

**System Strength Services Agreement**

For Red Cliffs Terminal Station

**Australian Energy Market Operator Limited**

and

**#1#**

[*Note: This draft agreement has been prepared for an interim system strength solution, and is not suitable for a longer-term system strength services agreement, or one that requires the construction of new assets*]

Australian Energy Market Operator Ltd

Level 22, 530 Collins Street

MELBOURNE VIC 3000

TEL: 03 9609 8000

FAX: 03 9609 8080

DETAILS

|  |  |
| --- | --- |
| **Parties:** | **Australian Energy Market Operator Limited** ABN 94 072 010 327of Level 22, 530 Collins Street, Melbourne VIC 3000 (**AEMO**)and#1# ABN #2#of #3# (**Service Provider**) |

|  |  |
| --- | --- |
| **Commencement Date** | [insert] 2020 |

|  |  |
| --- | --- |
| **Expiry Date** | The second anniversary of the Commencement Date  |

|  |  |  |
| --- | --- | --- |
| **Address for Service** | AEMO: | Attention: Group Manager Victorian PlanningEmail Address: joe.spurio@aemo.com.aucc. Reception.Melbourne@aemo.com.au |
| Service Provider: | Attention: [insert]Email Address: [insert] |

|  |  |
| --- | --- |
| **Governing law** | Victoria |

OPERATIVE PROVISIONS

# Interpretation

## Defined terms

* 1. Capitalised terms used in this agreement are defined in clause 1.2, in the Details or in a Schedule.
	2. Terms in italics have the meaning given to them in the National Electricity Rules (NER).

## Definitions

**Agreement** means this agreement, including the Details and all Schedules and Annexures.

**Authority** means any Commonwealth, State, Territory or local government or regulatory department, body, instrumentality, minister, agency or other authority having jurisdiction over a party, other than AEMO.

**Available** means, in respect of a Service at any time, that the Service is being provided at the Contracted Capacity while meeting the Minimum Technical Requirements (see clause 4).

**Billing Period** means a calendar month.

**Change in Law** means any change in legislation that has a material adverse effect on the rights or obligations of a party under this Agreement (including the cost of providing Service) other than a change in legislation:

1. the operation of which is excluded under clause 17.10; or
2. relating to income tax (or state equivalent tax), a tax on capital gains, or taxes, imposts or charges of a similar nature.

**Claims** means all claims, losses, liabilities, costs or expenses, whether arising in contract, tort (including negligence), equity or otherwise, but excludes Service Charges payable under this Agreement.

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

**Consumer Price Index** or **CPI** is the Consumer Price Index All Groups, Weighted Average of Eight Capital Cities, Index Numbers published by the Australian Bureau of Statistics.

**Contract Capacity** is specified in item3 of the relevant Schedule.

**Contract Hours** are specified in item3 of the relevant Schedule.

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

**Equipment** is specified in item2 of each Schedule.

**Event of Force Majeure** means in respect of a party (**affected party**), an act of God, lightning strike, earthquake, flood, drought, storm, tempest, mudslide, explosion, fire or any other natural disaster, an act of war, act of public enemies or terrorists, riot, civil commotion, malicious damage, sabotage, blockade or revolution, an act or omission of any Authority, or a Labour Dispute, that:

1. is beyond the reasonable control of the affected party;
2. is not the result of a breach of this Agreement or the NER by the affected party, or of an intentional or negligent act or omission or breach of obligation of the affected party, a person providing services to the affected party or any other person over which the affected party should have exercised control; and
3. results in the affected party being unable to observe or perform on time and as required any obligation (other than an obligation to pay money) under this Agreement.

**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:

1. it is (or states that it is) insolvent or under administration; or
2. it has a controller (as defined in the Corporations Act) appointed, is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver (or receiver and manager) appointed to any part of its property;
3. 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);
4. 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) to (c);
5. it is otherwise unable to pay its debts when they fall due; or
6. 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.

**Labour Dispute** means a strike, lockout, ban, “go‑slow” activity, stoppage, restraint of labour or other similar act that is not directed primarily at a party to this Agreement.

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

**Minimum Technical Requirements** are specified in item 5 of each Schedule.

**MVA** means Megavolt-ampere.

**NER** means the National Electricity Rules made under the National Electricity Law in the schedule to the *National Electricity (South Australia) Act 1996* (SA).

