning this Agreement, including, where relevant:

- (a) the provision of *Services* under this Agreement;
- (b) the operation and maintenance of *reserve equipment*;
- (c) data from metering, measurement, supervisory and electronic data processing systems;
- (d) any procedures used in the performance of this Agreement;
- (e) all notices given or received by telephone in relation to this Agreement; and,
- (f) in respect of *Services* provided through *load reduction*, records of electricity supply and demand side management agreements or arrangements or any network support agreements or arrangements affecting the *Service*, including the time, duration, quantity and amount of demand response or other services supplied or activated under any such agreement or arrangement.

### 8.2. Form and Retention

- (a) The records referred to in **clause 8.1** may be maintained in writing or electronically.



- (b) The *Capacity Provider* must maintain a record referred to in **clause 8.1** for at least seven years from the date it was created.

### **8.3. Right to Inspect Records**

- (a) AEMO may request a copy of any of the records maintained under **clause 8.1** or any other information in connection with this Agreement and the provision of the *Services* at any time.
- (b) The *Capacity Provider* must comply with a request from AEMO under **clause 8.3(a)** within five Business Days of receipt.
- (c) The *Capacity Provider* must, if requested:
  - (i) provide AEMO with any technical specifications, drawings, plans or other such documents in relation to the *Capacity Provider's* facility and the *reserve equipment*; and/or
  - (ii) allow AEMO or its agent to inspect the facility, including the *reserve equipment*.
- (d) The *Capacity Provider* must cooperate and coordinate with AEMO and/or its agent to the extent reasonably necessary in relation to the inspection of any facility and *reserve equipment*, including providing for or procuring rights of entry for the purposes of commissioning, inspection and testing of the facility and *reserve equipment*.

### **8.4. Audits by AEMO**

- (a) AEMO may audit any of the records maintained under **clause 8.2(b)** by giving the *Capacity Provider* at least five Business Days' notice. A notice under this **clause 8.4(a)** must include the following information:
  - (i) the nature of the audit;
  - (ii) the *Service* concerned;
  - (iii) the name of any *representative* appointed by AEMO to conduct the audit; and
  - (iv) the date on which the audit will commence.
- (b) Unless the *Capacity Provider* agrees otherwise, an audit under this **clause 8.4** may only occur during normal business hours on a Business Day.
- (c) On request from AEMO, the *Capacity Provider* must procure the disclosure of records and information from any party to electricity supply and demand side management agreements or arrangements or any network support agreements or arrangements affecting the *Service*, including the time, duration, quantity and amount of demand response or other services supplied or activated under any such agreement or arrangement and the *Capacity Provider* must consent to the disclosure to AEMO of any such records and information.

### **8.5. Conduct of Audit**

Audits will occur at the site at which the relevant records are maintained by the *Capacity Provider*, unless agreed by the parties, and the *Capacity Provider* must provide the AEMO *representatives* conducting the audit with all assistance those *representatives* may require to conduct it, including access to all relevant records (including computer records or systems) and any interpretation or explanation required.

### **8.6. Inspections**

- (a) Subject to **clause 8.6(d)**, at a date and time convenient to both parties, AEMO may inspect any of the *reserve equipment* to determine whether the *Capacity Provider* is complying with this Agreement.

- (b) Where any *reserve equipment* is located on a third party or end user's property, the *Capacity Provider* will use all commercially reasonable endeavours to procure consent for AEMO to inspect such equipment in accordance with **clause 8.6(a)** at a date and time convenient to both parties and the end user.
- (c) At least five Business Days prior to the date on which AEMO wishes to make an inspection, AEMO must deliver a notice to the *Capacity Provider* detailing the following information:
  - (i) the *reserve equipment* to be inspected;
  - (ii) the *representatives* who will be conducting the inspection on behalf of AEMO; and
  - (iii) the date and time when AEMO proposes to commence the inspection and the expected date and time when the inspection will conclude.
- (d) The *Capacity Provider* must not unreasonably refuse access and must procure that all necessary third party consents to the access required by AEMO to conduct the inspection are secured in time for the inspection to commence as agreed between the parties.
- (e) If AEMO conducts an inspection under this **clause 8.6**, the *Capacity Provider* must designate *representatives* to accompany AEMO's *representatives* and answer any questions and assist with the conduct of the inspection.

### **8.7. Conduct of Inspection**

- (a) AEMO must not carry out any inspection of *reserve equipment* under **clause 8.6** within six months of a previous inspection under this Agreement of the same *reserve equipment*.
- (b) Unless otherwise agreed by the *Capacity Provider*, an inspection under **clause 8.6** may take as long as reasonably necessary, provided it is no longer than 24 hours. Any agreement to extend the period of the inspection must not be unreasonably withheld, considering the extent of the inspection proposed.
- (c) Whilst carrying out an inspection in accordance with **clause 8.6**, AEMO must, and must procure that its *representatives*:
  - (i) do not cause any loss or damage to the *Capacity Provider's* assets;
  - (ii) do not interfere with the operation of the *Capacity Provider's* business (provided that the inspection itself does not constitute interference);
  - (iii) observe the *Capacity Provider's* requirements relating to occupational health and safety and industrial relations matters that apply to all invitees of the *Capacity Provider*; and
  - (iv) do not ask any question or give any direction, instruction, or advice to any *representative* of the *Capacity Provider* other than the *representative* designated by the *Capacity Provider* for this purpose.

