

System Restart Ancillary Services Agreement

PROFORMA - DECEMBER 2017

Australian Energy Market Operator Limited

and

#1#

Drafting Note: This document is published as a **general indication** of the terms and conditions on which AEMO expects to contract for system restart ancillary services (SRAS), as at December 2017. For each specific procurement, a form of agreement will be issued with the request for offer or invitation to tender. That form may differ from this document, and individual terms may be negotiated if appropriate.

This document has been set up so that technical and commercial terms specific to an individual SRAS are specified in the Details (front page) and in schedules and annexures, with no changes generally required to the rest of the agreement. For each contracted SRAS, there will be a schedule containing at least the following matters:

- Nominated Delivery Point and type of SRAS (TTHL or non-TTHL)
- Description of the SRAS Equipment that provides the service, and the Transmission Components between the generating system connection point and the Delivery Point
- Contracted levels of performance, including timeframes and MW to be delivered
- Minimum Availability/Reliability Requirements (rolling 12 month periods)
- Minimum Technical Requirements
- How AEMO will request the provision of SRAS
- Any special test requirements (in addition to those in the SRAS Guideline)
- Itemisation of charges

Australian Energy Market Operator Limited
Level 22, 530 Collins Street
MELBOURNE VIC 3000
TEL: 03 9609 8000
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DETAILS

Parties:	Australian Energy Market Operator Limited ABN 94 072 010 327 of Level 22, 530 Collins Street, MELBOURNE VIC 3000 (AEMO) and #1# ABN #2# of #3# (SRAS Provider)
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Commencement Date	[insert]
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Expiry Date	[insert]
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Governing law	Victoria
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Address for Service	AEMO: Attention: Group Manager Systems Capability Address: GPO Box 2008 MELBOURNE VIC 3001 Email: Reception.Melbourne@aemo.com.au SRAS Provider: Attention: [insert] Address: [insert] Email: [insert]
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OPERATIVE PROVISIONS

1. Interpretation

1.1. Definitions - General

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

1.2. Dictionary

Agreement means this agreement, including the Details and all schedules and annexures.

Authority means any Commonwealth, State, Territory or local government or regulatory department, body, instrumentality, minister, agency or other authority, other than AEMO.

Auxiliary Plant means the plant associated with the operation of *generating units*, required to be started prior to starting a *generating unit*.

Availability Charge is specified in item 7.1 of a **Schedule**.

Available means, in respect of an SRAS at any time, that the SRAS is, or under this Agreement is taken to be, capable of being provided by SRAS Equipment and SRAS Transmission Components at all of the Contracted Levels of Performance while meeting the Minimum Technical Requirements (see clause 5).

Billing Period means a *billing period* as defined in the NER, except that:

- (a) the first Billing Period commences when this Agreement commences; and
- (b) the last Billing Period ends when this Agreement ends.

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

- (a) the operation of which is excluded under clause 18.10; or
- (b) relating to income tax (or state equivalent tax), a tax on capital gains, or taxes, imposts or charges of a similar nature.

Charges means the Availability Charge, Usage Charge or Testing Charge as applicable.

Claims means all claims, losses, liabilities, costs or expenses, whether arising in contract, tort (including negligence), equity or otherwise.

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

Conditions Precedent Fulfilment Date is specified in the **Annexure**.

Conditions Precedent (if any) are specified in the **Annexure**.

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

Contract Values means the Availability Charge and Testing Charge, as adjusted annually under clause 9.10.

Contract Year means:

- (a) the period from the later of the Commencement Date and the Conditions Precedent Fulfilment Date to the next 30 June (the first Contract Year);
- (b) each subsequent period from 1 July to 30 June during the Term; and

- (c) if the Term ends other than on 30 June in any year, the period ending on the last day of the Term and commencing on the preceding 1 July.

Contracted Electricity Export Capability is specified in item 3 of a **Schedule**

Contracted Levels of Performance are specified in item 3 of a **Schedule**.

Corporations Act means the Corporations Act 2001 (Cth).

Delivery Point is specified in item 1 of a **Schedule**.

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

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

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

Individual Reliability Levels are specified in item 4 of a **Schedule** and represent the minimum expected requirements for each specified reliability parameter for an SRAS in each [Contract Year].

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

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

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

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

Minimum Availability Requirement is specified in item 4 of a **Schedule** and represents the minimum Availability requirement for an SRAS, expressed as a percentage and measured in accordance with clause 5.4 for rolling 12 month periods.

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

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

Relevant Period means:

- (a) where there are no Conditions Precedent, the period from the Commencement Date to the following 30 June, and each period of 12 months ending at the end of each subsequent month (rolling 12 month periods); and
- (b) otherwise, the period from the Conditions Precedent Fulfilment Date to the end of the month before the month in which the first anniversary of that date falls, and each period of 12 months ending at the end of each subsequent month during the Term (rolling 12-month periods).

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

Review Date means 1 July in each Contract Year.

SRAS means the *system restart ancillary service* described in item 1 of a **Schedule** and meeting the requirements of the definition of that term in the NER.

SRAS Equipment is specified in item 2 of a **Schedule**, and includes any SRAS Third Party Assets (as defined in the SRAS Guideline), if required for the provision of the SRAS.

SRAS Guideline means the guideline of that name published by AEMO under clause 3.11.7 of the NER.

SRAS Transmission Components are specified in item 2 of a **Schedule**, being the components of the TNSP's *transmission system* located between the *connection point* of the SRAS Provider's *generating system* or another *network* to that *transmission system*, and the Delivery Point.

Term means the period during which this Agreement is in effect under clause 3.

Test means a test of an SRAS conducted in accordance with the requirements in clause 4 and Appendix A of the SRAS Guideline, as varied by any special test conditions in item 7 of a **Schedule** if applicable.

Testing Charge is specified in item 8 of a **Schedule**.

TNSP means the *Transmission Network Service Provider* for the *transmission system* on which the Delivery Point for an SRAS is located.

Unavailable means, in respect of an SRAS at any time, that the SRAS is not, or under this Agreement is taken not to be, capable of being provided by SRAS Equipment and SRAS Transmission Components at all of the Contracted Levels of Performance while meeting the Minimum Technical Requirements (see clause 5).

Usage Charge is specified in item 8 of a **Schedule**.

1.3. Interpretation

Unless otherwise specified, a reference in this Agreement to:

- (a) a document (including this Agreement) includes the document as novated, varied, or replaced;
- (b) a clause, paragraph, schedule, or annexure is a reference to a clause, paragraph, schedule, or annexure in this Agreement;
- (c) a clause is a reference to all its subclauses;
- (d) legislation includes subordinate legislation and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them;
- (e) the singular includes the plural and vice versa and a gender includes all genders;
- (f) the word "**person**" includes a firm, a body corporate, a partnership, joint venture, trust, an unincorporated association and any authority and any successor entity to those persons;

- (g) 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;
- (h) a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (i) a party includes, where the context requires it, that person’s directors, officers, employees, contractors, agents and any other persons authorised by that party and, in the case of AEMO, includes any *System Operator* acting on AEMO’s behalf;
- (j) 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;
- (k) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
- (l) a month is a reference to a calendar month;
- (m) a day is a reference to a period of time commencing at midnight and ending the following midnight; and
- (n) a period of time and the period dates from a given day or the day of an act or event, it is to be calculated exclusive of that day and, if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day.