**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.

**Review Date** means an anniversary of the Commencement Date.

**Service** means the service described in item1 of each Schedule.

**Service Charge** is specified in item6 of each Schedule.

**Term** means the period during which this Agreement is in effect.

**Test** means a test contemplated by clause 5.

## Interpretation

Unless otherwise specified, a reference in this Agreement to:

* 1. a document (including this Agreement) includes the document as novated, varied, or replaced;
	2. a clause, paragraph, Schedule, or Annexure is a reference to a clause, paragraph, Schedule, or Annexure in this Agreement;
	3. a clause is a reference to all its subclauses;
	4. legislation includes subordinate legislation and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them;
	5. the singular includes the plural and vice versa and a gender includes all genders;
	6. the word “**person**” includes a firm, a body corporate, a partnership, joint venture, trust, an unincorporated association and any Authority, and any successor entity to those persons;
	7. the word “**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 to examples of a similar kind;
	8. a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
	9. a party includes, where the context requires it, that person’s directors, officers, employees, contractors, agents and any other persons authorised by that party and, in the case of AEMO, includes any *System Operator* acting on AEMO’s behalf;
	10. 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;
	11. writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
	12. a month is a reference to a calendar month;
	13. a day is a reference to a period of time commencing at midnight and ending the following midnight; and
	14. 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.

## Construction

* 1. Headings are inserted for convenience and do not affect the interpretation of this Agreement.
	2. 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.
	3. 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.
	4. An agreement, representation or warranty:
		1. in favour of two or more persons is for the benefit of them jointly and each of them severally;
		2. by two or more persons binds them jointly and each of them severally.

## Schedules

If a Schedule contains any provisions that impose additional obligations to those set out in the Operative Provisions, the provisions in the Schedule apply as if they were Operative Provisions.

# 1A. Conditions Precedent

[*Note: this clause and associated definitions and consequential provisions are only required if the Equipment has not been fully commissioned by the contract execution date*]

## 1A.1 Conditions

Except for those in clauses1A, 6, 9, 13, 14, 15 and 17, all of the parties’ rights and obligations under this Agreement are subject to the Conditions Precedent.

## 1A.2 Fulfilment of Conditions

The SRAS Provider must use reasonable endeavours to fulfil or procure the fulfilment of the conditions precedent specified in Schedule [2] (**CPs**)by the applicable CP Fulfilment Date specified in Schedule [2].

## 1A.3 Updates

Until the CPs are met, the SRAS Provider must update AEMO at its request on the status of the fulfilment of each CP, including the anticipated date each CP will be fulfilled.

## 1A.4 Waiver

Each CP is for the sole benefit of AEMO and can only be waived by AEMO.

## 1A.5 Non-fulfilment of CPs

If any CP is not fulfilled by the applicable CP Fulfilment Date or waived in accordance with clause1A.4, AEMO may terminate this Agreement by giving the SRAS Provider 3 *business days’* notice.

## 1A.6 Effect of Termination

If this Agreement is terminated under clause1A.5, this Agreement is of no further effect and the parties are released from any further obligation under this Agreement but they remain liable for any breach committed before that termination.

## 1A.7 Survival

If this Agreement is terminated under clause1A.5, clause 1A.6 does not affect the rights and obligations of the parties under clauses6, 9, 13, 14, 15 and 17.

# Term

* 1. This Agreement comes into effect at midnight at the beginning of the Commencement Date.
	2. Subject to paragraph (c) and to earlier termination in accordance with this Agreement, this Agreement continues until midnight at the end of the Expiry Date.
	3. AEMO may in its absolute discretion extend the Expiry Date for a further period of up to 12 months, either in respect of all Services under this Agreement or a specified Service only (by reference to the relevant Schedule), by notice to Service Provider given not less than 3 months before the original Expiry Date.
	4. If an extension under paragraph (c) applies to a specified Service only, any Schedules relating to any other Service will cease to form part of this Agreement at midnight on the original Expiry Date.

# Provision of Service

## General

* 1. Service Provider must use all reasonable endeavours to make the Service Available at all times during the Contract Hours. This obligation incorporates and is subject to the requirements of clause 7 regarding maintenance of the Equipment.
	2. If, at any time, Service Provider considers that a Service is not, or will not be, Available any reason, it must notify AEMO immediately specifying:
		1. which Service the notice applies to;
		2. the period or expected period of non-Availability;
		3. when Service Provider expects the Service to become Available again; and
		4. the reason for non-Availability.

## Performance

* 1. If at any time the *connection agreement* relating to any Equipment is amended, the parties must negotiate in good faith to make such amendments to this Agreement (if any) as are reasonably necessary to reflect the amended *connection agreement*.Any disagreement between the parties on those amendments must be resolved in accordance with clause 13.
	2. If any Schedule requires the Equipment to operate or cease to operate automatically, Service Provider must use reasonable endeavours to ensure that the Equipment operates or ceases to operate automatically on the occurrence of an event or condition specified in that Schedule.

