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**IT IS BROWSABLE ON-SCREEN ONLY AND IS ONLY PROVIDED
FOR YOUR INFORMATION - TO HELP YOU DECIDE WHETHER TO
PARTICIPATE IN THIS RFT AND THEN BECOME A PROSPECTIVE
TENDERER**

Please read and Note:

This file is provided on the Commerce tenders web site when the Request For Tender (RFT) document is issued in Dmax Lite format.

This file contains (below) a brief scope statement and extracts from the RFT documents, but is not a complete RFT document and does not contain the responsible questions.

To participate in this tendering process you MUST first return to the Commerce tenders web site:

<https://tenders.nsw.gov.au/commerce>

Then from the RFT web page (see RFT number below) download a full copy of the RFT documents, including the responsible components, and also any addenda issued to date; and also during the tender period.

Copy/Save the RFT documents to your own computer drive or network location – the blue “DOWNLOAD A SOFT COPY” link at the bottom provides access to the page from which you can do this.

DmAX Lite Software

You will need to have a current licensed copy of the Dmax Lite 5.1 software to read, complete, and respond to the RFT with your tender. If you do not currently have such a licensed copy it can be optionally purchased and downloaded when downloading the full RFT documents from the tenders web site.



NSW Procurement – Contracting Services is a Business Unit of the NSW
Department of Commerce

**NSW Procurement – Contracting Services invites this tender for and on
behalf of the
NSW Government State Contracts Control Board**

Request for Tender [0802382](#)

[RETAIL SUPPLY OF ELECTRICITY METERING
AND METERING DATA AGENCY SERVICES
FOR NSW GOVERNMENT\(LARGE SITES\)](#)

[PERIOD: UP TO FIVE YEARS FROM DATE OF
COMMENCEMENT](#)

RFT Issue Date: [18 December 2008](#)

Closing Date: [WEDNESDAY 11 FEBRUARY 2009](#)

Closing Time: 9:30 am Sydney Time

Note: In order to respond to this RFT, tenderers must have a current licence for i-Tenders Supplier software. Licences can be purchased through NSW eTendering website: www.tenders.nsw.gov.au at a cost of \$110 (inclusive of GST) for a 12 month annual licence. This provides access to respond to tenders developed in the i-Tenders application. It is anticipated that most RFTs released by the Board for the NSW Government will be in this format.

For help on purchasing your software, or use of application, please contact NSW Procurement Client Support Centre on 1800 NSW BUY (679 289) or NSWP_Support@Commerce.nsw.gov.au.

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For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated in Part B of this RFT.

Other matters should be directed to:

Group General Manager
NSW Procurement – Contracting Services
NSW Department of Commerce
McKell Building
2-24 Rawson Place
Sydney NSW 2000
Tel: (02) 9372 7504
Fax: (02) 9372 7533

Request for Tender 0802382 –Supply of Electricity Metering and Metering Data Agency Services for NSW Government (Large Sites)

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REQUEST FOR TENDER - PART A – OVERVIEW

1 Outcome

This Request for Tender (“RFT”) is made by the State Contracts Control Board (the “Board”) for the supply to Eligible Customers of the Deliverables as defined in the Statement of Requirements .

The Board is responsible for the delivery of the tender process, assisted by NSW Procurement – Contracting Services.

2 Objectives

The objectives of establishing the proposed Agreement include, but are not limited to the following:

- (a) Minimising the cost of electricity metering and associated services through appropriate aggregation and cost minimisation;
- (b) Improving data accuracy and availability for NSW Government;
- (c) Maintaining a state inventory of large site electricity meters;
- (d) Minimising interruption to business at change of electricity retailer;
- (e) Greater flexibility and consistency to electricity data analysis and reporting;
- (f) Issues of inaccurate or unsafe metering installations can be identified and resolved with the metering provider;
- (g) Providing benefit to Local Government and other eligible contract buyers by leveraging off the NSW Government expenditure where possible; and at the same time increasing leveraging power for the whole of NSW Government; and
- (h) Managing compliance with all applicable laws, standards, codes and policies.

3 RFT Approach

Tenderers are invited to submit their offer meeting all requirements of this RFT.

Tenders will be assessed in accordance with the evaluation scoring protocol established prior to tenders closing.

The Board reserves the right to short-list tenderers and request further clarification and / or revised pricing for the Deliverables.

The Board reserves the right and absolute discretion, if the pricing outcome is not considered to represent best value for money to NSW Government, to decline offers and to reissue, revalidate or decline tender responses and reinstate short-listed tenders.

4 RFT Timetable

Given below is the Board's provisional RFT Program. The Board may, at its absolute discretion, amend the provisional RFT program.

Milestone	Proposed Completion Date
Issue RFT	18/12/08
RFT Close Date	11/02/09
RFT Evaluation completed including:	
<ul style="list-style-type: none"> Evaluation of tenders undertaken by Evaluation Team in accordance with Tender Evaluation Plan. SCCB approval of recommendation by Evaluation panel. Award of Contract 	March/April 2009 (indicative only)
Supply of Deliverables	From Date of Commencement

5 Background and Scope

5.1 Background

The proposed Agreement will cover supply of retail electricity Metering and Metering Data Agency services, and is intended to complement the current contract 777 for the retail supply of Electricity.

There is currently no existing State contract for metering and data agency services.

This RFT is seeking to leverage NSW Government's significant purchasing power and the current supply market capability to establish an agreement(s) that delivers commercially competitive Deliverables.

5.2 Scope

This RFT is seeking offers for Metering Data Provider and Metering Data Agency Services.

The scope of supply is fully detailed in Part E of this RFT.

6 Customer base

The supply of all Deliverables is to be for Whole of Government use, including all government organisations, and all other Eligible Customers within New South Wales and ACT as outlined below:

Schedule 1 Departments

In accordance with the Public Sector Employment and Management Act 2002 and the Public Sector Management (Goods and Services) Regulation, 2000, NSW Departments listed in Schedule 1 of the Act are obliged to use the services and contracts of the Board. To assist tenderers in preparing their response to this tender Schedule 1 Departments are listed for reference in:

<http://www.legislation.nsw.gov.au/maintop/scanact/inforce/NONE/0>

Other Government Authorities and Users of Government Contracts

Other Government Authorities (and community organisations) are also eligible to purchase from State Contracts. Many such Authorities currently purchase goods or services from State Contracts and may purchase metering services.

The successful tenderer/s must be proactive in marketing all Deliverables to Eligible Customers.

7 Contract and Duration

The Requirement is to be met by means of an Agreement to be embodied in a deed of agreement between the Board and the successful tenderer(s) on the conditions contained in Part D.

The Agreement will be for a minimum term of one up to five years, with the duration of the Agreement being determined at the sole discretion of the Board.

The Agreement will commence from Date of Acceptance with progressive uptake of services by Eligible Customers during the Term of the Agreement.

Eligible Customers will provide feedback to the Board on the performance of the Contractor.

8 Allocation of Contract

The Board reserves the right to appoint more than one Contractor under the proposed Agreement.

9 NSW Government requirements

The successful tenderer must comply with NSW Government codes, guidelines, and Standards listed in Schedule 1 of Part D.

10 RFT Structure

This RFT is structured in the TenderMax Pro format. TenderMax Pro is an e-sourcing application designed to fully automate the traditional paper-based tendering process: introducing best practice processes in electronic tender production, submission and evaluation to improve tender submission, evaluation and award phases.

This RFT comprises 5 Parts as follows:

Overview – Part A

It is an executive summary of main outcomes, objectives, requirements and expectations for this Agreement as described in detail in the proposed Agreement and the Statement of Requirements. It provides the tenderer(s) with the essential information to make an informed decision on whether to tender or not.

Conditions of Tender – Part B

It provides the terms, conditions and processes governing the RFT.

Tender Response – Part C

These are response schedules which are required by the Board to evaluate the tenderers' offers. Tender responses to be completed by the tenderer(s) are in the TenderMax format.

Deed of Agreement - Part D

This is the conditions of contract to be executed between the successful tenderer(s) and the Board.

Statement of Requirements – Part E

This is the requirements for the supply of Deliverables.

11 Performance Framework

The Board is committed to engaging contractors who are able and willing to continually improve their performance during the term of the proposed Agreement.

The performance framework is contained within Schedule 7 of Part D in the proposed Deed of Agreement. This describes the performance framework in detail and the measurement/targets of all performance indicators

Performance measures are based on the Contractor's performance as measured by individual Key Performance Indicators – (KPIs). Both Contracting Services and Customers will provide data to establish the KPIs.

12 Electronic Business

The use of NSW government electronic procurement systems (smartbuy®, NSW e-Tendering, i-Tenders, etc) is a preferred requirement under this Agreement. Tenderers are encouraged to present similar electronic solutions that can further support expanding adoption of electronic business by NSW government agencies and their suppliers.

*Request for Tender 0802382 –Retail Supply of
Electricity Metering and Metering Data Agency
Services for NSW Government (Large Sites)*

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PART B Conditions of Tender

1 Definitions

Unless the context indicates otherwise, the following terms, where used in Parts A-C of this RFT, shall have the meanings set out below.

“ABN” means an Australian Business Number as provided in GST law.

“Addendum” means an addition to this RFT made by the Board made before Closing Date and Time.

“Agreement” means an agreement made by a tenderer with the Board pursuant to the RFT under which there is an agreement for the provision of Deliverables on the order of any Customer for whom the Board has arranged the contract. The Agreement will be embodied in a Deed of Agreement between the Board and the Contractor in the form of Part D (and Part E if applicable) to this RFT.

“Alternative Tender”

A substantially Non-Conforming Tender that is intended to offer a different method of meeting the object and intent of the requirement.

“Board”

The State Contracts Control Board established under the *Public Sector Employment and Management Act 2002* whose responsibilities include:

- (a) Inviting and accepting tenders;
- (b) Determining the conditions under which tenders are invited or accepted;
- (c) Entering into contracts on behalf of the Crown in right of the State of New South Wales; and
- (d) On-going contract administration and management,

and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

“Closing Date and Closing Time” means the Closing Date and Time for receipt of tenders specified in the cover sheet of this RFT.

“Code” means the NSW Government Code of Practice for Procurement as amended from time to time, together with any other codes of practice relating to procurement, including any amendments to such codes that may be applicable to the particular RFT. The Code can be viewed and downloaded from: http://www.treasury.nsw.gov.au/procurement/pdf/code_of_prac-curr.pdf

“Conforming Tender” means a tender that substantially conforms in all material aspects to:

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part D
- (c) other Parts of this RFT
- (d) is in the prescribed form.

“Contractor” means a tenderer who has entered into an Agreement with the Board.

“Customer” means each Eligible Customer that places an Order with the Contractor as contemplated in Part D.

“Customer Contract” means the contract that is made between the Contractor and a Customer when that Customer places an Order.

“Deed” means a form in which a contract can be recorded which requires execution under the parties' seal.

“Deliverables” means in relation to an Eligible Customer, the supply of metering and data agency services by the Contractor to that Eligible Customer's relevant Large Sites and the provision of any Value Added Services.

“Eligible Customer” means

- (a) An entity listed in Schedule 1 to the *Public Sector Employment and Management Act 2002* as amended from time to time;
A public body as defined by clause 18(4) of the *Public Sector Management (Goods and Services) Regulation 2000* being:
 - (i) a government trading enterprise (including a State owned corporation),
 - (ii) a public or private hospital (including an area health service),
 - (iii) a local government agency,
 - (iv) a charity or other community non-profit organisation,
 - (v) a public or private school or a college or university,
 - (vi) a public authority of this State, the Commonwealth or any other State or Territory
 - (vii) a contractor to a public authority (but only in respect of things done as such a contractor).
- (b) a Nominee Purchaser provided that it satisfies the requirements of clause 3.7 of Part D (Agreement) and
- (c) such other persons or entities, which the Board may from time to time in its discretion, determine through a customer registration process.

“GST” is a goods and services tax and has the same meaning as in the GST Law.

“GST Law” means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999* (C'th) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation made under those Acts.

“GST Free Supplies” and **“Input Taxed Supplies”** have the same meaning as in the GST Law.

“Metering Data Agent (MDA)” is an agent appointed by NEMMCO to undertake the collection, processing and transfer of metering data to NEMMCO and other registered participants.

“Metering Data Provider (MDP)” is a service provider accredited by NEMMCO to undertake the collection, processing and/or transfer of metering data to NEMMCO and other registered participants.

“Nominee Purchaser” means a contractor to an Eligible Customer, nominated by the Eligible Customer to be authorised to place orders under Agreements and registered by NSW Procurement – Contracting Services.

“Non-Conforming Tender” means a tender that does not substantially conform in all material aspects to:

- (a) the Statement of Requirements;
- (b) the terms and conditions of Part D;
- (c) other Parts of this RFT;
- (d) is not in the prescribed form.

“NSW Procurement - Contracting Services” A business unit of the NSW Department of Commerce representing the Board and authorised to arrange and administer contracts on behalf of the Board.

“**smartbuy®**” means an electronic market place, consisting of an internet web site and associated databases and applications, maintained on behalf of the NSW Government, located at <http://smartbuy.nsw.gov.au> and associated domains.

“**Statement of Requirements**” means the detailed description of the Services contained in Part E.

“**State Contracts Control Board**” is the Board.

2 Tender Preparation

2.1 Tenderer to inform itself

Before submitting its tender, a tenderer must:

- 2.1.2 Examine all information relevant to the risks and contingencies and other circumstances having an effect on its Tender;

2.2 Assumptions made by Tenderer

Where a tenderer has made assumptions in preparing its tender, such assumptions must be set out in a supporting statement and submitted with the tender.

3 Eligibility to Tender

3.1 Legal Entity of Tenderer

- 3.1.1 Tenders must be submitted by a legal entity or, if a joint tender, by legal entities, with the capacity to contract. The Board will only enter into an Agreement with such legal entity or entities.

- 3.1.2 The Board may ask a tenderer to provide evidence of its legal status or capacity to contract. If tenders from entities propose to contract in their capacity as trustees, such evidence may include copies of the relevant trust deeds. Any evidence requested is to be provided within 3 working days of the request.

3.2 Financial Capability of Tenderer

- 3.2.1 The Board reserves the right to reject any tender if the Board judges the tenderer not to have appropriate financial capability.

- 3.2.2 Where the Board forms the view that the tenderer does not have the appropriate financial capability, the Board reserves the right to make acceptance of any tender conditional upon the tenderer entering into a bank, parent company or personal guarantee, or an unconditional performance bond in a form satisfactory to the Board.

3.3 ABN Requirements

- 3.3.1 The Board will not enter into an agreement with a company that does not have an Australian Business Number and is not registered for GST. Normally, tenderers must be registered for GST and state their ABN in their tender.

- 3.3.2 Tenders from tenderers that do not have an ABN and/or are not registered for GST, such as tenderers commencing business in Australia, may be considered at the Board's discretion if the tenderer demonstrates that it will obtain an ABN and GST registration before entering into an agreement with the Board. Such tenderers must state how and when they intend to obtain an ABN and register for GST in their tender response.

4 Tender Process

4.1 Contact Officer

- 4.1.1 Tenderers should refer requests for information or advice regarding this RFT to:

Name: »Rose Pantano
Telephone: »02 9372 7520

Facsimile: »02 9372 7799
E-mail: »Rose.Pantano@commerce.nsw.gov.au

4.1.2 Any information given to a tenderer to clarify any aspect of this RFT will also be given to all other tenderers if in the Board's opinion the information would unfairly favour the inquiring tenderer over other tenderers.

4.1.3 Please note that the majority of the Department of Commerce will be closed from Monday 22 December until Monday 5 January 2009. However, enquiries about this RFT may still be made as follows:

- 19 December 2008 to 2 January 2009, by email to Angela Burrell:
Angela.burrell@commerce.nsw.gov.au
- 3 January 2009 to 19 January 2009 to:

Dominic Sciacca

Telephone: 02 9372 7579
Facsimile: 02 9372 7633
Email: dominic.sciacca@commerce.nsw.gov.au

4.2 Pre-Tender Access to Prospective Nominee Purchasers

4.2.1 A tenderer who wishes to become a Nominee Purchaser to an Eligible Customer under any existing NSW State Contracts Control Board Agreement, must apply to that Eligible Customer to be granted temporary viewing access to view the relevant Board Agreements on smartbuy®. The procedure is described in the link below. The purpose of such pre tender access is to enable tenderers who wish to do so, to price the Services at Board rates and confer any benefit in their tender to the Eligible Customer. The information must not be used for any other purpose.

4.2.2 A tenderer seeking pre tender access must complete the Pre-Tender Access Application Form indicated through the link below. The Eligible Customer will determine, in its sole discretion, whether the tenderer's application will be recommended. In the exercise of this discretion, the Eligible Customer will ensure that decisions made are applied consistently to all applicants. Recommended applications will be submitted by the Eligible Customer to NSW – Contracting Services for approval.

4.2.3 If the tenderer is successful in its tender, it must apply to become a Nominee Purchaser. <http://www.contractservices.nswp.commerce.nsw.gov.au/Publications/Forms.htm#nominee>

4.3 Conformity of Tenders

4.3.1 The Board seeks substantially Conforming Tenders.

4.3.2 Substantially Non-Conforming Tenders may be excluded from the tender process without further consideration at the Board's discretion.

4.4 Alternative Tenders

4.4.1 Tenderers may, if they choose, submit an Alternative Tender. Alternative Tenders will only be considered if submitted in conjunction with a substantially Conforming Tender. An Alternative Tender must be clearly marked "Alternative Tender".

4.5 Submission of Tenders

4.5.1 Prices, responses and other information provided in the tender are to be in writing and in English.

4.5.2 Tenderers must complete all of Part C of this RFT, as directed and must not amend any of the questions provided.

-
- 4.5.3 Tenderers should notify the Contact Officer in writing on or before the Closing Date and Time if they find any discrepancy, error or omission in this RFT.
- 4.5.4 All tenders must be provided in the TenderMax Pro format, using the DMax Lite software. The tender responses in Part C must be included in one or more files with an extension of *.dtr. The DMax Lite software is only supported on a Microsoft Windows 9X and above operating system; other operating systems are not compatible. Tenderers must ensure access to a Microsoft Windows compatible computer is used to prepare the tender.
- 4.5.5 When submitting an electronic tender with supporting items:
- (a) The complete tender, including the supporting items must be submitted by Closing Date and Closing Time, and
 - (b) Supporting items provided by the tenderer in support of its tender but excluding printed material should be clearly designated as supporting items to the RFT to which they relate and be forwarded to the Contact Officer indicated in clause 4.1 of this RFT in a sealed envelope.
- 4.5.6 Tenderers must ensure that all excel or word attachments can be opened and viewed by Microsoft Excel 2003 or Microsoft Word 2003. Other formats for the attachments are only to be submitted if an arrangement has first been made with the Contract Officer prior to lodgment of the tender.
- 4.6 Electronic Tenders to the NSW Department of Commerce *eTendering* website**
- 4.6.1 A tenderer is required, to lodge its tender electronically to the Tender Box through the NSW Department of Commerce tenders web site at
- <https://tenders.nsw.gov.au/commerce>
- Locate the web page for RFT 0802382, login as a system user, and follow the on-screen instructions to lodge.
- A tender submitted electronically will be treated in accordance with the *Electronic Transactions Act 2000* (NSW), and given no lesser level of confidentiality, probity and attention than tenders lodged by other means.
- 4.6.2 A tenderer, by electronically lodging a tender, is taken to have accepted conditions shown in the Conditions and rules on the NSW Department of Commerce *eTendering* website.
- 4.6.3 A tenderer must follow the following directions:
- (a) A RFT for which electronic lodgement is available through the website can be identified by the blue "Lodge a Response" link on the web pages for the RFT.
 - (b) To lodge a tender electronically, the files containing the tenderer's response must be up-loaded through the website. Access to the up-loading process is through the blue "Lodge a Response" link, then following the steps and instructions on the NSW Department of Commerce *eTendering* website and any instructions which may have been supplied with the RFT.
- 4.6.4 A tenderer must observe the following format for lodgements:
- (a) An electronically lodged tender must be lodged in a file format required by the RFT.
 - (b) If a tenderer compresses files, it must be possible to decompress them using WinZip. A tenderer must not submit self-extracting (*.exe) zip files.
 - (c) A tenderer must not change pre-existing text in the RFT other than to insert the required information.
 - (d) The file/s name/s must have an extension and not have invalid characters or file names/loading pathnames too long for the system, as detailed on the NSW Department of Commerce *eTendering* website.

