1. AUCTION AGREEMENT

**PART 1 - FORMAL INSTRUMENT OF** AGREEMENT

**PARTIES**

**Australian Energy Market Operator Limited** ABN 94 072 010 327 of Level 22, 530 Collins Street, Melbourne, Victoria 3000 (“**AEMO**”)

and

**<Company Name>** ABN **<Number>** of **<Registered address>** (“**Applicant**”)

**RECITALS**

A AEMO has established and operates the Capacity Auction under the National Gas Rules and the Auction Procedures.

B The Applicant has applied to participate in the Capacity Auction.

C This Agreement sets out the terms and conditions for the Applicant to participate in the Capacity Auction.

**AGREEMENT**

The Applicant and AEMO agree as follows:

**1. Interpretation**

(a) This Agreement comprises the following parts:

* + 1. Part 1 - this formal instrument of agreement ("**Formal Instrument**"); and
    2. Part 2 - the Auction Agreement Standard Terms in the Auction Procedures, as amended, supplemented or replaced from time to time.

(b) Capitalised words used in this Formal Instrument have the meaning given to them in the Auction Agreement Standard Terms unless otherwise defined in this Formal Instrument.

(c) The rules of interpretation in the Auction Agreement Standard Terms apply to the interpretation of this Formal Instrument.

(d) The Auction Agreement Standard Terms form part of, and are incorporated into, this Formal Instrument and together they form one agreement to which the Applicant and AEMO are a party. This Formal Instrument and the Auction Agreement Standard Terms must be read and construed as one document.

(e) To the extent that there is any inconsistency between the Auction Agreement Standard Terms and this Formal Instrument, this Formal Instrument will prevail.

**2. Agreement to be bound**

The parties agreed to perform and be bound by the Auction Agreement Standard Terms as those terms may be amended, supplemented or replaced from time to time.

**3. Other matters**

(a) The liability of each party with respect to any breach of this Formal Instrument or the Auction Agreement Standard Terms is governed by the Auction Agreement Standard Terms.

(b) This Formal Instrument may be executed in any number of counterparts and by different parties on separate counterparts. Each counterpart when executed and delivered constitutes an original. All counterparts together constitute one and the same instrument.

**EXECUTED** as an agreement.

|  |
| --- |
| **Signed** for and on behalf of **Australian Energy Market Operator Limited** in the presence of: |
| Signature (Witness) |  | Signature |
| <Witness name> | <AEMO signatory name> |
| Print Name (Witness) | Print Name |
|  |  |  |
| Date: |  | Date: |

|  |
| --- |
| **Signed** for and on behalf of**<Applicant name>** in the presence of: |
| Signature (Witness) |  | Signature |
| <Witness name> | <Applicant signatory name> |
| Print Name (Witness) | Print Name |
|  |  |  |
| Date: |  | Date: |

Each person who executes this document under a power of attorney declares and warrants that the person is not aware of any fact or circumstance that might affect the person’s authority to do so under that power of attorney.

**PART 2 - AUCTION AGREEMENT STANDARD TERMS**

* 1. Definitions and interpretation
     1. Definitions

Capitalised words and phrases in these Auction Agreement Standard Terms are defined below unless specified otherwise.

**AEMC** means the Australian Energy Market Commission, which is established under section 5 of the Australian Energy Market Commission Establishment Act 2004 (SA).

**AEMO** means Australian Energy Market Operator Limited (ACN 072 010 327).

**AER** means the Australian Energy Regulator, which is established under section 44AE of the Competition and Consumer Act 2010 (Cth).

**Agent Participant** has the meaning given to it in the Auction Procedures.

**Agreement** means the agreement between AEMO and the Auction Participant comprising the Formal Instrument executed by the Auction Participant and AEMO and the Auction Agreement Standard Terms.

**Appointing Participant** has the meaning given to it in the Auction Procedures.

**Auction Agreement Close-Out Amount** means, at any time in relation to the Auction Participant, the aggregate amount calculated as owing to AEMO under this Agreement at that time (but where the Auction Participant is also an Exchange Member, disregarding the set-off arrangements in this Agreement).

**Auction Agreement Standard Terms** means these Auction Agreement Standard Terms as may be amended, supplemented or replaced from time to time.

**Auction Capacity** means *transportation capacity* (as defined under the Auction Procedures) offered or purchased in the Capacity Auction.

**Auction Fees** means fees for participating in the Capacity Auction, determined by AEMO from time to time in accordance with the National Gas Rules.

**Auction Participant** means each party to this Agreement other than AEMO.

**Auction Platform** has the meaning given to it in the Auction Procedures.

**Auction Procedures** means the Capacity Transfer and Auction Procedures made by AEMO, as may be amended, supplemented or replaced from time to time.

**Auction Service** means a *transportation service* (as defined under the Auction Procedures) provided by means of Auction Capacity.

**Auction Settlement** means the activity of billing and settlement of amounts payable in respect of the Capacity Auction.

**Auction Settlement Amount** for a Billing Period means the amount determined by AEMO under the Auction Procedures to be the amount payable by the Auction Participant in respect of the Billing Period including Auction Fees for the Billing Period and payment for Auction Capacity purchased in the Capacity Auction.

**Auction Settlement Statement** means a statement provided under clause A7.1.

**Authority** means any government, government department, instrumentality, Minister, agency, statutory authority or other body in which a government has a controlling interest and includes the AEMC, AEMO, the AER and their respective successors.

**Billing Period** means the period commencing at the start of the Gas Day starting on the first day of the month and ending at the end of the Gas Day starting on the last day of the month.

**Business Day** has the same meaning as ‘business day’ in the National Gas Law.

**Capacity Auction** means the *capacity auction* established by AEMO under the National Gas Rules.

**Close-Out** is defined in clause A13.2.

**Combined Revised Settlement Statement** is defined in clause A8.2(b)(iii).

**Combined Settlement Statement** is defined in clause A8.2(b)(i).

**Confidential Information** is defined in clause A15.1.

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

**Credit Support** means a security provided to AEMO in respect of the Auction Participant that meets the requirements of clause A6.2(c).

**Credit Support Provider** means a person that meets the requirements under clause A6.3 and A6.4 and is the issuing party that assumes obligations to AEMO pursuant to a Credit Support.

**Default Event** means any event which is defined as a default event in this Agreement (including clause A12.1) or the Auction Procedures.

**Default Notice** means a notice issued by AEMO under clause A12.2.

**Disclosed Information** means any information provided to the Auction Participant by or on behalf of AEMO in connection with this Agreement or the Capacity Auction.

**Exchange** has the meaning given in the Exchange Agreement.

**Exchange Agreement** means the Exchange Agreement made by AEMO under Part 22 of the National Gas Rules governing participation in and the operation of the gas trading exchange established by AEMO under that Part.

**Exchange Member** means a person who is a party to the Exchange Agreement.

**Facility Operator** has the same meaning as in the National Gas Rules.

**Final Net Settlement Amount** is defined in clause A13.4(b).

**Force Majeure** is defined in clause A18.1.

**Formal Instrument** means the formal instrument of agreement forming part of this Agreement under which the Auction Participant agrees to be bound by these Auction Agreement Standard Terms.

**Gas Day** has the same meaning as ‘*gas day’* under the Auction Procedures.

**Interest Rate** has the same meaning as in the National Gas Rules.

**Margin Call** means a request issued by AEMO to the Auction Participant under clause A6.9 for the Auction Participant to bring its Trading Margin above a specified level.

**Market Conduct Rules** means the market conduct and nomination rules applicable to the Capacity Auction under the National Gas Rules.

**Maximum Total Payment** has the meaning given in the Auction Procedures.

**National Gas Law** means the National Gas Law as set out in the Schedule to the National Gas (South Australia) Act 2008 (SA).

**National Gas Rules** has the same meaning as in the National Gas Law.

**Net Payment Amount** is defined in clause A8.3(a) and is an amount payable in circumstances where the Auction Participant is also an Exchange Member.

**Payment Shortfall** has the meaning given in the Auction Procedures.

**Prudential Exposure**, for the Auction Participant at any time, means the amount of its actual or contingent liability calculated by AEMO under clause A6.8 or clause A9 (as applicable).

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

**Revised Auction Statement** means a statement provided under clause A7.3.

**Security Deposit Balance** means:

(a) the credit balance of the Auction Participant in the security deposit fund under clause A6.7 recorded in AEMO’s books of account, as reduced by applications of that credit balance by AEMO from time to time in accordance with this Agreement; plus

(b) where the Auction Participant is also an Exchange Member, any credit balance of the Auction Participant in the security deposit fund under clause 9.3 of the Exchange Agreement

**Settlement Statement** means an Auction Settlement Statement, Revised Auction Statement, Combined Settlement Statement or Combined Revised Settlement Statement, as the case requires.

**Settlements and Prudential Methodology** has the meaning given in the Exchange Agreement.

**Total Payment Due** has the meaning given in the Auction Procedures.

**Trading Halt** means a suspension by AEMO of the Auction Participant’s access to or use of the Auction Platform.

**Trading Limit**, for the Auction Participant at any time, means the amount calculated by AEMO under clause A6.8 or clause A9 (as applicable) by reference to the amount of the Auction Participant’s Credit Support.

**Trading Margin**, for the Auction Participant at any time, means its Trading Limit less its Prudential Exposure calculated under clause A6.8 or clause A9 (as applicable).

* + 1. Headings

In this Agreement, any heading, index, table of contents or marginal note is for convenience only and does not affect the interpretation of this Agreement.