1.4. Construction

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

1.5. Symbols

A symbol in column 1 of the table below has the meaning set out opposite that symbol in column 2:

1. SYMBOL	2. MEANING
*	requires multiplication to be effected
+	requires addition to be effected
-	requires subtraction to be effected
/	requires division to be effected
Hz	Hertz
kV	kilovolt
MW	Megawatt
MWh	Megawatt hour
\$	Australian dollars

1.6. Schedules

If a Schedule contains any provisions that impose additional obligations to those set out in the Operative Provisions, the provisions in the Schedule apply in respect of the SRAS the subject of that Schedule, as if the provision was an Operative Provision.

2. Conditions Precedent

2.1. Conditions

Except for those in clauses **2, 8, 10, 14, 15, 17** and **18**, all of the parties' rights and obligations under this Agreement are subject to the Conditions Precedent.

2.2. Fulfilment of Conditions

The SRAS Provider must use reasonable endeavours to fulfil or procure the fulfilment of the Conditions Precedent by the Conditions Precedent Fulfilment Date.

2.3. Updates

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

2.4. Waiver of Condition Precedent

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

2.5. Conditions Precedent Fulfilment Date

If any Condition Precedent is not fulfilled by the Conditions Precedent Fulfilment Date or waived in accordance with clause **2.4**, AEMO may terminate this Agreement by giving the SRAS Provider 3 *business days*' notice.

2.6. Effect of Termination

If this Agreement is terminated under clause **2.5**, this Agreement is of no further effect and the parties are released from any further obligation under this Agreement but they remain liable for any breach committed before that termination.

2.7. Survival

If this Agreement is terminated under clause **2.5**, clause **2.6** does not affect the rights and obligations of the parties under clauses **8, 10, 14, 15, 17** and **18**.

3. Term

3.1. Term

- (a) This Agreement comes into effect at midnight at the beginning of the Commencement Date.
- (b) Subject to clause **3.2(a)** and **(b)** and to earlier termination in accordance with this Agreement, this Agreement continues until midnight at the end of the Expiry Date.

3.2. AEMO's Option to Extend Term

- (a) AEMO may extend the Term for a period of up to 12 months by giving the SRAS Provider notice to that effect at least 3 months before the Expiry Date that specifies:
 - (i) whether the extension applies to all SRAS or to specified SRAS only (by reference to the relevant Schedules); and
 - (ii) the date on which the extension will expire (the **first extension expiry date**).

- (b) If the extension applies to specified SRAS only, the Schedules relating to all other SRAS will cease to form part of this Agreement or any other agreement between the parties at midnight at the end of the Expiry Date.

3.3. Further Extension by Agreement

- (a) AEMO may request a further extension of the Term for a period of up to 12 months after the first extension expiry date by giving the SRAS Provider notice to that effect at least 3 months before the first extension expiry date that specifies:
 - (i) whether the requested extension applies to all SRAS under this Agreement as at the date of the request, or to specified SRAS only (by reference to the relevant Schedules); and
 - (ii) the date on which the further extension will expire (the **second extension expiry date**).
- (b) The SRAS Provider may accept AEMO's request by notice in writing not later than 2 months before the first extension expiry date, in which case the Term expires on the second extension expiry date, and otherwise the Term expires on the first extension expiry date.
- (c) If a further extension applies to specified SRAS only, the Schedules relating to all other SRAS will cease to form part of this Agreement or any other agreement between the parties at midnight at the end of the first extension expiry date.

4. Provision of SRAS

- (a) The SRAS Provider must use its reasonable endeavours to ensure that each SRAS is Available at all times during the Term.
- (b) At any time during the Term, AEMO may (but is not obliged to) request the SRAS Provider to provide an SRAS in accordance with item 6 of the relevant **Schedule**.
- (c) The SRAS Provider must use all reasonable endeavours to provide an SRAS in accordance with this Agreement when requested by AEMO.

5. SRAS Availability

5.1. Determining Availability

- (a) Subject to paragraph (b), an SRAS is Unavailable:
 - (i) for any period notified to AEMO under clause **5.2(a)**; and
 - (ii) for any periods when the SRAS is taken to be Unavailable under clause **5.2(b)** and **(c)**, and at all other times the SRAS is taken to be Available.
- (b) If an SRAS is Unavailable solely as a result of an Event of Force Majeure or an act or omission of AEMO:
 - (i) the SRAS is taken to be Available for the purposes of determining the payment due to the SRAS Provider in respect of the Availability Charge; and
 - (ii) that Unavailability is to be disregarded in determining whether the SRAS meets the Minimum Availability Requirement.

5.2. Inability or failure to provide SRAS

- (a) If at any time the SRAS Provider considers that an SRAS is, or will become, Unavailable for any reason, it must notify AEMO immediately specifying:
 - (i) which SRAS the notice applies to;
 - (ii) when the SRAS became, or will become, Unavailable;

- (iii) how long the SRAS Provider expects the Unavailability to continue; and
 - (iv) the cause of the Unavailability,
- and the SRAS Provider must notify AEMO when the SRAS becomes Available again.
- (b) An SRAS is taken to be Unavailable for the period determined in paragraph (c) if any of the following occurs:
- (i) the SRAS Provider fails to provide an SRAS in accordance with this Agreement when requested by AEMO, and has not previously notified AEMO of its Unavailability during the relevant period under paragraph (a);
 - (ii) the SRAS Provider fails to provide a test report within the period specified in clause 6.3, or fails to demonstrate to AEMO's reasonable satisfaction that an SRAS remains Available within the period specified in clause 6.4; or
 - (iii) the SRAS fails a Test.
- (c) In any case under paragraph (b), the relevant SRAS is taken to be Unavailable for the period commencing on one of the following dates (as applicable):
- (i) the date when the SRAS ceased to be Available, if the SRAS Provider can establish that date to AEMO's reasonable satisfaction;
 - (ii) on the date of the relevant failure, where SRAS could not be provided or failed a Test solely because of the failure of any of the SRAS Transmission Components; or
 - (iii) otherwise, commencing on the date that is half-way between the date of the relevant failure and the most recent to occur of:
 - (A) the last date the SRAS was successfully Tested or provided to AEMO in accordance with this Agreement;
 - (B) the Commencement Date; and
 - (C) the Conditions Precedent Fulfilment Date,
 and concluding when the SRAS Provider demonstrates to AEMO's reasonable satisfaction that the SRAS is Available.

