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# Demand Side Response (DSR) Provider Agreement

[Name of DSR Provider]  
(“*DSR Provider*”)

[Name of provider of reserve to  
NEMMCO, if applicable] (“*reserve  
provider*”)

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This Agreement was produced for the EUAA in response to the NEMMCO tender for reserve conducted late in 2005. Legal advice was provided by Maddocks Lawyers. Funding assistance was provided by the National Electricity Consumers Advocacy Panel.

A Summary Report on the legal process and output is also available from the EUAA.

An Independent Assessment of the work undertaken is also available.

Copyright

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## DSR Provider Agreement

### Parties to the Agreement

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Date:

Parties: [Insert name, ABN and address of the DSR Provider] (“*DSR Provider*”)

[Insert name, ABN and address of direct provider of reserve to NEMMCO, if applicable] (“*reserve provider*”)

### Recitals

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- A. *NEMMCO* has requested that the *reserve provider* provide various reserves to it.
- B. The *reserve provider* has agreed to provide the various reserves to *NEMMCO* by:
- B1 procuring demand supply response providers to enter into agreements with the *reserve provider* for the provision of reserves by the demand supply response providers to the *reserve provider*; and
  - B2 aggregating the reserves provided by the demand supply response providers for supply to *NEMMCO*.
- C. The *DSR Provider* has agreed, as a demand supply response provider, to provide the *reserve* identified in the Schedule to the *reserve provider* for its aggregation and supply to *NEMMCO* on the terms and conditions of this agreement.

### Operative provisions

#### 1 Interpretation and incorporation of Schedule

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##### Definitions and interpretation

1.1 In this agreement unless the context otherwise requires:

- (a) a word or phrase *in this style* has the meaning set out opposite that word or phrase in **Part 1** of the **Attachment**, or if it is not defined in **Part 1** of the **Attachment**, it has the meaning ascribed to that word or phrase in the *Rules*; and
- (b) the rules of interpretation set out in **Part 2** of the **Attachment** apply.

##### Schedules

1.2 If a **Schedule** contains provisions that impose additional obligations to those set out in the operative provisions in respect of a particular *reserve*, those provisions apply in respect of that particular *reserve* in addition to the operative provisions.

1.3 If the *reserve* provided under this agreement is comprised of:

- (a) *load reduction*, all references to a **Schedule Item** shall mean the Schedule Items contained in the Schedule entitled: Load Reduction;



- (b) *generation increase*, all references to a **Schedule Item** shall mean the Schedule Items contained in the Schedule entitled: Generation Increase; or
- (c) both *load reduction* and *generation increase*, all references to a **Schedule Item** shall mean the Schedule Items contained in both Schedules, or either, depending on the context.

## 2 Term

### Term

- 2.1 **Clauses 1, 2, 12, 15, 17** and the **Attachment** come into effect at the time when the last party to execute this agreement does so.
- 2.2 The remainder of this agreement commences at midnight at the end of the *commencement date*.
- 2.3 This agreement continues until the earliest to occur of the following:
- (a) the *DSR Provider* is no longer required to provide any *reserve* under this agreement by reason of the operation of **clauses 2.4, 11.9 or 12**;
  - (b) the giving of a written notice by the *reserve provider* to the *DSR Provider* under **clause 3.10**;
  - (c) the giving of a written notice by the *reserve provider* to the *DSR Provider* that the *Reserve Agreement* is terminated for any reason whatsoever;
  - (d) the expiry of a written notice given by either party to the other to terminate this agreement provided that:
    - (i) the minimum period of the notice is 3 months before the proposed termination date; and
    - (ii) no notice may be given under this clause prior to midnight at the end of the expiry of 5 years after the *commencement date*;
- and, subject to any written law to the contrary and to the provisions of this agreement, this agreement may not otherwise be terminated.

### Earlier termination of particular reserves

- 2.4 Notwithstanding **clauses 2.1, 2.2 and 2.3**, and subject to **clauses 11.9 and 12**, the *DSR Provider* is only required to provide a particular *reserve* during the period specified in **Schedule Item S8** in respect of that particular *reserve*.

## 3 Provision of reserve

- 3.1 The *DSR Provider* must use its reasonable endeavours to provide to the *reserve provider* or as may be directed by the *reserve provider* each *reserve* during the same periods that the *reserve provider* has agreed to provide *reserves* to NEMMCO under the *Reserve Agreement* in accordance with this agreement.
- 3.2 The *DSR Provider* must ensure that each of the *minimum technical requirements* for each *reserve* is met throughout the period specified in **Schedule Item S8**.

- 3.3 The *DSR Provider* must use its reasonable endeavours to ensure that each *reserve*, when requested, is provided in accordance with the relevant *contracted level of performance* throughout the period specified in **Schedule Item S8**.
- 3.4 The *DSR Provider* represents and warrants to the *DSR Provider* that during the period specified in **Schedule Item S8**:
- (a) other than the *market capacity* or pursuant to this agreement, no *dispatch offers* or *dispatch bids* relating to the *reserve* have been submitted or will be submitted and the *reserve* will not otherwise be available for *dispatch*;
  - (b) the *reserve* will not be provided and will not be required or available to be provided pursuant to any other arrangement or agreement, including demand side management arrangements or agreements other than any agreement between the *DSR Provider* and its *Local Retailer*;
  - (c) the *reserve* will be provided after the *market capacity* (if applicable) has been *dispatched*; and
  - (d) if *non-scheduled reserve* is being provided under this agreement:
    - (i) by *load reduction*, that the *DSR Provider* has agreed to reducing its consumption of electricity or having its supply of electricity interrupted for the *reserve provider* to provide the *non-scheduled reserve* to NEMMCO; or
    - (ii) by *generation increase*, that the *DSR Provider* has agreed with the *reserve provider* that the *generation* may be utilised to enable the *reserve provider* to provide the *non-scheduled reserve* to NEMMCO.
- 3.5 The *reserve provider* may (but is not obliged to) at any time request that a particular *reserve* be *dispatched* or *activated* by the *DSR Provider* in accordance with the notification procedures set out in **Schedule Item S3**. The *DSR Provider* will not be entitled at any time to require the *reserve provider* to request that a particular *reserve* be *dispatched* or *activated*.
- 3.6 The *DSR Provider* must use all reasonable endeavours to comply with a request under **clause 3.5**.
- 3.7 Neither the *DSR Provider*, nor any other party, will be entitled to *spot market* revenue associated with the *reserve*. If requested by the *reserve provider*, the *DSR Provider* will participate in the *spot market* as the *reserve provider's* agent and account to the *reserve provider* for any *spot market* revenue associated with the *reserve*.
- 3.8 If, at any time, the *DSR Provider* considers that any *reserve equipment* in respect of the *reserve* is, or will become, incapable of meeting any of the *minimum technical requirements* or providing the *reserve* in accordance with any of the *contracted levels of performance*, the *DSR Provider* must immediately notify the *reserve provider* accordingly.
- 3.9 A notice under **clause 3.8** must specify:
- (a) when the *reserve equipment* became, or will become, incapable of meeting the *minimum technical requirements* or providing the *reserve* in accordance with any of the *contracted levels of performance*;

- (b) for how long the *DSR Provider* expects the incapability to continue; and
  - (c) the cause of the incapability and whether the *DSR Provider* believes the incapability is due to an *event of force majeure*.
- 3.10 Where the agreement by the *DSR Provider* with its *Local Retailer* referred to in **clause 3.4(b)** contains a clause which provides that the *Local Retailer* may request the *DSR Provider* to voluntarily curtail its use of any *reserve* (whether with or without payment), the *DSR Provider* must immediately notify the *reserve provider* if at any time the *DSR Provider* provides or curtails its use of any *reserve* to the *Local Retailer* and the *DSR Provider* must give all relevant details requested by the *reserve provider* including without limitation:
- (a) the date, time and duration of the provision or curtailment of use of the *reserve*; and
  - (b) the amount of payment received or to be received by the *DSR Provider* (if any, when the information is available to the *DSR Provider*).
- 3.11 The *DSR Provider* must pay to the *reserve provider* for its onward payment to *NEMMCO* all payments received by the *DSR Provider* from the *Local Retailer* in relation to the *DSR Provider's* curtailment of use of any *reserve*.

## 4 Tests

### Types of Tests

4.1 The *DSR Provider* must conduct:

- (a) the tests in respect of the *reserve* described in **Schedule Item S4**:
  - (i) at the times described in the **Schedule Item S4**; and
  - (ii) within a reasonable period of being requested to do so by the *reserve provider* under **clause 4.2**; and
- (b) any tests reasonably required by the *reserve provider* under **clause 4.3** after the implementation of a change or modification within a reasonable period of the change or modification,  
in accordance with **clause 4**.

4.2 If the *reserve provider* reasonably believes that the *reserve equipment* in respect of a *reserve* is incapable of meeting any of the *minimum technical requirements* or providing the *reserve* in accordance with any of the *contracted levels of performance*, the *reserve provider* may request that the *DSR Provider* conduct tests of the kind described in **Schedule Item S4.1**.

4.3 If a *DSR Provider* changes or modifies any *reserve equipment* in a manner that could reasonably be expected to affect the ability of the *reserve* to meet any of the *minimum technical requirements* or to be provided in accordance with the *contracted levels of performance*, the *reserve provider* may request that the *DSR Provider* conduct tests to demonstrate that the *reserve equipment* is capable of meeting the *minimum technical requirements* and providing the *reserve* in accordance with the *contracted levels of performance*.

- 4.4 Provided the *DSR Provider* can meet its obligations under this agreement, the *DSR Provider* may conduct any other tests at any time.

### Conduct of tests

- 4.5 Prior to conducting any *test*, the *DSR Provider* must:

- (a) notify the *reserve provider* of its intention to conduct the *test* at least 5 *business days*, or such other notice period as the parties agree, prior to the proposed date of the *test*;
- (b) agree with the *reserve provider* on the procedures to be used in conducting the *test* and the timing and duration of the *test* (which agreement must not be unreasonably withheld by the *reserve provider*); and
- (c) invite the *reserve provider* to appoint a *representative* to witness the conduct of the *test* in order to verify that the *test* is correctly carried out.

- 4.6 If the *reserve provider* appoints a *representative* under **clause 4.5(c)** to witness a *test*:

- (a) the *DSR Provider* must provide sufficient access to permit that *representative* to witness the *test* in order to verify that the *test* is correctly carried out; and
- (b) the *reserve provider* must use its best endeavours to ensure that the *representative*:
  - (i) does not interfere with the conduct of the *test*;
  - (ii) does not cause any loss or damage to the *DSR Provider*, its plant, equipment or other assets;
  - (iii) does not interfere with the operation of the *DSR Provider's* business (provided that the *test* does not itself constitute interference);
  - (iv) observes any requirements of the *DSR Provider* relating to occupational health and safety and industrial relations matters that apply to all invitees of the *DSR Provider*; and
  - (v) does not ask any question or give any direction, instruction or advice to any *representative* of the *DSR Provider* other than the *representative* designated by the *DSR Provider* for this purpose.

### Evidence of tests

- 4.7 If the *DSR Provider* conducts a *test*, the *DSR Provider* must provide to the *reserve provider* evidence that the *test* has been conducted, together with the results of that *test*, within 10 *business days* of the *test* being conducted.

### Failure to conduct tests

- 4.8 If the *DSR Provider* does not conduct a *test* as required by **clause 4.1**, the *reserve provider* may, by notice to the *DSR Provider*, request an explanation of why the *test* was not carried out. Not later than 2 *business days* after the *DSR Provider* receives a notice under this **clause 4.8**, the *DSR Provider* must respond, setting out:

- (a) the reasons why the *test* was not conducted;
- (b) when the *test* will be conducted; and

- (c) any other relevant information.

4.9 If the *DSR Provider* does not provide evidence that demonstrates to the reasonable satisfaction of the *reserve provider* that the parameter the subject of the relevant *test* meets the applicable standard specified in the **Schedule** before the end of 3 *business days* after notice is given by the *reserve provider* under **clause 4.8**, the *reserve equipment* in respect of the *reserve* is taken to be incapable of meeting the *minimum technical requirements* and providing the *reserve* in accordance with the *contracted levels of performance*, for the period:

- (a) commencing half-way between:
- (i) the date of the relevant notice under **clause 4.8**; and
  - (ii) the most recent to occur of:
    - (A) the last time a *test* was conducted that demonstrated that the parameter met the applicable standard specified in the **Schedule**;
    - (B) the last time the *reserve* was successfully provided to the *reserve provider* using the *reserve equipment* in accordance with the *contracted levels of performance* while meeting the *minimum technical requirements*; and
    - (C) the date on which the *DSR Provider* is required to commence providing the particular *reserve* as specified in the **Schedule Item S8**; and
- (b) concluding when the *DSR Provider* demonstrates to the *reserve provider's* satisfaction that the parameter meets the applicable standard specified in the **Schedule**.

### **Failure to agree**

4.10 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 4.5(b)**, the disagreement must be resolved in accordance with the dispute resolution procedures contemplated by **clause 14**.

### **Failure to pass test**

4.11 If a *test* does not demonstrate that the parameter tested meets the applicable standard specified in the **Schedule**, the *reserve equipment* is taken to be incapable of meeting the *minimum technical requirements* and providing the *reserve* in accordance with the *contracted levels of performance* for the period:

- (a) commencing half-way between:
- (i) the date of the *test*; and
  - (ii) the most recent to occur of:
    - (A) the last time a *test* was conducted that demonstrated that the parameter met the applicable standard specified in the **Schedule**;
    - (B) the last time the *reserve* was successfully provided to the *reserve provider* using the *reserve equipment* in accordance with the

*contracted levels of performance* while meeting the *minimum technical requirements*; and

- (C) the date on which the *DSR Provider* is required to commence providing the particular *reserve* as specified in **Schedule Item S8**; and

- (b) concluding when the *DSR Provider* demonstrates to the *reserve provider's* satisfaction that the *minimum technical requirements* parameter meets the applicable standard specified in the **Schedule**.

4.12 If:

- (a) the *reserve equipment* is taken to be incapable of meeting the *minimum technical requirements* and providing the *reserve* in accordance with the *contracted levels of performance* under **clause 4.11**; or
- (b) the *DSR Provider* notifies the *reserve provider* under **clause 3.8** that any *reserve equipment* is, or will become, incapable of meeting the *minimum technical requirements* or providing the *reserve* in accordance with the *contracted levels of performance*; or
- (c) the *reserve provider* gives a notice under **clause 4.8**; or
- (d) the *reserve* is taken to have been disabled by the operation of **clause 9.15**,

the *DSR Provider* must:

- (e) diligently and at its own expense take the necessary remedial action to ensure that the *reserve equipment* can meet the *minimum technical requirements* and provide the *reserve* in accordance with the *contracted levels of performance*;
- (f) promptly advise the *reserve provider* of the proposed timetable for implementing the remedial action;
- (g) keep the *reserve provider* informed of its progress in implementing the remedial action from time to time; and
- (h) after taking the remedial action, submit such evidence as the *reserve provider* may reasonably require (that may include the conduct of further *tests*) until the *DSR Provider* is able to demonstrate to the *reserve provider's* reasonable satisfaction that the *reserve equipment* can meet the *minimum technical requirements* and provide the *reserve* in accordance with the *contracted levels of performance*.

### Cost of testing

4.13 Unless otherwise specified in the Schedule, the *DSR Provider* must pay all costs relating to *tests* conducted pursuant to **clauses 4.1(a)(i), 4.1(b) and 4.4**.

- (a) If a *test* conducted by the *DSR Provider* under **clause 4.1(a)(ii)** demonstrates that the parameter tested meets the applicable standard specified in the **Schedule**, the *reserve provider* will reimburse the *DSR Provider* for the short run marginal costs incurred by the *DSR Provider* in conducting the *test*.

- (b) In any other case, the *DSR Provider* must pay all costs relating to a *test* conducted under **clause 4.1(a)(ii)**.

4.14 The amount payable by the *reserve provider* under **clause 4.13(a)** is to be negotiated by the parties in good faith. Costs and expenses will only be payable:

- (a) if they are reasonable;
- (b) if the *test* was conducted in accordance with procedures for testing agreed by the parties prior to the conduct of the *test*; and
- (c) if the *test* was conducted at the time and was materially of the length agreed by the parties.

