

VERSION 6.0 – JULY 2021

PROFORMA SECURITY DEPOSIT DEED FOR RESERVE CAPACITY SECURITY - THIRD PARTY DEPOSITOR

THIS DEED is made the day of 20 .

DETAILS

Party details			
Market Participant:	Name (if an individual, please provide full legal name):		
	ACN or ARBN (if the Market Participant is a body corporate):		
	ABN (if the Market Participant is an individual):		
	Postal Address:		
	Place of business for service by personal delivery (if different from postal address):		
	Date of birth (if the Market Participant is an individual):		
	Email:		
	Facsimile:		
	If the Market Participant enters into this deed as trustee of a trust, or as responsible entity for a registered scheme, please also provide the following information (to the extent it is applicable):		
	Name of trust:		
	ABN allocated to the enterprise carried on by the trust:		
	Name of registered scheme:		
	ARSN of the registered scheme:		
	Depositor:	Name (if an individual, please provide full legal name):	
ACN or ARBN (if the Market Participant is a body corporate):			
ABN (if the Market Participant is an individual):			
Address:			
Date of birth (if the Market Participant is an individual):			
Email:			

	If the Depositor enters into this deed as trustee of a trust, or as responsible entity for a registered scheme, please also provide the following information (to the extent it is applicable):	
	Name of trust:	
	ABN allocated to the enterprise carried on by the trust:	
	Name of registered scheme:	
	ARSN of the registered scheme:	
AEMO:	Name:	Australian Energy Market Operator Limited
	ABN:	94 072 010 327
	Postal Address:	PO Box 7096, Cloisters Square, PERTH WA 6850
	Place of business for service by personal delivery:	Level 45, 152 St Georges Terrace, Perth, Western Australia 6000
	Email:	wa.operations@aemo.com.au
	Facsimile:	+61 (0) 3 9609 8080
Deposit and Facility details		
Facility		
Deposit Date:		
Initial Security Deposit Amount:	AUD	

RECITALS

- A. AEMO administers the process for the provision of Reserve Capacity Security under Chapter 4 of the Wholesale Electricity Market Rules ("**WEM Market Rules**").
- B. AEMO has developed the WEM Market Procedure for Reserve Capacity Security ("**WEM Market Procedure**"), which is a WEM Market Procedure under clause 4.13.8 of the WEM Market Rules and regulation 9 of the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* ("**Regulations**").
- C. The Market Participant is registered as a Rule Participant under Chapter 2 of the WEM Market Rules.
- D. The Market Participant is required under clause 4.13 of the WEM Market Rules (as a condition of the Market Participant holding Capacity Credits with respect to the Facility that has been assigned Certified Reserve Capacity under Chapter 4 of the WEM Market Rules) to provide Reserve Capacity Security, in accordance with the WEM Market Rules and the WEM Market Procedure, to AEMO in respect of the Market Participant's obligation to provide the Certified Reserve Capacity.
- E. If the Facility does not operate at the level required by clause 4.13.10 of the WEM Market Rules, then under clause 4.13.11 of the WEM Market Rules the Market Participant will be liable to pay an amount equal to the Reserve Capacity Security amount to AEMO. Under clause 4.13.11A of the WEM Market Rules, AEMO may draw upon the Reserve Capacity Security for the Facility, in satisfaction of the Market Participant's payment obligation.
- F. The Depositor has agreed to provide the Security Deposit to AEMO on behalf of the Market Participant.
- G. AEMO has agreed to accept the Security Deposit as Reserve Capacity Security under the WEM Market Rules and the WEM Market Procedure on the terms and conditions set out in this Deed.

THE PARTIES AGREE:

1. DEFINITIONS AND INTERPRETATION

1.1 Unless otherwise provided for, terms used in this Deed which are defined in the WEM Market Rules or the WEM Market Procedure have the same meaning as in the WEM Market Rules or the WEM Market Procedure.

1.2 The following terms have the following meanings:

“**Account**” means the bank account under the control of AEMO and specified in the Security Deposit Instructions, into which the Security Deposit is to be deposited or paid.

“**Apply**” includes pay, apply, claim, draw upon, appropriate, set off and deduct.