# Availability

## Determining Availability

* 1. A Service is only taken to have been provided (and the Service Charge is only payable) in respect of periods during the Contract Hours during which the Service is Available.
	2. Without limiting paragraph (a), a Service is taken not to be Available for the period determined under paragraph (c) if any of the following occurs:
		1. Service Provider fails to provide evidence or Test results demonstrating to AEMO’s reasonable satisfaction that the Service is Available within the applicable period provided for in clause 5.3 or 5.4; or
		2. the Service is reasonably demonstrated not to be Available by the results of a Test or other evidence.
	3. For the purposes of paragraph (c), the relevant Service is taken not to be Available for the period commencing on:
		1. the date when the Service ceased to be Available, if Service Provider can establish that date to AEMO’s reasonable satisfaction; or
		2. otherwise, the day that is half‑way between the date on which the non-Availability was identified and the date of the most recent to occur of:
			1. a Test that demonstrated the relevant Equipment was capable of operating at the Contract Capacity while meeting the Minimum Technical Requirements;
			2. independently verifiable measurements confirming that the Service was Available; and
			3. the Commencement Date **[**or if later the last CP Fulfilment Date in accordance with clause 1A**]**,

and ending on the day on which Service Provider demonstrates to AEMO’s reasonable satisfaction, by Test or otherwise, that the Service is Available.

## Requirement for remedial action

If the Service is not Available during the Contract Hours for any reason, Service Provider must:

* 1. diligently and at its own expense take the necessary remedial action to make the Service Available;
	2. promptly advise AEMO of the proposed timetable for implementing the remedial action and keep AEMO informed of progress;
	3. after taking the remedial action, conduct a Test or submit such other evidence as AEMO may require to demonstrate to AEMO’s reasonable satisfaction that the Service is Available; and
	4. pay AEMO’s reasonable costs incurred in relation to any Test required by AEMO for the purposes of paragraph (c), or in reviewing any other evidence concerning the remedial action.

# Tests

## Requirement to conduct a Test

* 1. AEMO may request Service Provider to conduct a Test at any time if AEMO reasonably believes that a Service is not Available (other than during a period notified by Service Provider under clause 3.2(b)), and Service Provider must conduct that Test within a reasonable time after receiving the request, in accordance with this clause 5.
	2. AEMO’s request under paragraph (a) must specify:
		1. the reason for AEMO’s belief that the Service is not Available; and
		2. each aspect of the Contracted Capacity or Minimum Technical Requirements that AEMO believes is not being met; and
		3. the nature of the Test to be conducted on the Equipment or associated devices to verify Availability of the Service.
	3. Provided each Service remains Available, Service Provider may conduct any other tests on the Equipment at any time during the Term.

## Conduct of Tests

* 1. Prior to conducting a Test, Service Provider must:
		1. agree with AEMO on the timing and duration of the Test (which agreement must not be unreasonably withheld); and
		2. invite AEMO (at AEMO’s cost) to appoint a Representative to witness the conduct of the Test.
	2. If AEMO appoints a Representative under paragraph (a)(iii) to witness a Test:
		1. Service Provider must provide sufficient access to permit that Representative to witness the Test in order to verify that it is carried out correctly; and
		2. AEMO must ensure that the Representative:
			1. does not interfere with the conduct of the Test;
			2. does not cause any loss or damage to Service Provider’s assets;
			3. does not interfere with the operation of Service Provider's business;
			4. observes Service Provider’s requirements relating to occupational health and safety and industrial relations matters applicable to visitors to Service Provider’s site; and
			5. does not ask any question, or give any direction, instruction, or advice, to any representative of Service Provider other than the Representative designated by Service Provider for that purpose.

## Evidence of Tests

* 1. Unless otherwise agreed between the parties, if Service Provider conducts a Test, Service Provider must provide to AEMO evidence that the Test has been conducted, together with the results of that Test, within 15 *business days* of the Test being conducted.
	2. The evidence provided to AEMO under paragraph (a) must demonstrate whether the Service is Available.

## Failure to Conduct Tests

If Service Provider does not conduct a Test as required by clause 5.1, AEMO may, by notice to Service Provider, request an explanation of why the Test was not carried out and Service Provider must respond within 2 *business days*, setting out:

* 1. the reasons why the Test was not conducted;
	2. when the Test will be conducted (if applicable); and
	3. information demonstrating that the Service remains Available.

## Failure to Agree

If the parties cannot agree on the procedures to be followed in conducting a Test, or the timing or duration of a Test as required by clause 5.2(a)(i), the disagreement must be resolved in accordance with clause 13.

## Cost of Testing

* 1. If a Test conducted by Service Provider under clause 5.1(a) demonstrates that the Service is Available, AEMO must reimburse Service Provider for its direct costs reasonably incurred in conducting the Test.
	2. Except as provided under paragraph (a), Service Provider must pay its own costs relating to Tests conducted under this Agreement.

# Records, Audits and Inspections

## Type of Records

Service Provider must compile and maintain reasonable records concerning this Agreement, including the delivery of a Service under this Agreement, the operation, maintenance and testing of Equipment, any procedures used in the performance of this Agreement and all Communications given or received by telephone in relation to this Agreement.

## Form and Retention

* 1. The records referred to in clause 6.1 may be maintained electronically.
	2. Service Provider must maintain a record referred to in clause 6.1 for at least 7 years from the date it was created.