5.3. Requirement for remedial action

If the SRAS is Unavailable for any reason other than scheduled maintenance of a *generating system* or *transmission element* as previously notified to AEMO under the NER, the SRAS Provider must:

- (a) diligently and at its own expense take the necessary remedial action to ensure that the relevant SRAS Equipment can meet the Minimum Technical Requirements and provide the relevant SRAS in accordance with the Contracted Levels of Performance;
- (b) to the extent that the Unavailability is caused by the failure or outage of SRAS Transmission Components, comply with all reasonable requests of the TNSP to coordinate its remedial action;
- (c) promptly advise AEMO of the proposed timetable for implementing the remedial action and keep AEMO informed of progress;
- (d) after taking the remedial action, submit such evidence as AEMO may require to demonstrate to AEMO's reasonable satisfaction that the SRAS is Available; and
- (e) pay AEMO's reasonable costs incurred in relation to any Test required by AEMO for the purposes of paragraph (c), or in reviewing any other evidence concerning the remedial action.

5.4. Minimum Availability Requirement

- (a) For the purposes of determining whether the Minimum Availability Requirement for an SRAS has been met, and the extent of any shortfall, the Availability of the SRAS is measured over each Relevant Period in accordance with paragraph (b).

- (b) Availability for a Relevant Period is calculated as $A/B \times 100$, expressed as a percentage, where:
A = the number of hours that the SRAS is Available during the Relevant Period; and
B = the total number of hours in the Relevant Period.

6. Tests

6.1. Types and Frequency of Tests

- (a) The purpose of a Test is to determine whether the SRAS Equipment and SRAS Transmission Components meet the Minimum Technical Requirements and are capable of providing the relevant SRAS at the Contracted Levels of Performance.
- (b) The SRAS Provider must conduct a Test:
- (i) within 20 *business days* after the end of any maintenance that has caused any major component of the SRAS Equipment identified in item 2 of a Schedule (including alternate *generating units*) to be out of service for a period of 7 days or more; and
 - (ii) at a time specified by AEMO on not less than 5 *business days*' notice to the SRAS Provider, not more than once in any Contract Year.
- (c) AEMO may request the SRAS Provider to conduct a Test at any other time if AEMO reasonably believes that an SRAS may not meet the Minimum Technical Requirements, or is incapable of providing the relevant SRAS at the Contracted Levels of Performance, and the SRAS Provider must conduct that Test within a reasonable time after receiving the request.
- (d) AEMO may, by written notice to the Service Provider before the time of a post-maintenance Test has been agreed under clause **6.2(a)(ii)**, waive the requirement to conduct that Test.
- (e) Provided each SRAS remains Available, the SRAS Provider may conduct any other tests on the SRAS Equipment at any time during the Term.

6.2. Notification of Tests

- (a) Prior to conducting a post-maintenance Test under clause **6.1(b)(i)**, the SRAS Provider must:
- (i) notify AEMO of its intention to conduct the Test at least 20 *business days* prior to the proposed date of the Test, unless a shorter notice period is agreed with AEMO; and
 - (ii) unless AEMO waives the requirement to conduct the Test, agree with AEMO on the timing and duration of the Test (which agreement must not be unreasonably withheld).
- (b) In determining the time of a Test under clause **6.1(b)(ii)**, AEMO must comply with the applicable requirements of the SRAS Guideline.
- (c) Where the SRAS Equipment includes alternate *generating units*, any one of which may be used in the provision of SRAS, AEMO may specify which is to be included in any Test, consistent with the SRAS Guideline.
- (d) AEMO may, on not less than 5 *business days*' notice to the SRAS Provider prior to any Test, designate a Representative to witness the Test.
- (e) The SRAS Provider must provide sufficient access to permit AEMO's Representative to witness any Test in order to verify that it is carried out correctly.
- (f) AEMO must ensure that its Representative:
- (i) does not interfere with the conduct of the Test;
 - (ii) does not cause any loss or damage to the SRAS Provider's assets;
 - (iii) does not interfere with the operation of the SRAS Provider's business;

- (iv) observes the SRAS Provider's requirements relating to occupational health and safety and industrial relations matters that apply to all invitees; and
- (v) does not ask any question, or give any direction, instruction, or advice, to any representative of the SRAS Provider other than the Representative designated by the SRAS Provider for this purpose.

6.3. Test Reports

Unless otherwise agreed between the parties, if the SRAS Provider conducts a Test, the SRAS Provider must provide a test report to AEMO that complies with the requirements for test reports set out in the SRAS Guideline, within 15 *business days* of the Test being conducted.

6.4. Failure to Conduct Tests

If the SRAS Provider does not conduct a Test as required by clause 6.1, AEMO may, by notice to the SRAS Provider, request an explanation of why the Test was not carried out and the SRAS Provider must respond within 2 *business days*, setting out:

- (a) the reasons why the Test was not conducted;
- (b) when the Test will be conducted; and
- (c) evidence demonstrating that the SRAS remains Available.

6.5. Failure of Test

- (a) Subject to paragraph (d), if the results of a Test indicate that the SRAS is Unavailable, the SRAS will have failed that Test and is taken to have been Unavailable for the period determined under clause 5.2(c).
- (b) If the results of a Test clearly indicate a material failure to provide the Contracted Electricity Export Capability substantially within the time specified in the Contracted Levels of Performance, the SRAS will have failed that Test and the SRAS Provider must immediately give a notice to AEMO under clause 5.2(a).
- (c) At any time after a Test and up to 5 *business days* after receiving a test report under clause 6.3, AEMO may notify the SRAS Provider, in AEMO's reasonable opinion:
 - (i) whether the Test demonstrates that the SRAS was Available or Unavailable; and
 - (ii) if Unavailable, whether any identified non-compliance with the Contracted Levels of Performance or Minimum Technical Requirements would have materially affected the ability to provide the SRAS,

provided that if paragraph (b) does not apply and AEMO does not give notice under this paragraph within 5 *business days* after receiving the test report, the SRAS is taken to have passed the Test (Available).
- (d) If AEMO's notice under paragraph (c) indicates that the non-compliance with the Contracted Levels of Performance or Minimum Technical Requirements would **not** have materially affected the ability to provide the SRAS, then the SRAS is taken to have failed that Test if, and only if:
 - (i) the result of a repeat Test conducted within 20 *business days* of the date of AEMO's notice also indicates that the SRAS is Unavailable (whether or not for the same reason); or
 - (ii) a repeat test is not conducted within 20 *business days* after the date of AEMO's notice.

6.6. Cost of Testing

- (a) Subject to paragraph (b), the SRAS Provider must pay all costs relating to Tests conducted under clause 6.1, including any Test conducted for the purposes of clause 5.3.

- (b) If a Test conducted by the SRAS Provider under clause 6.1(b) or (c) demonstrates that the SRAS is Available, AEMO must pay the SRAS Provider the Testing Charge.

