

**SECURITY DEPOSIT DEED FOR CREDIT SUPPORT – THIRD PARTY DEPOSITOR
WHOLESALE ELECTRICITY MARKET
VERSION 5.0 – NOVEMBER 2017**

DETAILS

This deed is between the Market Participant, the Depositor and AEMO (each as described below).

Market Participant:	Name:	
	ABN:	
	Address:	
	Email:	
Depositor:	Name:	
	ABN:	
	Address:	
	Email:	
AEMO:	Name:	Australian Energy Market Operator Limited
	ABN:	94 072 010 327
	Address:	Level 45, 152 St Georges Terrace, Perth, Western Australia 6000
	Email:	wa.operations@aemo.com.au
Deposit Date:		
Initial Security Deposit Amount:		AUD

ACKNOWLEDGEMENT

The Market Participant and the Depositor each acknowledge that the following Terms and Conditions constitute part of this deed.

SIGNING

EXECUTED AS A DEED on _____ (insert date of execution).

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

EXECUTED by
in accordance with section 127 of the Corporations Act 2001 (Cth) by:

.....
Director signature

.....
Director/Secretary signature

.....
Director full name
(BLOCK LETTERS)

.....
Director/Secretary full name
(BLOCK LETTERS)

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 (Cth) by:

.....
Sole director and sole secretary signature

.....
Full name
(BLOCK LETTERS)

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

EXECUTED by
in accordance with section 127 of the Corporations Act 2001 (Cth) by:

.....
Director signature

.....
Director/Secretary signature

.....
Director full name
(BLOCK LETTERS)

.....
Director/Secretary full name
(BLOCK LETTERS)

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 (Cth) by:

.....
Sole director and sole secretary signature

.....
Full name
(BLOCK LETTERS)

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 signature

.....
Director/Secretary signature

.....
Director full name
(BLOCK LETTERS)

.....
Director/Secretary full name
(BLOCK LETTERS)

TERMS AND CONDITIONS

RECITALS

- A. AEMO administers the process for the provision of Credit Support under chapter 2 of the Wholesale Electricity Market Rules (**WEM Rules**).
- B. AEMO has developed the Market Procedure for Prudential Requirements (**Prudential Procedure**), which is a Market Procedure under clause 2.43.1 of the WEM Rules and regulation 9 of the Electricity Industry (Wholesale Electricity Market) Regulations 2004.
- C. The Market Participant is registered as a Rule Participant under chapter 2 of the WEM Rules.
- D. The Market Participant is required under clause 2.38.1 of the WEM Rules (as a condition of being and continuing to be registered as a Market Participant under chapter 2 of the WEM Rules) to ensure that AEMO holds the benefit of Credit Support, in accordance with the WEM Rules and the Prudential Procedure, in respect of the Market Participant's obligations as a Market Participant.
- E. The Depositor has agreed to provide Security Deposits to AEMO on behalf of the Market Participant.
- F. If the Market Participant does not meet the requirements of clause 9.22.6 of the WEM Rules, then under clauses 9.23.4 and 9.24 of the WEM Rules the Market Participant will be liable to pay an amount to AEMO.
- G. AEMO has agreed to accept Security Deposits from time to time as Credit Support under the WEM Rules and the Prudential Procedure on the terms and conditions set out in this deed.
- H. If the Market Participant's Credit Limit is increased, the existing Credit Support is no longer current or valid, or AEMO draws upon the Credit Support, then the Market Participant is required to produce further Credit Support in accordance with clause 2.38.3 of the WEM Rules.

