**NCESS Contract (Reliability)**

**[For Unregistered Facilities that will receive activation payments – Peak Demand Service only (by reducing Withdrawal)]**

**Australian Energy Market Operator Limited**

**and**

**Enel X Australia Pty Ltd**

Australian Energy Market Operator Limited

ABN 94 072 010 327

Level 22, 530 Collins Street

Melbourne VIC 3000

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**Contract Details**

|  |  |
| --- | --- |
| **Parties** | **AEMO**  Australian Energy Market Operator Limited (ABN 94 072 010 327)  Level 22, 530 Collins Street, Melbourne VIC 3000 |
| **Service Provider**  Enel X Australia Pty Ltd (ABN 49 104 710 278)  Level 34, 140 William Street, Melbourne VIC 3000 |
| **Commencement Date** | 1 October 2024 or the date when each Condition Precedent has been satisfied (whichever is later) |
| **End Date** | 1 October 2026 |
| **Service** | Peak Demand Service |
| **Maximum Service Quantity** | ## MW |
| **Security** | $## |
| **Address for Service** | **AEMO**  Attention: Manager – WA Future System & Design  Email: ##  Cc:  Attention: General Counsel  Address: GPO Box 2008, Melbourne VIC 3001  Email: reception.melbourne@aemo.com.au |
|  | **Service Provider**  Attention: ##  Address: ##  Email: ## |

**Recitals**

A AEMO’s functions under the *WEM Regulations* and the *WEM Rules* relevantly include:

* ensuring the *SWIS* operates in a secure and reliable manner; and
* procuring, scheduling and dispatching *Non-Co-optimised Essential System Services* in accordance with the *WEM Rules*.

B AEMO and the Service Provider have agreed to enter into this *NCESS Contract*.

**Operative Provisions**

# Interpretation

* 1. Definitions – general
     1. Subject to **clause 1.1(b)**, capitalised terms used in this Contract are defined in **clause 1.2**.
     2. Terms in capitalised-italics have the meaning given in the *WEM Rules* (including Appendix 12) as at 1 October 2023.[[1]](#footnote-2)
  2. Dictionary

**Activation Notice Period** means the activation notice period specified in **Schedule 3**.

**Activation Payment** means the activation payment for the Peak Demand Service determined under **clause 10.3**.

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

**Authority** means any Commonwealth, State, Territory or local government or regulatory department, body, instrumentality, minister, agency or other authority, but does not include AEMO.

**Availability Payment** means the availability payment for the Peak Demand Service determined under **clause 10.210.2**.

**Availability Period** means the availability period for the Peak Demand Service determined under **clause 4.4**4.4(a).

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

**Available**, in relation to the Service, means the Unregistered Service Equipment is capable of increasing *Injection* or reducing *Withdrawal*, as applicable, by the Maximum Service Quantity (relative to the Baseline Quantity).

**Baseline Quantity** means the quantity (calculated in **Schedule 4**) from which the Maximum Service Quantity provided in a *Trading Interval* is measured.

**Condition Precedent** means a condition precedent specified in **Schedule 1**.

**Condition Precedent Satisfaction Date**, in relation to a Condition Precedent, means a condition precedent satisfaction date specified in **Schedule 1**.

**Connection Point** has the meaning given in the Electricity Industry (Metering) Code 2012.

**Contract Term** means the period specified in **clause 2**.

**Designated Connection Point** means a designated connection point specified in **Schedule 3**.

**Energy Legislation** means:

* + 1. the *Electricity Industry Act*, the *WEM Regulations* and the *WEM Rules*;
    2. any other statute or legislative instrument of the Commonwealth or a State or Territory providing for the establishment, operation or administration of a market for energy or an energy system; and
    3. any instrument or procedure made under any of the foregoing.

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

**Insolvency Event**, in relation to a party, means 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 2001 (Cth)) appointed, is in liquidation, in provisional liquidation, under administration, wound up or has had a receiver (or receiver and manager) appointed to any part of its property;
    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), (b)** or **(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.

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

**Legislation** means Acts of Parliament, regulations, rules, statutory instruments and codes, and includes any licence, order, official policy, directive, request, requirement or guideline of an Authority whether or not it has the force of law.

**Maximum NCESS Contract Amount** means the maximum Availability Payments that would be payable to the Service Provider, assuming that the Service is available during each *Trading Interval* in the Availability Period of the Contract Term.

**Maximum Service Quantity**, in relation to the Peak Demand Service, means the MW quantity required to be provided and measured by reference to the relevant Baseline Quantity, and specified in the **Contract** **Details** (as adjusted under **clause 3.6** or **clause 13.4**, if applicable),.

**NCESS Payment**, in relation to a Settlement Period, has the meaning given in **clause 10.11.1(b)**.

**NMI** (short for “National Metering Identifier”), in relation to a Connection Point, means the identifier or code for that Connection Point.

