|  |
| --- |
| Auction PARTICIPATION AGREEMENT |
|  |

|  |  |
| --- | --- |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

Contents

[1. Definitions and Interpretations 6](#_Toc13471942)

[1.1. Definitions 6](#_Toc13471943)

[1.2. Interpretation 7](#_Toc13471944)

[2. Previous Agreement 8](#_Toc13471945)

[3. Term 8](#_Toc13471946)

[4. Auctions 8](#_Toc13471947)

[4.1. General 8](#_Toc13471948)

[5. Settlements Residue Distribution Agreements 8](#_Toc13471949)

[5.1. Eligibility 8](#_Toc13471950)

[5.2. Formation 8](#_Toc13471951)

[5.3. Term of SRDA 9](#_Toc13471952)

[5.4. Separate Agreements 9](#_Toc13471953)

[6. Offering Units 9](#_Toc13471954)

[6.1. Right to offer Units 9](#_Toc13471955)

[6.2. Cancellation of Offered Units 9](#_Toc13471956)

[7. Purchase Price 9](#_Toc13471957)

[7.1. Payment 9](#_Toc13471958)

[7.2. Default Interest 9](#_Toc13471959)

[8. Cancellation Price 10](#_Toc13471960)

[8.1. Payment 10](#_Toc13471961)

[9. Distribution of Units 10](#_Toc13471962)

[9.1. Default Interest 10](#_Toc13471963)

[9.2. Distribution Instalments 10](#_Toc13471964)

[9.3. Calculation of Instalments 10](#_Toc13471965)

[9.4. Auction Expense Fees 10](#_Toc13471966)

[9.5. Adjustment to Settlements Residue 11](#_Toc13471967)

[9.6. Reconciliation Adjustment 11](#_Toc13471968)

[9.7. Payment Procedure 11](#_Toc13471969)

[9.8. Default Interest 11](#_Toc13471970)

[10. Reconciliation Statement 11](#_Toc13471971)

[11. Goods and Services Tax 12](#_Toc13471972)

[11.1. GST to be added to amounts payable 12](#_Toc13471973)

[11.2. Impact of GST on the Calculation of Amounts Payable 12](#_Toc13471974)

[12. Dispute Resolution 12](#_Toc13471975)

[13. Auction Participant Acknowledgements 12](#_Toc13471976)

[13.1. General 12](#_Toc13471977)

[13.2. Acknowledgements 12](#_Toc13471978)

[13.3. Waiver 13](#_Toc13471979)

[14. Liability 13](#_Toc13471980)

[14.1. Implied Warranties 13](#_Toc13471981)

[14.2. Limitation of Liability 13](#_Toc13471982)

[14.3. Notification 14](#_Toc13471983)

[14.4. Statutory Immunity 14](#_Toc13471984)

[14.5. Agents Liability 14](#_Toc13471985)

[15. Auction Costs 14](#_Toc13471986)

[16. Termination 14](#_Toc13471987)

[16.1. National Electricity Market 14](#_Toc13471988)

[16.2. Continuing Eligibility 14](#_Toc13471989)

[16.3. Breach 15](#_Toc13471990)

[16.4. Insolvency 16](#_Toc13471991)

[16.5. Settlements Residue Calculation 16](#_Toc13471992)

[16.6. Purchase Price Adjustment 16](#_Toc13471993)

[16.7. Adjustments to Settlements Residue 16](#_Toc13471994)

[16.8. Continuing Rights 16](#_Toc13471995)

[16.9. Consequences of termination 17](#_Toc13471996)

[17. Close Out and Offset 17](#_Toc13471997)

[17.1. General provisions for application of close out and offset 17](#_Toc13471998)

[17.2. Defaulting Participant Profit and Loss 17](#_Toc13471999)

[18. General 18](#_Toc13472000)

[18.1. Notices 18](#_Toc13472001)

[18.2. Entire Agreement 19](#_Toc13472002)

[18.3. Amendment 19](#_Toc13472003)

[18.4. Assignment 19](#_Toc13472004)

[18.5. No Waiver 19](#_Toc13472005)

[18.6. Further Assurances 19](#_Toc13472006)

[18.7. No Merger 19](#_Toc13472007)

[18.8. Costs and Stamp Duty 19](#_Toc13472008)

[18.9. Governing Law and Jurisdiction 20](#_Toc13472009)

[18.10. Counterparts 20](#_Toc13472010)

**DETAILS**

|  |
| --- |
|   |

**Date:**

|  |  |
| --- | --- |
| 1  | **Australian Energy Market Operator Limited** ABN 94 072 010 327 of Level 22, 530 Collins Street, MELBOURNE VIC 3000 (**AEMO**) and  |
| 2  | **[name]** ABN of [address] **(Auction Participant).** and[[1]](#footnote-1)  |
| 3  | **[name]** ABN of [address] **(Agent).**  |

