

# NCESS Contract (Minimum Demand)

**[For Registered Facilities, or Facilities that will be required to register and that will receive energy payments]**

**Australian Energy Market Operator Limited**

and

**##**

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

# Table of Contents

<b>1.</b>	<b>Interpretation</b>	<b>4</b>
<b>2.</b>	<b>Contract Term</b>	<b>7</b>
<b>3.</b>	<b>Condition Precedent</b>	<b>8</b>
<b>4.</b>	<b>Service</b>	<b>9</b>
<b>5.</b>	<b>Availability</b>	<b>10</b>
<b>6.</b>	<b>Measurement and verification</b>	<b>11</b>
<b>7.</b>	<b>Modifications to Registered Service Equipment</b>	<b>11</b>
<b>8.</b>	<b>GPS Test and Service Test</b>	<b>11</b>
<b>9.</b>	<b>Payment and settlement</b>	<b>12</b>
<b>10.</b>	<b>Liability</b>	<b>12</b>
<b>11.</b>	<b>Termination</b>	<b>13</b>
<b>12.</b>	<b>Dispute resolution</b>	<b>14</b>
<b>13.</b>	<b>Representations and warranties</b>	<b>14</b>
<b>14.</b>	<b>General</b>	<b>14</b>
	<b>Schedule 1 – Conditions Precedent</b>	<b>19</b>
	<b>Schedule 2 – Progress Report</b>	<b>21</b>
	<b>Schedule 3 – Service</b>	<b>22</b>
	<b>Schedule 4 – Baseline Quantity calculation methodology</b>	<b>23</b>
	<b>Schedule 5 – Operational Contact Persons</b>	<b>24</b>

## Contract Details

<b>Parties</b>	<b>AEMO</b> Australian Energy Market Operator Limited (ABN 94 072 010 327) Level 22, 530 Collins Street, Melbourne VIC 3000
	<b>Service Provider</b> ##
<b>Commencement Date</b>	1 October 2023 or the date when all Conditions Precedent are satisfied or waived in accordance with <b>clause 3.3</b> (whichever is later)
<b>End Date</b>	1 October 2024
<b>Registered Service Equipment</b>	<b>Type</b> <input type="checkbox"/> <i>Non-Intermittent Generating System</i> <input type="checkbox"/> <i>Electric Storage Resource</i> <b>Status</b> <input type="checkbox"/> <i>Registered Facility</i> <input type="checkbox"/> <i>New Facility</i>
<b>Service</b>	Minimum Demand Service
<b>Maximum Service Quantity</b>	## MW

<b>Address for Service</b>	<b>AEMO</b>
	Attention: Manager – WA Future System & Design Email: toby.price@aemo.com.au Cc: Attention: General Counsel Address: GPO Box 2008, Melbourne VIC 3001 Email: reception.melbourne@aemo.com.au
	<b>Service Provider</b>
	Attention: ##
	Address: ##
	Email: ##
	Cc:
	Email: ##

## Recitals

- A AEMO's functions under the *WEM Regulations* and the *WEM Rules* relevantly include:
- ensuring the *SWIS* operates in a secure and reliable manner; and
  - procuring, scheduling and dispatching *Non-Co-optimised Essential System Services* in accordance with the *WEM Rules*.
- B AEMO and the Service Provider have agreed to enter into this *NCESS Contract*.

## Operative Provisions

### 1. Interpretation

---

#### 1.1. Definitions – general

- (a) Subject to **clause 1.1(b)**, capitalised terms used in this Contract are defined in **clause 1.2**.
- (b) Terms in capitalised-italics have the meaning given in the *WEM Rules* (including Appendix 12) effective as at the *New WEM Commencement Day*.

#### 1.2. Dictionary

**Actual Service Quantity** (measured in MW per *Dispatch Interval*), is the minimum of zero and the Interval Meter Data (converted to MW) less the Baseline Quantity.

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

**Availability Payment** means the availability payment for the Minimum Demand Service determined under **clause 9.2**.

**Availability Price** means the availability price specified in **Schedule 3**.

**Available**, in relation to the Service, means the Registered Service Equipment is (or under this Contract is taken to be) capable of increasing *Withdrawal* by the Maximum Service Quantity (relative to the Baseline Quantity).

**Baseline Quantity**, for the relevant service, means the quantity (calculated in **Schedule 4**) from which the Maximum Service Quantity provided in a *Dispatch Interval* is measured.

**Commencement Date** means the commencement date specified in the **Contract Details**.

**Condition Precedent** means a condition precedent specified in **Schedule 1**.

**Condition Precedent Satisfaction Date**, in relation to a Condition Precedent, means a condition precedent satisfaction date specified in **Schedule 1**.