**Peak Demand Service** means a service (measured in MW of response capability) to reduce *Withdrawal*.

**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 2001 (Cth)) of that party.

**Security** has the meaning given in **clause 11**.

**Service** means the Peak Demand Service as specified in the **Contract** **Details**.

**Service Limitation** means a service limitation specified in **Schedule 3**.

**Service Test**, in relation to the Unregistered Service Equipment, means a test of its ability to provide the Service for the purposes of this Contract.

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

* + 1. (unless **clause 11.4** applies with respect to the Security) the first Settlement Period commences on the Commencement Date; and
    2. the last Settlement Period ends on the End Date.

**Unavailable**, in relation to the Service, means the Unregistered Service Equipment is not (or under this Contract is not taken to be) capable of reducing *Withdrawal* by the Maximum Service Quantity (relative to the Baseline Quantity).

**Unregistered Service Equipment** means the *Registered Facility* or *Facility* that is required to be registered under the WEM Rules for the purposes of this Contract.

* 1. Interpretation

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

* + 1. **this Contract** includes any schedules, attachments and annexures;
    2. a document (including this Contract) includes the document as novated, varied, or replaced, and despite any change in the identity of the parties;
    3. a clause, paragraph, schedule, or annexure is a reference to a clause, paragraph, schedule, or annexure to this Contract;
    4. a clause is a reference to all its subclauses;
    5. an **Item** is a reference to a provision in a **Schedule**;
    6. Legislation includes subordinate legislation and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them;
    7. the singular includes the plural and vice versa, and a gender includes all genders;
    8. the word “person” includes a firm, a body corporate, a partnership, joint venture, trust, an unincorporated association, any Authority and any successor entity to those persons;
    9. the words “includes” or “including” or “such as” are not words of limitation, and when introducing an example, do not limit the meaning of the words to which the example relates or to examples of a similar kind;
    10. a person includes a reference to the person’s executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
    11. a party includes, where the context requires it, that person’s directors, officers, employees, contractors, agents and any other persons authorised by that party;
    12. 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;
    13. writing includes any mode of representing or reproducing words in tangible and permanently visible form;
    14. a month is a reference to a calendar month;
    15. a day is a reference to a period of time commencing at midnight and ending at the following midnight; and
    16. a period of time dating from a given day or the day of an act or event, is to be calculated exclusive of that day and, if a period of time is specified as commencing on a given day or the day of an act or event, it is to be calculated inclusive of that day.
  1. Construction
     1. Headings are inserted for convenience, and do not affect the interpretation of this Contract.
     2. If a word or phrase is defined in this Contract, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
     3. No rule of construction applies to a clause to the disadvantage of a party merely because that party put forward the clause or would otherwise benefit from it.
     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; and
        2. by two or more persons binds them jointly and each of them severally.
  2. Schedules
     1. The **Schedules** form part of this Contract.
     2. If a **Schedule** contains any provisions that impose additional obligations to those set out in the Operative Provisions, the provisions in the Schedule apply in respect of the Service, as if the provision were an Operative Provision.
  3. *WEM Rules* prevail

If there is any inconsistency between this Contract and the *WEM Rules* with respect to a party’s obligation or other term of this Contract, the *WEM Rules* prevail to the extent of the inconsistency.

# Contract Term

* 1. Commencement Date

This Contract commences at 8.00 am on the Commencement Date.

* 1. End Date

This Contract ends at 8.00 am on the End Date (unless terminated earlier under **clause 13**).

# Condition Precedent

* 1. Condition Precedent

This Contract (other than this **clause 3** and **clause** **1** (Interpretation), **clause** **10** (Payment and settlement) [but only to the extent required for **clause** **10** to give effect to **clause 11.4**], **clause** **11** (Security), **clause** **14** (Dispute resolution), **clause** **15** (Representations and warranties) and **clause** **16** (General)) has no legal effect unless and until the Service Provider satisfies each Condition Precedent.

* 1. Responsibility for satisfying Conditions Precedent

The Service Provider must:

* + 1. use reasonable endeavours to satisfy each Condition Precedent as soon as practicable and, in any event, must satisfy each Condition Precedent by the Condition Precedent Satisfaction Date;
    2. keep AEMO informed regarding the status of each Condition Precedent, including by providing information in accordance with **Schedule 2** and as otherwise reasonably requested by AEMO; and
    3. notify AEMO in writing promptly if the Service Provider reasonably considers that a Condition Precedent is unlikely to be satisfied by the Condition Precedent Satisfaction Date.
  1. Extension and waiver

Each Condition Precedent is for AEMO’s benefit. AEMO (in its sole discretion) may extend a Condition Precedent Satisfaction Date or waive the non-satisfaction of a Condition Precedent by notifying the Service Provider to that effect in writing.