**Parties:**

|  |
| --- |
|  |

**Austraclear Account:**

|  |
| --- |
| **To AEMO:** Level 22, 530 Collins Street, MELBOURNE VIC 3000 Facsimile: 03 9609 8080 Attention: Group Manager Settlements and Prudentials  **cc:** Level 22, 530 Collins Street, MELBOURNE VIC 3000 Facsimile: 03 9609 8080 Attention: Group Manager Legal  **To the Auction Participant:** [address] Facsimile: Attention: [[2]](#footnote-2) **To the Agent:** [address] Facsimile: Attention:  |

**Address for Service of Notices:**

**OPERATIVE PROVISIONS:**

# Definitions and Interpretations

Definitions

The following definitions apply unless the context requires otherwise:

**AEMO Clearing Account**means Austraclear account NEMM30 or such other Austraclear account as is notified to the Auction Participant by *AEMO*.

**AEMOMarkets Portal**has the meaning given to it in the *auction rules*.

**Allocation Confirmation**means a confirmation sent to the Auction Participant by *AEMO* in accordance with clause 14.1 of the *auction rules*.

**Bid** has the meaning given to it in the *auction rules*.

**Bid File** has the meaning given to it in the *auction rules*.

**Cancellation Confirmation** means a confirmation sent to the Auction Participant by AEMO in accordance with clause 14.2 of the *auction rules*.

**Cancellation Price** means, in respect of Offered Units, the aggregate cancellation price for the Relevant Quarter, as specified in the Relevant Cancellation Confirmation.

**Cancelled Units** means Offered Units that are cancelled in accordance with clause 6.2.

**Disclosed Information**means:

* 1. the information contained or referred to in the AEMO Settlements Residue Auction Information Memorandum (any version); and
	2. any other information provided to the Auction Participant by or on behalf of *AEMO* in connection with an *auction*.

**Distribution Instalment**means, in respect of an SRDA, an instalment of SRDA Units to be distributed in accordance with **clause 9.2**.

**GST**has the meaning given to it in section 195-1 of the A New Tax System (Goods and Services) Tax Act1999 (Cth).

**Input Tax Credit** has the meaning given to it in section 195-1 of the A New Tax System (Goods and Services) Tax Act 1999 (Cth).

**Margin Call** has the meaning given to it in the *auction rules*.

**Offer** has the meaning given to it in the *auction rules*.

**Offer File** has the meaning given to it in the *auction rules*.

**Offered Units** has the meaning given to it in the *auction rules*.

**Previous Agreement** means any *auction participant agreement* entered into between the Auction Participant and Agent (if applicable) and *AEMO* prior to the date of this Agreement.

**Purchase Price**means, in respect of an SRDA, the aggregate purchase price for the Relevant Quarter, as specified in the Relevant Allocation Confirmation.

**Purchase Statement** has the meaning given to it in the *auction rules*.

**Reconciliation Statement** is defined in **clause 10.**

**Relevant Allocation Confirmation**means, in respect of an SRDA, the Allocation Confirmation pursuant to which the SRDA is formed in accordance with **clause 5.2**.

**Relevant Cancellation Confirmation**means, in respect of Cancelled Units, the Cancellation Confirmation pursuant to which the Cancelled Units are cancelled in accordance with **clause 6.2**.

**Relevant Quarter**has the meaning given to it in the *auction rules*.

**SRDA**means a *settlements residue distribution agreement*. **SRDA Units**means, in respect of an SRDA, the Units specified in the Relevant Confirmation for that Relevant Quarter and, for the avoidance of doubt, may include Units in more than one Unit Category.

**Taxable Supply** has the meaning given to it in section 195-1 of the A New Tax System (Goods and Services) Tax Act 1999 (Cth).

**Trading Position**has the meaning given to it in the *auction rules*

**Unit**has the meaning given to it in the *auction rules*.

**Unit Category**has the meaning given to it in the *auction rules*.

Any word or phrase *in this style* has the same meaning given to that word or phrase in the National Electricity Rules.

Interpretation

Headings are for convenience only and do not affect interpretation. The following rules of interpretation apply unless the context requires otherwise.

* 1. The singular includes the plural and conversely.
	2. A gender includes all genders.
	3. If a word or phrase is defined, its other grammatical forms have a corresponding meaning.
	4. A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
	5. A reference to a clause or Schedule is a reference to a clause of or a schedule to this Agreement.
	6. A reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, varied, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document.
	7. A reference to a person includes the person’s successors, permitted substitutes and permitted assigns (and, where applicable, the person’s legal personal representatives).
	8. A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.
	9. A reference to $ or dollars is to Australian currency.
	10. A reference to a time is to *Eastern Standard Time*.
	11. The word “includes” or “including” or “such as” are not words of limitation, and when introducing an example, do not limit the meaning of the words to which the example relates to examples of a similar kind.

