

# **Supplementary Capacity Contract (Scheduled Facility/Semi-Scheduled Facility)**

**Australian Energy Market Operator Limited**

and



Australian Energy Market Operator Limited  
ABN 94 072 010 327  
Level 12, 171 Collins Street  
Melbourne VIC 3000

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## Parties

<b>AEMO</b>	Australian Energy Market Operator Limited (ABN 94 072 010 327) Level 12, 171 Collins Street, Melbourne VIC 3000
<b>Service Provider</b>	### (ABN ###) ###
<b>Address for Service</b>	<b>AEMO</b> Attention: Manager – WA Reserve Capacity Email: wa.capacity@aemo.com.au Cc: Attention: Managing Counsel – Gas/WEM Email: Reception.Perth@aemo.com.au
	<b>Service Provider</b> Attention: ### Email: ###

## Background

- A. Clause 4.24.1 of the *WEM Rules* relevantly requires *AEMO* to seek to acquire supplementary capacity if, at any time after the day which is six months before the start of a *Capacity Year*, *AEMO* considers that inadequate *Reserve Capacity* will be available in the *SWIS* to maintain *Power System Security* and *Power System Reliability*.
- B. *AEMO* and the Service Provider have agreed to enter into this *Supplementary Capacity Contract*.

## Operative Provisions

### 1. Interpretation

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#### 1.1. Definitions – general

- (a) Terms in capitalised italics have the meaning given in the *WEM Rules* (including Appendix 12 of the *WEM Rules*).
- (b) Other capitalised terms are defined in **clause 1.2**.

#### 1.2. Dictionary

**Activation Parameters** means the activation parameters specified in **Item (d) of Schedule 3**.

**Activation Price** means the activation price specified in **Item 0 of Schedule 3**.

**Availability Payment** means the availability payment calculated in accordance with **clause 8.2**.

**Availability Price** means the availability price specified in **Item 0 of Schedule 3**.

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

**Baseline Quantity** means the baseline quantity specified in **Item (c) of Schedule 3**.

**Commencement Date** means the commencement date specified in **Item (a) of Schedule 3**.

**Condition Precedent** means a condition precedent specified in **Schedule 2**.

**Condition Precedent Satisfaction Date**, in relation to a Condition Precedent, means a condition precedent satisfaction date specified in **Schedule 2**.

**Contract Term** means the contract term specified in **clause 2**.

**Designated Connection Point** has the meaning given in **Item (b) of Schedule 3**.

**End Date** means the end date specified in **Item (a) of Schedule 3**.

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

**Insolvency Event**, in relation to the Service Provider, means the happening of any of these events:

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

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

**Maximum Service Quantity**, in relation to the Service, means the maximum service quantity specified in **Item (c) of Schedule 3** (or any reduced quantity under **clause 3.5** or **clause 11.4**).

**Operational Contact** means AEMO's Operational Contact or the Service Provider's Operational Contact (as applicable) as specified in **Schedule 4**.

**SCADA** means AEMO's supervisory control and data acquisition system.

**Service** means to increase *Injection* by a quantity up to the Maximum Service Quantity (relative to the Baseline Quantity) when required by AEMO under this *Supplementary Capacity Contract*.

**Service Equipment** means the service equipment specified in **Item (b) of Schedule 3**.

**Service Parameter** means a service parameter specified in **Item (c) of Schedule 3**.

**Service Period** means the service period specified in **Item (c) of Schedule 3**.

**Service Test** means a test of the Service Equipment's ability to provide the Service during the Service Period in accordance with **clause 7**.

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

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

**Supplementary Capacity Payment**, in relation to a Settlement Period, means the payment for the Service under this *Supplementary Capacity Contract* as calculated in accordance with **clause 8**.

**Unavailable**, in relation to the Service, means the Service Equipment is (under **clause 5.2** or **clause 7.4**) taken to be incapable of increasing *Injection* by the Maximum Service Quantity (relative to the Baseline Quantity).