- 4.6.5 Signatures are not required for a tender submitted to the NSW Department of Commerce *eTendering* website. A tenderer must ensure that a tender response is authorised by the person or persons who may do so on behalf of the tenderer and appropriately identify the person and indicate the person's approval of the information communicated.
- 4.6.6 Electronically submitted tenders may be made corrupt or incomplete, for example by computer viruses. The Board may decline to consider for acceptance a tender that cannot be effectively evaluated because it is incomplete or corrupt. Tenderers must note that:
- (a) To reduce the likelihood of viruses, a tenderer must not include any macros, applets, or executable code or files in a tender response.
 - (b) A tenderer should ensure that electronically submitted files are free from viruses by checking the files with an up to date virus-checking program before submission.
- 4.6.7 If a tenderer experiences any persistent difficulty with the NSW Department of Commerce *eTendering* website in submitting a tender or otherwise, it is encouraged to advise the Contact Officer promptly in writing.
- (a) If there is a defect or failure of the NSW Department of Commerce *eTendering* website and the Board is advised, the tender Closing Date and Closing Time may be extended provided that, in the view of the Board, the RFT process will not be compromised by such an extension.
 - (b) Tenders must be fully received by the Closing Date and Closing Time.
- 4.6.8 A tender lodged via the NSW Department of Commerce *eTendering* website should ideally be below 7 megabytes (MB) in total file size. Responses totalling more than 7MB may experience difficulties in lodgement. In this case tenderers may break down the lodgement into smaller packages if clearly identified eg. package 1 of 3; 2 of 3; 3 of 3.
- 4.6.9 If a tenderer provides multiple lodgements, the latest tender received will be the tender to be evaluated.
- 4.7 Tender Validity Period**
- 4.7.1 The Tender will remain open for acceptance by the Board as follows:
- The offers are to remain open for acceptance by the Board for a period of three (3) months from the tender Closing Date and Time.
- 4.8 Late Tenders**
- 4.8.1 Late tenders will not be considered, except where the Board is satisfied that the integrity and competitiveness of the tendering process has not been compromised. The Board shall not penalise any supplier whose tender is received late if the delay is due solely to mishandling by the Board.
- 4.9 Extension of Closing Date and Time**
- 4.9.1 The Board may, in its discretion, extend the Closing Date and Time.
- 4.10 Corruption or Unethical Conduct**
- 4.10.1 Tenderers must comply with the requirements of the Commerce Business Ethics Statement, which is available at the link below and must disclose any conflicts of interests in Part C.
- 4.10.2 If a tenderer, or any of its officers, employees, agents or sub-contractors is found to have:
- (a) offered any inducement or reward to any public servant or employee, agent or subcontractor of the Board, Customer or the NSW Government in connection with this RFT or the submitted tender;

- (b) committed corrupt conduct in the meaning of the *Independent Commission Against Corruption Act 1988*;
- (c) a record or alleged record of unethical behaviour; or not complied with the requirements of Commerce Business Ethics Statement available at: <http://www.commerce.nsw.gov.au/About+Commerce/Business+ethics+statement/Business+ethics+statement.htm>;

this may result in the tender not receiving further consideration.

4.10.3 The Board may, in its discretion, invite a relevant tenderer to provide written comments within a specified time before the Board excludes the tenderer on this basis.

4.10.4 If the Board becomes aware of improper conflict of interests by a successful tenderer after Agreement has been executed, then the Board reserves the right to terminate the Agreement and any Customer Contract that has been made under it.

4.11 Code of Practice for Procurement

4.11.1 In submitting its tender, the tenderer signifies agreement to comply with the Code.

4.11.2 Failure to comply with the Code may be taken into account by the Board when considering the tenderer's tender or any subsequent tender, and may result in the tender being passed over.

4.12 Prescribed Form of Tender

The tender, including any Alternative Tender, must comprise a completed Part C and any attachments to Part C, as may be necessary. Any attachments should be labelled to identify those clauses of the RFT to which they relate.

4.13 Addenda to RFT

4.13.1 If, for any reason the Board, at its sole discretion, requires the RFT to be amended before the Closing Date and Time, an Addendum will be issued.

4.13.2 In each case, an Addendum becomes part of the RFT.

4.13.3 The Board, during the tender period may issue Addenda altering the RFT. In such cases, it is the obligation of the tenderer to verify if any addenda were issued prior to the closing date, even if a tender has already been submitted.

4.13.4 Tenderers must check the web site address, <https://tenders.nsw.gov.au/commerce> and download the Addendum.

4.14 Tenderer's Costs

The tenderer acknowledges that the Board will not be liable to it for any expenses or costs incurred by it as a result of its participation in this RFT, including where the RFT has been discontinued.

4.15 Custody of Tenders after Receipt

4.15.1 Tenders lodged electronically to the NSW Department of Commerce Tenders website will be treated in accordance with the *Electronic Transactions Act 2000* (NSW) and given no lesser level of confidentiality, probity and attention than tenders lodged by other means.

4.15.2 On receipt of tenders lodged electronically to the NSW Department of Commerce eTendering website, Tenders are encrypted and stored in a secure "electronic tender box."

4.15.3 For reasons of probity and security, NSW Department of Commerce is prevented from interrogating the electronic tender box to ascertain whether tenders have been received or for any reason, until after the Closing Date and Closing Time.

4.15.4 The e-mail receipt that is sent to the tenderer after successfully up-loading and lodging the tender electronically is the only evidence of tender lodgement provided.

4.16 Ownership of Tenders

- 4.16.1 All tenders become the property of the Board on submission.
- 4.16.2 The Board may make copies of the tenders for any purpose related to this RFT.

4.17 Discontinuance of Tender Process

- 4.17.1 Where the Board determines that awarding a contract would not be in the public interest, the Board reserves the right to discontinue the tender process at any point, without making a determination regarding acceptance or rejection of tenders.

4.18 Variations to Tenders

- 4.18.1 At any time after the Closing Date of tenders and before the Board accepts any tender received in response to this RFT, a tenderer may, subject to clause 4.18.2, vary its tender:
- (a) by providing the Board with further information by way of explanation or clarification;
 - (b) by correcting a mistake or anomaly; or
 - (c) by documenting agreed changes to the tender negotiated under clause 5.5 of this Part B.
- 4.18.2 Such a variation may be made either:
- (a) at the request of the Board, or
 - (b) with the consent of the Board at the request of the tenderer; but only if,
 - (i) in the case of a variation requested by the tenderer under clause 4.18.1(a)-(b), it appears to the Board reasonable in the circumstances to allow the tenderer to provide the information or correct the mistake or anomaly; or
 - (ii) in the case of a variation under clause 4.18.1(c), the Board has confirmed that the draft-documented changes reflect what has been agreed.
- 4.18.3 If a tender is varied in accordance with clause 4.18.1(a) or (b), the Board will provide all other tenderers whose tenders have similar characteristics with the opportunity of varying their tenders in a similar way.
- 4.18.4 A variation of a tender under clause 4.18.1 will not be permitted if in the Board's view:
- (a) it would substantially alter the original tender; or
 - (b) in the case of variation under clause 4.18.1(a) or (b), it would result in the revising or expanding of a tender in a way that would give a tenderer an unfair advantage over other tenderers.

5 Evaluation Process

- 5.1.1 Tenders will be assessed against the evaluation criteria listed below which are not indicated in order of significance or to be given equal weight.
- 5.1.2 The evaluation criteria for this RFT that do not relate to price will account for 40% of the total evaluation score. The selection criteria for this RFT that relate to price will account for 60% of the total evaluation score.
- 5.1.3 Information supplied by the tenderer in Part C will contribute to the assessment against each criterion. Tenderers are advised to respond clearly to all the evaluation criteria listed in this RFT.
- 5.1.4 Tenders that do not include a fully completed Part C, in particular those tenders which do not contain sufficient information to permit a proper evaluation to be conducted, or electronic tenders that cannot be effectively evaluated because the

file has become corrupt, may be excluded from the tender process without further consideration at the Board's discretion.

- 5.1.5 The Board may assess an Alternative Tender against the evaluation criteria where submitted with a substantially Conforming Tender.

5.2 Evaluation Criteria

The evaluation criteria for this RFT include but are not limited to the criteria below:

- (a) Accreditation and registration as a metering provider and meter data agent with the Market and System Operator (NEMMCO) (this is a mandatory requirement).
- (b) Degree of compliance with Statement of Requirements (Part E) and demonstrated ability to provide Metering Data Provider (MP) and Metering Data Agent (MDA) services including:
 - Meter data agent with the Market and System Operator NEMMCO
 - Capability to work with Customer's choice of electricity providers
 - Access to data
 - Invoicing via the customer's choice of electricity provider;
- (c) Account management and customer services capabilities, ability to provide electronic data and reports, consolidated billing and electronic commerce through Smartbuy, as applicable;
- (d) Quality Assurance systems and demonstrated ability to make transitional arrangement in a timely and efficient manner.
- (e) Tenderer's demonstrated capacity to fulfil the Agreement, particularly its performance in contracts similar in scale and scope to that proposed, including transfer management, provision of value added services, provision of online services and referee reports;
- (f) The degree of the tenderer's compliance with NSW government procurement policy and other applicable policies;
- (g) The degree of the tenderer's compliance with the conditions of the contract at Part D;
- (h) The tenderer's financial capacity to perform the Agreement; and
- (i) The Tender Price and best value for money to NSW Government.

NOTE: It is the tenderers responsibility to read all policy considerations relevant to this RFT. Tenderers are required to respond to the policy questions provided in Part C.

5.3 Presentations by Tenderer

- 5.3.1 The Board may in its discretion, and as part of the evaluation process, invite any or some of the tenderers to make personal presentations regarding their tender.
- 5.3.2 Receiving a presentation by a tenderer in no way represents a commitment by the Board to accept any aspect of the tender.

5.4 Acceptance or Rejection of Tenders

- 5.4.1 The Board may assess an Alternative Tender against the evaluation criteria when submitted with a substantially Conforming Tender.
- 5.4.2 The Board expressly reserves the right to accept, in its discretion, either or both of the following:

- (a) Any Alternative Tender or part of an Alternative Tender, when submitted with a substantially Conforming Tender; and
- (b) Any other substantially Non-Conforming Tender or part of a substantially Non-Conforming Tender (not, in either case, being an Alternative Tender or part of an Alternative Tender) that, in the Board's opinion, is substantially a substantially Conforming Tender.

5.4.3 The Board is not bound to accept the lowest tender.

5.4.4 If the Board rejects all the tenders received it may invite fresh tenders based on the same or different criteria (specifications and details contained in Alternative Tenders will not be used as the basis for the calling of new tenders).

5.5 Post Tender Negotiations

5.5.1 Before making any determination as to acceptance or rejection of Tenders the Board may, at its discretion, elect to conduct limited negotiations with preferred tenderers, including those who have submitted Alternative Tenders or who have submitted substantially Conforming Tenders, to mutually improve outcomes.

5.5.2 The Board will generally not enter into negotiations to amend standard conditions of contract contained in Part D.

5.5.3 If the Board considers that none of the tenders are fully acceptable either due to the level of non-conformance or because they do not represent sufficient value for money, but considers that full conformity is achievable, negotiations may be conducted with the tenderer that submitted the most conforming tender based on the evaluation criteria. The purpose of the negotiations will be advised by the Board and made clear to the participants before the commencement of negotiation.

5.5.4 The Board may at its absolute discretion elect to conduct post tender negotiations under clause 5.5.3 with more than 1 tenderer in the event that it decides that the closeness of the tenders or timing constraints warrants doing so.

5.6 Exchange of Information between Government Agencies

5.6.1 Lodgement of a tender will itself be an authorisation by the tenderer to the Board to make available, on request, to any NSW government agency information, including but not limited to, information dealing with the tenderer's performance on any contract that may be awarded. Such information may be used by the recipient NSW Government agency for assessment of suitability for pre-qualification, selective tender lists, expressions of interest or the award of a contract or termination of contract.

5.6.2 The provision of the information by the Board to any other NSW Government agency is agreed by the tenderer to be a communication falling within section 30 of the *Defamation Act 2005* (NSW), and the tenderer shall have no claim against the Board and the State of New South Wales in respect of any matter arising out of the provision or receipt of such information, including any claim for loss to the tenderer arising out of the communication

5.6.3 In the evaluation of tenders, the Board may take into account any information about the tenderer that the Board receives from any source.

5.6.4 To avoid doubt, information that may be collected, exchanged and used in accordance with this provision includes "personal information" about the tenderer for the purposes of the *Privacy and Personal Information Protection Act 1998*. Lodgement of a tender will be an authorisation by the tenderer to the Board to collect such information from third parties, and to use and exchange such information in accordance with this clause 5.6.

5.6.5 The tenderer's attention is drawn to the *Freedom of Information Act 1989* which obliges disclosure of the contract documents resulting from the tender and may confer rights, subject to the terms of that Act, to access, and to require the correction of, information held by certain agencies, including tenders held by the

Board. A summary of the provisions is contained in the Annexure to Part B (Disclosure Information).

6 Method of Acceptance

- 6.1.1 Acceptance of a tender or part tender will be subject to the execution of a formal Deed of Agreement in the terms of Part D. Until the Board and the successful tenderer(s) execute a formal Deed or Deeds there will be no legally enforceable agreement concluded between them.

7 Disclosure Information

- 7.1.1 Following the Board's decision, all tenderers will be notified in writing of the outcome of their tenders.
- 7.1.2 Details of tenderers and the outcome of the tender process will be disclosed in accordance with the *Freedom of Information Act* 1989 and the NSW Government Tendering Guidelines, available at:
<http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>
- 7.1.3 An outline of these requirements can be found in Annexure 1 to Part B of this RFT.

8 Complaints Procedure

It is the NSW Government's objective to ensure that industry is given every opportunity to win Government contracts. Should any entity feel that it has been unfairly excluded from tendering or unfairly disadvantaged by the Conditions in Part D, or the Statement of Requirements in Part E, it is invited to write to:

Chairperson
State Contracts Control Board
Level 22, McKell Building
2-24 Rawson Place
Sydney NSW 2000

ANNEXURE 1 TO PART B (Disclosure of Information)

Disclosure of information concerning tenderers and outcome of the tender process

1. In accordance with the NSW Government Tendering Guidelines referred to in clause 7.1.2 and found at <http://www.dpws.nsw.gov.au/Government+Procurement/Procurement+Policy+Framework/NSW+Government+Tendering+Guidelines.htm>, the following **tender information** is required to be disclosed -

Tender Type	Level of disclosure	Basis of disclosure
For all public calls for tender, expressions of interest or other such public calls which may result in a contract with the private sector.	<p>As a minimum:</p> <ul style="list-style-type: none"> a concise description of the proposed works, goods or services the subject of the tender call; the date responses to the tender call close and where responses are lodged; and location of the tender call documents. <p>The names and addresses of all entities which submit responses.</p>	<p>Routine public disclosure at the time tender calls are advertised.</p> <p>Routine public disclosure within 7 days of the date tender calls closed.</p>
In a multi-stage tender process.	The names and addresses of the shortlisted entities, except where such disclosure is likely to compromise the competitiveness of the subsequent tender process.	Routine public disclosure within 7 days of these entities being advised of their shortlisting.

2. In accordance with the NSW Government Tendering Guidelines referred to in clause 7.1.2 above, the following **contract** information is required to be disclosed -

Contract size and type	Level of disclosure	Basis of disclosure
<p>Class 1 contracts All government contracts with estimated value \$150,000 or above).</p>	<ul style="list-style-type: none"> a) The name and business address of the contractor; b) Particulars of any related body corporate (within the meaning of the Corporations Act 2001 of the Commonwealth) in respect of the contractor, or any other private sector entity in which the contractor has an interest, that will be involved in carrying out any of the contractor's obligations under the contract or will receive a benefit under the contract; c) The date on which the contract became effective and the duration of the contract; d) Particulars of the project to be undertaken, the goods or services to be provided or the real property to be leased or transferred under the contract; e) The estimated amount payable to the contractor under the contract; f) A description of any provisions under which 	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

	<p>the amount payable to the contractor may be varied;</p> <p>g) A description of any provisions with respect to the renegotiation of the contract;</p> <p>h) In the case of a contract arising from a tendering process, the method of tendering and a summary of the criteria against which the various tenders were assessed; and</p> <p>i) A description of any provisions under which it is agreed that the contractor is to receive payment for providing operational or maintenance services.</p>	
<p>Class 2 contracts Class 1 contracts (i.e government contracts with estimated value \$150,000 or above) which also:</p> <ul style="list-style-type: none"> - result from a direct negotiation where there has not been a tender process; or - have been the subject of a tender process and where the final contract terms and conditions are substantially negotiated with the successful tenderer (this includes alliance type contracts); or - involve operation or maintenance obligations for 10 years or longer; or - involve a privately financed project as defined by relevant Treasury guidelines; or - involve a transfer of land or other asset to a party in exchange for the transfer of land or other asset to an agency. 	<p>The information required for class 1 contracts and</p> <p>a) Particulars of future transfers of significant assets to the State at zero, or nominal, cost to the State, including the date of their proposed transfer;</p> <p>b) Particulars of future transfers of significant assets to the contractor, including the date of their proposed transfer;</p> <p>c) The results of any cost-benefit analysis of the contract conducted by the agency;</p> <p>d) The components and quantum of the public sector comparator if used;</p> <p>e) Where relevant, a summary of information used in the contractor's full base case financial model (for example, the pricing formula for tolls or usage charges);</p> <p>f) Where relevant, particulars of how risk, during the construction and operational phases of a contract to undertake a specific project (such as construction, infrastructure or property development), is to be apportioned between the parties, quantified (where practicable) in net present-value terms and specifying the major assumptions involved;</p> <p>g) Particulars as to any significant guarantees or undertakings between the parties, including any guarantees or undertakings with respect to loan agreements entered into or proposed to be entered into; and</p> <p>h) Particulars of any other key elements of the contract.</p>	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>
<p>Class 3 contracts Class 2 contracts where the estimated value of the government contract is \$5 million or more.</p>	<p>The information for class 1 and 2 contracts and the complete contract, less confidential information.</p> <p>Note: if some or all of a class 3 contract is not disclosed for reasons of confidentiality, the agency is to disclose:</p> <ul style="list-style-type: none"> • the reasons for not publishing the contract 	<p>Routine public disclosure within 60 days after the contract becomes effective.</p>

	or provisions; <ul style="list-style-type: none"> • a statement as to whether the contract or provisions will be published and, if so, when; and • where some but not all of the provisions of the contract have been disclosed, a general description of the types of provisions that have not been published. 	
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3. Requests for disclosure of additional contract information

Tenderers must acknowledge that any person may make a specific request to the State Contracts Control Board for any item of contract information contained in schedules 1 or 2, or for a copy of a contract, which is not required to be routinely disclosed under section 15A of the Freedom of Information Act 1989 ("FOI Act"). The State Contracts Control Board must provide the requested contract information or the requested copy of the contract to the requesting person (less any confidential information) within 60 days of receiving the request.