OPERATIVE PART

1. DEPOSIT

- 1.1 The Depositor must, in the manner specified in the Security Deposit Instructions, deposit or pay the Initial Security Deposit into the Settlement Account as per clause 2.38.4 of the WEM Rules.
- 1.2 The Security Deposit will be taken to be a Security Deposit provided by the Market Participant for the purpose of the WEM Rules and the Prudential Procedure. 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.
- 1.3 If the Depositor notifies AEMO that a further amount is to be paid into the Settlement Account, by way of Security Deposit, this amount will be deposited by the Depositor into the Settlement Account and a Security Deposit Direction will be promptly provided by the Depositor to AEMO in respect of that further amount.
- 1.4 A Security Deposit Direction will only be validly given to AEMO if it is sent by email from an authorised representative of the Depositor.
- 1.5 Following receipt of a payment in cleared funds in respect of a Security Deposit into the Settlement Account, AEMO will arrange for such amount to be deposited into the Trust Account to be held in accordance with clause 2.1.

2. DEPOSIT HELD ON TRUST

- 2.1 AEMO must hold the Security Deposit on trust in the Trust Account as follows:

- (a) if AEMO becomes entitled under clause 9.23.4(b) or clause 9.24.1 of the WEM Rules to Apply the Credit Support, then AEMO may Apply the Security Deposit together with any Interest accrued that has not yet been paid to the Depositor pursuant to clause 2.1(b) of this deed, in accordance with the WEM Rules; and
 - (b) subject to clause 2.1(a), to the extent that AEMO has not become entitled to Apply the Credit Support, after the end of each calendar month AEMO must 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 on that part (if any) of the Credit Support that AEMO has not become entitled to Apply;

less
 - (ii) any liabilities and expenses incurred by AEMO (including bank fees and charges that have been incurred on or in respect of the Security Deposit or the Account during that calendar month); and
 - (c) on termination of this deed but subject to clause 2.1(a), to the extent that AEMO has not become entitled to Apply the Credit Support, as soon as practicable after the termination of this deed, AEMO must pay to the Depositor:
 - (i) the Security Deposit (including Interest that has not yet been paid under clause 2.1(b)(i));

less
 - (ii) any liabilities and expenses incurred by AEMO (including bank fees and charges that have been incurred on or in respect of the Security Deposit or the Account but not yet been deducted under clause 2.1(b)(ii)).
- 2.2 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 2.1 and 2.3.
- 2.3 As soon as practicable after the termination of this deed, AEMO shall re-assign to the Depositor any of the rights, entitlements and interests referred to in clause 2.2 that are then still subsisting and which AEMO has not Applied, and which AEMO is not then entitled to Apply, in accordance with clause 2.1.
- 2.4 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.
- 2.5 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; or
 - (b) in responding to requests for information about the Security Interest created by this deed, under part 8.4 of the PPSA.
- 3. PAYMENTS TO DEPOSITOR ON BEHALF OF MARKET PARTICIPANT**
- 3.1 The Market Participant acknowledges and agrees that any payments by AEMO to the Depositor pursuant to clause 2.1 of this deed are payments made to the Depositor on behalf of the Market Participant.

3.2 The Market Participant agrees that, by executing this deed, it directs AEMO to make any payments to the Depositor pursuant to clause 2.1 of this deed on its behalf and waives any right or entitlement to receive those payments.

4. NO PRIOR NOTICE REQUIRED

If AEMO becomes entitled under clause 9.23 or clause 9.24 of the WEM Rules to Apply the Credit Support, 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 2.1(a).

5. NO ENCUMBRANCES AND NO ASSIGNMENT

5.1 Subject to and without prejudice to the assignment, security, rights and interests made and created under clause 2, AEMO must not:

- (a) create or permit to subsist 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 2.1(a).

5.2 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.

6. TERMINATION

6.1 This deed continues until it is terminated.

6.2 This deed is terminated, and clauses 2.1(c) and 2.3 apply, on the first to occur of:

- (a) the Market Participant receiving a notice in writing from AEMO that this deed is no longer required; and
- (b) replacement of this deed by other Credit Support in accordance with the WEM Rules.