* + 1. General interpretation rules

In this Agreement, unless a contrary intention appears:

* 1. a reference to a clause, schedule or annexure is a reference to a clause, schedule or annexure to this Agreement;
  2. a reference to this Agreement or another agreement or document includes that document as amended, varied, novated, supplemented or replaced from time to time;
  3. a reference to legislation or a provision of legislation includes all regulations, orders or instruments issued under the legislation or provision; and any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
  4. a reference to a person, corporation, trust, partnership, unincorporated body, government authority or other entity includes any of them;
  5. a reference to a person includes that person’s successors, substitutes and permitted assigns (and, where applicable, the person’s legal personal representatives);
  6. a reference to dollars or $ is a reference to Australian dollars;
  7. where a word or expression is defined or given meaning, another grammatical form has a corresponding meaning;
  8. the singular includes the plural and vice versa;
  9. a gender includes all other genders;
  10. if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
  11. 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;
  12. if a party to this Agreement is made up of more than one person, an obligation of that party is a joint and several obligation of those persons, a right of that party is held by each of those persons separately, and any other reference to that party is a reference to each of those persons separately, so that (for example) a representation, warranty or undertaking is given by each of them separately; and
  13. a provision of this Agreement shall not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Agreement or the inclusion of the provision in this Agreement.
      1. Time and days
  14. References in this Agreement to a time of day are to Australian Eastern Standard Time (and are not adjusted for daylight saving time in any jurisdiction).
  15. In this Agreement, unless otherwise specified:
      1. a period of time expressed to commence before or after a given day, or before or after the day of an act or event, is to be calculated exclusive of that day; and
      2. a period of time expressed to commence on a given day, or on the day of an act or event, is to be calculated inclusive of that day.
      3. Quantities
  16. All references to units of measurement are references to the units of measurement defined in or for the purposes of the *National Measurement Act 1960* (Cth).
  17. All numerical information used and calculations made under this Agreement will be, as far as practical, to an accuracy of 4 decimal places, or such greater accuracy as may be necessary to ensure that financial calculations are correct to the nearest cent.
      1. Agent Participants

In relation to an Agent Participant and its Appointing Participants:

* 1. the Agent Participant will represent the Appointing Participants and will exercise the rights and perform the obligations of the Appointing Participants under and in connection with this Agreement as agent for the Appointing Participants;
  2. each Appointing Participant’s rights of access to and use of the Auction Platform must be the same as each other Appointing Participant and must only be exercised through its Agent Participant;
  3. except as otherwise expressly provided in this Agreement, a reference to the Auction Participant includes a reference to the Agent Participant acting for and on behalf of the Appointing Participants;
  4. the obligations of the Appointing Participants are joint and several obligations of those Appointing Participants, a rights of the Appointing Participants are held by each of those Appointing Participants separately, and any other reference to an Appointing Participant is a reference to each of the Appointing Participants separately, so that (for example) a representation, warranty or undertaking is given by each of them separately;
  5. all acts and omissions of the Agent Participant under or in connection with this Agreement are taken to be acts and omissions of all the Appointing Participants;
  6. the Appointing Participants are jointly and severally liable for the acts and omissions of the Agent Participant under or in connection with this Agreement;
  7. payment or delivery to or other performance in favour of the Agent Participant under or in connection with this Agreement is taken to be payment or delivery to or other performance in favour of its Appointing Participants; and
  8. no party to this Agreement is required to inquire into the scope of the authority of the Agent Participant and each Appointing Participant is bound by and will ratify all acts and omissions of the Agent Participant under or in connection with this Agreement.
  9. Participation in the Capacity Auction
     1. Terms of participation
  10. The Auction Participant agrees that it will:
      1. participate in the Capacity Auction in accordance with the Auction Procedures and on the terms and conditions of this Agreement; and
      2. pay AEMO for all Auction Capacity allocated to the Auction Participant in the Capacity Auction and any other amounts payable by the Auction Participant under this Agreement on the terms of this Agreement and the Auction Procedures.
  11. The Auction Participant acknowledges and agrees that AEMO will:
      1. conduct the Capacity Auction in accordance with the Auction Procedures and this Agreement;
      2. notify the results of the Capacity Auction to Facility Operators in accordance with the Auction Procedures and the National Gas Rules; and
      3. receive payment from the Auction Participant and make payments to Facility Operators in connection with the Capacity Auction, in each case as principal, and not as agent for the Auction Participant or any Facility Operator.
      4. Use of Auction Services

The Auction Participant acknowledges and agrees that:

* 1. the provision and use of an Auction Service represented by Auction Capacity purchased in the Capacity Auction is a matter between the Auction Participant and the Facility Operator that provides the Auction Service;
  2. AEMO is not responsible for, and has no liability in respect of, the provision or use of any Auction Service;
  3. AEMO makes no representation or warranty as to the availability, fitness for purpose or otherwise of any Auction Capacity or Auction Service;
  4. the Auction Participant (and not AEMO) is responsible for ensuring that the Auction Participant has an agreement with each Facility Operator who provides the Auction Service represented by Auction Capacity purchased by the Auction Participant in the Capacity Auction;
  5. to the extent that the Auction Participant does not have an agreement with the relevant Facility Operator mentioned in clause A2.2(d), the relevant Facility Operator may decline to provide the Auction Service; and
  6. the Auction Participant is not relieved of any of its payments obligations to AEMO in relation to the Capacity Auction in the circumstances mentioned in clause A2.2(e) or by reason of any other act or omission of any Facility Operator or any other person, except as expressly provided for in the Auction Procedures.
     1. Eligibility
  7. To be eligible (and to remain eligible) to access the Auction Platform and participate in the Capacity Auction, the Auction Participant must meet and continue to satisfy the eligibility criteria specified in the Auction Procedures.
  8. The Auction Participant must give information to AEMO on request to verify that it continues to satisfy the eligibility criteria specified in the Auction Procedures.
  9. The Auction Participant must notify AEMO immediately if it ceases to satisfy the eligibility criteria specified in the Auction Procedures.
     1. Market conduct
  10. The National Gas Rules contain Market Conduct Rules applicable to the Auction Participant in relation to its participation in the Capacity Auction.
  11. If AEMO has reasonable grounds to believe that any act or omission of the Auction Participant on or in relation to the Auction Platform breaches the Market Conduct Rules, AEMO may do any one or more of the following:
      1. raise the matter with the Auction Participant and, if it is satisfied with the Auction Participant’s response, take no further action, or take no further action subject to the Auction Participant complying with conditions agreed between AEMO and the Auction Participant; or
      2. refer the conduct to the AER.
      3. Termination of the Capacity Auction or auction participation

* 1. AEMO may terminate this Agreement on not less than 30 days’ notice to the Auction Participant if the Auction Platform ceases permanently to operate.
  2. An Auction Participant may request AEMO to terminate this Agreement pursuant to any right to make such a request in the Auction Procedures or National Gas Rules by giving AEMO a notice in accordance with clause A19.2 specifying the proposed date of termination, which must be at least 30 days after the date of the notice.
  3. The termination of this Agreement under clause A2.5(a) or clause A2.5(b) takes effect at the time specified by notice from AEMO to the Auction Participant (which in the case of a notice under clause  A2.5(a), may be given after that notice of termination). AEMO is not required to give a notice under this clause A2.5(c) until it is reasonably satisfied that:
     1. all liability accrued under this Agreement in respect of the Auction Participant has been satisfied; and
     2. the Auction Participant has executed all documents reasonably required by AEMO to give effect to that termination, as notified by AEMO to the Auction Participant.
  4. The termination of this Agreement under this clause A2.5 does not entitle the Auction Participant to any payment under this Agreement.
     1. Effect of termination
  5. The termination of this Agreement under clause A2.5 or otherwise does not affect:
     1. the rights of a party to recover an amount, or the obligation of a party to pay an amount, that became payable prior to the date of termination;
     2. any rights of a party that otherwise relate to, or may arise in the future from, any breach or non-observance of obligations under this Agreement; or
     3. the operation of this clause and clauses A14 (dispute resolution), A15 (confidentiality), A17 (liability) and A20.2 (Auction Platform Terms of Use) to A20.10 (indemnity).
  6. If the Auction Participant comprises more than one entity and one of those entities withdraws from this Agreement, this Agreement continues (and does not terminate) in relation to the other entities notwithstanding that withdrawal.
  7. Auction Participant Representatives
  8. The Auction Participant must nominate one or more individuals within its organisation (or that of the Agent Participant, in the case of Appointing Participants) to fulfil the roles required under the Auction Procedures in connection with the Auction Participant's participation in the Capacity Auction, on behalf of the Auction Participant. Appointing Participants must make joint nominations of the same person for each role and must do so through their Agent Participant.
  9. Auction Platform
     1. Access to Auction Platform
  10. Subject to the Auction Procedures and this Agreement, AEMO will give the Auction Participant access to the Auction Platform to the extent required for the purpose of participating in the Capacity Auction.
  11. AEMO may suspend the Auction Participant's access to the Auction Platform if a Suspension Event or a Default Event occurs in relation to the Auction Participant.
  12. The Auction Participant’s right of access to and use of the Auction Platform terminates on termination of this Agreement.
  13. Auction Fees
  14. The Auction Participant must pay the Auction Fees specified and published by AEMO from time to time.
  15. The Auction Fees may include:
      1. an application fee;
      2. a fee payable upon the acceptance of an application;
      3. annual fees for participation in the Capacity Auction;
      4. a fee for purchases in the Capacity Auction; and
      5. ad hoc fees for services provided by AEMO to the Auction Participant from time to time, including training, assistance or advice in relation to access to and use of the Auction Platform.
  16. Prudential Requirements

* + 1. Confidentiality

Information about the Credit Support, Prudential Exposure, Trading Limit and Trading Margin of the Auction Participant is Confidential Information.