Where a copy of a contract has been requested and some or all of the contract is not provided for reasons of confidentiality, the State Contracts Control Board will disclose:

- the reasons for not providing;
- a statement as to whether the contract or provisions will be provided and, if so, when; and
- where some but not all of the provisions of the contract have been provided, a general description of the types of provisions that have not been provided.

4. Disclosure of amendments or variations to contract information under the FOI Act

The FOI Act requires that, if there is an amendment to the contract terms or a material variation made under the contract that changes information already routinely disclosed under the FOI Act, the State Contracts Control Board must ensure that the information concerning the change is routinely disclosed within 60 days after such amendment or variation becomes effective, less any confidential information. In the case of class 3 contracts, the full amendment or material variation, less any confidential information, must be disclosed within the 60 day timeframe.

5. Confidential information

None of the disclosure obligations contained in the FOI Act, or the requirements for disclosing tender information or a copy of a contract or information in relation to a contract under these guidelines, require the disclosure of:

- the commercial-in-confidence provisions of a contract (as defined in schedule 3 to the FOI Act) (the contractor's financing arrangements; the contractor's cost structure or profit margins; the contractor's full base case financial model; any intellectual property in which the contractor has an interest; or any matter whose disclosure would place the contractor at a substantial commercial disadvantage in relation to other contractors or potential contractors, whether at present or in the future.);
- details of any unsuccessful tender;
- any matter that could reasonably be expected to affect public safety or security; or
- information which would be exempt from disclosure if it were the subject of an application under the FOI Act.

Where such confidential information is withheld, the State Contracts Control Board must inform the requesting person that access to that information may be sought in accordance with the FOI Act. This will enable a person seeking the information to have the appeal rights available under the FOI Act.

6. Tenderers are invited to nominate items they consider are confidential and why.



**NSW Procurement – Contracting Services is a Business Unit of the NSW
Department of Commerce**

Dated: <Insert Date>

NSW STATE CONTRACTS CONTROL BOARD

and

<Insert Contractor name>

**AGREEMENT (REQUEST FOR TENDER, PART D) RETAIL SUPPLY OF
ELECTRICITY METERING AND METERING DATA AGENCY SERVICES
FOR NSW GOVERNMENT (LARGE SITES)**

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For the purposes of this RFT, inquiries should be directed to the Contact Officer nominated in Part B of this RFT.

Other matters should be directed to:

Group General Manager
NSW Procurement – Contracting Services
NSW Department of Commerce
McKell Building
2-24 Rawson Place
Sydney NSW 2000
Tel: (02) 9372 8840
Fax: (02) 9372 7533

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THIS AGREEMENT executed by DEED is made on the _____ day of _____ 20__

BETWEEN

NEW SOUTH WALES STATE CONTRACTS CONTROL BOARD for and on behalf of the Crown in right of the State of New South Wales, of McKell Building, 2-24 Rawson Place, Sydney, in the State of New South Wales ("the Board")

AND

[.....name of contractor.....] of [.....address.....] in the State of [.....] ("the Contractor").

BACKGROUND

- A. The Board issued the Request for Tender for the supply of the Deliverables.
- B. The Contractor submitted a tender that was accepted by the Board.
- C. The Board and the Contractor have agreed to enter into this Agreement in order to establish and put in place a framework for the supply of Deliverables to Eligible Customers.

NOW THE PARTIES AGREE:

1 Interpretation

1.1 Definitions

"Act" means the *Electricity Supply Act 1995*.

"ACT" means the Australian Capital Territory.

"Administrators" means Personnel of the Contractor who are responsible for managing Authorised Users within its organisation and receiving notices sent by or on behalf of the Board or any Customer for purposes of complying with the Contractor's smartbuy® obligations.

"Agreement" means this Deed of Agreement including the Schedules.

"Applicable Discount" means an applicable discount in the Price Schedule, as varied from time to time in accordance with this Agreement, or any other applicable discount which may be offered by the Contractor from time to time.

"Authorised Users" means Personnel who the Contractor authorises to access and use smartbuy® on its behalf and who are given access to do so by the Board.

"Board's Delegate" means the Board's employee named in Schedule 1 item 9 responsible for the overall administration of this Agreement on behalf of the Board.

"Business Day" means a normal working day (not being a public holiday, Saturday or Sunday).

"Catalogue Information" means details and information about the Deliverables and pricing contained in a catalogue placed on smartbuy® by the Contractor or provided by the Contractor to the Board for such placement.

"Change in Control" means a circumstance in which control is or may be exercised over the Contractor:

- (a) through removal or appointment of directors of the Contractor;
- (b) by virtue of the direct holding of at least 15% of the voting shares in the Contractor or a holding company of the Contractor; or
- (c) by any other means whatsoever.

"Confidential Information" means, in relation to a Party, Information that:

- (a) is by its nature confidential;

- (b) is designated by that Party as confidential; or
- (c) the other Party knows or ought to know is confidential.

“Consequential Loss” means any loss recoverable at law (other than loss arising in the usual course of things) which is:

- (a) consequential upon other loss;
- (b) a loss of opportunity or goodwill;
- (c) a loss of profits;
- (d) a loss of anticipated savings or business;
- (e) loss of value of any equipment,

and any costs or expenses in connection with the foregoing.

“Consideration” has the same meaning as provided for in the GST Law.

“Contractor Information” means the information that must be provided by the Contractor in smartbuy® covering its own organisation and that of its Designated Subcontractors and Nominated Subcontractors and includes names, addresses and contact details.

“Contractor’s Insolvency” means any of the following:

- (a) insolvency of the Contractor;
- (b) the Contractor indicates that it does not have the resources to perform this Agreement or any Customer Contract;
- (c) an application for winding up of the Contractor is made and not stayed within 14 days;
- (d) a winding up order in respect of the Contractor is made;
- (e) a controller, administrator, receiver and manager, provisional liquidator or liquidator is appointed in respect of the Contractor;
- (f) a mortgagee enters the possession of any property of the Contractor;
- (g) notice is given of a meeting of creditors of the Contractor for the purposes of a deed of arrangement; or
- (h) any actions of a similar effect are taken.

“Customer” means each Eligible Customer that places an Order with the Contractor as contemplated by this Agreement.

“Customer Contract” means the contract that is made between the Contractor and a Customer when that Customer places an Order.

“Deed” means a form in which a contract or agreement can be recorded which requires execution under the parties’ seal.

“Deliverables” means in relation to an Eligible Customer, the supply of metering services by the Contractor to that Eligible Customer’s relevant Large Sites and the provision of any Value Added Services and Optional Services and, in respect of a Customer Contract, all Deliverables subject to that Customer Contract.

“Designated Subcontractors” means the comprehensive list of subcontractors, resellers and distributors that the Contractor will use for the purposes of this Agreement and named in smartbuy® as such.

“Distribution Network Service Provider” means a person who owns or controls a Distribution System.

“Distribution System” means the electricity power lines and associated equipment and electricity structures that are used to convey and control the conveyance of electricity to the premises of wholesale and retail customers, or to convey and control the conveyance of electricity to, from and along the rail network electricity

system operated by the Rail Corporation New South Wales, but does not include the Transmission System.

“Eligible Customer” means:

- (a) any agency in the Public Sector Service;
- (b) a public body as defined by clause 18(4) of the *Public Sector Management (Goods and Services) Regulation 2000* being:
 - (i) a government trading enterprise (including a State owned corporation);
 - (ii) a public or private hospital (including an area health service);
 - (iii) a local government agency;
 - (iv) a charity or other community non-profit organisation;
 - (v) a public or private school or a college or university;
 - (vi) a public authority of this State, the Commonwealth or of any other State or Territory;
 - (vii) a contractor to a public authority (but only in respect of things done as such a contractor);
- (c) a Nominee Purchaser provided that it satisfies the requirements of clause 5.4; and
- (d) such other persons which the Board may from time to time in its discretion, determine through a customer registration process.

“Environmental Management Plan” means a plan for managing environmental matters in relation to this Agreement and Customer Contracts which is based (to the extent applicable to a whole of government situation) on the NSW Government Environmental Management Systems Guidelines.

“Externally Hosted Catalogue” means Catalogue Information hosted in a system other than smartbuy®’s physical infrastructure which is accessible via smartbuy.

“Force Majeure” means, in relation to the Contractor or a Customer, any cause outside the affected person’s control including an act of God, fire, lightning, explosion, flood, subsistence, insurrection or civil disorder, war or military operation, sabotage, vandalism, embargo, government action, or compliance in good faith with any law, regulation or direction by any Federal, State or Local Government or authorities, any network failure, or any failure on the part of the Network Operator or a generator, and industrial disputes of any kind.

“GST” is a goods and services tax and has the same meaning as in the GST Law.

“GST Law” means any law imposing a GST and includes *A New Tax System (Goods & Services Tax) Act 1999* (Cth) or if that Act does not exist, means any Act imposing, or relating, to a GST and any regulation based on those Acts.

“Industrial Relations Plan” means a plan for managing industrial relations matters in relation to this Agreement and Customer Contracts which is based (to the extent applicable to a whole of government situation) on the NSW Government Industrial Relations Systems Guidelines.

“Information” includes information in the form of data, text or images.

“Key Personnel” means the personnel of the Contractor specified in Schedule 1 item 11.

“Large Site” means a NMI for a location or premises within New South Wales or the ACT:

- (a) that is owned or occupied by an Eligible Customer; and
- (b) that has a Type 3 Meter, Type 4 Meter or Type 7 Meter,

and in relation to a Customer Contract, means each such NMI which is subject to that Customer Contract.

“Management Fee” means the fee payable by the Contractor to the Board in accordance with clause 10.

“Meter” means an instrument that measures the quantity of electricity passing through it and includes associated equipment attached to that instrument to control or regulate the flow of electricity.

“Metering Data Agent (MDA)” is an agent appointed by NEMMCO to undertake the collection, processing and transfer of metering data to NEMMCO and other registered participants.

“Metering Data Provider (MDP)” is a service provider accredited by NEMMCO to undertake the collection, processing and/or transfer of metering data to NEMMCO and other registered participants.

“National Electricity Rules” or **“NER”** means the 'National Electricity Rules' as defined in the *National Electricity Law* set out in the schedule to the *National Electricity (South Australia) Act 2005* (SA).

“NEMMCO” means the National Electricity Market Management Company and any body which is the successor to the administrative responsibilities of the National Electricity Market Management Company.

“Network Operator” means a Transmission Operator or Distribution Network Service Provider.

“NMI” will have the same meaning as is given to that term in the National Electricity Rules.

“Nominated Subcontractor” means a subcontractor nominated by the Board that must be used by the Contractor and indicated in smartbuy® as such.

“Nominee Purchaser” means a contractor to a Public Sector Service agency, nominated by the Public Sector Service agency authorised to place Orders under Agreements for things done as such a contractor and registered by NSW Procurement – Contracting Services.

“NSW” means the State of New South Wales.

“NSW Procurement – Contracting Services” means a business unit of the NSW Department of Commerce, representing the Board and authorised to arrange and administer contracts on behalf of the Board.

“Occupational Health & Safety Management Plan” means a plan for managing occupational health & safety matters in relation to this Agreement and Customer Contracts which is based (to the extent applicable to a whole of government situation) on the NSW Government Occupational Health & Safety Systems Guidelines.

“Optional Services” means the optional data and services requirements outlined in the Statement of Requirements at Part E of the Request for Tender.

“Order” means a request by a Customer for the supply of the Deliverables substantially in the form of Schedule 2.

“Payment Period” means each period nominated in item 5 of Schedule 1 or where this Agreement expires or is terminated before the conclusion of one such period, the period up to and including the date of expiration or termination.

“Parties” means:

- (a) in respect of this Agreement, the Board and the Contractor; and
- (b) in respect of a Customer Contract, the Contractor and the Customer which is a party to that Customer Contract.

“Personnel” of a Party means;

- (a) in the case of the Board or an Eligible Customer, its officers, employees, agents and contractors; and
- (b) in the case of the Contractor, includes subcontractors, resellers, distributors, ie. Designated Sub-Contractors (and Nominated Subcontractors) in smartbuy®.

“Personal Information” has the same meaning as in the Privacy Act.

“Price” means, in relation to a Deliverable, the price payable by Customers for that Deliverable as set out in the Price Schedule and where relevant, means the price inclusive of any Applicable Discount specified in the Price Schedule.

“Price Schedule” means Schedule 4 to this Agreement as varied or deemed to be varied in accordance with this Agreement.

“Privacy Act” means the Privacy and Personal Information Protection Act 1998 (NSW).

“Public Sector Service” has the same meaning as that given to it in the *Public Sector Employment and Management Act 2002* (NSW).

“RESA” means the Retail Electricity Supply Agreement terms and conditions which apply to each Customer contract with the Retail Supplier.

“Relationship Manager” means the Contractor’s employee named in Schedule 1 item 11.

“Retail Supplier” means the person who supplies electricity to Customers in accordance with the Act and all other Statutory Requirements.

“Request for Tender” means the request for tender issued by the Board, consequent to which this Agreement was awarded to the Contractor for the supply of the Deliverables.

“Schedule” means a schedule to this Agreement.

“Service Levels” means the service levels which need to be met by the Contractor under this Agreement and in respect of each Customer Contract as set out in Schedule 7 and, where applicable, include the service levels under any Customer Service Level Agreement.

“smartbuy® CONNECT” means the electronic document exchange providing the security, connectivity, transformation, and trading partner management services.

“smartbuy® TRADE” means an entry level product for organisations new to eProcurement. It delivers a single source, easy to use, electronic product and ordering system.

“Statement of Requirements” means the detailed description of the Deliverables to be provided under Customer Contracts as contemplated by this Agreement set out in Schedule 3.

“Standards” means Australian Standards, where such exist and are applicable to any Deliverables, and includes international standards in the event of the lack of an applicable Australian Standard.

“State Contracts Control Board” means the State Contracts Control Board established by the *Public Sector Employment and Management Act 2002* and includes the duly authorised delegates of the Board, including officers of NSW Procurement – Contracting Services.

“State of New South Wales” means the Crown in right of the State of New South Wales.

“Statutory Requirements” means the laws relating to the performance of this Agreement and the Customer Contracts and the lawful requirements of any

government or regulatory authority with respect to the performance of this Agreement and the Customer Contracts.

“Substantial Breach” means a substantial breach of a condition of this Agreement by the Contractor and includes any breach of the following clauses:

- (a) clause 5.5.3 (Nominee Purchaser);
- (b) clauses 7.1 to 7.5 (Pricing);
- (c) clause 10 (Management Fee);
- (d) clause 11 (Information and Confidentiality);
- (e) clauses 12.4 (Compliance with Laws, Standards, and Statutory Requirements);
- (f) clause 12.5 (Minimum Insurance Requirements);
- (g) clause 12.12 (Child Protection);
- (h) clause 13.1 (Service Levels);
- (i) clause 13.5.1 (minimal or nil sales returns);
- (j) clause 19.1 (No Assignment or Novation); and
- (k) clause 19.2 (Conflicts of Interest),

“Supply” has the same meaning as provided for in the GST Law.

“Tax Invoice” has the same meaning as provided for in the GST Law.

“Taxable Supply” has the same meaning as provided for in the GST Law.

“Term” means the period of this Agreement, set out in item 2 Schedule 1 and any extension of the Term in accordance with clause 2.2.

“Transmission Operator” means a person who owns or operates a Transmission System.

“Transmission System” means any electricity power lines and associated equipment and electricity structures that are a transmission system by virtue of an order in force under the Act.

“Transaction” means any use of smartbuy® including sale or purchase of Deliverables available through smartbuy®.

“Transaction Data” means any data created or generated or derived from the use of smartbuy® by any participant in smartbuy® including any data about the purchase or sale of Deliverables that any participant in smartbuy® makes available or transmits to or through smartbuy® and includes any information which may identify the Customer from the smartbuy® database.

“Transition Plan” means, in relation to any Deliverables, the Contractor’s plan set out in the Statement of Requirements for ensuring successful transition into and out of this Agreement in respect of such Deliverables.

“Type 3 Meter” means a ‘Smart Meter’ which records energy use in half hour intervals for loads between 750MWh and 100,000MWh. This meter is remotely interrogated via a telephone line or a mobile phone arrangement.

“Type 4 Meter” means a ‘Smart Meter’ which records energy use in half hour intervals for loads less than 750MWh. This meter is remotely interrogated via a telephone line or a mobile phone arrangement.

“Type 7 Meter” means that a meter is not used to measure electricity consumption and consumption is measured by engineering calculations.

“Value Added Services” means the services described in the Statement of Requirements at Part E of the Request for Tender.

1.2 Rules for interpreting this Agreement

1.2.1 Headings are for convenience only, and do not affect the interpretation.

1.2.2 The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

1.2.3 A reference to:

- (a) legislation (including subordinate legislation) is a reference to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) software, document or agreement, or a provision of a document or agreement, is a reference to that software, document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a person includes any type of entity, organisation or body of persons whether or not it is incorporated or has a separate legal entity;
- (d) a person includes a person's permitted assigns and substitutes (including persons taking by novation);
- (e) a monetary amount is a reference to that amount in Australian dollars;
- (f) a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later unless specifically indicated otherwise; and
- (g) any thing (including a right, obligation or concept) includes each part of it.

1.2.4 Where:

- (a) the Contractor consists of more than one person or corporation, this Agreement binds each of them separately and any two or more of them jointly and severally;
- (b) an obligation, representation or warranty is made or assumed by the Contractor in this Agreement that obligation, representation or warranty shall bind each person which together constitute the Contractor separately and jointly and each such person shall alone be responsible for every obligation, representation or warranty of the Contractor contained in this Agreement.

1.2.5 If an event which would normally occur on a Business Day must occur on a stipulated day which is not a Business Day, it will be taken to be required to occur on the next Business Day.

1.2.6 If a period of time is specified as a date from a given day or the day of an act or event, the period is to be calculated exclusive of that day.

1.2.7 A singular word includes the plural, and vice versa.

1.2.8 A word which suggests one gender includes the other genders.

1.2.9 If a word is defined, another part of speech of that word has a corresponding meaning.

1.2.10 The Parties may undertake business by the electronic exchange of information and the provisions of this Agreement will be interpreted to give effect to undertaking business in this manner.