**Connection Point** has the meaning given in the Electricity Industry (Metering) Code 2012.

**Contract Term** means the period specified in **clause 2**.

**Designated Connection Point** has the meaning given in **Schedule 3**.

**End Date** means the end date specified in the **Contract Details**.

**Energy Legislation** means:

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

**Good Electricity Industry Practice** means the exercise of the degree of skill, diligence, prudence and foresight that a skilled and experienced person would reasonably and ordinarily exercise under comparable conditions and circumstances, consistent with applicable written laws and statutory instruments and applicable recognised codes, standards and guidelines.

**GPS Test**, in relation to the Minimum Demand Service where the Registered Service Equipment includes an *Electric Storage Resource*, means a test of its ability to comply with the *Registered Generator Performance Standards* when the *Generating System* is charging.

**Insolvency Event**, in relation to a party, means the happening of any of these events:

- (a) it is (or states that it is) insolvent or under administration; or
- (b) it has a controller (as defined in the Corporations Act 2001 (Cth)) appointed, is in liquidation, in provisional liquidation, under administration, wound up or has had a receiver (or receiver and manager) appointed to any part of its property;
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that party, which is preparatory to or could result in any of the events detailed in **paragraphs (a), (b) or (c)**;
- (e) it is otherwise unable to pay its debts when they fall due; or
- (f) something having a substantially similar effect to the events detailed in **paragraphs (a) to (e)** happens in connection with that party under the law of any jurisdiction.

**Interval Meter Data**, in relation to each Designated Connection Point, means data from an interval meter provided by the *Metering Data Agent* for each *Trading Interval*.

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

**Maximum NCESS Contract Amount** means the maximum Availability Payments that would be payable to the Service Provider, assuming that the Service is available during each *Dispatch Interval* in the Service Period of the Contract Term.

**Maximum Service Quantity**, in relation to the Minimum Demand Service, means the MW quantity required to be provided and measured by reference to the relevant Baseline Quantity, and specified in the **Contract Details** (as adjusted under **clause 3.6** or **clause 11.4**, if applicable).

**Minimum Demand Service** means a service (measured in MW of response capability) to increase *Withdrawal*.

**NCESS Payment**, in relation to a Settlement Period, has the meaning given in **clause 9.1(b)**.

**New Facility**, in relation to the Registered Service Equipment, means that the Registered Service Equipment is designated as a new *Facility* in the **Contract Details**.

**NMI** (short for "National Metering Identifier"), in relation to a Connection Point, means the identifier or code for that Connection Point.

**Operational Contact Person** means AEMO's Operational Contact Person or the Service Provider's Operational Contact Person, as applicable, as specified in **Schedule 5**.

**Registered Service Equipment** means the *Registered Facility* or *Facility* that is required to be registered under the *WEM Rules* for the purposes of this Contract.

**Representative**, in relation to a party, means any officer, employee, agent, adviser, trustee, permitted assignee, liquidator, administrator, or third-party contractor of that party or of a related body corporate (as that term is defined in the Corporations Act 2001 (Cth)) of that party.

**Service** means the Minimum Demand Service as specified in the **Contract Details**.

**Service Period** means the availability period for the Minimum Demand Service determined under **clause 4.5**.

**Service Test**, in relation to the Registered Service Equipment, means a test of its ability to provide the Service for the purposes of this Contract.

**Settlement Period** means a *Trading Week*, provided that:

- (a) the first Settlement Period commences on the Commencement Date; and
- (b) the last Settlement Period ends on the End Date.

**Unavailable**, in relation to the Service, means the Registered Service Equipment is (under **clause 5.2** or **clause 8.2(b)**) not taken to be capable of increasing *Withdrawal* by the Maximum Service Quantity (relative to the Baseline Quantity).

## 1.2. Interpretation

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

- (a) **this Contract** includes any schedules, attachments and annexures;
- (b) a document (including this Contract) includes the document as novated, varied, or replaced, and despite any change in the identity of the parties;
- (c) a clause, paragraph, schedule, or annexure is a reference to a clause, paragraph, schedule, or annexure to this Contract;
- (d) a clause is a reference to all its subclauses;
- (e) Legislation includes subordinate legislation and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them;

- (f) the singular includes the plural and vice versa, and a gender includes all genders;
- (g) the word “person” includes a firm, a body corporate, a partnership, joint venture, trust, an unincorporated association, any Authority and any successor entity to those persons;
- (h) the words “includes” or “including” or “such as” are not words of limitation, and when introducing an example, do not limit the meaning of the words to which the example relates or to examples of a similar kind;
- (i) a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (j) a party includes, where the context requires it, that person’s directors, officers, employees, contractors, agents and any other persons authorised by that party;
- (k) a thing (including an amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively, and to each of them individually;
- (l) writing includes any mode of representing or reproducing words in tangible and permanently visible form;
- (m) a month is a reference to a calendar month;
- (n) a day is a reference to a period of time commencing at midnight and ending at the following midnight; and
- (o) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day and, if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day.