### **8.8. Testing of facilities, including reserve equipment**

- (a) AEMO may conduct from time to time and at any time, but at intervals of not less than five Business Days, tests of the *Capacity Provider's* facility, including *reserve equipment*.
- (b) Subject to meeting the requirements in **clause 2.3**, the *Capacity Provider* must cooperate and coordinate with AEMO to the extent reasonably necessary in relation to the testing of its facility and *reserve equipment*, including providing or procuring rights of entry for the purposes of testing of the facility.

### **8.9. Failure of test of facility, including reserve equipment**

- (a) If the facility and *reserve equipment* fail a test pursuant to **clause 8.8**, AEMO may, in its discretion:

- (i) take no action and request a re-test in accordance with **clause 8.10**;
  - (ii) reduce the *availability price* to zero; and/or
  - (iii) reduce the *contracted level of performance* of the facility to reflect the maximum *capacity* achieved in the test.
- (b) For the purposes of **1.1(a)**, the facility, including the *reserve equipment* will fail a test if it is unable to provide *Services* equal to or more than 90% of the *contracted level of performance*.

#### **8.10. Retesting the facilities, including *reserve equipment***

- (a) The *Capacity Provider* may request a re-test in accordance with the process outlined in **clause 8.8** within five Business Days after the previous test.
- (b) If the facility successfully performs the re-test, AEMO must adjust the *contracted level of performance* to the original *contracted level of performance* specified in this Agreement.
- (c) If the facility fails the re-test, AEMO may:
  - (i) adjust the *contracted level of performance* (as adjusted in **clause 8.9(a)(iii)**) to reflect the maximum *capacity* achieved in the re-test; or
  - (ii) terminate this Agreement pursuant to **clause 13**.
- (d) For the purpose of this clause, the facility fails a re-test if it is unable to provide *Services* equal to or more than 90% of the *contracted level of performance*.

## **9. Maintenance, Repairs**

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### **9.1. Maintenance of *Reserve Equipment***

- (a) In respect of *reserve equipment* owned, operated or controlled by the *Capacity Provider*, the *Capacity Provider* must operate and maintain the *reserve equipment* in accordance with good electricity industry practice and equipment manufacturer's instructions, where appropriate.
- (b) In respect of *reserve equipment* not owned, operated or controlled by the *Capacity Provider*, the *Capacity Provider* must:
  - (i) ensure that each third party or end user contracted by the *Capacity Provider* for the purposes of providing *Services* operates and maintains the *reserve equipment* applicable to that third party and end user in accordance with good electricity industry practice and equipment manufacturer's instructions, where appropriate; and
  - (ii) notify AEMO promptly after becoming aware of a change or modification to any *reserve equipment* that affects or could reasonably be expected to affect the ability of that *reserve equipment* to meet the *contracted levels of performance*.

### **9.2. Notice of Modifications to *Reserve Equipment***

- (a) In respect of *reserve equipment* owned, operated or controlled by the *Capacity Provider*, the *Capacity Provider* must notify AEMO promptly after changing or modifying any *reserve equipment* in a way that affects or could reasonably be expected to affect the ability of that *reserve equipment* to meet the *contracted levels of performance*.
- (b) In respect of *reserve equipment* which is not owned, operated or controlled by the *Capacity Provider*, the *Capacity Provider* must ensure that each third party and end user contracted by the *Capacity Provider* for the purposes of providing *Services* notifies the *Capacity Provider* as soon as the *reserve equipment* applicable to that third party and end user is, or will become, incapable of providing *Services* in accordance with the *contracted levels of performance*.

## 10. Payments/Charges

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### 10.1. Calculation of Payments to *Capacity Provider* for provision of *Services*

- (a) The *charges* payable by AEMO to the *Capacity Provider* for *Services* provided under this Agreement are to be determined in accordance with this **clause 10**.
- (b) This payment will consist of:
  - (i) an *availability charge*, which is accrued daily for making the facility *available* during the *term*; and
  - (ii) an *activation charge*, which is total payable for *Services* supplied during any Trading Interval or part thereof that the *Service* is activated during the *term*.
- (c) Subject to and without limiting clause 9.24.3A of the *WEM Rules*, AEMO will pay the *availability charge* and the *activation charge* in accordance with the terms and conditions of this Agreement, including the invoicing and payment terms prescribed in this **clause 10**.
- (d) For the avoidance of doubt:
  - (i) AEMO is only required to pay the *activation charge* for a Trading Month if the *Service* is activated during that Trading Month; and
  - (ii) when activated, AEMO may require less of a *Service* than the *Maximum Capacity* and the *activation charge* will be reduced accordingly.

### 10.2. Calculation of payments

- (b) The *availability charge* and the *activation charge* will be payable to the *Capacity Provider* by AEMO for each relevant *billing period*.
- (c) The total *availability charge* payable to the *Capacity Provider* by AEMO for the *billing period* (**AvC**) will be determined as follows:

$$\mathbf{AvC = AvP \times D \times CQ}$$

Where:

AvP = the *availability price* (in \$ per MW per day)

D = number of days in the *billing period*,

CQ = the *Maximum Capacity*.

- (d) The *activation charge* payable to the *Capacity Provider* by AEMO for the *billing period* will be the *activation price* multiplied by the aggregate amount of *capacity* actually supplied in accordance with an *operating instruction* from AEMO given **under clause 4.11** during Trading Intervals or parts thereof during each day in the *billing period*, as measured in accordance with **clause 7.1**.

