



FERM (Firm Energy Reliability Mechanism) Agreement Indicative Term Sheet – New Generation

Revision History

Version	Release Date	Comment
1.0	16/06/2025	Consultation draft
1.1	30/06/2025	Minor revision to Table 1

Purpose

This document sets out a summary of the indicative terms and conditions for the proposed Firm Energy Reliability Mechanism (**FERM**) Agreement for long duration capacity providers following a FERM scheme tender in accordance with Part 5 Division 3 of the *National Electricity (South Australia) (Firm Energy Reliability and Orderly Exit Management) Regulations 2025*. In particular, it is directed towards 'new designated electricity entities', being persons who are required or intend to be registered by AEMO as a Generator or Integrated Resource Provider.

This Term Sheet is a draft issued for feedback and market engagement purposes only and will be developed further following stakeholder consultation. It is not an offer to enter into a FERM Agreement with any long duration capacity provider which receives a copy of the Term Sheet. It is not intended to create legal rights for any party or to form a legally binding relationship, obligation or commitment by or involving the South Australian Government.

Recipients of this Term Sheet should not rely on its contents as the sole basis for making any financial, investment or business decisions.

FERM Agreement Terms

No.	Item	Indicative terms
1	Term of FERM Agreement	(i) The Term commences on the Signing Date and continues until the expiry of the Operational Period.
2	Parties	(i) LDC Provider and the Financial Vehicle.
3	Project milestones	The LDC Provider will be required to use best endeavours to meet a series of project milestones or preconditions in respect to the Project by agreed milestone / sunset dates during the Construction Period (in order to reach Full Commercial Operations). These milestones are expected to include: (i) securing all tenure required for the Project; (ii) obtaining all required approvals, authorisations and licences for the Project; (iii) submission of the application to connect to the relevant network service provider in accordance with clause 5.3.4 of the NER;

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No.	Item	Indicative terms
		(iv) obtaining notifications from AEMO under clauses 5.3.4A or 5.3.4B of the NER in respect of the Project; (v) obtaining an offer to connect under clause 5.3.6 of the NER from the relevant network service provider; (vi) obtaining a relevant licence pursuant to Part 3 Division 1 of the <i>Electricity Act 1996</i> (SA); (vii) achieving FID; (viii) issue of an unconditional notice to proceed for the full scope of work under the engineering, procurement and construction contract (or equivalent) for the Project; (ix) the Project is installed and commissioned and capable of being dispatched at its Agreed Capability; (x) the LDC Provider is registered as a Generator or an Integrated Resource Provider with AEMO; (xi) the relevant network service provider / AEMO has confirmed that the Project is unconditionally released from all hold points; (xii) obtaining and holding all required approvals and registration requirements under the NER, including R2 approval from AEMO; and (xiii) achieving Full Commercial Operations. The Financial Vehicle will have the right to terminate the FERM Contract and call upon the Initial Security if certain milestones are not satisfied by the agreed milestone / sunset dates. The LDC Provider will be required to provide periodic reporting on the status and progress of these project milestones. If at any time, the LDC Provider or the Financial Vehicle reasonably believes that the LDC Provider is likely to fail to satisfy a Project milestone, the LDC Provider must submit a cure plan to the Financial Vehicle. Drafting note: an extended period may be provided for new long-lead generation (N+6) to meet certain project milestone dates.
4	Construction obligations	During the Construction Period, the LDC Provider will be required to: (i) diligently progress the work and design, construct, commission, test and complete the Project; and (ii) construct the Project in accordance with good electricity industry practice and all applicable laws and authorisations.
5	Operation requirements	During the Operational Period, the LDC Provider will be required to: (i) operate, maintain, and repair the Project in accordance with all relevant approvals, authorisations and licences and good electricity industry practice; (ii) ensure that the Project materially conforms to the Project Characteristics and is registered with AEMO in central dispatch in line with Project Characteristics; (iii) submit a maintenance plan and report on planned and unplanned maintenance / outages at the required intervals; (iv) use best endeavours to ensure that any planned maintenance that is reasonably likely to affect the Agreed Capability of the Project is undertaken outside of agreed periods;