* + 1. Auction Participant obligations
  1. If the Auction Participant is not eligible to be a Credit Support Provider, the Auction Participant must provide and at all times maintain Credit Support for the amount and forward period required to ensure that its Trading Margin does not fall below zero.
  2. The Auction Participant is responsible for ensuring that its Trading Margin does not reduce below zero and must not submit a bid that, if accepted or registered, would result in its Trading Margin being less than zero.
  3. Any Credit Support provided under this Agreement must:
     1. be an unconditional bank guarantee in a form specified by AEMO;
     2. be duly executed and delivered unconditionally to AEMO by an entity satisfying the requirements in clause A6.3 and A6.4 for Credit Support Providers; and
     3. subject to clause A6.2(d), constitute valid and binding unsubordinated obligations of the Credit Support Provider to pay AEMO amounts, in accordance with its terms, relating to the obligations of the Auction Participant under this Agreement.
  4. At any time that the Auction Participant is also an Exchange Member, any Credit Support provided under this Agreement must (in addition to satisfying clause A6.2(c)) constitute valid and binding unsubordinated obligations of the Credit Support Provider to pay AEMO amounts, in accordance with its terms, relating to the obligations of the Auction Participant under this Agreement and the Exchange Agreement.
     1. Credit Support Provider

A Credit Support Provider must:

* 1. be either:
     1. an entity under the prudential supervision of the Australian Prudential Regulation Authority; or
     2. a central borrowing authority of an Australian State or Territory or the Commonwealth which has been established by an Act of Parliament of that jurisdiction;
  2. be resident in, or have a permanent establishment in, Australia;
  3. not be an externally-administered body corporate (as defined in the Corporations Act) or under a similar form of administration under any laws applicable to it in any jurisdiction;
  4. not be immune from liabilities incurred under this Agreement or any Credit Support; and
  5. be capable of being sued in its own name in a court of competent jurisdiction.
     1. Minimum credit rating

A Credit Support Provider must have a credit rating of:

* 1. A-1 or higher for short term unsecured counterparty obligations of the entity, as rated by Standard & Poor’s (Australia) Pty Ltd;
  2. P-1 or higher for short term unsecured counterparty obligations of the entity, as rated by Moody’s Investors Service Pty Ltd; or
  3. some other acceptable credit rating determined by AEMO.
     1. Replacement and return of Credit Support
  4. Within 24 hours of becoming aware that its existing Credit Support ceases to meet all the requirements of clause A6.2, the Auction Participant must deliver to AEMO a replacement or additional Credit Support sufficient to ensure that the Auction Participant complies with its obligations under that clause.
  5. The Auction Participant may deliver a replacement Credit Support to AEMO at any other time.
  6. AEMO must return any unexpired and undrawn Credit Support to the Credit Support Provider on request, provided that AEMO will continue to hold Credit Support in respect of the Auction Participant that meets the requirements of this clause A6and takes effect on or before the return date.
  7. AEMO must return any unexpired and undrawn Credit Support to the relevant Credit Support Provider immediately after the termination of this Agreement takes effect under clause A2.5 unless this Agreement is continuing in relation to other parties to that Auction Agreement as provided for in clause A2.6(b).
     1. Drawdown of Credit Support

* 1. AEMO may, at any time after the occurrence of a Default Event in respect of the Auction Participant and while that Default Event is subsisting, exercise its rights to draw down any amount under a Credit Support relating to the Auction Participant and apply it against any amount actually or contingently owing to AEMO under this Agreement or (if the Auction Participant is also an Exchange Member) the Exchange Agreement.
  2. AEMO must inform the Auction Participant if AEMO exercises its rights to draw down any amount under a Credit Support.
     1. Security deposit amounts
  3. Subject to this clause, the Auction Participant may at any time pay a cash amount to AEMO as a security deposit to secure payment of any amount which may become payable under this Agreement or (if the Auction Participant is also an Exchange Member) the Exchange Agreement.
  4. AEMO must record security deposit amounts paid by the Auction Participant together with any interest earned on those amounts, as a credit balance in respect of that Auction Participant in AEMO’s security deposit fund.
  5. AEMO may apply the credit balance of an Auction Participant in the security deposit fund by setting off all or part of that amount against any amount owing by that Auction Participant to AEMO under a Settlement Statement.
  6. An Auction Participant may, in accordance with any guidance published by AEMO on its website, request AEMO’s agreement to arrangements for the application of that participant’s credit balance in respect of a Settlement Statement. If AEMO agrees, it must apply (or maintain) the credit balance in accordance with those arrangements unless a Default Event occurs in relation to the Auction Participant.
  7. AEMO may deduct any liabilities or expenses of the security deposit fund from the balance of an Auction Participant in that fund, to the extent those liabilities or expenses are attributable to the maintenance or application of that balance.
  8. If there is a credit balance in the security deposit fund for a former Auction Participant immediately after the termination of this Agreement takes effect under clause A2.5, AEMO must pay to that former Auction Participant an amount equal to that balance, unless this Agreement is continuing in relation to other parties to this Agreement as provided for in clause A2.6(b).
     1. Calculation of prudential amounts for Auction Participant

* 1. If the Auction Participant is eligible to be a Credit Support Provider, the Auction Participant will not have a Trading Limit or a Trading Margin.
  2. AEMO must calculate the Trading Limit, Prudential Exposure and Trading Margin for the Auction Participant at least once each Business Day and make the calculations available to the Auction Participant.
  3. Subject to clause A9:
     1. the **Trading Limit** of the Auction Participant at any time is an amount equal to the amount of the Auction Participant’s current valid and undrawn Credit Support, provided that any Credit Support having an expiry date of less than 10 Business Day*s* from the date of calculation must be disregarded;
     2. the **Prudential Exposure** of the Auction Participant at any time is the amount calculated by AEMO in accordance with the Auction Procedures, reflecting a reasonable estimate of the maximum net aggregate amount actually or contingently owing to AEMO under this Agreement or under the National Gas Rules in relation to the Capacity Auction at that time, less the Auction Participant’s Security Deposit Balance (if any); and
     3. the **Trading Margin** of the Auction Participant at any time is an amount equal to its Trading Limit less its Prudential Exposure.
     4. Trading Margin requirements
  4. If at any time the Trading Margin of the Auction Participant is less than zero, the Auction Participant:
     1. must not submit any further bids; and
     2. may modify or cancel existing bids, provide Credit Support or pay a security deposit amount in cleared funds to AEMO under clause A6.7 to increase its Trading Margin.
  5. If the Trading Margin remains below zero for 2 consecutive Business Day*s*, AEMO may issue a Margin Call by notice to the Auction Participant. If the Auction Participant is also an Exchange Member, a single Margin Call may be made under this Agreement and the Exchange Agreement.
  6. If the Auction Participant receives a Margin Call, the Auction Participant must, by the applicable time under clause A6.9(d):
     1. deliver additional Credit Support to AEMO; and/or
     2. pay a security deposit amount in cleared funds to AEMO under clause A6.7,

so that the Prudential Exposure of the Auction Participant immediately after taking that action is not more than 80% of its Trading Limit.

* 1. The Auction Participant must comply with clause A6.9(c) by 12:00 noon 2 Business Day*s* after the Margin Call was issued.
  2. If a Margin Call was not issued on a Business Day, or was issued after 2:00pm on a Business Day, it is taken to have been issued at 9:00am on the next Business Day.
  3. Auction Settlements
     1. Auction Settlement Statements

* 1. By the 15th Business Day after the end of each Billing Period, AEMO must make available to the Auction Participant an Auction Settlement Statement stating the Auction Settlement Amount for the Billing Period payable by or to the Auction Participant on the payment date for that Auction Settlement Statement, adjusted by:
     1. any adjustments payable under clause A7.5 in respect of a previous Billing Period; and
     2. the application of the Auction Participant’s Security Deposit Balance (if any).
  2. Each Auction Settlement Statement must be accompanied by supporting data that is sufficient to enable each Auction Participant to audit the calculation of the net amount payable.
  3. If the net amount payable by or to an Auction Participant for a Billing Period is less than $10, that amount is taken to be zero (that is, no payment is to be made by or to AEMO).
     1. Payment of auction amounts

By 12 noon on the 17th Business Day after the end of a Billing Period or 12 noon on the 2nd Business Day after an Auction Settlement Statement is made available under clause A7.1, whichever is the later, the Auction Participant must pay to AEMO in cleared funds the net amount stated to be payable to AEMO by that Auction Participant in its Auction Settlement Statement, whether or not the Auction Participant disputes the amount payable.