If the parties cannot agree on the costs and expenses payable by the *reserve provider* under **clause 4.13(a)**, the dispute must be resolved in accordance with the dispute resolution procedures contemplated by **clause 14**.

## 5 Measurement and verification

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### Verification

5.1 The *reserve provider* may at any time verify that *reserve* is being provided in accordance with this agreement using the process contemplated by **Schedule Item S6**.

### Measurement

5.2 The *DSR Provider* must comply with **Schedule Item S6** in the measurement and verification of each *reserve*.

5.3 Measurement of each *reserve* must be made in accordance with those parts of the **Schedule** relevant to each *reserve*, and as provided by the *reserve provider's* records and the *DSR Provider's* metering, measurement, supervisory and electronic data processing systems.

## 6 Records, audits and inspections

---

### Type of records

6.1 The *DSR Provider* must compile and maintain records:

- (a) of the procedures used for conducting, and the results of, any *tests* conducted under **clause 4**; and
- (b) relating to the *reserve* provided, including without limitation:
- (i) periods when any *reserve equipment* is not capable of providing the *reserve*;
- (ii) any maintenance carried out on any *reserve equipment*;
- (iii) any modifications that could alter the provision of, or the ability to monitor the provision of, the *reserve*.

- 
- (c) relating to the measurement and verification of the provision of the *reserve*, including the records set out in **Schedule Item S6**;
  - (d) a record of any notifications required by the **Schedule Item S3** that are transmitted to the *reserve provider* by telephone;
  - (e) a record of the calculation of any payment under this agreement; and
  - (f) a record of all information relating to the provision or curtailment of use of a *reserve* to the *Local Retailer* including without limitation the following:
    - (i) the date, time and duration of the provision or curtailment of use of the *reserve*; and
    - (ii) the amount of payment received or to be received by the *DSR Provider* (if any, when the information is available to the *DSR Provider*).

### **Form and retention**

6.2 The records referred to in **clause 6** may be maintained in writing or electronically.

6.3 The *DSR Provider* must maintain the records referred to in **clause 6** for at least 7 years from their creation.

### **Right to inspect records**

6.4 The *reserve provider* may request a copy of any of the records maintained under **clause 6** by the *DSR Provider* or any other information in connection with any *reserve equipment* (being information relevant to the provision of a *reserve*) at any time. The *reserve provider* may supply any records or other information obtained from the *DSR Provider* to NEMMCO without reference to the *DSR Provider*.

6.5 The *DSR Provider* must comply with a reasonable request of the *reserve provider* under **clause 6.4** within 5 *business days* of receiving such a request.

### **Right to audit**

6.6 The *reserve provider* may audit any of the records maintained under **clause 6** by the *DSR Provider*.

### **Audit notice**

6.7 The *reserve provider* must give the *DSR Provider* at least 3 *business days'* notice of its intention to carry out an audit under **clause 6.6**. A notice under this **clause 6.7** must include the following information:

- (a) the nature of the audit;
- (b) the *reserve* concerned;
- (c) the name and office of any *representative* appointed by the *reserve provider* to conduct the audit; and
- (d) times at which the audit will commence.

6.8 An audit under **clause 6** may only occur during normal business hours on a *business day*, unless the *DSR Provider* agrees otherwise.



## Conduct of audit

6.9 Audits will occur at the site at which the relevant information is maintained by the *DSR Provider* and the *DSR Provider* must provide the *representatives* conducting the audit with all assistance that those *representatives* may reasonably require to conduct the audit, including access to all relevant documentation, data and records (including computer records or systems).

## Right to inspect plant & equipment

6.10 If either the *reserve provider* or *NEMMCO* wishes to inspect any *reserve equipment* in order to determine whether the *DSR Provider* is complying with its obligations under this agreement, the *reserve provider* must provide the *DSR Provider* with an inspection notice under **clause 6.11**.

## Inspection notice

6.11 Inspections under **clause 6.10** are to take place at a time that is mutually convenient to the parties. At least 3 *business days* prior to the date on which the *reserve provider* wishes to make an inspection under **clause 6.10**, the *reserve provider* must deliver a notice to the *DSR Provider* requesting access to conduct an inspection. The *DSR Provider* must not unreasonably refuse such access. A notice requesting access to conduct an inspection must include the following information:

- (a) the names and offices of the *representatives* who will be conducting the inspection on behalf of the *reserve provider* and *NEMMCO*, if the inspection is required by *NEMMCO*; and
- (b) the time when the inspection will commence and the expected time when the inspection will conclude.

6.12 If the *reserve provider* conducts an inspection under **clause 6.10**, the *DSR Provider* must designate *representatives* to accompany the persons conducting the inspection on behalf of the *reserve provider* and, where applicable, *NEMMCO*, and answer any relevant and reasonable questions of those persons and assist those persons in conducting the inspection.

## Conduct of inspection

6.13 Any inspection under **clause 6.10** may take as long as reasonably necessary but in no event longer than 24 hours unless otherwise agreed. Such agreement may not be unreasonably withheld (considering the extent of the inspection proposed).

## Obligations during inspection

6.14 Whilst carrying out an inspection in accordance with **clause 6.10**, the *reserve provider* must, and must procure that its *representatives*:

- (a) not cause any loss or damage to the *DSR Provider*, its plant, equipment or other assets;
- (b) not interfere with the operation of the *DSR Provider's* business (provided that the inspection does not of itself constitute interference);
- (c) observe any requirements of the *DSR Provider* relating to occupational health and safety and industrial relations matters that apply to all invitees of the *DSR Provider*; and

- (d) not ask any question or give any direction, instruction or advice to any *representative* of the *DSR Provider* other than the *representative* of the *DSR Provider* designated by the *DSR Provider* for this purpose.

### **Authorisation by the *DSR Provider***

6.15 The *DSR Provider* must, simultaneously with the execution of this agreement, sign an authorisation in form and substance acceptable to the *reserve provider* authorising the *reserve provider* to have access to and obtain all available information from *NEMMCO* relating to or arising from the supply of the *reserve* by the *DSR Provider* (whether by *load reduction* or *generation increase*), including but not limited to *meter* readings of the *DSR Provider*. The *DSR Provider* must also provide the *reserve provider* with up-to-date passwords from time to time to enable the *reserve provider* to have on-line access to the information from the meter data agent.

## **7 Maintenance**

- 7.1 The *DSR Provider* must maintain the *reserve equipment* in accordance with good electricity industry practice.
- 7.2 The *DSR Provider* may only undertake maintenance of the *reserve equipment* in accordance with **Schedule Item S5**.
- 7.3 The *reserve provider* must not unreasonably withhold its agreement to the timing of maintenance of *reserve equipment*.
- (a) If the *reserve provider* considers the proposed maintenance will not prevent the *DSR Provider* from providing the *reserve* in accordance with this agreement; or
- (b) If:
- (i) in the *DSR Provider's* reasonable opinion, the maintenance is required to meet its obligations under **clause 7.1**; and
- (ii) the *reserve provider* considers the proposed maintenance will only prevent the *reserve* being provided during a period when the *reserve provider* is unlikely to request the *reserve* be provided.
- 7.4 If the *reserve provider* does not agree to the timing of maintenance of the *reserve equipment*, the *DSR Provider* may undertake the maintenance at the time proposed, but the maintenance will not be taken to be *agreed maintenance* for the purpose of calculation of *availability charges*.

## **8 Modifications prohibited**

- 8.1 The *DSR Provider* must not, without the prior consent of the *reserve provider*, change or modify the *reserve equipment* in a manner that could reasonably be expected to adversely affect the ability of the *reserve equipment* to provide the *reserve* in accordance with this agreement.
- 8.2 If the *reserve provider* has consented to a change or modification to the *reserve equipment* under **clause 8.1**, the *DSR Provider* must:

- 
- (a) notify the *reserve provider* promptly after the change or modification has been implemented; and
  - (b) promptly conduct such *tests* as the *reserve provider* may reasonably require to demonstrate the capability of the *DSR Provider* to provide the *reserve* following implementation of the change or modification to the *reserve equipment*. The *DSR Provider* must bear the costs of conducting any such *tests*.

## 9 Payments

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### Calculation of Payments

- 9.1 The charges owed by the *reserve provider* for *reserve* provided under this agreement are to be determined in accordance with **Schedule Item S7**.

### Preliminary statements

- 9.2 Within 10 *business days* after the end of each *billing period*, the *reserve provider* must give the *DSR Provider* a preliminary statement setting out the charges owed and the amounts payable by each party to the other party under this agreement in respect of that *billing period*.
- 9.3 A preliminary statement must set out in detail the way in which the charges and amounts set out in the statement were calculated, including any raw data used to calculate the payments.

### Final statements

- 9.4 Not later than 23 *business days* after the end of each *billing period*, the *reserve provider* must give the *DSR Provider* a final statement stating the net amount payable by one party to the other under this agreement in respect of that *billing period*. The final statement will be binding and conclusive on the *DSR Provider* save for manifest error.

### Disputed statement

- 9.5 If there is a dispute between the parties concerning an amount payable by one party to the other specified in a preliminary statement provided under **clause 9.2**, the parties agree to use reasonable endeavours to resolve the dispute within 20 *business days* of the end of the relevant *billing period*. The dispute must be resolved by agreement or under the dispute resolution procedures contemplated by **clause 14**. If the parties have not resolved the dispute before the time at which the *reserve provider* must give the *DSR Provider* the final statement under **clause 9.4** in respect of the *billing period*, the *reserve provider* must prepare that final statement on the basis of its own assessment of the amounts payable under this agreement in respect of that *billing period*.

### Payment

- 9.6 If the final statement in respect of a *billing period* indicates that a party must pay the other party a net amount, that party must pay the net amount specified in the final statement to the other party (whether or not there is a dispute in relation to the amount payable) on the later of:
- (a) the 30<sup>th</sup> *business day* after the end of the *billing period*;
  - (b) the 7<sup>th</sup> *business day* after the *reserve provider* gives the final statement; and
  - (c) the 10<sup>th</sup> *business day* after the *reserve provider* receives payment in respect of the relevant *reserve* from NEMMCO.

Any payment by the *reserve provider* to a *related body corporate* of the *DSR Provider* will be deemed payment to the *DSR Provider*.

- 9.7 Disputes must be raised within the applicable period of the relevant *billing period*. In this **clause 9.7**, the “**applicable period**” is the period after the relevant *billing period* within which a dispute in respect of the final statement or supporting data must be raised according to the *Rules* (the applicable period being 6 months). If a party does not raise a dispute within that period, that party will be taken to have agreed to the way in which that matter is dealt with in the final statement in respect of the relevant *billing period*.

## Adjustment

- 9.8 Where an amount specified in a final statement has been the subject of a dispute and the parties agree that that amount is incorrect, or it is determined in accordance with the dispute resolution procedures contemplated by **clause 14**, that that amount is incorrect or was not payable, the *reserve provider* must issue a replacement statement for the *billing period* stating the correct amount payable.
- 9.9 If a payment has already been made in relation to the original statement, the party advantaged must pay the other party:
- (a) the amount required to put the other party in the position it would have been in at the time payment was due under **clause 9.6** under the original statement if payment had been made on the basis of the replacement statement and not the original statement. To avoid doubt, no interest is payable under this **paragraph (a)**; and
  - (b) interest on the adjustment amount payable under **paragraph (a)**. The interest accrues daily at the *bank bill rate* on the relevant day for each day from the date on which payment was due under **clause 9.6** under the original statement until the adjustment amount is paid and is calculated on the basis of paragraphs **(b)**, **(c)** and **(d)** of **clause 12.13**.
- 9.10 Payment under **clause 9.9** must be made on the same day as the next payment is made under **clause 9.6**.

## Evidence

- 9.11 Subject to **clause 9.16**, calculations of charges due under **clause 9** must be based on the best information available to the *reserve provider* at the time of preparing a statement concerning the *trading intervals* during which the *reserve equipment* was capable of providing the relevant *reserve*.
- 9.12 Subject to **clause 9.16**, calculations of *enabling charges* must be based on the *reserve provider's* records of the *trading intervals* during which the *reserve* was *pre-activated* during a *billing period*.
- 9.13 Subject to **clause 9.16**, calculation of *usage charges* must be based on the *reserve provider's* records of the *trading intervals* during which the *reserve* was *dispatched* or *activated* during that *billing period*.

## Reduced payment for non-performance

- 9.14 If, during a *trading interval*, any *reserve equipment* is (or, under this agreement, is taken to be) incapable of meeting the *minimum technical requirements* or providing the *reserve* in accordance with the *contracted levels of performance* or taken to be disabled by the operation of **clause 9.15** (whether due to an *event of force majeure* or otherwise), no *availability charge*

is payable to the *DSR Provider* for that *trading interval* in respect of that *reserve* or the relevant portion of that *reserve* (as applicable), notwithstanding the **Schedule**.

9.15 If:

- (a) the *reserve* has been *pre-activated*; and
- (b) the *DSR Provider* is requested or required to provide the *reserve*; and
- (d) any *reserve equipment* is unable to meet the *minimum technical requirements* or provide the *reserve* in accordance with the *contracted levels of performance*,

the *reserve* or the relevant portion of that *reserve* (as applicable), is taken to have been disabled for the period:

- (e) commencing half-way between:
  - (i) the time that the *DSR Provider* is requested or required to provide the *reserve*; and
  - (ii) the most recent to occur of:
    - (A) the last time that the *reserve* or the relevant portion of that *reserve* (as applicable) was *pre-activated*; and
    - (B) the last time the *reserve* or the relevant portion of that *reserve* (as applicable) was successfully *activated* in accordance with the *contracted levels of performance* while meeting the *minimum technical requirements* at the *reserve provider's* request of or otherwise in accordance with this agreement; and
    - (C) the last time the *reserve service* or the relevant portion of that *reserve* (as applicable) was successfully tested.
- (f) concluding when the *DSR Provider* demonstrates to the *reserve provider's* satisfaction that the relevant *reserve equipment* is capable of providing the *reserve* or the relevant portion of that *reserve* (as applicable) in accordance with the *contracted levels of performance* while meeting the *minimum technical requirements*.

Notwithstanding the **Schedule**, no *availability charges* or *enabling charges* are payable to the *DSR Provider* in respect of a *reserve* for any *trading interval* during which the *reserve service* is taken to have been disabled under this **clause 9.15**.

### **Disputing the *reserve provider's* records**

9.16 Nothing in **clauses 9.11, 9.12** or **9.13** prevents the *DSR Provider* from disputing the accuracy of the *reserve provider's* records.

### **GST**

9.17 The charges specified in the **Schedule** and any other prices, fees, charges and amounts payable to or by the *reserve provider* under this agreement exclude *GST*. Accordingly, in accordance with the settlement procedures under the *Rules*:

- (a) where the *DSR Provider* makes a *taxable supply* to the *reserve provider* under this agreement, the *reserve provider* must also pay the *DSR Provider* making the *supply* an additional amount equal to the consideration payable for the *supply* multiplied by the applicable *GST* rate;
- (b) where the *reserve provider* makes a *taxable supply* to the *DSR Provider* under this agreement, the *DSR Provider* must also pay the *reserve provider* an additional amount equal to the consideration payable for the *supply* multiplied by the applicable *GST* rate; and
- (c) The *reserve provider* must include in its statements issued under this agreement the additional amounts contemplated by the **paragraphs (a) and (b)**.

9.18 If the additional amount paid or payable to a party in respect of a *taxable supply* under **clause 9.17** differs from the actual amount of *GST* payable by or to a party to the other under the relevant *legislation* in respect of the relevant *supply*, adjustments must be made in accordance with the adjustment procedures under **clauses 9.8 to 9.10** so as to ensure the additional amount paid under this **clause 9.18** in respect of the *supply* is equal to the actual amount of *GST* payable under the relevant *legislation* in respect of the *supply*.

9.19 All amounts payable by a party (“**the reimbursing party**”) to the other party (“**the reimbursed party**”) by way of reimbursement:

- (a) of an amount paid or payable by the reimbursed party to any other person; or
- (b) calculated on the basis of amounts incurred or to be incurred by the reimbursed party,

will be calculated on the basis that the amounts payable to, or incurred by, the reimbursed party exclude any amount in respect of *GST* incurred by the reimbursed party to the extent the reimbursed party is entitled to an input tax credit in respect of such *GST* amount.