7. Maintenance and Reliability

7.1. Scheduling maintenance

- (a) The SRAS Provider must:
 - (i) maintain the SRAS Equipment in accordance with *good electricity industry practice*;
 - (ii) give AEMO its proposed annual schedule of planned maintenance affecting the operation of the SRAS Equipment promptly on determining that schedule, and notify AEMO of any updates to that schedule as soon as reasonably practicable;
 - (iii) notify AEMO as soon as the SRAS Provider becomes aware of any requirement for unplanned maintenance affecting the operation of the SRAS Equipment.
- (b) Without limiting AEMO's powers under the NER and the National Electricity Law, AEMO may request the SRAS Provider to reschedule or adjust the scope of any maintenance that coincides with:
 - (i) an outage of another source of *system restart ancillary services* for the same *region*; or
 - (ii) a period of actual or forecast *low reserve* or *lack of reserve* conditions,and the SRAS Provider must use reasonable endeavours to comply with any such request.

7.2. Information and assessment of Individual Reliability

- (a) The SRAS Provider must notify AEMO promptly after changing or modifying any SRAS Equipment in a way that reduces or could reasonably be expected to reduce the Availability of the relevant SRAS or the reliability of the SRAS Equipment.
- (b) [Within 20 *business days* after the end of each Contract Year,] or [At the time of providing a test report under clause 6.3,] the SRAS Provider must give AEMO the information indicated in item 4 of the relevant **Schedule**, in relation to the Individual Reliability Levels of an SRAS.
- (c) Following the end of each Contract Year, AEMO must assess whether the SRAS has met the Individual Reliability Levels, based on the information provided by the SRAS Provider under this Agreement, by the TNSP under the SRAS Guideline, and other relevant information available to AEMO.
- (d) AEMO must notify the SRAS Provider of its assessment under paragraph (c).

8. Records, Audits and Inspections

8.1. Maintenance of Records

- (a) The SRAS Provider must compile and maintain reasonable records concerning this Agreement, including the delivery of SRAS under this Agreement, the operation, maintenance and testing of SRAS Equipment, any procedures used in the performance of this Agreement and all notices given or received by telephone in relation to this Agreement.
- (b) Records may be maintained in writing or electronically, and each must be retained for at least 7 years from the date it was created.

8.2. Right to Inspect Records

- (a) AEMO may request a copy of any of the records maintained under clause 8.1 or any other information in connection with SRAS at any time during the period referred to in clause 8.1(b).
- (b) The SRAS Provider must comply with a request from AEMO under paragraph (a) within 5 *business days* of receipt.

8.3. Audits by AEMO

- (a) AEMO may audit any of the records maintained under clause 8.1 by giving the SRAS Provider at least 5 *business days'* notice. A notice under this paragraph (a) must include the following information:
 - (i) the nature of the audit;
 - (ii) the SRAS concerned;
 - (iii) the name of any Representative appointed by AEMO to conduct the audit; and
 - (iv) the date on which the audit will commence.
- (b) Unless the SRAS Provider agrees otherwise, an audit may only occur during normal business hours on a *business day*.

8.4. Conduct of Audit

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

8.5. Inspections

- (a) At a date and time convenient to both parties, AEMO may inspect any of the SRAS Equipment to determine whether the SRAS Provider is complying with this Agreement.
- (b) At least 5 *business days* prior to the date on which AEMO wishes to make an inspection, AEMO must deliver a notice to the SRAS Provider detailing the following information:
 - (i) the SRAS Equipment to be inspected and the scope of the inspection;
 - (ii) the Representatives who will be conducting the inspection on behalf of AEMO; and
 - (iii) the date and time when AEMO proposes to commence the inspection and the expected date and time when the inspection will conclude.
- (c) The SRAS Provider must not unreasonably refuse access and must procure that all necessary third party consents to the access required by AEMO to conduct the inspection are secured in time for the inspection to commence as agreed between the parties.
- (d) If AEMO conducts an inspection under paragraph (a), the SRAS Provider must designate Representatives to accompany AEMO's Representatives and answer any questions and assist with the conduct of the inspection.

8.6. Conduct of Inspection

- (a) AEMO must not carry out any inspection of SRAS Equipment under clause 8.5 within 6 months of a previous inspection under this Agreement of the same SRAS Equipment.
- (b) Unless otherwise agreed by the SRAS Provider, an inspection under clause 8.6 may take as long as reasonably necessary, but no longer than 24 hours. Any agreement to extend the period of the inspection must not be unreasonably withheld, considering the extent of the inspection proposed.
- (c) Whilst carrying out an inspection, AEMO must ensure that its Representatives:
 - (i) do not cause any loss or damage to the SRAS Provider's assets;
 - (ii) do not interfere with the operation of the SRAS Provider's business (provided that the inspection itself does not constitute interference);
 - (iii) observe the SRAS Provider's requirements relating to occupational health and safety and industrial relations matters that apply to all invitees of the SRAS Provider; and

- (iv) do not ask any question or give any direction, instruction, or advice to any of the SRAS Provider's personnel other than the Representative designated by the SRAS Provider for this purpose.

9. Payments

9.1. Calculation of Payments

The charges owed by AEMO for an SRAS provided under this Agreement are to be determined in accordance with item 7 of the relevant Schedule, as adjusted under clause 9.10.

9.2. Preliminary Statements

Within 5 *business days* after the end of each Billing Period, AEMO must give the SRAS Provider a preliminary statement setting out the charges and any other amounts owed by each party to the other party under this Agreement in respect of that Billing Period (preliminary statement).

9.3. Final Statements

Not later than 18 *business days* after the end of each Billing Period, AEMO must give the SRAS Provider a final statement stating the net amount payable by one party to the other under this Agreement in respect of that Billing Period (final statement).

9.4. Disputes over Statements

- (a) If there is a dispute between the parties concerning the charges or any other amounts payable by one party to the other specified in a preliminary statement, the parties agree to use reasonable endeavours to resolve the dispute within 15 *business days* of the end of the relevant Billing Period. The dispute must be resolved by agreement or in accordance with clause 14. If the parties have not resolved the dispute before the time at which AEMO must give the SRAS Provider the final statement, AEMO must prepare that final statement on the basis of its own assessment of the charges and any other amounts payable under this Agreement in respect of that Billing Period.
- (b) Disputes in relation to a final statement must be raised within 6 months of the date of the relevant final statement. If a party does not raise a dispute within that period, the party will be taken to have agreed to the way in which that matter is dealt with in the final statement.

9.5. Payment

If a final statement indicates that a party must pay the other party a net amount, that party must pay the net amount specified in the final statement to the other party (whether or not there is a dispute in relation to the amount payable) on the later of:

- (a) the twentieth *business day* after the end of the Billing Period; and
- (b) the second *business day* after AEMO gives the final statement.