* + 1. Revised auction statements
  1. Subject to this clause A7.3, the Auction Participant may notify AEMO of a query concerning the amount payable in an Auction Settlement Statement before 9:00am on the 1st Business Day of the 4th Billing Period after the end of the Billing Period for the Auction Settlement Statement and AEMO and the Auction Participant must each use reasonable endeavours to resolve that query before that cut-off time.
  2. If the Auction Participant’s query is about an error (including an omission) or discrepancy in settlement information provided by a Facility Operator to AEMO and used by AEMO to determine the auction amount (as defined in Part 25 of the National Gas Rules) payable by the Auction Participant, the Auction Participant must comply with the Auction Procedures and National Gas Rules in relation to the query and any dispute about that query must be resolved as a rule dispute under Part 15C of the National Gas Rules.
  3. By the 2nd Business Day of the 4th Billing Period after each Billing Period, AEMO must make available to the Auction Participant a Revised Auction Statement in respect of that Billing Period, taking into account the outcome of any queries or disputes resolved in respect of the Auction Settlement Statement for that Billing Period.
  4. Each Revised Auction Statement (including any further Revised Auction Statement issued under clause A7.4) must:
     1. set out the revised amounts payable by or to the Auction Participant for the relevant Billing Period;
     2. set out the amount of the adjustment to the net amount payable under the Auction Settlement Statement for that Billing Period, plus interest at the Interest Rate, calculated as simple interest on a daily basis, for the period commencing on the day after the payment date for that Settlement Statement and ending on the payment date applicable to the Revised Auction Statement, but taking into account any adjustments previously made as a result of an earlier Revised Auction Statement for the same Billing Period; and
     3. include supporting data that is sufficient to enable the Auction Participant to audit the calculation of any adjustment to its net amount payable.
     4. Disputes on Revised Auction Statements
  5. A dispute in respect of the net amount payable for a Billing Period after adjustment in accordance with a Revised Auction Statement:
     1. may only be raised on the basis that AEMO has made an error in calculation or has not used the correct information validly provided to it in accordance with this Agreement or the National Gas Rules; and
     2. must be notified by the Auction Participant to AEMO under clause A14 within 30 Business Day*s* after the date on which AEMO made the Revised Auction Statement available to the Auction Participant.
  6. If a dispute under this clause is resolved in a way that causes the adjusted net amount payable for a Billing Period to differ from the amount calculated under the disputed Revised Auction Statement, AEMO must, within 5 Business Day*s* of the resolution of that dispute, make a further Revised Auction Statement available to the Auction Participant.
     1. Payment of adjustments
  7. Payment of an adjustment under a Revised Auction Statement is due on the next payment date determined under clause A7.2 which occurs 10 or more Business Day*s* after the date on which that Revised Auction Statement is made available to the Auction Participant.
  8. AEMO must apply the adjustment to the amount stated to be payable to or by the Auction Participant in respect of the relevant Auction Settlement Statement on the payment date, and for the avoidance of doubt clause A7.2 applies to the payment of adjustments.
  9. Joint settlement with the Exchange Agreement
     1. Application
  10. This clause A8 applies if the Auction Participant is also an Exchange Member.
  11. To the extent that there is any inconsistency between this clause A8 and the Exchange Agreement or any other provision of this Agreement, this clause A8 prevails.
      1. Combined Settlement Statement
  12. In respect of any Billing Period during which the Auction Participant is also an Exchange Member, AEMO must issue to the Auction Participant a single settlement statement covering amounts owed by or to the Auction Participant under this Agreement and the Exchange Agreement and those amounts will be subject to netting and must be paid as provided for in this clause A8.
  13. Settlement statements will be combined as follows:
      1. AEMO must issue a single statement which separately sets out the details of the Auction Settlement Statement required to be issued by AEMO under clause A7.1 for the Billing Period and the details of the Final Statement (as defined in the Exchange Agreement) for the Billing Period required to be issued by AEMO to the Auction Participant under the Exchange Agreement (a **Combined Settlement Statement**);
      2. for each Combined Settlement Statement, AEMO must determine the net amount payable by or to the Auction Participant after netting under clause A8.3;
      3. AEMO must issue a single statement which separately sets out the details of the Revised Auction Statement required to be issued by AEMO under clause A7.3 and the details of the Revised Statement (as defined in the Exchange Agreement) for the Billing Period required to be issued by AEMO to the Auction Participant under the Exchange Agreement (a **Combined Revised Settlement Statement**); and
      4. for each revised Combined Revised Settlement Statement, AEMO must determine the net amount payable by or to the Auction Participant after netting under clause A8.3.
  14. The issue of a Combined Settlement Statement or a Combined Revised Settlement Statement discharges AEMO’s obligations to the Auction Participant to issue separate statements for the relevant Billing Period under this Agreement and the Exchange Agreement.
      1. Payment netting

* 1. If, in respect any Billing Period during which the Auction Participant is also an Exchange Member, amounts would (but for this clause A8) be payable:
     1. by one party (the **first party**) to the other (the **second party**) under the Exchange Agreement (after allowing for netting as provided for in the Exchange Agreement); and
     2. by the second party to the first party under this Agreement,

then the obligations of AEMO and the Auction Participant respectively to make payment of the relevant amount for the Billing Period will be automatically set off such that the obligations are replaced by an obligation upon the party by which the larger amount would otherwise have been payable to pay to the other party the amount by which the larger amount exceeds the smaller amount (**Net Payment Amount**).

* 1. The failure to pay a Net Payment Amount shall be deemed to be a failure to pay an amount owed under both this Agreement and the Exchange Agreement and the party the Net Payment Amount is owed to has all the rights and remedies which apply to the failure to pay according to the terms of this Agreement and the Exchange Agreement.
  2. The scope of this clause A8.3(c) is limited to payments owed between the parties under this Agreement and the Exchange Agreement in the ordinary course and absent any Close-Out under those agreements.
  3. Nothing in this clause A8.3 amends, overrides, restates or otherwise alters any of the provisions of the Exchange Agreement or this Agreement concerning Close-Out and the accrual and obligation to make, or the mechanics provided in this Agreement for the payment of, a Final Net Settlement Amount.
     1. Payment of Net Payment Amount

* 1. By 12 noon on the 17th Business Day after the end of a Billing Period or 12 noon on the 2nd Business Day after a Combined Settlement Statement is made available under clause A8.2, whichever is the later, the Auction Participant must pay to AEMO in cleared funds the net amount stated to be payable by the Auction Participant to AEMO in the Combined Settlement Statement, whether or not the Auction Participant disputes the amount payable.
  2. By 2:00pm on the payment date under clause A8.4(a), AEMO must pay to the Auction Participant in cleared funds the net amount stated to be payable to that Auction Participant in the Combined Settlement Statement, if at that time the Maximum Total Payment determined under the Auction Procedures is not less than the Total Payment Due.
  3. If there is a Payment Shortfall for a Billing Period, AEMO must pay the Auction Participant the reduced amount determined in the manner provided for in the Auction Procedures by 4:00pm on the same date.
  4. If AEMO subsequently receives payments in respect of a Payment Shortfall, AEMO will refund a portion of the reduction made under clause A8.4(c) determined in accordance with the Auction Procedures by making an adjustment to the next Combined Settlement Statement.
  5. Joint Credit Support
  6. At any time the Auction Participant is also an Exchange Member:
     1. the **Trading Limit** of the Auction Participant at that time is an amount equal to the amount of the Auction Participant’s current valid and undrawn Credit Support provided under this Agreement or the Exchange Agreement, provided that any Credit Support having an expiry date of less than 10 Business Day*s* from the date of calculation must be disregarded; and
     2. the **Prudential Exposure** of the Auction Participant at that time is:
        1. the amount calculated by AEMO, in accordance with the Auction Procedures, reflecting a reasonable estimate of the maximum net aggregate amount actually or contingently owing to AEMO under this Agreement or under the National Gas Rules in relation to the Capacity Auction at that time; plus
        2. the net amount calculated by AEMO in accordance with the Settlements and Prudential Methodology, reflecting a reasonable estimate of the maximum net aggregate amount actually or contingently owing to AEMO by the Auction Participant under the Exchange Agreement and the National Gas Rules in relation to the Exchange at that time; less
        3. the Auction Participant’s Security Deposit Balance (if any).
  7. If a Final Net Settlement Amount is payable to AEMO and AEMO has the benefit of Credit Support and/or if there is a Security Deposit Balance in respect of the Auction Participant, then AEMO is entitled to apply the Credit Support and/or Security Deposit Balance (as applicable) against the Final Net Settlement Amount.
  8. Other matters relating to Auction Settlements
     1. Settlement facilities
  9. Subject to clause A10.1(b), AEMO and the Auction Participant must use the electronic cash transfer system designated by AEMO for the payment of amounts under this Agreement.
  10. AEMO must ensure that an electronic funds transfer facility is made available to the Auction Participant and AEMO for use:
      1. if the designated electronic cash transfer system is not available for Auction Settlement; or
      2. where agreed or determined by AEMO for the payment of ad hoc amounts under this Agreement between AEMO and the Auction Participant.
  11. AEMO and each Auction Participant must submit any matching receipt details required to enable another party to make a payment under this Agreement through the designated electronic cash transfer system.
      1. Late payment
  12. An Auction Participant must pay interest on any unpaid moneys due and payable by it under this Agreement at the Interest Rate, calculated as simple interest on a daily basis, for the period commencing on the date payment was due and ending on the date payment is made.
  13. Any payment received or applied by AEMO in respect of an Auction Participant for a Billing Period is taken to be made, and may be applied by AEMO, in satisfaction of the Auction Fees payable to AEMO by that Auction Participant (as specified in the relevant final or Revised Auction Statement issued to that Auction Participant) before it is applied by AEMO in satisfaction of any other obligation or liability.
      1. Amounts in dispute

If a dispute under this Agreement or the Exchange Agreement or a dispute about an error (including an omission) or discrepancy in settlement information provided by a Facility Operator to AEMO and used by AEMO to determine the amount payable by the Auction Participant is resolved in a way that causes the amount payable for a Billing Period to differ from the amount calculated under a Settlement Statement, AEMO must, within 5 Business Days of the resolution of the dispute, issue a Revised Auction Statement or Combined SettlementStatement (as applicable) to give effect to the adjustment.