## Set Off

9.20

- (a) Without limiting the *reserve provider's* rights under any other provision of this agreement or at law, the *reserve provider* may deduct from any money due to the *DSR Provider* under this agreement any sum that is payable by the *DSR Provider* to the *reserve provider* whether or not:
  - (i) the *reserve provider's* right to payment arises by way of damages, debt, restitution or otherwise including without limitation, amounts due by the *DSR Provider* to the *reserve provider* under clause 3.11; or
  - (ii) the factual basis giving rise to the *reserve provider's* right to payment arises out of this agreement, any other agreement, or is independent of any agreement.
- (b) If the money payable to the *DSR Provider* under this agreement is insufficient to discharge the liability of the *DSR Provider* to pay the *reserve provider* the amount under **paragraph (a)**, the excess will be a debt due and payable and the *reserve provider* may have recourse to any payments due to the *DSR Provider* other than under this agreement. Nothing in this **clause 9.20** affects the *reserve provider's*

rights to recover from the *DSR Provider* such money, or any balance that remains owing.

## 10 Extent of liability

### Liability cap

10.1 Subject to **clauses 10.2** and **10.4**, the total amount recoverable by a party from the other party in respect of any and all *claims* arising out of any one or more events during the term of this agreement with respect to, arising from, or in connection with, this agreement or the *pre-activation, dispatch* or *activation* of the *reserve* is, excluding any payments due by the *reserve provider* to the *DSR Provider* under **clause 9** and the indemnity under **clause 10.3**, limited to a maximum aggregate amount of \$100.

10.2 Regardless of the nature of any *claim*, neither of the parties is liable, in any circumstances:

- (a) for any indirect, special or consequential loss of any kind (including, without limitation, loss of profits, anticipated savings or business) with respect to, arising from, or in connection with, this agreement or the provision of the *reserve*; or
- (b) for any other loss, to the extent that the *claim* results from:
  - (i) a failure by the other party to install and maintain a *protection system*, or a control and monitoring system in accordance with a *Rules* or *good electricity industry practice*; or
  - (ii) the failure of a *protection system* or a *control system* and *monitoring equipment* of the other party to operate in the operating conditions in which it was required to operate and for the purpose for which it was required;
  - (iii) any other failure by the other party to act in accordance with this agreement, a *Rules* or *good electricity industry practice*.

### Indemnity

10.3 Subject to **clauses 10.1** and **10.2**, the *reserve provider* indemnifies the *DSR Provider* against any liability or loss arising from, and any costs, charges or expenses incurred in connection with, a *claim* by a third person against the *DSR Provider* with respect to, arising from, or in connection with, any act or omission of the *DSR Provider* in relation to the *pre-activation, dispatch* or *activation* of the *reserve* to the extent of:

10.3.1 the amount of cover by the *reserve provider's* insurance policy (if any) which the *reserve provider* may take out from time to time; or

10.3.2 any indemnity given by *NEMMCO* to the *reserve provider*.

### National Electricity Law

10.4 This agreement varies and excludes the operation of section 119 and 120 of the National Electricity Law to the extent provided for in **clause 10.3**.

## 11 Force Majeure

### Effect on performance of obligation

- 11.1 If a party (referred to in **clause 11** as the “*affected party*”) is unable, by reason of the occurrence of an *event of force majeure*, to perform any obligation under this agreement on time and as required (not being an obligation to pay money), a failure by the *affected party* to perform that obligation, so far as the *affected party's* ability to perform it is directly affected by that *event of force majeure*, will not be considered a *material performance breach* or a *non-financial breach* (as the case would otherwise be).
- 11.2 Availability and other payments under this agreement will not be made if the *reserve* during the relevant *billing period* is not available, *pre-activated* or *dispatched* or *activated* due to an *event of force majeure*.

### Obligation to notify

- 11.3 If an *affected party* becomes aware of a circumstance which the *affected party* reasonably considers constitutes, or is likely to constitute, or result in an *event of force majeure*, the *affected party* must:
- (a) immediately notify the other party 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
  - (b) 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:
    - (i) the *affected party's* estimate of the likely commencement of and duration of the *event of force majeure*;
    - (ii) the action taken and the action proposed to be taken by the *affected party* in complying with its obligations under **clause 11.3**;
    - (iii) the cessation of the *event of force majeure* or the successful mitigation or minimisation of the effects of the *event of force majeure*; and
    - (iv) any other matter which the other party reasonably requests in connection with the occurrence of the *event of force majeure* and the matters referred to in **paragraphs (b)(i), (ii) and (iii)**.

### Obligation to mitigate

- 11.4 If an *event of force majeure* occurs, the *affected party* must, as soon as practicable after the occurrence of that *event of force majeure*, 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.
- 11.5 The period during which a failure by the *affected party* to perform an obligation will not be considered a *material performance breach* or *non-financial breach* (as applicable) under **clause 11.1** but will not include any delay in the performance of the affected obligation that is attributable to a failure by the *affected party* to comply with **clause 11.3**.
- 11.6 The party affected by the *event of force majeure* bears the onus of proving that it has complied with its obligations under **clause 11.3**.



- 11.7 Nothing in this **clause 11** 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.
- 11.8 Notwithstanding anything in this **clause 11** to the contrary, an *affected party* is not required to incur any expense insofar as an *event of force majeure* is caused by the *non-financial breach* of this agreement by the other party.

### **Termination for extended force majeure outage**

- 11.9 If, by reason of an *event of force majeure*, the *reserve equipment* is incapable of providing the *reserve* for a period exceeding 1 week, the *reserve provider* may terminate this agreement in respect of the particular *reserve* by notifying the *DSR Provider*.
- 11.10 If the *reserve provider* gives a termination notice under **clause 11.9** in respect of a *reserve*, this agreement terminates in respect of that *reserve* from the start of the later of:
- (a) midnight at the end of the date on which the notice was given; and
  - (b) the time and the date nominated in the notice.

To avoid doubt, no damages (liquidated or unliquidated) are payable under **clause 11** (or otherwise) solely by reason of the termination of this agreement in respect of any particular *reserve* under **clause 11.9**.

- 11.11 If the *reserve provider* terminates this agreement in respect of a *reserve* pursuant to **clause 11.9**, from the time the termination notice takes effect, the *reserve* in respect of which this agreement has been terminated will be taken not to form part of this agreement or any other agreement between the parties.

## **12 Default**

### ***Insolvency event***

- 12.1 If an *insolvency event* occurs in relation to a party, the other party may terminate this agreement at any time by notice to the first party. If the other party gives a termination notice under this **clause 12.1**, this agreement terminates from the start of the later of:
- (a) midnight at the end of the date on which the notice was given; and
  - (b) the time and the date nominated in the notice.

### **Notice by party in breach**

- 12.2 If a party becomes aware that a circumstance has arisen that the party reasonably considers constitutes or is likely to constitute or result in a *default* by it, the party ("*defaulting party*") must:
- (a) immediately after becoming aware of the circumstances, give the other party ("*non-defaulting party*") notice of that circumstance; and
  - (b) keep the *non-defaulting party* informed both at reasonable intervals and upon request by the *non-defaulting party*, as soon as practicable following the receipt of that request, of:
    - (i) the *defaulting party*'s estimate of the likely duration of the *default*;

- (ii) the cessation of that *default* or the successful mitigation or minimisation of the effects of that *default*; and
- (iii) any other matter which the *non-defaulting party* may reasonably request in connection with the occurrence of the *default* and the matters referred to in **paragraphs (b)(i) and (ii)**.

### Notice by party not in breach

12.3 If a *non-defaulting party* becomes aware that a circumstance has arisen that the *non-defaulting party* reasonably considers constitutes a *default* by the *defaulting party*, the *non-defaulting party* may give the *defaulting party* notice of that circumstance. Upon receipt of that notice, the *defaulting party* must keep the *non-defaulting party* informed in accordance with **clause 12.2(b)**.

12.4 Upon receiving notice under **clause 12.3** or otherwise becoming aware that a circumstance has arisen that constitutes, or is likely to constitute, or result in a *default* by it, a *defaulting party* must cure the *default* or prevent the *default* from occurring (as the case requires) and mitigate any loss the *non-defaulting party* suffers or is likely to suffer.

### Material performance breach

12.5 Subject to **clause 12.6**, a *material performance breach* occurs if:

- (a) a *reserve* is not provided when required under this agreement or, when a *reserve* is provided, the *contracted levels of performance* specified for the *reserve* are not complied with; or
- (b) a *test* in respect of a *reserve* indicates that the *reserve equipment* may not be capable of providing the *reserve* in accordance with the *contracted levels of performance*; or
- (c) monitoring of in-service performance indicates that the *reserve equipment* is not providing the *reserve* in accordance with the *contracted levels of performance*.

12.6 An event identified in **clause 12.5** does not constitute a *material performance breach* if the event occurs during a period when the *DSR Provider* has notified the *reserve provider* under **clause 12.3** that the relevant *reserve equipment* is incapable of providing the *reserve* in accordance with the *contracted levels of performance*.

### Remedies

12.7

- (a) Subject to **paragraph (b)** and **paragraph (c)**, if the *defaulting party* does not cure a *material non-financial default* or a *material performance breach* within 5 *business days* of receiving notice under **clause 12.3** or within 10 *business days* of giving notice under **clause 12.2**, the *non-defaulting party* may terminate this agreement by giving a further notice to the *defaulting party*, whereupon this agreement will terminate.
- (b) If the *defaulting party* does not cure a *material non-financial default* which consists of a failure to meet the *minimum technical requirements* within a time to be agreed by the parties (or failing agreement, within 10 *business days* of the *reserve provider's* notice under **clause 12.3**), the *reserve provider* may terminate this agreement by giving a further written notice to the *DSR Provider*.

- (c) If the *DSR Provider* has received from the *reserve provider* 3 or more notices of *material performance breach*, the *reserve provider* at any time after the third notice terminate this agreement by giving 2 *business days* notice to the *DSR Provider*.

### Availability requirement

12.8 The **Schedule** specifies the *minimum availability requirement* for each *reserve*.

12.9 If, at the end of a *billing period*, the actual availability of a *reserve* calculated under **clause 12.10** falls below the *minimum availability requirement* for that *reserve*:

- (a) the *reserve provider* may terminate this agreement or terminate the provision of the relevant *reserve* under this agreement by giving notice to the *DSR Provider*, whereupon this agreement or the provision of the relevant *reserve*, as the case may be, will terminate; or
- (b) no *availability charge* is payable to the *DSR Provider* in respect of the relevant *reserve* for any *trading intervals* for that *billing period* notwithstanding the **Schedule**; or
- (c) do both of the actions detailed in **paragraphs (a) and (b)**.

12.10 For the purpose of determining whether the *minimum availability requirement* in respect of a *reserve* has been met, the actual availability of a *reserve* is:

- (a) measured over a period of 1 *billing period* at the end of the *billing period*, but excluding any periods which the **Schedule** states should be excluded (in this **clause 12.10** called the "**relevant period**"). For this purpose, if this agreement commences during a *billing period*, the period between the commencement of this agreement and the end of that *billing period* is a *billing period*;
- (b) equal to:

$$\frac{x}{y} \times 100\%$$

where:

x = the number of hours that the *reserve* meets the *minimum availability requirement* during the *relevant period*; and

y = the total number of hours in the *relevant period*;

- (c) determined by applying the following rules:
- (1) the *minimum availability requirement* is not met for the period the *reserve* in accordance with **Schedule Item S3.3**.
  - (2) the *minimum availability requirement* is not met for any period that the relevant *reserve equipment* is taken to be incapable of providing the *reserve* in accordance with the *contracted levels of performance*;
  - (3) if the *DSR Provider* has notified the *reserve provider* that the relevant *reserve equipment* is incapable of providing the *reserve* in accordance with the

*contracted levels of performance*, the *reserve* does not meet the *minimum availability requirement* during the period that the relevant *reserve equipment* is so incapable;

- (4) the minimum availability requirement is not met for any period the relevant *reserve equipment* is unavailable due to *agreed maintenance* or *non-agreed maintenance*;
- (5) if:
- (A) the relevant *reserve equipment* does not respond in the manner contemplated by the **Schedule** when required to do so; or
  - (B) the relevant *reserve equipment* responds when required to do so, but in responding fails to meet the *minimum technical requirements* or *contracted levels of performance* in respect of that *reserve*,

the *reserve* or the relevant portion of the *reserve*, as the case may be, is taken to be unavailable for the period:

- (C) commencing half-way between the date the relevant *reserve equipment* failed to respond in the manner contemplated by the **Schedule** or meet the *minimum technical requirement* or *contracted level of performance* (as applicable) and the most recent to occur of:
  - (I) the last time a *test* was conducted and demonstrated that the relevant *reserve equipment* was capable of providing the *reserve* or the relevant portion of the *reserve*, as the case may be, in accordance with the *contracted levels of performance* while meeting the *minimum technical requirements*;
  - (II) the last time the relevant *reserve* was successfully provided to the *reserve provider* in accordance with the *contracted levels of performance* while meeting the *minimum technical requirements*; and
  - (III) the date on which the *DSR Provider* is required to commence providing the particular *reserve* as specified in **Schedule Item S8**; and
- (D) concluding when the *DSR Provider* demonstrates to the *reserve provider's* satisfaction, by *test* or otherwise, that the relevant *reserve equipment* can meet the *minimum technical requirements* and provide the *reserve* in accordance with the *contracted levels of performance*.

12.11 A termination notice given under **clause 12.9** must set out in detail how the actual availability of the *reserve* was measured.

### **Financial default notice**

12.12 If a party commits a financial default, the non-defaulting party may give the defaulting party notice specifying the financial default.

## Default interest

12.13 The *defaulting party* must pay to the *non-defaulting party* interest on any amount that is the subject of a *financial default*. Interest:

- (a) accrues daily at the *bank bill rate* on the relevant day for each day from the date on which the amount became due and payable until the *financial default* is cured;
- (b) is payable on the first *business day* of each month;
- (c) is calculated on actual days elapsed and a 365-day year; and
- (d) is capitalised on the first *business day* after the due date for payment of such interest if not paid when due.

12.14 The *defaulting party's* obligation to pay the outstanding amount following a *financial default* on the date it becomes due for payment is not affected by **clause 12.13**.

## Remedies

12.15 If the *defaulting party* does not cure a *financial default* within 5 *business days* of the *defaulting party's* receipt of a notice under **clause 12.12**, the *non-defaulting party* may exercise any, or any combination, of the following remedies:

- (a) the *non-defaulting party* may sue the *defaulting party* for recovery of the debt represented by the *financial default*, any interest owing on the *financial default* under **clause 12.13**, and all costs of recovery and enforcement associated with the *financial default*; and
- (b) the *non-defaulting party* may terminate this agreement by giving a further notice to the *defaulting party*, whereupon this agreement will terminate.

## Cure

12.16 A *default* is cured for the purposes of this agreement if:

- (a) the *default* is remedied; or
- (b) in the case of a *default* that is incapable of remedy (for example, because the time for performance has passed):
  - (i) the *defaulting party* has paid compensation to the *non-defaulting party* for any expenses, costs, losses and damages suffered by the *non-defaulting party* as a result of the breach (including all costs of recovery and enforcement associated with the *default*); and
  - (ii) the *defaulting party* has:
    - (A) taken all reasonable steps to prevent the circumstances giving rise to the *default* being repeated; and
    - (B) demonstrated to the *non-defaulting party's* satisfaction that those steps have been taken; and
    - (C) given the *non-defaulting party* an undertaking (in a form reasonably satisfactory to the *non-defaulting party*) not to repeat

the *default*. (To avoid doubt, a breach of any such undertaking is subject to the provisions of **clause 10**).

12.17 A *financial default* is cured for the purposes of this agreement when the *defaulting party* has paid to the *non-defaulting party* any amount the subject of the *financial default*, any interest owing on the *financial default* under **clause 12.13** and all costs of recovery and enforcement associated with the *financial default*.

### Termination notices

12.18 A termination notice under **clause 12.7, 12.9** or **12.15(b)** takes effect on the later of:

- (a) midnight at the end of the date on which the notice was given; and
- (b) the time and the date nominated in the notice.

