

**Non-Market Ancillary Services Agreement**

**Australian Energy Market Operator Limited**

and

**#1#**

Australian Energy Market Operator Ltd

Level 22, 530 Collins Street

MELBOURNE VIC 3000

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DETAILS

|  |  |
| --- | --- |
| **Parties:** | **Australian Energy Market Operator Limited** ABN 94 072 010 327of Level 22, 530 Collins Street, Melbourne VIC 3000 (**AEMO**)and**#1#** ABN #2#of #3# (**NMAS Provider**) |

|  |  |
| --- | --- |
| **Commencement Date** | 14 September 2019 |

|  |  |
| --- | --- |
| **Expiry Date** | 13 March 2021 (subject to clause 2) |

|  |  |  |
| --- | --- | --- |
| **Address for Service** | AEMO: | Attention: Group Manager Victorian PlanningAddress: GPO Box 2008 MELBOURNE VIC 3001Email: Reception.Melbourne@aemo.com.au |
| NMAS Provider: | Attention: [Insert]Address: [Insert]Email: [Insert]  |

|  |  |
| --- | --- |
| **Governing law** | Victoria |

OPERATIVE PROVISIONS

# Interpretation

## Defined terms

* 1. Capitalised terms used in this agreement are defined in clause 1.2, in the Details or in a Schedule.
	2. Terms in italics have the meaning given to them in the National Electricity Rules (NER).

## Definitions

**Agreement** means this agreement, including the Details and all Schedules and Annexures.

**Authority** means any Commonwealth, State, Territory or local government or regulatory department, body, instrumentality, minister, agency or other authority having jurisdiction over a party, other than AEMO.

**Auxiliary Plant** means the plant associated with the operation of *generating units*, required to be started prior to starting a *generating unit*.

**[Availability Charge** is specified in item8 of each Schedule.]

**Available** means, in respect of an NMAS at any time, that the NMAS is, or under this Agreement is taken to be, capable of being provided in accordance with the Contracted Levels of Performance while meeting the Minimum Technical Requirements (see clause 4).

**Change in Law** means any change in legislation that has a material adverse effect on the rights or obligations of a party under this Agreement (including the cost of providing NMAS) other than a change in legislation:

1. the operation of which is excluded under clause 17.10; or
2. relating to income tax (or state equivalent tax), a tax on capital gains, or taxes, imposts or charges of a similar nature.

**Charges** means the Availability Charge, the Enabling Charge and the Testing Charge, or any of them as applicable.

**Claims** means all claims, losses, liabilities, costs or expenses, whether arising in contract, tort (including negligence), equity or otherwise, but excludes amounts payable or repayable in respect of Charges.

**Communication** means any notice, demand, approval, consent, request or other communication required or given by a party to another party under this Agreement.

**Consumer Price Index** or **CPI** is the Consumer Price Index All Groups, Weighted Average of Eight Capital Cities, Index Numbers published by the Australian Bureau of Statistics.

**Contract Values** means the Charges, as adjusted annually under clause8.11.

**Contracted Levels of Performance** are specified in item3 of the relevant Schedule.

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

**Enabling Charge** is specified in item8 of each Schedule.

**Event of Force Majeure** means in respect of a party (**affected party**), an act of God, lightning strike, earthquake, flood, drought, storm, tempest, mudslide, explosion, fire or any other natural disaster, an act of war, act of public enemies or terrorists, riot, civil commotion, malicious damage, sabotage, blockade or revolution, an act or omission of any Authority, or a Labour Dispute, that:

1. is beyond the reasonable control of the affected party;
2. is not the result of a breach of this Agreement or the NER by the affected party, or of an intentional or negligent act or omission or breach of obligation of the affected party, a person providing services to the affected party or any other person over which the affected party should have exercised control; and
3. results in the affected party being unable to observe or perform on time and as required any obligation (other than an obligation to pay money) under this Agreement.

**GST** has the meaning given to it in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Insolvency Event** means, in relation to a party, the happening of any of these events:

1. it is (or states that it is) insolvent or under administration; or
2. it has a controller (as defined in the Corporations Act) appointed, is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver (or receiver and manager) appointed to any part of its property;
3. 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 on terms approved by the other party);
4. 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) to (c);
5. it is otherwise unable to pay its debts when they fall due; or
6. 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.

**Labour Dispute** means a strike, lockout, ban, “go‑slow” activity, stoppage, restraint of labour or other similar act that is not directed primarily at a party to this Agreement.

**Law** means Commonwealth, state, or local legislation, judicial, administrative, or regulatory decrees, judgments, awards or orders and all common laws and equity.

**Maximum NMAS Quantity** is the maximum quantity of NMAS AEMO may require under this agreement at any time, being 150 MVAr.

**Minimum Availability Requirement** is the minimum percentage of time in a given period (Relevant Period) during which the NMAS Equipment must be Available, as specified in item4 of each Schedule.

**Minimum Technical Requirements** are specified in item 5 of each Schedule.

**MVAr** means Megavolt-ampere reactive.

**MW** means Megawatt.

**MWh** means Megawatt hour

**NER** means the National Electricity Rules made under the National Electricity Law in the schedule to the *National Electricity (South Australia) Act 1996* (SA).

**NMAS** means the service described in item1 of each Schedule.

**NMAS Equipment** is specified in item2 of each Schedule.

**Relevant Period** means a period specified in item 4 of each Schedule for the purpose of determining whether the Minimum Availability Requirement has been met in that period.

**Representative,** in relation to a party, means any officer, employee, agent, adviser, trustee, permitted assignee, liquidator, administrator, or third party contractor of that party or of a related body corporate (as that term is defined in the Corporations Act) of that party.