7. REPRESENTATIONS AND WARRANTIES

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

- (a) any authorisations, consents, approvals and licenses 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 that 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 Settlement Account, and the assignment under clause 2.2 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 judgement or court order outstanding against it;
- (f) no action or proceeding has been taken that 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 2.

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

- (a) any authorisations, consents, approvals and licenses required or 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 that 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 clauses 2.1(b) and 2.1(c) of this deed on behalf of the Market Participant.

7.3 The representations and warranties in clauses 7.1 and 7.2 shall survive the execution of this deed and the deposit or payment of the Security Deposit into the Settlement Account.

7.4 The Depositor covenants with AEMO to indemnify and keep indemnified AEMO from and against any loss, damage, cost, expense or claim that 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 7.1.

7.5 The Market Participant covenants with AEMO to indemnify and keep indemnified AEMO from and against any loss, damage, cost, expense or claim that 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 7.2.

8. 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 parties to effect, perfect or complete the provisions of this deed and any transaction contemplated by it.

9. WAIVER

- 9.1 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.
- 9.2 If chapter 4 of the PPSA would otherwise apply to the enforcement of a Security Interest arising out of this deed, to the extent the law permits, the Depositor and AEMO agree that:
- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (i) AEMO need not comply with sections 95, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - (ii) sections 142 and 143 are excluded; and
 - (b) for the purposes of section 115(7) of the PPSA, AEMO need not comply with sections 132 and 137(3).
- 9.3 The Depositor waives the right to receive any notice under the PPSA (including notice of a Verification Statement) unless the notice is required by the PPSA and cannot be excluded.
- 9.4 If AEMO exercises a right, power or remedy in connection with this deed, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless AEMO states otherwise at the time of exercise. However, this clause 9.4 does not apply to a right, power or remedy that can only be exercised under the PPSA.

10. 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.

11. NOTICES

- 11.1 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 email to the party – the party's email address.
- 11.2 For the purposes of clause 11.1 and until another address or email address has been notified by a party to the other parties in accordance with clause 11.1, the address details of the parties for service of notices are specified in the Details.
- 11.3 A Notice that is:
- (a) personally delivered is deemed 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 received on the second Business Day after the date of posting; and

- (c) sent by email is deemed to have been received at the time when the relevant email enters the information system of the recipient's internet service provider.

12. 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.

13. 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.

14. STAMP DUTY

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

15. DEFINITIONS AND INTERPRETATION

15.1 Unless otherwise provided for, terms used in this deed which are defined in the WEM Rules or the Prudential Procedure have the same meaning as in the WEM Rules and the Prudential Procedure.

15.2 The following terms have the following meanings in this deed:

Account means either or both of the Settlement Account and the Trust Account as applicable.

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

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

Deposit Date means the date specified in the Details.

Details means the section headed "details" at the beginning of this deed.

Initial Security Deposit Amount means the amount of the Security Deposit specified in the Details.

Interest means interest at the Bank Bill Rate.

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

Security Deposit means the cash sum of the Initial Security Deposit Amount in Australian dollars to be deposited or paid by the Depositor into the Settlement Account, plus any further amount deposited or paid into the Settlement Account by the Depositor pursuant to a Security Deposit Direction, less any amount Applied by AEMO or paid back to the Depositor in accordance with the Prudential Procedure.

Security Deposit Direction means an email direction from the Depositor to AEMO in substantially the form published on the AEMO website (<http://aemo.com.au>) as amended from time to time by AEMO.

Security Deposit Instructions means the payment instructions referable to security deposits published on the AEMO website (<http://aemo.com.au>) as amended from time to time by AEMO.

Security Interest has the meaning given to that term in section 12 of the PPSA.

Settlement 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 by the Depositor.

Trust Account means the bank account under the control of AEMO in which the Security Deposit will be held in accordance with the terms of this deed.

Verification Statement has the meaning given to that term in section 155 of the PPSA.

15.3 The following principles of interpretation apply to this deed:

- (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.