### 1.3. Construction

- (a) Headings are inserted for convenience, and do not affect the interpretation of this Contract.
- (b) If a word or phrase is defined in this Contract, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (c) No rule of construction applies to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.
- (d) An agreement, representation or warranty:
  - (i) in favour of two or more persons is for the benefit of them jointly and each of them severally; and
  - (ii) by two or more persons binds them jointly and each of them severally.

### 1.4. Schedules

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

### 1.5. *WEM Rules* prevail

If there is any inconsistency between this Contract and the *WEM Rules* with respect to a party’s obligation or other term of this Contract, the *WEM Rules* prevail to the extent of the inconsistency.

## 2. Contract Term

---

### 2.1. Commencement Date

This Contract commences at 8.00 am on the Commencement Date.

## 2.2. End Date

This Contract ends at 8.00 am on the End Date (unless terminated earlier under **clause 11**).

## 3. Condition Precedent

---

### 3.1. Condition Precedent

This Contract (other than this **clause 3** and **clause 1** (Interpretation), **clause 12** (Dispute resolution), **clause 13** (Representations and warranties) and **clause 14** (General)) has no legal effect unless and until all Conditions Precedent are satisfied or waived in accordance with **clause 3.3**.

### 3.2. Responsibility for satisfying Conditions Precedent

The Service Provider must:

- (a) use reasonable endeavours to satisfy each Condition Precedent as soon as practicable and, in any event, must satisfy each Condition Precedent by the Condition Precedent Satisfaction Date;
- (b) keep AEMO informed regarding the status of each Condition Precedent, including by providing information in accordance with **Schedule 2** and as otherwise reasonably requested by AEMO; and
- (c) notify AEMO in writing promptly if the Service Provider reasonably considers that a Condition Precedent is unlikely to be satisfied by the Condition Precedent Satisfaction Date.

### 3.3. Extension and waiver

Each Condition Precedent is for AEMO's benefit. AEMO (in its sole discretion) may extend a Condition Precedent Satisfaction Date to a date on or before 1 April 2024, or waive the non-satisfaction of a Condition Precedent, by notifying the Service Provider to that effect in writing.

### 3.4. Termination for non-satisfaction of Condition Precedent

AEMO may terminate this Contract if a Condition Precedent is not satisfied by the Condition Precedent Satisfaction Date, and AEMO (in its sole discretion) does not:

- (a) extend the Condition Precedent Satisfaction Date; or
- (b) waive the non-satisfaction of the Condition Precedent under **clause 3.3**.

### 3.5. Consequences of termination

If AEMO terminates this Contract under **clause 3.4**, **clause 11.3** applies with respect to the termination.

### 3.6. Alternative to termination

- (a) AEMO (as an alternative to termination under **clause 3.4**) may, by notice to the Service Provider, reduce the relevant Maximum Service Quantity to a quantity AEMO reasonably expects the Service Provider to be capable of providing, having regard to all relevant information available to AEMO, including information provided by the Service Provider in accordance with **Schedule 2**.
- (b) If the Maximum Service Quantity is reduced under **clause 3.6(a)**:
  - (i) the Service Provider may, by notice in writing, request AEMO to increase the relevant Maximum Service Quantity to a quantity up to but not exceeding the Maximum Service Quantity specified in the **Contract Details**; and
  - (ii) AEMO must increase the relevant Maximum Service Quantity to a quantity (up to but not exceeding the Maximum Service Quantity specified in the **Contract Details**) that AEMO reasonably expects the Service Provider to be capable of providing, having regard to all relevant information available to AEMO.



## 4. Service

---

### 4.1. Service obligations

On and from the Commencement Date, the Service Provider must:

- (a) operate and maintain the Registered Service Equipment in accordance with Good Electricity Industry Practice; and
- (b) ensure that each *Real-Time Market Submission* or *Standing Real-Time Market Submission* for the Registered Service Equipment and for each *Dispatch Interval* in the Service Period includes (except to the extent the Registered Service Equipment is subject to a *Planned Outage* or *Forced Outage* in the *Dispatch Interval*) an offer quantity for *Withdrawal* greater than or equal to the sum of the Maximum Service Quantity and the Baseline Quantity.

### 4.2. Essential System Services

To avoid doubt, this Contract does not prevent the Service Provider from offering a *Frequency Co-optimised Essential System Service* quantity that includes the Maximum Service Quantity in a *Real-Time Market Submission* or a *Standing Real-Time Market Submission*, provided the Service Provider complies with **clause 4.1**.

### 4.3. Additional obligations for *Electric Storage Resource* for Minimum Demand Service

This **clause 4.3** applies with respect to the Minimum Demand Service where the Registered Service Equipment includes an *Electric Storage Resource*. The Registered Service Equipment must continue to meet its *Generator Performance Standards* for its *Generating System* (when charging) for all *Technical Requirements*. AEMO may require the Service Provider to demonstrate the *Generating System* complies with the *Generator Performance Standards* when charging. The test must be completed at a time and in a manner reasonably specified by AEMO. AEMO and the Service Provider must follow the process in the *WEM Procedure* specified in clause 3A.9.1 of the *WEM Rules*.