**Review Date** means an anniversary of the Commencement Date.

**Term** means the period during which this Agreement is in effect.

**Test** means a test contemplated by clause 5.

**Testing Charge** is specified in item [8] of each Schedule.

**Unavailable** means, in respect of an NMAS at any time, that the NMAS is not, or under this Agreement is taken not to be, capable of being provided in accordance with the Contracted Levels of Performance while meeting the Minimum Technical Requirements (see clause4).

## Interpretation

Unless otherwise specified, a reference in this Agreement to:

* 1. a document (including this Agreement) includes the document as novated, varied, or replaced;
	2. a clause, paragraph, Schedule, or Annexure is a reference to a clause, paragraph, Schedule, or Annexure in this Agreement;
	3. a clause is a reference to all its subclauses;
	4. legislation includes subordinate legislation and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them;
	5. the singular includes the plural and vice versa and a gender includes all genders;
	6. the word “**person**” includes a firm, a body corporate, a partnership, joint venture, trust, an unincorporated association and any Authority, and any successor entity to those persons;
	7. 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;
	8. a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
	9. a party includes, where the context requires it, that person’s directors, officers, employees, contractors, agents and any other persons authorised by that party and, in the case of AEMO, includes any *System Operator* acting on AEMO’s behalf;
	10. a thing (including an amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively, and to each of them individually;
	11. writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions;
	12. a month is a reference to a calendar month;
	13. a day is a reference to a period of time commencing at midnight and ending the following midnight; and
	14. a period of time and the period dates from a given day or the day of an act or event, it 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.

## Construction

* 1. Headings are inserted for convenience and do not affect the interpretation of this Agreement.
	2. If a word or phrase is defined in this Agreement, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
	3. No rule of construction will apply to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.
	4. An agreement, representation or warranty:
		1. in favour of two or more persons is for the benefit of them jointly and each of them severally;
		2. by two or more persons binds them jointly and each of them severally.

## Schedules

If a Schedule contains any provisions that impose additional obligations to those set out in the Operative Provisions, the provisions in the Schedule apply as if they were Operative Provisions.

# Term

* 1. This Agreement comes into effect at midnight at the beginning of the Commencement Date.
	2. Subject to paragraph (c) and to earlier termination in accordance with this Agreement, this Agreement continues until midnight at the end of the Expiry Date.
	3. AEMO may in its absolute discretion extend the Expiry Date for a further period of up to 12 months, either in respect of all NMAS under this Agreement or specified NMAS only (by reference to the relevant Schedule), by notice to NMAS Provider given not less than 3 months before the original Expiry Date.
	4. If an extension under paragraph (c) applies to specified NMAS only, the Schedules relating to any other NMAS will cease to form part of this Agreement at midnight on the original Expiry Date.

# Provision of NMAS

## General obligations

* 1. The NMAS Provider must use all reasonable endeavours to maximise the Availability of each NMAS during the Term. This obligation:
		1. applies at all times, including during any periods excluded from the calculation of the Minimum Availability Requirement; and
		2. incorporates and is subject to the requirements of clause [7] regarding maintenance of the NMAS Equipment.
	2. If at any time any *performance standards* applicable to any NMAS Equipment are amended, the parties must negotiate in good faith to make such amendments to this Agreement as are reasonably necessary to reflect the amended *performance standards*.Any disagreement between the parties on those amendments must be resolved in accordance with clause 13.

## Requests for service

* 1. At any time during the Term, AEMO may (but is not obliged to) request the NMAS Provider to provide an NMAS up to the Maximum NMAS Quantity, in accordance with one or more Schedules.
	2. The NMAS Provider must use all reasonable endeavours to comply with a request under paragraph (a).
	3. If any Schedule requires the NMAS Equipment to operate automatically, the NMAS Provider must use reasonable endeavours to ensure that the NMAS Equipment operates automatically on the occurrence of an event or condition specified in that Schedule.
	4. If, at any time, the NMAS Provider considers that an NMAS is, or will become, Unavailable for any reason, it must notify AEMO immediately specifying:
		1. which NMAS the notice applies to;
		2. when the NMAS became, or will become, Unavailable;
		3. when the NMAS Provider expects the NMAS to become Available again; and
		4. the cause of the Unavailability.

# Availability

## Determining When NMAS Unavailable

* 1. An NMAS is taken to be Unavailable for any period of Unavailability notified by the NMAS Provider under clause 3.2(d), subject to paragraph (d).
	2. An NMAS is taken to be Unavailable for the period determined in accordance with paragraph (c) if any of the following occurs:
		1. the NMAS Provider fails to provide evidence or Test results demonstrating to AEMO’s reasonable satisfaction that an NMAS is Available within the applicable period provided for in clause 5.3 or 5.4;
		2. the NMAS Provider fails to provide the NMAS when required to do so under this Agreement, or it is not provided in accordance with one or more of the Contracted Levels of Performance or the Minimum Technical Requirements, except where the failure is due solely to an act or omission of AEMO; or
		3. the results of a Test demonstrate that an NMAS is not Available.
	3. For the purposes of paragraph (c) the relevant NMAS is taken to be Unavailable for the period starting on:
		1. the date when the NMAS ceased to be Available, if the NMAS Provider can establish that date to AEMO’s reasonable satisfaction; or
		2. otherwise, the day that is half‑way between the date of the relevant failure or Test and the date of the most recent to occur of:
			1. a Test that demonstrated the relevant NMAS Equipment was Available;
			2. successful provision of the NMAS in accordance with the Contracted Levels of Performance while meeting the Minimum Technical Requirements; and
			3. the Commencement Date,

and ending on the day on which the NMAS Provider demonstrates to AEMO’s reasonable satisfaction, by Test or otherwise, that the NMAS is Available.

* 1. During any period when an NMAS is Unavailable solely as a result of an Event of Force Majeure or an act or omission of AEMO, it is nevertheless taken to be Available for the purpose of determining whether the NMAS meets the Minimum Availability Requirement.

