



Sub-Allocation Agreement

Australian Energy Market Operator Ltd

and

#1#

Australian Energy Market Operator Ltd
Level 22, 530 Collins Street
MELBOURNE VIC 3000
TEL: 03 9609 8000
FAX: 03 9609 8080

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DETAILS

Date:

Parties:

1	Australian Energy Market Operator Limited ABN 94 072 010 327 of Level 22, 530 Collins Street, MELBOURNE VIC 3000 and	(AEMO)
2	#1# ABN #2# of #3#	(Participants)

AEMO Representative:

Participant
Representatives:

Commencement Date:

Completion Date:

System Point:

Address for Service of
Notices:

<p>To AEMO:</p> <p>#10# Facsimile: #11# Attention: #12#</p> <p>cc: Level 22, 530 Collins Street, MELBOURNE VIC 3000 Facsimile: 03 9609 8080 Attention: #13#, Senior Manager, Legal</p> <p>To the Participant:</p> <p>#14# Facsimile: #15# Attention: #16#</p>
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Operative Provisions

1 Interpretation

Definitions

1.1 In this Agreement, unless the context otherwise requires:

Default Provisions means the methodology set out in Rule 229 (13) (for injections) or Rule 230 (for withdrawals).

Intellectual Property includes all patents, copyright, moral rights, registered designs, registered and unregistered trademarks, trade secrets, knowhow and confidential information and all other intellectual property as defined in Article 2 of the *Convention Establishing the World Intellectual Property Organisation of July 1967*.

Law means Commonwealth, state, or local legislation, judicial, administrative, or regulatory decrees, judgments, awards or orders and all common laws and equity.

NGL means the National Gas Law contained in the Schedule to the National Gas (South Australia) Act 1996 (SA).

NGR means the National Gas Rules made in accordance with the NGL.

Representative means any director, officer, employee, contractor, agent and any other authorised representative of a person.

Sub-Allocation means the *allocation* of quantities of gas in accordance with the Sub-Allocation Methodology.

Sub-Allocation Methodology means the methodology for the *allocation* of gas set out in Rule 229(13) of the NGR.

Victorian Gas Market means the *declared wholesale gas market* operated by AEMO in accordance with Part 19 of the NGR.

Capitalised terms not otherwise defined in this **clause 1.1** are defined in the **Details** or in a **Schedule** and all italicised terms are defined in the NGL or the NGR.

Construction

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

- (a) this Agreement includes any schedules 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) 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) legislation includes subordinate legislation and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them;
- (f) the singular includes the plural and vice versa and a gender includes all genders;
- (g) the word “**Rule**” followed by a number refers to provisions in the NGR;
- (h) the word “**person**” includes a firm, a body corporate, a partnership, an unincorporated association or a government agency and any successor entity to those persons;
- (i) the words “**includes**”, “**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 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) 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; and
- (m) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions.

1.3 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.

1.4 Headings are inserted for convenience and do not affect the interpretation of this Agreement.

Time

1.5 A reference to:

- (a) a day is a reference to a period of time commencing at midnight and ending the following midnight;
- (b) time is a reference to Australian eastern standard time.

1.6 A period of time and the period dates from a given day or the day of an act or event, it 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.

Contra Proferentum

1.7 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.

Gas Quantities

1.8 Any references to Sub-Allocations or gas quantities in this Agreement are deemed to be expressed to the nearest gigajoule (GJ).

Precedence

1.9 If, and to the extent of, any inconsistency between the Operative Provisions, schedules, or annexures to this document, the Operative Provisions will prevail over the schedules and annexures, and the schedules will prevail over the annexures.

1.10 If, and to the extent of, any inconsistency between this Agreement and the NGR, the NGR will prevail over this Agreement.

2 Engagement

Term

2.1 This Agreement commences on the Commencement Date and continues until the Completion Date, unless terminated earlier in accordance with this Agreement.

Extension

2.2 Provided the parties agree on the Fees to apply from the commencement of any extension, this Agreement may be extended by agreement of the parties.

Consideration

2.3 In consideration of each Participant's paying the Fees, AEMO agrees to provide the Services in accordance with this Agreement and the NGR.