1.2.11 Capitalised words which are not defined in this Agreement have the same meaning as in the Act.

- 1.2.12** In the event of any ambiguity, discrepancy or inconsistency in interpreting any term or terms of this Agreement, the order of priority in the interpretation of such term or terms will be in the order of:
- (a) Schedule 6 to this Agreement;
 - (b) the terms and conditions of this Agreement (other than the Schedules);
 - (c) Schedule 1 and 3 to this Agreement;
 - (d) any other Schedules.
- 1.2.13** Specifying anything in this Agreement after the words “includes” or “for example” or similar expressions does not limit what else is included unless there is express wording to the contrary.

2 Term

2.1 Duration

- 2.1.1** This Agreement commences on the commencement date specified in item 2 of Schedule 1 and, subject to clause 2.2.1, expires on the expiry date specified in the same item 2, unless terminated earlier in accordance with this Agreement.

2.2 Extension

- 2.2.1** The Board may in its sole discretion by notice to the Contractor extend this Agreement for the period or periods specified in item 2 of Schedule 1.

3 Formation

3.1 Nature of the Agreement between the Board and the Contractor

- 3.1.1** This Agreement describes the terms and conditions between the Board and the Contractor under which the Contractor agrees with the Board that it will supply the Deliverables to Customers, as and when Orders are placed, on the terms and conditions of the Customer Contract and subject to this Agreement.
- 3.1.2** This Agreement constitutes the entire Agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded.
- 3.1.3** The Contractor acknowledges and agrees that any Customer, although not a party to this Agreement, may take the benefit of, and may enforce this Agreement in its own name.

4 No Assurance of Orders and Non-Exclusive Supply

4.1 No Assurance of Orders and Non-Exclusive Supply

- 4.1.1** This Agreement does not:
- (a) imply that the Contractor will receive any Orders for the Deliverables;
 - (b) imply that the Contractor is the exclusive provider of the Deliverables; or
 - (c) oblige any Eligible Customer to place an Order for the Deliverables with the Contractor.
- 4.1.2** The Contractor acknowledges that the Board and any Eligible Customer may, from time to time, in its discretion, appoint other suppliers under an agreement to supply the Deliverables and that the Contractor will make no objection to such appointment.

5 Customer Contract

5.1 Formation of Customer Contract

- 5.1.1** The Contractor agrees that, subject to clause 5.3.1, each time a Customer places an Order with the Contractor a separate Customer Contract between the Contractor and the Customer is formed in relation to that Order.

5.2 Terms of Customer Contract for the Deliverables

- 5.2.1** The terms and conditions of a Customer Contract between the Contractor and a Customer for the supply of the Deliverables are those appearing in:
- (a) this Agreement to the extent applicable; and
 - (b) the applicable Order from that Customer.

5.3 Incomplete Customer Contract

- 5.3.1** If an Order is issued by a Customer in incomplete form, the Contractor must notify that Customer as soon as practicable of the details required that have not been provided. The Customer must promptly provide those details, and on provision of those details a Customer Contract between the Contractor and the Customer is formed in relation to that Order.

5.4 Contractor must supply to all Customers

- 5.4.1** If an Eligible Customer places an Order with the Contractor during the Term, the Contractor must supply the required Deliverables to that Eligible Customer on the terms and conditions of the Customer Contract which is formed pursuant to clause 5.1.1 when that Order is placed.

5.5 Nominee Purchasers

- 5.5.1** Subject to clause 5.5.3, the Contractor must satisfy each Customer Contract which results from an Order placed by a Nominee Purchaser, provided that the Nominee Purchaser provides in that Order:
- (a) its NSW Procurement – Contracting Services Registration Number;
 - (b) the identity of the Eligible Customer nominating it;
 - (c) the agreement number, name and location of the contract in respect of which the purchase is being made; and
 - (d) a statement that the Deliverables ordered are related to carrying out its obligations with the Eligible Customer nominating it.
- 5.5.2** If at any time during the Term, the Contractor wishes to restrict its dealings with a Nominee Purchaser, the Contractor shall so request in writing to the Board. The Board may approve the request if there are genuine commercial reasons for the Contractor's request. If approved by the Board, the details of the restrictions will be included in item 3, Schedule 1, by way of amendment to this Agreement, or otherwise notified by the Board to the Contractor.
- 5.5.3** Where the Board does not approve a request of the Contractor under clause 5.5.2 and the Contractor refuses to deal with a Nominee Purchaser, the Board may consider it a Substantial Breach of this Agreement.
- 5.5.4** The Contractor may at any time lift the restrictions it has sought to be placed on its dealings with a Nominee Purchaser and shall notify the Board accordingly.
- 5.5.5** If the Contractor makes a supply under a Customer Contract to an entity purporting to be a Nominee Purchaser, the Contractor is taken to be satisfied that the supply is properly made under that Customer Contract.

5.6 Supply through Designated and Nominated Subcontractors

- 5.6.1** The Contractor must supply the Deliverables directly to Eligible Customers or through the Designated Subcontractors and/or Nominated Subcontractors indicated in smartbuy® in accordance with Schedule 6.
- 5.6.2** If an Order is placed by an Eligible Customer on a Designated Subcontractor or Nominated Subcontractor, the Contractor is deemed to have entered into a Customer Contract with the Customer in respect of that Order.
- 5.6.3** The Contractor must ensure that its Designated Subcontractors and Nominated Subcontractors supply the Deliverables in accordance with the terms of this Agreement and the relevant Customer Contracts.
- 5.6.4** The Contractor must ensure that its Designated Subcontractors in smartbuy® are current and up to date. In the event of a change being required to smartbuy®, as a result of an addition or deletion of a Designated Subcontractor, the Contractor must give notice to the Board within 7 days of such event, in order that smartbuy® can be updated in a manner and format as required by the Board.
- 5.6.5** The Contractor's obligations under this Agreement are not affected in any way by the supply through Designated Subcontractors or Nominated Subcontractors.

6 The Deliverables

6.1 List of Deliverables

- 6.1.1** The Deliverables to be supplied by the Contractor in connection with this Agreement are listed in Schedule 3.

7 Pricing

7.1 Contractor's Obligations

- 7.1.1** The Contractor must supply the Deliverables on the basis of the Prices in the Price Schedule.
- 7.1.2** The Prices apply to all Large Sites located within New South Wales or the Australian Capital Territory.

7.2 Calculating the Price

- 7.2.1** The Price for the Deliverables in the Price Schedule includes all applicable levies, duties, taxes, insurances, packaging, imposts, overheads, profits and any Applicable Discounts, but is exclusive of GST.
- 7.2.2** If a supply of Deliverables in connection with this Agreement is a Taxable Supply then the Customer must pay the Contractor the GST payable on that Supply in addition to the price of the Deliverables.

7.3 Prices for the Deliverables

- 7.3.1** The Price is the maximum price payable by a Customer for a Deliverable and is not subject to any increase during the Term.

7.4 Conduct of Price Negotiations

- 7.4.1** The Contractor will not conduct or participate in price negotiations with any Customer to supply the Deliverables at prices different from those in this Agreement. All negotiations with the Contractor relating to prices of Deliverables under this Agreement will be conducted by the Board.

7.5 Goods and Services Tax

- 7.5.1** The Contractor must hold an Australian Business Number (ABN) and be registered for GST.

- 7.5.2** Every invoice issued by a person making a Supply contemplated by this Agreement must be in the form of, or be accompanied by, a valid Tax Invoice. No amount is payable until a valid Tax Invoice is received.
- 7.5.3** If there is any abolition or reduction of any tax, duty, excise or statutory charge associated with the GST, or any change in the GST, the Consideration payable for the Supply must be varied so that the Contractor's net dollar margin for the Supply remains the same.
- 7.5.4** Any contract entered into by a Party to this Agreement with a third party which involves a Supply being made, the cost of which will affect the cost of any Supply made under or in connection with this Agreement, must include a clause in equivalent terms to clause 7.5.3.
- 7.5.5** The Parties agree that this clause will apply to the Management Fee payable by the Contractor to the Board.

8 Payment

8.1 Payment of Contract Price

- 8.1.1** In consideration of the Contractor providing the Deliverables under a Customer Contract to which it is a party, each Customer shall, subject to the terms and conditions of the Customer Contract and the applicable terms and conditions of the RESA, pay the Retail Supplier/Customer the Price of the Deliverables listed in the Price Schedule, as applicable.
- 8.1.2** Failure by any Customer to pay the Price at the due time will not of itself be grounds for the Contractor to avoid performance of the relevant Customer Contract.

8.2 Invoices and Time for Payment

- 8.2.1** The Contractor shall issue accounts for payment under each Customer Contract to the Retail Supplier/Customer. Where applicable, the Price must be passed on at cost to the Retail Supplier.
- 8.2.2** Subject to this clause 8.2, the Customer shall make payment within 60 days from the end of the month after receipt of a valid Tax Invoice and documents necessary to evidence delivery to the Customer.
- 8.2.3** The Contractor agrees that the making of a payment by a Customer is not intended to be an acknowledgement that the relevant Deliverables have been supplied in accordance with the relevant Customer Contract.
- 8.2.4** If a Party ("first Party") becomes aware that the other Party has made an error in an amount invoiced or paid under a Customer Contract:
- (a) the first Party shall notify the other Party within 28 days of becoming aware of that fact; and
 - (b) provided that the Customer consents to the Contractor's calculation of the amount of the error, the Contractor will credit or debit the Customer's next account with the amount necessary to rectify error.

8.3 Set-off

- 8.3.1** A Customer may set off any amount owing to it by the Contractor under any Customer Contract against any amount which is payable by the Customer to the Contractor under any Customer Contract.
- 8.3.2** The Contractor may set off any amount owing to it by a Customer under any Customer Contract against any amount which is payable by the Contractor to the Customer under any Customer Contract.

8.4 Money Recoverable by Customer

- 8.4.1** Without limiting clause 8.3, any damages, costs and expenses recoverable by a Customer from the Contractor in consequence of the Contractor's breach of a

Customer Contract may be deducted from money then due to the Contractor under that Customer Contract or any other Customer Contract to which that Customer is a party. If that money is insufficient for that purpose, the balance remaining unpaid will be a debt due by the Contractor to that Customer and may be:

- (a) set off against any other money due to the Contractor by the Customer; or
- (b) recovered from the Contractor by the Customer in an appropriate court.

8.4.2 For the purposes of this clause 8.4, the Board may act for and on behalf of any Customer for the purpose of assessing and certifying any damages, losses, costs and expenses sustained or incurred by the Customer as a result of the breach of any Customer Contract.

8.5 Suspension of Payments

Should the Contractor refuse or neglect to carry out the instructions or requirements of the Board in regard to any matter connected with this Agreement, each Customer may, when directed by the Board, suspend all payments to the Contractor until such instructions or requirements have been complied with by the Contractor and in complying with a direction of the Board, no Customer shall be in breach of this Agreement or any Customer Contract.

9 Variations

9.1 Variations to Agreement

9.1.1 This Agreement may not be varied except in writing signed by both the Board and the Contractor.

10 Management Fee

10.1 Payment of Management Fee

10.1.1 The Contractor must pay to the Board a Management Fee in accordance with this clause 10.

10.1.2 The Contractor shall act in good faith in respect of all its obligations under this clause 10 and shall use its best endeavours to ensure that the obligations imposed on it in relation to the Management Fee are met.

10.2 Obligation to ensure Deliverables purchased under Customer Contracts

10.2.1 The Contractor agrees to take all reasonable steps to ensure that where Eligible Customers purchase Deliverables from the Contractor and/or its Designated Subcontractors and/or Nominated Subcontractors, the purchases are made under Customer Contracts.

10.2.2 The Contractor agrees that all purchases of Deliverables by New South Wales government departments and agencies shall be treated as purchases to which this clause 10 applies.

10.2.3 The Contractor agrees that all purchases of Deliverables by any Eligible Customers not covered by clause 10.2.2 shall be treated as purchases to which this clause 10 applies, unless the Contractor can provide evidence, to the satisfaction of the Board, that a purchase was made under a contract between that Eligible Customer and the Contractor other than a Customer Contract.

10.3 Amount of Management Fee

10.3.1 The Management Fee in respect of a Payment Period is the GST-exclusive aggregate cost of all Deliverables supplied to all Customers in that Payment Period, multiplied by the percentage shown in Item 4 of Schedule 1 (the Management Fee Rate), plus the GST payable on this amount. The Management Fee is payable regardless of whether a supply of Deliverables to a Customer was made under a Customer Contract.

- 10.3.2** The amount of the Management Fee will not under any circumstances be shown as a separate charge in any quote or invoice to a Customer.
- 10.3.3** The Contractor agrees that the Management Fee payable has been allowed for in the Prices specified in the Price Schedule together with all costs associated with its calculation, proof of payment and compliance with this clause 10.
- 10.4 Administration of Management Fee**
- 10.4.1** Within 30 days of the end of each Payment Period, the Contractor shall provide to the Board electronically through smartbuy® a sales report ("the Report") which relates to the relevant Payment Period and which reports the:
- (a) total amount, exclusive of GST, all Customers are liable to pay in respect of all Deliverables invoiced by the Contractor, its Designated Subcontractors and/or Nominated Subcontractors, to the Retail Supplier; and
 - (b) the sales information as set out in Item 6 of Schedule 1 ("the Sales Information"), or as the Board requests in writing from time to time;
 - (c) such other relevant information as the Board may reasonably require.
- 10.4.2** In the event that the Contractor does not provide a Report within 30 days of the end of a Payment Period, the Contractor shall be liable to pay to the Board:
- (a) the cost to the Board of ensuring compliance by the Contractor with its obligations under this clause, (including the number of hours expended by staff of the Board multiplied by the hourly rate for those staff); and
 - (b) interest at the rate specified in item 7 of Schedule 1 on the Management Fee payable which (had this clause been complied with) would have been invoiced to the Contractor under clause 10.4.3, calculated from 60 days after the expiry of the relevant Payment Period.
- 10.4.3** After receipt of a completed Report from the Contractor, the Board shall compile a Tax Invoice for the Management Fee payable based on the Report and forward that Tax Invoice to the Contractor or Retailer. (The liability belongs to the Contractor as transacted through electricity retailer)
- 10.4.4** The Tax Invoice shall set out the Management Fee payable by the Contractor to the Board for the relevant Payment Period and the GST payable on the Management Fee.
- 10.4.5** The Contractor shall forward payment to the Board in accordance with each Tax Invoice from the Board within 30 days of the date of that Tax Invoice.
- 10.4.6** In the event that the Contractor does not provide payment within the time period required by clause 10.4.5, the Contractor shall be liable to pay to the Board:
- (a) the cost to the Board of ensuring the compliance by the Contractor with its obligations under this clause (including the number of hours expended by staff of the Board multiplied by the hourly rate for those staff Board); and
 - (b) interest at the rate specified in item 7 of Schedule 1 on the invoiced amount, calculated from 60 days after the expiry of the relevant Payment Period.
- 10.4.7** The Board may alter the above procedure for the collection of the Management Fee as advised in writing to the Contractor from time to time during the Term.
- 10.4.8** Where the Contractor considers that an accounting adjustment to the amount of the Management Fee paid or payable in respect of a Payment Period is required, it must advise the Board in writing. The Contractor and Board may then agree on the amount of any adjustment. If the Contractor and the Board cannot agree on the amount of any adjustment, the issue shall be determined in accordance with clause 16.
- 10.4.9** Where the Contractor has not issued any invoice to a Customer during a relevant Payment Period the Contractor must provide, within 30 days of the conclusion of

that Payment Period, a report stating that no Deliverables were provided by the Contractor to any Eligible Customer during the Payment Period.

10.4.10 The Contractor must set up and maintain a system which:

- (a) to the reasonable satisfaction of the Board is suitable for identifying all purchasers of the Deliverables that are Eligible Customers whether pursuant to Customer Contracts or otherwise;
- (b) enables monitoring by the Board of the Customer Contracts placed with, and invoices issued by, the Contractor and its Designated Subcontractors and/or Nominated Subcontractors, and for the provision of the Sales Information; and
- (c) accommodates the use of the Customer's corporate credit card if the Parties have agreed to use that card for the purchases of Deliverables.

10.4.11 The Board may, at its own cost, take such measures as it considers reasonable in the circumstances (including the appointment of an auditor) to verify that the Contractor and its Designated and Nominated Subcontractors have paid the correct amount of Management Fee due to the Board and the Contractor agrees to cooperate with the Board in relation to any such measures.

10.4.12 If the Board appoints an auditor pursuant to clause 10.4.11, the Board will inform the Contractor in writing of the appointment. The Contractor agrees to cooperate with any auditor appointed by the Board, including providing access within 10 working days of the written notification from the Board that an audit will take place and providing information about all sales of Deliverables made to Eligible Customers (whether pursuant to an Order, a Customer Contract or otherwise), copies of all contracts, orders and invoices between the Contractor and any Eligible Customers or the Retail Supplier. The Contractor agrees to provide the auditor appointed by the Board access on the basis of the appointed auditor entering into an Auditor Confidentiality Agreement in the form set out in Schedule 5.

10.4.13 If the measures contemplated by clauses 10.4.11 and 10.4.12 verify that the Contractor has not paid in full the Management Fee that is actually due to the Board, the Contractor:

- (a) must pay the difference between the Management Fee paid to the Board and the Management Fee actually due to the Board within 30 days of a written direction from the Board;
- (b) will be liable for interest at the rate specified in item 7 of Schedule 1, on the additional amount calculated from 60 days after the expiry of the relevant Payment Period; and
- (c) will, at the discretion of the Board, reimburse the Board's costs and expenses of the measures taken (including any auditor's fees) under clauses 10.4.11 and 10.4.12 to the Board in accordance with the sliding scale set out below to compensate the Board for the cost incurred in ensuring the correct Management Fee is paid:

Difference between management fee paid and payable:

- (a) 99% or more of management fee was paid
- (b) 90-98% of management fee paid
- (c) 75-89% of management fee paid
- (d) 50-74% of management fee paid
- (e) less than 50% of payable management fee paid

Portion of Audit costs to be borne:

- (a) \$0
- (b) 25% of audit and other costs

- (c) 50% of audit and other costs
- (d) 75% of audit and other costs
- (e) 100% of audit and other costs.

- 10.4.14** The Contractor shall during the Term and for a 12 month period after this Agreement has expired or is terminated, keep secure all relevant documents and information for the purposes of this clause and give any auditor appointed by the Board access to those documents and information at all reasonable times.
- 10.4.15** The parties agree that a breach of this clause 10 (including a failure by the Contractor to cooperate satisfactorily with the audit referred to in clause 10.4.12) shall be a Substantial Breach of this Agreement which will entitle the Board to terminate this Agreement pursuant to clause 17.1.1 and this right of termination shall be in addition to the right of the Board to recover from the Contractor any sums payable to the Board under this Agreement or otherwise, or the right of the Board to deduct those sums from any money that may be or become payable by the Board to the Contractor on any other account.

11 Information and Confidentiality

11.1 Information

- 11.1.1** The Customer will provide the Contractor with all the information reasonably requested for the purposes of any Customer Contract to which that Customer is a party and will notify the Contractor of any changes in that information.