Previous Agreement

The Parties agree that:

* 1. any Previous Agreement is terminated on and from the date of this Agreement;
	2. subject to subclause (c), any SRDAs entered into pursuant to a Previous Agreement for SRDA Units allocated to the Auction Participant before the date of this Agreement (the “**Existing SRDAs**”) continue notwithstanding the termination of the Previous Agreement;
	3. the terms of SRDAs entered into pursuant to a Previous Agreement for any SRDA Units allocated to the Auction Participant before the date of this Agreement (each an “**Existing SRDA**”) are amended, effective from the date on which the Existing SRDA was entered into pursuant to the Previous Agreement, to the terms of the SRDA that would have been entered into had the SDRA Units been allocated to the Auction Participant in accordance with the terms of this Agreement;
	4. notwithstanding any term of the Previous Agreement, the rights and obligations of the parties in relation to *auctions* and SRDA Units, including the right of a party to recover an amount, or the obligation of a party to pay an amount that become payable prior to the date of termination of the Previous Agreement, and any rights of a party that otherwise relate to, or may arise in the future from, any breach of nonobservance of obligations under the Previous Agreement or an Existing SRDA are subject to the terms of this Agreement and the Existing SRDAs as amended pursuant to paragraph (c).

Term

This Agreement commences on the date specified in the **Details** and continues until it is terminated in accordance with **clause 16**.

Auctions

General

The Auction Participant:

* 1. acknowledges that *AEMO* will conduct the *auctions* in accordance with the *auction rules*; and
	2. agrees that it will participate in the *auctions* in accordance with the *auction rules*, and on the terms and conditions set out in this Agreement.

Settlements Residue Distribution Agreements

Eligibility

*AEMO* will only enter into an SRDA with *eligible persons* who meet and continue to satisfy the criteria detailed in the *Rules*, or clause 3.2 of the *auction rules*.

Formation

The parties agree that if:

* 1. the Auction Participant submits a Bid File to *AEMO*; and
	2. *AEMO* allocates Units to the Auction Participant in accordance with the *auction rules* and sends a Confirmation to the Auction Participant,

the parties will have entered into an SRDA in respect of each Relevant Quarter for which the Auction Participant has been allocated Units, pursuant to which *AEMO* unconditionally agrees to grant to the Auction Participant, and the Auction Participant agrees to acquire, the SRDA Units for the Purchase Price on the terms and conditions set out in this Agreement.

Term of SRDA

Each SRDA commences on the date of the Relevant Confirmation and, subject to **clause 16**, continues until 16 *business days* after receipt by the Auction Participant of the Reconciliation Statement to be provided by *AEMO* under **clause 10**.

Separate Agreements

Each SRDA is a separate agreement and shall be subject to the terms and conditions set out in this Agreement.

Offering Units

Right to offer Units

An Auction Participant may offer any or all SRDA Units for a Relevant Quarter in future auctions for the Relevant Quarter in accordance with the SRDA and the *auction rules*.

Cancellation of Offered Units

If an Auction Participant offers SRDA Units in an auction in accordance with clause 6.1 and the SRDA Units are allocated in the auction, AEMO must:

* 1. pay the Auction Participant the Cancellation Price for those SRDA Units in accordance with the SRDA and the *auction rules*; and
	2. immediately cancel the SRDA Units.

For the avoidance of doubt, the cancellation of a SRDA Unit by AEMO does not terminate the underlying SRDA between AEMO and the Auction Participant under which that Cancelled Unit was allocated, and does not affect the obligation of the Auction Participant to pay AEMO the Purchase Price for the Cancelled Unit in accordance with the *auction rules* and the SRDA under which that Cancelled Unit was allocated to the Auction Participant.

Purchase Price

Payment

For each SRDA, the Auction Participant must pay the Purchase Price by the payment date and time specified in the Purchase Statement by authorising the transfer of funds in dollars to the AEMO Clearing Account.

Default Interest

The Auction Participant must pay interest at the *bank bill rate* calculated as simple interest on a daily basis from the date on which payment of the Purchase Price was due in accordance with **clause 7.1** up to and including the date of payment.

Cancellation Price

Payment

For each Cancelled Unit, subject to payment of the Purchase Price by the Auction Participant to AEMO, AEMO must pay the Cancellation Price by the payment date and time specified in the Purchase Statement by authorising the transfer of funds in dollars to the Austraclear Account specified in the **Details** or such other Austraclear account notified to *AEMO* by the Auction Participant.