* 1. Termination for non-satisfaction of Condition Precedent

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

* + 1. extend the Condition Precedent Satisfaction Date; or
    2. waive the non-satisfaction of the Condition Precedent under **clause 3.3**.
  1. Consequences of termination

If AEMO terminates this Contract under **clause 3.4**:

* + 1. **clause 11.4** applies with respect to the Security; and
    2. **clause 13.3** applies with respect to the termination.
  1. Alternative to termination

AEMO (as an alternative to termination under **clause 3.4**) may reduce the Maximum Service Quantity to a quantity AEMO reasonably expects the Service Provider to be capable of providing, having regard to all relevant information available to AEMO, including information provided by the Service Provider in accordance with **Schedule 2**. **Clause 11.4** applies with respect to the Security to the extent of the proportionate difference between the Maximum Service Quantity and the reduced Maximum Service Quantity.

# Service

* 1. Service obligations

On and from the Commencement Date, the Service Provider must:

* + 1. operate and maintain the Unregistered Service Equipment in accordance with Good Electricity Industry Practice; and
    2. ensure each *Load* associated with the Unregistered Service Equipment is not (and has not previously been) associated with any *Demand Side Programme* during the 2022/23 or 2023/24 *Capacity Year*;
    3. (subject to this Contract) ensure the Service is Available at all times during the Availability Period;
    4. ensure the Unregistered Service Equipment satisfies the control and communication requirements specified in **Schedule 3**;
    5. activate the Unregistered Service Equipment (or cause third-party Unregistered Service Equipment to be activated) and provide the Service when required to do so by AEMO in compliance with the relevant Activation Notice and otherwise in accordance with this Agreement; and
    6. not enter into or be a party to any contractual or legal arrangement relating to the Unregistered Service Equipment (other than in the ordinary course of business) that may adversely affect the Service Provider’s ability to provide the Service.
  1. Changes in Unregistered Service Equipment or Designation Connection Point

The Service Provider may notify AEMO’s Operational Contact Person (by telephone and email) of a proposed change in the Unregistered Service Equipment or a Designation Connection Point. AEMO may approve the proposed change with effect from a time determined by AEMO, and (in its sole discretion) may require the Service Provider to carry out a Service Test.

* 1. Information request
     1. AEMO (acting reasonably) may request information from the Service Provider’s Operational Contact Person regarding the Unregistered Service Equipment or the Service at any time during the Contract Term.
     2. The Service Provider must provide requested information without undue delay.
  2. Availability Period
     1. The Availability Period for the Peak Demand Service is each *Trading Interval* in each *Electric Storage Resource Obligation Interval*.
  3. Material change notification by Service Provider

The Service Provider must notify AEMO’s Operational Contact Person without undue delay if there are any material changes during the Contract Term with respect to:

* + 1. the Unregistered Service Equipment; or
    2. a Designated Connection Point (including NMI details).

# Activation

* 1. Activation Notice
     1. AEMO (in its sole discretion) may issue an Activation Notice to the Service Provider’s Operational Contact Person (by telephone and email) during the Contract Term.
     2. An Activation Notice must specify:
        1. the MW quantity of reduced *Withdrawal*, relative to the Baseline Quantity, that is required to be provided during each relevant *Trading Interval* (which must not exceed the Maximum Service Quantity);
        2. the time by when the Unregistered Service Equipment is required to have reduced *Withdrawal* relative to the Baseline Quantity (which must be consistent with the Service Limitations); and
        3. the time when the Unregistered Service Equipment is no longer required to maintain the MW quantity specified in **clause 5.1(b)(i)** (which must be consistent with the Service Limitations).
     3. To avoid doubt, when an Activation Notice is issued, the Service Provider is required to:
        1. reduce *Withdrawal*, as applicable, before the time specified for the purposes of **clause 5.1(b)(ii)**, at a rate approximating the service ramp rate (where the service ramp rate is the rate (in MW per minute on a linear basis) at which the Unregistered Service Equipment is required to reduce *Withdrawal*); and
        2. increase *Withdrawal*, as applicable, after the time specified for the purposes of **clause 5.1(b)(iii)** to a level that the Service Provider considers appropriate.
     4. The Service Provider must comply with an Activation Notice.

# Availability

* 1. Determining Availability

The Service is taken to be Available in any *Trading Interval* during the Availability Period unless it is Unavailable under **clause 6.3**.