## Right to Inspect Records

* 1. AEMO may request a copy of any of the records maintained under clause 6.1 or any other information in connection with Service at any time during the period referred to in clause 6.2(b).
	2. Service Provider must comply with a request from AEMO under paragraph (a) within 5 business days of receipt.

## Audits by AEMO

* 1. AEMO may audit any of the records maintained under clause 6.1 by giving Service Provider at least 5 business days' notice. A notice under this paragraph (a) must include the following information:
		1. the nature of the audit;
		2. the Service concerned;
		3. the name of any Representative appointed by AEMO to conduct the audit; and
		4. the date on which the audit will commence.
	2. Unless Service Provider agrees otherwise, an audit may only occur during normal business hours on a business day.

## Conduct of Audit

Audits will occur at the site at which the relevant records are maintained by Service Provider and Service Provider must provide AEMO’s Representatives conducting the audit with all reasonable assistance they may require to conduct it, including access to all relevant records (including computer records or systems) and any interpretation or explanation required.

## Inspections

* 1. At a date and time convenient to both parties, AEMO may inspect any of the Equipment to determine whether Service Provider is complying with this Agreement.
	2. At least 5 business days prior to the date on which AEMO wishes to make an inspection, AEMO must deliver a notice to Service Provider detailing the following information:
		1. the Equipment to be inspected and the scope of the inspection;
		2. the Representatives who will be conducting the inspection on behalf of AEMO; and
		3. the date and time when AEMO proposes to commence the inspection and the expected date and time when the inspection will conclude.
	3. Service 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.
	4. If AEMO conducts an inspection under paragraph (a), Service Provider must designate Representatives to accompany AEMO’s Representatives and answer any questions and assist with the conduct of the inspection.

## Conduct of Inspection

* 1. AEMO must not carry out any inspection of Equipment under clause 6.6 within 6 months of a previous inspection under this Agreement of the same Equipment.
	2. Unless otherwise agreed by Service Provider, an inspection under clause 6.6 may take as long as reasonably necessary, provided it is no longer than 12 hours. Any agreement to extend the period of the inspection must not be unreasonably withheld, considering the extent of the inspection proposed.
	3. Whilst carrying out an inspection in accordance with clause 6.6, AEMO must ensure that its Representatives:
		1. do not cause any loss or damage to Service Provider’s assets;
		2. do not interfere with the operation of Service Provider's business (provided that the inspection itself does not constitute interference);
		3. observe Service Provider’s requirements relating to occupational health and safety and industrial relations matters that apply to all invitees of Service Provider; and
		4. do not ask any question or give any direction, instruction, or advice to any of Service Provider’s personnel other than the Representative designated by Service Provider for this purpose.

# Maintenance

* 1. Service Provider must maintain the Equipment in accordance with *good electricity industry practice*.
	2. Service Provider must not schedule planned maintenance during the periods specified in item 4 of the relevant Schedule.
	3. Service Provider must notify AEMO promptly after changing or modifying any Equipment in a way that reduces or could reasonably be expected to reduce the Availability of a Service.

# Payments

## Calculation of Payments

The Service Charge owed by AEMO for Services provided under this Agreement is to be determined in accordance with item 6 of each Schedule, as adjusted under clause 8.9.

## Invoices

Within 10 *business days* after the end of each Billing Period, Service Provider must give AEMO an invoice setting out the Service Charge and any other amounts payable by each party to the other party under this Agreement in respect of that Billing Period.

## Disputed payments

* 1. If there is a dispute between the parties concerning any invoiced amount that cannot be resolved by agreement:
		1. if the amount is not yet due, any undisputed part of the invoiced amount must be paid on the due date; and
		2. the dispute is to be resolved in accordance with clause 13.
	2. Disputes in relation to an invoiced amount must be raised within 6 months of the date of the relevant invoice. If a party does not raise a dispute within that period, the party will be taken to have agreed to pay or receive the invoiced amounts.

## Payment

Subject to clause 8.3, if an invoice indicates that a party must pay the other party a net amount, that party must pay the net amount specified in the invoice to the other party by the 20th *business day* after AEMO received the invoice.

## Adjustment

* 1. To the extent that the Service Charge or any other amount specified in an invoice:
		1. must be adjusted to effect an adjustment retrospectively to a Review Date under clause 8.9;
		2. must be adjusted under clause 8.7;
		3. are otherwise agreed by the parties, or determined in accordance with clause 13, to be incorrect or not payable,

Service Provider must issue a replacement statement for the Billing Period stating the correct amounts payable.