### 1.3. Interpretation

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

- (a) the singular includes the plural and vice versa;
- (b) the words "includes" or "including" or "such as" are not words of limitation, and when introducing an example, do not limit the meaning of the words to which the example relates or to examples of a similar kind;
- (c) a thing (including an amount) is a reference to the whole and each part of it; and
- (d) a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day and, if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day.

### 1.4. Construction

- (a) Headings are inserted for convenience, and do not affect the interpretation of this *Supplementary Capacity Contract*.
- (b) If a word or phrase is defined in this *Supplementary Capacity Contract*, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- (c) No rule of construction applies to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.

### 1.5. Schedules

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

### 1.6. WEM Rules prevail

If there is any inconsistency between this *Supplementary Capacity Contract* and the *WEM Rules*, the *WEM Rules* prevail to the extent of the inconsistency.

## 2. Contract Term

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### 2.1. Commencement Date

This *Supplementary Capacity Contract* commences at 8:00 am on the Commencement Date.

### 2.2. End Date

This *Supplementary Capacity Contract* ends at 8:00 am on the End Date (unless terminated earlier under **clause 11**).

## 3. Condition Precedent

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### 3.1. Condition Precedent

This *Supplementary Capacity Contract* (other than **clause 1**, this **clause 3** and **clause 0**) has no legal effect unless and until all Conditions Precedent are satisfied by the Service Provider under **clause 3.2** or waived by AEMO under **clause 3.3**.

### 3.2. Satisfaction

The Service Provider must:

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

### 3.3. Extension and waiver

- (a) Each Condition Precedent is for AEMO's benefit.
- (b) AEMO (in its sole discretion) may extend a Condition Precedent Satisfaction Date, or waive a Condition Precedent that is not satisfied by the Condition Precedent Satisfaction Date by notifying the Service Provider to that effect in writing.

### 3.4. Termination for non-satisfaction

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

- (a) extend the Condition Precedent Satisfaction Date; or
- (b) waive the Condition Precedent.

### 3.5. Alternative to termination

- (a) AEMO (as an alternative to termination under **clause 3.4**) may reduce the Maximum Service Quantity to a quantity that AEMO reasonably expects the Service Provider to be capable of providing, having regard to all relevant information available to AEMO, by notifying the Service Provider to that effect in writing.
- (b) If the Maximum Service Quantity is reduced under **clause 3.5(a)**:
  - (i) the Service Provider may, by notice in writing, request AEMO to increase the Maximum Service Quantity to a quantity up to but not exceeding the Maximum Service Quantity specified in **Item (c) of Schedule 3**; and
  - (ii) AEMO must increase the Maximum Service Quantity to a quantity (up to but not exceeding the Maximum Service Quantity specified in **Item (c) of Schedule 3**) that AEMO reasonably expects the Service Provider to be capable of providing, having regard to all relevant information available to AEMO.

## 4. Service

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### 4.1. Service Parameters and Activation Parameters

The Service Parameters and the Activation Parameters apply for the purposes of this *Supplementary Capacity Contract*.

## 4.2. Service obligations

The Service Provider must:

- (a) operate and maintain the Service Equipment in accordance with Good Electricity Industry Practice; and
- (b) ensure that its *Real-Time Market Submission* or *Standing Real-Time Market Submission* for the Service Equipment and for each *Dispatch Interval* in the Service Period includes (except to the extent that the Service Equipment is subject to a *Planned Outage* or *Forced Outage* in the *Dispatch Interval*) an offer quantity for *Injection* that is greater than or equal to the sum of the Maximum Service Quantity and the Baseline Quantity, where the total quantity may be specified in multiple *Price-Quantity Pairs*, and:
  - (i) if the Service Equipment is subject to a Service Test in the *Dispatch Interval*, the offer price is equal to the *Energy Offer Price Floor*; or
  - (ii) otherwise, the offer price is less than or equal to the Activation Price or the *Energy Offer Price Ceiling* (whichever is lower).

## 4.3. Essential System Services

To avoid doubt, the Service Provider may offer a *Frequency Co-optimised Essential System Service* quantity that includes the Maximum Service Quantity in a *Real-Time Market Submission* or a *Standing Real-Time Market Submission*, for the Service Equipment and for a *Dispatch Interval* in the Service Period, provided that the Service Provider complies with **clause 4.2**.