No.	Item	Indicative terms
		(v) comply with the performance obligations (set out below); (vi) bid and dispatch the Project in good faith in accordance with market signals; (vii) operate the project in a manner which seeks to optimise Project revenue; (viii) not enter into any offtake contract unless at arms length or if between related parties on equivalent terms; (ix) if a new market is established and it is consistent with industry practice to participate in that market, register to participate in that market. Drafting note: a market liquidity obligation will also apply to the LDC Provider under the Regulations.
6	Performance Obligations	During the Operational Period, the LDC Provider will be required to comply with the following performance obligations (referred to collectively as the 'Capacity Commitment') (i) The LDC Provider must ensure that the Project has the Agreed Capacity at all times. (ii) The LDC Provider must ensure that the Project has the Required Actual Capacity at all times during each Forecast LOR Period. (iii) During Forecast LOR Periods, the LDC Provider must comply with AEMO dispatch directions. Relief from this obligation may be granted in specified circumstances, including: (i) where the Project is offline due to a scheduled outage or maintenance; (ii) where the Project is unavailable due to AEMO direction; or (iii) due to a Force Majeure Event. If LDC Provider fails to comply with their Capacity Commitment, they must investigate the cause of the non-compliance and provide a cure plan and comply with that cure plan.
7	Payment and repayment mechanism	(i) The LDC Provider will provide the Financial Vehicle with the information required to calculate payments at the end of each annual reporting period (including a certified statement of net operational revenue, in accordance with Schedule 1) and a notice of payment or repayment, setting out the amount being claimed or owed to the Financial Vehicle. (ii) Payments will be determined as outlined in the proposed commercial model contained in Schedule 1. (iii) All amounts payable under the agreement are exclusive of GST.
8	Alterations to the Facility	(i) The LDC Provider must not make any alteration, expansion or change to the Project without the Financial Vehicle's written consent. (ii) The Financial Vehicle must provide such acceptance and not unreasonably delay acceptance where the alteration, expansion or change will not materially or adversely impact: (a) the Financial Vehicle's rights and obligations; (b) the LDC Provider's ability to earn the expected revenue of the tender bid; and will not result in the Project:



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		(a) no longer being capable of meeting its Capacity Commitment; or (b) reducing its Agreed Capability or Required Actual Capacity. (iii) The parties acknowledge the Financial Vehicle may withhold its consent if the alterations would result in the Project no longer being able to meet its obligations under the Agreement.
9	Market disruption event	(i) In the event of a Market Disruption Event, the parties will be required to negotiate in good faith any required changes to the Agreement to: (a) take into account the impact of the Market Disruption Event on the affected party; (b) as far as practicable, put the relevant party in the same relative commercial position as contemplated by this agreement, or if that is not possible, to achieve an equitable allocation of risk between the parties in relation to the Market Disruption Event.
10	Major Casualty Event and Reinstatement	(i) If a Major Casualty Event occurs, the LDC Provider must notify the Financial Vehicle whether it intends to reinstate the Project within one year. (ii) If LDC Provider elects to reinstate the Project then: (a) LDC Provider must at its own cost reinstate the Project to a state that is substantially the same as prior to the Major Casualty Event; and (b) provide a plan to the Financial Vehicle to reinstate the Project and comply with that plan in all material respects. (iii) The Financial Vehicle may elect to terminate the FERM Agreement if the LDC Provider fails to comply with an approved reinstatement plan in all material respects or does not elect to reinstate the Project.
11	Force Majeure Events	(i) The LDC Provider will not be in breach of the FERM Agreement to the extent it is unable to meet its Capacity Commitment as the result of a Force Majeure Event. (ii) The LDC Provider must do all things reasonably necessary to mitigate or overcome a Force Majeure Event which prevents the LDC Provider from meeting its Capacity Commitment.
12	Change Event	(i) A market standard Change Event regime including cost sharing mechanisms will be included. (ii) If at any time after the Signing Date a Change Event occurs, and that Change Event prevents or materially interferes with the operation of the FERM Agreement or any of the parties' performance of their obligations under the Agreement, then parties will: (a) use their reasonable endeavours to mitigate the effects of the Change Event; and (b) consider and negotiate in good faith any specific amendment to the FERM Agreement requested by a party to preserve the operations of the Agreement in the manner originally intended at the signing date.
13	Default and Termination	(i) A market standard termination regime will be included. (ii) The FERM Scheme Financial Vehicle may terminate for default including in the event of: (a) insolvency of the LDC Provider;