### Survival

12.19 Termination or expiration of this agreement for any reason does not affect:

- (a) any rights of either party against the other that:
  - (i) arose prior to the time at which the termination or expiration occurred; and
  - (ii) otherwise relate to, or may arise in the future from any breach or non-observance of this agreement occurring prior to its termination or expiration, or
- (b) the rights and obligations of the parties under **clause 5, 9, 10 12** and **14**.

12.20 Subject to **clauses 2.2, 12.7, 12.9** and **12.15(b)**, nothing in this agreement prevents a party exercising any of its rights at law or in equity in respect of a breach of this agreement.

### Partial termination

12.21 If the *reserve provider* is able to terminate this agreement under **clause 12.7** or **12.9**, the *reserve provider* may instead elect to terminate this agreement in respect of one or more of the *reserve* while leaving this agreement on foot in relation to any other *reserve*. The *reserve provider* must make its election in the termination notice under **clause 12.7** or **12.9**. If the *reserve provider* makes an election under this **clause 12.21**, from the time the termination notice takes effect, the **Schedule** in relation to the *reserve* or *reserve* in respect of which this agreement has been terminated, will be taken not to form part of this agreement or any other agreement between the parties.

## 13 Assignment and sub-contracting

### Assignment

13.1 Subject to **clause 13.4**, the *DSR Provider* must not *dispose* of or deal with its rights in this agreement except with the prior consent of the *reserve provider*, which consent must not be unreasonably withheld or delayed.

13.2 The *DSR Provider* must not dispose of or deal with its *reserve equipment* without the prior consent of the *reserve provider*, which consent must not be unreasonably withheld or delayed.

- 13.3 The *DSR Provider* must not *dispose* of or deal with its rights in this agreement without the *reserve provider's* prior written consent, which consent must not be unreasonably withheld or delayed.

### Sub-contracting

- 13.4 The *DSR Provider* must not subcontract the performance of any of its obligations under this agreement except with the *reserve provider's* prior consent, which consent must not be unreasonably withheld or delayed.
- 13.5 If the *DSR Provider* sub-contracts any stage of the provision of a *reserve*, the *DSR Provider* remains responsible for the performance of this agreement.

## 14 Dispute resolution

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### Disputes

- 14.1 If a dispute arises under or in relation to this agreement, the *first stage dispute resolution processes* and the *second stage dispute resolution processes* apply.
- 14.2 **Clause 14** constitutes an agreement in writing under clause 8.2.1(a)(6) of the *Rules*.
- 14.3 A party may not have recourse to litigation or *second stage dispute resolution processes* in relation to a dispute under or in relation to this agreement unless that party:
- (a) has either given or received a *dispute notice*; and
  - (b) has otherwise complied with the requirements of **clause 14**.
- 14.4 **Clause 14.3** does not prevent a party seeking an urgent interlocutory injunction from a court of competent jurisdiction.
- 14.5 Unless otherwise agreed or determined under the *first stage dispute resolution processes* or the *second stage dispute resolution processes*, the parties must continue to perform their obligations under this agreement despite the operation of **clause 14**.

## 15 Warranties

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- 15.1 The *DSR Provider* represents and warrants to the *reserve provider* as at the date of this agreement and at all times after the date of this agreement that:
- (a) it is in the position to provide the *reserve* to the *reserve provider* and will provide the *reserve* with due care and skill;
  - (b) it and its *representatives* are duly qualified and skilled to provide the *reserve* to the *reserve provider*;
  - (c) it will provide the *reserve* in accordance with all relevant *legislation* and relevant Australian Standards and rules of practice;
  - (d) the execution of its obligations under this agreement, including the provision of the *reserve*, does not and will not infringe the *intellectual property rights* of any person;

- (e) to the best of its knowledge, information and belief, it has procured and maintains, in respect of anything to be done or used by it in association with this agreement, all rights, permissions and licences in respect of any *intellectual property rights* from the person possessing or entitled to each right;
- (f) if the *DSR Provider* is a body corporate:
  - (i) the *DSR Provider* has full corporate power to enter into, perform and observe its obligations under this agreement, and that the execution, delivery and performance of the agreement by it has been duly and validly authorised by all necessary corporate action; and
  - (ii) this agreement and the transactions contemplated by it do not contravene the *DSR Provider's* constituent documents or any law, the *Rules*, any other regulation or official directive or any of the *DSR Provider's* obligations or undertakings by which the *DSR Provider* or any of the *DSR Provider's* assets are bound, or cause a limitation on the powers of the *DSR Provider's* directors to be exceeded;
- (g) the *DSR Provider's* obligations under this agreement are valid and binding and enforceable in accordance with their terms;
- (h) the *DSR Provider* is entitled to, and has the right and power to, carry out its obligations under the agreement; and
- (i) the entering into this agreement and the fulfilment of its obligations under this agreement, including without limitation, the provision of the *reserve* to the *reserve provider* or as may be directed by the *reserve provider*, does not breach any other arrangement or agreement entered into by the *DSR Provider*.

15.2 The *reserve provider* represents and warrants to the *DSR Provider* as at the date of this agreement and at all times after the date of this agreement that:

- (a) it has full corporate power to enter into, perform and observe its obligations under this agreement, and that the execution, delivery and performance of the agreement by it has been duly and validly authorised by all necessary corporate action;
- (b) this agreement and the transactions contemplated by it do not contravene its constituent documents or any law, the *Rules*, any other regulation or official directive or any of its obligations or undertakings by which it or any of its assets are bound, or cause a limitation on the powers of its directors to be exceeded; and
- (c) its obligations under this agreement are valid and binding and enforceable in accordance with their terms.

## 16 Compliance with *legislation* and the requirements of an *authority*

16.1 Each party must comply with all applicable *legislation* and with the lawful requirements of *authorities* in any way affecting or applicable to this agreement.

16.2 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 *legislation* or



an *authority* for the purpose of complying with its obligations under this agreement are given or obtained.

16.3 Each party as the case may require must pay all fees and bear all costs connected with such notices, consents, authorisations, registrations and certifications.

16.4 Each party must, upon demand made in writing by the other party (in this **clause 16.4** called the "*requesting party*") at any time and from time to time, provide to the *requesting party* all information necessary to establish to the satisfaction of the *requesting party* that the requirements of **clauses 16.2** and **16.3** have been complied with.

## 17 General

### Notices

#### 17.1

- (a) Subject to **paragraph (b)**, all *communications* to a party must be:
- (i) in writing;
  - (ii) marked to the attention of the person named in respect of that party in **part 3** of the **Attachment**; and
  - (iii) delivered by hand to the address of the addressee, or sent by prepaid, registered or certified post (airmail if posted to or from a place outside Australia), or hand delivered by a reputable courier service to the address of the addressee, or sent by facsimile to the facsimile number of the addressee, or sent in electronic form to the electronic mail address of the addressee which is specified in respect of that party in **part 3** of the **Attachment**.
- (b) Subject to the *Rules*, any *communication* given in the course of the day-to-day running of the *transmission network* or the *market* by or on behalf of a party to the other may be made by automated electronic process, telephone or other instantaneous means of *communication*.
- (c) Unless *communications* under **clause 17.1(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.

### Receipt

17.2 Subject to **clause 17.4**, a *communication* is effective from the later of:

- (a) the time it is received or taken to be received under **clause 17.3**; and
- (b) any later time specified in the *communication* (provided it has been actually received or taken to be received under **clause 17.3** prior to that time).

17.3 Subject to **clause 17.4**:

- (a) a *communication* delivered by hand to the address of a party is taken to be received if it is handed (with or without acknowledgment of delivery) to any person at that

address who, in the reasonable judgement of the person making the delivery (upon making appropriate enquiries), represents themselves and appears to be a *representative* of the party;

- (b) a *communication* sent by facsimile is deemed to be received on receipt of a transmission report confirming successful transmission;
- (c) an electronic message is taken to be received 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
- (d) a *communication* sent by post is taken to be received on the third day after posting.

17.4 If a *communication* is received on a day that is not a *business day* or after 5:00 pm on a *business day*, it is taken to be received on the next *business day*.

17.5 Any party may at any time by not less than 5 *business days* notice given to the other party designate a different person, address, facsimile number or electronic mail address for the purposes of this **clause 17** and **part 3** of the **Attachment**.

### **Exercise of rights**

17.6 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**

17.7 A provision of or a right created under this agreement may not be:

- (a) waived except in writing signed by the party granting the waiver; or
- (b) varied or amended except in writing signed by the parties.

### **Approvals and consents**

17.8 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**

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

### **Payment not necessary before claim**

17.10 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**

17.11 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

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

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

## Supervening legislation

17.13 Any present or future *legislation* 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

17.14 If a provision of this agreement is void, unenforceable or illegal in a jurisdiction, it is severed for the purposes of that jurisdiction. The remainder of this agreement has full force and the validity or enforceability of that provision in any other jurisdiction is not affected. This **clause 17.14** has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

## Entire agreement

17.15 Subject to the *Rules*, this agreement constitutes the entire agreement of the parties in connection with the provision of the *reserve* and any previous agreements, understandings and negotiations on that subject matter cease to have any effect.

## Confidential information

17.16 In consideration of the *reserve provider* agreeing to enter into this agreement and in recognition of the fact that the information the *reserve provider* has provided, or will provide, to the *DSR Provider* during the course of this agreement is *confidential information*, the *DSR Provider* agrees and undertakes to the *reserve provider* that it will not use or disclose any *confidential information* to anyone except as required by law.

## No other representations or warranties

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

## Counterparts

17.18 This agreement may be executed in counterparts and the counterparts taken together constitute one and the same agreement.

## Governing law

17.19 This agreement and the transactions contemplated by this agreement are governed by the laws in force in the jurisdiction listed in **part 3** of the **Attachment**.

## Submission to jurisdiction

17.20 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the jurisdiction listed in **part 3** of the **Attachment** and courts of appeal from them for determining any dispute concerning this agreement or the transactions contemplated by this agreement. Except for an express right under any other provision of this agreement to submit *claims* or disputes arising under this agreement (or any of its specific provisions) to an alternative forum for dispute resolution or mediation, each party waives any right it has to

object to an action because it is being brought in those courts, including claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

### **Service of process**

17.21 Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under this agreement.

### **No partnership, agency or trust**

17.22 Except as expressly provided in the agreement, nothing contained or implied in this agreement:

- (a) constitutes or may be taken 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
- (b) creates or may be taken to create any agency or trust.

### **Representatives**

17.23 Any acts of representatives of the *reserve provider* and the *DSR Provider* are taken to be acts of the *reserve provider* and the *DSR Provider*, respectively.

## Attachment

### PART 1: DEFINITIONS

In this agreement:

“*agreed maintenance*” means any maintenance carried out or to be carried out that is likely to affect the provision of *reserve*:

- (a) in respect of which the *DSR Provider* has complied with **Schedule Item S5.1**; and
- (b) the length of which, when taken together with all other *agreed maintenance* which has occurred in the *billing period* in which the maintenance is planned to occur, does not exceed 10% of the time in that *billing period*; and
- (c) which the *reserve provider* has agreed to under **clause 7** of this agreement.

“*authority*” means any Commonwealth, State, Territory or local government or regulatory department, body, instrumentality, minister, agency or other *authority*, but does not include the *reserve provider*.

“*availability charge*” means a charge payable in response to *pre-activation* of *reserve* under **Schedule Item S7.2(a)**.

“*billing period*” means a period of 7 days commencing with the trading interval ending at 00:30 hours (Eastern Standard Time) on Sunday during the same periods that the *reserve provider* has agreed to provide *reserves* to NEMMCO under the *Reserve Agreement*, provided that:

- (a) the first *billing period* for the purposes of this agreement commences when this agreement commences; and
- (b) the last *billing period* for the purposes of this agreement ends (if applicable) when the agreement terminates.

“*CEO*” means the person holding the most senior day to day management position of a party, whether called chief executive officer, managing director or another similar title.

“*claims*” means any and all claims, losses, liabilities, costs or expenses, whether arising in contract, tort (including negligence), equity or otherwise.

“*commencement date*” means 16 January 2006.

“*communication*” means any notice, demand, approval, consent or other communication required or given by a party to another party under this agreement.

“*confidential information*” means all trade secrets and all financial, marketing and technical information, ideas, concepts, know-how, technology, processes and knowledge which is confidential or of a sensitive nature, but excludes that which is in the public domain.

“*contracted levels of performance*” is detailed in **Schedule Item S3**.

“*control*” means the possession, directly or indirectly, of the power to direct the business activities of a person. To avoid doubt, the existence of a power by *legislation* or the *Rules* to direct or require a person to do something does not confer “*control*” over that person.

“*default*” means a *material non-financial default*, *material performance breach* or a *non-financial breach*.

“*dispose*” means assign, transfer or otherwise dispose of any legal or equitable estate, either in whole or in part, whether by sale, lease, declaration or creation of trust or otherwise.

“*dispute notice*” means a notice under clause 8.2.4(a) of the *Rules*.

“*enabling charge*” means a charge payable in response to *pre-activation* of *reserve* under **Schedule Item S7.2(b)**.

“*event of force majeure*” in respect of a party (in this definition called the “*affected party*”) means:

- (a) a *labour dispute* which results in the *affected party* being unable to observe or perform on time and as required any obligation (not being an obligation to pay money) under this agreement; or
- (b) a circumstance which satisfies the following requirements:
  - (i) the circumstance is beyond the reasonable control of the *affected party*;
  - (ii) the circumstance is not the result of a breach of this agreement or the provisions of any *Rules* by the *affected party* or of an intentional or negligent act or omission of the *affected party* (or of any other person over which the *affected party* should have exercised *control*);
  - (iii) the circumstance results in the *affected party* being unable to observe or perform on time and as required any obligation (not being an obligation to pay money) under this agreement; and
  - (iv) the circumstance involves one or more of the following:
    - (A) an act of God, lightning strike, earthquake, flood, drought, storm, tempest, mud slide, washaway, explosion, fire or any natural disaster;
    - (B) an act of war, act of public enemies, terrorist attack, riot, insurrection, civil commotion, malicious damage, sabotage, blockade, revolution, invasion or a breakdown of the *communication* system (including without limitation a breakdown of the relevant telephone exchange);
    - (C) an act or omission (whether legislative, executive or administrative) of any *authority*;
    - (D) an act or omission of a person who is not a party to this agreement, provided that person is not under the *control* of the *affected party* and is not a sub-contractor to the *affected party*;
    - (E) any proceedings taken or threatened by or any disputes with adjacent or neighbouring occupiers of the *DSR Providers*;
    - (F) any temporary or permanent unavailability of any required material or service; or
    - (G) any urgent and unforeseen reserve requirement by the DSR Provider.

“*financial default*” means a failure by a party to pay any amount under this agreement to the other party when due (including any amount payable as compensation or indemnification for any loss or

damage suffered by a party which amount has been agreed by the parties or, if disputed, has been determined in accordance with the dispute resolution procedures contemplated by **clause 14**).

“*first stage dispute resolution processes*” means the procedures set out in clause 8.2.4 of the *Rules*.

“*GST*” means goods and services tax or any similar tax imposed in Australia.

“*insolvency event*” means the happening of any of these events:

- (a) an application is made to a court for an order or an order is made that a body corporate be wound up; or
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order; or
- (c) except to reconstruct or amalgamate while solvent on terms approved by the *reserve provider*, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the *reserve provider* or is otherwise wound up or dissolved; or
- (e) a body corporate is or states that it is insolvent; or
- (f) as a result of the operation of section 459F(1) of the Corporations Act 2001 (Cth), a body corporate is taken to have failed to comply with a statutory demand; or
- (g) a body corporate is or makes a statement from which it may be reasonably deduced by the *reserve provider* that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act 2001 (Cth); or
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable *legislation* or an administrator or controller (as defined in the Corporations Act 2001 (Cth)) is appointed to a body corporate; or
- (i) a controller (as defined in the Corporations Act 2001 (Cth)) is appointed in respect of any part of the property of the body corporate; or
- (j) a person becomes an insolvent under administration as defined in section 9 of the Corporations Law or action is taken which could result in that event; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

“*intellectual property rights*” means all rights conferred under statute, common law and equity in and in relation to inventions, designs, formulae, trade marks, trade names, logos and get-up, circuit layouts, confidential information, copyright and neighbouring rights.