## 4.4. Service Provider notification

- (a) The Service Provider must notify AEMO's Operational Contact without undue delay if:
  - (i) the Service Provider changes or modifies any Service Equipment that it owns, operates, or controls in a manner that affects or could reasonably be expected to affect its ability to provide the Service;
  - (ii) the Service Provider becomes aware of any other material information with respect to the Service Equipment (including any Service Equipment applicable to a third-party with whom the Service Provider enters into a contract or an arrangement for the purposes of providing the Service) or the Designated Connection Point (including *NMI* details) that affects or could reasonably be expected to affect the Service Provider's ability to provide the Service; or
  - (iii) an Insolvency Event occurs.
- (b) The Service Provider must notify AEMO's Operational Contact of a proposed change in the Designated Connection Point. AEMO may approve the proposed change (and must not unreasonably withhold its approval of the proposed change) with effect from a time determined by AEMO. AEMO (in its sole discretion) may require the Service Provider to carry out a Service Test following a change in the Designated Connection Point.

## 4.5. AEMO information request

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

## 5. Availability

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### 5.1. Determining Availability

The Service is taken to be Available in any *Dispatch Interval* during the Service Period (including when subject to a *Planned Outage*) unless it is taken to be Unavailable under **clause 5.2** or **clause 7.4**.

### 5.2. Unavailable

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

- (a) a Condition Precedent is not satisfied (and has not been extended or waived under **clause 3.3**);
- (b) the Service Provider's *Real-Time Market Submission* or *Standing Real-Time Market Submission* for the Service Equipment and for the *Dispatch Interval* is not in accordance with **clause 4.2(b)**;
- (c) the Service Equipment is or continues to be subject to a *Forced Outage* in the *Dispatch Interval* that prevents the Service Equipment from providing the Service;
- (d) the Service Equipment is subject to a *Commissioning Test Plan* in the *Dispatch Interval*;
- (e) (with respect to any difference between a *Dispatch Instruction* quantity and the relevant Maximum Service Quantity for a *Dispatch Interval*) AEMO identifies from available data that the Service Equipment would have been unable to comply with the Service Provider's *Real-Time Market Submission* or *Standing Real-Time Market Submission* for the Service Equipment for the *Dispatch Interval*; or
- (f) **clause 5.3** applies.

### 5.3. Unavailable – *Dispatch Instruction*

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

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

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

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



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

## 6. Measurement and verification

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### 6.1. Measurement

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

### 6.2. Verification

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

## 7. Service Test

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### 7.1. Service Test

AEMO may require the Service Provider to carry out a Service Test if both of the following apply:

- (a) the Service is taken to be Unavailable under **clause 5.3**; and
- (b) the *MWh* quantity of increased Injection determined in accordance with **clause 6.1** is less than 80% of the following quantity:
  - (i) *Dispatch Target* or *Dispatch Cap*, as applicable, less
  - (ii) the Baseline Quantity (converted to an equivalent *MWh* value for the *Dispatch Interval*).

### 7.2. Service Test process

The Service Test process is as follows:

- (a) AEMO determines 2 consecutive *Trading Intervals* in the Service Period during which the Service Equipment is to be subject to a Service Test;
- (b) AEMO notifies the Service Provider's Operational Contact of the Service Test *Trading Intervals* in writing; and
- (c) the Service Provider updates its *Real-Time Market Submission* or *Standing Real-Time Market Submission* for the Service Equipment to include (for the Service Test *Trading Intervals*) an offer price and quantity that is in accordance with **clause 4.2(b)**;

### 7.3. Service Test outcome

AEMO must determine the Service Test outcome based on Interval Meter Data, *Facility Sub-Metering* data (where available) or SCADA data (as reasonably determined by AEMO) as follows:

- (a) if (applying **clause 5.2**) the relevant data shows that the Service is taken to be Unavailable in either or both of the Service Test *Trading Intervals*, then the Service Equipment fails the

- Service Test; and
- (b) otherwise, the Service Equipment passes the Service Test.