## Requirement for Remedial Action

If the NMAS is Unavailable for any reason, the NMAS Provider must:

* 1. diligently and at its own expense take the necessary remedial action to ensure that the relevant NMAS Equipment can meet the Minimum Technical Requirements and provide the relevant NMAS in accordance with the Contracted Levels of Performance and the Minimum Technical Requirements;
	2. promptly advise AEMO of the proposed timetable for implementing the remedial action and keep AEMO informed of progress;
	3. after taking the remedial action and if requested by AEMO, submit such evidence as AEMO may require to demonstrate to AEMO’s reasonable satisfaction that the NMAS is Available; and
	4. pay AEMO’s reasonable costs incurred reviewing any evidence concerning the remedial action.

# Tests

## Types and Frequency of Tests

* 1. The NMAS Provider must conduct the Tests required by the relevant Schedule:
		1. at the times specified in the relevant Schedule, unless the requirement for the Test is waived by AEMO or the timing is varied at AEMO’s request or with its agreement; and
		2. within a reasonable period of being requested to do so by AEMO under paragraph (b) or (c),

in accordance with this clause 5.

* 1. AEMO may request the NMAS Provider to conduct a Test at any time if AEMO reasonably believes that NMAS Equipment is Unavailable (other than during a period notified by the NMAS Provider under clause 3.2(d)), and the NMAS Provider must conduct that Test within a reasonable time after receiving the request.
	2. If the NMAS Provider modifies any NMAS Equipment in a manner that could reasonably be expected to affect its ability to provide NMAS in accordance with the Contracted Levels of Performance while meeting the Minimum Technical Requirements, AEMO may request that the NMAS Provider conduct Teststo demonstrate that the NMAS Equipmentis Available.
	3. Provided each NMAS remains Available, the NMAS Provider may conduct any other tests on the NMAS Equipment at any time during the Term.

## Conduct of Tests

* 1. Prior to conducting any Test, the NMAS Provider must:
		1. notify AEMO of its intention to conduct the Test at least 20 business days prior to the proposed date of the Test, unless a shorter notice period is agreed with AEMO;
		2. agree with AEMO on the timing and duration of the Test (which agreement must not be unreasonably withheld); and
		3. invite AEMO to appoint a Representative to witness the conduct of the Test in order to verify that the Test is carried out correctly.
	2. If AEMO appoints a Representative under paragraph (a)(iii) to witness a Test:
		1. the NMAS Provider must provide sufficient access to permit that Representative to witness the Test in order to verify that it is carried out correctly; and
		2. AEMO must ensure that the Representative:
			1. does not interfere with the conduct of the Test;
			2. does not cause any loss or damage to the NMAS Provider’s assets;
			3. does not interfere with the operation of the NMAS Provider's business;
			4. observes the NMAS Provider’s requirements relating to occupational health and safety and industrial relations matters that apply to all invitees; and
			5. does not ask any question, or give any direction, instruction, or advice, to any representative of the NMAS Provider other than the Representative designated by the NMAS Provider for this purpose.

## Evidence of Tests

* 1. Unless otherwise agreed between the parties, if the NMAS Provider conducts a Test, the NMAS Provider must provide to AEMO evidence that the Test has been conducted, together with the results of that Test, within 15 *business days* of the Test being conducted.
	2. The evidence provided to AEMO under paragraph (a) must demonstrate whether the NMAS is Available.

## Failure to Conduct Tests

If the NMAS Provider does not conduct a Test as required by clause 5.1, AEMO may, by notice to the NMAS Provider, request an explanation of why the Test was not carried out and the NMAS Provider must respond within 2 *business days*, setting out:

* 1. the reasons why the Test was not conducted;
	2. when the Test will be conducted; and
	3. information demonstrating that the NMAS remains Available.

## Failure to Agree

If the parties cannot agree on the procedures to be followed in conducting a Test, or the timing or duration of a Test as required by clause 5.2(a)(ii), the disagreement must be resolved in accordance with clause 13.

## Cost of Testing

* 1. Subject to paragraph (b), the NMAS Provider must pay all costs relating to Tests conducted under clause 5.1.
	2. If a Test conducted by the NMAS Provider under clause 5.1(a) demonstrates that the NMAS is Available, AEMO must pay the NMAS Provider the Testing Charge.

# Records, Audits and Inspections

## Type of Records

The NMAS Provider must compile and maintain reasonable records concerning this Agreement, including the delivery of NMAS under this Agreement, the operation, maintenance and testing of NMAS Equipment, any procedures used in the performance of this Agreement and all Communications given or received by telephone in relation to this Agreement.

## Form and Retention

* 1. The records referred to in clause 6.1 may be maintained in writing or electronically.
	2. The NMAS Provider must maintain a record referred to in clause 6.1 for at least 7 years from the date it was created.

## Right to Inspect Records

* 1. AEMO may request a copy of any of the records maintained under clause 6.1 or any other information in connection with NMAS at any time during the period referred to in clause 6.2(b).
	2. The NMAS Provider must comply with a request from AEMO under paragraph (a) within 5 business days of receipt.

## Audits by AEMO

* 1. AEMO may audit any of the records maintained under clause 6.1 by giving the NMAS Provider at least 5 business days' notice. A notice under this paragraph (a) must include the following information:
		1. the nature of the audit;
		2. the NMAS concerned;
		3. the name of any Representative appointed by AEMO to conduct the audit; and
		4. the date on which the audit will commence.
	2. Unless the NMAS Provider agrees otherwise, an audit may only occur during normal business hours on a business day.

## Conduct of Audit

Audits will occur at the site at which the relevant records are maintained by the NMAS Provider and the NMAS Provider must provide AEMO’s Representatives conducting the audit with all reasonable assistance they may require to conduct it, including access to all relevant records (including computer records or systems) and any interpretation or explanation required.