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

“**Interest**” means interest at AEMO Deposit Rate.

“**PPSA 2009**” means the *Personal Property Securities Act 2009* (Cth).

“**Protected Period**” means the period beginning on the date the Security Deposit is deposited or paid into the Account and ending on the date which is the earlier of:

- (a) the date on which AEMO refunds the Reserve Capacity Security to the Depositor under clause 4.13.10 or clause 4.13.14(c) of the WEM Market Rules (as applicable); and
- (b) the date on which AEMO Applies the Reserve Capacity Security under clause 4.13.11A of the WEM Market Rules.

“**Security Deposit**” means the Initial Security Deposit Amount specified in the Details and any Interest which accrues on it.

“**Security Deposit Instructions**” means the instructions published on the AEMO website (<http://aemo.com.au/>) in the section headed *Deposit Instructions* as amended from time to time by AEMO.

“**Security Interest**” has the meaning given to that term in section 12 of the PPSA 2009.

1.3 The following principles of interpretation apply:

- (a) references to any statute, statutory provision, order, regulation or rule, include that statute, provision, order, regulation or rule as amended, modified, re-enacted or replaced from time to time whether before or after the date hereof;
- (b) headings to clauses are for information only and do not affect the interpretation of this Deed;
- (c) references in this Deed to any agreement, deed or document (including, without limitation, references to this Deed) shall be deemed to include references to such agreement, deed or document as varied, amended, modified, supplemented or replaced from time to time;
- (d) “**under**” includes by, by virtue of, pursuant to and in accordance with;
- (e) “**including**” and similar expressions are not words of limitation; and
- (f) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.

2. INFORMATION TO BE PROVIDED WITH THIS DEED

Immediately after executing this Deed, the Depositor must:

- (a) if the Depositor is an individual, provide to AEMO a true copy of one of the following (in descending order of preference):
 - (i) a current driver's licence issued by a State or Territory licensing authority to the Depositor;
 - (ii) a current proof of identity or proof of age card issued by a State or Territory Body to the Depositor;
 - (iii) a current Australian passport issued to the Depositor;
 - (iv) a current Australian visa issued for the Depositor;
 - (v) a current passport issued by the jurisdiction outside of Australia in which the Depositor ordinarily resides; or
 - (vi) a birth certificate issued for the Depositor.
- (b) if the Depositor is a body corporate, provide to AEMO a true and up-to-date copy of its constitution or equivalent document.

3. DEPOSIT

3.1 The Depositor must:

- (a) before 5pm on _____ ; and
- (b) in the manner specified in the Security Deposit Instructions, deposit or pay the Security Deposit into the Account.

3.2 The Security Deposit will be taken to be a security deposit provided by the Market Participant for the purpose of the WEM Market Rules and the WEM Market Procedures. Further, the parties to this Deed acknowledge and agree that the Security Deposit deposited or paid by the Depositor is deposited or paid for and on behalf of the Market Participant.

4. DEPOSIT HELD ON TRUST AND CREATION OF SECURITY

4.1 AEMO shall hold the Security Deposit upon trust as follows:

- (a) if, during the Protected Period, AEMO becomes entitled under clause 4.13.11A of the WEM Market Rules to Apply the Reserve Capacity Security, then AEMO shall Apply the Security Deposit (after meeting AEMO's costs associated with doing so):
 - (i) first, in or towards payment of the cost of funding Supplementary Capacity Contracts under clause 4.13.11A(a) of the WEM Market Rules; and
 - (ii) secondly, in or towards payment to Market Customers of their entitlements under clause 4.13.11A(b) of the WEM Market Rules;
- (b) subject to clause 4.1(a), if, during the Protected Period, AEMO has not become entitled under clause 4.13.11A of the WEM Market Rules to Apply the Reserve Capacity Security, then, for so long as AEMO has not become so entitled, on the last day of each calendar month AEMO shall Apply from the Security Deposit and pay to the Depositor:
 - (i) that part of the Security Deposit which comprises Interest that has accumulated at the end of that calendar month;
less
 - (ii) any liabilities and expenses incurred by AEMO (including bank fees and charges which have been incurred on or in respect of the Security Deposit or the Account during that calendar month); and
- (c) subject to clause 4.1(a), if, during the Protected Period, AEMO is required to return the Security Deposit to the Depositor (as a result of the Market Participant complying with clause 4.13.10 of the WEM Market Rules, or as a result of AEMO determining under clause 4.13.14 of the WEM Market Rules that the Security Deposit is no longer required to be held), then AEMO must return:
 - (i) the Security Deposit (including interest which has not yet been paid under clause 4.1(b)(i));
less
 - (ii) any liabilities and expenses incurred by AEMO (including bank fees and charges which have been incurred on or in respect of the Security Deposit or the Account during the Protected Period and which have not yet been deducted under clause 4.1(b)(ii)),
within the period specified in clause 4.13.10 or clause 4.13.14(c) of the WEM Market Rules, as applicable.