11.2 Obligations of Parties

- 11.2.1** Neither Party will make public, disclose or use any Confidential Information of the other Party except in accordance with this Agreement.
- 11.2.2** Notwithstanding clause 11.2.1, a Party may make public, disclose or use Confidential Information of the other Party:
- (a) if required by law, including to the extent necessary to comply with any statutory requirements or government policy relating to the public disclosure of Confidential Information;
 - (b) if strictly necessary for legal proceedings;
 - (c) if the other Party provides its prior written consent; or
 - (d) to its officers, employees, sub-contractors and agents where such disclosure is essential to carrying out their duties or in accordance with this Agreement or any Customer Contract.
- 11.2.3** If a Party is required to disclose Confidential Information under clause 11.2.2, the Party agrees to use reasonable endeavours to ensure those who receive the Confidential Information do not disclose the Confidential Information except as permitted by clause 11.2.2.
- 11.2.4** Each Party must ensure the Confidential Information of the other Party is used solely in connection with or for the purposes of fulfilling its obligations under this Agreement and the Customer Contracts.
- 11.2.5** This clause will survive the termination of this Agreement.

12 Specific Obligations of Contractor

12.1 Contract Transition Requirements

- 12.1.1** The Contractor must ensure that it has complied with the requirements of each Transition Plan in the Statement of Requirements in accordance with the dates indicated therein.

12.2 Marketing by the Contractor

12.2.1 The Contractor is responsible for the proactive marketing of its organisation's capability to Customers.

12.3 Licences and Approvals

12.3.1 The Contractor must obtain at its own cost all licences, approvals and consents necessary to perform this Agreement and each Customer Contract, including any licences listed below or otherwise offered in or required by the Tender:

- NEMMCO Accredited Meter Data Provider
- Registered Metering Data Provider

12.3.2 The Contractor must inform the Board immediately if any of the Contractor's licences, approvals or consents referred to in clause 12.3.1 are forfeited or lapse, or is liable to forfeiture or lapsing during the Term.

12.4 Compliance with Laws, Standards and Statutory Requirements

12.4.1 The Contractor must, in carrying out its obligations under this Agreement and each Customer Contract, comply with:

- (a) all applicable Statutory Requirements;
- (b) the NSW Government codes, policies, guidelines and Standards listed in item 8 of Schedule 1 and any other codes, policies, guidelines and Standards specified in writing by the Board to the Contractor;
- (c) a particular Standard which has been agreed between the Contractor and the Board, and if that Standard is revised, the Contractor must submit evidence of compliance with the revised Standard within a reasonable period of time; and
- (d) the obligations imposed on the Board by the Privacy Act in relation to Personal Information that is disclosed to, or acquired by, or in possession of the Contractor in accordance, or in connection, with this Agreement or any Customer Contract. The Contractor must, and must ensure that its officers, employees, agents and sub-contractors, comply with the obligations imposed on the Board by the Privacy Act as though the Contractor was, as far as reasonably practicable, the Board in relation to any such Personal Information. The Contractor must also comply with any request of the Board in relation to Personal Information and will not do anything that would cause the Board to be in breach of its obligations under the Privacy Act.

12.4.2 At least 14 days before commencing the supply of Deliverables under any Customer Contract, the Contractor must document, submit, and implement the following which complies with applicable legislation and the Statement of Requirements:

- (a) an Industrial Relations Plan;
- (b) an Environmental Management Plan; and
- (c) an Occupational Health & Safety Management Plan.

12.4.3 The Contractor must demonstrate to the Board or to a Customer, whenever requested, that it has met and is meeting its obligations under this clause.

12.5 Minimum Insurance Requirements

12.5.1 The Contractor must hold and maintain, and must ensure that all Designated Subcontractors and Nominated Subcontractors are beneficiaries under or otherwise hold and maintain, the following insurances for the Term, or for such other period as may be specifically required by this Agreement for the particular policy:

- (a) a broad form liability policy of insurance which includes public liability insurance for at least the amount specified in item 10 of Schedule 1 in respect of each claim;

- (b) workers' compensation insurance in accordance with applicable legislation for all the Contractor's employees; and
- (c) such other insurances as are specified in Schedule 1 item 10.

12.5.2 All policies of insurance must be effected with an insurer rated A or better by AM Best or an equivalent rating organisation.

12.5.3 The Contractor must ensure that each policy of insurance is in effect for the Term or such other period as required by the Board.

12.5.4 The Contractor shall, and shall ensure Designated Subcontractors and Nominated Subcontractors, as soon as practicable, inform the Board in writing of the occurrence of an event that may give rise to a claim under a policy of insurance effected as required by this Agreement and shall ensure that the Board is kept fully informed of subsequent action and developments concerning the claim.

12.5.5 The Contractor must, when requested in writing by the Board, arrange for its insurer to complete a "Certificate of Currency of Insurance Obtained".

12.5.6 Where the Contractor is insured under its parent company's insurance policy, the parent company's insurance policy must clearly indicate that it applies and extends coverage to the Contractor.

12.5.7 The effecting of insurance shall not limit the liabilities or obligations of the Contractor under other provisions of this Agreement.

12.6 General Indemnity and Liability

12.6.1 The Contractor will be liable in respect of, and indemnifies, and shall keep indemnified, the Board and the Customers and their respective officers, employees and agents against any claim, loss or expense (including a claim, loss or expense arising out of personal injury or death or damage to property) which any of them pays, suffers, incurs or is liable for (including legal costs on a solicitor and client basis) (together "the loss") as a result of any unlawful, negligent, reckless or deliberately wrongful act or omission of the Contractor (or its employees, agents or subcontractors or their employees) in the performance of this Agreement or any Customer Contract.

12.6.2 The Contractor's liability in respect of, and indemnity given in, clause 12.6.1 shall be reduced proportionally to the extent that any unlawful, negligent, or deliberately wrongful act or omission of the Board or a Customer or their officers, employees or agents caused or contributed to the loss.

12.6.3 Unless otherwise expressly provided for in this Agreement, neither the Board nor any Customer shall be liable in any circumstances for any Consequential Loss arising out of any failure to comply with this Agreement or any Customer Contract, whether in contract, tort (including negligence) or otherwise.

12.7 Contractor's Warranties

12.7.1 The Contractor warrants:

- (a) it has capacity to enter into this Agreement and each Customer Contract and perform the obligations imposed on the Contractor under this Agreement and each Customer Contract; and
- (b) the execution and performance of the Contractor's obligations under this Agreement and each Customer Contract will not breach any law, regulation or Statutory Requirement or any contractual or other obligation owed by the Contractor to any third party.

12.8 Access to Large Sites by the Contractor

12.8.1 Any access by the Contractor to a Large Site must be arranged with the relevant Customer. In accessing a Large Site, the Contractor must comply with the relevant Customer's policies and procedures as to the use of that Large Site, including access times.

12.9 Mistakes in Information

12.9.1 The Contractor must pay for any additional costs incurred by the Board or any Customer for errors or omissions in material or other Information supplied by it, even though that material or Information may have been approved by the Board.

12.10 Notification of Change in Control or Transfer of Ownership

12.10.1 During the Term, the Contractor must immediately notify the Board and each Customer under an existing Customer Contract in writing of any Change in Control or other action in respect of its restructure (including any amalgamation).

12.11 Notification of Contractor's Insolvency

12.11.1 The Contractor must immediately notify the Board in writing of the Contractor's Insolvency and disclose the details of any:

- (a) action taken in relation to the Contractor's Insolvency in so far as it affects this Agreement and any Customer Contracts; and
- (b) existing Customer Contracts which the Contractor has entered into under this Agreement.

12.11.2 The Contractor must immediately notify each Customer of the Contractor's Insolvency.

12.12 Child Protection

12.12.1 If any Customer Contract involves child-related employment, the Contractor must ensure that:

- (a) it complies with, and its Designated Subcontractors and Nominated Subcontractors, comply with, the NSW Department of Commerce Code of Behaviour for the Protection of Children and other Vulnerable People; and
- (b) it complies with its obligations, and its Designated Subcontractors and Nominated Subcontractors, comply with their obligations, as an employer under the Child Protection (Prohibited Employment) Act 1998 ("Prohibited Employment Act") and the Commission for Children and Young People Act 1998 ("Children and Young People Act").

12.12.2 Details of relevant obligations are contained in guidelines issued by the NSW Department of Education and Training, called "the working with children check." The guidelines are available at www.kids.nsw.gov.au.

12.12.3 Without affecting the obligations imposed by the Prohibited Employment Act and the Children and Young People Act:

- (a) if any work under a Customer Contract is "child-related employment" under the Prohibited Employment Act (employment of specified kinds that primarily involves direct contact with children where that contact is not directly supervised), the Contractor:
 - (i) must obtain, and ensure that its sub-contractors obtain, a prohibited person declaration from any person who is to perform the work; and
 - (ii) must conduct, and ensure that its sub-contractors conduct, a working with children check on any person who is to perform the work; and
- (b) if any work under a Customer Contract is "child-related employment" under the Children and Young People Act (any employment that involves direct contact with children where the contact is not directly supervised) the Contractor must conduct, and ensure that its sub-contractors conduct, a working with children check on any person who is to perform the work.

12.12.4 The Contractor must not, and must ensure that its sub-contractors do not, engage any person who is a "prohibited person" under the Prohibited Employment Act (persons who have committed a serious sex offence within the meaning of that Act)

to perform work under any Customer Contract that is “child-related employment” under that Act.

- 12.12.5** If the work involves access to Department of Education sites, additional requirements relating to community expectations concerning child protection may be imposed as a condition of entry to that site.
- 12.12.6** The Board may require the immediate removal of a “prohibited person” or a person who is the subject of a child abuse allegation or investigation from performance of child-related employment under the relevant Customer Contract.

13 Performance Management

13.1 Service Levels

- 13.1.1** The Contractor must meet the specified Service Levels during the Term. Performance against the Service Levels must be tracked by the Contractor and reported to the Board’s Delegate in accordance with the frequencies and formats in Schedule 7.
- 13.1.2** Where the Contractor does not meet the Service Levels, the Board may, at its discretion, take one or more of the following actions in relation to the Contractor:
 - (a) temporarily suspend the use of all or parts of this Agreement by all or any Eligible Customers, for a period not exceeding 12 months; and
 - (b) require the Contractor to undertake more frequent performance reporting in addition to that specified in Schedule 7, to ensure performance is improved, until such time as the Contractor has demonstrated its ability to meet the Service Levels in accordance with Schedule 7.
- 13.1.3** The remedies in clause 13.1.2 are in addition to any other provisions available to the Board to deal with the inability of the Contractor to meet its Service Levels obligations under this Agreement and at law.
- 13.1.4** The measurements and tolerances in the Service Levels specified in Schedule 7 may be amended, added to, or deleted by the Board and the Contractor in writing during the Term.

13.2 Customer Service Level Agreements

- 13.2.1** Each Customer may enter into an agreement (“Customer Service Level Agreement”) substantially in the form set out or contemplated by in Schedule 7 or in any other agreed form in respect of the service levels applicable to that Customer. Where a Customer Service Level Agreement exists, it will take precedence over the requirements in this Agreement in respect of Service Levels to the extent of any inconsistency.
- 13.2.2** The Contractor will supply the Deliverables in accordance with the Service Levels and each relevant Customer Service Level Agreement.

13.3 Board’s Delegate

- 13.3.1** The Board has nominated the Board’s Delegate in Schedule 1 item 9 to oversee the performance of this Agreement. The Board may, by notice in writing to the Contractor, nominate a replacement Board’s Delegate.

13.4 Contractor’s Relationship Manager

- 13.4.1** For the purpose of ensuring an efficient relationship with the Board, the Contractor has appointed the Relationship Manager indicated in Schedule 1 item 11. The Relationship Manager must:
 - (a) act as the representative of the Contractor and have the legal power to bind the Contractor in all matters pertaining to this Agreement and/or the Customer Contracts;

- (b) serve as the principal point of contact for the Contractor with respect to the overall administration of this Agreement and the Customer Contracts;
- (c) have the authority to implement such actions (including issuing of directives through the Contractor's organisation), as may be required for the Contractor to comply with this Agreement and/or the Customer Contracts;
- (d) meet with the Board's Delegate at least once each month to provide information regarding the Contractor's performance under this Agreement, with particular reference to the Service Levels; and
- (e) answer the Board's queries and work with the Board to address issues relating to matters deemed urgent by the Board arising out of this Agreement and/or the Customer Contracts.

13.4.2 The Relationship Manager must be available at all times during business hours and at all other times on reasonable notice by the Board's Delegate to meet with the Board's Delegate to discuss any queries, concerns or issues arising in connection with this Agreement or a Customer Contract.

13.4.3 The Relationship Manager must be supported by the Key Personnel named in Schedule 1 item 11. The Relationship Manager and/or the Key Personnel named in Schedule 1 item 11 must be available to attend periodic meetings as required by Customers.

13.5 Contractor Performance Monitoring

13.5.1 The Board will monitor the sales performance of the Contractor under this Agreement. Where after 12 months of operation of this Agreement the:

- (a) sales of the Contractor are minimal, or
- (b) the Contractor consistently has nil returns,

it may be treated by the Board as unacceptable performance of this Agreement by the Contractor.

13.6 Exchange of Information Between Government Agencies

13.6.1 The Contractor authorises the Board and each Customer and their employees and agents to make available to NSW Government departments or agencies Information concerning the Contractor, including any Information provided by the Contractor to the Board or a Customer and any Information relating to the Contractor's performance under this Agreement or any Customer Contract, or the Contractor's financial position.

13.6.2 The Contractor acknowledges that Information about the Contractor from any source including any substantiated reports of unsatisfactory performance, may be taken into account by NSW Government agencies in considering whether or not to offer the Contractor future opportunities for NSW Government work.

13.6.3 The Board regards the provision of Information about the Contractor to any New South Wales Government department or agency as privileged within section 30 of the *Defamation Act 2005* (NSW).

13.6.4 The Contractor releases and indemnifies the Board, each Customer and the State of New South Wales from any claim in respect of any matter arising out of the provision of Information. Without limiting the above, the Contractor releases the Board, each Customer and the State of New South Wales from any claim it may have for any loss to the Contractor arising out of the provision of Information relating to the use of such Information by the recipient of the Information.

14 Personnel

14.1 The Contractor's Personnel

- 14.1.1** The Contractor warrants that all personnel (including the Personnel) engaged in the provision of the Deliverables are appropriately qualified, competent and experienced including the Contractor's Relationship Manager and Key Personnel.
- 14.1.2** The Contractor must:
- (a) employ only such persons as are careful, skilled and experienced in the provision of the Deliverables; and
 - (b) (where applicable) hold, or ensure appropriate personnel hold, all necessary licences, permits and authorities.
- 14.1.3** The Board may object to and direct the Contractor to remove any of its personnel (including the Relationship Manager and Key Personnel) who in its opinion is incompetent, unsuitable, or who has been guilty of neglect, or other improper behaviour. Any personnel so removed may not be re-employed by the Contractor under this Agreement.
- 14.1.4** Any replacement Relationship Manager or Key Personnel provided by the Contractor must be approved by the Board.

15 Force Majeure

- 15.1.1** If a Force Majeure event occurs and prevents the Contractor or a Customer (in this clause the "affected party") from performing in full any of its obligations under a Customer Contract, the affected party must notify the other Party ("other Party") (and the Board, if the affected party is the Contractor) as soon as practicable of the nature of the Force Majeure event, the time of its commencement and likely duration and the extent to which its obligations are affected.
- 15.1.2** Provided that the affected party complies with its obligations under this clause, the affected party's obligations under the relevant Customer Contract are suspended to the extent that the affected party is prevented from performing them.
- 15.1.3** The affected party must take reasonable steps to promptly remove or mitigate the relevant Force Majeure event, except that the affected party will not be obliged to settle any industrial dispute.
- 15.1.4** Performance of the relevant obligations must recommence once the relevant Force Majeure event has been rectified or ceases to exist.
- 15.1.5** The other Party may terminate the relevant Customer Contract on thirty days notice if the Force Majeure event continues for more than 14 consecutive days.

16 Conduct and Dispute Management

16.1 Co-operation

- 16.1.1** The Parties must do all they reasonably can to co-operate in matters relating to this Agreement and/or the Customer Contracts, but their rights and responsibilities under this Agreement and each Customer Contract remain unchanged unless the Parties agree in writing to vary them.

16.2 Duty not to Hinder Performance

- 16.2.1** Each Party must do all it reasonably can to avoid hindering the performance of the other under this Agreement and each Customer Contract.

16.3 General

- 16.3.1** In order to resolve any conflicts or issues in respect of this Agreement or any Customer Contract, the issue resolution process stated below is to be followed:
- (a) Amicable Resolution (clause 16.4.); and

- (b) Expert Determination (clause 16.5)

16.4 Amicable Resolution

- 16.4.1** Either Party may give notice to the other Party of an issue, including a dispute or difference, (“the Issue Notice”) about the meaning or effect of this Agreement or a Customer Contract, or about any matter arising under or out of this Agreement or a Customer Contract. The Issue Notice must be given within a reasonable time of the Party becoming aware of the issue.
- 16.4.2** The Party submitting the Issue Notice must submit it to the other Party’s authorised representative, which:
- (a) in the case of the Board is to the Board’s Delegate;
 - (b) in the case of the Contractor is the Relationship Manager; and
 - (c) in the case of a Customer is the person listed in the relevant Order in relation to the provision of notices to the Customer and the Board’s Delegate.
- 16.4.3** The Parties must follow the issue resolution process in this clause before either commences proceedings or takes similar action except to seek an urgent injunction or declaration.
- 16.4.4** If a Party gives an Issue Notice under this clause, each Party will nominate in writing a senior executive who will promptly confer to resolve the issue.
- 16.4.5** A Party is not entitled to refer an issue to Expert Determination until 21 days after the giving of the Issue Notice to the other Party.
- 16.4.6** A Party may only refer an issue to Expert Determination by giving notice in writing to the other Party specifying the issue to be decided (“the Referral Notice”).
- 16.4.7** If the Party giving the Referral Notice is the Contractor it must give the Referral Notice to the authorised representative of the Board and, if the issue relates to a Customer Contract, the authorised representative of the relevant Customer, each as referred to in clause 16.4.2.
- 16.4.8** If the Party giving the Referral Notice is the Board, it must give the Referral Notice to the authorised representative of the Contractor referred to in clause 16.4.2.
- 16.4.9** If the Party giving the Referral Notice is the Customer, it must give the Referral Notice to the authorised representatives of the Board and the Contractor referred to in clause 16.4.2.
- 16.4.10** If a Referral Notice has not been given to the other Party within 28 days after becoming entitled to under clause 16.4.5, then the issue is barred from Expert Determination or any other action or proceedings (including court proceedings).

16.5 Expert Determination

- 16.5.1** If a Referral Notice is given under clause 16.4, the expert is to be agreed between the Board and the Contractor. If they cannot agree within 28 days of the Referral Notice, the expert is to be nominated by the Chief Executive Officer, Australian Commercial Disputes Centre, Sydney.
- 16.5.2** The Parties agree that the Board may represent a Customer in any expert determination process.
- 16.5.3** The expert nominated must be a lawyer unless otherwise agreed. The expert must not be:
- (a) an employee of the parties;
 - (b) a person who has been connected with this Agreement or any Customer Contract as the case may be; or
 - (c) a person who the Board and the Contractor have been unable to agree on.