### 4.4. Information request

- (a) AEMO (acting reasonably) may request information from the Service Provider's Operational Contact Person regarding the Registered Service Equipment or the Service at any time during the Contract Term.
- (b) The Service Provider must provide requested information without undue delay.

### 4.5. Service Period

The Service Period for the Minimum Demand Service is the 8 *Trading Intervals* between 10.00am and 2:00pm on a *Trading Day*. AEMO may modify the 8 *Trading Intervals* for a *Trading Day* to any 8 consecutive *Trading Intervals* between 9.00 am and 3.00 pm by notifying the Service Provider by 6.00 pm on the *Scheduling Day* for that *Trading Day*.

### 4.6. Material change notification by Service Provider

The Service Provider must notify AEMO's Operational Contact Person without undue delay if:

- (a) There are any material changes during the Contract Term with respect to:
  - (i) the Registered Service Equipment; or
  - (ii) a Designated Connection Point (including NMI details); or
- (b) an Insolvency Event occurs in relation to the Service Provider.

## 5. Availability

---

### 5.1. Determining Availability

The Service is taken to be Available in any *Dispatch Interval* during the Service Period (including when subject to a *Planned Outage*) unless it is Unavailable under **clause 5.2** or **clause 8.2(b)**.

### 5.2. Unavailable

The Service is Unavailable in any *Dispatch Interval* during the Service Period (except to the extent the Registered Service Equipment is subject to a *Planned Outage* in the *Dispatch Interval*) if:

- (a) a Condition Precedent is not satisfied and AEMO (in its sole discretion) does not waive non-satisfaction of the Condition Precedent under **clause 3.3**;
- (b) the Service Provider's *Real-Time Market Submission* or *Standing Real-Time Market Submission* for the Registered Service Equipment and for the *Dispatch Interval* is not in accordance with **clause 4.1(b)**;
- (c) **clause 5.3** applies;
- (d) the Registered Service Equipment is or continues to be subject to a *Forced Outage* in the *Dispatch Interval* that prevents the Registered Service Equipment from providing the Service;
- (e) the Registered Service Equipment is subject to a *Commissioning Test Plan* in the *Dispatch Interval*;
- (f) (with respect to any difference between a *Dispatch Instruction* quantity and the relevant Maximum Service Quantity for a *Dispatch Interval*) AEMO identifies from available data that the Registered Service Equipment would have been unable to comply with the Service Provider's *Real-Time Market Submission* or *Standing Real-Time Market Submission* for the Registered Service Equipment for the *Dispatch Interval*; or
- (g) the Registered Service Equipment does not comply with a *Rectification Plan* referred to in **clause 8.1** with respect to the *Registered Generator Performance Standards* when the *Generating System* is charging.

### 5.3. Unavailable – *Dispatch Instruction*

Subject to **clause 5.4**, the Registered Service Equipment is Unavailable for the purposes of **clause 5.2** (with respect to the *Dispatch Instruction* for the Registered Service Equipment and the *Dispatch Interval*) if:

- (a) both of the following apply:
  - (iii) the *Dispatch Target* or *Dispatch Cap*, as applicable, is less than or equal to the sum of the Maximum Service Quantity and the Baseline Quantity; and
  - (iv) the Registered Service Equipment is not operating within the applicable *Tolerance Range* or *Facility Tolerance Range* for that *Dispatch Instruction* at the end of the *Dispatch Interval*; or
- (b) both of the following apply:
  - (i) the *Dispatch Target* or *Dispatch Cap*, as applicable, is greater than the sum of the Maximum Service Quantity and the Baseline Quantity; and
  - (ii) the Registered Service Equipment is not operating at a quantity that is greater than or equal to the sum of the Maximum Service Quantity and the Baseline Quantity, allowing for the relevant *Tolerance Range* or *Facility Tolerance Range*, at the end of the *Dispatch Interval*.

### 5.4. Exceptions to clause 5.3 – *SWIS Frequency* response and *Essential System Services*

**Clause 5.3** does not apply to the extent that one or more of the following applies:

- (a) the *SWIS Frequency* is outside the range for the *Frequency Dead Band* as specified in the *Registered Generator Performance Standards* applicable to the Registered Service Equipment) and both of the following apply:
  - (i) the Service Provider complies with the *Registered Generator Performance Standard* applicable to the Registered Service Equipment; and
  - (ii) in AEMO's reasonable opinion, the Registered Service Equipment would otherwise have been Available if the *SWIS Frequency* deviation had not occurred; or
- (b) the Service Provider complies with an *Essential System Service Enablement Quantity* with respect to the Registered Service Equipment.

## **6. Measurement and verification**

---

### **6.1. Measurement**

AEMO must use Interval Meter Data, *Facility Sub-Metering* data (where available) or SCADA data (as reasonably determined by AEMO) to determine the MWh quantity of adjusted *Withdrawal*, as applicable, at each Designated Connection Point relative to the Baseline Quantity for each *Dispatch Interval*.