### 10.3. Capacity Provider is a Market Participant

- (a) If the *Capacity Provider* is a Market Participant, AEMO must follow the normal settlement processes in the *WEM Rules*, including clause 9.7.1A of the *WEM Rules*.
- (b) For the avoidance of doubt, this **clause 10.3** does not apply to *Capacity Providers* that are not Market Participants under the *WEM Rules*.

### 10.4. Capacity Provider is not a Market Participant

- (a) If the *Capacity Provider* is not a Market Participant under the *WEM Rules*, AEMO must follow the settlement processes outlined in this **clause 10.4**.
- (b) On the sixth Business Day of the second month following each Trading Month during the *term*, AEMO will issue a recipient created tax invoice to the *Capacity Provider* and, subject to clause 9.24.3A of the *WEM Rules*, will pay the *Capacity Provider* the amount payable via bank transfer to their nominated account within four Business Days of the date of the invoice.
- (c) The *Capacity Provider* must provide any information and perform any act that AEMO considers necessary to facilitate the payment of the invoice by AEMO.
- (d) If the *Capacity Provider* disagrees with an invoice issued under **clause 10.4** Error! Reference source not found., the *Capacity Provider* may lodge a notice of disagreement with AEMO by no later than 5pm AWST on the fortieth Business Day following the date on which the invoice was issued.
- (e) AEMO will, within one month of receipt of a notice of disagreement respond to the notice of disagreement by:
  - (i) indicating any revisions to the invoice and issuing a revised invoice; or
  - (ii) disagreeing with the notice of disagreement (and therefore taking no action).
- (f) If the *Capacity Provider* is not satisfied with AEMO's response pursuant to **clause 10.2(e)(e)**, the *Capacity Provider* may commence a dispute in accordance with **clause 15**.
- (g) If AEMO issues a revised invoice under **clause 10.4(e)(e)(i)**, it will pay the *Capacity Provider* the amount payable via bank transfer to their nominated account within four Business Days of the date of the invoice.
- (h) For the avoidance of doubt, this **clause 10.4** does not apply to *Capacity Providers* that are Market Participants under the *WEM Rules*.

#### 10.5. Payments for failure to provide the Service

- (a) If the:
  - (i) *reserve equipment* is taken to be not available under **clause 6.3 or 6.4** for a Trading Interval during the period determined under **clause 6.5**; or
  - (ii) *Capacity Provider* is directed to activate the *reserve equipment*, but fails to provide the *Service* in accordance with an *operating instruction* during any given Trading Interval (as measured in accordance with **clause 7.1(b)** and determined in accordance with **clause 10.5(b)**),
 then for that Trading Interval:
  - (iii) the *activation charge* will not be payable by AEMO; and
  - (iv) the *Capacity Provider* must pay the *nonavailability refund* to AEMO.
- (b) For the purposes of **clause 10.5(a)(ii)**, the *Capacity Provider* will be deemed to have failed to provide the *Service* if it provides less than 90% of the *capacity* it was directed to provide during any Trading Interval. This will be calculated by AEMO as follows:

$$A = \frac{SD}{S} \times 100$$

Where:

A = the percentage of *capacity* supplied

SD = the actual amount of the *capacity* supplied by the facility in the Trading Interval expressed (in MWh),

S = the amount of the *capacity* that AEMO required for that Trading Interval as specified in an *operating instruction*.

The *Capacity Provider* agrees and acknowledges that “S” will be calculated from data provided by AEMO and/or the Metering Data Agent.

- (c) For the purposes of **clause 10.5(a)1.1(a)(iv)**, the *nonavailability refund* payable by the *Capacity Provider* for a Trading Interval will be calculated by AEMO as follows:

$$\text{NAC} = \text{AvP} \times \text{CP}$$

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Where:

NAC = the *nonavailability refund* payable for that Trading Interval

AvP = the *availability price* (in \$ per MW per day),

CP = the *Maximum Capacity*,

- (d) If a *nonavailability refund* is payable by the *Capacity Provider* under **clause 10.5(a)(iv)**, the *Capacity Provider* agrees that this amount will, at first instance, be set off by AEMO against any amounts payable by AEMO during the relevant *billing period*. Any disputes as to requirement for, or the quantum of, the *nonavailability refund* must be dealt with in accordance with **clause 15**.
- (e) The *Capacity Provider* acknowledges and agrees that:
- (i) AEMO has entered into this Agreement on the basis that the *Capacity Provider* will pay the *nonavailability refund* to AEMO in the circumstances contemplated in **clause 10.5(a)**;
  - (ii) AEMO will suffer loss if the *Capacity Provider* does not provide the *Services* in accordance with this Agreement and *nonavailability refund* payable in the circumstances contemplated in **clause 10.5(a)** is to compensate them for that loss;
  - (iii) the *nonavailability refund* payable in the circumstances contemplated in **clause 10.5(a)** are intended to, and do, represent a reasonable, genuine and good faith pre-estimate of the anticipated or actual loss and damage that AEMO will or may suffer if the *Capacity Provider* does not provide the *Services* in accordance with this Agreement and are not a penalty;
  - (iv) it expressly waives the right to the extent permissible to claim or argue, and warrants to AEMO that it will not claim or argue, that the *nonavailability refund* payable in the circumstances contemplated in **clause 10.5(a)** is not a genuine pre-estimate of loss or damage; and
  - (v) if it is determined by a court of competent jurisdiction that the *Capacity Provider's* liability to pay the *nonavailability refund* in the circumstances contemplated in **clause 10.5(a)**, is deemed to be or becomes void, voidable or unenforceable in any way so as to disentitle AEMO from claiming the *nonavailability refund* in the circumstances contemplated in **clause 10.5(a)** or any part of it when due, then AEMO is entitled to claim against the *Capacity Provider*, and the *Capacity Provider* agrees to pay to AEMO, damages at law as an alternative to the *nonavailability refund*, which damages are not limited by **clause 11**.