## Inspections

* 1. At a date and time convenient to both parties, AEMO may inspect any of the NMAS Equipment to determine whether the NMAS Provider is complying with this Agreement.
	2. At least 5 business days prior to the date on which AEMO wishes to make an inspection, AEMO must deliver a notice to the NMAS Provider detailing the following information:
		1. the NMAS Equipment to be inspected and the scope of the inspection;
		2. the Representatives who will be conducting the inspection on behalf of AEMO; and
		3. the date and time when AEMO proposes to commence the inspection and the expected date and time when the inspection will conclude.
	3. The NMAS Provider must not unreasonably refuse access and must procure that all necessary third party consents to the access required by AEMO to conduct the inspection are secured in time for the inspection to commence as agreed between the parties.
	4. If AEMO conducts an inspection under paragraph (a), the NMAS Provider must designate Representatives to accompany AEMO’s Representatives and answer any questions and assist with the conduct of the inspection.

## Conduct of Inspection

* 1. AEMO must not carry out any inspection of NMAS Equipment under clause 6.6 within 6 months of a previous inspection under this Agreement of the same NMAS Equipment.
	2. Unless otherwise agreed by the NMAS Provider, an inspection under clause 6.6 may take as long as reasonably necessary, provided it is no longer than 24 hours. Any agreement to extend the period of the inspection must not be unreasonably withheld, considering the extent of the inspection proposed.
	3. Whilst carrying out an inspection in accordance with clause 6.6, AEMO must ensure that its Representatives:
		1. do not cause any loss or damage to the NMAS Provider’s assets;
		2. do not interfere with the operation of the NMAS Provider's business (provided that the inspection itself does not constitute interference);
		3. observe the NMAS Provider’s requirements relating to occupational health and safety and industrial relations matters that apply to all invitees of the NMAS Provider; and
		4. do not ask any question or give any direction, instruction, or advice to any of the NMAS Provider’s personnel other than the Representative designated by the NMAS Provider for this purpose.

# Maintenance

* 1. The NMAS Provider must maintain the NMAS Equipment in accordance with *good electricity industry practice*.
	2. The NMAS Provider:
		1. must, at all times during the Term, provide AEMO with the most recently updated planned maintenance schedule for NMAS Equipment;
		2. must promptly notify AEMO when it becomes aware of any need for unplanned maintenance that could reasonably affect the provision of NMAS under this Agreement; and
		3. must not schedule planned maintenance during periods of expected low electricity demand in the Victoria *region*, typically during overnight periods, weekends, and public holidays, unless that maintenance cannot reasonably be conducted outside those periods.
	3. The NMAS Provider must notify AEMO promptly after changing or modifying any NMAS Equipment in a way that reduces or could reasonably be expected to reduce the Availability of an NMAS.

# Payments

## Calculation of Payments

* 1. Subject to paragraph (b), the Charges owed by AEMO for NMAS provided under this Agreement are to be determined in accordance with item 8 of each Schedule, as adjusted under clause 8.9.
	2. If the same NMAS Equipment is being used to provide more than one type of NMAS at the same time, the NMAS Provider is not entitled to receive a Charge for each of them, but AEMO must instead pay the amount that represents the highest of the applicable Charges for the NMAS being provided.

## Monthly Invoices

* 1. The NMAS Provider must issue a monthly invoice to AEMO on or after the first calendar day of each month for the Charges payable by AEMO in respect of the immediately preceding month.
	2. The NMAS Provider must provide sufficient information in each invoice to allow AEMO to assess the accuracy of the applicable Charges invoiced and must comply with all reasonable requests by AEMO for any further information it requires to assess the accuracy of the Charges.

## Payment and Disputes

* 1. AEMO will pay any undisputed invoice within 30 days of receipt.
	2. If AEMO disputes an invoice, AEMO will promptly notify the NMAS Provider of AEMO’s reason for the dispute and will pay the undisputed part (if any), the dispute will then be dealt with under clause 13.

## Adjustment

* 1. Where the Charges or any other amounts specified in an invoice:
		1. must be adjusted to effect a repayment due under clause 8.7 or an adjustment retrospectively to a Review Date under clause 8.9;
		2. are agreed by the parties to be incorrect; or
		3. are determined in accordance with clause 13 to be incorrect or not payable,

the NMAS Provider must issue a replacement invoice or adjustment note stating the correct charges or any other amounts payable.

* 1. If a payment has already been made, the party advantaged must pay the other party the amount required to put the other party in the position it would have been in at the time payment was due under clause 8.4 plus interest on the difference between the amount paid to the party advantaged and the amount that should have been paid. The interest accrues daily at the bank bill rate on the relevant day for each day from the date on which payment was made under clause 8.3 until payment is made under this paragraph (b).
	2. Payment under paragraph (b) must be made:
		1. on the same day as the next payment is made under clause 8.3, where applicable by set off against an amount due to the party advantaged; or
		2. if no subsequent payments are to occur under clause 8.3, within 15 business days after the replacement invoice or adjustment note is issued under paragraph (a).

## No payment for Negative Calculation

Except in the case of an adjustment under clause 8.4, if the calculation of a charge results in a negative amount, the amount payable is taken to be zero.

## Measurement

* 1. Measurement of each NMAS must be made in accordance with each relevant Schedule and as provided by AEMO’s records and the NMAS Provider’s metering, measurement, supervisory and electronic data processing systems.
	2. Paragraph (a) does not prevent the NMAS Provider from disputing the accuracy of AEMO’s records.

## Reduced Payment for NMAS Not Available or Provided

* 1. Availability Charges and Enabling Charges are only payable to the NMAS Provider in respect of NMAS respectively Available and provided in accordance with this Agreement.
	2. The NMAS Provider must repay to AEMO, in accordance with clause 8.4:
		1. any amount of the Availability Charge previously paid in respect of a period in which the NMAS was Unavailable (pro-rata for a period of partial Availability); and
		2. any Enabling Charges previously paid for any quantity of NMAS that is subsequently identified not to have been provided in accordance with the Contracted Levels of Performance while meeting the Minimum Technical Requirements.