### **6.2. Verification**

AEMO may use Interval Meter Data, *Facility Sub-Metering* data (where available) or SCADA data (as reasonably determined by AEMO) to verify quantities provided under this Contract.

## **7. Modifications to Registered Service Equipment**

---

### **7.1. Service Provider Registered Service Equipment**

The Service Provider must notify AEMO promptly after changing or modifying any Registered Service Equipment that it owns operates or controls in a manner that affects or could reasonably be expected to affect its ability to provide the Service.

### **7.2. Third-Party Registered Service Equipment**

The Service Provider must use reasonable endeavours to ensure that any third-party with whom the Service Provider enters into a contract or an arrangement for the purposes of providing the Service notifies the Service Provider as soon as any Registered Service Equipment applicable to that third-party is, or will become, incapable of providing the Service.

## **8. GPS Test and Service Test**

---

### **8.1. GPS Test**

AEMO may require the Service Provider to carry out a GPS Test if AEMO reasonably considers the Registered Service Equipment has not operated in accordance with its *Generator Performance Standards*. If the Registered Service Equipment fails the GPS Test, the Service Provider must propose a *Rectification Plan* that is capable of being accepted by AEMO (in accordance with clause 3A.11 of the *WEM Rules*) that indicates how the Registered Service Equipment will comply with the *Registered Generator Performance Standards* when the *Generating System* is charging.

### **8.2. Service Test**

- (a) AEMO may require the Service Provider to carry out a Service Test if the Registered Service Equipment does not operate at a level equal to or greater than the Maximum Service Quantity at any time in a 6-month period.
- (b) If the Registered Service Equipment fails a Service Test, the Service is taken to be Unavailable from the Trading Interval in which AEMO reasonably considers the Registered Service Equipment failed the Service Test until the Registered Service Equipment passes a Service Test or AEMO otherwise reasonably considers the Service is Available.

## 9. Payment and settlement

---

### 9.1. NCESS Payment

- (a) AEMO must calculate the NCESS Payment for each Settlement Period.
- (b) The NCESS Payment is the sum of the Availability Payments for the Minimum Demand Service.

### 9.2. Availability Payment for Minimum Demand Service

The Availability Payment for the Minimum Demand Service in a Settlement Period is determined as follows:

$$\text{Availability Payment} = \sum_{t \in \text{tEDI}} \text{AP} \times \text{MSQ}$$

where:

**AP** is the Availability Price for the relevant *Dispatch Interval* (in \$ per MW per *Trading Interval* and adjusted proportionately for that *Dispatch Interval*);

**MSQ** is the Maximum Service Quantity; and

**tEDI** denotes all *Dispatch Intervals* in the Service Period in the Settlement Period (excluding *Dispatch Intervals* when the Service is Unavailable for the Minimum Demand Service).

### 9.3. Settlement process

Section 9 of the *WEM Rules* applies with respect to NCESS Payments.

### 9.4. GST

Clause 9.1.3 of the *WEM Rules* applies with respect to amounts payable under this Contract.

## 10. Liability

---

### 10.1. AEMO's liability cap

- (a) Subject to **clause 10.1(b)**, and other than in respect of any unpaid NCESS Payment amounts, the total amount recoverable from AEMO in respect of any and all claims arising out of any one or more events during the Contract Term with respect to, arising from, or in connection with, this Contract is limited to the prescribed maximum amount for the purposes of section 126 of the *Electricity Industry Act* and regulation 52 of the *WEM Regulations*.
- (b) Regardless of the nature of any claim, AEMO is not liable in any circumstances for any:
  - (i) damages or losses that are not direct and do not flow naturally from a breach of this Contract, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this Contract;
  - (ii) loss of market, opportunity or profit (whether direct or indirect); or
  - (iii) damages or losses to the extent that a claim results from the Service Provider's failure to act in accordance with this Contract, Legislation, or Good Electricity Industry Practice.

### 10.2. Service Provider liability cap

- (a) Subject to **clause 10.2(b)**, and other than in respect of any NCESS Payment amounts repayable by the Service Provider under this Contract, the total amount recoverable from the Service Provider in respect of any and all claims arising out of any one or more events during the Contract Term with respect to, arising from, or in connection with, this Contract is limited to the lesser of the Maximum NCESS Contract Amount and \$5 million.

- (b) Regardless of the nature of any claim, the Service Provider is not liable in any circumstances for any:
  - (i) damages or losses that are not direct and do not flow naturally from a breach of this Contract, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this Contract;
  - (ii) loss of market, opportunity or profit (whether direct or indirect); or
  - (iii) damages or losses to the extent that a claim results from AEMO's failure to act in accordance with this Contract, Legislation, or Good Electricity Industry Practice.