## 10.6. Set-Off

- (a) Without limiting AEMO's rights under this Agreement or at law, AEMO may deduct from any money due to the *Capacity Provider* under this Agreement any sum that is payable by the *Capacity Provider* to AEMO under this Agreement whether or not:
  - (i) AEMO's right to payment arises by way of damages, debt, restitution or otherwise; or
  - (ii) the factual basis giving rise to AEMO's right to payment arises out of this Agreement, any other agreement, or is independent of any agreement.
- (b) If the money payable to the *Capacity Provider* under this Agreement is insufficient to discharge the liability of the *Capacity Provider* to pay AEMO any amount due under this Agreement, the excess will be a debt due and payable and AEMO may have recourse to any payments due to the *Capacity Provider* other than under this Agreement, where applicable.
- (c) Nothing in this **clause 10.6** affects AEMO's rights to recover from the *Capacity Provider* such money, or any balance that remains owing.

## 10.7. GST

- (a) In **clause 10.7** "*input tax credit*", "*supply*" and "*taxable supply*" each have the meaning given to those terms in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (*GST Act*).
- (b) The *charges* and any other amounts payable to or by AEMO under this Agreement exclude GST.
- (c) Where a party is required under this Agreement to reimburse or otherwise pay an amount to another party ("*reimbursed party*") on account of a cost or expense incurred by that *reimbursed party*, the amount of the reimbursement will be reduced by the amount of any *input tax credit* to which the reimbursed party is entitled for an acquisition to which that cost or expense relates.
- (d) If either party makes a *taxable supply* under this Agreement, the party receiving the *taxable supply* must also pay an additional amount equal to the consideration payable for the *supply* multiplied by the applicable GST rate.
- (e) AEMO must include the additional amounts contemplated under **clause 10.7(d)** in statements issued under this Agreement and each party must assist the other party to claim *input tax credits* for GST where relevant.
- (f) AEMO will issue tax invoices and revised invoices (where applicable) in respect of *taxable supplies* (including *supplies* taken to be *taxable supplies* under Subdivision 153-B of the *GST Act*) made by the *Capacity Provider* to AEMO under this Agreement, and the *Capacity Provider* will not issue tax invoices in respect of those *supplies*.
- (g) The *Capacity Provider* confirms that it is registered for GST purposes on the date of this Agreement and must notify AEMO if it ceases to:
  - (i) be so registered; or
  - (ii) satisfy any of the requirements for receiving recipient created tax invoices listed in a relevant determination made under subsection 29-70(3) of the *GST Act*.

## 11. Liability

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### 11.1. Unlimited liability

Neither party excludes liability in connection with this Agreement for:

- (a) liability under **clause 11.5**; or

- (b) fraud by the party.

### 11.2. Limit of liability

Subject to **clause 11.1**, the total liability of a party in connection with this Agreement (whether in contract, tort, including negligence, or otherwise) is limited to the party's Liability Cap specified in the Details.

### 11.3. Excluded liability

Subject to **clause 11.1**, neither party will be liable (whether in contract, tort (including negligence) or otherwise) for loss of profits, business, revenue, goodwill, opportunity, or anticipated savings or for any other form of indirect or consequential loss or damage.

### 11.4. Relationship with Energy Legislation

This Agreement does not vary or exclude the operation of any provision in Energy Legislation that limits or excludes the liability of a party.

### 11.5. Indemnity

The *Capacity Provider* indemnifies AEMO against any liability or loss arising from, and any costs, charges or expenses incurred in connection with, a *claim* by a third person against AEMO with respect to, arising from, or in connection with, any act or omission of the *Capacity Provider* in relation to the provision of *Services*.

### 11.6. AEMO Liability

Regardless of the nature of any *claim*, AEMO is not liable in any circumstances for any damages or loss to the extent that a claim results from the *Capacity Provider's* failure to act in accordance with this Agreement, *legislation* or good electricity industry practice.

### 11.7. Civil Liability Act 2002

The parties agree that Part 1F of the *Civil Liability Act 2002* (WA) will not apply to any *claim*, action, suit or proceeding under or in connection with this Agreement.

## 12. Force Majeure excluded

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- (a) In accordance with clause 4.24.13(a) of the *WEM Rules*, a party's obligation under this Agreement shall not be suspended and will continue despite the party ("*affected party*") being unable to comply with that obligation for any reason, including where an event beyond the reasonable control of the *affected party* results in the *affected party* being unable to observe or perform on time, and as required, that obligation.
- (b) Without limiting the effect of **clause** Error! Reference source not found.(a), at all times during the *term*, the *Capacity Provider* undertakes and agrees to make *available* the *reserve equipment* and, if directed, supply the *Services* and expressly acknowledges and agrees that it has no right to invoke relief in relation to an event described in **clause** Error! Reference source not found.(a).