* + 1. Application of GST
  1. In this clause, the terms “adjustment event”, “adjustment note”, “GST”, “GST law”, “input tax credit”, “recipient”, “recipient created tax invoice”, “supply”, “supplier”, “tax invoice” and “taxable supply” have the meanings given to them in the *A New Tax System (Goods and Services) Tax Act 1999* (Cth) (**GST Act**).
  2. All monetary amounts payable, determined, published or notified under, or referred to in, this Agreement (including Auction Fees) exclude GST.
  3. A statement or invoice issued in relation to a taxable supply made under or in connection with this Agreement must set out the amount of GST in respect of that supply.
  4. If a party (**the supplier**) is required to pay GST in respect of a supply made under or in connection with (including by reason of a breach of) this Agreement, the recipient must (in addition to any other payment for, or in connection with, the supply) pay to the supplier an amount equal to such GST (**GST gross-up**). Notwithstanding any other clause in this Agreement, GST is only payable subject to the provision of a valid tax invoice or recipient created tax invoice (as applicable).
  5. AEMO and the Auction Participant must be and remain registered for GST.
  6. If a GST gross-up is payable, then:
     1. AEMO will issue a recipient created tax invoice to the Auction Participant where it is treated under GST law as making a supply to AEMO;
     2. subject to the recipient created tax invoice agreement between AEMO and the Auction Participant, the supplier must give the recipient a tax invoice for the supply (including when AEMO is treated under GST law as making a supply); and
     3. a tax invoice or recipient created tax invoice issued by AEMO may be in the form of a Settlement Statement.
  7. If any payment to be made to a party under or in connection with this Agreement is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any GST gross-up.
  8. If an adjustment event has occurred in respect of a supply made under or in connection with this Agreement and is not otherwise taken into account in the calculation of Settlement Statements, any party that becomes aware of the occurrence of that adjustment event must notify AEMO (or in the case of AEMO, the affected parties) as soon as practicable, and the parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that supply, or any refund of GST, is paid no later than 20 Business Days after the supplier first becomes aware that the adjustment event has occurred.
  9. Suspension
     1. Definitions
  10. Each of the following events is a **Suspension Event** in relation to an Auction Participant:
      1. AEMO has issued a Margin Call to the Auction Participant which remains outstanding;
      2. there has been a material breach by the Auction Participant of any provision of this Agreement or of the Auction Procedures which AEMO has by notice to the Auction Participant required the Auction Participant to remedy and which remains unremedied at the expiry of the period specified in the notice (being not shorter than 2 Business Days); or
      3. a Default Event has occurred in relation to the Auction Participant and is subsisting; or
      4. AEMO has reasonable grounds to believe the Auction Participant no longer satisfies the eligibility criteria specified in the Auction Procedures, and the Auction Participant has failed to give AEMO information to verify its continued eligibility within 2 Business Days of AEMO requesting that information from the Auction Participant.
         1. Trading Halt
  11. AEMO may impose a Trading Halt on the Auction Participant by suspending the Auction Participant’s access to or use of the Auction Platform:
      1. if a Suspension Event has occurred in relation to the Auction Participant;
      2. under another provision of this Agreement or the Auction Procedures that allows AEMO to suspend or limit the Auction Participant’s access to the Auction Platform;
      3. at the request of the AER in connection with any investigation of an alleged breach of the Market Conduct Rules;
      4. in order to comply with an order or instruction from any other Authority; or
      5. the Auction Participant is in breach of any provision of the National Gas Law or the National Gas Rules.
  12. In determining whether to impose a Trading Halt, AEMO must consider whether there is an increased risk of default or disruption to the Capacity Auction arising from the continued participation of the Auction Participant and the extent to which a Trading Halt may mitigate that risk, having regard to all relevant circumstances including:
      1. the cause, severity and effect of any applicable Suspension Event;
      2. the steps taken by the Auction Participant to remedy the event or circumstances and to prevent any reoccurrence; and
      3. the availability and effectiveness of any other available measures (such as a recalculation of Prudential Exposure) to mitigate any increased risk.
  13. As far as reasonably practicable, the extent of a suspension should be commensurate with the nature and extent of the matter giving rise to the suspension.
  14. AEMO must notify the Auction Participant before, or as soon as reasonably practicable after, imposing a Trading Halt or varying the extent of the related suspension, specifying:
      1. the reason for the Trading Halt;
      2. the extent of the suspension, including the Auction Capacity in respect of which the suspension applies; and
      3. the commencement time of the Trading Halt.
  15. Except in circumstances where AEMO has issued a termination notice under this Agreement while the Auction Participant is subject to a Trading Halt, AEMO must permit the Auction Participant to resume access to and use of the Auction Platform as soon as reasonably practicable after AEMO is reasonably satisfied that:
      1. the circumstances, acts or omissions giving rise to the Trading Halt no longer apply; or
      2. the circumstances, acts or omissions giving rise to the Trading Halt do not warrant continued suspension, and the Auction Participant has made reasonable arrangements to ensure that similar circumstances, acts or omissions will not reoccur.
  16. AEMO must notify the Auction Participant of the date and time at which a Trading Halt ends.
      + 1. Effect of Trading Halt
  17. During a Trading Halt, AEMO may suspend access to and use of the Auction Platform by the Auction Participant that is subject to the Trading Halt in whole or in part, and AEMO may vary the extent of the suspension at any time having regard to subsequent events or circumstances.
  18. AEMO may withdraw or cancel any bid submitted by the Auction Participant while it is subject to a Trading Halt, whether the bid was submitted before or after the Trading Halt commenced.
  19. The Auction Participant must while it is subject to a Trading Halt continue to perform its obligations under this Agreement (including its obligations with respect to payment).
  20. Default and termination
      1. Default events
  21. Each of the following is a **Default Event** under this Agreement:
      1. the Auction Participant does not pay an amount due for payment by it to AEMO under this Agreement, or fails to comply with a Margin Call in accordance with clause A6.9(c), by the appointed time on the due date;
      2. AEMO does not receive payment in full of any amount claimed by AEMO under any Credit Support in respect of the Auction Participant, within 90 minutes after the due time for payment of that claim;
      3. the Auction Participant admits to the AER that it has breached, or is declared by a court to have breached, the Market Conduct Rules, and AEMO reasonably considers that:
         1. the breach is ongoing and is likely to have a material adverse effect on the Capacity Auction; and
         2. the Auction Participant is unlikely to remedy or remove the circumstances leading to that breach within a reasonable period of time;
      4. the Auction Participant ceases to meet the criteria for registration under the Auction Procedures;
      5. a representation made or repeated or deemed to have been made or repeated by the Auction Participant under clauses A16.2 and A16.3 of this Agreement proves to have been incorrect or misleading in any material respect when made or repeated or deemed to have been made or repeated;
      6. the Auction Participant or its Credit Support Provider ceases or is likely to cease to carry on its business or a substantial part of its business;
      7. the Auction Participant or its Credit Support Provider enters into or takes any action to enter into an arrangement (including a scheme of arrangement), composition or compromise with, or assignment for the benefit of, all or any class of their respective creditors or members, or a moratorium involving any of them;
      8. the Auction Participant or its Credit Support Provider states that it is unable to pay from its own money its debts as and when they fall due for payment;
      9. a receiver or receiver and manager is appointed in respect of any property of the Auction Participant or its Credit Support Provider;
      10. an administrator, provisional liquidator, liquidator, trustee in bankruptcy or person having a similar or analogous function is appointed in respect of the Auction Participant or its Credit Support Provider;
      11. an order is made, or a resolution is passed, for winding up the Auction Participant or its Credit Support Provider;
      12. a notice under section 601AB(3) of the Corporations Act is given to the Auction Participant or its Credit Support Provider, unless the registration of that Auction Participant or Credit Support Provider is reinstated under section 601AH of that Act;
      13. the Auction Participant or its Credit Support Provider dies or is dissolved and the notice of dissolution is not discharged; and
      14. the Auction Participant or its Credit Support Provider is taken to be insolvent or unable to pay its debts under any applicable legislation.
      15. Default Notice
  22. Where a Default Event has occurred in relation to the Auction Participant, AEMO may, in addition to exercising any other rights under this Agreement, issue a Default Notice to the Auction Participant.
  23. A Default Notice issued by AEMO under this Agreement must specify:
      1. the nature of the Default Event; and
      2. the period within which the Auction Participant must remedy the Default Event, being 24 hours unless AEMO considers it reasonable to allow a longer remedy period in all the circumstances.
  24. AEMO must revoke a Default Notice if:
      1. the Default Event is remedied within the time specified in the Default Notice; and
      2. there are no other circumstances which would entitle AEMO to issue a Default Notice.
      3. Consequences of failure to comply with Default Notice

If a Default Event is not remedied by the time specified in the Default Notice, or if AEMO receives notice from the Auction Participant that it is not likely to remedy the Default Event, then AEMO may do any or all of the following:

* 1. give notice to the Auction Participant terminating this Agreement with effect from the date in the notice and publish a statement on its website that the notice has been given and apply the Close-Out procedure under clause A12.4;
  2. if it has not already done so, make a claim upon any Credit Support held in respect of the Auction Participant in accordance with clause A6.6(a);
  3. calculate a provisional Settlement Statement for the Auction Participant in respect of all or any part of its Prudential Exposure and require payment of the amount in the provisional Settlement Statement within 2 Business Days of the issue of that statement;
  4. apply the Auction Participant’s Security Deposit (if any) against any provisional statement amount;
  5. withhold the payment of any amount otherwise due by AEMO to the Auction Participant under this Agreement until the relevant liabilities of the Auction Participant have been finally determined; and
  6. set off any amount payable by AEMO under this Agreement against any other amount payable by the Auction Participant to AEMO under this Agreement or the Exchange Agreement.
     1. Close-Out under this Agreement
  7. If AEMO gives a termination notice to the Auction Participant under clause A12.3(a), termination will take effect from the date specified in the notice.
  8. At the time of giving a termination notice to the Auction Participant under clause A12.3(a), or as soon as reasonably practicable afterwards:
     1. AEMO must give a notice to the Auction Participant that Close-Out will apply to the Auction Participant;
     2. AEMO must determine and notify the Auction Participant of the Auction Agreement Close-Out Amount; and
     3. the Auction Agreement Close-Out Amount is due and payable on the date of termination specified in the notice under clause A12.3(a).
  9. Simultaneous Close-Out under Exchange Agreement
     1. Application of this clause
  10. This clause A13 applies if the Auction Participant is also an Exchange Member.
  11. To the extent that there is any inconsistency between this clause A13 and the Exchange Agreement or any other provision of this Agreement, this clause A13 prevails.
      1. Definitions

In this clause A13:

**Close-Out** means:

* 1. when used as a verb:
     1. in relation to this Agreement, to terminate this Agreement and accelerate the payment of the Auction Agreement Close-Out Amount under clause A12.4; and
     2. in relation to the Exchange Agreement, to give effect to the close out and offset procedure in clause 20.5 or clause 20.6 of the Exchange Agreement where the Auction Participant is the “Defaulting Participant" under that clause, calculate the Exchange Agreement Close-Out Amount in respect of that Auction Participant and the net amount owed to or by the Auction Participant and terminate the Membership Agreement” in respect of the Auction Participant; and
  2. when used as a noun, means the act of Closing-Out and Closed-Out shall be construed accordingly.

**Close-Out Event** means:

* 1. in relation to this Agreement, in relation to the Auction Participant, any event on the basis of which AEMO has the contractual right to Close-Out under clause A12.4; and
  2. in relation to the Exchange Agreement, in relation to the Auction Participant, any event on the basis of which AEMO has the contractual right to Close-Out in relation to the Auction Participant under the Exchange Agreement,

even if there are no transactions outstanding under the relevant agreement at the relevant time.

**Early Termination Date** has the meaning given to it in clause A13.3(a).

**Exchange Agreement Close-Out Amount** means, at any time in relation to the Auction Participant, the amounts determined by AEMO under the Exchange Agreement to be the “Close-Out Amount” for the Auction Participant at that time.

**Final Net Settlement Amount** is defined in clause A13.4(b).

**Termination Notice** has the meaning given to it in clause A13.3(a).

* + 1. Simultaneous Close-Out of this Agreement and Exchange Agreement
  1. If a Close-Out Event has occurred and is continuing in respect of the Auction Participant, AEMO may Close-Out under both this Agreement and the Exchange Agreement by sending to the Auction Participant a notice (**Termination Notice**) specifying the date on which all transactions under both agreements are Closed-Out (the **Early Termination Date**), which date must be no earlier than the day the Termination Notice is deemed to be received under clause A19.2 and no later than the day falling 5 Business Days after that day.
  2. A Termination Notice given in accordance with clause A19 of this Agreement is also taken to satisfy the notice requirements of the Exchange Agreement.
  3. AEMO may not Close-Out only this Agreement, only the Exchange Agreement or only a part of either of them. If AEMO attempts to do so, the exercise of that right will be taken for the purposes of this clause to be effective provision of a Termination Notice initiating Close-Out of both this Agreement and the Exchange Agreement and all transactions under them in their entirety, effective on the designated Early Termination Date.
  4. A Close-Out Event is taken to be continuing until the earlier of such time as the conditions that constituted the Close-Out Event cease to exist or any amount that has become due and payable under this Agreement or the Exchange Agreement as the result of the occurrence of the Close-Out Event has been paid in full.
     1. Effect of Early Termination Date
  5. When Close-Out has been commenced:
     1. AEMO must determine the Auction Agreement Close-Out Amount and the Exchange Agreement Close-Out Amount in each case on the basis that the parties shall be treated as not being entitled to exercise any rights to Credit Support (each a **Settlement Amount**);
     2. each Settlement Amount is due and payable on the Early Termination Date; and
     3. with effect from the Early Termination Date, all further payment obligations under this Agreement and the Exchange Agreement are released (and not merely suspended) and replaced by the single, surviving obligation of one party to pay the other a single Final Net Settlement Amount due from one party to the other in accordance with the provisions of this clause.
  6. If, on the Early Termination Date, a Settlement Amount would be payable:
     1. by one party (the first party) to the other (the second party) under the Exchange Agreement (after allowing for netting as provided for in the Exchange Agreement); and
     2. by the second party to the first party under this Agreement,

then the obligations of AEMO and the Auction Participant respectively to make payment of each such Settlement Amount will be automatically set off such that the obligations are replaced by an obligation upon the party by which the larger amount would otherwise have been payable to pay to the other party the amount by which the larger amount exceeds the smaller amount (the **Final Net Settlement Amount**) on the Early Termination Date.

* 1. If a Settlement Amount has been netted off in whole or in part on the Early Termination Date, such Settlement Amount shall, to the extent of such netting-off, be deemed to have been discharged and no longer due under the relevant agreement that has been Closed-Out.
  2. AEMO must determine the Final Net Settlement Amount due and provide to the Auction Participant a statement showing the calculation of the Final Net Settlement Amount (which may be, at the option of AEMO, provided at the same time and as part of the Termination Notice or by separate notice following the Early Termination Date).
  3. The Final Net Settlement Amount is payable by the party from whom such payment is due on or before the Business Day falling 3 Business Days after the Business Day on which the statement is provided under clause A13.4(d).
  4. The Final Net Settlement Amount must be paid in accordance with the payment instructions provided by AEMO in the statement provided under clause A13.4(d), together with interest on the Final Net Settlement Amount, from (and including) the payment date under clause A13.4(e) to (but excluding) the date the Final Net Settlement Amount is paid, at the Interest Rate.
  5. Dispute resolution
     1. Dispute notice
  6. Subject to clause A14.1(b), if any dispute arises between the parties in connection with this Agreement, the party requiring it to be resolved must promptly give the other party written notice giving details of the dispute.
  7. A dispute subject to determination as a rule dispute (as defined in the National Gas Rules) must be resolved under Part 15C of the National Gas Rules.
     1. Negotiation period
  8. Within 10 Business Days of a party receiving a dispute notice under clause A14.1 or such longer period agreed by the parties, a senior executive of each party with authority to resolve the dispute must meet and, in good faith, attempt to resolve the dispute by negotiation.
  9. If the parties are unable to reach a resolution of the dispute by negotiation within a period of 10 Business Days, then any party may by notice in writing to the other given at any time after the negotiation period, bring the good faith negotiation period to an end.
     1. Urgent relief
  10. Nothing in this Agreement denies any party the right to seek injunctive or declaratory relief from an appropriate court where failure to obtain that relief would cause irreparable damage to the party concerned.
  11. The dispute resolution procedures in this clause do not apply to impair, delay or otherwise prejudice the exercise by a party of its rights under this Agreement (including without limitation any right of termination).
      1. Mediation
  12. The parties may agree to seek to have the dispute resolved by mediation. In that case, within five Business Days of reaching that agreement, the parties must refer the matter to a mutually agreed mediator, or failing agreement to a mediator appointed at the request of any party by the Institute of Arbitrators and Mediators Australia.
  13. The mediation will be conducted in accordance with the procedures determined by the mediator. The mediator must determine who will bear the liability for the mediator’s fees and the disbursements and other costs of the mediation which must be paid accordingly.
  14. Confidentiality
      1. Definition of Confidential Information

Confidential Information means information, of whatever kind, provided to the Auction Participant or to AEMO under or in connection with this Agreement that is, and remains, of a confidential or commercially sensitive nature.

* + 1. Obligations of confidentiality
  1. A party must, in relation to the Confidential Information of the other party:
     1. keep confidential any Confidential Information that comes into the party’s possession or control in the course of performing the party’s obligations or exercising its rights under this Agreement;
     2. not disclose Confidential Information except as permitted or required by this Agreement;
     3. only use or reproduce Confidential Information for the purpose for which it was disclosed or another purpose contemplated by this Agreement; and
     4. not permit, and use all reasonable endeavours to prevent, unauthorised access to Confidential Information.
  2. In respect of Confidential Information that is also protected information within the meaning of section 91G of the National Gas Law, the Auction Participant consents to the disclosure of that Confidential Information by AEMO as permitted or required by this Agreement.
     1. Permitted disclosures

Subject to clause A15.4, clause A15.2 does not prevent:

* 1. the use or disclosure of information that is in the public domain, other than as a result of a breach of clause A15.2 by the person seeking to rely on this provision or breach of an obligation owed to that person under clause A15.4;
  2. the disclosure of information to agents, officers, employees, auditors or professional advisers of the party or a Related Body Corporate for the purposes of this Agreement or for obtaining advice about the application of this Agreement;
  3. the use or disclosure of Confidential Information with the consent of the person to whom the duty of confidentiality is owed;
  4. the use or disclosure of information as required by law or a lawful requirement imposed by any Authority or any recognised stock exchange;
  5. the use or disclosure of information for the purposes of legal proceedings (including dispute resolution processes under this Agreement, arbitration proceedings, proceedings when an expert determination of a disputed question, or proceedings by way of mediation or some other alternative dispute resolution mechanism);
  6. the use or disclosure of information to protect the safety of any person or property;
  7. the use or disclosure of information reasonably required in connection with the party’s financing arrangements, investment in the party or a disposal of the party’s assets;
  8. the disclosure of information to the AER, the AEMC, the Australian Competition and Consumer Commission or the Australian Securities and Investments Commission or another regulatory body having jurisdiction over the party;
  9. the use or disclosure of information as required or authorised by or under the National Gas Law or the National Gas Rules;
  10. the use or disclosure of information of a historical nature that does not identify the person to whom it relates, for the preparation of a report under this Agreement; or
  11. the use or disclosure of information in an aggregated or other form in which its confidential aspects cannot be identified.
      1. Conditions of disclosure

* 1. A party proposing to disclose Confidential Information under clauses A15.3 (d), (e), (f), (h) or (i) must, where it is reasonably practicable to do so, inform the person to whom disclosure is proposed of the confidentiality of the information.
  2. A party proposing to disclose Confidential Information under clauses A15.3 (b) or (g) must ensure that the person to whom disclosure is proposed is subject to binding obligations:
     1. to keep the information confidential and not to further disclose it;
     2. not to use or reproduce the information for a purpose other than that for which it was disclosed; and
     3. to take all reasonable steps to prevent unauthorised access to the information.
  3. Representations
     1. AEMO

AEMO makes the representations in clause A16.3 (excluding clauses A16.3 (f), (j), (k) and (l)) to the Auction Participant at the time this Agreement is entered into.