## GST

* 1. The Contract Values and any other prices, fees and charges and any other amounts payable to or by AEMO under this Agreement exclude GST.
	2. Where a party is required under this Agreement to reimburse or otherwise pay an amount to another party (**reimbursed party**) on account of a cost or expense incurred by that reimbursed party, the amount of the reimbursement will be reduced by the amount of any input tax credit to which the reimbursed party is entitled for an acquisition to which that cost or expense relates.
	3. If either party makes a taxable supply under this Agreement, the party receiving the taxable supply must also pay an additional amount equal to the consideration payable for the supply multiplied by the applicable GST rate.
	4. Each party must include the additional amounts contemplated under paragraph (c) in statements issued under this Agreement and must assist the other party to claim input tax credits for GST where relevant.
	5. If the additional amount paid or payable to a party in respect of a taxable supply under paragraph (c) differs from the actual amount of GST payable, adjustments must be made in accordance with the adjustment procedures under clause 8.4.
	6. In this clause 8.8, “**input tax credit**”, “**supply**” and “**taxable supply**” each have the meaning given to those terms in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## Review based on CPI variations

* 1. Each Contract Value will be reviewed annually as of each Review Date and adjusted effective from that date in accordance with the change in CPI, so that the Contract Value as at the Review Date is equal to:

CVB \* CPI/CPIB

Where:

CVB means the Contract Value immediately before the Review Date;

CPI means the CPI for the quarter ending on the 30 June immediately before the Review Date; and

CPIB means the CPI for the quarter ending on the 30 June in the preceding year.

* 1. If either:
		1. the CPI ceases to be published; or
		2. the method of calculation of the CPI substantially alters,

the CPI is to be replaced by the nearest equivalent index and any necessary consequential amendments are to be made.

* 1. Any replacement index and consequential amendments required under paragraph (b) are to be determined by agreement between the parties or, if the parties do not agree, by the Australian Statistician or their nominee (acting as an expert and not as an arbitrator), whose decision is binding and conclusive.

# Extent of Liability

## AEMO Liability Cap

* 1. Subject to paragraph (b), the total amount recoverable from AEMO in respect of any and all Claims arising out of any one or more events during the Term with respect to, arising from, or in connection with, this Agreement or the provision of NMAS is limited to a maximum aggregate amount of $5,000,000.
	2. Regardless of the nature of any Claim, AEMO is not liable in any circumstances for any:
		1. damages or losses that are not direct and do not flow naturally from a breach of this Agreement, 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 Agreement;
		2. loss of market, opportunity or profit (whether direct or indirect); or
		3. damages or losses to the extent that a Claim results from the NMAS Provider’s failure to act in accordance with this Agreement, a Law or *good electricity industry practice*.

## NMAS Provider Liability Cap

* 1. Subject to paragraph (b), the total amount recoverable from the NMAS Provider in respect of any and all Claims arising out of any one or more events during the Term with respect to, arising from, or in connection with, this Agreement or the provision of the NMAS is limited to a maximum aggregate amount of $5,000,000.
	2. Regardless of the nature of any Claim, the NMAS Provider is not liable in any circumstances for any:
		1. damages or losses that are not direct and do not flow naturally from a breach of this Agreement, 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 Agreement;
		2. loss of market, opportunity or profit (whether direct or indirect); or
		3. damages or losses to the extent that a Claim results from AEMO’s failure to act in accordance with this Agreement, a Law or good electricity industry practice.

## Indemnity

Subject to clause 9.2, the NMAS Provider indemnifies AEMO against any liability or loss arising from, and any costs, charges or expenses incurred in connection with, a Claim by a third person against AEMO with respect to, or in connection with, any act or omission of the NMAS Provider in relation to the provision of NMAS.

## National Electricity Law

This Agreement does not vary or exclude the operation of sections 116, 119 or 120 of the National Electricity Law. To avoid doubt, any liability of a party under this Agreement will not exceed the lesser of any amount to which that liability may be limited under the National Electricity Law, and the relevant liability cap under this clause 9.

# Force Majeure

## Effect on performance of obligation

A party’s obligation under this Agreement (other than an obligation to pay money) shall be suspended during the time and to the extent that the party (**affected party**) is unable to comply with that obligation by reason of the occurrence of an Event of Force Majeure.

## Obligation to Notify

If an affected party becomes aware of a circumstance it reasonably considers constitutes or is likely to constitute or result in an Event of Force Majeure, it must:

* 1. immediately give the other party notice of the circumstances and of the obligations under this Agreement that have been, or will be, or are likely to be, affected by that circumstance; and
	2. keep the other party informed both at reasonable intervals and upon request by the other party as soon as practicable following the receipt of that request of:
		1. the affected party’s estimate of the likely and actual commencement (as appropriate) of and duration of the Event of Force Majeure;
		2. the action taken and the action proposed to be taken by the affected party in complying with paragraph (a);
		3. the cessation of the Event of Force Majeure or the successful mitigation of the effects of the Event of Force Majeure; and
		4. any other matter the other party reasonably requests in connection with the occurrence of the Event of Force Majeure and the matters referred to in paragraph (b).

## Obligation to Mitigate

* 1. As soon as practicable after the occurrence of an Event of Force Majeure, the affected party must use reasonable endeavours (including incurring any reasonable expenditure of funds and rescheduling manpower and resources) to mitigate the consequences of that Event of Force Majeure and minimise any resulting delay in the performance of its obligations under this Agreement.
	2. The suspension granted under clause 10.1 does not include any delay in the performance of the affected obligation attributable to a failure by the affected party to comply with paragraph (a).
	3. The affected party bears the onus of proving that it has complied with its obligations under paragraph (a).
	4. Nothing in clause 10 requires the affected party to settle or compromise a Labour Dispute where the affected party, in its sole and absolute discretion, considers that course to be inappropriate.