* 1. Unavailability notification by Service Provider
     1. The Service Provider must notify AEMO’s Operational Contact Person without undue delay (by telephone and email) if it considers that:
        1. the Unregistered Service Equipment is or will become incapable of reducing *Withdrawal* from the Baseline Quantity; or
        2. the Service is or will become Unavailable for any other reason.
     2. The notice must specify:
        1. when the Service became or will become Unavailable;
        2. the expected period of Unavailability; and
        3. the cause of the Unavailability.
     3. The Service Provider must notify AEMO’s Operational Contact Person without undue delay (by telephone and email) when the Service becomes Available after a period of Unavailability.
  2. Unavailable

The Service is Unavailable in any *Trading Interval* during the Availability Period if:

* + 1. a Condition Precedent is not satisfied and AEMO (in its sole discretion) does not waive non-satisfaction of the Condition Precedent under **clause 3.3**;
    2. either of the following applies:
       - 1. the Service Provider does not activate the Unregistered Service Equipment in compliance with an Activation Notice and otherwise in accordance with this Agreement; or
         2. the Service Provider activates the Unregistered Service Equipment, but the quantity of reduced *Withdrawal* relative to the Baseline Quantity, as measured in accordance with **clause 7.1**, is less than 90% of the required quantity for each relevant *Trading Interval*;
    3. the *Trading Interval* is within a period notified under **clause 6.2**;
    4. AEMO loses communication with, or visibility of, the Unregistered Service Equipment for the entire *Trading Interval*; or
    5. AEMO otherwise reasonably determines that the Unregistered Service Equipment is unable to provide the Maximum Service Quantity in the *Trading Interval*.

# Measurement and verification

* 1. Measurement

AEMO must use Interval Meter Data to determine the MWh quantity of adjusted *Withdrawal* at each Designated Connection Point relative to the Baseline Quantity for each *Trading Interval*.

* 1. Verification

AEMO must use Interval Meter Data to verify quantities provided under this Contract.

# Modifications to Unregistered Service Equipment

* 1. Service Provider Unregistered Service Equipment

The Service Provider must notify AEMO promptly after changing or modifying any Unregistered Service Equipment that it owns operates or controls in a manner that affects or could reasonably be expected to affect its ability to provide the Service.

* 1. Third-Party Unregistered Service Equipment

The Service Provider must use reasonable endeavours to ensure that any third-party with whom the Service Provider enters into a contract or an arrangement for the purposes of providing the Service notifies the Service Provider as soon as any Unregistered Service Equipment applicable to that third-party is, or will become, incapable of providing the Service.

# Service Test

* 1. Service Test

AEMO may require the Service Provider to carry out a Service Test if the Unregistered Service Equipment does not operate at a level equal to or greater than the Maximum Service Quantity at any time in a 6-month period.

* 1. Deemed Unavailability

If the Unregistered Service Equipment fails a Service Test, the Service is Unavailable from the *Trading Interval* in which AEMO reasonably considers it failed the Service Test until the Unregistered Service Equipment passes a Service Test or AEMO otherwise reasonably considers the Service is Available.

# Payment and settlement

* 1. NCESS Payment
     1. AEMO must calculate the NCESS Payment for each Settlement Period.
     2. The NCESS Payment is the sum of the Availability Payments and Activation Payments for the Peak Demand Service.
  2. Availability Payment for Peak Demand Service

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

**Availability Payment =**

where:

**AP** is the Availability Price for the relevant *Trading Interval* (in $ per MW per *Trading Interval*);

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

**t∈DI** denotes all *Trading Intervals* in the Settlement Period (excluding *Trading Intervals* when the Service is Unavailable).

* 1. Activation Payment for Peak Demand Service
     1. The Activation Payment for each Billing Period is determined as follows:

Activation Payment for each *Trading Interval* in the Billing Period

where:

**AP** is the Activation Price ($ per MWh); and

**AQ** is the Activation Quantity (MWh) determined as follows:

* + - 1. 0 if the Service is Unavailable in the *Trading Interval*; and
      2. otherwise the MWh quantity provided for the relevant *Trading Interval*, up to but not exceeding the MW quantity specified in an Activation Notice, as determined in accordance with **clause 7.1**.
  1. Settlement process

Section 9 of the WEM Rules applies with respect to NCESS Payments.

* 1. GST

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

# Security

* 1. Application

This clause 11 applies if the **Contract** **Details** specify that Security is required.

* 1. Obligation to provide Security

The Service Provider must ensure that AEMO holds the benefit of the specified Security amount by 1 October 2023. The security must be an obligation in writing that:

* + 1. is from a *Security Provider*;
    2. is a guarantee or bank undertaking in a form prescribed by AEMO;
    3. is duly executed by the *Security Provider* and delivered unconditionally to AEMO;
    4. constitutes valid and binding unsubordinated obligations of the *Security Provider* to pay to AEMO amounts in accordance with its terms; and
    5. permits drawings or claims by AEMO up to a stated amount.
  1. Return of Security

AEMO must return the security to the Service Provider as soon as practicable if the Service Provider satisfies each Condition Precedent by the Condition Precedent Satisfaction Date (or AEMO waives non-satisfaction of a Condition Precedent under **clause 3.3)**.