“*generation increase*” means increase of *loading level* of a *generating unit* for the purpose of providing *reserve* under this agreement.

“*labour dispute*” means a strike, lockout, ban, “go-slow” activity, stoppage, restraint of labour or other similar act which is not directed primarily at a party to this agreement.

“*legislation*” means Acts of Parliament, regulations, statutory instruments and Rules, and includes any licence, order, official policy, directive, request, requirement or guideline of an *authority* whether or not it has the force of law.

“*load reduction*” means reduction of electricity consumption for the purpose of providing *reserve* under this agreement.

“*market capacity*” means, in relation to a *reserve*, the *loading level* as quantified in **Schedule Item S2** that is:

- (a) the subject of *dispatch offers* or *dispatch bids* or is considered by the *reserve provider* to be likely to be submitted or otherwise available for *dispatch*; or
- (b) provided and will be provided, or available to be provided, pursuant to any other arrangement, including demand side management arrangements;

during the period specified in **Schedule Item S8**.

“*material non-financial default*” means a:

- (a) *non-financial breach* by a party having, or reasonably expected to have, a material adverse effect on the other party's ability to obtain and enjoy the primary rights and benefits under this agreement; or
- (b) a failure to meet one or more of the *minimum technical requirements*.

“*material performance breach*” has the meaning given by **clauses 12.5** and **12.6**.

“*minimum availability requirement*” is specified in **Schedule Item S3**.

“*minimum technical requirements*” are specified in **Schedule Item S3**.

“*NEMMCO*” means NATIONAL ELECTRICITY MARKET MANAGEMENT COMPANY LIMITED ABN 94 072 010 327 of Level 12, 15 William Street, Melbourne, Victoria

“*non-agreed maintenance*” is any maintenance that is not *agreed maintenance*.

“*non-financial breach*” means any breach of a term or condition of this agreement but does not include a *financial default* or a *material performance breach*.

“*pre-activate*” means the act of preparing the *reserve* for *dispatch* or *activation*.

“*related body corporate*” in respect of an entity means another entity that is related to the first entity within the meaning of section 50 of the Corporations Act 2001 (Cth).

“*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 a *related body corporate* of that party.

“*reserve*” is the *load reduction* or *generation increase* specified in **Schedule Item S2**.

*Reserve Agreement* means the *reserve provider's* agreement with *NEMMCO* for the provision of various reserves to *NEMMCO*.



“*reserve equipment*” means all plant, resources and equipment of the *DSR Provider* used or proposed to be used from time to time in the provision of the *reserve*.

“*second stage dispute resolution processes*” means the procedures set out in clause 8.2.5 of the *Rules*.

“*Rules*” means the National Electricity Rules.

“*test*” means, in relation to a *reserve*, a test contemplated by **clause 4**.

“*usage charge*” means a charge payable in response to *dispatch* or *activation* of *reserve* under **Schedule Item S7.2(c)**.

## **PART 2: INTERPRETATION**

### **2.1 General interpretation**

In this agreement, unless the contrary intention appears:

- (a) a reference to a recital, clause, paragraph, Schedule or Attachment is a reference to a recital, clause or paragraph of or Schedule or Attachment to this agreement and references to this agreement include any Schedule or Attachment;
- (b) a reference to this agreement, any other agreement or instrument, or any provision of any of them includes any amendment, variation or replacement of that agreement, instrument or provision;
- (c) a reference to a statute, ordinance, licence, Rules (including any *Rules*) or law includes regulations and other instruments under, and consolidations, amendments, re-enactments, extensions or replacements of that statute, ordinance, licence, Rules or law;
- (d) a reference to a thing (including, without limitation, an amount) is a reference to the whole and each part of it;
- (e) the singular includes the plural and vice versa;
- (f) the word “person” includes a natural person, firm, body corporate, partnership (whether limited or otherwise), joint venture, trust, an unincorporated association and any *authority*;
- (g) a reference to a person includes a reference to the person's executors, administrators, successors, and substitutes (including, but not limited to, persons taking by novation) and permitted assigns;
- (h) a reference to one gender includes all genders;
- (i) if a period of time is specified 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;

- (j) a reference to a day is a reference to a period of time commencing at midnight and ending the following midnight;
- (k) a reference to a month is a reference to a calendar month;
- (l) if a word or phrase is specifically defined in this agreement other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

## 2.2 Headings

Headings are inserted for convenience and do not affect the interpretation of this agreement.

## 2.3 Symbols

A symbol in column 1 of the chart below has the meaning set out opposite that symbol in column 2 of the chart:

<b>CHART</b>	
<b>1</b>	<b>2</b>
<b>SYMBOL</b>	<b>MEANING</b>
EDST	Eastern daylight saving time.
EST	Eastern standard time.
*	requires multiplication to be effected.
+	requires addition to be effected.
-	requires subtraction to be effected.
MW	Megawatt.
MWh	Megawatt hour.
Hz	Hertz.
min	minute
\$	Australian dollars.

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**PART 3: GOVERNING LAW, ADDRESSES FOR NOTICES AND OTHER MATTERS**

## 1. Jurisdiction

Victoria

## 2. Notices

*Reserve Provider*

Attention:

Address

Fax:

Email:

Telephone:

Mobile (&amp;/or after hours contact):

*DSR Provider*

Attention:

Address:

Fax:

E-mail:

Telephone:

Mobile (&amp;/or after hours contact):

## Schedule Generation Increase

### S1 Definitions

In this **Schedule**:

“*activation instruction*” means, in relation to a *generating unit* other than a *scheduled generating unit*, an instruction from the *reserve provider* for the *reserve* to become *activated*.

“*activation lead time*” means the period between the issue of an *activation instruction* and the time at which the *reserve* is ready to be *activated*. The activation lead time for each *reserve* is specified in **Schedule Item S2**.

“*block*” means the minimum amount of *reserve* that can be *dispatched* or *activated* by the *reserve provider*.

“*commit*” means synchronising the *generating unit* and connecting it to the *network* at or through one or more of the *connection points* and increasing the power generated until the level becomes equal to the *minimum operating level*.

“*commitment lead time*” means, in relation to a *generating unit* [other than a *scheduled generating unit*], the time required for the *DSR Provider* to *commit* the *generating unit* as specified in **Schedule Item S2**.

“*communication*” means any notice, demand, approval, consent or other communication required or given by a party to another party pursuant to or in connection with this agreement (including *pre-activation instructions*, *activation instructions*, *commitment instruction* and *de-commitment instruction*).

“*de-commitment*” means reducing the electrical power output of the *generating unit* to the *network* as quickly as practicable and disconnecting it from the *network*.

“*de-commitment lead time*” means the period required for the *DSR Provider* to *de-commit* the *generating unit* **Schedule Item S2**.

“*firm capacity*” means the *generating unit loading level* set out in **Schedule Item S2**.

“*minimum operating level*” means, in relation to a *generating unit*, the minimum loading level at which it can operate continuously.

“*pre-activation instruction*” means, in relation to a *generating unit* other than a *scheduled generating unit*, an instruction from the *reserve provider* to *commit* the *generating unit*.

### S2 Reserve details

#### S2.1 Scheduled generating unit:

<b>Name of scheduled generating unit</b>	
<b>Registration status under Chapter 2 of the Rules</b>	[market/non-market]
<b>Location</b>	
<b>Connection point(s)</b>	
<b>Firm capacity</b>	[ ] MW
<b>Market capacity</b>	[ ] MW

<b>Minimum operating level</b>	[ ] MW
<b>Commitment lead time</b>	[ ] hours
<b>De-commitment lead time</b>	[ ] hours

### **Commitment Requirements**

The *generating unit* may be *committed* at any time by the *reserve provider* for the purpose of making the *reserve* ready for *dispatch*.

### **Dispatch Requirements**

The *scheduled generating unit* may be *dispatched* at any time by the *reserve provider* for the purpose of providing the *reserve* at any level of *generation* that is not less than the greater of the *minimum operating level* and the *market capacity* (if applicable) and not more than the *firm capacity*.

### **Minimum and Maximum Rates of Change of the Level of Generation**

The minimum and maximum rates of change of the level of *generation* by the *generating unit* that can be specified in a *dispatch instruction* are as follows.

Power output range	Minimum rate of change of power output		Maximum rate of change of power output	
	While operating on AGC	While not operating on AGC (manual control)	While operating on AGC	While not operating on AGC (manual control)
[ ] MW	[ ] MW/min	[ ] MW/min	[ ] MW/min	[ ] MW/min
[ ] MW	[ ] MW/min	[ ] MW/min	[ ] MW/min	[ ] MW/min
[ ] MW	[ ] MW/min	[ ] MW/min	[ ] MW/min	[ ] MW/min
[ ] MW	[ ] MW/min	[ ] MW/min	[ ] MW/min	[ ] MW/min
[ ] MW	[ ] MW/min	[ ] MW/min	[ ] MW/min	[ ] MW/min

Where available, the *reserve provider* may at any time request that the *scheduled generating unit* be switched to operate on AGC or under manual control. The *DSR Provider* must comply with this request as soon as practicable.

*Dispatch constraints*

<b>Minimum run time</b>	[ ] hours
<b>Minimum off-time</b>	[ ] hours
<b>Other <i>dispatch</i> constraints</b>	

## **S2.2 Generating unit other than scheduled generating unit**

<b>Name of generating unit</b>	
<b>Registration status under Chapter 2 of the</b>	[market/non-market, non-

<b>Rules</b>	scheduled/exempt]
<b>Location</b>	
<b>Connection point(s)</b>	
<b>Firm capacity</b>	[ ] MW
<b>Minimum operating level</b>	[ ] MW
<b>Commitment lead time</b>	[ ] hours
<b>De-commitment lead time</b>	[ ] hours

### **Commitment Requirements**

The *generating unit* may be *committed* at any time by the *reserve provider* for the purpose of making the *reserve* ready for *activation*.

### **Activation Requirements**

The *generating unit* may be *activated* at any time by the *reserve provider* for the purpose of providing the *reserve* at any level of *generation* that is not less than the greater of the *minimum operating level* and not more than the *firm capacity*.

### **Minimum and Maximum Rates of Change of the Level of Generation**

The minimum and maximum rates of change of the level of *generation* by the *generating unit* that can be specified in an *activation instruction* are as follows.

<b>Power output range</b>	<b>Minimum rate of change of power output</b>	<b>Maximum rate of change of power output</b>
[ ] MW	[ ] MW/min	[ ] MW/min
[ ] MW	[ ] MW/min	[ ] MW/min
[ ] MW	[ ] MW/min	[ ] MW/min
[ ] MW	[ ] MW/min	[ ] MW/min
[ ] MW	[ ] MW/min	[ ] MW/min

### **Activation constraints**

<b>Minimum run time</b>	[ ] hours
<b>Minimum off-time</b>	[ ] hours
<b>Other <i>dispatch</i> constraints</b>	

## **S3 Contracted Levels of Performance**

The contracted level of performance is the provision of the *firm capacity* that conforms to the *minimum technical requirements*, performance criteria and minimum availability requirements of this **Schedule**.

### S3.1 Minimum Technical Requirements

- (a) the *reserve* must be capable of being *pre-activated* and *dispatched* or *activated* by instructions to a single point of contact with operational responsibility for the *reserve*;
- (b) the *reserve* must be capable of being *pre-activated* and *dispatched* or *activated* as a *block* of not less than 10 MW, which may be made up of smaller components that are managed by the *DSR Provider*;
- (c) the *reserve* must be sustainable for a period of at least an hour; and
- (d) each *generating unit* must have a type 1, 2, 3 or 4 *metering installation* as required by S7.2 of the *Rules* to measure the electrical output or change in electrical consumption as a result of the *dispatch* or *activation instruction*.

### S3.2 Performance Criteria

#### *Scheduled generating unit*

The *scheduled generating unit* must be capable of:

- (a) unless already *committed* through the *reserve provider's central dispatch* process, upon receiving from the *reserve provider* a *pre-activation instruction*, *committing* within the *commitment lead time*;
- (b) once *committed* and upon receiving from the *reserve provider* a *dispatch instruction*, *generating*:
  - (i) at a level which is not less than the *market capacity* and not more than the *firm capacity*; and
  - (ii) at a rate of change of the level of *generation* as required by the *dispatch instruction*, but not greater than the relevant rate set out in this **Schedule**, unless the *dispatch instruction* specifies and the *DSR Provider* agrees that the *scheduled generating unit* should do so; and
- (c) unless required to continue to *generate* through the *reserve provider's central dispatch* process, once *committed* and upon receiving a *dispatch instruction* from the *reserve provider* to *de-commit*, *de-committing* in accordance with the *de-commitment lead time*.

#### *Generating unit other than scheduled generating unit*

The *generating unit* must be capable of:

- (a) upon receiving from the *reserve provider* a *pre-activation instruction*, *committing* within the *commitment lead time*;
- (b) at the end of the *commitment lead time* and upon receiving from the *reserve provider* an *activation instruction*, *generating*:
  - (i) at a level which is not less than the *minimum operating level* and not more than the *firm capacity*; and
  - (ii) at a rate of change of the level of *generation* as required by the *activation instruction*, but not greater than the relevant rate set out in this **Schedule**, unless the *activation instruction* specifies and the *DSR Provider* agrees that the *generating unit* should do so; and
- (c) once *committed* and upon receiving a *de-commitment instruction* from the *reserve provider*, *de-committing* in accordance with the *de-commitment lead time*.

### S3.3 Minimum Availability

#### *Scheduled generating unit*

The *minimum availability requirement* will not be met if:

- (a) in a *billing period*, the reduction in the amount of energy capable of being *generated* (as advised in the applicable availability advice) by the *scheduled generating unit* occurring for any reason other than:
  - (i) *agreed maintenance*; or
  - (ii) a relevant *network constraint*,
 is greater than 0 MW. The availability advice to apply is the Weekly Availability Advice (as referred to in **Schedule Item 3.4.1**), as modified (in the following order) by the Changes to Availability Advice (as referred to in **Schedule Item 3.4.1**) (if any), Ad Hoc Availability Advice (as referred to in **Schedule Item 3.4.1**) (if any) and/or notice under **clause 4.4** (if any); or
- (b) a *dispatch instruction* has been given and the *scheduled generating unit* has been unable to *generate* at the level requested by the *dispatch instruction*.

#### *Generating unit other than scheduled generating unit*

The *minimum availability requirement* will not be met if:

- (a) in a *billing period*, the reduction in the amount of energy capable of being *generated* (as advised in the applicable availability advice) by the *generating unit* occurring for any reason other than:
  - (i) *agreed maintenance*; or
  - (ii) a relevant *network constraint*,
 is greater than 0 MW. The availability advice to apply is the Weekly Availability Advice (as referred to in **Schedule Item 3.4**), as modified (in the following order) by the Changes to Availability Advice (as referred to in **Schedule Item 3.4**) (if any), Ad Hoc Availability Advice (as referred to in **Schedule Item 3.4**) (if any) and/or notice under **clause 4.4** (if any); or
- (b) an *activation instruction* has been given and the *reserve* has been unable to *generate* at the level detailed in the *activation instruction*.

### S3.4 Availability notification by the DSR Provider

In this **Schedule Item S3.4**, the term “*week*” means each *trading interval* for a period of seven days commencing at 12.30am EST on the following day and ending at 12.30am EST on the following Saturday.

The *DSR Provider* must provide to the *reserve provider* availability notifications for the *reserve* as detailed below.

The *DSR Provider* must not declare as available any capacity it knows or ought to know is not functioning to a satisfactory level of performance or is the subject of maintenance, where such lower level of performance or maintenance will in any way affect the ability of the *reserve* to meet the requirements specified in this **Schedule**.

#### WEEKLY AVAILABILITY ADVICE



By 3 pm EDST on each Friday, the *DSR Provider* must provide advice to the *reserve provider* on the availability of the *reserve*. This Weekly Availability Advice must:

- (a) state the maximum capacity level of *generation* that can be achieved up to the *firm capacity* for each *trading interval* for each *week*;
- (b) describe any maintenance which is proposed during the *week* that will affect the *reserve*;
- (c) state the cause of any unavailability that is not due to maintenance during the *week*;
- (d) describe any known problems that may:
  - reduce the reliability of the *reserve* in any *trading interval*;
  - affect the ability of the *reserve* to ensure that the *generating unit* complies with this **Schedule** in any *trading interval*, and the extent of any reduction in performance of the *reserve*; or
  - impose a threat to the security of the *network*.