## 13. Termination

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### 13.1. Termination for default



A party ("*terminating party*") may immediately terminate this Agreement by notice to the other party ("*defaulting party*") if:

- (a) subject to **clause 13.2**, the *defaulting party* does not carry out or meet any material obligation under this Agreement and in the case of a default that is capable of remedy, does not remedy that default within 60 Business Days after the *terminating party* serves notice on the *defaulting party* requiring it to be remedied;
- (b) any representation or warranty made by the *defaulting party* in this Agreement is materially inaccurate or untrue; or
- (c) an *insolvency event* occurs in relation to the *defaulting party*.

### 13.2. Termination by AEMO for cause

AEMO may terminate this Agreement immediately by notice in writing to the *Capacity Provider* if:

- (a) the *Capacity Provider* fails to demonstrate that it is capable of meeting the contracted levels of performance after being requested by AEMO to do so; or
- (b) AEMO, acting reasonably, otherwise determines that the *reserve equipment* might not be capable of providing the relevant *Services* in accordance with the *contracted levels of performance*; or
- (c) the *Capacity Provider* fails to activate or dispatch *Services* in any Trading Interval to at least 80% of the amount specified in an *operating instruction* for that Trading Interval.
- (d) the *Capacity Provider* fails to supply the *Services* in accordance with an *operating instruction* for two or more Trading Intervals; or
- (e) the *reserve equipment* fails two tests conducted under **clause 8.8** or a re-test under **clause 8.10**.

### 13.3. Termination by AEMO for convenience

AEMO may terminate this Agreement by giving the *Capacity Provider* not less than five Business Days' notice.

### 13.4. No liability for termination

- (a) For the avoidance of doubt but subject to **clause 13.41.1(b)**, AEMO will incur no liability to the *Capacity Provider* if it terminates this Agreement under **clauses 13.1, 13.2** or **13.3**.
- (b) If this Agreement is terminated by AEMO under **clause 13.2**, AEMO is only liable for payments due in accordance with this Agreement before the effective date of termination. Each party will otherwise bear its own costs and neither party will incur further liability to the other.

### 13.5. Termination Notices

- (a) A notice to terminate issued under **clause 13.1, 13.2** or **13.3** takes effect on the later of:
  - (i) the time it is given; and
  - (ii) the time specified in the notice.
- (b) A notice given under **clause 13.1** or **13.2** must specify the event in relation to which notice is given.

### 13.6. Survival

Subject to **clause 13.4(b)**, expiry or termination of this Agreement for any reason does not affect any rights of either party against the other that:

- (a) arose prior to the time at which expiry or termination occurred; and
- (b) otherwise relate to or might arise at any future date from any breach of this Agreement occurring prior to the expiry or termination; or
- (c) the rights and obligations of the parties under **clauses 8, 10, 11, 15 and 18**.

### **13.7. Reduction of capacity**

If AEMO is entitled to terminate this Agreement under **clause 13.1** or **13.2**, AEMO may instead elect to reduce the *capacity* to be provided under this Agreement by specifying so in the notice issued under **clause 13.1** or **13.2** (as applicable) and the *Services* will be amended accordingly.

## **14. Assignment and sub-contracting**

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### **14.1. Assignment**

- (a) The *Capacity Provider* must not *dispose* of its rights in this Agreement or, in respect of *reserve equipment* owned, operated or controlled by the *Capacity Provider*, without first obtaining AEMO's written consent, which must not be unreasonably withheld or delayed.
- (b) If the AEMO consents pursuant to **clause 14.1(a)**, the *Capacity Provider* must not assign all or any part of its rights and interests under this Agreement without requiring the assignee to enter into a deed of novation on terms to the reasonable satisfaction of AEMO under which the assignee agrees to assume obligations that are substantially equivalent to the *Capacity Provider's* obligations under this Agreement.
- (c) Any purported assignment in breach of the requirements of any of the provisions of this **clause 14.1** is void ab initio.

### **14.2. Sub-contracting**

- (a) If the *Capacity Provider* sub-contracts the performance of obligations under this Agreement, the *Capacity Provider* remains responsible for the performance of those obligations.
- (b) If AEMO sub-contracts the performance of obligations under this Agreement, AEMO remains responsible for the performance of those obligations.

## **15. Dispute resolution**

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### **15.1. WEM Rules Rule Participant dispute resolution procedure**

The parties agree that the dispute process set out in sections 2.18, 2.19, 2.20, and 9.21 and clause 9.20.8 of the *WEM Rules* applies to a dispute under this Agreement between the parties as if the *Capacity Provider* was a Rule Participant for the purposes of those clauses.

### **15.2. General dispute resolution procedure**

- (a) This **clause 15** does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

- (b) Unless otherwise agreed, the parties must continue to perform their obligations under this Agreement despite the existence of a dispute.