* 1. Drawdown of Security

If the Service Provider does not satisfy each Condition Precedent by the relevant Condition Precedent Satisfaction Date, and AEMO (in its sole discretion) does not waive non-satisfaction of a Condition Precedent under **clause 3.3**, then the Service Provider must pay to AEMO, as compensation to the market, an amount equal to the Security amount. AEMO may draw on the Security in satisfaction of this payment obligation. The Security is deemed to be a negative NCESS amount payable under this Contract for the purposes of clauses 5.9.1 and 9.10.27C of the *WEM Rules*.

# Liability

* 1. AEMO’s liability cap
     1. Subject to **clause 12.1(b)**, and other than in respect of any unpaid NCESS Payment amounts, the total amount recoverable from AEMO in respect of any and all claims arising out of any one or more events during the Contract Term with respect to, arising from, or in connection with, this Contract is limited to the prescribed maximum amount for the purposes of section 126 of the *Electricity Industry Act* and regulation 52 of the *WEM Regulations*.
     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 Contract, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this Contract;
        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 Service Provider’s failure to act in accordance with this Contract, a Law, or Good Electricity Industry Practice.
  2. Service Provider liability cap
     1. Subject to clause 12.2(b), and other than in respect of any NCESS Payment amounts repayable by the Service Provider under this Contract, the total amount recoverable from the Service Provider in respect of any and all claims arising out of any one or more events during a Contract Year with respect to, arising from, or in connection with, this Contract is limited to the Maximum NCESS Contract Amount.
     2. Regardless of the nature of any claim, the Service 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 Contract, even if they may reasonably be supposed to have been in the contemplation of both parties as a probable result of the breach at the time they entered into this Contract;
        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 Contract, a Law, or Good Electricity Industry Practice.

# Termination

* 1. Termination by AEMO

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

* + 1. (for any period after the Service Provider satisfies each Condition Precedent) any of the following applies:
       1. as at any given day, the Service has been Unavailable in more than 10% of *Trading Intervals* in the Availability Period in the preceding 3 months (or part thereof) during the Contract Term;
       2. the Service is Unavailable for a continuous period of more than 1 month during the Contract Term; or
       3. the Service Provider breaches a material term of this Contract and, in the case of a breach that is capable of remedy, does not remedy that breach within 20 *Business Days* after AEMO notifies the Service Provider of the breach; or
       4. an Insolvency Event occurs in relation to the Service Provider.
    2. A termination notice takes effect on the later of:
       1. the time it is given; and
       2. the time specified in the notice.
  1. No liability for termination
     1. Subject to **clause 13.2(b)**, AEMO is not liable to the Service Provider if it terminates this Contract under this **clause 13**.
     2. AEMO is only liable for NCESS Payments due in accordance with this Contract before the effective date of termination.
  2. Consequences of termination

Subject to **clause 13.2(b)**, expiry or termination of this Contract for any reason does not affect any rights of either party against the other party that:

* + 1. arose prior to the time at which expiry or termination occurred; and
    2. otherwise relate to or may arise at any future date from any breach of this Contract occurring prior to the expiry or termination.
  1. Reduction of Maximum Service Quantity

AEMO (acting reasonably and as an alternative to termination) may reduce the Maximum Service Quantity to a quantity AEMO reasonably expects the Service Provider to be capable of providing having regard to the Service Provider’s historical performance under this Contract.

# Dispute resolution

* 1. *WEM Rules* dispute process

Subject to **clause 14.2**, the dispute process set out in sections 2.18, 2.19, 2.20, 9.16 and 9.17 of the *WEM Rules* applies to any dispute arising under this Contract.

* 1. General dispute resolution procedure
     1. This **clause 14** does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.
     2. Unless otherwise agreed, the parties must continue to perform their obligations under this Contract despite the existence of a dispute.

# Representations and warranties

The Service Provider represents and warrants to AEMO as at the Commencement Date and at all times during the Contract Term that:

* + 1. the Service Provider’s obligations under this Contract are valid and binding and enforceable in accordance with their terms;
    2. the Service Provider has in full force and effect all contracts, authorisations, licences, permits, consents, certificates, authorities and approvals necessary to enter into this Contract, to perform its obligations under this Contract and to allow those obligations to be enforced;
    3. the Service Provider is not in default under Legislation affecting it or its respective assets, or any obligation or undertaking by which it or any of its assets are bound which will or might reasonably be expected to, materially affect its ability to perform the obligations under this Contract;
    4. there is no pending or threatened action or proceeding affecting the Service Provider or any of its respective assets before a court, governmental agency, commission, arbitrator or other tribunal which will, or might reasonably be expected to, materially affect its ability to perform its obligations under this Contract; and
    5. the Service Provider does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

# General

* 1. Notices
     1. Subject to **clause 16.1(b)** and **Schedule 5**, 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 **Contract** **Details**; and
        3. left at, sent by ordinary pre-paid post (airmail if posted to or from a place outside Australia), or in electronic form, to the address, number, or electronic mail address of the addressee specified in respect of that party in the **Contract** **Details**.
     2. Subject to the *WEM Rules*, any:
        1. communications given in the course of the day-to-day running of the *Wholesale Electricity Market* by or on behalf of a party to the other;
        2. notifications regarding Availability of the Services by the Service Provider in accordance with this Contract,

must be made by email (or automated electronic process) or telephone as notified by AEMO.