Distribution of Units

Default Interest

Except for Cancelled Units under the SRDA and subject to Allocation Fees and Cancellation Fees, for each SRDA, the Auction Participant is entitled to receive the greater of:

* 1. $10 per SRDA Unit; and
	2. the amount that is represented by the SRDA Units

For the avoidance of doubt, the payment by *AEMO* to the Auction Participant of any amount under clause 3.12.2 of the *Rules*, or in accordance with an assessment made by an independent expert under clause 3.12.3 of the *Rules* following a referral to that independent expert under clause 3.12.2(l) or 3.12.2(m) of the *Rules*, is not to be taken as a payment towards the amount referred to in **paragraph (a)**.

Distribution Instalments

Subject to Allocation Fees and Cancellation Fees, *AEMO* must distribute the *settlements residue* represented by SRDA Units (excluding Cancelled Units) in instalments as follows:

* 1. a Distribution Instalment must be made in respect of each *billing period* or part of a *billing period* falling within the Relevant Quarter to which the SRDA Unit relates;
	2. the Distribution Instalment must be included on the statements provided by *AEMO* in respect of the relevant *billing period* under clauses 3.15.14 and 3.15.15 of the *Rules*; and
	3. each Distribution Instalment must be made on the date on which payments in respect of the relevant *billing period* are to be made by *AEMO* under clause 3.15.17 of the *Rules*,

provided that *AEMO* is not obliged to make any Distribution Instalments under an SRDA unless the Auction Participant has paid the Purchase Price for that SRDA.

Calculation of Instalments

For each SRDA Unit, the amount of *settlements residue* for each Distribution Instalment is based on the settlements *residue* for the relevant Unit Category in respect of the relevant *billing period* or part of a *billing period*.

Auction Expense Fees

* 1. The totalAllocation Fees and Cancellation Fees for all Transactions for an Auction Participant in relation to Units for a Relevant Quarter must be deducted from the total of the first Distribution Instalments for that Relevant Quarter provided that, if the total Distribution Instalments would be a negative amount, no distribution will be made and the remaining part of the totalAllocation Fees and Cancellation Fees for all Transactions will be deducted from the total of the next Distribution Instalments or, if necessary, the total of the next succeeding Distribution Instalments until the adjustment has been fully made or all of the Distribution Instalments have been made.
	2. If the total Allocation Fees and Cancellation Fees for all Transactions for an Auction Participant in relation to Units for a Relevant Quarter have not been fully deducted after all the Distribution Instalments for the Relevant Quarter have been made in accordance with clause 9.4(a), the balance of the total Allocation Fees and Cancellation Fees will be added to the total Allocation Fees and Cancellation Fees for Transactions for the Auction Participant for the next Relevant Quarter for which the Auction Participant has been allocated Units to be deducted from the Distribution Instalments for that Relevant Quarter.

Adjustment to Settlements Residue

If any adjustment is made to the amount of the *settlements residue* for a Unit Category in respect of a *billing period* covered by an SRDA, *AEMO* must, subject to **clause 9.1**, pass on that adjustment to the Auction Participant as follows:

* 1. *AEMO* must issue to the Auction Participant such revised statements and other statements as may be required under clause 3.15.19 of the *Rules* specifying the adjustment and interest calculated in accordance with clause 3.15.19 of the *Rules*; and
	2. *AEMO* or the Auction Participant, as the case may be, must pay the adjustment and interest payable in respect of the adjustment in accordance with clause 3.15.20 of the *Rules*.

Reconciliation Adjustment

Any adjustment set out in a Reconciliation Statement must be paid on a date specified by *AEMO*, between 10 and 15 *business days* from the issue of the Reconciliation Statement that coincides with a payment time stated in a *final statement* issued under clause 3.15.15 of the *Rules*.

Payment Procedure

All Distribution Instalment payments and adjustments must be effected through the Austraclear system as follows:

* 1. payments by *AEMO* must be made by authorising the transfer of funds in dollars to the Austraclear Account specified in the **Details** or such other Austraclear account notified to *AEMO* by the Auction Participant; and
	2. payments by the Auction Participant must be made by authorising the transfer of funds in dollars to the AEMO Clearing Account.

Default Interest

* 1. Subject to **paragraph (b)**, if any amount specified in **clause 9** is not paid on the due date, *AEMO* or the Auction Participant, as the case may be, must pay interest at the *bank bill rate* calculated as simple interest on a daily basis from the date the amount was due up to and including the date of payment.
	2. The parties agree that interest is not payable on an amount under this **clause 9.8** if interest is payable on that amount under clause 3.15.25 of the *Rules*.

Reconciliation Statement

For each SRDA, *AEMO* must, within 10 *business days* after the last Distribution Instalment has been made, provide the Auction Participant with a Reconciliation Statement via the AEMO Markets Portal, setting out:

* 1. the total amount that has been distributed to the Auction Participant under the SRDA;
	2. the amount to which the Auction Participant is entitled under the SRDA under **clause 9.1**; and
	3. any adjustments required to be made to ensure the requirements of **clause 9.1** have been satisfied.