4.2 The Depositor hereby assigns to AEMO, by way of security, the whole of the Depositor's present and future rights, entitlements and interests in and to the Security Deposit, and AEMO shall hold and deal with those rights, entitlements and interests in accordance with clauses 4.1 and 4.3.

4.3 As soon as practicable after the end of the Protected Period, AEMO shall re-assign to the Depositor any of the rights, entitlements and interests referred to in clause 4.2 that are then still subsisting and which AEMO has not Applied, and which AEMO is not then entitled to Apply, in accordance with clause 4.1.

4.4 AEMO may on its own initiative, lodge a financing statement or financing change statement in relation to the Security Interest created by this Deed for registration under the PPSA 2009.

4.5 The Market Participant and the Depositor acknowledge and agree that they are jointly and severally liable for all costs, charges and expenses incurred by AEMO:

- (a) in preparing and registering a financing statement or a financing change statement in relation to the Security Interest created by this Deed, under the PPSA 2009; or
- (b) in responding to requests for information about the Security Interest created by this Deed, under Part 8.4 of the PPSA 2009.

5. PAYMENTS TO DEPOSITOR ON BEHALF OF MARKET PARTICIPANT

5.1 The Market Participant acknowledges and agrees that any payments by AEMO to the Depositor pursuant to clause 4.1 of this Deed:

- (a) are payments made to the Depositor on behalf of the Market Participant; and
- (b) will discharge any obligation AEMO has under the WEM Market Rules to pay the Market Participant directly.

5.2 The Market Participant agrees that, by executing this Deed, it directs AEMO to make any payments to the Depositor pursuant to clause 4.1 of this Deed on its behalf and waives any right or entitlement to receive those payments.

6. NO PRIOR NOTICE REQUIRED

If, during the Protected Period, AEMO becomes entitled under clause 4.13.11A of the WEM Market Rules to Apply the Reserve Capacity Security, it shall not be necessary for AEMO to make enquiry or give prior notice to the Depositor or the Market Participant before Applying the Security Deposit under clause 4.1(a).

7. NO ENCUMBRANCES AND NO ASSIGNMENT

7.1 Subject to and without prejudice to the assignment, security, rights and interests made and created under clause 4, during the Protected Period AEMO must not:

- (a) create any mortgage, charge, lien, assignment, encumbrance, right of set-off or other security interest (whether fixed or floating) on or over all or any part of the Security Deposit or the right to receive or be paid the same or agree to do so; or
- (b) sell, transfer, assign, factor, withdraw, discount or otherwise deal with or dispose of the whole or any part of the Security Deposit or the right to receive or to be paid the same or agree to do so,

unless and until its right to Apply the Security Deposit has arisen under clause 4.1(a).

7.2 If the Depositor grants or attempts or purports to grant a Security Interest in the Security Deposit, then the Depositor commits a breach of this Deed and must indemnify AEMO for any loss or damage caused to AEMO by the creation or enforcement of the Security Interest granted by the Depositor.