* + 1. Unless communications under **clause 16.1(b)** are recorded in some other way satisfactory to and with the consent of both parties, the parties must ensure that logs are kept in which persons or electronic systems giving and receiving those Communications record brief details of their substance and timing.
    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 a posted letter, 5 *Business Days* after posting;
       2. in the case of an electronic message, on production of a report by the computer from which the electronic message was sent that indicates that the message was received in its entirety at the electronic mail address of the recipient; and
       3. in the case of a communication under **clause 16.1(b)**, when the communication is received.
    4. Other than communications given under **clause 16.1(b)**, if a communication is received, or deemed to be received, on a day that is not a *Business Day*, or after 4:00pm AWST on a *Business Day*, it is taken to be received on the next *Business Day*.
    5. A party may at any time by notice given to the other party in writing designate a different person, address, telephone number or electronic mail address for the purposes of **clause 16.1** and the **Contract** **Details** and **Schedule 5**.
  1. Exercise of Rights

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

* 1. Waiver of Rights

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.
  1. Assignment or other dealing
     1. The Service Provider must not assign or otherwise deal with its rights or obligations under this Contract or (except in the ordinary course of business) in respect of the Unregistered Service Equipment without AEMO’s written consent.
     2. AEMO must not unreasonably withhold or delay its consent under **clause 16.4(a)**.
     3. AEMO (as a condition of consent under **clause 16.4(a)**) may require the Service Provider and the third-party to enter into a deed of novation with AEMO on terms that are reasonably satisfactory to AEMO under which the third-party agrees to assume obligations that are substantially equivalent to the Service Provider’s obligations under this Contract.
     4. Any purported assignment in breach of this **clause 16.4** is invalid and of no legal effect.
  2. Amendment and variation
     1. Unless otherwise stated in this Contract, this Contract may be varied:
        1. by agreement of the parties as recording in writing and signed by the parties; or
        2. unilaterally by AEMO under **clause 16.4(b)**.
     2. If the *WEM Rules* are amended and, in AEMO’s reasonable opinion, the amendment will affect this Contract or the performance of obligations under this Contract, AEMO may, by notice in writing to the Service Provider:
        1. effect relevant amendments to the Agreement to reflect the amendment of the *WEM Rules*; and
        2. specify the date that these amendments to the Agreement come into force.
  3. 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 Contract.

* 1. Costs and Expenses
     1. Costs, fees and expenses of a party covered by a right of indemnity include legal expenses, fees and contract payments 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.
     2. Except as otherwise agreed by the parties in writing or stated in this Contract, each party must pay its own costs in relation to preparing, negotiating and executing this Contract and any document related to this Contract.
  2. Further Assurances

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

* + 1. promptly do everything reasonably necessary to give effect to this Contract 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.
  1. Supervening legislation

Any present or future Legislation that operates to vary an obligation or right, power or remedy of a person in connection with this Contract is excluded to the extent permitted by law.

* 1. Severability

If a provision or part of a provision of this Contract is void, unenforceable, invalid or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of this Contract remains effective and the validity or enforceability of that provision in any other jurisdiction is not affected. This **clause 16.10** has no effect if the severance alters the basic nature of this Contract or is contrary to public policy.

* 1. Entire Agreement
     1. Subject to the *WEM Rules*, this Contract constitutes the entire agreement of the parties in connection with provision of the *Services* and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.
     2. For the avoidance of doubt, this Contract contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or anything said or done by the other party, or by a director, officer, agent or employee of that party, before this Contract was executed, save as permitted by law.
  2. Confidential Information
     1. The Service Provider consents to the use or disclosure of its confidential information by AEMO to the extent reasonably necessary for AEMO to carry out its functions, or comply with its obligations, under the *WEM Regulations* and the *WEM Rules*.
     2. This **clause 16.12** survives termination (for whatever reason) of this Contract.
  3. No other representations or warranties

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

* 1. Counterparts

This Contract may consist of a number of identical copies, each signed by one or more parties to this Contract. If so, the signed copies make up one document and the date of this Contract will be the date on which the last counterpart was signed. The counterparts may be executed and delivered by email or other electronic signature by one or more of the parties and the receiving party or parties may rely on the receipt of such document so executed and delivered electronically as if the original had been received.