## 11. Termination

---

### 11.1. Termination by AEMO

AEMO may terminate this Contract by giving notice to the Service Provider if:

- (a) (for any period after the Commencement Date) any of the following applies:
  - (i) as at any given day, the Service has been Unavailable in more than 10% of *Dispatch Intervals* in the Service Period in the preceding 3 months during the Contract Term;
  - (ii) the Service is Unavailable for a continuous period of more than 1 month during the Contract Term;
  - (iii) the Service Provider breaches a material term of this Contract and, in the case of a breach that is capable of remedy, does not remedy that breach within 20 *Business Days* (or, if AEMO approves a longer period for a specific breach, within that longer period) after AEMO notifies the Service Provider of the breach; or
  - (iv) an Insolvency Event occurs in relation to the Service Provider, and the Service Provider does not remedy the Insolvency Event within 20 *Business Days* after the Insolvency Event occurs (or, if AEMO approves a longer period for the Insolvency Event, within that longer period).
- (b) A termination notice takes effect on the later of:
  - (i) the time it is given; and
  - (ii) immediately prior to 8.00 am on the *Trading Day* immediately after the date specified in the notice.

### 11.2. No liability for termination

- (a) Subject to **clause 11.2(b)**, AEMO is not liable to the Service Provider if it terminates this Contract under this **clause 11**.
- (b) AEMO is only liable for NCESS Payments due in accordance with this Contract before 8.00 am on the *Trading Day* immediately after the date specified in the termination notice.

### 11.3. Consequences of termination

Subject to **clause 11.2(b)**, expiry or termination of this Contract for any reason does not affect any rights of either party against the other party that:

- (a) arose prior to the time at which expiry or termination occurred; and
- (b) otherwise relate to or may arise at any future date from any breach of this Contract occurring prior to the expiry or termination.

### 11.4. Reduction of Maximum Service Quantity

- (a) AEMO (acting reasonably and as an alternative to termination) may, by notice to the Service Provider, reduce the relevant Maximum Service Quantity to a quantity AEMO reasonably

expects the Service Provider to be capable of providing having regard to the Service Provider's historical performance under this Contract.

- (b) If the Maximum Service Quantity is reduced under **clause 11.4(a)**:
  - (i) the Service Provider may, by notice in writing, request AEMO to increase the relevant Maximum Service Quantity to a quantity up to but not exceeding the Maximum Service Quantity specified in the **Contract Details**; and
  - (ii) AEMO must increase the relevant Maximum Service Quantity to a quantity (up to but not exceeding the Maximum Service Quantity specified in the **Contract Details**) that AEMO reasonably expects the Service Provider to be capable of providing, having regard to all relevant information available to AEMO.

## 12. Dispute resolution

---

### 12.1. *WEM Rules* dispute process

Subject to **clause 12.2**, the dispute process set out in sections 2.18, 2.19, 2.20, 9.16 and 9.17 of the *WEM Rules* applies to any dispute arising under this Contract.

### 12.2. General dispute resolution procedure

- (a) This **clause 12** does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.
- (b) Unless otherwise agreed, the parties must continue to perform their obligations under this Contract despite the existence of a dispute.

## 13. Representations and warranties

---

The Service Provider represents and warrants to AEMO as at the Commencement Date and at all times during the Contract Term that (to the best of its knowledge and belief):

- (a) the Service Provider's obligations under this Contract are valid and binding and enforceable in accordance with their terms;
- (b) the Service Provider has in full force and effect all contracts, authorisations, licences, permits, consents, certificates, authorities and approvals necessary to enter into this Contract, to perform its obligations under this Contract and to allow those obligations to be enforced;
- (c) the Service Provider is not in default under Legislation affecting it or its respective assets, or any obligation or undertaking by which it or any of its assets are bound which will or might reasonably be expected to, materially affect its ability to perform the obligations under this Contract;
- (d) there is no pending or threatened action or proceeding affecting the Service Provider or any of its respective assets before a court, governmental agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Contract; and
- (e) the Service Provider does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

## 14. General

---

### 14.1. Notices

- (a) Subject to **clause 14.1(b)** and **Schedule 5**, all communications to a party must be:
  - (i) in writing;