Goods and Services Tax

GST to be added to amounts payable

* 1. The parties acknowledge that:
		1. all amounts payable under this Agreement including the Purchase Price, Cancellation Price and *auction expense fees*, are expressed to be exclusive of GST; and
		2. any Bid or Offer is made on a GST exclusive basis.
	2. If GST is payable on a Taxable Supply made by *AEMO* to an Auction Participant, the amount payable for that Taxable Supply will be the amount expressed in this Agreement plus GST.

Impact of GST on the Calculation of Amounts Payable

Without limiting **clause 11.1**:

* 1. If an amount payable under this Agreement is calculated by reference to or relates to a cost, expense, liability or similar amount (**Liability**) incurred by a party, the Liability shall be reduced by the amount of any Input Tax Credit to which that party is entitled in respect of that Liability.
	2. If an amount payable under this Agreement is calculated by reference to or relates to price, value, sales, revenue or a similar amount (**Revenue**), the Revenue shall be exclusive of GST.
	3. If *AEMO* becomes liable to pay GST on a Taxable Supply to the Auction Participant prior to the time that it is entitled to receive in full the consideration for that Taxable Supply, the Auction Participant will, at the request of *AEMO*, pay to *AEMO* an amount equal to the GST payable on the Taxable Supply at least 7 days before the time that *AEMO* is liable to pay the GST.

Dispute Resolution

The dispute resolution procedures set out in clause 8.2 of the *Rules* will apply to any dispute arising in relation to this Agreement, a SRDA or otherwise in relation to any *auction*.

Auction Participant Acknowledgements

General

The Auction Participant acknowledges, in respect of this Agreement and each SRDA, that neither *AEMO,* nor any person acting on behalf of or associated with *AEMO*, makes any representation, gives any advice, or gives any warranty or undertaking of any kind in respect of this Agreement, an SRDA, the Units, or the *auctions* or otherwise in relation to or in connection with this Agreement, or any transaction or arrangement contemplated under this Agreement.

Acknowledgements

Without limiting the generality of **clause 13.1**, the Auction Participant acknowledges, in respect of this Agreement and each SRDA, the following:

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

Waiver

To the maximum extent permitted by law, the Auction Participant waives any right that it has (whether at the date of this Agreement or a SRDA or otherwise) to bring any action or to make any claim against *AEMO* or any person acting on behalf of or associated with *AEMO* arising (directly or indirectly) out of any alleged negligent act or omission, misrepresentation, or conduct which is likely to mislead, deceive or confuse on the part of *AEMO* or any person acting on behalf of or associated with *AEMO* in providing the Disclosed Information or otherwise in relation to the *auctions*.

Liability

Implied Warranties

To the maximum extent permitted by law and except as otherwise provided in this Agreement, all terms, conditions, warranties or statements (whether express, implied, written, oral, collateral, statutory or otherwise) which would be implied or incorporated into this Agreement or a SRDA as having been given by *AEMO* in favour of the Auction Participant are excluded and *AEMO* disclaims all liability in relation to them.

Limitation of Liability

Despite any other provision of this Agreement and except as otherwise provided by law:

* 1. *AEMO* is not liable to make any payment (whether by way of damages or otherwise) for any breach of any representation, warranty, condition or obligation unless a claim is made in writing by the Auction Participant (setting out in reasonable detail the nature of the claim and the damages sought) on or before the date that is 6 months after the end of the Relevant Quarter covered by the SRDAto which the claim relates; and
	2. *AEMO* will not be liable for an amount for breach of representation, warranty, condition or obligation which would exceed the aggregate amount of the Purchase Price that has been paid by the Auction Participant in respect of the SRDA to which the claim relates less the aggregate amount of the Cancellation Price that has been paid to the Auction Participant in respect of the SRDA to which the claim relates.

Notification

If the Auction Participant becomes aware of a claim or potential claim against *AEMO* with respect to any breach of any representation, warranty, condition or obligation, the Auction Participant must notify *AEMO* in writing within 5 *business days* after becoming so aware.

Statutory Immunity

For the avoidance of doubt and despite any other provision of this Agreement, nothing in this Agreement, SRDA, or the *auction rules* varies or excludes the operation of section 119 and 120A of the *National Electricity Law*.

Agents Liability[[3]](#footnote-3)

Where an Agent is a party to this Agreement, the Agent will be jointly and severally liable with the Auction Participant in relation to the Auction Participant’s obligations under this Agreement and any SRDA entered into by the Auction Participant.

Auction Costs

The Auction Participant will be responsible for all costs and expenses incurred by it in connection with the *auctions*. *AEMO* will not be liable on any grounds whatsoever for costs or expenses incurred by the Auction Participant in the conduct of due diligence in relation to the Units, making decisions regarding bidding for Units or offering Units in the *auctions* or in any other way in connection with the *auctions*.