* 1. Governing law and jurisdiction

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

* 1. No partnership, agency or trust

Nothing contained or implied in this Contract constitutes or may be deemed to constitute that a party is the partner, agent or representative of any other party for any purpose whatsoever, or creates or may be deemed to create any partnership or creates or may be deemed to create any agency or trust.

* 1. No authority to act

Neither party has any power or authority to act for or to assume any obligation or responsibility on behalf of the other party, to bind the other party to any agreement, negotiate or enter into any binding relationship for or on behalf of the other party or pledge the credit of the other party except as specifically provided in this Contract or by express agreement between the parties.

SIGNING PAGE

EXECUTED as an agreement

|  |  |  |
| --- | --- | --- |
| **SIGNED** by Daniel Westerman as authorised representative for **Australian Energy Market Operator Limited**: | )  )  )  )  )  )  )  )  )  )  )  )  )  )  )  ) | By executing this Contract the signatory warrants that the signatory is duly authorised to execute this Contract on behalf of **Australian Energy Market Operator Limited**  Date: ....................................................... |

|  |
| --- |
| Executed by **Enel X Australia Pty Ltd** in accordance with section 127(1) of the Corporations Act 2001 (Cth) by: |
| Signature of Sole Director and Company Secretary |
| Jeffrey Renaud  Name of Sole Director and Company Secretary |
| Date |

# – Conditions Precedent

|  |  |  |
| --- | --- | --- |
| **No** | **Condition Precedent** | **Condition Precedent Satisfaction Date** |
| 1 | The Service Provider must register as a *Market Participant*. | ## |
| 2 | The Service Provider provides NMI details of each *Load* associated with the Unregistered Service Equipment. | ## |
| 3 | The Service Provider must ensure that it has:   * + 1. an interval meter installed; and     2. been assigned a NMI,   for each Designated Connection Point, and must notify AEMO of the NMI for each Designated Connection Point as soon as it is assigned. | ## |
| 5 | The Service Provider must complete commissioning (to AEMO’s satisfaction) of the required control and communication requirements specified in **Schedule 3**. | ## |
| 6 | The Service Provider demonstrates (at its own cost) that the Unregistered Service Equipment is capable of providing the relevant Maximum Service Quantity relative to the Baseline Quantity for the Availability Period. | ## |

# – Progress Report

The Service Provider must provide the following information (with supporting evidence) at least every 3 months from the date of this Contract until the Commencement Date (or termination under **clause 3.4** if applicable):

* 1. when all third-party contracts will be finalised;
  2. when all required control equipment will be in place;
  3. when required control and communication equipment will be ready to undertake commissioning; and
  4. when the required control and communication equipment will have completed commissioning.

# – Service

* 1. Unregistered Service Equipment and Designated Connection Point

|  |  |
| --- | --- |
| Unregistered Service Equipment | ## |
| Designated Connection Point | The following NMI: ## |

* 1. Availability Price and Activation Price

|  |  |
| --- | --- |
| Availability Price per Trading Interval ($ per MW per Trading Interval) |  |
| Activation Price ($ per MW per Trading Interval) |  |

* 1. Service Limitations

|  |  |
| --- | --- |
| Activation Notice Period | 1 hour before the Service is to be provided |
| Minimum Activation Quantity (MW) | 1 MW |
| Minimum Activation Event Duration | 1 Trading Interval |
| Maximum Activation Event Duration | 8 continuous *Trading Intervals* during the Availability Period |

* 1. Control and communication requirements

###### The Unregistered Service Equipment must satisfy the following control and communication requirements:

* + 1. a single point of communication for activation;
    2. a capability to activate the Maximum Service Quantity; and
    3. visibility, through communication protocols approved by AEMO, at a granularity of no more than 5 minutes, of:
       1. *Withdrawal*; and
       2. Maximum Service Quantity availability
       3. aggregated connection points at each *Transmission Node* where the Designated Connection Points comprise more than 10 MW.

# – Baseline Quantity calculation methodology

The Baseline Quantity in MWh for the Unregistered Service Equipment is determined in accordance with this **Schedule 4**.

**Calculation**

The calculation of the amount of Service delivered in accordance with an activation will be in accordance with the following:

The aggregated electricity demand of all *NMI’s* from the Designated Connection Points in **Schedule 3** will be used to calculate the Baseline Quantity and the amount of Service actually supplied. Baseline Quantities and Service Quantities provided in accordance with an activation will not be calculated for individual *NMIs* forming part of an aggregation.