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		(b) non-payment by the LDC Provider; (c) unremedied (or unremittable) material breach by the LDC Provider; (d) where a non-material breach has been notified to the LDC Provider and the LDC Provider has not provided or complied with a cure plan; (e) prolonged failure to achieve the performance obligations; (f) a prolonged Force Majeure Event of more than [XX] days' continuous duration. (iii) The LDC Provider may terminate in the event of: (a) the Financial Vehicle's failure to pay; (b) material breach by the SFV. (iv) Upon notice of default, the defaulting party will be required to submit a cure plan to the other party within a nominated timeframe. Failure to submit or comply with the cure plan will entitle the other party to terminate the FERM Agreement. Drafting note: civil penalties also apply to a breach of relevant obligations under the Regulations by a LDC Provider (including in respect to compliance with a Performance Obligation under the FERM Contract).
14	Insurance	(i) The LDC Provider will be required to obtain and maintain market standard insurances in relation to the Project at its own cost, which may include: (a) contract works insurance for the full reinstatement/replacement value of the Project; (b) industrial special risks insurance of at least the full replacement or reinstatement value of the Project; (c) public and product liability insurance for at least \$20m per event; (d) other insurances required by law. (ii) Insurances must be obtained from insurers with a minimum credit rating of A- or A3.
15	Data/Information provision	(i) The LDC Provider must promptly provide the Financial Vehicle with data relating to the Project as may be requested by Financial Vehicle from time to time. (ii) Such data may include project commissioning data, operational data, operational financial data and other such data as Financial Vehicle may require to monitor compliance with the FERM Agreement and perform its obligations under the Regulations.
16	Audit rights	(i) The Financial Vehicle may commission an independent audit of the LDC Provider's books and records to verify the accuracy of certified statements and availability reports provided in accordance with the FERM Agreement. (ii) The Financial Vehicle will bear the costs of any audit undertaken unless the reports/statements are materially inaccurate in which case the LDC Provider will bear the costs of the audit.
17	Confidentiality	The FERM Agreement will include a market standard confidentiality regime.



No.	Item	Indicative terms
18	Representations and warranties	Market standard representations and warranties will be required by the LDC Provider to the Financial Vehicle, including as to the accuracy of all information provided as part of the tender.
19	Assignment and Change in Control	(i) The LDC Provider must not assign, novate or otherwise transfer its rights or obligations under, or interest in, the Agreement without the Financial Vehicle's prior written consent. (ii) Certain exclusions to the requirement for consent may be included, such as: (a) where the incoming party has the legal, financial and technical capacity to perform the LDC Provider's obligations; (b) if this would not have a material adverse effect on the Project or increase the liability of the Financial Vehicle under the Agreement; and/or (c) where this occurs prior to Full Commercial Operations, if the Financial Vehicle considers that the incoming party would have achieved an equivalent or higher merit score during the tender assessment process. (iii) The Financial Vehicle may assign, novate or otherwise transfer, its rights or obligations under, or interest in, the Agreement to any person who replaces the Financial Vehicle under the Regulations. (iv) The LDC Provider must not undergo a Change in Control without the Financial Vehicle's prior written consent (subject to relevant exceptions, as outlined above). (v) "Control" will have the meaning given in section 50AA of the <i>Corporations Act 2001</i> (Cth), with industry standard modifications.
20	Liability	A market standard liability regime will be included in the Agreement, with standard exclusions / limitations.
21	Security	The LDC Provider may be required to procure and provide to the Financial Vehicle initial security (in the form of a letter of credit or bank guarantee issued by an Australian ADI with an acceptable credit rating and otherwise in a form satisfactory to the Financial Vehicle), calculated on a \$X/MW basis, which may be called upon by the Financial Vehicle following termination for the LDC Provider's default or insolvency, prior to achieving Full Commercial Operations.
22	Dispute Resolution	The Agreement will include a market standard dispute resolution regime that allows for referral to an independent expert in appropriate circumstances.
23	Governing Law	The Agreement is governed by and construed in accordance with the laws of South Australia.
24	Definitions	Agreed Capability means at any time, the capability of dispatching at least [XX]MW with a minimum of 8 hours of continuous rated output into the NEM. Change Event means any of the following, other than where the LDC Provider should reasonably have anticipated the event as at the date of the FERM Agreement: (a) a change in law; (b) a change to the structure or operation of the NEM;