* 1. If a payment has already been made, the party advantaged must pay the other party the amount required to put the other party in the position it would have been in at the time payment was due under clause 8.4 plus interest on the difference between the amount paid to the party advantaged and the amount that should have been paid. The interest accrues daily at the bank bill rate on the relevant day for each day from the date on which payment was made under clause 8.4 until payment is made under this paragraph (b).
	2. Payment under paragraph (b) must be made:
		1. on the same day as the next payment is made under clause 8.4, where applicable by set off against an amount due to the party advantaged; or
		2. if no subsequent payments are to occur under clause 8.4, within 15 business days after the replacement statement is given under paragraph (a).

## Measurement

* 1. Measurement of each Service must be made in accordance with each relevant Schedule and as provided by AEMO’s records and Service Provider’s metering, measurement, supervisory and electronic data processing systems.
	2. Paragraph (a) does not prevent Service Provider from disputing the accuracy of AEMO’s records.

## Reduced Payment for Service Not Available or Provided

* 1. Service Charges are only payable to Service Provider in respect of a Service that is Available in accordance with this Agreement.
	2. Service Provider must repay to AEMO any amount of the Service Charge previously paid in respect of any Contract Hours during which the relevant Service is subsequently agreed or determined not to have been Available.

## GST

* 1. The Service Charge and any other amounts payable to or by AEMO under this Agreement exclude GST.
	2. 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.
	3. 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.
	4. Each party must include the additional amounts contemplated under paragraph (c) in statements issued under this Agreement and must assist the other party to claim input tax credits for GST where relevant.
	5. If the additional amount paid or payable to a party in respect of a taxable supply under paragraph (c) differs from the actual amount of GST payable, adjustments must be made in accordance with the adjustment procedures under clause 8.5.
	6. In this clause 8.8, “**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).

## Review based on CPI variations

* 1. The dollar value of the Service Charge will be reviewed annually as of each Review Date and adjusted effective from that date in accordance with the change in CPI, so that its value as at the Review Date is equal to:

SCB \* CPI/CPIB

Where:

SCB means the dollar value of the Service Charge immediately before the Review Date;

CPI means the CPI for the quarter ending on the 30 June immediately before the Review Date; and

CPIB means the CPI for the quarter ending on the 30 June in the preceding year.

* 1. If either:
		1. the CPI ceases to be published; or
		2. the method of calculation of the CPI substantially alters,

the CPI is to be replaced by the nearest equivalent index and any necessary consequential amendments are to be made.

* 1. Any replacement index and consequential amendments required under paragraph (b) are to be determined by agreement between the parties or, if the parties do not agree, by the Australian Statistician or their nominee (acting as an expert and not as an arbitrator), whose decision is binding and conclusive.

# Extent of Liability

## AEMO Liability Cap

* 1. Subject to paragraph (b) and other than in respect of any unpaid Service Charges, the total amount recoverable from AEMO in respect of any and all Claims arising out of any one or more events during the Term with respect to, arising from, or in connection with, this Agreement or the provision of a Service is limited to a maximum aggregate amount of $5,000,000.
	2. Regardless of the nature of any Claim, AEMO is not liable in any circumstances for any:
		1. damages or losses that are not direct and do not flow naturally from a breach of this Agreement, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this Agreement;
		2. loss of market, opportunity or profit (whether direct or indirect); or
		3. damages or losses to the extent that a Claim results from Service Provider’s failure to act in accordance with this Agreement, a Law or *good electricity industry practice*.

## Service Provider Liability Cap

* 1. Subject to paragraph (b), the total amount recoverable from Service Provider in respect of any and all Claims arising out of any one or more events during the Term with respect to, arising from, or in connection with, this Agreement or the provision of the Service is limited to a maximum aggregate amount of $5,000,000.
	2. Regardless of the nature of any Claim, Service Provider is not liable in any circumstances for any:
		1. damages or losses that are not direct and do not flow naturally from a breach of this Agreement, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this Agreement;
		2. loss of market, opportunity or profit (whether direct or indirect); or
		3. damages or losses to the extent that a Claim results from AEMO’s failure to act in accordance with this Agreement, a Law or good electricity industry practice.

## Indemnity

Subject to clause 9.2, Service 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, or in connection with, any act or omission of Service Provider in relation to the provision of a Service.

## National Electricity Law

This Agreement does not vary or exclude the operation of sections 116, 119 or 120 of the National Electricity Law. To avoid doubt, any liability of a party under this Agreement will not exceed the lesser of any amount to which that liability may be limited under the National Electricity Law, and the relevant liability cap under this clause 9.

# Force Majeure

## Effect on performance of obligation

A party’s obligation under this Agreement (other than an obligation to pay money) shall be suspended during the time and to the extent that the party (**affected party**) is unable to comply with that obligation by reason of the occurrence of an Event of Force Majeure.