## 7.4. Deemed Unavailability

If the Service Equipment fails a Service Test, the Service is taken to be Unavailable from the start of the first Service Test *Trading Interval* until:

- (a) the Service Equipment passes a Service Test; or
- (b) AEMO otherwise reasonably considers the Service is Available.

## 8. Supplementary Capacity Payment

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### 8.1. Supplementary Capacity Payment

- (a) AEMO must calculate the Supplementary Capacity Payment for each Settlement Period.
- (b) The Supplementary Capacity Payment is equal to the Availability Payment.

### 8.2. Availability Payment

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

$$\text{Availability Payment} = \sum_{d \in \text{dESP}} \left( \frac{\text{AP}}{N} \right) \times \text{MSQ}$$

where:

**AP** is the Availability Price for the relevant *Dispatch Interval* (in \$ per MW per *Trading Day*);  
**N** is the number of *Dispatch Intervals* in the Service Period in a *Trading Day* (including *Dispatch Intervals* when the Service is taken to be Unavailable);

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

**dESP** denotes all *Dispatch Intervals* in the Service Period in the Settlement Period (excluding *Dispatch Intervals* when the Service is taken to be Unavailable).

### 8.3. Activation Payment for Service

- (a) No activation payment is payable under this *Supplementary Capacity Contract*.
- (b) To avoid doubt, the Service Provider will receive the *Energy Market Clearing Price* and (if applicable) the *Energy Uplift Payment* with respect to quantities provided under this *Supplementary Capacity Contract* in accordance with the *WEM Rules*.

## 9. Settlement

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### 9.1. Settlement

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

### 9.2. GST

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

## 10. Liability

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### 10.1. AEMO's liability cap

- (a) Subject to **clause 10.1(b)**, and other than in respect of any unpaid Supplementary Capacity Payment amounts, the total amount recoverable from AEMO in respect of any and all claims arising out of any one or more events during the Contract Term with respect to, arising from, or

in connection with, this *Supplementary Capacity Contract* is limited to the prescribed maximum amount for the purposes of section 126 of the *Electricity Industry Act* and regulation 52 of the *WEM Regulations*.

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

## 10.2. Service Provider's liability cap

- (a) Subject to **clause 10.2(b)**, and other than in respect of any Supplementary Capacity Payment amounts repayable by the Service Provider under this *Supplementary Capacity Contract*, the total amount recoverable from the Service Provider in respect of any and all claims arising out of any one or more events during the Contract Term with respect to, arising from, or in connection with, this *Supplementary Capacity Contract* is limited to the lesser of:
  - (i) the maximum Availability Payments that would be payable to the Service Provider, assuming that the Service is available during each *Dispatch Interval* in each Service Period during the Contract Term; and
  - (ii) \$5 million.
- (b) Regardless of the nature of any claim, the Service Provider is not liable in any circumstances for any:
  - (i) damages or losses that are not direct and do not flow naturally from a breach of this *Supplementary Capacity Contract*, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this *Supplementary Capacity Contract*;
  - (ii) loss of market, opportunity or profit (whether direct or indirect); or
  - (iii) damages or losses to the extent that a claim results from AEMO's failure to act in accordance with this *Supplementary Capacity Contract* or Good Electricity Industry Practice, or as otherwise required by law.

## 11. Termination

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### 11.1. Termination by AEMO

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

- (a) (for any period after the Commencement Date) any of the following applies:
  - (i) the Service ceases to be an *Eligible Service*;
  - (ii) as at any given day, the Service has been Unavailable in more than 50% of *Dispatch Intervals* in the Service Period in the preceding 28 *Trading Days* during the Contract Term;
  - (iii) the Service Provider breaches a material term of this *Supplementary Capacity Contract* and, in the case of a breach that is capable of remedy, does not remedy that breach within 10 *Business Days* after AEMO notifies the Service Provider of the breach; or

- (iv) an Insolvency Event occurs.
- (b) A termination notice takes effect on the later of:
  - (i) the time it is given; and
  - (ii) the time specified in the notice.