- 16.5.4** When the person to be the expert has been agreed or nominated, the Board, on behalf of both the Board and the Contractor, must engage the expert by letter of engagement (and provide a copy to the Contractor) setting out:
- (a) the issue referred to the expert for determination;
 - (b) the expert's fees;
 - (c) the Expert Determination Procedure set out in 10;
 - (d) any other matter which is relevant to the engagement.
- 16.5.5** The expert must determine the issue referred to the expert in accordance with the Expert Determination Procedure set out in Schedule 8.
- 16.5.6** The Parties must share equally the fees and out-of-pocket expenses of the expert for the determination, and bear their own expenses.
- 16.5.7** If the expert determines that one Party must pay the other an amount exceeding the amount shown in Item 12 Schedule 1 (calculating the amount without including interest on it, and after allowing for set offs), then either Party may commence litigation, but only within 56 days after receiving the determination.
- 16.5.8** Unless a Party has a right to commence litigation under clause 16.5.7:
- (a) the Parties must treat each determination of the expert as final and binding and give effect to it; and
 - (b) if the expert determines that one Party owes the other money, that Party must pay the money within 28 days.
- 16.5.9** The Parties agree to continue performing their obligations under this Agreement and/or the relevant Customer Contract while the issue is being dealt with by expert determination under this clause.

17 Termination by the Board

17.1 Termination for Cause

- 17.1.1** Without prejudice to its rights at common law, the Board may immediately terminate this Agreement, in whole or in part, by written notice to the Contractor ("Notice of Termination for Cause"):
- (a) where the Contractor makes any statement or representation or provides material or information in the Tender, which is false, untrue, or incorrect in a way which materially affects this Agreement or any Customer Contract;
 - (b) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Contractor including for corrupt conduct or for collusive pricing;
 - (c) where the Contractor commits a Substantial Breach of this Agreement that is not capable of remedy;
 - (d) where the Contractor commits a Substantial Breach of this Agreement in a manner that is capable of remedy and does not remedy the breach within 7 days of receiving a notice from the Board requiring it to do so ("Notice of Breach"), or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the Board may reasonably allow;
 - (e) where the Contractor assigns its rights and/or obligations, or novates this Agreement or subcontracts any Customer Contract except in accordance with this Agreement;
 - (f) in the case of the Contractor's Insolvency;
 - (g) where the Contractor has not for three consecutive Payment Periods issued any invoice to a Customer or received any Order; or

- (h) if in the Board's view a conflict of interest exists for the Contractor which prevents the proper performance of this Agreement or any Customer Contract.

17.2 Effect of Termination for Cause

17.2.1 If the Board terminates this Agreement for cause the Board may:

- (a) contract with any other person to complete the provision of the Deliverables including any Order remaining to be filled;
- (b) deduct loss or damages arising from or in connection with the termination, including any loss or damages incurred by a Customer under any Customer Contract (which may be ascertained and certified by the Board), from any money due, or which may become due, to the Contractor (whether under this Agreement or any Customer Contract); and
- (c) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Board and/or the Customers (as applicable).

17.2.2 The Board's termination under clause 17.1.1 will not affect any Customer Contract unless the context requires it.

17.3 Termination for the Board's Convenience

17.3.1 The Board may terminate this Agreement in whole or in part for its convenience by giving 14 days written notice ("Notice of Termination for Convenience") with effect from the date stated in the notice and without the need to provide reasons.

17.4 Effect of Termination for Convenience

17.4.1 The Board's termination under clause 17.3.1 will not affect any Customer Contract unless the context requires it.

17.4.2 The Board shall reimburse the Contractor its unavoidable costs directly incurred as a result of termination under clause 17.3.1 provided that any claim by the Contractor:

- (a) must be supported by written evidence of the costs claimed;
- (b) will be in total satisfaction of the liability of the Board to the Contractor in respect of this Agreement and its termination.

17.5 No Consequential Loss

17.5.1 The Board shall not in any circumstances be liable for any Consequential Loss or loss of profits suffered by the Contractor as a result of the termination of this Agreement by the Board.

18 Termination of Customer Contracts

18.1 Termination by Contractor or Customer

18.1.1 In respect of a Customer Contract and without prejudice to their rights at common law, either the Contractor or the relevant Customer may give 30 days prior written notice to the other to terminate that Customer Contract if:

- (a) a receiver, administrator or liquidator is appointed over any part of the other Party's undertaking or assets; or
- (b) a Party commits a substantial breach of the Customer Contract that is not capable of remedy; or
- (c) a Party commits a substantial breach of the Customer Contract and fails to rectify such breach within 14 days of a notice being served by the other Party, or such further time, having regard to the nature of the breach and a reasonable time to remedy it, as the other Party may reasonably allow.

18.2 Effect of Termination of Customer Contract

18.2.1 In the event of termination of a Customer Contract under clause 18.1.1, the Customer to that Customer Contract:

- (a) may procure from any other source a reasonably similar alternative to the Deliverables suitable to the Customer and the Contractor shall be liable to the Customer for any reasonable extra expense incurred together with any loss sustained by the Customer;
- (b) shall be liable under the Customer Contract to pay only for the Deliverables provided and accepted by the Customer or performed to the satisfaction of the Customer, in accordance with the Customer Contract; and
- (c) may recover from the Contractor the amount of any loss or damage suffered by the Customer as a result of the termination.

18.2.2 This clause will survive the termination of the Customer Contract.

18.2.3 If the Customer terminates a Customer Contract the Customer may:

- (a) deduct any loss or damages arising from or in connection with the termination, from any money due, or which may become due, to the Contractor from it under that Customer Contract; and
- (b) recover from the Contractor in an appropriate court the balance of any monies remaining unpaid as a debt due and payable by the Contractor to the Customer under that customer Contract.

18.2.4 The Customer's termination under this clause will not affect this Agreement, unless the context requires it.

18.2.5 Any termination by the Customer of a Customer Contract is without prejudice to any accrued rights or remedies of the Customer under that Customer Contract.

19 General

19.1 No Assignment or Novation

19.1.1 The Contractor must not assign or novate this Agreement or any Customer Contract without first obtaining the prior written consent of the Board, which consent may not be unreasonably withheld.

19.1.2 The Contractor acknowledges that the Board may make financial checks and due diligence checks on the entity proposing to take over this Agreement before determining whether or not to give consent to the assignment or novation.

19.2 Conflicts of Interest

19.2.1 The Contractor promises that, to the best of its knowledge, no conflict of interest of the Contractor, its employees, agents or sub-contractors exists or is likely to arise in the performance of its obligations under this Agreement or any Customer Contract.

19.2.2 The Contractor must:

- (a) notify in writing, and consult with, the Board immediately upon becoming aware of the existence, or possibility, of a conflict of interest; and
- (b) comply with any direction given by the Board in relation to those circumstances designed to manage that conflict of interest.

19.2.3 For the purposes of this clause, a “conflict of interest” includes engaging in any activity, or obtaining any interest, likely to conflict with the performance by the Contractor of, or to restrict the Contractor in performing, its obligations under this Agreement or any Customer Contract.

19.3 Records and Access to Records

19.3.1 The Contractor must keep proper accounts and records in accordance with the accounting principles generally applied in commercial practice.

- 19.3.2** During the Term, the Contractor must, within a reasonable time of a request from the Board, give the Board access to, and copies of, any material relevant to the performance of the Contractor's obligations under this Agreement or any Customer Contract, and any financial information, that the Board reasonably requires.

19.4 Waiver

- 19.4.1** Any waiver of a breach of this Agreement or any Customer Contract must be in writing.
- 19.4.2** A waiver in respect of a breach of a term of this Agreement or any Customer Contract shall not be taken to be a waiver in respect of any other breach.
- 19.4.3** The failure to enforce a term of this Agreement or any Customer Contract will not be interpreted as a waiver of that term.

19.5 Severability

- 19.5.1** If any part of this Agreement or any Customer Contract is void or voidable, then that part is severed from this Agreement or that Customer Contract (as the case may be) but without affecting the continued operation of the remainder of this Agreement or that Customer Contract (as the case may be).

19.6 Notices

- 19.6.1** Notices must be sent to:
- (a) the address shown in items 13 or 14 of Schedule 1; or
 - (b) the address last notified to the other Party in writing; or
 - (c) in the case of the Contractor, at the Contractor's registered office; or
 - (d) in the case of a Customer under a Customer Contract, its address for notices listed in the relevant Order.
- 19.6.2** All notices must be in writing and signed by the relevant Party and must be given either by hand delivery, post or facsimile transmission.
- 19.6.3** If delivery or receipt of a notice is not made on a Business Day, then it will be taken to be made on the next Business Day.

19.7 Counterparts

- 19.7.1** If there are a number of counterparts of this Agreement, the counterparts taken together constitute one and the same instrument.

19.8 Applicable Law

- 19.8.1** This Agreement and each Customer Contract is governed by the laws of the State of New South Wales and the Parties submit to the non-exclusive jurisdiction of the courts of the State of New South Wales and the Commonwealth of Australia.

19.9 No agency/no employment/no partnership

- 19.9.1** The Contractor agrees that the Contractor will not be taken to be, nor will it represent that it is, the employee, partner, officer and/or agent of the Board.

19.10 Disengagement Period

- 19.10.1** For 6 months following the expiry or termination of a Customer Contract (or part thereof) the Contractor will provide such assistance as is reasonably requested by the relevant Customer for the supply of the Deliverables which were subject to that Customer Contract to continue without interruption to facilitate an orderly, prompt and efficient transition to an alternative service provider. Such assistance includes:
- (a) providing reasonable co-operation with a third party supplier nominated by the Customer; and
 - (b) providing the Customer data, information and materials that may be required to enable transacting with a new provider as requested by the Board or the Customer.

20 Pricing Information

- 20.1.1** The Contractor agrees that, subject to clause 11, product pricing information in relation to this Agreement (including discounts, commissions and rebates as appropriate) may be disclosed to any person by the Board at its sole discretion in the form of a User Guide or in any medium of communication it deems appropriate.

21 Change to Market

- 21.1.1** If there is a change to the operation of the retail and/or wholesale electricity market in New South Wales from that presently existing at the commencement date of this Agreement specified in Item 2 of Schedule 1 as determined, without limitation, by legislation, regulation, the National Electricity Rules, NEMMCO and/or the Independent Pricing and Regulatory Tribunal, and such change materially adversely reduces the ability of either the Customer or the Contractor to perform its obligations under the Customer Contract, or has a material adverse effect on the financial consequences of this Agreement or the Customer Contracts for the Customer or the Contractor, then the Contractor must consult with the Board and do all such things as are reasonably necessary for the purpose of endeavouring in good faith to agree with the Board on the amendments which should be made to this Agreement and the Customer Contracts so that the Parties are not materially financially advantaged or disadvantaged because of the change.
- 21.1.2** The Customer Contract will be amended to give effect to the amendments agreed between the Contractor and the Board under the terms of this Deed of Agreement.
- 21.1.3** If the Parties are unable to agree under clause 21.1.1 within 30 days of either of them giving written notice to the other of the application of this clause 21.1.1, either Party may refer the matter to expert determination under clause 16.

Schedule 1 Agreement Details

Item 1	Contractor's Name
Item 2	Term: (clause 2.1.1) Commencement Date: Expiry Date: Period of extended term (if any): (clause 2.2.1) Commencement Date: Expiry Date:
Item 3	Restrictions on Nominee Purchasers (clause 5.8)
Item 4	Management Fee Rate (clause 10.3.1) 0.75%
Item 5	Payment Period of Management Fee (clause 1.1 and clause 10) Monthly
Item 6	Sales Information (clause 10.4.1) <u>1. The names of the ten largest Customers listed by dollar value invoiced by the Contractor in the relevant Payment Period.</u>
Item 7	Interest for Late Payment of Management Fee (clause 10.4.2, 10.4.6 and 10.4.13) Interest of 5% per annum shall be payable by the Contractor on any Management Fee not remitted to the Board in accordance with the clause 10.4.2, 10.4.6 and 10.4.13
Item 8	Codes and Standards and Statutory Requirements (clause 12.4.1) 1. Code of Practice for Procurement 2. Implementation Guidelines NSW Government Procurement 1999 3. Environmental Management Systems Guidelines 4. Occupational Health and Safety Management Systems Guidelines 5. Code of Behaviour (for the protection of children and other vulnerable people) 6. NSW Government Industrial Relations Management Guidelines.
Item 9	Board's Delegate (clause 13.3)
Item 10	Insurances (clause 12.5) Broad Form Insurance Policy Amount, including Public Liability and Products Liability: AUD\$20M
Item 11	Relationship Manager (clause 13.4.1) Name: Address: Position: Telephone: Facsimile:

	Key Personnel (clause 13.4.3)
Item 12	Expert Determination Amount (clause 16.5.7): AUD: \$1M
Item 13	Notices to: (clause 19.6) The Contractor's contact name and address: Name: Address: Position: Telephone: Facsimile:
Item 14	The Board's contact name and address: (clause 19.6) Name: Vendor Manager, Vendor Management, Contracting Services – NSW Procurement (check with Ron) Address: Level 12 McKell Building, 2-24 Rawson Place, SYDNEY, NSW 2000 Telephone: Facsimile:

Schedule 2 Order

Site Notification & Consent Form

1. Customer's Site Details:

Business Name:

ABN:.....

Customer's Name for Location of Supply Point:.....

Street Number / Name:.....

Suburb / Town / State / Postcode.....

NMI(s):.....

Current Retailer:.....

Current Account No:.....

2. Proposed Start Date (subject to completion of transfer).

Date.....

3. Proposed End Date.

Date.....

4. Consent (to be completed by Customer).

I have selected as my chosen GreenPower retailer.

Signed by Customer:.....

Name (please print):.....

Title:.....

Date:.....

Telephone:.....

Facsimile:.....

Email:.....

5. Customer's Notice Details (to be completed by Customer).***[Details to be inserted]***

Business Name:

Contact Name (please print):.....

Title:.....

Street Number / Name:.....

Suburb / Town / State / Postcode:.....

Telephone:.....

Facsimile:.....

Email:.....

6. Additional Information***[Details to be inserted; including any requirements re consolidation of invoices/contact for accounts]***

Schedule 3 Statement of Requirements

Refer to Part E, RFT Statement of Requirements

Full details of the Statement of Requirements are included in Part E of this RFT.

Note: This schedule 3 will be completed following award of the Agreement based on the requirements of Part E (Statement of Requirements) of this Request for Tender and the successful tenderer(s) response, and/or variations made in accordance with this Request for Tender.

Schedule 4 Pricing

Note: This Schedule will be completed following award of contract based on the Price Schedules attached to the Tender of the successful tenderer at Part C and any variations to the Price Schedule and/or variations made in accordance with this Request for Tender.

Schedule 5 Management Fee Audit Confidential Disclosure Deed of Agreement

Effective Date:

Auditor (Company):

This Confidential Disclosure Deed of Agreement is entered into by and between the Contractor ("Contractor") ABN and the "Auditor", which has been engaged by the State Contracts Control Board ("Board") under an Agreement with the Contractor to carry out a review of the Contractor's records and systems in connection with the Agreement dated.....for the supply of.....

1. In accordance with the clause 7 of the Agreement the Contractor will disclose to the Auditor all information that the Auditor may reasonably require to enable the Auditor to determine the amount of the Management Fee payable by the Contractor.
2. **Representatives.** The officer(s) responsible for disclosing or receiving Confidential Information are:
 On behalf of the Contractor:
 Name:
 Title:
 The Contractor's address:
 Other officer:
 On behalf of Auditor:
 Name: -----and any other partner or employee of the Auditor who is involved in the Audit or has a need to know in connection with the Audit.
 Title:
 Work Address of Auditor's representative above:
3. **Definition of Confidential Information.** The "Confidential Information" disclosed under this Agreement is all information in any form received in connection with the Audit. A recipient of Confidential Information under this Agreement shall have a duty to protect all such Confidential Information whether expressly disclosed as Confidential Information or not.
4. **Disclosure Period and Term.** The information disclosed by the Contractor to the Auditor will remain confidential for a period of 2 years from the date of this Deed.
5. **Use of Confidential Information.** The Auditor shall use, and shall ensure that any of its employees or contractors use, the Confidential Information for the sole purpose of fulfilling the Auditor's obligations to the Board in relation to the Audit.
6. **Protection of Confidential Information.** The Auditor shall not disclose the Confidential Information to a third party other than the Board, and solely for the purposes for which the Confidential Information was disclosed. The Auditor shall take all reasonable steps to prevent the unauthorised use, dissemination or publication of the Confidential Information. For the avoidance of doubt, the Auditor's partners and employees referred to in clause 2 are not third parties for the purposes of this clause.
7. **Exclusions.** This Agreement imposes no obligation upon a Recipient of the Auditor with respect to the Confidential Information which:
 - (a) is or becomes a matter of public knowledge through no fault of the Recipient;
 - (b) is required to be disclosed under operation of law; or
 - (c) is disclosed by the Recipient with the Discloser's prior written approval; or

(d) is disclosed to a party's legal adviser in connection with the Audit or this Deed of Agreement.

8. **Proprietary Rights.** Neither party to this Deed of Agreement acquires any intellectual property rights or any other rights under this Deed of Agreement except the limited right to use set out in paragraph 5 above.
9. **General.** The parties do not intend that any agency or partnership relationship be created between them by this Deed of Agreement. This Agreement sets forth the entire agreement with respect to the Confidential Information disclosed herein and supersedes all prior or contemporaneous agreements concerning such Confidential Information, whether written or oral. All additions or modifications to this Deed of Agreement must be made in writing and must be signed by both parties.

This Deed of Agreement shall be governed by the laws of the State of New South Wales and shall be subject to the jurisdiction of the Courts in Sydney, Australia.

Signed sealed and delivered by the parties:

CONTRACTOR:	AUDITOR:
ABN/ACN:	ABN/ACN:
Authorised Signature: _____	Authorised Signature: _____
Name: _____	Name: _____
Title : _____	Title : _____
Date: _____	Date: _____

Schedule 6 smartbuy® Requirements

1 smartbuy® Licence

The Board grants to the Contractor a non-exclusive, non-transferable, revocable licence to use smartbuy® for the performance of its obligations under this Agreement.

2 Authorised User

- 2.1 The Board may approve a person nominated by the Contractor and allow such person to access or use smartbuy® and become an Authorised User or an Administrator.
- 2.2 The Board may in its discretion decline to accept a person nominated by the Contractor as an Authorised User or an Administrator, without stating its reasons.

3 Contractor Obligations

- 3.1 The Contractor must provide any information that is reasonably required by the Board to make smartbuy® available including Contractor Information. The Contractor must ensure that all information provided to the Board (including maintaining information in the smartbuy® system) is current, correct, and complete at all times. The Contractor must immediately notify the Board of any changes required to the Contractor Information.
- 3.2 The Contractor agrees that Contractor Information will be published on smartbuy® by the Board. Contractors are responsible to ensure that Designated and Nominated Sub-Contractors are aware that their information will be published by the Board on smartbuy® as a part of Contractor Information.
- 3.3 The Contractor must:
 - (a) conform to the Board's current password policies;
 - (b) comply with all directions given by the Board in relation to the Contractor's access and/or use of smartbuy®; and
 - (c) ensure that Transactions are only made for and on behalf of the Contractor and in accordance with this Agreement
 - (d) provide the Board with an appropriate number of dedicated personnel to ensure the appropriate use of smartbuy®.