## Obligation to Notify

If an affected party becomes aware of a circumstance it reasonably considers constitutes or is likely to constitute or result in an Event of Force Majeure, it must:

* 1. immediately give the other party notice of the circumstances and of the obligations under this Agreement that have been, or will be, or are likely to be, affected by that circumstance; and
	2. keep the other party informed both at reasonable intervals and upon request by the other party as soon as practicable following the receipt of that request of:
		1. the affected party’s estimate of the likely and actual commencement (as appropriate) of and duration of the Event of Force Majeure;
		2. the action taken and the action proposed to be taken by the affected party in complying with paragraph (a);
		3. the cessation of the Event of Force Majeure or the successful mitigation of the effects of the Event of Force Majeure; and
		4. any other matter the other party reasonably requests in connection with the occurrence of the Event of Force Majeure and the matters referred to in paragraph (b).

## Obligation to mitigate

* 1. As soon as practicable after the occurrence of an Event of Force Majeure, the affected party must use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling manpower and resources) to mitigate the consequences of that Event of Force Majeure and minimise any resulting delay in the performance of its obligations under this Agreement.
	2. The suspension granted under clause 10.1 does not include any delay in the performance of the affected obligation attributable to a failure by the affected party to comply with paragraph (a).
	3. The affected party bears the onus of proving that it has complied with its obligations under paragraph (a).
	4. Nothing in clause 10 requires the affected party to settle or compromise a Labour Dispute where the affected party, in its sole and absolute discretion, considers that course to be inappropriate.

## Termination for extended force majeure outage

* 1. If, by reason of an Event of Force Majeure, Equipment is Unavailable for a period exceeding 2 months, AEMO may terminate this Agreement in respect of the relevant Service.
	2. If AEMO gives a termination notice under paragraph (a) in respect of a particular Service, this Agreement terminates in respect of that Service from the start of the later of:
		1. the day following the day on which the notice was given; and
		2. the day nominated in the notice,

and on termination the applicable Schedule will no longer form part of this Agreement or any other agreement between the parties.

# Default

## Termination

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

* 1. the defaulting party does not pay any money due under this Agreement on the due date and the defaulting party does not pay the money within a further period of 20 business days after the terminating party serves notice on the defaulting party requiring payment;
	2. subject to clause 11.2, the defaulting party does not carry out or meet any other material obligation under this Agreement and in the case of a default that is capable of remedy, does not remedy that default within 30 business days after the terminating party serves notice on the defaulting party requiring it to be remedied;
	3. any representation or warranty given by the defaulting party under clause 14 is materially inaccurate or untrue; or
	4. an Insolvency Event occurs in relation to the defaulting party.

## Termination by AEMO

* 1. AEMO may immediately terminate this Agreement by giving notice to Service Provider if the Service has not been Available for at least 50% of the Contract Hours in two or more Billing Periods occurring within six months of each other.
	2. At any time, AEMO may terminate this Agreement for convenience on giving Service Provider at least 3 months’ notice.

## Termination Notices

A notice to terminate issued under clause 11.1 or 11.2 takes effect on the later of:

* 1. the time it is given; and
	2. the time specified in the notice.

## Survival

Expiry or termination of this Agreement for any reason does not affect:

* 1. any rights of either party against the other that:
		1. arose prior to the time at which expiry or termination occurred; and
		2. otherwise relate to or might arise at any future date from any breach of this Agreement occurring prior to the expiry or termination; or
	2. the rights and obligations of the parties under clauses 6, 8, 9, 13, 14 and 17.

## Reduction of Services

If AEMO is entitled to terminate this Agreement under clause 11.1 or 11.2 and where there is more than one Service, AEMO may instead elect to reduce the number of Services it purchases under this Agreement (specified by reference to a Schedule), by giving a notice to Service Provider that complies in all other respects with clause 11.1 or 11.2 (as applicable). On and from the effective date of that notice, the specified Schedule will be taken not to form part of this Agreement or any other agreement between the parties.

## No other termination

Subject to any Law to the contrary, a party must not terminate this Agreement other than for a reason provided for under this Agreement and in accordance with the relevant requirements for termination.

# Assignment and Sub Contracting

## Assignment by Service Provider

* 1. Subject to paragraph (c), Service Provider must not dispose of its rights in this Agreement or any Equipment without first obtaining AEMO’s consent, which must not be unreasonably withheld or delayed.
	2. AEMO must give its consent for the purposes of paragraph (a) if:
		1. Service Provider disposes of the Equipment to one person or a group of persons (assignee);
		2. the assignee executes and delivers to AEMO a deed (in form and substance satisfactory to AEMO) prior to the disposal by which the assignee agrees to assume obligations that are substantially equivalent to Service Provider’s obligations under this Agreement; and
		3. the assignee is a *Registered Participant* that is capable, legally, financially and technically, of undertaking Service Provider’s obligations under this Agreement.
	3. Service Provider must not, without AEMO’s prior consent (which must not be unreasonably withheld), grant security interests by way or mortgage or charge over the Equipment or Service Provider’s rights and interests in or under this Agreement.
	4. Service Provider must reimburse all of AEMO’s costs associated with considering or giving consent under this clause.
	5. In this clause 12.1, the words ‘**dispose of**’ and ‘**disposal**’ refer to an assignment, transfer or other means of disposing of all or part of a legal or equitable interest, whether by sale, lease, declaration or creation of trust or otherwise.

