AEMO_RGB_LowRes.jpg

# Book Build Participation Deed

**This deed is made on:**

**By:**

(name) ABN

of (address)

(“**Participant**”)

**In favour of:**

**Australian Energy Market Operator Limited** ABN 94 072 010 327 of Level 22, 530 Collins Street, Melbourne, Victoria 3000 (“**AEMO**”),

for the benefit of AEMO on its own behalf and on behalf of each other Book Build Participant.

## BACKGROUND

A. AEMO accredits Book Build Participants and conducts *voluntary book builds* in accordance with the National Electricity Rules and the Book Build Procedures.

B. Under the Book Build Procedures, the Participant must enter into this deed, and comply with its obligations under it, as a condition of its accreditation.

# Definitions and Interpretation

## Defined terms

* 1. In this deed, a term appearing in *italics* has the meaning given to that term in Chapter 4A or Chapter 10 of the National Electricity Rules, and may be more specifically described in the Book Build Procedures.
  2. The following terms have the meanings listed below when used in this deed:

**Book Build Participant** means, at any time, a person accredited by AEMO to participate in *voluntary book builds*, and includes the Participant while so accredited.

**Book Build Procedures** means the procedures of that name made by AEMO under clause 4A.H.2 of the National Electricity Rules.

**National Electricity Law** means the Schedule to the *National Electricity (South Australia) Act 1996* (SA), applied as a law of each participating jurisdiction in respect of which a *voluntary book build* is conducted from time to time.

**National Electricity Rules** means the rules of that name made under the National Electricity Law.

**VBB Offer** means the terms of an offer (being an invitation to treat as described in the Book Build Procedures) to enter into a *book build contract* listed on AEMO’s website in relation to a *voluntary book build*.

## 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. 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.

# Benefit of this deed

The Participant gives the covenants in this deed in favour of AEMO and, in the case of clause 5, also for the benefit of each other Book Build Participant.

# Term

* 1. The term of this commences when AEMO accredits the Participant as a Book Build Participant and, subject to paragraph (b), ends on the earlier of the date on which:
     1. the Participant’s accreditation is revoked by AEMO; or
     2. AEMO permanently ceases to conduct *voluntary book builds*.
  2. After the end date under paragraph (a), the Participant remains bound by the provisions of this deed in connection with a *voluntary book build* that commenced before that end date,including:
     1. the making of a VBB Offer by the Participant;
     2. the conduct of negotiations relating to a *book build contract* in respect of which the Participant became a *matched book build participant* on or before the end date;
     3. the payment of fees due from the Participant to AEMO under the Book Build Procedures in respect of any period up to and including the end date; or
     4. any other thing done or not done on or before the end date by the Participant, AEMO or another Book Build Participant in connection with the conduct of that *voluntary book build*.

# For the benefit of AEMO

## Acknowledgments

The Participant acknowledges and agrees that:

* 1. AEMO conducts *voluntary book builds* under Chapter 4A of the National Electricity Rules and the Book Build Procedures as part of its statutory functions under the National Electricity Law;
  2. in conducting a *voluntary book build*, neither AEMO nor any person acting on behalf of or associated with AEMO, makes any representation or gives any advice, invitation, recommendation, warranty or undertaking of any kind in respect of any Book Build Participant or any VBB Offer;
  3. *book build contracts* are by nature speculative and potentially high risk investments, and the Participant must rely entirely on its own investigations, opinions and professional advice in making decisions in connection with any VBB Offer, including with regard to:
     1. the suitability of any VBB Offer and the terms of any resulting *book build contract* for the Participant’s needs and circumstances;
     2. where relevant, whether the contract is a *qualifying contract*;
     3. the capacity and authority of the Participant and each counterparty to enter into the contract; and
     4. compliance of the Participant and each counterparty with applicable laws, including financial services requirements under Chapter 7 of the *Corporations Act 2001* (Cth).