- (ii) marked to the attention of the person named in respect of that party in the **Contract Details**; and
  - (iii) left at, sent by ordinary pre-paid post (airmail if posted to or from a place outside Australia), or in electronic form, to the address, number, or electronic mail address of the addressee specified in respect of that party in the **Contract Details**.
- (b) Subject to the *WEM Rules*, any:
- (i) communications given in the course of the day-to-day running of the *Wholesale Electricity Market* by or on behalf of a party to the other;
  - (ii) notifications regarding Availability of the Service by the Service Provider in accordance with this Contract,
- must be made by email (or automated electronic process) or telephone as notified by AEMO.
- (c) Unless communications under **clause 14.1(b)** are recorded in some other way satisfactory to and with the consent of both parties, the parties must ensure that logs are kept in which persons or electronic systems giving and receiving those communications record brief details of their substance and timing.
- (d) Unless a later time is specified in it, a communication takes effect from the time it is received.
- (e) A communication is taken to be received:
- (i) in the case of a posted letter, 5 *Business Days* after posting;
  - (ii) in the case of an electronic message, on production of a report by the computer from which the electronic message was sent that indicates that the message was received in its entirety at the electronic mail address of the recipient; and
  - (iii) in the case of a communication under **clause 14.1(b)**, when the communication is received.
- (f) Other than communications given under **clause 14.1(b)**, if a communication is received, or deemed to be received, on a day that is not a *Business Day*, or after 4:00pm AWST on a *Business Day*, it is taken to be received on the next *Business Day*.
- (g) A party may at any time by notice given to the other party in writing designate a different person, address, telephone number or electronic mail address for the purposes of **clause 14.1**, the **Contract Details** and **Schedule 5**.

## 14.2. Exercise of Rights

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

## 14.3. Waiver of Rights

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

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

#### 14.4. Assignment or other dealing

- (a) The Service Provider must not assign or otherwise deal with its rights or obligations under this Contract or (except in the ordinary course of business) in respect of the Registered Service Equipment without AEMO's written consent.
- (b) AEMO must not unreasonably withhold or delay its consent under **clause 14.4(a)**.
- (c) AEMO (as a condition of consent under **clause 14.4(a)**) may require the Service Provider and the third-party to enter into a deed of novation with AEMO on terms that are reasonably satisfactory to AEMO under which the third-party agrees to assume obligations that are substantially equivalent to the Service Provider's obligations under this Contract.
- (d) Any purported assignment in breach of this **clause 14.4** is invalid and of no legal effect.

#### 14.5. Amendment and variation

- (a) Unless otherwise stated in this Contract, this Contract may be varied:
  - (i) by agreement of the parties as recorded in writing and signed by the parties; or
  - (ii) by agreement under **clause 14.5(b)**.
- (b) If any Legislation (including the *WEM Rules*) is amended (**Change in Law**) and, in a party's reasonable opinion, the amendment will affect this Contract or the performance of obligations under this Contract:
  - (i) the party may, by notice in writing to the other party, request relevant amendments to this Contract that are reasonably required to address the Change in Law; and
  - (ii) both parties must act reasonably and in good faith to agree on any amendments to this Contract required to address the impact of the Change in Law on this Contract or the performance of obligations under this Contract.

#### 14.6. Costs and expenses

Except as otherwise agreed by the parties in writing or stated in this Contract, each party must pay its own costs in relation to preparing, negotiating and executing this Contract and any document related to this Contract.

#### 14.7. Further assurances

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

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

#### 14.8. Supervening legislation

Subject to **clause 14.5(b)**, any present or future Legislation that operates to vary an obligation or right, power or remedy of a person in connection with this Contract is excluded to the extent permitted by law.

#### 14.9. Severability

If a provision or part of a provision of this Contract is void, unenforceable, invalid or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Contract remains effective and the validity or enforceability of that provision in any other jurisdiction is not affected. This **clause 14.9** has no effect if the severance alters the basic nature of this Contract or is contrary to public policy.

#### 14.10. Entire agreement

- (a) Subject to the *WEM Rules*, this Contract constitutes the entire agreement of the parties in connection with provision of the Service and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.



- (b) For the avoidance of doubt, this Contract contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by the other party, or by a director, officer, agent or employee of that party, before this Contract was executed, save as permitted by law.

**14.11. Confidential information**

- (a) The Service Provider consents to the use or disclosure of its confidential information by AEMO to the extent reasonably necessary for AEMO to carry out its functions, or comply with its obligations, under the *WEM Regulations* and the *WEM Rules*.
- (b) This **clause 14.11** survives termination (for whatever reason) of this Contract.

**14.12. No other representations or warranties**

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

**14.13. Counterparts**

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

**14.14. Governing law and jurisdiction**

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

**14.15. No partnership, agency or trust**

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

**14.16. No authority to act**

Neither party has any power or authority to act for or to assume any obligation or responsibility on behalf of the other party, to bind the other party to any agreement, negotiate or enter into any binding relationship for or on behalf of the other party or pledge the credit of the other party except as specifically provided in this Contract or by express agreement between the parties.

# SIGNING PAGE

EXECUTED as an agreement

**SIGNED** by ## as authorised representative for )  
**Australian Energy Market Operator Limited:** )  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

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

Date: .....

**SIGNED** by ## as authorised representative for )  
**##:** )  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)  
)

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

Date: .....