## Termination for Extended Force Majeure

* 1. If, by reason of an Event of Force Majeure, NMAS Equipment is incapable of providing NMAS for a period exceeding 2 months, AEMO may terminate this Agreement in respect of the relevant NMAS.
	2. If AEMO gives a termination notice under paragraph (a) in respect of a particular NMAS, this Agreement terminates in respect of that NMAS from the start of the later of:
		1. the day following the day on which the notice was given; and
		2. the day nominated in the notice,

and on termination the applicable Schedule will no longer form part of this Agreement or any other agreement between the parties.

# Default

## Termination

A party (**terminating party**) may immediately terminate this Agreement by notice to the other party (**defaulting party**) if:

* 1. the defaulting party does not pay any money due under this Agreement on the due date and the defaulting party does not pay the money within a further period of 20 business days after the terminating party serves notice on the defaulting party requiring payment;
	2. subject to clause 11.2, the defaulting party does not carry out or meet any other material obligation under this Agreement and in the case of a default that is capable of remedy, does not remedy that default within 30 business days after the terminating party serves notice on the defaulting party requiring it to be remedied;
	3. any representation or warranty given by the defaulting party under clause 14 is materially inaccurate or untrue; or
	4. an Insolvency Event occurs in relation to the defaulting party.

## Termination by AEMO

* 1. AEMO may immediately terminate this Agreement by giving notice to the NMAS Provider if:
		1. the NMAS Provider fails twice within a 6-month period to demonstrate that the NMAS is Available when requested to provide the NMAS or otherwise required to demonstrate its Availability under this Agreement; or
		2. the Minimum Availability Requirement is not met for any Relevant Period.
	2. A termination notice given under paragraph (a)(ii) must set out how compliance with the Minimum Availability Requirement was measured.
	3. At any time, AEMO may terminate this Agreement for convenience on giving the NMAS Provider at least 3 months’ notice.

## Termination Notices

A notice to terminate issued under clause 11.1 or 11.2 takes effect on the later of:

* 1. the time it is given; and
	2. the time specified in the notice.

## Survival

Expiry or termination of this Agreement for any reason does not affect:

* 1. any rights of either party against the other that:
		1. arose prior to the time at which expiry or termination occurred; and
		2. otherwise relate to or might arise at any future date from any breach of this Agreement occurring prior to the expiry or termination; or
	2. the rights and obligations of the parties under clauses 6, 8, 9, 13 and 17.

## Reduction of NMAS

If AEMO is entitled to terminate this Agreement under clause 11.1 or 11.2 and where there is more than one NMAS, AEMO may instead elect to reduce the number of NMAS it purchases under this Agreement (specified by reference to a Schedule), by giving a notice to the NMAS Provider that complies in all other respects with clause 11.1 or 11.2 (as applicable). On and from the effective date of that notice, the specified Schedule will be taken not to form part of this Agreement or any other agreement between the parties.

## No other termination

Subject to any written Law to the contrary, a party must not terminate this Agreement other than for a reason provided for under this Agreement and in accordance with the relevant requirements for termination.

# Assignment and Sub Contracting

## Assignment

* 1. In this clause 12.1, the words ‘**dispose o**f’ and ‘**disposal**’ refer to an assignment, transfer or other means of disposing of all or part of a legal or equitable interest, whether by sale, lease, declaration or creation of trust or otherwise.
	2. Subject to paragraph (d), the NMAS Provider must not dispose of its rights in this Agreement or NMAS Equipment without first obtaining AEMO’s consent, which must not be unreasonably withheld or delayed.
	3. AEMO must give its consent for the purposes of paragraph (a) if:
		1. the NMAS Provider disposes of the NMAS Equipment to one person or a group of persons (assignee);
		2. the assignee executes and delivers to AEMO a deed (in form and substance satisfactory to AEMO) prior to the disposal by which the assignee agrees to assume obligations that are substantially equivalent to the NMAS Provider’s obligations under this Agreement; and
		3. the assignee is a Registered Participant.
	4. The NMAS Provider may grant security interests by way or mortgage or charge over this Agreement and the NMAS Provider’s rights and interests in or under this Agreement without AEMO’s consent.
	5. AEMO may, without the consent of the NMAS Provider, dispose of its rights in this Agreement to any person from time to time performing the functions of AEMO as at the date of this Agreement in respect of the provision of *shared transmission services* for the *declared shared network* in Victoria.

## Sub-contracting

* 1. The NMAS Provider must not sub-contract the performance of any of its obligations under this Agreement without first obtaining AEMO’s consent, which must not be unreasonably withheld or delayed.
	2. If the NMAS Provider sub-contracts the performance of obligations under this Agreement, the NMAS Provider remains responsible for the performance of this Agreement.

# Dispute Resolution

* 1. If a dispute arises in relation to this Agreement or its subject matter, the parties agree that rule 8.2 of the NER applies to that dispute.
	2. Unless otherwise stated in this Agreement, agreed by the parties, or determined under the rule 8.2 dispute resolution processes, the parties must continue to perform their obligations under this Agreement despite the operation of this clause 13.

# Warranties

* 1. The NMAS Provider represents and warrants to AEMO as at the date of this Agreement and at all times after the date of this Agreement that:
		1. it will render NMAS with due care and skill;
		2. it and its representatives are duly qualified and skilled to provide NMAS;
		3. it will provide NMAS in accordance with all relevant Law, *good electricity industry practice* and relevant Australian Standards and codes of practice;
		4. it will ensure that data of NMAS Availability and provision provided to AEMO for AEMO’s use in calculating payments and issuing statements in accordance with clause 8 will be in a form suitable for use in AEMO’s systems, and will accurately reflect the level of Availability and provision of NMAS under this Agreement;
		5. the NMAS Provider’s obligations under this Agreement are enforceable in accordance with their terms; and
		6. the NMAS Provider is entitled to carry out its obligations under this Agreement.
	2. AEMO represents and warrants to the NMAS Provider as at the date of this Agreement and at all times after the date of this Agreement that AEMO’s obligations under this Agreement are enforceable in accordance with their terms.