## Privacy consent

To the extent that the Participant provides contact details of its representatives to AEMO under the Book Build Procedures and those details include personal information as defined in the *Privacy Act 1988* (Cth):

* 1. the Participant acknowledges and agrees that AEMO may use and disclose that personal information for the purposes of a *voluntary book build* in accordance with the Book Build Procedures;
  2. in providing that personal information to AEMO, the Participant represents and warrants that it has first taken all action required or otherwise necessary under applicable privacy legislation (including if appropriate making relevant disclosures or obtaining relevant consents from the relevant representatives), taking into account that AEMO will use and disclose the personal information in accordance with the Book Build Procedures; and
  3. the Participant acknowledges and agrees that AEMO will rely on the Participant having taken all relevant action under paragraph (b) for the purposes of AEMO’s own compliance with applicable privacy legislation.

## Statutory immunity and waiver

* 1. Nothing in this deed or the Book Build Procedures, and nothing done in the conduct of any *voluntary book build*,varies or excludes the operation of sections 119 and 120 of the National Electricity Law.
  2. To the maximum extent permitted by law, the Participant waives any right it may have at any time to bring any action or 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 on the part of AEMO or any person acting on behalf of or associated with AEMO in the conduct of any *voluntary book build*.

## Compliance with Procedures

The Participant undertakes to comply with its obligations under the Book Build Procedures and pay the fees provided for under those procedures as they fall due.

## Costs, liability and indemnity

* 1. The Participant is responsible for all costs and expenses incurred by it in connection with a *voluntary book build*, the conduct of due diligence in relation to a VBB Offer or the negotiation, execution or performance of any *book build contract.*
  2. AEMO is not liable on any grounds whatsoever for any such costs or expenses incurred by the Participant or any other person.
  3. The Participant indemnifies AEMO against any loss, liability, cost or expense (including legal costs and expenses on a full indemnity basis) arising from a claim against AEMO at any time before, during or after the term of this deed, to the extent that claim results from any act or omission of the Participant in connection with this deed, a *voluntary book build* or the negotiation or performance of a *book build contract*.

# For the benefit of other book build participants

## Good faith

* 1. The Participant must act in good faith at all times in relation to a *voluntary book build* and any subsequent negotiation of *book build contracts.*
  2. Without limiting paragraph (a):
     1. if the Participant submits a VBB Offer, it must ensure the terms of the offer listed by AEMO reflect the product or service that, subject to contract, the Participant is willing and able to deliver to a counterparty on reasonable commercial terms; and
     2. if the Participant requests the contact details of another Book Build Participant in respect of a VBB Offer, it must have a genuine intention to negotiate a *book build contract* on the basis of the terms disclosed in the VBB offer and otherwise on reasonable commercial terms.

## Compliance with laws

Without limiting its obligations in respect of any other Book Build Participant under clause 4.1(c), the Participant must ensure that it has, or will have at the time of entering into any *book build contract*, all necessary rights, licences or authorisations necessary to enter into that contract and perform its obligations under it in accordance with applicable laws.

# General

* 1. This deed is governed by and shall be construed in accordance with the laws of Victoria, Australia.
  2. If any provision of this deed is or becomes invalid, unenforceable or illegal or is declared to be invalid, unenforceable or illegal by any court of competent jurisdiction, that invalidity, unenforceability or illegality does not prejudice or affect the remaining provisions of this deed.
  3. Any stamp duty that may be payable on or in connection with this deed must be borne by the Participant.

**EXECUTED** as a deed and delivered.

[Use the appropriate form of execution below]

|  |
| --- |
| Executed by |
| **(Participant name)**  in accordance with section 127(1) of the Corporations Act 2001 |
|  |
| Director (signature) |  | Director/Company Secretary (signature) |
|  |  |
| Print Name | Print Name |

**[or]**

|  |
| --- |
| Signed for and on behalf of |
| (Participant name)  By |
| (Print name of attorney) |  | Attorney (signature) |
| who is duly authorised to execute this agreement under a valid power of attorney and declares that he or she is not aware of any fact or circumstance that might affect his or her authority to do so under that power of attorney,  in the presence of: |
| Witness (signature) |  |
|  |
| Print witness name |