Termination

National Electricity Market

This Agreement and each SRDA will terminate immediately if the *National Electricity Market* permanently ceases to operate. For the avoidance of doubt, this **clause 16.1** does not come into effect by reason of *AEMO* declaring the *spot market* to be suspended for any of the reasons set out in clause 3.14.3 of the *Rules*.

Continuing Eligibility

*AEMO* may terminate this Agreement and any or all of the SRDAs between *AEMO* and the Auction Participant by notice to the Auction Participant if:

* 1. the Auction Participant ceases to satisfy the criteria specified in clause 3.2 of the *auction rules*;
	2. the Auction Participant does not demonstrate to *AEMO’s* reasonable satisfaction that it continues to satisfy the criteria specified in clause 3.2 of the *auction rules;*
	3. the Auction Participant fails to provide *AEMO* with the evidence sought by *AEMO* under clause 3.4 of the *auction rules* by the date and time requested by *AEMO*;
	4. the Auction Participant breaches any condition or restriction in respect of the Auction Participant’s participation in the *auctions* that is imposed on the Auction Participant pursuant to the *Rules*.

Breach

* 1. If a party commits a material breach of this Agreement that relates to a particular SRDA, and fails to remedy that breach within 3 *business days* after being required in writing to do so, the other party may terminate the SRDA to which the breach relates by further notice to the other party.
	2. If the Auction Participant commits a material breach of this Agreement that does not relate to a particular SRDA, and fails to remedy that breach within 3 *business days* after being required in writing to do so, *AEMO* may terminate this Agreement and any or all of the SRDAs between *AEMO* and the Auction Participant by further notice to the Auction Participant.
	3. If an Auction Participant fails to comply with a Margin Call in accordance with clause 7.4 of the *auction rules*, by the appointed time on the due date *AEMO* may terminate this Agreement and any or all of the SRDAs between *AEMO* and the Auction Participant by further notice to the Auction Participant.
	4. If:
		1. *AEMO* terminates a SRDA under **clause 16.3(a)**; and
		2. *AEMO* and the Auction Participant are parties to SRDAs in respect of which, at the date the SRDA is terminated under **clause 16.3(a)**, the Purchase Price has not been paid,

*AEMO* may, by notice to the Auction Participant, require the Auction Participant to pay the Purchase Price under each such SRDA within 35 *business days* after receiving the notice. If the Auction Participant does not comply with the notice *AEMO* may terminate this Agreement and each such SRDAby further notice to the Auction Participant.

Note: If the Auction Participant does comply with the notice, payment of the Cancellation Price and distribution of the *settlements residue* represented by SRDA Units (excluding Cancelled Units) under each such SRDA will not occur on payment of the Purchase Price but will only occur during the Relevant Quarter in accordance with the *Rules* and the applicable SRDA.

* 1. If:
		1. *AEMO* has served two notices on the Auction Participant under **clause 16.3(a)** or **clause 16.3(b)**, or has served one notice on the Auction Participant under each of **clause 16.3(a)** and **clause 16.3(b)**; and
		2. the Auction Participant commits a further material breach of this Agreement,

*AEMO* may, even if the previous material breaches were remedied within 3 *business days* after the Auction Participant was required in writing to do so, terminate this Agreement and any or all of the *SRDAs* between *AEMO* and the Auction Participant by notice to the Auction Participant.

* 1. For the purposes of **clause 16**, a failure by the Auction Participant to pay the Purchase Price for a SRDA on the due date is a material breach of this Agreement that relates to that SRDA.

Insolvency

Any party may terminate this Agreement and any or all of the SRDAs between the parties by notice to each other party if:

* 1. the other party stops or suspends or threatens to stop or suspend payment of its debts;
	2. the other party is insolvent within the meaning of section 95A of the Corporations Act 2001 (Cth);
	3. the other party is required to be presumed insolvent by reason of section 459C(2) of the Corporations Act 2001 (Cth);
	4. the other party fails to comply with a statutory demand (within the meaning of section 459F(1) of the Corporations Act 2001 (Cth));
	5. an administrator is appointed over all or any of the assets or undertaking of the other party or any step preliminary to the appointment of such an administrator is taken;
	6. a controller within the meaning of section 9 of the Corporations Act 2001 (Cth), or similar officer is appointed to all or any of the assets or undertaking of the other party; or
	7. an application or order is made, proceedings are commenced, a resolution is passed or proposed in a notice of meeting or an application to a court or other steps are taken for the winding up or dissolution of the other party or for the other party to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them.

Settlements Residue Calculation

The Auction Participant may, by notice to *AEMO*, terminate an SRDA if there is a change in the way in which the *settlements residue* is calculated during the term of the SRDA that affects the calculation of *settlements residue* the subject of the SRDA Units. For the avoidance of doubt, this clause does not apply to changes that commence operation before the start of the term of the SRDA or changes that are made before or published publically before the start of the term of the SRDA but only commence operation during the term of the SRDA.