For each problem, the *DSR Provider* must indicate to the best of its knowledge an assessment of the risk that the problem may escalate or improve;

- (e) describe any tests the *DSR Provider* intends to conduct during the *week* and the proposed timing of each test and any unavailability associated with each test; and
- (f) such other information concerning the availability or the available capacity of the *reserve* as the *reserve provider* may reasonably request from time to time.

#### CHANGES TO AVAILABILITY ADVICE

If the *DSR Provider* becomes aware of a material change to the Weekly Availability Advice, the *DSR Provider* must as soon as practicable after becoming aware of the change provide a replacement advice to the *reserve provider* on the availability of the *reserve*. This must:

- (a) state the maximum capacity of *generation* that can be achieved up to the *firm capacity* for each *trading interval* for the remainder of the relevant *week*;
- (b) describe any maintenance proposed for the remainder of the relevant *week* that will affect the *reserve*;
- (c) state the cause of any unavailability not due to maintenance for the remainder of the relevant *week*;
- (d) describe any known problems of a type referred to in **paragraph (d)** of the Weekly Availability Advice. For each problem, the *DSR Provider* must indicate to the best of its knowledge an assessment of the risk that the problem may escalate or improve;
- (e) describe any tests the *DSR Provider* intends to conduct during the remainder of the relevant *week* and the proposed timing of each test and any unavailability associated with each test;
- (d) such other information concerning the availability of the *reserve* as the *reserve provider* may reasonably request from time to time; and
- (e) state the *reserve* that can be provided where the available *reserve* is less than the 10 MW *block* as required in order to met the *minimum technical requirements*.

#### AD HOC AVAILABILITY ADVICE

the *reserve provider* may request advice on availability of the *reserve* on an ad hoc basis. If requested by the *reserve provider*, the *DSR Provider* must provide information, including:

- (a) a statement of the maximum capacity level of *generation* that can be achieved, up to the *firm capacity*, for each *trading interval* for the period requested;
- (b) details of any maintenance that proposed for the period requested that will affect the *reserve*;
- (c) the cause of any unavailability not due to maintenance in the period requested;
- (d) details of any known problems of the type referred to in **paragraph (d)** of the Weekly Availability Advice. For each problem, the *DSR Provider* must indicate to the best of its knowledge an assessment of the risk that the problem may escalate;
- (e) a description of any tests the *DSR Provider* intends to conduct in the period requested and the proposed timing of each test and any unavailability associated with each test; and
- (f) such other information concerning the availability of the *reserve service* as the *reserve provider* may reasonably request from time to time.

The *DSR Provider* must make reasonable endeavours to provide this advice as soon as possible.

### **S3.5 Instructions by the *reserve provider***

In this **Schedule Item S3.5**, an "*instruction*" means any notification by the *reserve provider* to the *DSR Provider* in respect of the *reserve* emanating from the *reserve provider's control centre*, which shall be taken by the *DSR Provider* to be an official request by the *reserve provider* in accordance with this **Schedule Item 3.5**.

In the first instance, *instructions* will be given verbally and will be followed up by facsimile transmissions or emails. Where there is an inconsistency between two types of the same communication, the written one shall prevail, and if there is an inconsistency between an email and a facsimile, the later in time shall prevail.

the *reserve provider* requires and the *DSR Provider* must provide:

- (a) Details of the *DSR Provider's* contact persons who are authorised to receive and respond operationally to *instructions*;
- (b) A normal and a backup contact telephone number for the receipt of *instructions* between the hours of 9 am and 8 pm EDST Monday to Friday;
- (c) An emergency and emergency backup telephone number for the receipt of *instructions* outside of the hours detailed above;
- (d) A facsimile telephone number for receipt of *instructions* to be available 24 hours per day;
- (e) An electronic mail address for receipt of *instructions* to be available 24 hours per day.

the *reserve provider* will provide the *DSR Provider* with the *reserve provider's*:

- (a) Names and telephone numbers for communications concerning *instructions* (which are available 24 hours a day);
- (b) A facsimile telephone number for communications concerning *instructions* (which will be available 24 hours a day);
- (c) An electronic mail address for communications concerning *instructions* (which will be available 24 hours a day).

Except as set out below, *instructions* will be issued by telephone, by facsimile or by email and through the use of the existing systems used for the *market* as modified by the *reserve provider* for the purposes of this agreement.

A *dispatch instruction* may be oral or via the *market systems* or via the *AGC*.

### **COMMITMENT INSTRUCTION**

The *reserve provider* may at any time issue a *commitment instruction* requiring the *DSR Provider* to *commit a generating unit*. Unless otherwise specified, the *generating unit* must *commit* within the *commitment lead time*.

In the *commitment instruction* for a *scheduled generating unit*, the *reserve provider* may also request a time at which the *generating unit* is to reach the *market capacity*, which is earlier than the time contemplated in **Schedule Item S2**. The *DSR Provider* must use reasonable endeavours to comply with the request.

### **DISPATCH INSTRUCTION**

The *reserve provider* may at any time issue a *dispatch instruction* to the *DSR Provider* to *dispatch the reserve* or to *de-commit the reserve*.

A *dispatch instruction*:

- (a) subject to **paragraph (b)**, may require a *generating unit* to generate at any level;
- (b) must not require the *generating unit* to generate below the *minimum operating level* unless the *dispatch instruction* is an instruction to *de-commit*;
- (c) must not require the *generating unit* to generate above the *firm capacity* unless agreed between *the parties*; and
- (d) must not require the *generating unit* to change its level of generation at rates of change greater than those specified in this **Schedule**, unless with the prior agreement of the *DSR Provider*.

The *DSR Provider* must comply with a *dispatch instruction* that complies with these requirements.

### **S3.6 Log**

The *reserve provider* must ensure that all non-written instructions are recorded either by a voice-recording device or in an operational log. If an instruction is recorded in an operational log, the recording should state the name or position of the person to whom the instruction was given.

## **S4 Testing Requirements**

### **S4.1: Demonstration of reserve**

The *DSR Provider* must conduct tests 1, 2 and 3 to demonstrate to the *reserve provider* that the *reserve equipment* is functional.

#### **Test 1: Operation of the generating unit at the firm capacity for a period of not less than 1 hour.**

Test 1 and the accompanying evidence must demonstrate to the *reserve provider* that the *generating unit* can be operated in a constant and stable manner as required by the *Rules*. During Test 1, where installed, all automatic *control systems* (for example, the *excitation control system* and *governor system*) must be operating in their automatic regulating mode.

Trend display print-outs of the performance of the *generating unit* must be provided to the *reserve provider* as evidence.

If Test 1 was carried out prior to the date of this agreement, but not earlier than 7 November 2005, it may be used as evidence of the carrying out Test 1 for the purposes of this agreement. The *DSR Provider* must provide evidence of the successful performance of Test 1 to the *reserve provider* within 10 *business days* of the test or within 10 *business days* of the date of this agreement, whichever is the later.

**Test 2: Commitment, dispatch and de-commitment of the generating unit under instruction from the reserve provider.**

The *DSR Provider* must demonstrate to the *reserve provider* that the *generating unit* is able to:

- (a) *commit*, under instruction from the *reserve provider*, within the *commitment lead time*;
- (b) once *committed*, generate at a level above the greater of the *minimum operating level* and the *market capacity*, and in accordance with the *dispatch instructions* or *activation instructions* issued by the *reserve provider*;
- (c) *de-commit*, under that from the *reserve provider* within the *de-commitment lead time*.

During Test 2, where installed, all automatic *control systems* (for example, the *excitation control system* and *governor system*) must be operating in their automatic regulating mode. Where installed, the *generating unit* must be operating under the control of the *AGC*.

The three tests described in paragraphs (a), (b) and (c) must be carried out in sequence. A failure to perform any one or more of the tests successfully constitutes a failure of Test 2.

If Test 2 was carried out prior to the date of this agreement, but not earlier than 7 November 2005, it may be used as evidence of the carrying out of Test 2 for the purposes of this agreement. The *DSR Provider* must provide evidence of the successful performance of Test 2 to the *reserve provider* within 10 *business days* of the test or within 10 *business days* of the date of this agreement, whichever is the later.

**Test 3: Reserve management facilities**

If requested by the *reserve provider*, the *DSR Provider* must demonstrate to the *reserve provider* the *reserve equipment* and the facilities and procedures to be used to manage and administer the *reserve*. The demonstration must be carried out within 5 *business days* of the *reserve provider's* written request, or as otherwise agreed with the *reserve provider*.

The demonstration must show to the *reserve provider's* satisfaction that the agreed measurement and verification requirements **Schedule Item S6** are being correctly determined.

**Test 4: Functional test, demonstration and procedures**

The *reserve equipment* and information protocols the *DSR Provider* will be using to centrally activate will be functionally tested.

Test 4 must demonstrate that the required notifications can be provided to the operator of each part of the *reserve equipment* in sufficient time to allow it to be *activated* according to the *contracted levels of performance* and *minimum technical requirements* set out in **Schedule Item S3**. *Pre-activation* and *activation* are not required as part of Test 4. The *DSR Provider* shall provide the test certificate/report (or equivalent) to the *reserve provider* within 5 *business days* of execution of this agreement or such later date agreed by the *reserve provider*.

If requested by the *reserve provider*, the *DSR Provider* must demonstrate how the *DSR Provider* would (if called on to do so) comply with a *pre-activation instruction* and an *activation instruction*. The demonstration must be carried out within 5 *business days* of the *reserve provider's* written request, or as otherwise agreed with the *reserve provider*.

For each part of the procedures that have been accepted by the relevant consumers, they shall be provided to the *reserve provider* (if some procedures are generic, a typical procedure will

suffice). The procedures must include information protocols and indicate the steps to be carried out for:

- pre-activation of that part of the *load reduction*;
- activation of that part of the *load reduction*;
- *de-commitment* of that part of the *load reduction*; and
- the notifications and responses required for each of Availability Advice, *pre-activation*, *activation* and *de-commitment*.

## S4.2 Periodic testing

The *DSR Provider* must test *generating units* once per week in accordance with this **Schedule Item S4.2** at a time agreed with the *reserve provider*.

### **Scheduled generating units**

Each test of a *scheduled generating unit* will entail the following:

- (a) The *DSR Provider* must submit a *dispatch offer* that will result in the *generating unit* being *dispatched* and operating for at least a period of [1] hour.

### **Generating units other than a scheduled generating unit**

Each test of a *generating unit* other than a *scheduled generating unit* will entail the following:

- (a) The *generating unit* must be in its normal state of readiness to accept a *dispatch instruction* or *activation instruction* from the *reserve provider* (that is, there must be no pre-preparation of the *generating unit* for the test).
- (b) At the commencement of the test, the *DSR Provider* must bring the *generating unit* to *synchronous speed*, *synchronise* the turbo-generator to the *network* and *connect* to the *network*.
- (c) The *DSR Provider* must increase the power supplied to the *network* by the *generating unit* at a rate not less than the minimum rate of change specified in this **Schedule Item S4.2**, until a rate of *generation* equal to the *minimum operating level*. The time from commencement of the test to the output from the *generating unit* reaching *minimum operating level* must not be longer than the *commitment lead time*.
- (d) The *generating unit* must remain at the level specified in **paragraph (c)** for a minimum of [1] hour (and not to excessively exceed [1] hour).
- (e) The *generating unit* must then reduce its load and *disconnect* from the *network*.

Throughout the test, the *DSR Provider* must ensure that the *generating unit* satisfies all of the stability and performance requirements of the *Rules*. The *DSR Provider* must ensure that automatic *control systems* such as the *excitation control system* and *governor system* are in their automatic modes of operation while the *generating unit* is connected to the *network*, unless otherwise agreed by the *reserve provider*.

Specific exceptions to these requirements must be obtained in writing from the *reserve provider*.

## S4.3 Reserve Equipment and Protocols

The *reserve equipment* and information protocols for the provision of the *reserve* by *generating units* other than *scheduled generating units* will be functionally tested at least monthly. This will be a demonstration within realistic timeframes of:

- (a) performance of the *reserve equipment* and information protocols for *commitment* of *generating units*;
- (b) performance of the *reserve equipment* and information protocols for *activation* of the *reserve*;

- (c) performance of the *reserve equipment* and information protocols for *de-commitment of the generating units*; and
- (d) performance of the *reserve equipment* and information protocols for *de-commitment of the generating units*.

The test must demonstrate that the required notifications can be provided to the operator of each *reserve* in sufficient time to allow the *reserve* to be *activated*. *Commitment* and *activation* of the *reserve* will not be required in the demonstration.

## S5 Maintenance

### S5.1 Coordination of maintenance

At least 24 hours before any maintenance of the *reserve equipment* (or a lesser time, if the nature of the requirement for maintenance or repair precludes the *DSR Provider* from providing at least 24 hours' notice), the *DSR Provider* must notify the *reserve provider* of that maintenance. The notification must include the following information:

- (a) the reason for the maintenance;
- (b) the proposed date(s) and times of the maintenance;
- (c) the expected reduction in the capacity during the maintenance period; and
- (d) the *DSR Provider's* assessment of the urgency of the maintenance.

The *DSR Provider* must notify the *reserve provider* of any deviation from this advice before or during the maintenance period as soon as practicable.

The timing of *agreed maintenance* must be agreed between the parties.

Despite the *reserve provider* agreeing to the timing of maintenance, the *reserve provider* may at any time request the *DSR Provider* to defer any maintenance. the *reserve provider* may only request the *DSR Provider* to defer maintenance if the *reserve provider* considers it is likely to wish the *reserve* to be *committed* or *dispatched/activated* at or about that time. If requested by the *reserve provider*, the *DSR Provider* must make a good faith assessment of the risks associated with the deferral of the relevant maintenance in relation to the ability of the *reserve service* to meet the *contracted level of performance* and notify the *reserve provider* of that assessment.

The *DSR Provider* must comply with a request by the *reserve provider* to defer maintenance, unless, in the *DSR Provider's* reasonable opinion, damage to the *reserve* is imminent, or the deferral of the maintenance significantly increases the risk of imminent danger to the safety of personnel.

The *reserve provider* will not be liable to reimburse any costs of the *DSR Provider* incurred in respect of deferral of maintenance if the *reserve provider* gives notice to the *DSR Provider* of the intended deferral at least 24 hours before the proposed commencement of the maintenance or within two hours after the *reserve provider* receipt of the *DSR Provider's* notice of the maintenance, whichever is the later.

If the *reserve provider* gives a notice to defer maintenance at a time that is:

- (a) less than 24 hours prior to the planned commencement of the maintenance; or
- (b) more than two hours after the *reserve provider's* receipt of the *DSR Provider's* notice of the maintenance,

whichever is the later:

- (c) the *DSR Provider* must use reasonable endeavours to defer the maintenance; and
- (d) the *reserve provider* must reimburse the *DSR Provider* for any reasonable expenses the *DSR Provider* incurs that cannot be avoided and are directly attributable to the deferral, upon the *DSR Provider's* provision of evidence of incurring of the expense to the *reserve provider*.

## S5.2 Planned maintenance for *generating units*

The maintenance that is planned to occur during the term of this agreement is as follows:

<i>Generating Unit</i>	<b>Proposed Maintenance Dates</b>	<b>Firm Capacity Reduction</b>	<b>Availability Reduction</b>
[Insert the <i>generating unit</i> name, designation and location]	[Insert the proposed dates and times of the planned maintenance]	[Insert the expected reduction in the <i>firm capacity</i> of the <i>generating unit</i> during the maintenance period]	[Insert the expected reduction in the availability (if any) due to the planned maintenance of the <i>generating unit</i> .]

## S6 Measurement and Verification

### S6.1 Scheduled Generating Units

#### Measurement

*Metered data* will be used to determine the quantity of energy *dispatched* from a *connection point* in respect of the *reserve*.

The *reserve provider's* energy management system will be used to determine the level at which each *generating unit* is generating.