8. REPRESENTATIONS AND WARRANTIES

8.1 The Depositor represents and warrants to AEMO as at the date of execution of this Deed and as at the date the Security Deposit is deposited or paid into the Account (by reference, in each case, to the facts and circumstances then subsisting) that:

- (a) any authorisations, consents, approvals and licences required or necessary for the Depositor to:
 - (i) enter into this Deed;
 - (ii) enter into the transactions the subject of this Deed; and
 - (iii) undertake and perform the obligations imposed on it by this Deed,have been obtained;
- (b) this Deed creates valid and binding obligations of the Depositor which are enforceable in accordance with their terms;
- (c) the execution of this Deed and the performance of its terms will not contravene any law, regulation or contractual restriction binding on the Depositor;
- (d) the Depositor's undertaking of the obligations contained in this Deed, the deposit or payment of the Security Deposit into the Account under clause 3.1, and the assignment under clause 4.2 have occurred or will occur in the ordinary course of the Depositor's business;
- (e) the Depositor is solvent (as defined in section 95A(1) of the Corporations Act) and there is no unfulfilled or unsatisfied judgment or court order outstanding against it;
- (f) no action or proceeding has been taken which is likely to lead to the winding up of the Depositor or to its assets coming under the control of a controller (as defined in section 9 of the Corporations Act); and
- (g) the Security Deposit is not subject to any mortgage, charge, assignment, lien, encumbrance, right of set-off or other security interest (whether fixed or floating), except for the assignment, security, rights and interests made and created under clause 4.

8.2 The Market Participant represents and warrants to AEMO as at the date of execution of this Deed and as at the date the Security Deposit is deposited or paid into the Account (by reference, in each case, to the facts and circumstances then subsisting) that:

- (a) any authorisations, consents, approvals and licences required as necessary for the Market Participant to:
 - (i) enter into this Deed;
 - (ii) enter into the transactions the subject of this Deed; and
 - (iii) undertake and perform the obligations imposed on it by this Deed, have been obtained;
- (b) this Deed creates valid and binding obligations of the Market Participant which are enforceable in accordance with their terms;
- (c) the execution of this Deed and the performance of its terms will not contravene any law, regulation or contractual restriction binding on the Market Participant; and
- (d) the Depositor is entitled to receive any payments made by AEMO in accordance with clause 4.1(b) and 4.1(c) of this Deed on behalf of the Market Participant.

8.3 The representations and warranties in clauses 8.1 and 8.2 shall survive the execution of this Deed, the deposit or payment of the Security Deposit into the Account and the end of the Protected Period.

8.4 The Depositor covenants with AEMO to indemnify and keep indemnified AEMO from and against any loss, damage, cost, expense or claim which AEMO may suffer or incur in connection with or in consequence of any breach of, or falsity in, any of the representations and warranties in clause 8.1.

8.5 The Market Participant covenants with AEMO to indemnify and keep indemnified AEMO from and against any loss, damage, cost, expense or claim which AEMO may suffer or incur in connection with or in consequence of any breach of, or falsity in, any of the representations and warranties in clause 8.2.

9. FURTHER ASSURANCE

Each party must promptly, at its own cost and expense, execute all documents and do all things that may reasonably be required by the other party to effect, perfect or complete the provisions of this Deed and any transaction contemplated by it.

10. WAIVER

10.1 No delay or omission of any party in exercising any right, power or privilege in this Deed impairs such right, power or privilege or is to be construed as a waiver of such right, power or privilege nor shall any single or partial exercise of any such right, power or privilege preclude any further exercise of it or the exercise of any other right, power or privilege. The rights and remedies of each party in this Deed are cumulative and not exclusive of any rights or remedies provided by law.

10.2 The Depositor agrees to waive the following rights under the PPSA 2009 in respect of the Security Deposit:

- (a) the right to receive a written notice from AEMO under section 121(4) of the PPSA 2009;
- (b) the right to receive a notice of seizure from AEMO under section 123 of the PPSA 2009;
- (c) the right to receive statements of accounts under section 132(4) of the PPSA 2009;
- (d) the right to receive a notice from AEMO of retention of the Security Deposit under sections 134 and 135 of the PPSA 2009;
- (e) the right to give a notice of objection under section 137 of the PPSA 2009;
- (f) the right to redeem the Security Deposit under section 142 of the PPSA 2009;
- (g) the right to reinstate this Deed under section 143 of the PPSA 2009; and
- (h) the right under section 157(1) of the PPSA 2009 to receive notice of a verification statement from AEMO, which the Depositor waives under section 157(3)(b) of the PPSA 2009.