Purchase Price Adjustment

If an SRDA is terminated under **clause 16.1** or by the Auction Participant under **clause 16.3(a)** or **clause 16.5**, the Auction Participant is entitled to a refund of a proportion of the Purchase Price equal to the proportion of the number of *billing periods* for which Distribution Instalments have not been made to the total number of *billing periods* for the Relevant Quarter.

Adjustments to Settlements Residue

*AEMO* is not required to pass on an adjustment under **clause 9.5** in respect of an SRDA that has been terminated under **clause 16.2**, **16.3** or **16.4**.

Continuing Rights

The termination or expiration of this Agreement or an SRDA does not affect:

* 1. subject to clause 17, the rights of a party to recover an amount, or the obligation of a party to pay an amount, that became payable prior to the date of termination or expiration;
	2. any rights of a party that otherwise relate to, or may arise in the future from, any breach or nonobservance of obligations under this Agreement or the SRDA; or
	3. the operation of **clauses 9.5, 9.6, 9.7, 9.8, 10, 11, 12, 13,** **14, 15**, **16** or **17**.

Consequences of termination

If AEMO gives a notice to terminate this Agreement and all SRDAs in respect of an Auction Participant where the event of default relates to a failure by the Auction Participant to pay the Purchase Price for a SRDA on the due date or failure to comply with a Margin Call in accordance with clause 7.4 of the *auction rules* by the appointed time on the due date, then AEMO may do any or all of the following in any order and at such times as AEMO determines and without the need for any prior notice to or consent of the Auction Participant or any other person:

* 1. publish a statement on its website that the notice has been given, and apply the close out and offset provisions under clause 17 to any Cancelled Units of the Auction Participant;
	2. withhold the payment of any amount otherwise due by AEMO to that Auction Participant under this Agreement or an SRDA until the relevant liabilities of that Auction Participant have been finally determined;
	3. terminate the Auction Participant’s authority to participate in auctions effective from a time determined by AEMO in its absolute discretion;
	4. make available in the next auction any Allocated Units which that Auction Participant held immediately prior to the relevant agreement being terminated;
	5. in respect of any Allocated Units which that Auction Participant held immediately prior to the relevant agreement being terminated which are unable to be made available in another auction or which otherwise remain unallocated, subject to deduction of Allocation Fees and Cancellation Fees for all Transactions for the Auction Participant, distribute the settlements residue represented by those Units to the relevant *Network Service Provider* in accordance with the *Rules*.

Close Out and Offset

General provisions for application of close out and offset

* 1. In this clause 17, the **Defaulting Participant** is the Auction Participant in relation to which the Default Event occurred.
	2. At the time of giving a termination notice to a Defaulting Participant under clause 16, or as soon as reasonably practicable afterwards, AEMO must give a **Close Out Notice** to the Defaulting Participant that close out and offset will apply to that Defaulting Participant.
	3. The Close Out Notice must set out the calculations and amounts determined in accordance with clause 17.2.

Defaulting Participant Profit and Loss

The close out and offset arrangements in this clause apply to, and are to be determined for Cancelled Units in respect of each SRDA to which the Defaulting Participant is a party as at the date of the Default Event (each a “Relevant SRDA”) as follows:

* 1. Calculate the **Defaulting Participant Profit** for each Unit Category for each Relevant SRDA;
	2. **Defaulting Participant Profit** for a Unit Category for a Relevant SRDA is equal to the Trading Position for the Defaulting Participant in that Unit Category and for the Relevant Quarter of the Relevant SRDA where the Trading Position is positive, as calculated in **clause 7.3** of the *auction rules*;
	3. Calculate the **Defaulting Participant Loss** for each Unit Category for each Relevant SRDA;
	4. **Defaulting Participant Loss** for a Unit Category for a Relevant SRDA is equal to the absolute value of the Trading Position for the Defaulting Participant in that Unit Category for the Relevant Quarter of the Relevant SRDA where the Trading Position is negative, as calculated in **clause 7.3** of the *auction rules*;
	5. Add together the Defaulting Participant Loss for all Unit Categories for all Relevant SRDAs (**Total Defaulting Participant Loss**);
	6. At, or as soon as practicable after, the time of the Default Event apply or set off any Cash Security (if any) held in respect of the Auction Participant to the Total Defaulting Participant Loss;
	7. To the extent that Cash Security is not sufficient to set off all of the Total Defaulting Participant Loss, the balance of the Total Defaulting Participant Loss must be set off against the Defaulting Participant Profit for all Unit Categories under the Relevant SRDA with a Defaulting Participant Profit for the Relevant Quarter closest in time to the time of the Default Event;
	8. If the Defaulting Participant Profit for all Unit Categories under the Relevant SRDA for the Relevant Quarter closest in time to the time of the Default Event is not sufficient to set off the balance of the Total Defaulting Participant Loss, the remaining part of the Total Defaulting Participant Loss will be set off from the Defaulting Participant Profit for all Unit Categories under the next Relevant SRDA with a Defaulting Participant Profit and, if necessary, the Defaulting Participant Profit of the next succeeding Relevant SRDA with a Defaulting Participant Profit until the full amount of the Total Defaulting Participant Loss has been fully set off or all of the Relevant SRDA’s with a Defaulting Participant Profit have been settled;
	9. To the extent that a **Defaulting Participant Profit** for a Unit Category for a Relevant SRDA remains after the full amount of the Total Defaulting Participant Loss has been set off under subclauses (f), (g) and (h), AEMO must pay the Defaulting Participant Profit to the Defaulting Participant at the time at which the Cancellation Price under the Relevant SRDA under which the Defaulting Participant Profit arises would have been payable had the Default Event not occurred; and
	10. For each Relevant SRDA:
		1. the obligation of the Defaulting Participant to pay the Purchase Price is terminated; and
		2. the obligation of AEMO to pay the Cancellation Price is terminated and replaced by the obligation to pay the Defaulting Participant the remaining Defaulting Participant Profit (if any) for a Unit Category in accordance with **clause 17.2(i)**.