Participant Obligations Several

2.4 The rights and obligations of the Participants under this Agreement are several, not joint and several.

3 Parties' Representatives

3.1 AEMO nominates the AEMO Representative to be the point of contact with each Participant for the administration of this Agreement. The AEMO Representative's actions are taken to be AEMO's.

3.2 Each Participant nominates a Participant Representative to be the point of contact with AEMO for the administration of this Agreement. Each Participant Representative's actions are taken to be the relevant Participant's.

3.3 A party may substitute its Representative with another person by notice to the other party.

4 Responsibilities

AEMO's Responsibilities

4.1 AEMO must:

- (a) produce the Outputs in accordance with and within the time specified in **Schedule 1**;
- (b) provided that AEMO does not disclose information that is confidential to another Participant, comply with a reasonable request by a Participant for further information about its Sub-Allocations, if available;
- (c) notify all Participants that a revision of the Sub-Allocations has been made within 5 *Business Days* of the revision's being made; and
- (d) ensure that the Outputs and the Sub-Allocations are available for use in fulfilling its functions under the NGR, in satisfaction of the requirements of Subdivision 5 of Part 19 of the NGR.

4.2 AEMO must ensure that a blank copy of this Agreement is posted on AEMO's website for the information of any persons wishing to inject or withdraw gas at the System Point.

New Participants

4.3 Upon being approached by a person wishing to inject or withdraw gas at the System Point (**Proposed Participant**), AEMO must notify all Participants of the request and provide a copy of the Agreement to the Proposed Participant.

4.4 AEMO will procure execution of a Deed of Accession from the Proposed Participant and notify the Participants that the Deed of Accession was executed and the date from which the Proposed Participant becomes a Participant.

Withdrawing Participants

4.5 If a Participant:

- (a) is suspended as a *Market Participant*;
- (b) ceases to be a *Market Participant*; or
- (c) notifies AEMO that it has ceased and no longer wishes to inject or withdraw gas at the System Point,

the Participant must execute a Deed of Withdrawal.

5 Payments to AEMO

Invoicing and Payment

5.1 Subject to the due and proper performance of the Services by AEMO, each Participant must pay AEMO its proportion of the Fees calculated in accordance with **Schedule 2**.

5.2 Each Participant agrees that the Fees are to be treated as if they were an amount payable under Rule 236(2) and is payable in accordance with Rule 246.

6 GST

Sums Exclude GST

6.1 All sums payable, or consideration under this Agreement, are exclusive of GST.

Responsibility for GST

6.2 If a supply is subject to GST, the recipient must pay to the supplier an additional amount equal to the Consultancy Fee multiplied by the applicable GST rate at the same time as payment is made for the supply.

Administration

6.3 Each party must provide valid tax invoices and assist the other party to claim input tax credits for GST where relevant in connection with this Agreement and to provide such other reasonable assistance to facilitate the management by each party of its GST affairs in connection with this Agreement.

Defined Terms

6.4 In **clause 6**, the expressions “**GST**”, “**consideration**”, “**input tax credit**”, “**recipient**”, “**supplier**”, “**supply**” and “**tax invoice**” have the meanings given to those terms in the in A New Tax System (Goods and Services Tax) Act 1999 (Cth).

7 Intellectual Property

7.1 Any Intellectual Property rights created provision of the Service will be owned by AEMO.

8 Liability

AEMO's Liability

8.1 AEMO's liability under this Agreement or for the provision of the Services is limited to the correction of errors through the settlements revision process set out in Rule 249. For the avoidance of doubt, AEMO is not liable in contract, tort (including negligence) or in respect of any other Law for any act or omission of AEMO under this Agreement or during the provision of the Services other than as provided in this **clause 8.1**.

Participant Liability

8.2 Each Participant's liability to every other Participant or AEMO (other than in respect of the payment of Fees) is limited to the correction of errors through the settlements revision process set out in Rule 249. For the avoidance of doubt, a Participant is not liable in contract, tort (including negligence) or in respect of any other Law for any act or omission of the Participant under this Agreement other than as provided in this **clause 8.2**.

9 Dispute resolution

Activation of Dispute Resolution Process

9.1 If a party claims that a dispute has arisen in relation to this Agreement they must give the other party a notice (“**Dispute Notice**”).