4 Catalogues

- 4.1 The Board may require the Contractor (unless otherwise specified by the Board) to take responsibility to update and actively maintain Catalogue Information provided by the Contractor on smartbuy®.
- 4.2 The Contractor is responsible for the accuracy and completeness of Catalogue Information including any images supplied by the Contractor.
- 4.3 The Contractor is required to provide Catalogue Information to an acceptable data standard, approved by the Board. Catalogue Information must include all required item attributes including United Nations Standards Products & Services Codes (being a coding system which classifies both products and services for use on a global basis). The Contractor may either provide developed Catalogue Information to the Board or may request the Board to provide it with assistance, at a fee.
- 4.4 The Board may transform data provided by the Contractor in order to load it into smartbuy® however the values and meaning of the data will not be modified without the prior agreement of the Contractor.
- 4.5 If the Board produces formatted Catalogue Information for the Contractor, then the Contractor must ensure that the formatted Catalogue Information is current, correct, and complies with its obligations under this Agreement.

- 4.6 The Board may review any Catalogue Information and require the Contractor from time to time to update or take off-line its existing Catalogue Information, add new Catalogue Information and/or verify that the Catalogue Information is accurate, current and in accordance with its obligations under this Agreement or applicable Codes and Standards.
- 4.7 The Board reserves the right to audit the Contractor's Catalogue Information from time to time for compliance with this Agreement.
- 4.8 The Contractor may only make available information or data, including any Catalogue Information in an Externally Hosted Catalogue with the Board's prior written consent. Where such approval is given the Contractor will provide the Board with administrator access to its Externally Hosted Catalogue to enable the Board to conduct audits as required.
- 4.9 When approved to connect an Externally Hosted Catalogue, the Contractor must set up accounts for Eligible Customers within two working days from receipt of lodgement of a completed request and ensure that all Eligible Customers can access Catalogue Information.
- 4.10 Externally Hosted Catalogues shall not provide functionality that allows Eligible Customers to directly place Orders for Deliverables. The Contractor agrees that, after an Eligible Customer has finished its browse activities, the Customer Contract for the Deliverables in Externally Hosted Catalogues must be transmitted via smartbuy®.
- 4.11 The Contractor's Externally Hosted Catalogue(s) should be available 7 days a week excluding any scheduled maintenance. Contractors must, in relation to their Externally Hosted Catalogues, give the Board reasonable prior notice of any scheduled maintenance and the time it will occur. The Contractor agrees to monitor the performance of its system and notify the Board immediately of any outage of its Externally Hosted Catalogue, except for any scheduled maintenance that the Contractor has notified the Board about.
- 4.12 The Contractor agrees to nominate in writing to the Board within 2 days of entry into this Agreement a person who can be contacted between 9am and 5pm during normal Business Days to receive and respond to enquiries relating to its Externally Hosted Catalogues.
- 4.13 The Contractor agrees to include on its webpage a customised error message confirming that the error is with the Externally Hosted Catalogue and not with smartbuy®.

5 Provision and Updating of Catalogue Information

- 5.1 The Contractor may be required to provide electronic Catalogue Information, upon request by the Board, in a smartbuy® format acceptable to the Board no later than 30 days from the commencement of this Agreement, inclusive of Catalogue Information specific to particular Eligible Customers.
- 5.2 All Catalogue Information including that pertaining to particular Eligible Customers must be updated in strict accordance with the frequency and conditions outlined in this document from the date on which the Catalogue Information is initially hosted on smartbuy® as per clause 4 above.

6 Availability

- 6.1 The Board may in its discretion limit or suspend the Contractor's access or use of smartbuy® during the Term of this Agreement.
- 6.2 Unless otherwise notified by the Board, smartbuy® will be accessible 7 days a week except during any necessary scheduled maintenance, unscheduled maintenance or unavailability caused by a circumstance beyond the reasonable control of the Board or its third party suppliers.
- 6.3 The Board will endeavour where reasonably practicable to notify the Contractor of any:

- (a) changes or upgrades to smartbuy®'s functionality that materially affect the Contractor's use of smartbuy®;
 - (b) changes in equipment or configuration requirements of smartbuy® that materially affects the Contractor's ability to access and use smartbuy®.
- 6.4 The Board agrees to make available the NSW Procurement Client Support Centre to assist the Contractor in relation to any defects it experiences in the operation or functionality of smartbuy®. The Contractor agrees to report any issues or defects to the Client Support Centre on 1800 NSW BUY (679 289) or NSW_P_Support@commerce.nsw.gov.au Unless the Contractor is otherwise notified by the Board, the Client Support Centre will be available from 8.30 am to 5.00 pm Monday to Friday, excluding public holidays. The Board may change the times during which the Client Support Centre is available from time to time.

7 smartbuy® Security

- 7.1 smartbuy® security systems have been created to protect buyers, suppliers and information maintained on or transmitted from or to smartbuy.
- 7.2 Key elements of the security regime include:
- (a) Data Centre certified to BS7799, ASIO T4 rating and Suntone 2 Accreditation;
 - (b) Robust firewalls;
 - (c) Multi level system design;
 - (d) Virus protection using Sophos Anti Virus software;
 - (e) Password protection and restricted access permissions;
 - (f) Intrusion detection systems;
 - (g) Audit trails of user activities;
 - (h) Where encryption is used, HTTPS protocol with 128 bit technology has been selected;
 - (i) Programme of system upgrades to ensure security compliance.
- 7.3 The Contractor must:
- (a) have in place procedures to prevent any unauthorised use of smartbuy® by any person on its behalf (including Administrators, Authorised Users or an unauthorised third party) and these procedures must include provision to ensure its Administrators and Authorised Users are prevented from accessing or using smartbuy® upon them ceasing to be authorised to do so;
 - (b) make all reasonable efforts to ensure that any information (including documents) that it transmits via smartbuy® will be free from viruses, worms or trojan horses or any other malicious program that is capable of causing damage to smartbuy® or smartbuy®'s users;
 - (c) make all reasonable efforts to ensure that its systems are secure and are kept up to date with adequate anti-virus software;
 - (d) notify the Board immediately of any significant security breaches that it suffers or threats that it is aware of.
- 7.4 The Contractor acknowledges that user logins and passwords used to access smartbuy® are transmitted using HTTPS protocol. Delivery of business documents (such as purchase orders and/or Invoices) is done through the following mechanisms, depending on the election of the Contractor:
- (a) Facsimile;
 - (b) unencrypted emails;

- (c) FTP: File Transfer Protocol over Secure Sockets Layer (SSL) (Secure Shell (SSH) available on request);
 - (d) HTTPS protocol: Hypertext Transport Protocol over Secure Sockets Layer (SSL).
- 7.5 While the Board will make reasonable endeavours at all times to make smartbuy® secure, the Board does not guarantee:
- (a) the security of smartbuy®, the internet, and any other system, including the system used by the Board to access or use smartbuy®;
 - (b) that the delivery of business documents will be uninterrupted or secure;
 - (c) that smartbuy® will be uninterrupted, timely, secure or error-free;
 - (d) that smartbuy®, the internet, and any other system, including the system used by the Contractor, will be free of viruses or errors.
- 7.6 The Contractor must immediately notify the Board if it suspects, becomes aware, or has knowledge of any unauthorised use of smartbuy® by another person.
- 7.7 The Board may provide access and password details ("Passwords"):
- (a) to Administrators to be supplied to Authorised Users; and/or
 - (b) directly to the e-mail addresses of Authorised Users who are acceptable to the Board.
- 7.8 The Contractor must take all reasonable steps to protect and keep secret any Passwords that the Board provides to it as per clause 7.6. The Contractor acknowledges and agrees that Board will rely on their use of a Password as conclusive evidence of their identity and authority, without further investigation. The Contractor must immediately notify the Board if it suspects, knows about or has knowledge that a Password has become compromised or known to another person and/or of any unauthorised use of a Password by another person has occurred.
- 8 Minimum Configuration**
- 8.1 To access and use smartbuy® TRADE the Contractor must have the following minimum configuration and the Contractor warrants that it has:
- (a) Windows 95, 98, 2000 or XP, IE 5.5 or later, a recommended video resolution of 1024X768; and
 - (b) will configure its web browser to use SSL3.0 and ensure that the auto-complete or similar function is switched off for "Contractor name and passwords on forms".
- 8.2 These configurations may be varied by the Board due to changes or upgrades to smartbuy® from time to time. The Board will, wherever practicable, notify the Contractor of any variations to the configurations. The Contractor acknowledges that any access speed to smartbuy® and the performance of smartbuy® is limited by the Contractor's Internet service or other infrastructure and equipment.
- 8.3 If the Contractor has any queries in relation to these configuration requirements it may contact the Client Support Centre.

9 Improper Use of smartbuy®

- 9.1 The Contractor must not intentionally, recklessly or negligently interfere with any other parties' use of smartbuy®. The Contractor must not use smartbuy® or any service provided by the Board to post or transmit any information or provide a link to any third party website that:
- (a) defames, threatens or menaces any person;
 - (b) breaches any law or regulation or infringes a third party's rights;
 - (c) is indecent, pornographic or obscene;

- (d) knowingly transmits any virus, computer programme, code, device, product, components or other disabling feature that prevents, inhibits or impairs the performance of smartbuy®;
 - (e) is an unsolicited commercial electronic message promoting the supply of goods or services.
- 9.2 The Contractor must ensure that its employees, officers and agents view or access any material published or made available on smartbuy® TRADE and/or smartbuy® CONNECT in accordance with this Agreement.
- 9.3 The Contractor must not use smartbuy® to sell, buy or dispose of, or attempt to sell, buy or dispose of any goods or services that are not specified by the Board under this contract, are unlawful or unauthorised.

10 Disclaimer

The Board makes no warranties in relation to the condition, fitness, merchantability, quality and title of the Deliverables purchased by the Customer using smartbuy®. To the extent permitted by law, the Board expressly excludes all conditions, warranties and terms whether express, implied, or statutory, which would otherwise be implied by law, conduct or otherwise into this Agreement.

11 Privacy

- 11.1 The Contractor warrants, in respect of any personal information provided in connection with the use of smartbuy®, that the information is accurate, up to date and complete, and that individuals to which the personal information refers authorise its collection and are aware:
- (a) that personal information is being collected, and will be held by the Board at the address shown in smartbuy® or by its third party suppliers;
 - (b) that the information is being collected for the purpose of managing smartbuy®, and the administration of this Agreement, and may be made available to Eligible Customers for those purposes;
 - (c) whether the supply of the information by the individual is required by law or is voluntary, and any consequences for the individual if the information (or any part of it) is not provided; and
 - (d) of the existence of any right of access to, and correction of, the information.
- 11.2 The Contractor acknowledges that its use of smartbuy® indicates its knowledge and acceptance of the privacy policy displayed on smartbuy®. smartbuy® may contain links to other websites. The Board is not responsible for the privacy practices or the content of such sites. The Board requires the Contractor to read the privacy statements in these linked sites, as their privacy policies may differ from those of the Board.
- ## 12 Integration with smartbuy® CONNECT
- 12.1 All electronic documents transmitted through smartbuy® TRADE are routed via smartbuy® CONNECT. smartbuy® CONNECT may also be used for document transmission directly between Eligible Customers and Contractors, without passing through the smartbuy® TRADE.
- 12.2 The following Transmission Types and Document Types are supported by smartbuy® CONNECT. The combination of Transmission Type and Document Type is termed a Trading Channel:

Transmission Type	Document Type	Trading Channel
HTTPS	xCBL3.0 (XML)	HTTPS/xCBL3.0
FTP	CSV	FTP/CSV

Email (SMTP)	PDF	Email/PDF
Fax	PDF	Fax/PDF

- 12.3 smartbuy® CONNECT supports the following business documents via the Trading Channels outlined above.
- (a) PO
 - (b) PO Change
 - (c) PO Acknowledgement
 - (d) Receipt
 - (e) Receipt Change
 - (f) Advanced Shipping Notice
 - (g) Invoice
 - (h) Technical Message Acknowledgement
- 12.4 Contractors must adhere to the smartbuy® Transmission specifications and smartbuy® Document specifications for the Trading Channel selected (specifications available on request. If you require more information contact the NSW Procurement Client Support Centre on 1800 NSW BUY (679 289) or NSW_P_Support@commerce.nsw.gov.au). For all documents implemented, Contractors must be capable of reading and actioning all mandatory and optional fields as defined in the document specifications.
- 12.5 The Board may assist in the development of an estimate of the costs of any integration to smartbuy® CONNECT. Firm pricing cannot be determined until the conclusion of a specific implementation planning study. Costs will vary depending upon the level of integration and their capability. Any integration of their systems with smartbuy®, including any Externally Hosted Catalogues may only take place with the Board's prior consent. The Contractor acknowledges that they will support and fund the establishment, maintenance and regular content update costs associated with integrating their systems with smartbuy® CONNECT. The Contractor is responsible and liable for any damage or claim that the Board suffers or incurs resulting from or in connection with the integration or interoperation of their systems with smartbuy®.
- 13 Invoices**
- 13.1 It is a requirement that the Contractor provides (as requested by the Board) electronic invoices to smartbuy® for all purchases by all NSW Government agencies against this Agreement - irrespective of how the purchase order is received (for example, via fax, telephone, mail, vendor online ordering system, etc). Contractors must send data via one of two channels:
- (a) Via the HTTPS/xCBL3.0 Trading Channel adhering to the smartbuy® HTTPS Channel Specification and the smartbuy® xCBL3.0 Document Specification. Contractors are responsible for all costs associated with implementing and maintaining the channel.
 - (b) Via the SFTP/CSV Trading Channel adhering to the smartbuy® SFTP Channel Specification and the smartbuy® CSV Invoice Document Specification. Contractors are responsible for all costs associated with implementing and maintaining the channel.
 - (c) Via a hosted web-portal provided by smartbuy® that allows Contractors to enter invoices online. If this option is selected, Contractors will also receive Purchase Order and Purchase Order Change documents from smartbuy® via this channel.

14 Externally Hosted Catalogues

- 14.1 Where Contractors are required to provide an Externally Hosted Catalogue the catalogue must utilise the OCI v3.0 protocol over HTTPS for both inbound and outbound requests.

Procedures Circular 235 recommends that NSW Department of Commerce only accepts Undertakings from financial institutions supervised by the Australian Prudential Regulation Authority (APRA). For approved financial institutions, please visit the APRA website: <http://www.apra.gov.au/adi/ADIList.cfm>. The list of Authorized Deposit-Taking Institutions indicates acceptable institutions. If you receive an Undertaking from an organization not on the list, please bring it to your Unit Manager's attention.

Schedule 7 Performance Management

1 PROVISION OF SERVICES

1.1.1 The Contractor will carry out the services as to:

- Comply with the statement of requirements in accordance with the terms and conditions of the Agreement, and specifically as detailed in Schedule 3.
- Achieve the service performance benchmarks (the "Service Levels") set out in this Schedule.

1.1.2 The Contractor shall use all reasonable care, skill and diligence in the provision of the products and services.

1.2 CONTRACTOR PERFORMANCE

1.2.1 It is the intention of the State Contracts Control Board ("the Board") and the Contractor that the Agreement be a mutually beneficial arrangement.

1.2.2 The Contractor acknowledges that service performance in accordance with the set service levels is of prime benefit to the NSW Government.

1.2.3 The Contractor will participate in monthly meetings (or at other scheduled times as required) with NSW Procurement – Contracting Services on behalf of the Board to review the Contractor's performance in meeting the Service levels.

1.3 ACCOUNT MANAGEMENT

1.3.1 The Contractor will allocate personnel with sufficient authority and experience to liaise with State Procurement on a regular basis for the purposes of:

- Ascertaining the Government's business needs and service requirements;
- Resolving Service Level difficulties
- Ensuring the effective and timely administration of the Agreement.

1.4 CONTRIBUTION TO MANAGEMENT REPORTING

1.4.1 The Contractor will co-operate with NSW Procurement – Contracting Services in the design of management reports to monitor Service Levels and contract sales in the provision of Services. These reports shall be provided on a monthly basis and submitted to NSW Procurement – Contracting Services for that period, or as otherwise requested from time to time.

1.5 GENERAL

1.5.1 This Performance Agreement will be effective from date of agreement by both parties.

1.5.2 The purpose of this Agreement is to clearly define the areas of performance that will be monitored by NSW Procurement – Contracting Services, together with the expected service levels.

1.5.3 No modifications or amendments to the Performance Agreement or any waiver of any terms or conditions herein shall be effective, unless agreed in writing and signed by both parties.

1.5.4 The Performance Agreement is subject to arbitration/mediation procedures for the resolution of disputes in accordance with the provisions of the deed of agreement.

1.5.5 Neither party shall be liable for failure to fulfil its obligations when such failure is due to reasons beyond its reasonable control.

1.6 SERVICE PERFORMANCE BENCHMARKS (SERVICE LEVELS)

1.6.1 The service levels to be measured as part of this Performance Agreement will monitor the following key accountabilities which are considered essential for high standard consultancy services. They include:

- Client satisfaction
- Contract sales and reporting
- Provision of accurate and timely management reports and statements
- Service levels and failures

1.6.2 The required service levels are detailed in the Attachments to this Schedule.

1.7 SCHEDULED PERFORMANCE MEETINGS

1.7.1 A meeting will be convened between delegates of both parties on a monthly basis at a time agreed by both parties.

1.7.2 Additional quarterly meetings may be scheduled by NSW Procurement – Contracting Services in addition to those at sub-clause 1.7.1 to discuss specific performance issues.

1.8 FAILURE TO MEET SERVICE LEVELS

1.8.1 In the event of the Contractor's performance not meeting the Service Levels (the "Performance Deficiency"), NSW Procurement – Contracting Services will advise the Contractor in writing of the performance deficiency. The Contractor must effect corrective action within 30 days to rectify the Performance Deficiency.

1.8.2 It will be at the Board's discretion to determine whether a failure to meet a service level warrants immediate action as per the Deed of Agreement — Termination of this Agreement.

1.8.3 If the Contractor is notified and fails to take corrective action in accordance with 1.8.1 above, the Contractor will be deemed to be in breach of the Agreement. NSW Procurement – Contracting Services will then notify the Contractor in writing that the Contractor is in breach of the Agreement.

1.8.4 If the Contractor is in breach of the Agreement, where such failure is not outside of the Contractor's reasonable control, will be liable to consequences which may include, but not limited to, depending on the severity, termination of the Agreement at the Board's discretion.

Attachment: Key Performance Indicators (KPIs)

Performance Element / Accountability	Minimum Service Level	Measurement
<p>Complaint Resolution</p> <p>Level 1: Emergency category (eg, unplanned disconnection)</p> <p>Level 2: Intermediate category (eg, disconnection notice)</p> <p>Level 3: General Enquiries</p>	<p>Level 1 to be actioned / resolved within 1 hour</p> <p>Level 2 to be actioned / resolved within 24 hours</p> <p>Level 3 to be actioned / resolved within 10 working days and 100% to be acknowledged within 24 hours</p> <p>100% of all complaints across all 3 levels to be resolved.</p>	<p>Through a register that will be maintained by the supplier and reported to State Procurement on a monthly basis using the example KPI Chart below.</p> <p>Full details of complaints and resolution to be documented.</p>
<p>Reporting</p> <p>1: Site Consumption Reports</p> <p>2: Variance Reports</p> <p>3: Half-Hour Meter Reports</p> <p>4: Other reports to the Board as agreed</p>	<p>To be provided within 20 working days of request.</p> <p>An accuracy rate of 99.9% to be achieved.</p>	<p>Through a register that will be maintained by the supplier and reported to State Procurement on a monthly basis using the example KPI Chart below.</p>
Invoicing	<p>An accuracy rate of 99.9% to be achieved.</p> <p>Errors (if any) to be actioned / resolved within 10 working days.</p>	<p>Through a register that will be maintained by the supplier and reported to State Procurement on a monthly basis using the example KPI Chart below.</p>

In this Attachment:

(1) **Normal Business Hours** means the hours between 9 am and 5 pm Eastern Standard Time on a Business Day.