#### Verification

Verification of *dispatch* of the *reserve* will be via the existing *market* systems and energy management systems located at the *reserve provider control centre*. The *DSR Provider* will not be required to verify the *dispatch* of the *reserve*.

### S6.2 Generating units other than scheduled generating unit

## Measurement

The *reserve* delivered by a *generating unit* shall be *metered* by a *metering installation* meeting the requirements of a type 1, 2, 3 or 4 *metering installation* as detailed in clause S7.2 of the *Rules* to measure the electrical output or change in electrical consumption as a result of the *activation instruction*. The *metering installation* must be installed by a NEMMCO accredited Metering Provider, and data collected by a NEMMCO accredited Metering Data Provider (category MDA 1-4).

The *reserve provider* may require that the *connection point* and *metering* be recorded within NEMMCO's *connection point* management system (MSATS).

The *DSR Provider* must provide the following information to the *reserve provider* :

- (a) details as to the *metering* equipment the *DSR Provider* proposes to use for the *reserve*;
- (b) the specifications of that *metering* equipment;
- (c) where *metering* equipment must be installed, the date by which the *metering* equipment will be functional;
- (d) how often or when each *meter* will be read; and
- (e) the method of determination of the energy from *meter* records.

All *metering* equipment must be in place and functional by 6 January 2005 or such later date agreed by the *reserve provider*.

## Verification

The *DSR Provider* must attach the following information when providing energy *dispatch* information under **Schedule Item S6.2**:

- (a) The energy activated by the *reserve* in each *trading interval* commencing from the *activation start time* to the *activation end time*;
- (b) Sufficient detail in summarised form as to the results of each step of the calculation used to determine the amount of energy *activated*; and
- (c) Any other information that the *reserve provider* may reasonably request from time to time that may be used to verify the amount of energy *activated*.

If the *reserve provider* requests further information relating to the measurement and determination of the *activated* energy, the *DSR Provider* must provide that information to the *reserve provider* within 2 *business days* of the *reserve provider's* request.

## S7 Charges

### S7.1 Charges

For each *billing period*, the *DSR Provider* will be entitled to charge the *reserve provider*:

- (a) an *availability charge* in respect of that *billing period*, which is equal to the amount calculated in accordance with **Schedule Item S7.2** in respect of that *billing period* provided that if the *DSR Provider* does not pass any *periodic tests* or is unable to



supply any *reserve* when called upon to do so, no *availability charge* is payable to the *DSR Provider* for that *billing period*;

- (b) an *enabling charge* in respect of that *billing period*, which is equal to the sum of the amounts calculated in accordance with **Schedule Item S7.2** in respect of *trading intervals* that fall in that *billing period* provided that if the *DSR Provider* is unable to supply any *reserve* when called upon to do so, no *enabling charge* is payable to the *DSR Provider* for that *billing period*; and
- (c) where *reserve* has been *dispatched* or *activated* during a *trading interval* in accordance with a *dispatch instruction* or *activation instruction*, a *usage charge*, which is calculated in accordance with **Schedule Item S7.2** in respect of that *trading interval*.

## S7.2 Calculation of Charges

- (a) The *availability charge* to be invoiced in respect of each *billing period* is \$[ ].
- (b) The *enabling charge* to be invoiced in respect of each *billing period*:
  - (i) is only payable in respect of *non-scheduled generating units*; and
  - (ii) is equal to the product of \$[ ] and the number of times a *pre-activation instruction* (not including *instructions* amending previous *instructions*) is given.
- (c) The *usage charge* to be invoiced in respect of each *billing period*:
  - (i) in the case of a *scheduled generating unit*, if energy is delivered at a *connection point* during a *trading interval* in accordance with a *dispatch instruction*, an amount is calculated for that *connection point* in respect of that *trading interval* equal to the product of \$[ ]/MWh and the amount (in MWh) of the energy sent out (determined in accordance with **Schedule Item S6.1**) to the *network* at the *connection point* pursuant to that *dispatch instruction* in that *trading interval*;
  - (ii) in the case of a *non-scheduled generating unit*, if energy is delivered at a *connection point* during a *trading interval* in accordance with an *activation instruction*, an amount is calculated for that *connection point* in respect of that *trading interval* equal to the product of \$[ ]/MWh and the amount (in MWh) of the energy sent out (determined in accordance with **Schedule Item S6.2**) to the *network* at the *connection point* pursuant to that *activation instruction* in that *trading interval*.

## S8 Term

The *DSR Provider* must provide each *reserve* in Column 1 for the period commencing at midnight at the end of the date in Column 2 and ending at midnight at the end of the date in Column 3 of the table below:

Reserve	Commencement	Conclusion

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## Schedule Load Reduction

### S1 Definitions

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In this **Schedule**:

“*activation instruction*” means an instruction from the *reserve provider* for the *reserve* to become *activated*

“*activation lead time*” means the period between the issue of an *activation instruction* and the time at which the *reserve* is ready to be *activated*. The activation lead time for each *reserve* is specified in **Schedule Item S2**.

“*block*” means the minimum amount of *reserve* that can be *activated* by the *reserve provider*.

“*communication*” means any notice, demand, approval, consent or other communication required or given by a party to another party pursuant to or in connection with this agreement (including, *pre-activation instructions*, *activation instructions*, *commitment instruction* and *de-commitment instruction*).

“*consumer*” means in respect of any premises forming part of the *load reduction*, the person listed as such in **Schedule Item S2**.

“*de-commit*” means cancelling the *activation* of the *reserve*, and allowing the consumption of electricity to meet the needs of the *consumers*.

“*de-commitment lead time*” means the period required for the *reserve service* to achieve *de-commitment* of *DSR Provider* in **Schedule Item S2**.

“*de-commitment instruction*” means an instruction from the *reserve provider* to *de-commit* the *reserve*.

“*firm capacity*” means the *loading level* reduction set out in **Schedule Item S2**.

“*load reduction*” is the reduction (in MW) in the level at which electricity is taken from the *network* at the *connection points*.

“*pre-activation instruction*” means an instruction from the *reserve provider* for the *reserve* to prepare to become *activated*.

“*pre-activation lead time*” means the time required for the *reserve* to reach a state of readiness to act upon an *activation instruction* as specified in **Schedule Item S2**.

“*standby generating unit*” means a *generating unit* that is used to supply load that has been *disconnected* from the *network* in order to provide the *reserve*.

### S2 Reserve

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#### S2.1 Load reduction details

The *load reduction* consists of the following:

Name of consumer	Firm capacity (7 am – 10 pm EDST weekdays)	Location	Does reduction in consumption rely on use of standby generating unit?	Connection point meter number
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
[Name]		[Address]	[yes/no]	
<b>TOTAL</b>		-	-	-

**[Exclusions]**

It is noted that the facility of [consumer name] is expected to be shut down during the period [ ] to [ ] and is therefore not included as part of the load reduction during that period.]

**[Market capacity]**

As none of the load reductions described in the above table form part of a scheduled load, the market capacity of each of them is zero.]

**Pre-activation, Activation and De-commitment Requirements**

Load can be pre-activated, activated and de-committed with the following time characteristics:

Proportion of total capacity*	Pre-activation lead time	Activation lead time	De-commitment lead time
[ ]%	[ ] hours	[ ] hours	[ ] hours

\* long term average

**Activation constraints**

Each part of the load reduction has the following activation constraints (assuming a maximum period of 6 hours on a day on which that part of the load reduction is activated):

Name of consumer	
Maximum continuous operation	
Minimum time between activation	

Name of consumer	
Constraints relating to time of day availability	
Constraints relating to day of week availability	
Maximum number of days per week of activation	
Maximum number of activations over the term	
Maximum number of consecutive days of activation in a week	

### Interrelations of constraints

The following constraints are interrelated in the following ways:

[ ]

### Normal Operating Schedule

Each load reduction has the following normal operating schedule:

Name of <i>consumer</i>	Normal operating schedule
[Name]	
[Name]	
[Name]	
[Name]	
[Name]	
[Name]	

## S3 Contracted Levels of Performance

The contracted level of performance is the provision of the *firm capacity* for load reduction that conforms to the *minimum technical requirements*, performance criteria and *minimum availability requirements* of this Schedule.

### S3.1 Minimum Technical Requirements

- (a) the *load reduction* must be able to be *pre-activated* and *activated* by instructions to a single point of contact with operational responsibility for the *reserve*;
- (b) the *load reduction* must be *activated* as a *block* of not less than 10 MW, which may be made up of smaller components that are managed by the *DSR Provider*;
- (c) the *load reduction* must be sustainable for a period of at least one hour.

### S3.2 Performance Criteria

The *load reduction* must be capable of:

- (a) upon receiving from the *reserve provider* a *pre-activation instruction*, preparing for *activation* within the *pre-activation lead time*;

- (b) upon receiving from the *reserve provider* an *activation instruction*, *activating* within the *activation lead time*;
- (c) once *activated* and upon receiving a *de-commitment instruction* from the *reserve provider*, *de-committing* in accordance with the *de-commitment lead time*.

No part of the *load reduction* shall be *activated* prior to receipt of a relevant *activation instruction*, without the prior consent of the *reserve provider*.

The *load reduction* being *activated* shall not lead to any consequent increase in the rate at which electricity is taken from the *network* by any other equipment or process owned by the *consumer* unless this effect has been deducted from the *firm capacity*.

### S3.3 Minimum Availability

The *minimum availability requirement* will not be met if:

- (a)  $WA_{m\_avg}$  calculated in respect of a *billing period* is less than the *firm capacity* in respect of that *billing period*;
- (b) an *activation instruction* has been given in respect of:
  - (i) three or fewer days (including zero) occurring in a *week* and  $DA_{w\_avg}$  calculated in respect of that *billing period* is less than  $WA_{w\_avg}$  calculated in respect of that *billing period*; or
  - (ii) more than three days occurring in a *billing period* and  $DA_{w\_avg}$  (taking into account only the first three days in that *billing period* in respect of which a *day ahead availability notice* was given) calculated in respect of that *billing period* is less than  $WA_{w\_avg}$  calculated in respect of that *billing period*,

provided that:

  - (iii) a *day ahead availability notice* has been requested at least once in that *billing period*; and
  - (iv) an *activation instruction* was given under **clause 3.4** in respect of any part of the *contracted reserve* only in respect of a day or days in that *billing period* in respect of which a *day ahead availability notice* was requested; or
- (c) an *activation instruction* has been given in respect of:
  - (i) three or fewer days occurring in a *billing period* and the  $E_{event}$  on any day on which an *activation instruction* is given is less than the corresponding  $DA_{event}$ ; or
  - (ii) more than three days occurring in a *billing period* and the  $E_{event}$  on any of the first three days on which an *activation instruction* is given is less than the corresponding  $DA_{event}$ .

To avoid doubt, it is possible for more than one default to occur under this **paragraph (c)** during a *billing period*.

The amounts  $WA_{m\_avg}$ ,  $WA_{w\_avg}$ ,  $DA_{w\_avg}$ ,  $E_{event}$  and  $DA_{event}$  will be calculated as follows:

$WA_{m\_avg}$  The average of the Weekly Availability will be determined for each *billing period* that occurs in the period specified in **Schedule Item S7**. The determination will only include the availability figures set out in the *weekly availability notice* applicable for each *trading interval* falling between the hours of 7 am EDST to 10 pm EDST on *business days* falling within the period covered by the advice. The availability for a *trading interval* is a summation for all the *reserve*.

$WA_{w\_avg}$  The average of the Weekly Availability will be determined for each *billing period* that occurs in the period specified in **Schedule Item S7**. The determination will only include the availability figures set out in the *weekly availability notice* applicable for each *trading interval* falling between the hours of 7 am EDST to 10 pm EDST on *business days* falling within the period covered by a *day ahead availability notice*. The availability for a *trading interval* is a summation for all the dispatchable *blocks*.

$DA_{w\_avg}$  The average of the Day Ahead Availability will be determined for each *billing period* that occurs in the period specified in **Schedule Item S7**. The determination will only include the availability figures set out in the *day ahead availability notice* applicable for each *trading interval* falling between the hours of 7 am EDST to 10 pm EDST on *business days* falling within the period covered by the advice. The availability for a *trading interval* is a summation for all the *reserve*.

$E_{event}$  In respect of a day on which an *activation instruction* is given in respect of a *reserve block*, the summation of the amounts (in MWh) of the reduction in the amount of energy taken at each relevant connection point pursuant to an *activation instruction* in respect of the parts of the *reserve* comprising that *block* during each *trading interval* occurring in the period commencing on the activation start time and ending at the time which is the earlier of 6 hours from that time and the activation end time.

The amount of the reduction at a connection point during a *trading interval* is as determined by the methods described in **Schedule Item S5**, but will exclude for the purposes of calculating  $E_{event}$  the amount of any reduction occurring in the period between the activation end time specified in the latest *activation instruction* given in relation to that *trading interval* and that *block* and the time at which *activation* actually ceased.

$DA_{event}$  In respect of a day on which an *activation instruction* is given in respect of a *reserve block*, the amount (in MWh) of the expected reduction in the amount of energy taken at each relevant connection point during each *trading interval* occurring in the period commencing on the *activation start time* and ending at the time which is the earlier of 6 hours from that time and the *activation end time*. The amount of the expected reduction is equal to the reduction that would be achieved based on the summation of the availability figures set out in the *day ahead availability notice* for that

reserve *block* in respect of each such *trading interval* of *activation* in that 6 hour period, assuming that the reserve *block* were to be *activated* at the level specified in that advice throughout each such *trading interval*.

### **S3.4 Availability notification by the DSR Provider**

The *DSR Provider* must provide to the *reserve provider* availability notifications as detailed below for each type of *reserve*.

The *DSR Provider* must not declare as available any capacity it knows or ought to know is not functioning to a satisfactory level of performance or is the subject of maintenance, where such lower level of performance or maintenance will in any way affect the ability of the *reserve* to meet the requirements specified in this **Schedule**.

In this **Schedule Item S3.4**, term “*week*” means each *trading interval* falling between the hours of 7.00 am EDST and 10.00 pm EDST on a week day in a period of seven days commencing at 12.30 am EST on the Saturday and ending at 12.30 am EST on the following Saturday.

#### **WEEKLY AVAILABILITY ADVICE**

By 3 pm EDST each Friday, the *DSR Provider* must provide a Weekly Availability Advice to the *reserve provider* setting out advice on the availability of each *block* for each *trading interval*. This information will include for each *block*:

- the designation of the *block*;
- the *firm capacity available* for each such *trading interval*; and
- such other information concerning the availability of the *load reduction* as the *reserve provider* may reasonably request from time to time.

#### **DAY AHEAD AVAILABILITY ADVICE**

On the day prior to possible *activation*, the *reserve provider* may request the *DSR Provider* to give a Day Ahead Availability Advice. The information will include for each *block* for each *trading interval* (the time of which is given in EST) falling in the period commencing at 7.00 am EDST on the following morning and finishing at 10.00 pm EDST on that day:

- the designation of the *block*;
- for each such *trading interval*, the level at which the *load reduction* is available (in MWh) for that *trading interval*, for that reserve *block*; and
- such other information concerning the availability of the *load reduction* as the *reserve provider* may reasonably request from time to time.

The *reserve provider* will make its request by 9:30 am EDST, for which the *DSR Provider* is required to respond by 11 am EDST.

#### **AD HOC AVAILABILITY ADVICE**

The *reserve provider* may request the *DSR Provider* to provide advice on availability over other periods on an ad hoc basis. If requested by the *reserve provider*, the *DSR Provider* must provide an Ad Hoc Availability Advice setting out information including for each *block*:

- the designation of the *block*;
- for each *trading interval* falling in the period requested by the *reserve provider*, the level at which the *load reduction* is available (in MWh) for that *trading interval*, for that *block*; and
- such other information concerning the availability of *load reduction* as the *reserve provider* may reasonably request from time to time.

The *DSR Provider* is required to make reasonable endeavours to provide this advice as soon as possible.

### S3.5 Instructions by the *reserve provider*

In this **Schedule Item S3.5**, an “*instruction*” means any notification by the *reserve provider* to the *DSR Provider* in respect of the *reserve* emanating from the *reserve provider’s control centre*, which shall be taken by the *DSR Provider* to be an official request by the *reserve provider* in accordance with this **Schedule Item 3.5**.