9.6. Adjustment

- (a) Where the charges or any other amounts specified in a final statement:
 - (i) must be adjusted to effect an adjustment retrospectively to a Review Date under clause 9.10;
 - (ii) are agreed by the parties to be incorrect; or
 - (iii) are determined in accordance with clause 14 to be incorrect or not payable,

AEMO must issue a replacement statement for the Billing Period stating the correct charges or any other amounts payable.

- (b) If a payment has already been made, the party advantaged must pay the other party the amount required to put the other party in the position it would have been in at the time payment was due under clause 9.5 plus interest on the difference between the amount paid to the party advantaged and the amount that should have been paid. The interest accrues daily at the bank bill rate on the relevant day

for each day from the date on which payment was made under clause 9.5 until payment is made under this paragraph (b).

- (c) Payment under paragraph (b) must be made:
 - (i) on the same day as the next payment is made under clause 9.5, where applicable by set off against an amount due to the party advantaged; or
 - (ii) if no subsequent payments are to occur under clause 9.5, within 15 *business days* after the replacement statement is given under paragraph (a).

9.7. Measurement

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

9.8. Reduced Payment if SRAS not Available

- (a) The Availability Charge is only payable to the SRAS Provider in respect of trading intervals occurring in a period during which the relevant SRAS is Available or taken to be Available under this Agreement.
- (b) The SRAS Provider must repay to AEMO any Availability Charges previously paid for an SRAS in respect of a trading interval when that SRAS was, or was taken to be, Unavailable under this Agreement.
- (c) AEMO may elect to set off any repayment amount against an amount due to the SRAS Provider by AEMO. If AEMO does not so elect, the SRAS Provider must pay that amount on the same day as the next payment is made under clause 9.5 or within 15 *business days* after the date that AEMO provides a statement for the relevant amount if no subsequent payments are to occur under clause 9.5.

9.9. GST

- (a) The Contract Values and any other prices, fees and charges and any other amounts payable to or by AEMO under this Agreement exclude GST.
- (b) Where a party is required under this Agreement to reimburse or otherwise pay an amount to another party (**reimbursed party**) on account of a cost or expense incurred by that reimbursed party, the amount of the reimbursement will be reduced by the amount of any input tax credit to which the reimbursed party is entitled for an acquisition to which that cost or expense relates.
- (c) If either party makes a taxable supply under this Agreement, the party receiving the taxable supply must also pay an additional amount equal to the consideration payable for the supply multiplied by the applicable GST rate.
- (d) Each party must include the additional amounts contemplated under paragraph (c) in statements issued under this Agreement and must assist the other party to claim input tax credits for GST where relevant.
- (e) If the additional amount paid or payable to a party in respect of a taxable supply under paragraph (c) differs from the actual amount of GST payable, adjustments must be made in accordance with the adjustment procedures under clause 9.6.
- (f) In this clause, "**input tax credit**", "**supply**" and "**taxable supply**" each have the meaning given to those terms in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

9.10. Review based on CPI variations

- (a) Each Contract Value will be reviewed annually as of each Review Date and adjusted effective from that date in accordance with the change in CPI, so that the Contract Value as at the Review Date is equal to:

$$\text{CVB} * \text{CPI/CPIB}$$

Where:

CVB means the Contract Value immediately before the Review Date;

CPI means the CPI for the quarter ending on the 31 March immediately before the Review Date;
and

CPIB means the CPI for the quarter ending on the 31 March in the preceding year.

- (b) If either:
- (i) the CPI ceases to be published; or
 - (ii) the method of calculation of the CPI substantially alters,
- the CPI is to be replaced by the nearest equivalent index and any necessary consequential amendments are to be made.
- (c) Any replacement index and consequential amendments required under paragraph (b) are to be determined by agreement between the parties or, if the parties do not agree, by the Australian Statistician or their nominee (acting as an expert and not as an arbitrator), whose decision is binding and conclusive.

10. Extent of Liability

10.1. AEMO Liability Cap

- (a) Subject to paragraph (b) and other than in respect of any unpaid Charges, the total amount recoverable from AEMO in respect of any and all Claims arising out of any one or more events during the Term with respect to, arising from, or in connection with, this Agreement or the provision of SRAS is limited to a maximum aggregate amount of \$5,000,000.
- (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 Agreement, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this Agreement;
 - (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 SRAS Provider's failure to act in accordance with this Agreement, a Law or good electricity industry practice.

10.2. SRAS Provider Liability Cap

- (a) Subject to paragraph (b), and other than in respect of any amounts repayable by the SRAS Provider in respect of Charges, the total amount recoverable from the SRAS Provider in respect of any and all Claims arising out of any one or more events during the Term with respect to, arising from, or in connection with, this Agreement or the provision of the SRAS is limited to a maximum aggregate amount of \$5,000,000.
- (b) Regardless of the nature of any Claim, the SRAS 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 Agreement, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this Agreement;
 - (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 Agreement, a Law or good electricity industry practice.
- (c) To avoid doubt and without limitation, the following are damages or loss arising directly from a breach of this Agreement by the SRAS Provider, for which the SRAS Provider will be liable if they arise:

- (i) AEMO's costs and expenses incurred in conducting a tender under the NER to procure an additional or replacement system restart ancillary service (replacement SRAS), to the extent that service would not have been required but for the SRAS Provider's breach; and
- (ii) the amount payable for a replacement SRAS between the commencement date of the replacement SRAS and the expiry date of the Term (as at the date the SRAS Provider was notified of the breach under clause 12), to the extent that amount exceeds the amount that would have been payable to the SRAS Provider under this Agreement during the same period but for the SRAS Provider's breach.

10.3. National Electricity Law

This Agreement does not vary or exclude the operation of sections 116, 119 or 120 of the National Electricity Law. To avoid doubt, any liability of a party under this Agreement will not exceed the lesser of any amount to which that liability may be limited under the National Electricity Law, and the relevant liability cap under clause 10.1 or 10.2.

11. Force Majeure

11.1. Effect on performance of obligation

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

11.2. Obligation to Notify

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

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

11.3. Obligation to mitigate

- (a) As soon as practicable after the occurrence of an Event of Force Majeure, the affected party must use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling manpower and resources) to mitigate the consequences of that Event of Force Majeure and minimise any resulting delay in the performance of its obligations under this Agreement.
- (b) The suspension granted under clause 11.1 does not include any delay in the performance of the affected obligation attributable to a failure by the affected party to comply with paragraph (a).
- (c) The affected party bears the onus of proving that it has complied with its obligations under paragraph (a).
- (d) Nothing in this clause 11 requires the affected party to settle or compromise a Labour Dispute where the affected party, in its sole and absolute discretion, considers that course to be inappropriate.

11.4. Termination for extended force majeure outage

- (a) If, by reason of an Event of Force Majeure, SRAS Equipment is incapable of providing SRAS for a period exceeding 3 months, AEMO may terminate this Agreement in respect of the relevant SRAS.
- (b) If AEMO gives a termination notice under paragraph (a) in respect of a particular SRAS, this Agreement terminates in respect of that SRAS from the start of the later of:
 - (i) the day following the day on which the notice was given; and
 - (ii) the day nominated in the notice,and on termination the applicable Schedule will no longer form part of this Agreement or any other agreement between the parties.