11. COUNTERPARTS

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same instrument.

12. NOTICES

12.1 Any notice, demand or other communication ("**Notice**") to be served under this Deed may be served upon any party only if it is communicated in writing and sent to:

- (a) in the case where it is delivered personally to the party — the party's place of business;
- (b) in the case where it is sent by certified mail addressed to the party — the party's postal address; or

- (c) in the case where the notice is sent by facsimile transmission to the party —the party's facsimile number.
- 12.2 For the purposes of clause 12.1 and until another address or facsimile number has been notified by a party to the other parties in accordance with clause 12.1, the addresses and facsimile numbers of the parties are as set out in the Details.
- 12.3 A Notice that is:
- (a) personally delivered is deemed to have been received at the time it is handed (with or without acknowledgement of delivery) to any person at the recipient's place of business who in the reasonable judgment of the person making the delivery (upon making appropriate enquiries) appears to be, and represents himself or herself as, a representative of the recipient;
 - (b) served by post is deemed to have been received on the second Business Day after the date of posting; and
 - (c) sent by facsimile transmission is deemed to have been received at the time of transmission unless it is received after 5.00pm Perth time, in which case it will be deemed to have been received at 9.00am Perth time on the next Business Day.

13. GOVERNING LAW AND SUBMISSION TO JURISDICTION

This Deed is governed by and shall be construed in accordance with the laws of Western Australia and the parties shall submit to the exclusive jurisdiction of the courts of Western Australia.

14. INVALIDITY AND SEVERANCE

If at any time one or more provisions of this Deed is or becomes invalid, illegal, void or unenforceable under any law, the remaining provisions of this Deed shall not be in any way affected or impaired and shall continue in full force and effect.

15. STAMP DUTY

The Depositor is liable for and shall duly pay any and all stamp duty which is assessed or payable in respect of this Deed or any of the transactions it evidences or contemplates.

EXECUTED AS A DEED

MARKET PARTICIPANT - Complete where Market Participant signing under section 127 of the Corporations Act (two directors or director and company secretary).

EXECUTED by

pursuant to section 127 of the *Corporations Act 2001*

.....
Director

.....
Director/Secretary

.....
Name
(Please print)

.....
Name
(Please print)

MARKET PARTICIPANT - Complete where Market Participant signing under section 127 of the Corporations Act (sole director and company secretary).

EXECUTED by

in accordance with section 127 of the *Corporations Act 2001* by:

.....
Sole director and sole secretary

.....
Name
(Please print)

MARKET PARTICIPANT - Complete where Market Participant signing by attorney.

EXECUTED FOR AND ON BEHALF OF

by its attorney in the presence of

.....
Witness

.....
Attorney

.....
Name (Please print)

.....
Name (Please print)

MARKET PARTICIPANT - Complete where Market Participant is an individual.

SIGNED BY

in the presence of

.....
Witness signature

.....
Signature

.....
Name (Please print)

DEPOSITOR – Complete where Depositor signing under section 127 of the Corporations Act (two directors or director and company secretary).

EXECUTED by

Pursuant to section 127 of the *Corporations Act 2001* by:

.....
Director

.....
Director/Secretary

.....
Name (Please print)

.....
Name (Please print)

DEPOSITOR – Complete where Depositor signing under section 127 of the Corporations Act (sole director and company secretary).

EXECUTED by

in accordance with section 127 of the Corporations Act 2001 by:

.....
Sole Director and Sole Secretary

.....
Name (Please print)

DEPOSITOR - Complete where Depositor signing by attorney.

EXECUTED FOR AND ON BEHALF OF

by its attorney in the presence of

.....
Witness

.....
Attorney

.....
Name (Please print)

.....
Name (Please print)

DEPOSITOR - Complete where Depositor is an individual.

SIGNED BY

in the presence of

.....
Witness Signature

.....
Signature

.....
Name (Please print)

EXECUTED by AUSTRALIAN ENERGY MARKET OPERATOR LIMITED (ABN 94 072 010 327) in accordance with section 127 of the Corporations Act 2001 (Cth) by:

.....
Director

.....
Director/Secretary

.....
Name
(Please print)

.....
Name
(Please print)