No.	Item	Indicative terms
		(c) an event causing a material change to market conditions in the NEM; and (d) a material change to workplace, industrial relations or a new enterprise bargaining agreement, each to the extent affecting the LDC Provider, but does not include: (a) a Force Majeure Event; (b) any change in planning, environmental or licensing requirements associated with the development, construction or operation of the Project; (c) a change in the NER which, as at the tender date, is the subject of a final determination of the Australian Energy Market Commission or the Energy Security Board; and (d) Market Disruption Events. Construction Period means the period commencing on the Signing Date and ending upon the commencement of the Operational Period. Financial Investment Decision (FID) occurs when: (a) the LDC Provider has secured the equity and/or external debt financing that is required to fund the construction and commissioning of the Project; (b) all conditions precedent to first draw down under that financing referred to in paragraph (a) have been satisfied or waived; and (c) the first draw down referred to in paragraph (b) is made available to the LDC Provider. Financial Vehicle means a person or body appointed under the Regulations to carry out scheme financial functions. Force Majeure Event may include: (a) an electrical or mechanical failure of any plant or equipment located on the generation facility side of the transmission network connection point; (b) an electrical or mechanical failure of any plant or equipment forming part of the Transmission System; (c) if the Project is ready to be energised and there is a delay in the commissioning of the Project in accordance with the NER to a level that would allow the LDC Provider to export a volume of electricity equal to or exceeding their Agreed Capability; (d) a Major Casualty Event; but only to the extent that: (a) the event is beyond the LDC Provider's reasonable control; (b) the LDC Provider has taken reasonable steps to overcome (and mitigate the impact of) the event; (c) the event is not caused or contributed to by the LDC Provider's failure to comply with the terms of the FERM Agreement;



No.	Item	Indicative terms
		and may not include: (a) lack of funds, financial hardship or inability to obtain financing or insurance by the LDC Provider and its related bodies corporate; (b) shortage of materials, consumables, equipment or utilities required by the LDC Provider except the extent it is itself caused by a Project Force Majeure Event; (c) breakdown of the LDC Provider's property or equipment caused by normal wear and tear; (d) strikes and industrial disputes that only affect the LDC Provider; and (e) lack of solar/wind resources. Forecast LOR Periods means each period of time where AEMO forecasts a possible Lack of Reserve 2 and Lack of Reserve 3 event (as defined in the reserve level declaration guidelines) in a day ahead forecast. Full Commercial Operations means the date on which all of the Project milestones for the Project are satisfied. Long Duration Capacity Provider (LDC Provider) means a person who is required or intends to be registered by AEMO as a Generator or Integrated Resource Provider. Major Casualty Event – means an event which causes loss, damage or destruction of at least X% of the rated capacity of the Project (X = per project basis where LDC Provider will be unable to reasonably meet its obligations under the FERM Agreement). Market Disruption Event may include any of the following events: (a) the failure of or delay by AEMO in announcing or publishing spot prices; (b) a change in the location, boundaries, number or abolishment of a regional reference node; and (c) the temporary or permanent discontinuance of the NEM NEL means the National Electricity Law as set out in the Schedule to the <i>National Electricity (South Australia) Act 1996</i> (SA). NER means the National Electricity Rules created pursuant to the NEL. Operational Period means the period commencing upon Full Commercial Operations and ending upon [XXX]. Project means [XXX] Project Characteristics means Capacity (MW) and Storage Capacity (MWh) (where relevant). Regulations means the <i>National Electricity (South Australia) (Firm Energy Reliability and Orderly Exit Management) Regulations 2025</i> (SA), including as amended from time-to-time.



No.	Item	Indicative terms
		Required Actual Capacity means at any time, the capacity to dispatch at least [XX]MW into the NEM (being the sum of power actually being dispatched and available capacity). Scheme Administrator means the person or body appointed under the Regulations to carry out scheme administration functions. Signing Date means the date of execution of the FERM Agreement.