* + 1. Auction Participant

The Auction Participant makes the representations in clause A16.3 to AEMO at the time it enters into this Agreement. Each representation is deemed to be repeated by the Auction Participant on each date that the Auction Participant submits a bid in the Capacity Auction.

* + 1. Representations

AEMO represents in accordance with and subject to clause A16.1, and the Auction Participant represents in accordance with clause A16.2 that:

* 1. it is duly organised and validly existing under the laws of the jurisdiction of its organisation or incorporation (and, if relevant under those laws, in good standing);
  2. it has the power to execute the Formal Instrument and any other documentation relating to the Formal Instrument to which it is a party, to deliver the Formal Instrument and any other document relating to the Formal Instrument that it is required by this Agreement to deliver and to perform its obligations under this Agreement and has taken all necessary action to authorise that execution, delivery and performance;
  3. the execution, delivery and performance of the Formal Instrument and the performance of this Agreement do not violate or conflict with any law applicable to it, any provision of its constitutional documents, any order or judgment of any court or agency of government applicable to it or any of its assets or any contractual restriction binding on or affecting it or any of its assets;
  4. all governmental and other licences, authorisations, permits, consents and other approvals (if any) that are required to enable the party to fulfil any of its obligations under this Agreement have been obtained and are in full force and effect and all conditions of any required authorisations have been complied with;
  5. its obligations under this Agreement constitute its legal, valid and binding obligations, enforceable in accordance with their respective terms subject to applicable bankruptcy, insolvency, reorganisation, moratorium or similar laws affecting creditors’ rights generally and subject as to enforceability to equitable principles of general application (regardless of whether enforcement is sought in a proceeding in equity or at law);
  6. in the case of Auction Participant, no Default Event, or event which with notice and/or lapse of time would constitute a Default Event, has occurred with respect to it and is continuing and no such event or circumstance would occur as a result of it entering into or performing its obligations under this Agreement;
  7. no litigation, arbitration or administrative suit or proceeding at law or in equity or before any court, tribunal, governmental body, agency, official or arbitrator is pending or so far as it is aware, threatened against it which would, if adversely determined, result in a material adverse change in its financial condition or its ability to perform its obligations under this Agreement, or that is likely to affect the legality, validity or enforceability against it of this Agreement or its ability to perform its obligations under this Agreement;
  8. it has entered into and executed this Agreement as principal (and not as agent or in any other capacity, fiduciary or otherwise) (except that if the party is both an Appointing Participant and an Agent Participant, then this representation is only given by the party in its capacity as Appointing Participant);
  9. except in the case of fraudulent misrepresentation, it is not relying upon any oral or written representation, warranty or other assurance of any party other than expressly provided for or referred to in this Agreement;
  10. in the case of the Auction Participant, it has carried out all investigations it considers relevant to assess the risks associated with participation in the Auction Platform and use of information provided through the Auction Platform and the suitability of any Auction Capacity or information for its purposes and has entered into this Agreement with the full understanding of the material terms and risks of this Agreement and it is capable of assuming those risks;
  11. in the case of the Auction Participant, AEMO is not acting as a fiduciary or an adviser for the party, nor has AEMO given to it any advice, representation, assurance or guarantee as to the expected performance, benefit or result of this Agreement, any Auction Capacity, any Auction Service, any information provided through the Auction Platform or otherwise in relation to or in connection with this Agreement, or any transaction or arrangement contemplated under this Agreement; and
  12. in the case of an Appointing Participant, it has authorised and will ratify all acts and omissions of its Agent Participant as agent for the Appointing Participant under or in connection with this Agreement.
      1. Exclusion of implied terms
  13. To the maximum extent permitted by law and except in the case of fraud or as otherwise expressly provided in this Agreement:
      1. all terms, conditions, warranties or statements (whether express, implied, written, oral, collateral, statutory or otherwise) which would be implied or incorporated into this Agreement as having been given by a party in favour of any other party (**implied terms**) are excluded;
      2. each party disclaims all liability in relation to any implied terms; and
      3. each party waives all rights and remedies which might otherwise be available to that party in relation to any implied terms.
  14. AEMO makes no representation and gives no warranty as to the accuracy, suitability or fitness for purpose of the Auction Platform, any Auction Capacity, any information provided through the Auction Platform and none of the Auction Platform, any Auction Capacity or the information provided purports to be suitable for the Auction Participant’s business objectives, financial situation or needs.
      1. Acknowledgements regarding Disclosed Information

Without limiting the generality of clauses A16.1 to A16.4, the Auction Participant acknowledges, in respect of this Agreement and the Capacity Auction, the following:

* 1. the Disclosed Information does not constitute an invitation, offer or recommendation by or on behalf of AEMO;
  2. the purpose of the Disclosed Information is to provide the Auction Participant with information to assist it in making decisions regarding bidding in the Capacity Auction;
  3. the Disclosed Information does not purport to contain all of the information that the Auction Participant requires for the purpose of making decisions regarding bidding for Auction Capacity in the Capacity Auction, and does not purport to have been prepared having regard to the Auction Participant’s business objectives, financial situation or particular needs;
  4. neither AEMO, nor any person acting on behalf of or associated with AEMO, makes any representation or warranty either express or implied as to the accuracy, reliability or completeness of the Disclosed Information;
  5. the Auction Participant will not rely in any way on the Disclosed Information or on the skill or judgement of AEMO or any person acting on behalf of or associated with AEMO and will rely absolutely on its own opinion and professional advice based on its own independent analysis, assessment, investigation and appraisal in making decisions regarding bidding in the Capacity Auction; and
  6. the Auction Participant will carry out all investigations it considers relevant and will examine and acquaint itself concerning:
     1. the contents, correctness and sufficiency of the Disclosed Information; and
     2. any other information which it considers relevant to the risks, contingencies and other circumstances which could affect the Auction Capacity and the Auction Participant’s decisions regarding bidding in the Capacity Auction.
  7. Liability
     1. Liability of AEMO

To the maximum extent permitted by law, AEMO is not liable to the Auction Participant for any act or omission (including any act or omission amounting to a breach of this Agreement or breach of statute or any negligent act or omission) under or in connection with this Agreement or any Capacity Auction whether arising in contract, tort (including negligence), breach of duty or on any other ground unless the act or omission was done or made in bad faith, within the meaning of section 91K of the National Gas Law.

* + 1. Interruption of Auction Platform

Without limiting clause A17.1, AEMO is not liable to the Auction Participant in respect of any interruption, failure, shutdown or malfunction of equipment or systems affecting the Auction Platform or any part of the Auction Platform, unless caused by AEMO’s failure to take reasonable steps to mitigate against those risks.

* + 1. Indemnity in relation to third party DWGM transfers

The Auction Participant must indemnify AEMO and keep it indemnified against any liability, claim, cost or expense (including legal expense) whether arising in contract, tort (including negligence), breach of duty or on any other ground suffered or incurred by AEMO in connection with the nomination by the Auction Participant of a person as Nominated DWGM participant in connection with a DWGM transfer (as defined in clause 20), except to the extent that the liability, claim, cost or expense is due to an act or omission of AEMO done or made in bad faith, within the meaning of section 91K of the National Gas Law.

* + 1. Recoverable losses

* 1. The liability of a party to any other party for any act or omission (including any act or omission amounting to a breach of this Agreement or a breach of statute or any negligent act or omission) under or in connection with this Agreement or the Capacity Auction is limited to the recovery by that party of Direct Loss less any amount of Excluded Loss relating to that other party in respect of that act or omission.
  2. No party is liable to any other party under or in connection with this Agreement or the Capacity Auction in any circumstances for any amount in respect of or comprising Consequential Loss however arising (including, without limitation, at law, in equity or pursuant to statute) and all such liability is excluded.
  3. Clauses A17.4(a) and A17.4(b) apply:
     1. to limit or exclude liability to the maximum extent permitted by law;
     2. subject to clause A17.6;
     3. subject to any provision which provides for an exclusive remedy in respect of the act or omission; and
     4. without prejudice and subject to clauses A17.1 and A17.2.
     5. Definitions

In this clause:

* 1. **Direct Loss** means any loss, damage, cost, liability or expense (however incurred) but excludes any Consequential Loss.
  2. **Consequential Loss** means any:
     1. indirect loss, damage, cost, liability or expense;
     2. special, indirect, consequential, incidental or punitive damages;
     3. damages for economic loss, loss of profits, loss of opportunity, loss of market, loss of contract, loss of revenue, goodwill, bargain, anticipated savings or loss or corruption of data,

whether arising in contract, tort (including negligence), under statute or otherwise, whether or not such loss or damage was foreseeable and even if advised of the possibility of the loss or damage.