# Compliance with Law

* 1. Each party must comply with its obligations under any Law in any way affecting this Agreement.
	2. Each party must procure that all notices required to be given, all consents required to be obtained and any form of authorisation, registration or certification required by Law for the purpose of complying with its obligations under this Agreement are given or obtained.
	3. Each party must pay all fees and bear all costs connected with such notices, consents, authorisations, registrations and certifications.
	4. Each party must, upon demand by the other party (**requesting party**) at any time, provide to the requesting party all information necessary to establish to the reasonable satisfaction of the requesting party that the requirements of paragraph (b) have been complied with.

# Change in Law

## Change in Law Notice

* 1. If a Change in Law occurs during the Term, a party may give notice (**notifying party**) to the other party (**notified party**) of the Change in Law.
	2. Any notice given by a notifying party under paragraph (a) must:
		1. be given by within 3 months of the commencement of the relevant Change in Law, otherwise this clause 16 does not apply; and
		2. include full details of impact of the Change in Law and any supporting information reasonably necessary to enable the notified party to verify its impact.

## Negotiations

On receipt of a notice under clause 16.1, the parties must negotiate in good faith such amendments to this Agreement as are necessary or appropriate on the basis of the following principles:

* 1. the amendments will endeavour to preserve the economic and legal effect of this Agreement as at the Commencement Date to the extent practicable, except any change in the Contract Values will be limited to the actual change in the cost of providing NMAS arising from the Change in Law; and
	2. the amendments will otherwise be fair and reasonable in the circumstances.

## Dispute

If the parties are unable to agree on the amendments in accordance with clause 16.2 within 2 months of receipt of the notice received under clause 16.1, the dispute must be resolved in accordance with clause 13. Any third party appointed under clause 13 to assist in the resolution of the dispute must take into account the principles detailed in clause 16.2.

# General

## Notices

* 1. Subject to paragraph (b), all Communications to a party must be:
		1. in writing;
		2. marked to the attention of the person named in respect of that party in the Details; and
		3. sent by electronic message to the email address of the addressee specified for that party in the Details.
	2. Subject to the NER, any:
		1. Communications given in the course of the day-to-day running of the national grid or the national electricity market by or on behalf of a party to the other; or
		2. request for NMAS made by AEMO,

may be made by automated electronic process, telephone or other instantaneous means of communication.

* 1. Unless Communications under paragraph (b) are recorded in some other way satisfactory to 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.
	2. Unless a later time is specified in it, a Communication takes effect from the time it is received.
	3. A Communication is taken to be received:
		1. in the case of an electronic message, at the time at which a report by the computer from which the electronic message was sent indicates that the message was received in its entirety at the electronic mail address of the recipient; and
		2. in the case of Communications under paragraph (b), instantaneously.
	4. Except for Communications under paragraph (b), if a Communication is received, or deemed to be received, on a day that is not a business day, or after 5:00pm on a business day, it is taken to be received on the next business day.
	5. A party may at any time by notice to the other party designate a different person or electronic mail address for the purposes of this clause 17.1 and the Details.

## Exercise of Rights

Subject to the express provisions of this Agreement, 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.

## No Waiver or Variation

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

* 1. 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;
	2. a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
	3. the exercise of a right does not prevent any further exercise of that right or of any other right.

## Amendment

An amendment to this Agreement will be effective only if made in writing and signed by the parties.

## Approvals and Consents

Subject to the express provisions of this Agreement, a party may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion.

## Continuing Indemnities

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives the end of this Agreement.

## Payment not necessary before Claim

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

## Costs and Expenses

Costs, fees and expenses of a party covered by a right of indemnity include legal expenses, fees and charges incurred by the indemnified party on a solicitor own-client basis and are not subject to taxation on a party and party or any other basis.

## Further Assurances

Each party agrees, at its own expense, on the request of another party to:

* 1. do everything reasonably necessary to give effect to this Agreement and the transactions contemplated by it (including the execution of documents); and
	2. use reasonable endeavours to cause relevant third parties to do likewise if necessary or desirable.

## Supervening Law

Subject to clause 16, any present or future Law that operates to vary an obligation or right, power or remedy of a person in connection with this Agreement is excluded to the extent permitted by Law.

## Severability

If a provision of this Agreement is void, unenforceable, or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Agreement remains effective and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause 17.1 has no effect if the severance alters the basic nature of this Agreement or is contrary to public policy.

## Entire Agreement

This Agreement is required by the NER and operates in accordance with the NER. Subject to this requirement, it constitutes the entire agreement of the parties in connection with the provision of the NMAS and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

## Confidential Information

Any information of a commercially sensitive nature exchanged between the parties under this Agreement or during the negotiations preceding this Agreement is *confidential information* for the purposes of the NER. The NMAS Provider consents to the disclosure of that information by AEMO to the extent reasonably necessary for the purposes of assessing the viability of NMAS, preparing restart plans, training in power system emergency response and in the delivery of NMAS, or any other obligation of AEMO under the NER.

## No other Representations or Warranties

Each party acknowledges that, in entering into this Agreement, it has not relied on any representations or warranties about its subject matter except as set out in this Agreement.

## Counterparts

This Agreement may consist of a number of copies, each signed by one or more parties to this Agreement. If so, the signed copies make up one document and the date of this Agreement will be the date on which the last counterpart was signed.

## Governing Law & Jurisdiction

This Agreement and the transactions contemplated by this Agreement are governed by the laws in force in the jurisdiction referred to in the Details. Each party submits to the non-exclusive jurisdiction of the courts of that place.