9.2 A Dispute Notice must include details of:

- (a) the nature of the dispute and the circumstances giving rise to the dispute;
- (b) the party's proposed resolution of the dispute; and
- (c) contact details of the relevant delegate of that party with authority to resolve the dispute (“**Delegate**”).

Referral to Delegates

9.3 If a Dispute Notice is given by a party the parties' Delegates must meet within 7 days of receipt of the Dispute Notice and use their best endeavours to agree to a resolution of the dispute.

Referral to Chief Executive Officers

9.4 If the parties' Delegates do not resolve the dispute within 7 days of their first meeting, the parties agree to refer the dispute to each party's Chief Executive Officer, who must meet within 7 days of receipt of the Dispute Notice and use their best endeavours to agree to a resolution of the dispute.

Referral to Independent Expert

9.5 If the parties' Chief Executive Officers do not resolve the dispute within 7 days of their first meeting, the parties agree to refer the dispute to an independent expert for determination, where:

- (a) the independent expert must be nominated by the Chairman, Institute of Arbitrators & Mediators Australia (Victorian Chapter);
- (b) any meetings required by the independent expert may be held at a venue and time as reasonably determined by the independent expert in consultation with the parties; and
- (c) the referral will be performed in accordance with the Institute of Arbitrators & Mediators Australia rules and standard form agreement current at the time.

9.6 Unless otherwise agreed, the costs of the independent expert are to be borne equally by the parties.

9.7 A party has no recourse to litigation in relation to a dispute under, or in relation to, this Agreement unless that party has complied with **clause 9**.

Urgent Interlocutory Relief

9.8 **Clause 9.7** does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.

Parties to Continue Performance of this Agreement

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

10 Termination

By Participant Agreement

10.1 The Participants may agree to terminate this Agreement without cause by notice to AEMO, specifying the date of termination, which must not be before the earlier of:

- (a) 30 days after the date of the notice; or
- (b) the date that another person is appointed to replace AEMO as sub-allocation agent for the System Point.

By AEMO

10.2 If any person other than a Participant injects or withdraws gas at the System Point, AEMO may suspend this Agreement by giving notice to the Participants specifying the date on which the suspension will be effective, whereupon the Default Provisions will apply from the date of a suspension under **clause 10.2**.

10.3 A suspension under **clause 10.2** will not affect any obligations incurred by any party before the suspension.

10.4 Provided a Deed of Accession is executed by the person who injected gas into the System Point within 3 months of the date of suspension under clause 10.2, AEMO will lift the suspension immediately and notify all Participants of the lifting of the suspension, whereupon this Agreement will continue

10.5 Subject to **clause 10.6**, if a Deed of Accession is not executed by the person who injected or withdrew gas at the System Point within 3 months of the date of suspension under **clause 10.2**, AEMO must notify all Participants that this Agreement will terminate upon expiry of a further period of 30 *Business Days*.

10.6 If the Participant Representatives of a majority of the Participants notify AEMO within 3 *Business Days* of AEMO's notice under **clause 10.5** specifying the services (which may include a direction to comply with the Default Provisions) to be performed by AEMO to assist in the transition to a replacement sub-

allocation agent and provided the Participants agree to keep paying the Fees to AEMO, AEMO will perform those services for a period not exceeding 3 months.

Following amendment of the NGR

- 10.7 If the NGR are amended so that this Agreement is no longer required AEMO may terminate this Agreement by providing 30 *Business Days* notice to the Participants.
- 10.8 No Early Termination Fee is payable as a result of a termination under **clause 10.7**.

11 Warranties and Representations

- 11.1 Each party represents and warrants that:
- (a) it has full corporate power and authority to enter into, perform and observe its obligations under this Agreement, and that the execution, delivery and performance of this Agreement by it has been duly and validly authorised by all necessary corporate action
 - (b) it has entered into this Agreement in its own right and not as trustee of any trust or as an agent on behalf of any other entity; and
 - (c) it has the legal right to use any third party's Intellectual Property Rights supplied by a party for the purposes of this Agreement.
- 11.2 AEMO represents and warrants that:
- (a) it has or will acquire the requisite technology, skill, personnel and ability to enable it to perform its obligations under this Agreement; and
 - (b) has used its reasonable endeavours and will continue to use its reasonable endeavours to inform itself on all aspects of the Services.
- 11.3 Each party acknowledges that all other parties have entered into this Agreement in reliance on the representations and warranties in **clause 11**.
- 11.4 The parties acknowledge that the representations and warranties contained in **clause 11** are the only representations and warranties given by AEMO for the purposes of this Agreement.