## 11.2. No liability for termination

If *AEMO* terminates this *Supplementary Capacity Contract*:

- (a) the Service Provider is entitled to receive any Supplementary Capacity Payment arising before the effective date of termination; and
- (b) *AEMO* is not liable to the Service Provider under *this Supplementary Capacity Contract* in any other respect.

## 11.3. Consequences of expiry or termination

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

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

## 11.4. Reduction of Maximum Service Quantity

- (a) *AEMO* (acting reasonably and as an alternative to termination) may reduce the Maximum Service Quantity to a quantity *AEMO* reasonably expects the Service Provider to be capable of providing, having regard to the Service Provider's historical performance under this *Supplementary Capacity Contract*, by notifying the Service Provider to that effect in writing.
- (b) If the Maximum Service Quantity is reduced under **clause 11.4(a)**:
  - (i) the Service Provider may, by notice in writing, request *AEMO* to increase the Maximum Service Quantity to a quantity up to but not exceeding the Maximum Service Quantity specified in **Item (c) of Schedule 3**; and
  - (ii) *AEMO* must increase the Maximum Service Quantity to a quantity (up to but not exceeding the Maximum Service Quantity specified in **Item (c) of Schedule 3**) that *AEMO* reasonably expects the Service Provider to be capable of providing, having regard to all relevant information available to *AEMO*.

# 12. Dispute resolution

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## 12.1. WEM Rules dispute process

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

## 12.2. General dispute resolution procedure

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

## 13. General

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### 13.1. Notices

- (a) Subject to **clause 13(b)** and (for operational communications) **Schedule 4**, all communications to a party must be:
  - (i) in writing;
  - (ii) marked to the attention of the person named in respect of that party in the **Contract Details**; and
  - (iii) left at, sent by ordinary pre-paid post (airmail if posted to or from a place outside Australia), or in electronic form, to the address, number, or electronic mail address of the addressee specified in respect of that party in the **Contract Details**.
- (b) Subject to the *WEM Rules*, any:
  - (i) communications given in the course of the day-to-day running of the *Wholesale Electricity Market* by or on behalf of a party to the other;
  - (ii) notifications regarding Availability of the Service by the Service Provider in accordance with this *Supplementary Capacity Contract*,must be made by email (or automated electronic process) or telephone as notified by *AEMO*.
- (c) Unless communications under **clause 13(b)** are recorded in some other way satisfactory to and with the consent of both parties, the parties must ensure that logs are kept in which persons or electronic systems giving and receiving those communications record brief details of their substance and timing.
- (d) Unless a later time is specified in it, a communication takes effect from the time it is received.
- (e) A communication is taken to be received:
  - (i) in the case of a posted letter, 5 *Business Days* after posting;
  - (ii) in the case of an electronic message, on production of a report by the computer from which the electronic message was sent that indicates that the message was received in its entirety at the electronic mail address of the recipient; and
  - (iii) in the case of a communication under **clause 13(b)**, when the communication is received.
- (f) Other than communications given under **clause 13(b)**, if a communication is received, or deemed to be received, on a day that is not a *Business Day*, or after 4:00pm AWST on a *Business Day*, it is taken to be received on the next *Business Day*.
- (g) A party may at any time by notice given to the other party in writing designate a different person, address, telephone number or electronic mail address for the purposes of this **clause 13**, the **Contract Details** and **Schedule 4**.

### 13.2. No force majeure rights

Clause 4.24.13(a) of the *WEM Rules* applies so as to exclude force majeure rights under this *Supplementary Capacity Contract*.

### 13.3. Exercise of rights

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

#### 13.4. Waiver of rights

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

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

#### 13.5. Assignment or other dealing

- (a) The Service Provider must not assign or otherwise deal with its rights or obligations under this *Supplementary Capacity Contract* or (except in the ordinary course of business) in respect of the Service Equipment without AEMO's written consent.
- (b) AEMO must not unreasonably withhold or delay its consent under **clause 13.5(a)**.
- (c) AEMO (as a condition of consent under **clause 13.5(a)**) may require the Service Provider and the third-party to enter into a deed of novation with AEMO on terms that are reasonably satisfactory to AEMO under which the third-party agrees to assume obligations that are substantially equivalent to the Service Provider's obligations under this *Supplementary Capacity Contract*.
- (d) Any purported assignment in breach of this **clause 13.5** is invalid and of no legal effect.

