

NETWORK SUPPORT CONTRACTING FRAMEWORK

Whilst the ultimate structure and content of any non-network support agreement will depend on the particular circumstances of the non-network support that is proposed to be provided, the following is an outline of the key contracting principles that are likely to appear in any non-network support agreement:

1. **Conditions precedent** – a non-network support agreement may contain conditions precedent that need to be satisfied by either or both parties prior to the substantive obligations in the agreement having force and effect (e.g. obtaining necessary approvals, obtaining funding, testing to confirm non-network support services meet certain requirements etc.).
2. **Term:**
 - Start Date and End Date
 - Ability of Powerlink to extend the Term for a specified period/s and how the charges payable during the extended period will be calculated.
3. **Non-Network Support Services** – describes the services to be provided and the times and manner in which they will be provided, including:
 - General obligations
 - AEMO directions
 - Provision of metering points;
 - Performance standards.
4. **Operation and Maintenance** – inclusion of these clauses will depend on the nature of the non-network support that is to be provided but may include clauses in relation to operation, maintenance, generator capacity, modifications, right to inspect etc.
5. **Representations and Warranties** - and consequences of making representations and breaching warranties. Inclusion of these clauses will depend on the nature of the non-network support that is to be provided.
6. **Charges and Invoicing** – describes the charges payable by Powerlink to the Service Provider, including how those charges are to be calculated, when those charges are to be invoiced and GST. May also address NEM Revenue and avoided TUoS charges.
7. **Payment:**
 - Paying invoices
 - Disputed Items
8. **Liability:**

Whilst the extent of the liability of the Service Provider to Powerlink will depend on the type of non-network support that is proposed to be provided and other relevant factors, generally the types of liability provisions Powerlink would seek to include in a Non-Network Support Agreement are as follows:

 - **Limitations of liability and indemnity** – will set out the extent of the Service Provider's liability to Powerlink, including any specific exclusions and/or limitations or indemnities;

- **'Consequential loss' excluded** – generally except for liabilities provided for in the above clause, neither party will be liable for the other's loss of profits, loss of revenue, loss of anticipated profit, loss of commercial opportunity, loss of business, cost of finance or increases in operating costs;
- 9. Insurance** - The insurances the Service Provider is required to have in place will depend on the type of non-network support that is proposed to be provided and other relevant factors.
- 10. Default and Termination** – these clauses will depend on the nature of the non-network support that is to be provided but will generally address:
- **Breach** – sets out the process for dealing with breaches, including the notice requirements and rectification period and what is to occur if there is a failure to cure a breach (including a right of termination);
 - **Termination for non-performance** – depending on the type of non-network support that is to be provided, the agreement will detail what is to occur where there is non-performance and ongoing non-performance, such as no entitlement to charges, reduction in charges, termination etc.;
 - **Termination for insolvency** – allows a party to terminate by written notice where there is an insolvency event in respect of the other party;
 - **Survival** – outlines which clauses in the agreement will survive despite termination of the agreement. (e.g. confidentiality)
- 11. Dispute Resolution provisions** - Sets out a process whereby disputes are dealt with efficiently.
- 12. Confidentiality**, including the instances where disclosure of confidential information is permitted.
- 13. Media** – Sets out a process whereby approval is sought and obtained before a party discloses any information through any communications media concerning the non-network solution or responds to any enquiry from any media.
- 14. Change in Law** – sets of procedure for dealing with changes in law affecting the agreement.
- 15. General boiler plate provisions**, such as:
- Entire agreement
 - No representations or warranties Amending agreement Severability
 - No Assignment No Merger Notices
 - Legal costs and stamp duty Counterparts
 - Governing law; Covid 19 provisions.
- 16. Defined Terms and Interpretation provisions**