## 16. Warranties

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- (a) The *Capacity Provider* represents and warrants to AEMO as at the *commencement date* and at all times after the date of this Agreement that:
- (i) during the period of dispatch or activation of the *reserve equipment* there will not be an increase in the demand or consumption of electricity from the Network by any other equipment, plant or process owned, contracted or controlled directly or indirectly by the *Capacity Provider*;
  - (ii) it has, and will continue to have, access to a Network;
  - (iii) it and its *representatives* are duly qualified and skilled to provide *the Services*;
  - (iv) it will provide *the Services* in accordance with all relevant *legislation*, good electricity industry practice and relevant Australian Standards and codes of practice;
  - (v) it will ensure that any data from the provision of the *Services* which is provided to AEMO for AEMO's use in calculating payments and issuing statements in accordance with **clause 10** will be accurate and in a form suitable for use in AEMO's systems;
  - (vi) the *Maximum Capacity available* is true and correct;
  - (vii) the *Capacity Provider's* obligations under this Agreement are valid and binding and enforceable in accordance with their terms;
  - (viii) if *Services* are being provided:
    - (A) through *load reduction*, the *Capacity Provider* has obtained all necessary consents from relevant end users of electricity to reduce their consumption of electricity or having their supply of electricity interrupted, such that the *Capacity Provider* can provide *Services* in accordance with an *operating instruction* given by AEMO under this Agreement; or
    - (B) by an increase in generation *capacity* and the *Capacity Provider* does not own the relevant *generating units*, the *Capacity Provider* has obtained all necessary consents from the owners of the *generating units* to utilise the *generating units* for the purpose of providing the *capacity* under and in accordance with this Agreement;
  - (ix) the *Capacity Provider* is otherwise entitled to carry out its obligations under this Agreement;
  - (x) this Agreement and any other transaction under it does not contravene the *Capacity Provider's* constituent documents or any *legislation* or any of the *Capacity Provider's* obligations or undertakings by which the *Capacity Provider* or any of the *Capacity Provider's* assets are bound or cause to be exceeded any limitation on the *Capacity Provider's* or the *Capacity Provider's* directors' powers;
  - (xi) the *Capacity Provider* has in full force and effect all contracts, authorisations, licences, permits, consents, certificates, authorities and approvals necessary to enter into this Agreement, to perform its obligations under this Agreement and to allow those obligations to be enforced;
  - (xii) neither the *Capacity Provider* nor any of its related bodies corporate is in default under *legislation* affecting any of them or their respective assets, or any obligation or undertaking by which it or any of its assets are bound which will or might

reasonably be expected to, materially affect its ability to perform the obligations under this Agreement;

- (xiii) there is no pending or threatened action or proceeding affecting the *Capacity Provider* or any of its related bodies corporate or any of their respective assets before a court, governmental agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Agreement; and
- (xiv) neither the *Capacity Provider* nor any of its related bodies corporate have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

- (b) The representations and warranties in **clause 16(a)** are made on and from the *commencement date* and will be taken to be made anew on each day after that for the *term*.

## 17. Compliance with legislation and the requirements of an authority

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- (a) Each party must comply with *legislation* in any way affecting this Agreement.
- (b) Each party must procure that all notices required to be given, all consents required to be obtained and any form of authorisation, registration or certification required by *legislation* for the purpose of complying with its obligations under this Agreement are given or obtained.
- (c) Each party must bear their own costs and fees connected with such notices, consents, authorisations, registrations and certifications.
- (d) Each party must, upon demand by the other party ("*requesting party*") at any time, provide to the *requesting party* all information necessary to establish to the satisfaction of the requesting party that the requirements of **clause 17(b)** have been complied with.

## 18. General

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### 18.1. Notices

- (a) Subject to **clause 18.1(b)** and **Item 5** of the **Schedule**, all *communications* to a party must be:
  - (i) in writing;
  - (ii) marked to the attention of the person named in respect of that party in the **Details**; and
  - (iii) left at, sent by ordinary pre-paid post (airmail if posted to or from a place outside Australia), or in electronic form, to the address, number, or electronic mail address of the addressee specified in respect of that party in the **Details**.
- (b) Subject to the *WEM Rules*, any:
  - (i) *communications* given in the course of the day-to-day running of the Wholesale Electricity Market by or on behalf of a party to the other including *operating instructions*;
  - (ii) request for *Services* made by AEMO; or
  - (iii) notifications of availability of the *Services* by the *Capacity Provider* in accordance with this Agreement,

must be made by automated electronic process, telephone or other instantaneous means of *communication* as notified by AEMO.

- (c) Unless *communications* under **clause 18.1(b)** are recorded in some other way satisfactory to and with the consent of both parties, the parties must ensure that logs are kept in which persons or electronic systems giving and receiving those *communications* record brief details of their substance and timing.
- (d) Unless a later time is specified in it, a *communication* takes effect from the time it is received.
- (e) A *communication* is taken to be received:
  - (i) in the case of a posted letter, on the sixth (fourteenth, if posted to or from a place outside Australia) Business Day after posting;
  - (ii) in the case of an electronic message, on production of a report by the computer from which the electronic message was sent that indicates that the message was received in its entirety at the electronic mail address of the recipient; and
  - (iii) in the case of *communications* under **clause 18.1(b)**, instantaneously.
- (f) Other than *communications* given under **clause 18.1(b)**, if a *communication* is received, or deemed to be received, on a day that is not a Business Day, or after 4:00pm AWST on a Business Day, it is taken to be received on the next Business Day.
- (g) A party may at any time by notice given to the other party in writing designate a different person, address, telephone number or electronic mail address for the purposes of **clause 18.1** and the **Details** and **Schedule**.