**Unadjusted baseline calculation**

Where:

𝑏 = unadjusted Baseline Quantity MWh for a given time interval (t)

i = one of S selected days

𝑡 = *Trading Interval*

𝑐 = MWh electricity demand for a given *Trading Interval* (t) occurring on one of the selected days i

S = the set of selected days in the 60 calendar days immediately preceding the [day/*weekday*]on which the Service was activatedand for which the calculation is being made (the **45 day period**). The days in the 45 day period selected for the set will be based on [day/*weekdays*]on which the Servicewas not activated(**Non-Activated Days**) and [day/*weekdays*]on which the Servicewas activated(**Activated Days**) determined as follows:

Step 1 - This set of selected days will normally comprise the 10 Non-Activated Days immediately preceding the [day/*weekday*]on which the Servicewas activatedand for which the calculation is being made. The Service Provider may request that AEMO exclude days from the set of selected days. AEMO may determine to exclude or include those days at AEMO’s discretion.

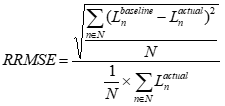
Step 2 - If, in the 45 day period, there are less than 10 Non-Activated Days but 5 or more Non-Activated Days, then S comprises those Non-Activated Days.

Step 3 - If, in the 45 day period, there are less than 5 Non-Activated Days, then S comprises the Non-Activated Days plus one or more of the Activated Days in the 45 day period will be added to the number of Non-Activated Days so that the total number of days in the set equals 5. The Activated Days added to the Non-Activated Days will be determined based on the level of demand during the *Trading Intervals* during the period of activationon the Activated Days (with the Activated Day with the highest demand during any *Trading Interval* during the period of activationon that Activated Day ranked highest and added to the Non-Activated Days, with the next highest ranked Activated Day added and so on, until the total number of days in the set equals 5). If 2 or more Activated Days are ranked the same based on the highest demand during any *Trading Interval* during the period of activation, the Activated Day closest in time to the [day/*weekday*]on which the Servicewas activatedand for which the calculation is being made will be ranked higher.

**Relative Root Mean Squared Error (RRMSE)**

AEMO may measure the accuracy of the unadjusted Baseline Quantity by determining the unadjusted Baseline Quantity’s relative root mean squared error (RRMSE) by comparing the Service Provider’s unadjusted Baseline Quantity against the [60] days not being Activated Days immediately preceding the [day/*weekday*]on which servicewas activatedand for which the calculation is being made and if they vary from each other by a value greater than or equal to [20%], AEMO may adjust the variables which are used to determine the unadjusted Baseline Quantity to ones which AEMO determines, acting reasonably, more accurately reflects the Service Provider’s typical demand.

The RRMSE is calculated as follows:



Where:

n is the set of *Trading Intervals* from which metering data is taken for the of the calculation.

*N* is the number of elements in set n

is the calculated Baseline Quantity load associated with a *Trading Interval* in set *n*.

is the actual metered load associated with a *Trading Interval* in set *n*.

**Adjustment factor calculation**

For calculations based on 30 minute metering data:

Where:

𝑎 = adjustment factor (this may be positive or negative)

𝑠 = the start of the *Trading Interval* (t) for which the activation was issued and for which the calculation is being made. This value may be adjusted by AEMO if required to reflect operational conditions on the day.

𝑏 = unadjusted Baseline Quantity MWh for a given time interval (t)

c = MWh electricity demand for a given time interval (t) during the period of activation for which the calculation is being made

𝑠−𝑛 = *Trading Interval* n 30-min intervals before activation start time

If the adjustment factor is a positive amount, the adjustment factor is limited to an amount equivalent to 20% of the amount of the Maximum Service Quantity*.*

If the Serviceis activated for 2 or more separate periods on the same day, the adjustment factor *a* for each period of activation will be the adjustment factor calculated for the first period of activationon that day.

**Adjusted Baseline Quantity calculation**

Where:

𝐵 = adjusted Baseline Quantity MWh for a given time interval (t)

𝑎 = adjustment factor (this may be positive or negative)

𝑏 = unadjusted Baseline Quantity MWh for a given time interval (t)

**Delivered service**

Where:

𝐵 = adjusted Baseline Quantity MWh for a given time interval (t)

c = MWh electricity demand for a given time interval (t) during the period of activation for which the calculation is being made

𝐷 = quantity provided for a given time interval (t)

Where D is more than the level specified in the relevant activation instruction, D = the level specified in the relevant activation instruction

Where D is less than zero, D = 0.

# – Operational Contact Persons

* 1. AEMO’s Operational Contact Person

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

* 1. Service Provider’s Operational Contact Person

Primary Contact Person

|  |  |
| --- | --- |
| Name/Title | ## |
| Telephone No | ## |
| Email | ## |

Backup Contact Person

|  |  |
| --- | --- |
| Name/Title | ## |
| Telephone No | ## |
| Email | ## |

1. Drafting note: this Contract is based on the 29 April 2023 companion version of the *WEM Rules*. A copy is available from Energy Policy WA at: <https://www.wa.gov.au/government/publications/wem-rules-consolidated-companion-version>. [↑](#footnote-ref-2)