## Sub-contracting

* 1. Service Provider must not sub-contract the performance of any of its obligations under this Agreement without AEMO’s prior consent, which must not be unreasonably withheld or delayed.
	2. If Service Provider sub-contracts the performance of obligations under this Agreement, Service Provider remains responsible for the performance of this Agreement.

## Assignment by AEMO

* 1. AEMO may assign its rights under this Agreement to a person who performs similar functions to AEMO’s *declared network functions* in relation to the Victorian *shared transmission network*.
	2. If AEMO proposes an assignment under paragraph (a), AEMO must procure that the proposed assignee enters into a deed of assignment and assumption with Service Provider in terms reasonably satisfactory to Service Provider. For the avoidance of doubt, AEMO will not be taken to have decided to propose an assignment if legislation is enacted that requires such an assignment.

# Dispute Resolution

* 1. If a dispute arises in relation to this Agreement or its subject matter, the parties agree that rule 8.2 of the NER applies to that dispute.
	2. Unless otherwise agreed by the parties, or determined under the rule 8.2 dispute resolution processes, the parties must continue to perform their obligations under this Agreement despite the operation of this clause 13.

# Warranties

* 1. Service Provider represents and warrants to AEMO as at the date of this Agreement and at all times after the date of this Agreement that, in respect of each Service:
		1. Service Provider and its representatives are duly qualified and skilled to operate the Equipment and will provide the Service with due care and skill;
		2. Service Provider will provide the Service in accordance with all relevant Law, *good electricity industry practice* and relevant Australian Standards and codes of practice;
		3. data regarding Service Availability and provision provided to AEMO for AEMO’s use in calculating payments and issuing statements in accordance with clause 8 will be in a form suitable for use in AEMO’s systems, and will accurately reflect the level of Availability and provision of the Service under this Agreement;
		4. Service Provider’s obligations under this Agreement are enforceable in accordance with their terms; and
		5. Service Provider has all necessary rights, approvals and authorisations necessary to perform its obligations under this Agreement.
	2. AEMO represents and warrants to Service Provider as at the date of this Agreement and at all times after the date of this Agreement that AEMO’s obligations under this Agreement are enforceable in accordance with their terms.

# Compliance with Law

* 1. Each party must comply with its obligations under any Law in any way affecting this Agreement.
	2. 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 Law for the purpose of complying with its obligations under this Agreement are given or obtained.
	3. Each party must pay all fees and bear all costs connected with such notices, consents, authorisations, registrations and certifications.
	4. 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 reasonable satisfaction of the requesting party that the requirements of paragraph (b) have been complied with.

# Change in Law

## Change in Law Notice

* 1. If a Change in Law occurs during the Term, a party may give notice (**notifying party**) to the other party (**notified party**) of the Change in Law.
	2. Any notice given by a notifying party under paragraph (a) must:
		1. be given by within 3 months of the commencement of the relevant Change in Law, otherwise this clause 16 does not apply; and
		2. include full details of impact of the Change in Law and any supporting information reasonably necessary to enable the notified party to verify its impact.

## Negotiations

On receipt of a notice under clause 16.1, the parties must negotiate in good faith such amendments to this Agreement as are necessary or appropriate on the basis of the following principles:

* 1. the amendments will endeavour to preserve the economic and legal effect of this Agreement as at the Commencement Date to the extent practicable, except any change in the Service Charge will be limited to the actual change in the cost of providing Service arising from the Change in Law; and
	2. the amendments will otherwise be fair and reasonable in the circumstances.

## Dispute

If the parties are unable to agree on the amendments in accordance with clause 16.2 within 2 months of receipt of the notice received under clause 16.1, the dispute must be resolved in accordance with clause 13. Any third party appointed under clause 13 to assist in the resolution of the dispute must take into account the principles detailed in clause 16.2.

# General

## Notices

* 1. Subject to paragraph (b), all Communications to a party must be:
		1. in writing;
		2. marked to the attention of the person named in respect of that party in the Details; and
		3. sent by electronic message to the email address of the addressee specified for that party in the Details.
	2. Subject to the NER, any Communications given in relation to the delivery or performance of a Service in the course of the day-to-day running of the national grid or the *national electricity market* by or on behalf of a party to the other may be made by automated electronic process, telephone or other instantaneous means of communication.
	3. Unless Communications under paragraph (b) are recorded in some other way satisfactory to 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.
	4. Unless a later time is specified in it, a Communication takes effect from the time it is received.
	5. A Communication is taken to be received:
		1. in the case of an electronic message, at the time at which a report by the computer from which the electronic message was sent indicates that the message was received in its entirety at the electronic mail address of the recipient; and
		2. in the case of Communications under paragraph (b), instantaneously.
	6. Except for Communications under paragraph (b), if a Communication is received, or deemed to be received, on a day that is not a business day, or after 5:00pm on a business day, it is taken to be received on the next business day.
	7. A party may at any time by notice to the other party designate a different person or electronic mail address for the purposes of this clause 17.1 and the Details.