General

Notices

Any notice, demand, consent or other communication (**Notice**) required by this Agreement:

* 1. must be in writing and signed by a person duly authorised by the sender;
	2. must be delivered to the intended recipient by prepaid post (if posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number specified in the **Details**:
	3. will be taken to be duly given or made:
		1. in the case of delivery in person, when delivered;
		2. in the case of delivery by post, two *business days* after the date of posting (if posted to an address in the same country) or seven *business days* after the date of posting (if posted to an address in another country); and
		3. in the case of fax, on receipt by the sender of a transmission control report from the despatching machine showing the relevant number of pages and the correct destination fax machine number or name of recipient and indicating that the transmission has been made without error,

but if the result is that a Notice would be taken to be given or made on a day that is not a *business day* in the place to which the Notice is sent or is later than 4.00pm (local time) it will be taken to have been duly given or made at the commencement of business on the next *business day* in that place.

Entire Agreement

This Agreement and each SRDA entered into in accordance with this Agreement contains the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements and understandings between the parties in connection with it.

Amendment

An amendment to this Agreement or an SRDA will be effective only if made in writing and executed by all parties.

Assignment

* 1. *AEMO* may assign its rights and obligations under this Agreement and any SRDA to any person without the other parties’ consent.
	2. Neither the Auction Participant, nor the Agent, is permitted to assign or otherwise transfer their respective rights and obligations under this Agreement and any SRDA without *AEMO’s* consent.

No Waiver

No failure, or delay, in exercising any right, power or remedy by a party operates as a waiver. A single or partial exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

Further Assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to this Agreement and the transactions contemplated by it.

No Merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

Costs and Stamp Duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement. All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Agreement and any instrument executed under this Agreement must be borne by the Auction Participant.

Governing Law and Jurisdiction

This Agreement and each SRDA is governed by the laws of Victoria. Each party submits to the nonexclusive jurisdiction of courts exercising jurisdiction there in connection with matters concerning this Agreement and each SRDA.

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.

**EXECUTED AS AN AGREEMENT**

**SIGNED** for and on behalf of **AEMO** in the presence of:

|  |  |  |
| --- | --- | --- |
| Signature (Witness)  |   | Signature  |
|   |  |   |

|  |  |  |
| --- | --- | --- |
| Print Name (Witness)  |  | Print Name  |
|   |   |   |

|  |  |  |
| --- | --- | --- |
| Date  **SIGNED** for and on behalf of the **AUCTION PARTICIPANT** in the presence of:  |   | Date  |

|  |  |  |
| --- | --- | --- |
| Signature (Witness)  |   | Signature  |
|   |  |   |

|  |  |  |
| --- | --- | --- |
| Print Name (Witness)  |  | Print Name  |
|   |   |   |

 Date Date

**SIGNED** for and on behalf of the **AGENT** in the presence of:[[4]](#footnote-4)

|  |  |  |
| --- | --- | --- |
| Signature (Witness)  |   | Signature  |
|   |  |   |

|  |  |  |
| --- | --- | --- |
| Print Name (Witness)  |  | Print Name  |
|   |   |   |

 Date Date

1. Delete the text starting with the ‘and’ if there is no Agent. [↑](#footnote-ref-1)
2. Delete the remainder of the text in this box from this point if there is no Agent. [↑](#footnote-ref-2)
3. This clause can be deleted if there is no Agent. [↑](#footnote-ref-3)
4. Delete this whole section if there is no Agent. [↑](#footnote-ref-4)