12. Default

12.1. Termination

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

- (a) the defaulting party does not pay any money due under this Agreement on the due date and the defaulting party does not pay the money within a further period of 45 *business days* after the terminating party serves notice on the defaulting party requiring payment;
- (b) subject to clause 12.2, the defaulting party does not carry out or meet any other material obligation under this Agreement and in the case of a default that is capable of remedy, does not remedy that default within 60 *business days* after the terminating party serves notice on the defaulting party requiring it to be remedied;
- (c) any representation or warranty given by the defaulting party under clause 15 is materially inaccurate or untrue; or
- (d) an Insolvency Event occurs in relation to the defaulting party.

12.2. Termination by AEMO

- (a) AEMO may immediately terminate this Agreement by giving notice to the SRAS Provider if:
 - (i) the SRAS Provider fails twice within a 12-month period to provide an SRAS when required by AEMO in accordance with the Contracted Levels of Performance while meeting the Minimum Technical Requirements;
 - (ii) the SRAS has been Unavailable for a continuous period of more than 3 months;
 - (iii) the Service Provider fails to meet the Minimum Availability Requirement in respect of an SRAS for any Relevant Period; or
 - (iv) one or more of the Individual Reliability Levels have not been met for any Contract Year.
- (b) A termination notice given under paragraph (a)(iii) or (iv) must set out how compliance with the Minimum Availability Requirement or relevant Individual Reliability Level was measured.

12.3. Termination Notices

A notice to terminate issued under clause 12.1 or 12.2 takes effect on the later of:

- (a) the time it is given; and
- (b) the time specified in the notice.

12.4. Survival

- (a) Expiry or termination of this Agreement for any reason does not affect:

- (i) any rights of either party against the other that:
 - (A) arose prior to the time at which expiry or termination occurred; and
 - (B) otherwise relate to or might arise at any future date from any breach of this Agreement occurring prior to the expiry or termination; or
- (ii) the rights and obligations of the parties under clauses **8, 9, 10, 14** and **18**.

12.5. Reduction of SRAS

If AEMO is entitled to terminate this Agreement under clause **12.1** or **12.2**, AEMO may instead elect to reduce the number of SRAS it purchases under this Agreement by specifying so in a notice to the Service Provider that complies in all other respects with clause **12.1** or **12.2** (as applicable). On and from the effective date of that notice, the specified Schedule will be taken not to form part of this Agreement or any other agreement between the parties.

12.6. No other termination

Subject to any written Law to the contrary, a party must not terminate this Agreement other than for a reason provided for under this Agreement.

13. Assignment and Sub-Contracting

13.1. Assignment

- (a) Subject to paragraph (c), the SRAS Provider must not dispose of its rights in this Agreement or SRAS Equipment without first obtaining AEMO's consent, which must not be unreasonably withheld or delayed.
- (b) AEMO must give its consent for the purposes of paragraph (a) if:
 - (i) the SRAS Provider disposes of the SRAS Equipment to one person or a group of persons (assignee);
 - (ii) the assignee executes and delivers to AEMO a deed (in form and substance satisfactory to AEMO) prior to the disposal by which the assignee agrees to assume obligations that are substantially equivalent to the SRAS Provider's obligations under this Agreement; and
 - (iii) the assignee is a Registered Participant.
- (c) Despite any other provision of this Agreement, AEMO acknowledges and agrees that the Service Provider may grant security interests (whether by mortgage, charge or otherwise) over this Agreement and its rights, interests and obligations in or under this Agreement without AEMO's consent.
- (d) In this clause, dispose of or disposal refers to an assignment, transfer or other means of disposing of all or part of a legal or equitable interest, whether by sale, lease, declaration or creation of trust or otherwise.

13.2. Sub-contracting

- (a) The SRAS Provider must not sub-contract the performance of any of its obligations under this Agreement without first obtaining AEMO's consent, which must not be unreasonably withheld or delayed.
- (b) If the SRAS Provider sub contracts the performance of obligations under this Agreement, the SRAS Provider remains responsible for the performance of this Agreement.

14. Dispute Resolution

- (a) If a dispute arises in relation to this Agreement or its subject matter, the parties agree that rule 8.2 of the NER applies to that dispute.

- (b) Unless otherwise agreed by the parties, or determined under the rule 8.2 dispute resolution processes, the parties must continue to perform their obligations under this Agreement despite the existence of a dispute.

15. Warranties

- (a) The SRAS Provider represents and warrants to AEMO as at the date of this Agreement and at all times after the date of this Agreement that:
 - (i) it will provide SRAS with due care and skill;
 - (ii) it and its representatives are duly qualified and skilled to provide SRAS;
 - (iii) it will provide SRAS in accordance with all relevant Law, good electricity industry practice and relevant Australian Standards and codes of practice;
 - (iv) it will ensure that data of SRAS Availability and provision provided to AEMO for AEMO's use in calculating payments and issuing statements in accordance with clause 9 will be in a form suitable for use in AEMO's systems, and will accurately reflect the level of Availability and provision of SRAS under this Agreement;
 - (v) the SRAS Provider's obligations under this Agreement are enforceable in accordance with their terms; and
 - (vi) the SRAS Provider is entitled to carry out its obligations under this Agreement.
- (b) AEMO represents and warrants to the SRAS Provider as at the date of this Agreement and at all times after the date of this Agreement that AEMO's obligations under this Agreement are enforceable in accordance with their terms.

16. Compliance with Law and the Requirements of an Authority

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

17. Change in Law

17.1. Change in Law Notice

- (a) If a Change in Law occurs during the Term, a party may give notice (**notifying party**) to the other party (**notified party**) of the Change in Law.
- (b) Any notice given by a notifying party under paragraph (a) must:
 - (i) be given by within 3 months of the commencement of the relevant Change in Law, otherwise this clause 17 will not apply; and
 - (ii) include full details of impact of the Change in Law and any supporting information reasonably necessary to enable the notified party to verify its impact.

17.2. Negotiations

On receipt of a notice under clause 17.1, the parties must negotiate in good faith such amendments to this Agreement as are necessary or appropriate on the basis of the following principles:

- (a) the amendments will endeavour to preserve the economic and legal effect of the Agreement as at the Commencement Date to the extent practicable, except any change in the Contract Values will be limited to the actual change in the cost of providing SRAS arising from the Change in Law; and
- (b) the amendments will otherwise be fair and reasonable in the circumstances.

17.3. Dispute

If the parties are unable to agree on the amendments in accordance with clause 17.2 within 2 months of receipt of the notice received under clause 17.1, the dispute must be resolved in accordance with clause 14. Any third party appointed under clause 14 to assist in the resolution of the dispute must take into account the principles detailed in clause 17.2.