## 18.2. Exercise of Rights

Subject to the express provisions of this Agreement, a party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

## 18.3. 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.

## 18.4. Amendment/ Variation

- (a) Unless otherwise stated in this Agreement, this Agreement may be varied:
  - (i) by agreement of the parties as recording in writing and signed by the parties; or
  - (ii) unilaterally by AEMO under **clause 18.4(b)**.
- (b) If the *WEM Rules* are amended and, in AEMO's reasonable opinion, the amendment will affect this Agreement or the performance of obligations under this Agreement, AEMO may, by notice in writing to the *Capacity Provider*:
  - (i) effect relevant amendments to the Agreement to reflect the amendment of the *WEM Rules*; and

- (ii) specify the date that these amendments to the Agreement come into force.
- (c) For the avoidance of doubt, **clause 18.4(b)** may only be invoked by AEMO if there has been a relevant amendment to the *WEM Rules*.

### **18.5. Approvals and Consents**

Subject to the express provisions of this Agreement, a party may give conditionally or unconditionally, or withhold its approval or consent, in its absolute discretion.

### **18.6. Continuing Indemnities**

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives the end of this Agreement.

### **18.7. Payment not necessary before *claim***

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

### **18.8. Costs and Expenses**

- (a) Costs, fees and expenses of a party covered by a right of indemnity include legal expenses, fees and charges incurred by the indemnified party on a solicitor-own client basis and are not subject to taxation on a party-and-party or any other basis.
- (b) Except as otherwise agreed by the parties in writing or stated in this Agreement, each party must pay its own costs in relation to preparing, negotiating and executing this Agreement and any document related to this Agreement.

### **18.9. Further Assurances**

Each party agrees, at its own expense, on the request of another party to:

- (a) promptly do everything reasonably necessary to give effect to this Agreement and the transactions contemplated by it (including the execution of documents); and
- (b) use reasonable endeavours to cause relevant third parties to do likewise if necessary or desirable.

### **18.10. Insurance**

- (a) Subject to **clause 18.10(b)**, the *Capacity Provider* must procure, and maintain at its own expense throughout the duration of this Agreement:
  - (i) reasonable levels of worker's compensation insurance in accordance with the *Workers Compensation and Injury Management Act 1981 (WA)* and for the *Capacity Provider's* common law liability to workers;
  - (ii) professional indemnity insurance from the commencement of the provision of the *Services* until the expiration of six calendar years following the date of completion of the *Services* for at least the amount specified in the **Details**; and
  - (iii) public liability insurance for at least the amount specified in the **Details**,
- (b) AEMO may (but is not obliged to) waive compliance by the *Capacity Provider* with **clause 18.10(a)** if AEMO is satisfied:

- (i) the *Capacity Provider* has adequate alternate arrangements;
  - (ii) the *Capacity Provider* is a self insurer; or
  - (iii) there are other reasons to waive such compliance.
- (c) The *Capacity Provider* must produce:
- (i) certificates of currency for the insurances required under **clause 18.10(a)**; or
  - (ii) other such proof regarding the insurances required under **clause 18.10(a)** as required by AEMO,
- upon request by AEMO.

#### **18.11. Supervening legislation**

Any present or future *legislation* that operates to vary an obligation or right, power or remedy of a person in connection with this Agreement is excluded to the extent permitted by law.

#### **18.12. Severability**

If a provision or part of a provision of this Agreement is void, unenforceable, invalid or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Agreement remains effective and the validity or enforceability of that provision in any other jurisdiction is not affected. This **clause 18.12** has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

#### **18.13. Entire Agreement**

- (a) Subject to the *WEM Rules*, this Agreement constitutes the entire agreement of the parties in connection with provision of the *Services* and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.
- (b) For the avoidance of doubt, this Agreement contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by another party, or by a director, officer, agent or employee of that party, before this Agreement was executed, save as permitted by law.

#### **18.14. Confidential Information**

- (a) The *Capacity Provider* consents to the use or disclosure of its confidential information by AEMO to the extent reasonably necessary for AEMO to carry out its functions, or comply with its obligations, under the *WEM Regulations* and the *WEM Rules*.
- (b) AEMO may publish the name of the *Capacity Provider*, the *capacity* volume (MW) and the *term* at the same time as it publishes details of agreements for *Services* and the *Capacity Provider* hereby grants its consent to any relevant disclosures.
- (c) All information exchanged between the parties under this Agreement or during the negotiations preceding this Agreement is declared by AEMO to be confidential information and must not be disclosed to any person except:
  - (i) for the purpose of assessing the viability and deliverability of the *Services*, in which case the *Capacity Provider* hereby grants its consent to any relevant disclosures;
  - (ii) in accordance with the *WEM Rules*;
  - (iii) as required by AEMO for the purpose of complying with the *WEM Rules*, and any relevant procedures published by AEMO in accordance with the *WEM Rules*,

- including procedures published under clause 4.24.18 of the *WEM Rules*, in which case the *Capacity Provider* hereby grants its consent to any such disclosures;
- (iv) where such information comes into the public domain other than by breach of this clause;
  - (v) where the party is required by the *WEM Rules*, a stock exchange, court order, governmental agency, Parliament or a committee of Parliament, or law to disclose such information;
  - (vi) where it is required to disclose such information in relation to the discovery of documents, or any proceeding before a court, tribunal, ACCC, other governmental agency or stock exchange;
  - (vii) where a disclosure is made on a confidential basis to the officers, employees or agents of that party or to the professional advisers of that party for the purpose of obtaining professional advice in relation to this Agreement, the enforcement of this Agreement or for the purpose of consulting those professional advisers;
  - (viii) where AEMO considers, in its absolute discretion, that it would be consistent with the Wholesale Market Objectives to disclose such information; or
  - (ix) the party has written consent from the other party (which must not be unreasonably withheld) to disclose such information.
- (d) This **clause 18.14** will survive termination (for whatever reason) of this Agreement.