#### 13.6. Amendment and variation

Unless otherwise stated in this *Supplementary Capacity Contract*, this *Supplementary Capacity Contract* may only be varied by agreement of the parties as recorded in writing and signed by the parties.

#### 13.7. Costs and expenses

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

#### 13.8. Entire agreement

- (a) Subject to the *WEM Rules*, this *Supplementary Capacity Contract* constitutes the entire agreement of the parties in connection with provision of the Service and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.
- (b) For the avoidance of doubt, this *Supplementary Capacity Contract* contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by the other party, or by a director, officer, agent or employee of that party, before this *Supplementary Capacity Contract* was executed, save as permitted by law.

#### 13.9. Confidential information

- (a) The Service Provider consents to the use or disclosure of its confidential information by AEMO to the extent reasonably necessary for AEMO to carry out its functions, or comply with its obligations, under the *WEM Regulations* and the *WEM Rules*.
- (b) This **clause 13.9** survives expiry or termination (for whatever reason) of this *Supplementary Capacity Contract*.

#### 13.10. Counterparts

This *Supplementary Capacity Contract* may be executed in counterparts. If so, the signed copies make up one document and the date of this *Supplementary Capacity Contract* is the date on which the last counterpart is signed.

### **13.11. Governing law and jurisdiction**

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





## Schedule 1 – Approved contract departures

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AEMO has approved the following variations from the standard-form *Supplementary Capacity Contract* for the purposes of clause 4.24.14 of the *WEM Rules*:

Clause/Schedule	Variation

## Schedule 2 – Conditions Precedent

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No	Requirement	Condition Precedent Satisfaction Date
1.	The Service Provider must complete commissioning (where required and to AEMO's satisfaction) of the Maximum Service Quantity.	1 February 20##
2.	The <i>Standing Data</i> for the Service Equipment must include (or must be updated in accordance with the <i>WEM Rules</i> to include) the Maximum Service Quantity.	1 February 20##
3.	The Service Provider must demonstrate to AEMO's satisfaction (through activation at its own cost and based on Interval Meter Data) that the Service Equipment is capable of increasing <i>Injection</i> by a quantity greater or equal to the Maximum Service Quantity (relative to the Baseline Quantity) for 2 consecutive <i>Trading Intervals</i> during the Service Period.	1 February 20##

## Schedule 3 – Service

(a) **Contract Term**

Commencement Date	The later of: <ul style="list-style-type: none"> <li>• 1 December 20##; and</li> <li>• the date on which all Conditions Precedent are satisfied or waived</li> </ul>
End Date	1 April 20##

(b) **Service Equipment and Designated Connection Point(s)**

Service Equipment ( <i>Scheduled Facility or Semi-Scheduled Facility</i> )	##
Designated Connection Point(s)	The following <i>NMI</i> : #

(c) **Service Parameters**

Service Period	From ## to ## on a <i>Trading Day</i>
Maximum Service Quantity	## MW
Baseline Quantity	The MW quantity of <i>Capacity Credits</i> held by the Service Equipment for the 20##-20## <i>Capacity Year</i>

(d) **Activation Parameters**

Notification method	<i>Dispatch Instruction</i>
Notification time to be given for activation	Same notification time as for a <i>Dispatch Instruction</i> with respect to the Service Equipment
Minimum duration of single activation	24 <i>Dispatch Intervals</i> in the Service Period
Maximum duration of single activation	All <i>Dispatch Intervals</i> in the Service Period

(e) **Availability Price and Activation Price**

Availability Price (\$ per MW per <i>Trading Day</i> )	###
Activation Price (\$ per MWh)	###

## Schedule 4 – Operational Contacts

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

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

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

**Primary Contact**

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

**Backup Contact**

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