18. General

18.1. Notices

- (a) Subject to paragraph (b), all Communications to a party must be:
 - (i) in writing;
 - (ii) marked to the attention of the person named in respect of that party in the Details; and
 - (iii) left at, sent by pre-paid express post (registered airmail if posted to or from a place outside Australia), or sent by electronic message, to the postal or electronic mail address of the addressee specified for that party in the Details.
- (b) Subject to the NER, any:
 - (i) Communications given in the course of the day-to-day running of the *national grid* or the *national electricity market* by or on behalf of a party to the other; or
 - (ii) request for SRAS made by AEMO,may be made by automated electronic process, telephone or other instantaneous means of communication.
- (c) Unless Communications under paragraph (b) are recorded in some other way satisfactory to both parties, the parties must ensure that logs are kept in which persons or electronic systems giving and receiving those Communications record brief details of their substance and timing.
- (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 hand-delivery, immediately upon being delivered to the address of the recipient party;
 - (ii) in the case of a posted letter, on the 2nd (10th, if posted to or from a place outside Australia) *business day* after posting;
 - (iii) 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
 - (iv) in the case of Communications under paragraph (b), instantaneously.
- (f) Except for Communications given under paragraph (b), if a Communication is received, or deemed to be received, on a day that is not a *business day*, or after 5:00pm on a *business day*, it is taken to be received on the next *business day*.

- (g) A party may at any time by notice given to the other party designate a different person, address or electronic mail address for the purposes of clause 18.1 and the Details.

18.2. Exercise of Rights

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

18.3. No Waiver or Variation

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

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

18.4. Amendment

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

18.5. Approvals and Consents

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

18.6. Continuing Indemnities

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

18.7. Payment not necessary before Claim

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

18.8. Costs and Expenses

Costs, fees and expenses of a party covered by a right of indemnity include legal expenses, fees and charges incurred by the indemnified party on a solicitor own client basis and are not subject to taxation on a party and party or any other basis.

18.9. Further Assurances

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

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

18.10. Supervening Law

Subject to clause 17, any present or future Law that operates to vary an obligation or right, power or remedy of a person in connection with this Agreement is excluded to the extent permitted by Law.

18.11. Severability

If a provision of this Agreement is void, unenforceable, or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Agreement remains effective and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 18.11 has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

18.12. Entire Agreement

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

18.13. Confidential Information

Any information of a commercially sensitive nature exchanged between the parties under this Agreement or during the negotiations preceding this Agreement is confidential information. The SRAS Provider consents to the disclosure of that information by AEMO to the extent reasonably necessary for the purposes of assessing the viability of SRAS, preparing restart plans, training in power system emergency response and in the delivery of SRAS, or any other obligation of AEMO under the NER.

18.14. No other Representations or Warranties

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

18.15. Counterparts

This Agreement may consist of a number of copies, each signed by one or more parties to this Agreement. If so, the signed copies make up one document and the date of this Agreement will be the date on which the last counterpart was signed.

18.16. Governing Law & Jurisdiction

This Agreement and the transactions contemplated by this Agreement are governed by the laws in force in the jurisdiction referred to in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

18.17. No Partnership, Agency or Trust

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

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

EXECUTED as an agreement

Drafting Note: A sample schedule follows for Non-TTHL SRAS (Schedule 1) and TTHL SRAS (Schedule 2). Note that each type has different parameters for contracted performance levels
Any Conditions Precedent are to be itemised in the Annexure

Schedule 1 - [Insert description eg power station name] SRAS

Drafting Note: This schedule contains the specifications normally required for a **Non-TTHL** service

S1.1 Item 1: Description of SRAS

SRAS Provider Generating Unit	XXXX
Delivery Point	
SRAS type	Non-TTHL

S1.2 Item 2: SRAS Equipment and SRAS Transmission Components

Drafting Note: All components of SRAS Equipment should be listed, including communications equipment used by the SRAS Provider in the restart and delivery process. Any SRAS Third Party Assets (as defined in the SRAS Guideline) must be individually listed and the asset owner/operator identified.

SRAS Equipment	Major components:
	Other components:
	SRAS Third Party Assets:
SRAS Transmission Components	

S1.3 Item 3: Contracted Levels of Performance

Performance Requirement	Contracted Level of Performance
Time to be ready to commence sending out electricity to the Delivery Point after AEMO issues an instruction to the SRAS Provider to start up	[] minutes
The capability of the SRAS Equipment to export electricity to the Delivery Point (Contracted Electricity Export Capability)	[] MW
Time to reach Contracted Electricity Export Capability after AEMO issues an instruction to the SRAS Provider to start up	[] minutes
Size of load of electricity that can be supported by the SRAS Equipment if connected at the Delivery Point, while maintaining frequency and voltage within limits (Contracted Load Block)	[] MW

S1.4 Item 4: Minimum Availability and Individual Reliability

- (a) The Minimum Availability Requirement for each Relevant Period (clause 5.4) is []%
- (b) The Individual Reliability Levels (clause 8.2) are:

Parameter	Required level	Annual information
[Specify parameter] [e.g. availability of alternate fuel source, number of available units for % of year, redundancy in other key components or communications link, maintenance performed, protection and control systems upgrades, etc.]		
[Specify parameter]		

S1.5 Item 5: Minimum Technical Requirements

- (a) The SRAS Provider's Generating Unit must have the capability following *disconnection* from the *power system* to deliver *energy* to the Delivery Point without taking *supply* from any part of the *power system* following *disconnection*.
- (b) Following loss of external *supply* the SRAS Equipment must maintain readiness to provide the SRAS until AEMO issues a Communication to energise or stop.
- (c) The SRAS Equipment (where necessary supported by the SRAS Transmission Components) must:
 - (i) be able to achieve each of the timeframes specified in each Contracted Level of Performance;
 - (ii) be able to operate at zero export load for at least 30 minutes;
 - (iii) be able to close onto a de-energised bus;
 - (iv) have appropriate *network* controls and *protection* systems in place to avoid the SRAS Equipment adversely affecting *power system* restoration while meeting the requirements specified in paragraphs (a) and (b);
 - (v) be able to operate in a stable manner while *network* switching is performed;
 - (vi) be able to control *voltage* to achieve the requirements of paragraphs (a) and (b);
 - (vii) be able to supply the Contracted Load Blocks to achieve the requirements of paragraphs (a) and (b);
 - (viii) be able to control *frequency* to achieve the requirements of paragraphs (a) and (b); and
 - (ix) have no restrictions or limitations that have the potential to adversely affect *power system* restoration.

S1.6 Item 6: Requests for Service

- (a) AEMO will issue a Communication to the SRAS Provider advising that a *major supply disruption* has occurred for which the SRAS may be required.
- (b) On receipt of the Communication under **paragraph (a)**, the SRAS Provider must initiate the SRAS Equipment to get ready to commence sending out *energy*.
- (c) AEMO will issue a further Communication to the SRAS Provider requesting that the SRAS Provider *energise* the Delivery Point.