## Schedule 1 – Conditions Precedent

No	Condition Precedent	Condition Precedent Satisfaction Date
1.	The Registered Service Equipment is registered as a <b>Semi-Scheduled/Scheduled Facility</b> under clause 2.29 of the <i>WEM Rules</i> .	##
2.	<p>Where the Service includes the Minimum Demand Service and the Registered Service Equipment includes an <i>Electric Storage Resource</i>:</p> <p>(a) the Service Provider must propose <i>Generator Performance Standards</i> for the <i>Generating System</i> (when charging) for all <i>Technical Requirements</i> included as part of <i>Registered Generator Performance Standards</i> in accordance with the process for <i>Transmission Connected Generating Systems</i> described in clause 3A.5 of the <i>WEM Rules</i>;</p> <p>(b) the Service Provider must (using the testing requirements and methods for determining compliance with <i>Registered Generator Performance Standards</i> described in the <i>WEM Procedure</i> developed in accordance with clause 3A.9.1 of the <i>WEM Rules</i>):</p> <p>(i) (before the Registered Service Equipment receives an <i>Interim Approval to Generate Notification</i>) demonstrate that the <i>Generating System</i>, when charging, complies with the <i>Registered Generator Performance Standards</i> relating to Parts A12.3, A12.5, A12.7 to A12.11 and A12.12 of Appendix 12 of the <i>WEM Rules</i> (excluding the harmonics of the <i>Generating System</i> when charging for the purposes of Part A12.12); and</p> <p>(ii) (before or after the Registered Service Equipment receives an <i>Interim Approval to Generate Notification</i>) demonstrate that the <i>Generating System</i>, when charging, complies with the <i>Registered Generator Performance Standards</i> relating to voltage fluctuations and harmonic voltage distortion in accordance with Part A12.12 of Appendix 12 of the <i>WEM Rules</i>.</p>	##
3.	If the Registered Service Equipment is an <i>Electric Storage Resource</i> that forms a component of a <i>Semi-Scheduled Facility</i> or a <i>Scheduled Facility</i> , the Service Provider must install <i>Facility Sub-Metering</i> for the <i>Electric Storage Resource</i> in accordance with the requirements specified in the <i>WEM Procedure</i> referred to in clause 2.29.15 of the <i>WEM Rules</i> .	##
4.	The Registered Service Equipment completes a <i>Commissioning Test</i> in accordance with clause 3.21A of the <i>WEM Rules</i> . To avoid doubt, if the Registered Service Equipment completes more than one <i>Commissioning Test</i> , this Condition Precedent is deemed to be satisfied when the Registered Service Equipment completes the first <i>Commissioning Test</i> .	##
5.	For each Service, the Service Provider demonstrates (at its own cost and based on Interval Meter Data or <i>Facility Sub-Metering</i> data, as applicable) that the Registered Service Equipment is capable of increasing <i>Withdrawal</i> by a quantity greater or equal to the relevant Maximum Service Quantity (relative to the Baseline Quantity) for 48 consecutive <i>Dispatch Intervals</i> during the relevant Service Period.	##



## Schedule 2 – Progress Report

---

The Service Provider must provide the following information (with supporting evidence) at least every 3 months from the date of this Contract until the Commencement Date (or termination under **clause 3.4** if applicable):

- (a) when all approvals will be finalised;
- (b) when financing will be finalised;
- (c) when site preparation will begin;
- (d) when construction will commence;
- (e) when equipment will be installed and when all required control equipment will be in place;
- (f) when the Registered Service Equipment, or part of the Registered Service Equipment, will be ready to undertake *Commissioning Tests*; and
- (g) when the Registered Service Equipment, or part of the Registered Service Equipment, will have completed all *Commissioning Tests*.

## Schedule 3 – Service

---

(a) **Registered Service Equipment, Designated Connection Point and Baseline Quantity**

Registered Service Equipment	##
Designated Connection Point (NMI or description of connection point)	##

(b) **Availability Price**

<b>Service</b>	<b>Minimum Demand Service</b>
Availability Price per <i>Trading Interval</i> (\$ per MW per <i>Trading Interval</i> )	\$##

## Schedule 4 – Baseline Quantity calculation methodology

---

The Baseline Quantity for a *Non-Intermittent Generating System* for:

- (a) the Peak Demand Service is the MW quantity of *Capacity Credits* held by the *Registered Facility* for the 2023-24 *Capacity Year*;
- (b) the Minimum Demand Service is 0 MW.

The Baseline Quantity for an *Electric Storage Resource* for:

- (a) the Peak Demand Service is the level of *Capacity Credits* held by the *Registered Facility* for the 2023-24 *Capacity Year*; and
- (b) the Minimum Demand Service is the level of *Capacity Credits* held by the *Registered Facility* for the 2023-24 *Capacity Year*.

## Schedule 5 – Operational Contact Persons

---

(a) **AEMO's Operational Contact Person**

Name/Title	WA Market Operations and Support
Telephone No	1300 989 797
Email	wa.operations@aemo.com.au

(b) **Service Provider's Operational Contact Person**

**Primary Contact Person**

Name/Title	##
Telephone No	##
Email	##

**Backup Contact Person**

Name/Title	##
Telephone No	##
Email	##