## No Partnership, Agency or Trust

Except as expressly provided in this Agreement, nothing contained or implied in this Agreement:

* 1. constitutes or may be deemed to constitute a party the partner, agent or legal representative of any other party for any purpose whatsoever, or create or be deemed to create any partnership; or
	2. creates or may be deemed to create any agency or trust.

**EXECUTED** as an agreement

1. NMAS – [Insert Service Provider Equipment Identifier]
	* 1. **Item 1: Description of NMAS**

The NMAS to be provided by the NMAS Provider is voltage control using [equipment type], and refers to all of the *reactive power* it absorbs [as measured at], and where [any other limitations].

* + 1. **Item 2: NMAS Equipment**

|  |  |
| --- | --- |
| **NMAS Equipment Location / Connection point** | **Equipment description** |
|  |  |
|  |  |

* + 1. **Item 3: Contracted Levels of Performance**

|  |  |
| --- | --- |
| **Performance Requirement** | **Contracted Level of Performance** |
| Maximum time taken to become fully available to provide the service following receipt of a request from AEMO. | 4 hours |
| Minimum level of *reactive power* absorbing capability for all facilities comprised in NMAS Equipment | 150 MVAr |
| Continuous time NMAS Equipment must be capable of providing the minimum level of *reactive power* absorbing capability. | 10 hours |

* + 1. **Item 4:** Minimum Availability Requirement

|  |  |
| --- | --- |
| Minimum Availability Requirement | To meet the Minimum Availability Requirement, the NMAS must be Available for at least the percentage of time specified below over each defined Relevant Period:  |
| Relevant Period | % Available of total hours in Relevant Period |
| Each continuous period of 3 calendar months commencing on or after the Commencement Date | [Tenderer to propose] |
| Each continuous period of 3 calendar months commencing on or after the Commencement Date | [Tenderer to propose] |

* + 1. **Item 5: Minimum Technical Requirements**

The NMAS Equipment must:

* 1. be capable of transmitting measurements of *reactive power* output to AEMO's every 4 seconds;
	2. be capable of absorbing *reactive power* while maintaining zero *active power* production;
	3. be capable of sustaining continuous contracted levels of performance of *reactive power* absorption upon receipt of a communication from AEMO;
	4. comply with any relevant *performance standards* registered with AEMO; and
	5. comply with any relevant requirements under the NER.
		1. **Item 6: Requests for Service**
	6. AEMO will issue a Communication to the NMAS Provider requesting the NMAS Provider to enable the NMAS Equipment, specifying a time (specified start time) by which it must be available to absorb the requested level of reactive power .
	7. On receipt of the Communication under paragraph (a), the NMAS Provider must configure the NMAS Equipment to absorb *reactive power* in accordance with that Communication.
	8. TheNMAS Provider must issue a Communication to AEMO when the NMAS Equipmentis ready to absorb *reactive power*.
	9. AEMO will issue a Communication to the NMAS Provider specifying the time AEMO requires the NMAS Equipment to stop absorbing *reactive power* under this Agreement.
	10. On receipt of a Communication under paragraph (f), the NMAS Provider must disable the NMAS Equipment in order to cease absorbing reactive power in accordance with the Communication. To avoid doubt, that Communication relates only to the provision of NMAS under this Agreement, and does not prevent the NMAS Provider from offering NMAS Equipment capacity for other purposesin accordance with the NER.
	11. For the purposes of this Agreement, the NMAS Provider is taken to have ceased provision of the NMAS at the time specified in a Communication under paragraph (d).
		1. **Item 7: Tests**

|  |  |  |
| --- | --- | --- |
| **Parameters to be tested** | **Contracted Level of Performance** | **Timing of initial and subsequent tests** |
| The Reactive Power Absorption Capability of the NMAS Equipment | A Test that varies the *reactive power* of the NMAS Equipment within the limits specified by the NMAS Provider (**Absorption Capability Test**). | [Annually by anniversary of test prior to contract]  |
| Accuracy of remote indicators | By comparison with a calibrated instrument or alternatively by comparison between measurements made by the NMAS Provider and AEMO. | [Annually by anniversary of test prior to contract] |
| Time taken to Enablethe Reactive Power Absorption Capability from receipt of a Communicationunder item 6 of this Schedule | On receipt of the relevant Communication enable the NMAS Equipment to get ready to absorb or *generate reactive power.* Record the time taken to Enable the NMAS Equipment from the time Communication was received. | [Annually by anniversary of test prior to contract] |
| Sustained *reactive power* absorption | Sustain *reactive power* absorption for 15 minutes at 150 MVAr. | [Annually by anniversary of test prior to contract] |

* + 1. **Item 8: Prices and Payments**
	1. **Availability Charge**

[Tenderers to propose charging structure]

* 1. **Enabling Charge**

[Tenderers to propose charging structure]

* 1. **Testing Charge**

[A Testing Charge of $[insert amount] is payable by AEMO for each set of Tests described in item 7. [Tenderes may propose an alternative structure]

**SIGNING PAGE**

|  |  |  |
| --- | --- | --- |
| **SIGNED** by as authorised representative for **AUSTRALIAN ENERGY MARKET OPERATOR LIMITED** in the presence of: |  |  |
| (signature of witness) |  | (signature of authorised representative) |
| (print name of witness) |  | By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of Australian Energy Market Operator Limited |
|  |
| (address of witness) |  | (Date signed) |
| (occupation of witness) |  |  |

|  |  |  |
| --- | --- | --- |
| **SIGNED** by as authorised representative for **#1#** in the presence of: |  |  |
| (signature of witness) |  | (signature of authorised representative) |
| (print name of witness) |  | By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of **#1#** |
|  |
| (address of witness) |  | (Date signed) |
| (occupation of witness) |  |  |