S1.7 Item 7: Special Test Conditions

[e.g. modifications, special approvals, additional periodic diesel generator start records (Insert if applicable, or state 'Not applicable')]

S1.8 Item 8: Prices and Payments

(a) Availability Charge

The Availability Charge for each *trading interval* is calculated as:

$RC * CF$

where:

RC means \$[] per *trading interval*;

CF means a compliance flag. CF is:

- (i) 0 if the SRAS is Unavailable in that *trading interval*; or
- (ii) 1 if the SRAS is Available in that *trading interval*.

(b) Usage Charge

In addition to any amount payable under item 7.1, AEMO will pay the SRAS Provider a Usage Charge of \$[] in respect of each *major supply disruption* for which the SRAS was provided in accordance with this Agreement.

Not more than one Usage Charge is payable in respect of any 24-hour period.

(c) Testing Charge

A Testing Charge of \$[] is payable by AEMO for each Test required to be carried out in accordance with this Agreement.

Schedule 2 - [Insert description eg power station name] SRAS

Drafting Note: This schedule contains the specifications normally required for a TTHL service

S2.1 Item 1: Description of SRAS

SRAS Provider Generating Unit	XXXX
Delivery Point	
SRAS type	TTHL

S2.2 Item 2: SRAS Equipment and SRAS Transmission Components

Drafting Note: All components of SRAS Equipment should be listed, including communications equipment used by the SRAS Provider in the restart and delivery process. Any SRAS Third Party Assets (as defined in the SRAS Guideline) must be individually listed and the asset owner/operator identified.

SRAS Equipment	Major components:
	Other components:
	SRAS Third Party Assets:
SRAS Transmission Components	

S2.3 Item 3: Contracted Levels of Performance

Note: For items marked *, as soon as reasonably practicable after a request by AEMO, the SRAS Provider must take all reasonable steps to configure or adjust its settings to the levels requested.

Performance Requirement	Contracted Level of Performance
Time to be ready to commence sending out electricity to the Delivery Point following a <i>major supply disruption</i>	[] minutes
The capability of the SRAS Equipment to export electricity to the Delivery Point (Contracted Electricity Export Capability)	[] MW
Time to reach Contracted Electricity Export Capability following a <i>major supply disruption</i>	[] minutes
Size of load of electricity that can be supported by the SRAS Equipment if connected at the Delivery Point, while maintaining frequency and voltage within limits (Contracted Load Block)	[] MW
*Threshold for trip condition to be activated by sustained excessive high <i>frequency</i>	# Hz for # sec
*Threshold for trip condition to be activated by sustained excessive low <i>frequency</i>	# Hz for # sec

*Rate of change of <i>frequency</i>	[] Hz/sec
*Threshold for trip condition to be activated by loss of <i>synchronism</i>	[]
*Threshold for trip condition to be activated by sustained excessive low <i>voltage</i> excursions	#pu volts for # sec

* See note immediately above the table

S2.4 Item 4: Minimum Availability and Individual Reliability

- (a) The Minimum Availability Requirement for each Relevant Period (clause 5.4) is []%
- (b) The Individual Reliability Levels (clause 8.2) are:

Parameter	Required level	Annual information
[Specify parameter] [e.g. <i>availability of alternate fuel source, number of available units for % of year, redundancy in other key components/communications link, maintenance performed, protection and control systems upgrades, etc.</i>]		
[Specify parameter]		

S2.5 Item 5: Minimum Technical Requirements

- (a) The SRAS Provider's Generating Unit must have the capability following *disconnection* from the *power system* to deliver *energy* to the Delivery Point without taking *supply* from any part of the *power system* following *disconnection*.
- (b) Following loss of external *supply* the SRAS Equipment must maintain readiness to provide the SRAS until AEMO issues a Communication to energise or stop.
- (c) The SRAS Equipment (where necessary supported by the SRAS Transmission Components) must:
- (i) be able to achieve each of the timeframes specified in each Contracted Level of Performance;
 - (ii) be able to operate at zero export load for at least 30 minutes;
 - (iii) be able to close onto a de-energised bus;
 - (iv) have appropriate *network* controls and *protection systems* in place to avoid the SRAS Equipment adversely affecting *power system* restoration while meeting the requirements specified in paragraphs (a) and (b);
 - (v) be able to operate in a stable manner while *network* switching is performed;
 - (vi) be able to control *voltage* to achieve the requirements of paragraphs (a) and (b);
 - (vii) be able to supply the Contracted Load Blocks to achieve the requirements of paragraphs (a) and (b);
 - (viii) be able to control *frequency* to achieve the requirements of paragraphs (a) and (b); and
 - (ix) have no restrictions or limitations that have the potential to adversely affect *power system* restoration;
 - (x) be able to maintain TTHL relay settings at the thresholds specified in item 3 of this Schedule; and
 - (xi) have tripping schemes that can be activated by sustained excessive high or low *frequency* excursions, loss of *synchronisation* and excessive low *voltage* excursions.

S2.6 Item 6: Requests for Service

- (a) If a trip condition occurs, the SRAS Equipment automatically trips to house load (no service request is required for this to occur).
- (b) AEMO will issue a Communication to the SRAS Provider requesting that the SRAS Provider *energise* the Delivery Point.

S2.7 Item 7: Special Test Conditions

[e.g. modifications, special approvals, additional periodic diesel generator start records (Insert if applicable, or state 'Not applicable').]

S2.8 Item 8: Prices and Payments

- (a) Availability Charge

The Availability Charge for each *trading interval* is calculated as:

$$RC * CF$$

where:

RC means \$[] per *trading interval*;

CF means a compliance flag. CF is:

- (i) 0 if the SRAS is Unavailable in that *trading interval*; or
 - (ii) 1 if the SRAS is Available in that *trading interval*.
- (b) Usage Charge
- In addition to any amount payable under item 7.1, AEMO will pay the SRAS Provider a Usage Charge of \$[] in respect of each *major supply disruption* for which the SRAS was provided in accordance with this Agreement.
- Not more than one Usage Charge is payable in respect of any 24-hour period.
- (c) Testing Charge
- A Testing Charge of \$[] is payable by AEMO for each Test required to be carried out in accordance with this Agreement.

DRAFT

SIGNING PAGE

SIGNED by [insert name] as authorised representative for **AUSTRALIAN ENERGY MARKET OPERATOR LIMITED** in the presence of:

(signature of witness)

(print name of witness)

(address of witness)

(occupation of witness)

(signature of authorised representative)

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

(Date signed)

SIGNED by [insert name] as authorised representative for #1# in the presence of:

(signature of witness)

(print name of witness)

(address of witness)

(occupation of witness)

(signature of authorised representative)

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

(Date signed)

DRAFT