#### **18.15. No other representations or warranties**

Each party acknowledges that, in entering into this Agreement, it has not relied on any representations or warranties about its subject matter except as provided in this Agreement.

#### **18.16. Counterparts**

This Agreement may consist of a number of identical copies, each signed by one or more parties to this Agreement. If so, the signed copies make up one document and the date of this Agreement will be the date on which the last counterpart was signed. The counterparts may be executed and delivered by email or other electronic signature by one or more of the parties and the receiving party or parties may rely on the receipt of such document so executed and delivered electronically as if the original had been received.

#### **18.17. Governing Law, Jurisdiction**

This Agreement and the transactions contemplated by it are governed by the laws in force in the jurisdiction referred to in the **Details**. Each party submits to the non-exclusive jurisdiction of the courts of that place. The parties will not object to the exercise of jurisdiction by those courts on any basis.

#### **18.18. No partnership, agency or trust**

Nothing contained or implied in this Agreement constitutes or may be deemed to constitute that a party is the partner, agent or *representative* of any other party for any purpose whatsoever, or creates or may be deemed to create any partnership or creates or may be deemed to create any agency or trust.

#### **18.19. No authority to act**

No party has any power or authority to act for or to assume any obligation or responsibility on behalf of another party, to bind another party to any agreement, negotiate or enter into any binding



relationship for or on behalf of another party or pledge the credit of another party except as specifically provided in this Agreement or by express agreement between the parties.

**18.20. Role of AEMO**

- (a) Nothing in this Agreement will oblige AEMO to grant or exercise any administrative or regulatory discretion, or otherwise fetter, constrain or otherwise impair the due exercise of any administrative or regulatory discretion exercisable by AEMO.
- (b) Anything which AEMO does, fails to do or purports to do pursuant to its statutory rights, duties, powers and functions conferred by or under any law will not be deemed to be an act or omission of AEMO under this Agreement.

**EXECUTED as an agreement:**

**SIGNED** by \_\_\_\_\_ as  
authorised representative for **Australian Energy  
Market Operator Limited**:

)  
)  
)  
)  
)  
) .....  
) By executing this agreement the signatory  
) warrants that the signatory is duly authorised to  
) execute this agreement on behalf of **Australian  
) Energy Market Operator Limited**  
)  
) Date: .....  
)  
)  
)  
)

**SIGNED** by \_\_\_\_\_ as  
authorised representative for **[insert]**:

)  
)  
)  
)  
) .....  
) By executing this agreement the signatory  
) warrants that the signatory is duly authorised to  
) execute this agreement on behalf of **[insert]**  
)  
) Date: .....  
)  
)  
)  
)  
)



# Schedule – Provision of Services

## 1. Description of the Service:

### 1.1. Source(s) of net load reduction or generation increase

[insert description of the facility and reserve equipment used to provide the Service including any NMI]

### 1.2. Service

[insert description of the Service i.e. generation or load reduction]

### 1.3. Amount of supplementary capacity

The Capacity Provider is required to supply a net load reduction or generation increase (capacity) of up to [insert the maximum capacity of the reserve equipment] (Maximum Capacity).

### 1.4. Restrictions and limitations

[insert any restrictions specified in the tender form not included anywhere else in the Schedule]

## 2. General

Item	
Any limits on the number of times AEMO can request activation	
Basis to be used for measuring the response	
Availability price (\$ per MW per day)	
Activation price (\$ per hour of activation for each MW provided)	
Method of notification by AEMO of instructions to activate	
Technical matters relating to the facility (including testing)	

### 3. Description and quantity of Services

#### 3.1. Service description and quantity

The *Service* comprises the provision of *capacity* as described below:

Requirement	Contracted level of performance
Amount of <i>Service</i> – MW	
Minimum amount of <i>Service</i> – MW	
Minimum duration of any activation	
Maximum duration of any single activation	
Maximum number of times that the <i>Service</i> may be activated over the <i>term</i>	
Maximum number of hours each day that the <i>Service</i> will be available over the <i>term</i>	
Time of day during which the <i>Service</i> will be available	
The <i>enablement lead time</i> i.e. notification time required to activate each <i>Service</i>	
The location of the <i>Service</i> and the associated national meter identifier (NMI).	
Maximum Contract Value per hour (\$2,380.23 per MW per hour)	\$

#### 4. Dispatch Constraints

The *reserve equipment* is subject to the following *dispatch constraints*:

Days of the week the <i>reserve equipment</i> is available for dispatch	
Maximum number of consecutive days the <i>reserve equipment</i> can be dispatched in a week	
Maximum number of days per week of dispatch	
Other <i>dispatch constraints</i>	

## 5. Requests for Provision of Services

### 5.1. Contact Persons for Operational Purposes

Subject to **clause 4.11**, *operating instructions* will be given and received and *communications* concerning *operating instructions* must be made to the following persons on behalf of each party:

<b>AEMO</b>	
Contact Person at all times: Name/Title: Telephone No: Email:	
<b>Capacity Provider</b>	
Contact Person at all times: Name/Title: Telephone No: Email:	
Backup Contact Person at all times: Name/Title: Telephone No: Email:	