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Schedule 1 - Payments Calculation Formula

Net Revenue Assessment Formula

Generator NR_n (Net Revenue in scheme year n)

$$= R_n (\text{Assessable Revenue in year } n) - C_n (\text{Assessable Costs in year } n)$$

Where R_n and C_n are calculated using Table 1 below.

Table 1 – Revenue and costs included in the annual net revenue calculation

Assessable revenue	• Energy sales (inc negative electricity) • Renewable energy or green products • Supply of ancillary services • Energy market contracts premiums • Other revenues as determined by the Scheme Administrator
Excluded revenue:	• Non-energy related income • Government subsidies incl grants and tax credits
Assessable costs:	• Energy market contract settlement payments
Excluded costs:	• Fuel and electricity purchases, including storage and transport • Routine operation and maintenance costs • Decommissioning costs • Penalties and fines • Non-operational costs (e.g. scheme costs, financing costs, regulatory compliance, depreciation) • Plant upgrades and overhauls



Cap and Collar Payment Assessment Formula

IF $NR_n < \text{Floor}$

$$\text{Scheme Payment}_n = \%_{\text{downnside sharing}} \times (\text{Threshold} - \text{Floor})$$

$$\text{Balance}_n = \text{Balance}_{n-1} + \text{Scheme Payment}_n$$

IF $\text{Floor} < NR_n < \text{Threshold}$

$$\text{Scheme Payment}_n = \%_{\text{downnside sharing}} \times (\text{Threshold} - GNR_n)$$

$$\text{Balance}_n = \text{Balance}_{n-1} + \text{Scheme Payment}_n$$

IF $\text{Threshold} < NR_n < \text{Ceiling}$

$$\text{IF } 0 < \text{Balance}_{n-1} < \%_{\text{upside sharing}} \times (GNR_n - \text{Threshold})$$

$$\text{Generator Payment}_n = \%_{\text{upside sharing}} \times (GNR_n - \text{Threshold}) - \text{Balance}_{n-1}$$

$$\text{Balance}_n = 0$$

$$\text{IF } \%_{\text{upside sharing}} \times (GNR_n - \text{Threshold}) < \text{Balance}_{n-1}$$

$$\text{Generator Payment}_n = 0$$

$$\text{Balance}_n = \text{Balance}_{n-1} - \%_{\text{upside sharing}} \times (GNR_n - \text{Threshold})$$

IF $\text{Ceiling} < NR_n$

$$\text{IF } 0 < \text{Balance}_{n-1} < \%_{\text{upside sharing}} \times (\text{Ceiling} - \text{Threshold})$$

$$\text{Generator Payment}_n = \%_{\text{upside sharing}} \times (\text{Ceiling} - \text{Threshold}) - \text{Balance}_{n-1}$$

$$\text{Balance}_n = 0$$

$$\text{IF } \%_{\text{upside sharing}} \times (\text{Ceiling} - \text{Threshold}) < \text{Balance}_{n-1}$$

$$\text{Generator Payment}_n = 0$$

$$\text{Balance}_n = \text{Balance}_{n-1} - \%_{\text{upside sharing}} \times (\text{Ceiling} - \text{Threshold})$$

The Floor reflects the expected revenue from market and contracts.

Where actual revenue (see Schedule 1) falls below the Revenue Threshold, the LDC Provider may claim payment from the Financial Vehicle up to the difference between the Revenue Threshold and the Revenue Floor.

Where actual revenue earned is between the Revenue Threshold and the Revenue Ceiling, repayments to the Financial Vehicle may be required.



- i. If the LDC Provider does not hold a cumulative positive balance drawn from the Financial Vehicle from previous periods, no payments from the LDC Provider are required.
- ii. If the LDC Provider holds a cumulative positive balance drawn from the Financial Vehicle, repayments are capped by the lesser of the Revenue Ceiling and the cumulative positive balance.

Where actual revenue earned is above the Revenue Ceiling:

- iii. If the LDC Provider does hold a cumulative positive balance drawn from the Financial Vehicle from previous periods, repayments up to this cumulative positive balance are required.
- iv. If the LDC Provider does not hold a cumulative positive balance drawn from the Financial Vehicle from previous periods, the LDC Provider retains all revenue above the Revenue Ceiling.

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