* 1. **Excluded Loss** means loss or damage suffered or incurred by a party to this Agreement as a result of, or to the extent contributed to by, any act or omission by that party, its Related Bodies Corporate or any of their officers, employees, agents, consultants or subcontractors.
     1. Carve-outs

The limitations and exclusions in this clause A17 do not apply to limit or exclude any liability:

* 1. for payments required to be made under this Agreement;
  2. under any indemnity given under this Agreement in favour of AEMO including the indemnity in clause A17.3;
  3. under the National Gas Law or the National Gas Rules in respect of any breach of the Market Conduct Rules; or
  4. arising from any fraudulent act or omission.
     1. Australian Consumer Law
  5. Pursuant to section 64A of the Australian Consumer Law (being Schedule 2 to the *Competition and Consumer Act 2010* (Cth)) this clause applies in respect of obligations to supply goods or services under this Agreement which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, except to the extent that the recipient of the goods or services establishes that reliance on this clause would not be fair and reasonable.
  6. This clause A17.7 prevails over the preceding provisions of this clause A17.
  7. Liability for a failure to comply with a guarantee imposed by the Australian Consumer Law:
     1. is limited in the case of goods (other than a guarantee under section 51, 52 or 53) to any one of the following as determined by the seller of the goods:
        1. the replacement of the goods or the supply of equivalent goods;
        2. the repair of the goods;
        3. the payment of the cost of replacing the goods or acquiring equivalent goods; or
        4. the payment of the cost of having the goods repaired; and
     2. is limited in the case of services, to any one of the following as determined by the supplier of the services:
        1. the supply of the services again; or
        2. the payment of the cost of having the services supplied again.
  8. Force Majeure
     1. Definition of Force Majeure
  9. Subject to this clause A18.1, **Force Majeure** means any event or circumstance (or combination of events and/or circumstances) the occurrence of which is beyond the reasonable control of the party seeking to rely on it (acting and having acted in accordance with Good Gas Industry Practice (as defined in the Auction Procedures) and in relation to AEMO, includes any event or circumstance by reason of which the Capacity Auction is delayed, suspended or cancelled.
  10. The act or omission of any agent or contractor of a party is not Force Majeure unless such act or omission is caused by or results from events and/or circumstances which would be Force Majeure if that person were the Affected Party (as defined in clause A18.2(a)).
  11. Force Majeure does not include events or circumstances such as loss of a party’s markets, a party’s inability to economically use or resell energy products or a party’s inability to procure contracts for Auction Services.
      1. Effect of Force Majeure
  12. If a party (**Affected Party**) is prevented or hindered by Force Majeure from complying with its obligations under this Agreement (other than an obligation referred to in clause A18.2(b)) then the obligations of the Affected Party are suspended during the period and to the extent that those circumstances continue to prevent or hinder that party from complying with its obligations.
  13. Force Majeure cannot be claimed in respect of, and does not excuse non-performance of, and does not suspend, any obligation with respect to:
      1. payment of any money; or
      2. providing or replacing Credit Support.
      3. Notice requirements

* 1. If the Affected Party is the Auction Participant, the Auction Participant must give prompt written notice to AEMO of the occurrence of the event or circumstance of Force Majeure, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement.
  2. The Auction Participant must:
     1. as soon as reasonably practicable, provide any additional information reasonably requested by AEMO in respect of the event or circumstance of Force Majeure;
     2. use its reasonable endeavours to remove or overcome the event or circumstance of Force Majeure; and
     3. give notice to AEMO of the cessation of the event or circumstance of Force Majeure.
  3. If the Affected Party is AEMO, AEMO must:
     1. promptly publish on its website as much information as is reasonably practicable about the event or circumstance giving of Force Majeure, the expected duration of that event or circumstance and the cessation of that event or circumstance; and
     2. use its reasonable endeavours to remove or overcome the event or circumstance of Force Majeure.
     3. Resumption of performance

An Affected Party must resume the performance of any obligation which it was unable to fulfil as a result of Force Majeure as soon as reasonably practicable after the Force Majeure ends.

* 1. Notices, communications and publication
     1. Communication through the Auction Platform

Where this Agreement requires any information, submission or notice to be communicated:

* 1. by AEMO to the Auction Participant; or
  2. by the Auction Participant to AEMO,

and the functionality of the Auction Platform allows for that communication to be made using the Auction Platform, the relevant party must use the Auction Platform for that communication, unless otherwise specified in the Auction Interface Protocol (as defined in the Auction Procedures) or (for a communication to be made by the Auction Participant) agreed by AEMO.

* + 1. Other notices
  1. A notice in connection with this Agreement which is not able to be communicated through the Auction Platform must be:
     1. in writing in English;
     2. signed by the party or its agent.
  2. A notice in connection with this Agreement which is not able to be communicated through the Auction Platform may be given to the recipient either by hand delivery, pre-paid registered mail, or email, in each case addressed to the address for notices of the recipient specified in the Formal Instrument.
  3. Where two or more persons comprise a party, notice to or by one of those persons is effective notice to and by all of them.
  4. Proof of delivery by pre-paid registered mail of a notice in accordance with this clause is proof of receipt of such notice on the day it is delivered.
  5. Unless proved to the contrary, proof of transmission by email of a notice in accordance with this clause is proof of receipt on the date of transmission, but if a transmission is not made on a Business Day or not made before 4.00pm, then it is proof of receipt at 10.00am on the next Business Day after transmission.
  6. Miscellaneous
     1. Assignment and subcontracting
  7. AEMO may subcontract the performance of all or any part of its obligations under this Agreement. In connection with any such subcontracting, AEMO may disclose Confidential Information to the subcontractor provided that AEMO procures that the subcontractor agrees to maintain the confidentiality of that information on terms no less onerous than the terms of this Agreement.
  8. AEMO may assign its rights and novate its obligations under this Agreement to a person appointed by AEMO to operate all or part of the Auction Platform, subject to the requirements of the National Gas Rules, by giving prior notice of that assignment and novation to the Auction Participant.
  9. For the purposes of giving effect to that assignment and novation under clause A20.1(b), by this clause, the Auction Participant consents to such assignment and novation provided that the incoming operator undertakes to the Auction Participant to assume the obligations of AEMO accrued and not discharged prior to the date that the assignment and novation takes effect.
  10. The Auction Participant must not assign or novate its rights or obligations under this Agreement. Any purported assignment or novation in breach of this clause is void.
      1. Auction Platform terms of use
  11. All Intellectual Property Rights in the Auction Platform and the content and layout of the Auction Platform are owned by AEMO or its licensors and are subject to copyright.
  12. Any database comprised in the Auction Platform is Confidential Information of AEMO (but without prejudice to the application of clause A15 in respect of Confidential Information of the Auction Participant contained in a database).
  13. The terms of use for the Auction Platform in Division 4 of the Procedures apply in this Agreement.
      1. Waiver
  14. A party waives a right under this Agreement only by written notice that it waives that right. A waiver is limited to a right of the party giving the waiver and the specific instance to which it relates and to the specific purpose for which it is given.
  15. No failure, or delay, in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
      1. Severance

If any provision of this Agreement is or becomes invalid, unenforceable or illegal or is declared to be invalid, unenforceable or illegal by any court of competent jurisdiction, such invalidity, unenforceability or illegality shall not prejudice or affect the remaining provisions of this Agreement which shall continue in full force and effect.

* + 1. Entire agreement

This Agreement records the entire agreement between the parties as to its subject matter. It supersedes all prior contracts, obligations, representations, conduct and understandings.

* + 1. Governing law
  1. The laws of Queensland govern this Agreement. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Queensland.
  2. Each party irrevocably waives any objection to the venue of any legal process on the basis that the process has been brought in an inconvenient forum.
  3. Each party irrevocably waives any immunity in respect of its obligations under this document that it may acquire from the jurisdiction of any court or any legal process for any reason including the service of notice, attachment before judgment, attachment in aid of execution or execution.
     1. Relationship of the parties

Nothing in this Agreement is to be treated as creating a partnership or trust and except as specifically provided in this Agreement no party may act as agent of a party or in any way bind another party to any obligation.

* + 1. Costs
  1. A party will bear its own costs in relation to the preparation and execution of this Agreement and any further document required.
  2. The Auction Participant will be responsible for all costs and expenses incurred by it in connection with the Capacity Auction. AEMO will not be liable on any grounds whatsoever for costs and expenses incurred by the Auction Participant in the conduct of due diligence in relation to Auction Capacity, Auction Services or the Capacity Auction, making decisions regarding bidding for Auction Capacity in the Capacity Auction or in any other way in connection with the Capacity Auction.
  3. All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Agreement and any instrument executed under this Agreement must be borne by the Auction Participant.
     1. Further assurances

Each party must do all things reasonably required to facilitate the performance of this Agreement.

* + 1. Indemnities

Unless expressly provided otherwise:

* 1. any indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties, and survives termination, completion or expiration of this Agreement;
  2. it is not necessary for a party to incur expense or make any payment before enforcing a right of indemnity conferred by this Agreement; and
  3. the making of a claim by a party under an indemnity contained in this Agreement in respect of a particular event does not preclude that party from subsequently making further claims under that indemnity in respect of any further loss arising out of the same event for which it has not previously been indemnified.

- End of Auction Agreement Standard Terms -