12 Notices

- 12.1 A notice, approval, consent, agreement, or other communication (**Communication**) required by this Agreement must be:
- (a) in writing;
 - (b) given by, or to the Representatives nominated for this purpose in the **Details**; and
 - (c) left at, sent by ordinary pre-paid post or by facsimile to, the address or number specified in the **Details**.
- 12.2 Unless a later time is specified in it, a Communication takes effect from the time it is received.
- 12.3 A Communication is taken to be received:
- (a) in the case of a posted letter, on the 3rd (7th, if posted to or from a place outside Australia) day after posting; and
 - (b) in the case of facsimile, at the time shown on a transmission report by the machine from which it was sent indicating that it was sent in its entirety to the facsimile number of the recipient.

13 Miscellaneous

Assignment

- 13.1 A Participant must not assign, transfer, novate or encumber its rights or obligations under this Agreement or declare itself a trustee in relation to this Agreement without AEMO's consent.

Waiver

13.2 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.

Amendment

13.3 An amendment to this Agreement will be effective only if made in writing and signed by the parties.

Approvals and consent

13.4 AEMO may exercise its rights, remedies or powers in any way it considers appropriate.

Remedies cumulative

13.5 A party's rights, powers and remedies under this Agreement are in addition to the rights, powers or remedies provided by Law.

Severance

13.6 If a provision of this Agreement is void, unenforceable, 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 13.6** has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

Counterparts

13.7 This Agreement may consist of a number of 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.

Entire agreement

13.8 This Agreement constitutes the entire agreement of the parties about its subject matter and supersedes any previous agreements, understandings and negotiations on that subject matter.

Survival

13.9 **Clauses 5, 8, 9, 10, 11, 12 and 14** survive the end of this Agreement.

14 Governing law etc

14.1 This Agreement is governed by the Law in Victoria. Each party submits to the non-exclusive jurisdiction of the courts of that place.

EXECUTED as an agreement

SIGNED by #20# as authorised representative)
for **AUSTRALIAN ENERGY MARKET**)
OPERATOR LIMITED in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
Address of witness)

.....
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

SIGNED by #19# as authorised representative)
for #1# PTY LTD in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
Address of witness)

.....
By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of #1#

SIGNED by #19# as authorised representative)
for #1# PTY LTD in the presence of:)

.....)
Signature of witness)

.....)
Name of witness (block letters))

.....)
Address of witness)

.....
By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of #1#

Schedule 1 – Services

1 Description of Services

The Services are:

- (a) perform Sub-Allocations at the System Point of the Parcel to the Parcel Outputs in accordance with the Sub-Allocation Methodology and the NGR;
- (b) produce a *sub-allocation statement* that complies with the requirements of Rule 229(9) and Rule 230(8).

2 Timing for Outputs

AEMO will provide the following Outputs in accordance with the timing referred to in the table below:

Output	Timing
Publish <i>metering data</i> , including Sub-Allocations on the <i>market information bulletin board</i>	Day +3 and after each settlement

3 Definitions

Parcel Output:	The quantity of <i>gas</i> that is treated as having been injected or withdrawn at the following points:
Parcel:	The quantity of <i>gas</i> that is treated as having been injected or withdrawn at
System Point:	

Schedule 2 – Fees

1 Rates

The Fees are made up of the following components:

Fee Component	Amount
Establishment Fee	\$ 7,600
Service Fee	\$ 2,300
Early Termination Fee	\$ 500

2 Calculation of the Proportion of the Fees payable by each Participant

AEMO will allocate a proportion of the Fees to each Participant according to the following methodology:

2.1 Establishment Fee

The Establishment Fee will be evenly apportioned between all Participants and is paid upon execution of this Agreement.

2.2 Service Fee

AEMO will determine the Service Fee for each Participant in accordance with the Sub-Allocation Methodology.

AEMO will charge the Service Fee monthly.

2.3 Early Termination Fee

The Early Termination Fee will be paid by each Participant who withdraws from this Agreement.