## 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.

## No Waiver or Variation

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

* 1. 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;
	2. a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
	3. the exercise of a right does not prevent any further exercise of that right or of any other right.

## Amendment

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

## 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.

## 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.

## 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.

## Costs and Expenses

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.

## Further Assurances

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

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

## Supervening Law

Subject to clause 16, any present or future Law 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.

## Severability

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 17.1 has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

## Entire Agreement

This Agreement is required by the NER and operates in accordance with the NER. Subject to this requirement, it constitutes the entire agreement of the parties in connection with the provision of the Service and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

## Confidential Information

Any information of a commercially sensitive nature exchanged between the parties under this Agreement or during the negotiations preceding this Agreement is *confidential information* for the purposes of the NER. Service Provider consents to the disclosure of that information by AEMO to any *Registered Participant* or *Jurisdictional System Security Coordinator* tothe extent reasonably necessary for the purposes of operational planning, assessing the viability of a Service, Service delivery or the performance of any other function of AEMO under the NER.

## 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 set out in this Agreement.

## Counterparts

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.

## Governing Law & Jurisdiction

This Agreement and the transactions contemplated by this Agreement 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.

## No Partnership, Agency or Trust

Except as expressly provided in this Agreement, nothing contained or implied in this Agreement:

* 1. constitutes or may be deemed to constitute a party the partner, agent or legal representative of any other party for any purpose whatsoever, or create or be deemed to create any partnership; or
	2. creates or may be deemed to create any agency or trust.

**EXECUTED** as an agreement

1. Service – [Description of facility]

[*Note: If Service Provider will provide system strength services from more than one separately connected facility, or from units within the same facility at different performance levels/technical requirements, a separate schedule must be completed for each (they will be considered as separate Services).*]

* + 1. **Item 1: Description of Service**

The Service to be provided by Service Provider is the operation of a *synchronous condensor* to provide fault current injection to increase three-phase fault levels at Red Cliffs Terminal Station.

* + 1. **Item 2: Equipment**

|  |  |
| --- | --- |
| **Equipment Location / Connection point** | **Equipment description** |
|  |  |
|  |  |

* + 1. **Item 3: Contracted Performance**

|  |  |
| --- | --- |
| **Performance Requirement** | **Contracted Performance** |
| Contract Hours (per day) | Continuous (24 hours) [or][# hours to # hours (AEST)# hours to # hours (AEDST)] |
| Contract Capacity, being the reactive current capacity at the Equipment’s *connection point* | [#] MVA |
| Fault level contribution at Red Cliffs Terminal Station when above reactive current capacity provided  | [*Note: this will be derived by AEMO*] |

* + 1. **Item 4: Maintenance** Requirements

For the purposes of clause 7, planned maintenance must not be scheduled during the months of November to March inclusive.

* + 1. **Item 5: Minimum Technical Requirements**
	1. The status of the Equipment (on/off) must be continuously monitored and transmitted to AEMO at least every 4 seconds at all times via signals from the Equipment’s SCADA system.
	2. The Equipment must be compliant with its *performance standards* (if applicable), and any technical requirements that apply in relation to the *connection point* under Service Provider’s *connection agreement*.
		1. **Item 6: Prices and Payments**

**Service Charge**

The Service Charge is $/MVA/hour

The amount of the Service Charge payable in a Billing Period is calculated as FLC x ACH x $[#], where:

* 1. FLC is the quantity of fault level contribution (in MVA) taken to be achieved at Red Cliffs Terminal Station when the Service is Available, which is derived from the Contract Capacity and specified in item 3 of this Schedule; and
	2. ACH is the total number of Contract Hours in the Billing Period during which the Service was Available.

1. [Conditions Precedent]

|  |  |
| --- | --- |
| **Condition Precedent** | **CP Fulfilment Date** |
|  | [#] or such later date as AEMO agrees |

**SIGNING PAGE**

|  |  |  |
| --- | --- | --- |
| **SIGNED** by as authorised representative for **AUSTRALIAN ENERGY MARKET OPERATOR LIMITED** in the presence of: |  |  |
| (signature of witness) |  | (signature of authorised representative) |
| (print name 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 |
|  |
| (address of witness) |  | (Date signed) |
| (occupation of witness) |  |  |

|  |  |  |
| --- | --- | --- |
| **SIGNED** by as authorised representative for **#1#** in the presence of: |  |  |
| (signature of witness) |  | (signature of authorised representative) |
| (print name of witness) |  | By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of #1# |
|  |
| (address of witness) |  | (Date signed) |
| (occupation of witness) |  |  |