In the first instance, *instructions* will be given verbally and will be followed up by facsimile transmissions or emails. Where there is a dispute between two types of the same communication, the written one shall prevail.

The *reserve provider* requires and the *DSR Provider* must provide:

- Details of the *DSR Provider’s* contact persons who are authorised to receive and respond operationally to *instructions*;
- A normal and a backup contact telephone number for the receipt of *instructions* between the hours of 9 am and 8 pm EDST Monday to Friday;
- An emergency and emergency backup telephone number for the receipt of *instructions* outside of the hours detailed above;
- A facsimile telephone number for receipt of *instructions* to be available 24 hours per day;
- An electronic mail address for receipt of *instructions* to be available 24 hours per day.

The *reserve provider* will provide the *DSR Provider* with the *reserve provider’s*:

- Names and telephone numbers for communications concerning *instructions* (which are available 24 hours a day);
- A facsimile telephone number for communications concerning *instructions* (which will be available 24 hours a day);
- An electronic mail address for communications concerning *instructions* (which will be available 24 hours a day).

### PRE-ACTIVATION INSTRUCTION

The *pre-activation instruction* shall contain the following instructions:

- the amount of *load reduction* that the *DSR Provider* must prepare for *activation*;
- the time at which the relevant *load reduction* is to be ready to be *activated* (the “*commitment time*”); and
- the time at which the relevant *load reduction* is expected to be requested to *de-commit* (the “*de-commitment time*”).



The *commitment time* shall not be earlier than the time of issue of the *pre-activation notification* plus the *commitment lead time*, unless otherwise agreed between the parties.

The *de-commitment time* shall not be earlier than the *commitment time* plus the *de-commitment lead time*, unless otherwise agreed between the parties.

The level of *activation* in any *trading interval* of a *load reduction* referred to in a *pre-activation notice* shall be not more than the level specified in the relevant Day Ahead Availability Notice for that *load reduction* and *trading interval*, unless otherwise agreed between the parties.

For a *load reduction* with a *commitment lead time* of zero, a *pre-activation instruction* will not be required and the *load reduction* shall be taken to be constantly in a state of readiness to act on an *activation instruction* issued by the *reserve provider*.

The issue of a *pre-activation instruction* does not imply that an *activation instruction* will be issued.

## ACTIVATION INSTRUCTION

The *activation instruction* shall indicate:

- (a) the amount of *load reduction* the *DSR Provider* must *activate* for each *trading interval* from the *activation start time* to the *activation end time*;
- (b) the time by which the relevant *load reduction* is to be *activated* (the “*activation start time*”); and
- (c) the completion time for the activation of the relevant *load reduction* (the “*activation end time*”).

If a *load reduction* has been *activated* pursuant to an *activation instruction*, the level at which the *load reduction* is *activated* shall be the level specified in the *activation instruction*.

The *reserve provider* must not give an *activation instruction* of an amount greater than that specified in the Day Ahead Availability Advice or the Ad Hoc Availability Advice unless otherwise agreed between the parties.

The *activation start time* shall not be earlier than the time of issue of the *activation instruction* plus the *activation lead time*, unless otherwise agreed between the parties.

The *activation end time* shall not be:

- (f) earlier than the *activation start time* plus the *de-commitment lead time* specified, unless otherwise agreed between the parties; or
- (g) later than 9 hours following the time of the *activation start time* specified in that *activation instruction*, unless otherwise agreed between the parties. The *DSR Provider* must not unreasonably withhold its consent to a request from the *reserve provider* for a later *activation end time* and the *DSR Provider* must use reasonable endeavours to comply with that later *activation end time*.

### S3.6 Log

The *reserve provider* must ensure that all non-written instructions are recorded either by a voice-recording device or in an operational log. If an instruction is recorded in an operational log, the recording should state the name or position of the person to whom the instruction was given.

## S4 Testing Requirements

### S4.1: Demonstration of *reserve*

The *DSR Provider* must conduct tests 1, 2 and 3 to demonstrate to the *reserve provider* that the *reserve equipment* is functional.

### Test 1: Reserve management facilities

If requested by the *reserve provider*, the *DSR Provider* must demonstrate to the *reserve provider* the *reserve equipment* and the facilities and procedures to be used to manage and administer the *reserve*. The demonstration must be carried out within 5 *business days* of the *reserve provider's* written request, or as otherwise agreed with the *reserve provider*.

The demonstration must show to the *reserve provider's* reasonable satisfaction that the agreed measurement and verification requirements **Schedule Item S6** are being correctly determined.

### Test 2: Functional test, demonstration and procedures

The *reserve equipment* and information protocols the *DSR Provider* will be using to centrally activate will be functionally tested.

Test 2 must demonstrate that the required notifications can be provided to the operator of each part of the *reserve equipment* in sufficient time to allow it to be activated according to the contracted levels of performance and minimum technical requirements set out in **Schedule Item S3**. Pre-activation and activation are not required as part of Test 2. The *DSR Provider* shall provide the test report to the *reserve provider* within 5 *business days* of execution of this agreement or such later date agreed by the *reserve provider*.

If requested by the *reserve provider*, the *DSR Provider* must demonstrate how the *DSR Provider* would (if called on to do so) comply with a pre-activation instruction and an activation instruction. The demonstration must be carried out within 5 *business days* of the *reserve provider's* written request, or as otherwise agreed with the *reserve provider*.

For each part of the procedures that have been accepted by the relevant consumers, they shall be provided to the *reserve provider* (if some procedures are generic, a typical procedure will suffice). The procedures must include information protocols and indicate the steps to be carried out for:

- (a) pre-activation of that part of the *load reduction*;
- (b) activation of that part of the *load reduction*;
- (c) de-commitment of that part of the *load reduction*; and
- (d) the notifications and responses required for each of Availability Advice, pre-activation, activation and de-commitment.

### Test 3: Standby generation

Testing is only required where *load reduction reserve* relies on *standby generation* being available to supply the load disconnected from the network.

A current test certificate (or test report or other formal advice) is required for each *standby generating unit*. Test 3 must be carried out prior to 1 January 2006 but not prior to 7 November 2005. As a minimum, Test 3 must indicate the successful starting of the prime mover and energisation of the alternator. The *DSR Provider* shall provide the test certificate (or equivalent) to the *reserve provider* within 5 *business days* of the execution of the agreement or such later date agreed by the *reserve provider*.

## S4.2 Periodic Testing

Testing is only required where *load reduction reserve* relies on *standby generation* being available to supply the load disconnected from the network.

A current test certificate (or test report or other formal advice) is required at all times for each *standby generating unit*. The test relating to the test certificate (or equivalent) must be carried out at least monthly. As a minimum, the test must indicate the successful starting of the prime mover and energisation of the alternator. The test certificate (or equivalent) shall be provided to the *reserve provider* within 10 *business days* of the test.

Specific exceptions to these requirements must be obtained in writing from the *reserve provider*.

## S5 Maintenance

At least 24 hours before any maintenance of the *reserve equipment* (or a lesser time, if the nature of the requirement for maintenance or repair precludes the *DSR Provider* from providing at least 24 hours' notice), the *DSR Provider* must notify the *reserve provider* of that maintenance. The notification must include the following information:

- (a) the reason for the maintenance;
- (b) the proposed date(s) and times of the maintenance;
- (c) the expected reduction in the capacity during the maintenance period; and
- (d) the *DSR Provider's* assessment of the urgency of the maintenance.

The *DSR Provider* must notify the *reserve provider* of any deviation from this advice before or during the maintenance period as soon as practicable.

The timing of *agreed maintenance* must be agreed between the parties.

Despite the *reserve provider* agreeing to the timing of maintenance, the *reserve provider* may at any time request the *DSR Provider* to defer any maintenance. The *reserve provider* may only request the *DSR Provider* to defer maintenance if the *reserve provider* considers it is likely to wish the *reserve* to be *committed* or *activated* at or about that time. If requested by the *reserve provider*, the *DSR Provider* must make a good faith assessment of the risks associated with the deferral of the relevant maintenance in relation to the ability of the *reserve service* to meet the *contracted level of performance* and notify the *reserve provider* of that assessment.

The *DSR Provider* must comply with a request by the *reserve provider* to defer maintenance, unless, in the *DSR Provider's* reasonable opinion, damage to the *reserve* is imminent, or the deferral of the maintenance significantly increases the risk of imminent danger to the safety of personnel.

The *reserve provider* will not be liable to reimburse any costs of the *DSR Provider* incurred in respect of deferral of maintenance if the *reserve provider* gives notice to the *DSR Provider* of the intended deferral at least 24 hours before the proposed commencement of the maintenance or within two hours after the *reserve provider* receipt of the *DSR Provider's* notice of the maintenance, whichever is the later.

If the *reserve provider* gives a notice to defer maintenance at a time that is:

- (e) less than 24 hours prior to the planned commencement of the maintenance; or
- (f) more than two hours after the *reserve provider's* receipt of the *DSR Provider's* notice of the maintenance,

whichever is the later:

- (g) the *DSR Provider* must use reasonable endeavours to defer the maintenance; and
- (h) the *reserve provider* must reimburse the *DSR Provider* for any reasonable expenses the *DSR Provider* incurs that cannot be avoided and are directly attributable to the deferral,

upon the *DSR Provider's* provision of evidence of incurring of the expense to the *reserve provider*.

## S5.2 Planned maintenance for *reserve equipment* and *standby generation*

The maintenance that is planned to occur is as follows:

Affected <i>Reserve</i>	Proposed Maintenance Dates	<i>Firm Capacity</i> Reduction	Availability Reduction
[Insert the part of the <i>reserve equipment</i> or <i>standby generation</i> (as applicable) name, designation and location]	[Insert the proposed dates and times of the planned maintenance]	[Insert the expected reduction in the <i>firm capacity</i> of that part of the <i>reserve</i> during the maintenance period]	[Insert the expected reduction in the availability (if any) due to the planned maintenance of that part of the <i>reserve</i> .]

## S6 Measurement and Verification

### S6.1 Measurement

- (a) A suitable method of determining the amount of *activated* energy shall be determined for each part of the *reserve* to reflect the intention of the parties described in **paragraph (b)**.
- (b) The intention of the parties is that the method for determining the amount of *activated* energy should be the most appropriate, verifiable, accurate and practicable way of quantifying the amount by which, in response to an *activation instruction*, the amount of electricity taken at a *connection point* for each part of the *reserve* during each *trading interval* in a period of *activation* has been reduced from the amount which it would otherwise have been during that *trading interval* had an *activation instruction* not been given.
- (c) The *DSR Provider* must, within 5 *business days* of the date of this agreement, make a proposal in relation to a method of determining the amount of *activated* energy that reflects **paragraph (b)**.
- (e) The *metering* and verification arrangements proposed by the *DSR Provider* are subject to the *reserve provider's* approval.
- (f) If agreement cannot be reached between the *reserve provider* and the *DSR Provider* within 5 *business days* after the date on which the *reserve provider* receives that proposal, then the matter will be resolved in accordance with **clause 14**. The

independent expert shall be instructed by the parties to determine how the provisions of this **Schedule Item S6.3** should be applied in order to best achieve **paragraph (b)**.

- (g) If, at any time following the determination of the method to apply for determining the amount of *activated* energy, either party reasonably considers that method is materially inappropriate, then the parties must negotiate in good faith to implement alternative arrangements. If the parties do not reach agreement within 10 *business days*, then the matter will be resolved in accordance with **clause 14**. The independent expert shall be instructed by the parties to determine what improvements or changes to the existing method should be made in the light of the way in which that method has operated under this agreement in order to better reflect **paragraph (b)**.

The *DSR Provider* must recommend to the *reserve provider* an appropriate method of calculation of the energy *activated*. This must include:

- (h) a list of what measuring equipment will be used in the determination, including any new *metering* equipment;
- (i) the performance and characteristics of the measuring equipment (existing and new) that will be used to determine the energy;
- (j) the load profile and any other relevant characteristics of the *load reduction*; and
- (k) concise details of the methodology which the *DSR Provider* proposes to use to calculate the *activated* energy.

The method of determination of the *activated* energy must be agreed by the *reserve provider* and be in place and functional by 6 January 2006 or such other date as agreed by the parties. If an agreement cannot be reached by a date, parties may enter into dispute resolution procedures set out in **clause 14**.

If *load reduction* is required to be *activated* prior to the installation of the *metering* equipment, or agreement cannot be reached as to the method of calculation or the equipment to be used, the *activated* energy will be taken to be 80% of the capacity specified for that part of the *load reduction* in **Schedule Item S2** over the period 7 am EDST to 10 pm EDST on *business days*. Outside these times, the capacity of that part of the *load reduction* will be taken to be 60% of the capacity specified in **Schedule Item S2**.

### **S6.3 Verification**

The *DSR Provider* must attach the following information when providing energy *activation* information under **Schedule Item S7.2**:

- (a) the energy *activated* for each *load reduction* at each half hour commencing from activation start time to activation end time and in which *block* it is included;
- (b) sufficient detail in summarised form as to the results of each step of the calculation used to determine the amount of energy *activated*; and
- (c) any other information the *reserve provider* may reasonably request from time to time that may be used to verify the amount of energy *activated*.

If the *reserve provider* requests further information relating to the measurement and determination of the *activated* energy, the *DSR Provider* must provide that information to the *reserve provider* within 2 *business days* of the *reserve provider's* request.

## S7 Charges

### S7.1 Charges

For each *billing period*, the *DSR Provider* will be entitled to charge the *reserve provider*:

- (a) an *availability charge* in respect of that *billing period*, which is equal to the amount calculated in accordance with **Schedule Item S7.2(a)** in respect of that *billing period* provided that if the *DSR Provider* does not pass any *periodic tests* or is unable to supply any *reserve* when called upon to do so, no *availability charge* is payable to the *DSR Provider* for that *billing period*;
- (b) an *enabling charge* in respect of that *billing period*, which is equal to the sum of the amounts calculated in accordance with **Schedule Item S7.2(b)** in respect of *trading intervals* that fall in that *billing period* provided that if the *DSR Provider* is unable to supply any *reserve* when called upon to do so, no *enabling charge* is payable to the *DSR Provider* for that *billing period*; and
- (c) where *reserve* has been *dispatched* or *activated* during a *trading interval* in accordance with a *dispatch instruction* or *activation instruction*, a *usage charge*, which is calculated in accordance with **Schedule Item S7.2(c)** in respect of that *trading interval*.

### S7.2 Calculation of Charges

- (a) The *availability charge* to be invoiced in respect of each *billing period* is \$[ ].
- (b) The *enabling charge* to be invoiced in respect of each *billing period* is equal to the product of \$[ ] and the number of times a *pre-activation instruction* (not including *instructions amending previous instructions*) is given.
- (c) The *usage charge* to be invoiced in respect of each *billing period*. If the electrical energy taken at the *connection point* in respect of the *reserve* is reduced during a *trading interval* in accordance with an *activation instruction*, an amount is calculated for those *connection points* in respect of the *trading interval* equal to the product of \$[ ]/MWh and the amount (in MWh) of the reduction in the level at which energy is taken (determined in accordance with **Schedule Item S6**) from the *network* at those *connection points* pursuant to that *activation instruction* in that *trading interval*.

## S8 Term

The *DSR Provider* must provide each *reserve* in Column 1 for the period commencing at midnight at the end of the date in Column 2 and ending at midnight at the end of the date in Column 3 of the table below:

Reserve	Commencement	Conclusion

Execution page

EXECUTED as an agreement

SIGNED by
as authorised representative for and on
behalf of NATIONAL ELECTRICITY
MARKET MANAGEMENT
COMPANY LIMITED in the presence
of:

Signature of witness

Name of witness (block letters)

Address of witness

Occupation of witness

By executing this agreement the
signatory warrants that the signatory is
duly authorised to execute this agreement
on behalf of NATIONAL
ELECTRICITY MARKET
MANAGEMENT COMPANY
LIMITED

SIGNED by
as authorised representative for and on
behalf of [insert DSR Provider] in the
presence of:

Signature of witness

Name of witness (block letters)

Address of witness

Occupation of witness

By executing this agreement the
signatory warrants that the signatory is
duly authorised to execute this agreement
on behalf of [insert DSR Provider].

Dated