2.4 Total Payable

The total Fees payable by a Participant each month are calculated by adding the product of AEMO's calculations in accordance with **items 2.1, 2.2 and 2.3** of this **Schedule 2**.

Annexure 1 – Deed of Accession

Date:

To: **Australian Energy Market Operator Limited**
ABN 94 072 010 327
of Level 22, 530 Collins Street, MELBOURNE VIC 3000 (AEMO)
and
[Participant Details] (Participants)

From: **[details of Acceding Party]**
(Acceding Party)

Re: Sub-Allocation Agreement between AEMO, **[name of participants]** dated **[]** (Sub-Allocation Agreement)

- 1 This is an Accession Deed to the Sub-Allocation Agreement. Terms used in the Sub-Allocation Agreement have the same meaning in this deed unless given a different meaning in this deed.
- 2 The Acceding Party:
 - (a) confirms that:
 - (i) it is a company incorporated in **[]**;
 - (ii) it is authorised to enter into this deed and this deed is legal, valid, binding and enforceable against it;
 - (iii) the entry into and performance by it, of the transactions contemplated by this deed do not and will not conflict with any Law applicable to it;
 - (iv) it agrees to procure the execution of any documents AEMO reasonably requires to give full effect to this deed; and
 - (v) it has received a copy of the Sub-Allocation Agreement (including all amendments), together with all other documents and information it requires in connection with this deed.
 - (b) agrees to:
 - (i) become, with effect from the date of this deed, a party to the Sub-Allocation Agreement;
 - (ii) be bound by the Sub-Allocation Agreement; and
 - (iii) perform its obligations under the Sub-Allocation Agreement.
 - (c) confirms the accuracy of the information set out under clause The Acceding Party's details for the purposes of clause 14 of the Sub-Allocation Agreement are as follows: of this deed.

3 The Acceding Party's details for the purposes of clause 14 of the Sub-Allocation Agreement are as follows:

Name: [INSERT]
Address: [INSERT]
Fax No: [INSERT]
Attention: [INSERT]

4 This deed is governed by the laws of Victoria.

EXECUTED as a deed poll by #19# as)
authorised representative for #1# PTY LTD in)
the presence of:)
)
)
.....)
Signature of witness)
)
.....)
Name of witness (block letters))
)
)
.....)
Address of witness)

.....
By executing this deed the signatory warrants
that the signatory is duly authorised to execute
this deed on behalf of #1#

Annexure 2 – Deed of Withdrawal

Date:

To:	<p>Australian Energy Market Operator Limited ABN 94 072 010 327 of Level 22, 530 Collins Street, MELBOURNE VIC 3000 (AEMO)</p> <p>and</p> <p>[Participant Details] (Participants)</p>
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From: [details of Participant]
 (Participant)

Re: Sub-Allocation Agreement between AEMO and [name of Participants] dated [] (Sub-Allocation Agreement)

1. Terms used in the Sub-Allocation Agreement have the same meaning in this deed unless given a different meaning in this deed.
2. The Participant seeks to withdraw as a party from the Sub-Allocation Agreement.
3. The Participant has paid all outstanding charges due, and performed all outstanding obligations under the Sub-Allocation Agreement.
4. The remaining parties to the Sub-Allocation Agreement agree to the Participant's withdrawal from [insert date].

EXECUTED as a deed

SIGNED by #20# as authorised representative)
 for **AUSTRALIAN ENERGY MARKET**)
OPERATOR LIMITED in the presence of:)
)
)
)
 Signature of witness)
)
)
 Name of witness (block letters))
)
)
 Address of witness)

.....
 By executing this deed the signatory warrants that the signatory is duly authorised to execute this deed on behalf of Australian Energy Market Operator Limited

SIGNED by #19# as authorised representative)
for #1# PTY LTD in the presence of:)
)
)
.....)
Signature of witness)
)
.....)
Name of witness (block letters))
)
)
.....)
Address of witness)

.....
By executing this deed the signatory warrants
that the signatory is duly authorised to execute
this deed on behalf of #1#

SIGNED by #19# as authorised representative)
for #1# PTY LTD in the presence of:)
)
)
.....)
Signature of witness)
)
.....)
Name of witness (block letters))
)
)
.....)
Address of witness)

.....
By executing this deed the signatory warrants
that the signatory is duly authorised to execute
this deed on behalf of #1#