(2) Where something is required to be done **within 24 hours**, and where that 24 hour period would expire at a time which is outside Normal Business Hours, this expression means that the thing is required to be done by the expiry of Normal Business Hours on the next Business Day.

Attachment: KPI Chart

Performance Element	Required Information	KPIs Achieved on a Monthly Basis					
		Feb 2009	Mar 2009	Apr 2009	May 2009	Jun 2009	Jul 2009
Complaint Resolution	Level 1: Emergency category Were all calls actioned / resolved within 1 hour?						
	Insert number of Level 1 calls						
	Level 2: Intermediate category (eg, meter failure) Were all calls actioned / resolved within 24 hours?						
	Insert number of Level 2 calls						
	Level 3: General Enquiries Were all calls actioned / resolved within 10 working days?						
	Were 100% of Level 3 calls acknowledged within 24 hours?						
	Insert number of Level 3 calls						
	Were 100% of all complaints across all 3 levels resolved?						
Reporting	1: Monthly Contract Report Were all reports delivered within 20 working days of request?						
	Was an accuracy rate of 99.9% achieved?						
	2: Consumption Reports Were all reports delivered within 20 working days of request?						

	Was an accuracy rate of 99.9% achieved?						
	3: Half-Hour or Quarter Meter Data Reports Were all reports delivered within 20 working days of request?						
	Was an accuracy rate of 99.9% achieved?						
	4: Other reports to the Board as agreed Were all reports delivered within 20 working days of request?						
	Was an accuracy rate of 99.9% achieved?						
Invoicing	Was an accuracy rate of 99.9% achieved?						
	Number of errors						
	Were the errors actioned / resolved within 10 working days?						

Note: Any KPIs not achieved in a month must be explained in an attachment with all relevant details.

Schedule 8 Expert Determination Procedure

1. Questions to be determined by the Expert

- 1.1 The expert must determine for each issue the following questions (to the extent that they are applicable to the issue):
- 1.1.1 Is there an event, act or omission which gives the claimant a right to compensation:
 under the Agreement:
 (a) for damages for breach of the Agreement, or
 (b) otherwise in law?
- 1.1.2 If so:
 what is the event, act or omission?
 (a) on what date did the event, act or omission occur?
 (b) what is the legal right which gives rise to the liability to compensation?
 (c) is that right extinguished, barred or reduced by any provision of the Agreement, estoppel, waiver, accord and satisfaction, set-off, cross-claim, or other legal right?
- 1.1.3 In the light of the answers to clauses 1.1.1 and 1.1.2 of this Expert Determination Procedure:
 (a) What compensation, if any, is due from one Party to the other and when did it fall due?
 (b) What interest, if any, is due when the expert determines that compensation?
- 1.2 The expert must determine for each issue any other questions required by the parties, having regard to the nature of the issue.

2. Submissions

- 2.1 The procedure for submissions to the expert is as follows:
- 2.2 The Party to the Agreement which has referred the issue to Expert Determination must make a submission in respect of the issue, within 15 Business Days after the date of the letter of engagement referred to in clause 12.5.3 of the Agreement.
- 2.3 The other party must respond within 15 Business Days after receiving a copy of that submission. That response may include cross-claims.
- 2.4 The Party referred to in clause 2.2 may reply to the response, but must do so within 10 Business Days after receiving the response, and must not raise new matters.
- 2.5 The other Party may comment on the reply, but must do so within 10 Business Days after receiving the reply, and must not raise new matters.
- 2.6 The expert must ignore any submission, response, reply, or comment not made within the time given in clauses 2.2 to 2.5 of this Expert Determination Procedure, unless the Principal and the Contractor agree otherwise.
- 2.7 The expert may request further information from either Party. The request must be in writing, with a time limit for the response. The expert must send a copy of the response to the other Party, and give the other Party a reasonable opportunity to comment on the response.

-
- 2.8 All submissions, responses, replies, requests and comments must be in writing. If a Party to the Agreement gives information to the expert, it must at the same time give a copy to the other Party.

3. Conference

- 3.1 The expert may request a conference with both Parties to the Agreement. The request must be in writing, setting out the matters to be discussed.
- 3.2 The Parties agree that such a conference is considered not to be a hearing which would give anything under this Expert Determination Procedure the character of an arbitration.

4. Role of Expert

- 4.1 The Expert:
- 4.1.1 acts as an expert and not as an arbitrator;
 - 4.1.2 must make its determination on the basis of the submissions of the Parties, including documents and witness statements, and the expert's own expertise; and
 - 4.1.3 must issue a certificate in a form the expert considers appropriate, stating the expert's determination and giving reasons, within 12 weeks after the date of the letter of engagement referred to in clause 12.5.3 of the Agreement.
 - 4.1.4 If a certificate issued by the expert contains a clerical mistake, an error arising from an accidental slip or omission, a material miscalculation of figures, a mistake in the description of any person, matter or thing, or a defect of form, then the expert must correct the certificate.

Request for Tender 0802382 –Retail Supply of Electricity Metering and Metering Data Agency Services for NSW Government (Large Sites)

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PART E: STATEMENT OF REQUIREMENTS

1. Scope

- 1.1 This Statement of Requirements covers the retail supply of all metering equipment and services to NSW Government Large Sites and all sites of Eligible Customers situated across NSW and ACT including but not limited to provision, installation, servicing, maintenance and inspection of metering equipment, plus meter reading, data validation and data forwarding to the retailer, NEMMCO and the network operator as required by NEMMCO in accordance with the National Electricity Rules.
- 1.2 The metering equipment and services shall be supplied, as required. Whilst it is expected that Customers will purchase metering services under the proposed Agreement, no minimum quantity of metering services can be provided and the Customer will not be bound to purchase metering services.
- 1.3 It is envisaged that the transition from existing arrangements would be implemented progressively during the course of the proposed Agreement.
- 1.4 The estimated requirements based on the current requirements incurred by government agencies for the Deliverables are approximately 3752 meters across 3101 NMIs at an average of 1.21 meters per NMI (includes NSW Health).

Estimated meter numbers per Customer:

Client	Estimated No of Meters
DEPARTMENT OF EDUCATION & TRAINING	841
DEPARTMENT OF HEALTH & AREA HEALTH SERVICES	475
NSW POLICE FORCE	105
UNIVERSITY OF SYDNEY	89
ROADS & TRAFFIC AUTHORITY	75
DEPARTMENT OF CORRECTIVE SERVICES	66
NSW ATTORNEY GENERAL'S DEPARTMENT	61
WYONG SHIRE COUNCIL	60
DEPARTMENT OF HOUSING	47
SYDNEY OLYMPIC PARK AUTHORITY	41
THE CITY OF SYDNEY COUNCIL	41
STATE PROPERTY AUTHORITY	40
GOSFORD CITY COUNCIL	38
UNIVERSITY OF WESTERN SYDNEY	37
DEPARTMENT OF ENVIRONMENT & CLIMATE CHANGE	35

ALBURY CITY COUNCIL	34
Catholic Education Office (Trustees of the Diocese of Parramatta)	31
BAPTIST COMMUNITY SERVICES	31
DEPARTMENT OF PRIMARY INDUSTRIES	28
The Frank Whiddon Masonic Homes of NSW	23
DEPARTMENT OF JUVENILE JUSTICE	13
DEPARTMENT OF COMMERCE	11
DEPARTMENT OF AGEING DISABILITY & HOME CARE	10
Total of Schedule 1 Agencies	1,182

Estimated additional meters required as part of the National Solar Systems Project:

Year	Estimated No of Meters
2008-2009	380
2009-2010	460

- 1.5 It is a requirement that during the term of the Agreement NSW Government will be allowed to roll in and out meters with two months advance notice.
- 1.6 The requirement is for the retail supply of contestable metering services only and therefore excludes Type 7 Metering Installations (Unmetered Loads).
- 1.7 The scope of the services covers interval metering of types 1 to 4 installed at Large Sites assigned to NSW Government's Large Site contract 777.
- 1.8 The Contractor must provide the Customer the right to add/remove meters within the Term of the Agreement, as required, for roll in and roll out of sites.

2. Reporting Requirements

2.1 Monthly Contract Reports

- 2.1.1 The Contractor shall provide to the Board and Customers, as requested at no cost, every month the following information:
 - New meters that have joined the contract
 - Existing meters that have made the transfer to a new location
 - Meters that exited from the contract
 - Regular updates on topics such as site visit issues, suggested improvements to metering services and transfer progress as required.

2.2 Consumption Reports

- 2.2.1 Generally, multiple site agencies and the Board will make use of these reports.

- 2.2.2 The Contractor will set up the process for compiling these reports and the sites that will form part of the Board/Customer report, which shall be provided at no cost to the Board/Customers.
- 2.2.3 The Board/Customers will nominate the sites that form the consumption report. All nominated sites are to be included in the consumption report.
- 2.2.4 Consumption reports will be required monthly for the Board and Customers and shall provide as a minimum the following detail:
- the NMI identifiers
 - electricity used, broken up into energy and respective network time of use periods (as defined in Appendix 1 to this Part E) with demand details.
- 2.2.5 These reports are used for energy management and various other reporting requirements.
- 2.2.6 In some instances, the consumption reports may be requested by the Board/Customers for up to 12 months after the expiry date of the Agreement for reporting purposes. In such instances, the Contractor shall provide the report, as required.
- 2.2.7 When requested, these reports are to be provided within four (4) weeks of the end of the billing period.
- 2.2.8 It is also desirable that the consumption reports be provided and accessible as part of an online data solution package.

(Note:

(i) *Tenderers must indicate in Part C their willingness to work with the appointed electricity retailer to facilitate single online reporting under the proposed Agreement.)*

(ii) *Tenderers are to include in Part C a typical format of a consumption report for assessment and provide details of their ability to provide consumption reports as part of an online data solution, refer clause 8.2.)*

3. Contract Records

- 3.1 The Contractor shall provide the Board, at no cost, on request, an electronic inventory of all sites on the Contract giving the following information:

Name of the Customer
 ABN of Customer
 Site address
 Postal address
 Current account number/s
 Meter NMI number
 Electricity Annual Consumption
 Meter type.

4. Licences, Approvals and Consents

- 4.1 It is a mandatory requirement that tenderers for the metering services category hold all licences, approvals and consents necessary to perform the proposed Agreement including licences listed below:
- NEMMCO Accredited Metering Data Provider
 - Registered Metering Data Provider
- 4.2 All technical requirements for the MDP and MDA function must be provided in accordance with the NEMMCO Service Level Requirements for Meter Data Providers within the NEM and the NEM Metrology Procedure. These documents define the required accuracy of metering installations, plus the inspection, testing and audit requirements.

5. Invoicing Requirements

5.1 Preferred requirements

- 5.1.1 The preferred requirement is for the Contractor to enter into arrangements with the Board's nominated electricity retailer to facilitate single invoicing as a pass through cost by the electricity retailer (refer Price Schedule A, Part C of this RFT).

- 5.2 The Customer will be invoiced by the electricity retailer for metering services.

(Note: Tenderers must indicate in Part C their willingness to work with the appointed electricity retailer to facilitate single invoicing under the proposed Agreement.)

5.2 Minimum Invoicing Information

- 5.2.1 For all Metering Services that will not be invoiced through the nominated retailer, the following minimum requirements apply (Refer Price Schedule B, Part C of this RFT).
- 5.2.2 The Contractor must present a single invoice for each site that includes all charges associated with metering services.
- 5.2.3 As a minimum, the invoice will contain the Account Number, Customer ID, NMI, site details, description of services provided and contract rates.

(Note: Tenderers are required to submit in Part C indicative examples of invoices illustrating proposed layouts, formats and information content of invoices for evaluation purposes. Tenderers must also indicate in Part C their willingness to work with the Board and Customers to submit invoices electronically.)

5.3 Consolidated tax invoices

- 5.3.1 Consolidated tax invoices shall be provided with supporting copies of each site invoice.
- 5.3.2 It is highly desirable to modify the way that consolidated invoices are grouped (that is, an ability to move specified sites from one consolidated invoice to another).

(Note: Tenderers are required to provide in Part C a sample consolidated invoice to demonstrate their ability including the ability to change grouping of invoices.)

5.4 Other Services, tariffs and charges

- 5.4.1 Invoicing for other services, including value-adding services and other charges must be itemised separately as provided in Price Schedule B and charged at the contract prices together with a clear explanation of what they are for and the basis upon which they have been calculated.

5.5 E-Billing

- 5.5.1 Tenderers are required to identify in Part C if:
- their billing systems have Electronic Data Interchange (EDI) functionality with respect to electronic billing
 - they currently have a facility to provide monthly billing data and invoices for payment via a data portal facility.)

6. Metering Responsibility, Testing and Registration

6.1 Type 1, 2, 3 or 4 Meters

- 6.1.1 The Contractor will be responsible for Metering Services related to the Retail Electricity Supply under this Agreement.

6.2 Type 7 Meters

- 6.2.1 'Type 7' Meters (being Meter databases) are the responsibility of the Distribution Network Service Provider. The Contractor shall only be required to assist with registration of the relevant load and inventory tables for Customers.

6.3 Meter Testing

- 6.3.1 If the Customer requires its Meter to be tested the Contractor shall arrange for the Distribution Network Service Provider or Accredited Metering Service Provider to test the Meter at a charge as stated in the Agreement. The Contractor shall provide a copy of the results of the test to the Customer if the testing authority does not do so.

6.3.2 If the Meter is accurate, the Customer shall be responsible for paying all testing charges and any amount in dispute that is outstanding as a result of the Customer disputing the accuracy of the Meter reading.

6.3.3 If the Meter is defective the NEMMCO Metrology Procedure shall be followed.

6.4 Registration of Meters

6.4.1 If the Customer's Metering Equipment for the Site has not been registered at the time the Customer places its order for the Retail Electricity Supply, the Contractor shall assist the Customer to complete the registration of the Meter as soon as practicable.

7. Estimation of Electricity Supplied

7.1 If the Metering Equipment at the Customer's Site makes an incorrect reading or fails to operate, or access to the Meter is denied for any reason, the Contractor will estimate the quantity of electricity supplied having regard to the Customer's prior billing history, by Meter readings subsequently obtained or by any other procedure established by NEMMCO under the Substitution Estimation & Validation Procedure.

8. Data Provision

8.1 Required data provision

8.1.1 The Contractor must be able to provide, on request, half-hourly or quarter-hour load profile data (kW hours and kVAr hours consumed in each time period) in a format compatible with Excel. Some Customers require the half-hour or quarter-hour meter data for selected periods as input to a proposed site development, to review power factor, to review the correct operation of automatic control equipment or to review energy management practices.

8.1.2 This load profile data may be required to be provided as part of an online data solution package.

(Note: Tenderers shall indicate in Part C their ability to provide load profile data as part of an online data solution package.)

8.2 Optional Data Provision

8.2.1 Tenderers shall indicate their capability to provide online data provision solutions package including:

- (a) Access to view data via the internet (whilst ensuring that data security is maintained)
- (b) On-line customisable reports and graphs
- (c) Export compatibility (kW hour and kVAr data can be easily exported for further analysis)
- (d) Ability to view historical meter data for the Term of the proposed Agreement
- (e) Ability to provide system training
- (f) Provision of detailed metering data for monitoring and reporting (eg kW, kVA, kVAR and/or power factor in half-hourly or quarter hour intervals)
- (g) Ability to view power quality data
- (h) SMS, e-mail or audible alarms (for example if close to demand threshold, or in the event of a complete power outage at the site)
- (i) Ability to provide consumption data reports to Customer via web or e-mail on request
- (j) Consolidated reporting across multiple NMIs and sites
- (k) 1/2 hourly meter data available the next day for review.
- (l) Ability to transfer all data collected by the Contractor to the Board on termination of the Agreement.

(Note: Tenderers must identify in the Price Schedule B in Part C details of additional costs, if any, for the provision of optional online data solution requirements outlined above).

9. Working with Nominated Retailer

- 9.1 The Contractor undertakes to work with the nominated electricity retailer to enable the Board's nominated retailer to perform the 'Responsible Person' function.

(Note: Tenderers shall demonstrate in Part C their proven working relationships with electricity retailers and end customers.)

10. Account Management

- 10.1 Dedicated account management should be provided to fulfil as a minimum the following requirements:

- act as the representative of the Contractor and have the legal power to bind the Contractor in all matters pertaining to the Agreement;
- serve as the principal point of contact for the Contractor with respect to the overall administration of the Agreement;
- have the authority to implement such actions (including issuing of directives through the Contractor's organisation), as may be required for the Contractor to comply with the Agreement;
- meet with the Board's Delegate as required to provide information regarding the Contractor's performance under the Agreement, and
- answer the Board's queries and work with the Board to address issues relating to matters deemed urgent by the Board arising out of the Agreement.

(Note: Tenderers are to identify in the relevant question in Part C what other account management services are provided as part of the provision of metering services.)

11. Transfer Processes

- 11.1 The Contractor shall support the transfer in requirements at the start of the Agreement by utilising the existing Metering Provider to provide a seamless transfer, and for other transfer sites progressively rolling in during the proposed Term.

- 11.2 The transfer process shall ensure:

- change of meters is managed with a minimum of disruption to sites;
- ability to work with the Governments nominated electricity retailers;
- work is conducted, wherever possible, at a time convenient to the site based on customer's operating hours; and
- upgrade of meters is only done when required to ensure compliance with the NEM Metrology Procedure, or at the specific request of the Customer.

(Note:

- (i) Tenderers shall indicate in Part C how they will support the transfer out requirements on expiry of the Agreement, or when sites are sold or rolled out during the proposed Term.*
- (iii) The tenderer shall indicate the expected time in weeks from commencement date of the proposed Agreement to when all meters will be transferred.)*

12. Basis of Tendering

12.1 Metering Services

- 12.1.1 Tenderers are required to submit all inclusive pricing for the provision of metering services on the basis of passing metering charges through the nominated electricity retailer as provided in Price Schedule A, Part C and on the basis of invoicing all charges (including metering services) directly to Customers as provided in Price Schedule B, Part C.

12.2 Value Added Services and Optional Requirements

- 12.2.1 Tenderers are required to identify in Price Schedule B the additional costs, if any, that are applicable for the provision of optional data and service requirements respectively.

12.3 Other Charges

- 12.3.1 Tenderers must identify in Price Schedule B, Part C additional costs, if any, that may apply for provision of services such as:
- Modifications for installations if there is not sufficient space or rewiring required;
 - Work performed outside normal business hours;
 - Revisits and rescheduling site visits to accommodate customer requirements;
 - Testing of metering equipment including the meter, CT and/or VT to meet NEMMCO test requirements, including provision of test certifications (chargeable only if meter not found faulty).

13. Value-added Services

- 13.1 The following examples are indicative of value added services that may be provided by the tenderer in the provision of the services at the tendered monthly metering prices:
- Environmental and carbon reporting;
 - Ability to include monitoring of other utilities (for example water and gas);
 - Installation and design of sub metering systems, including data provision from new or existing submeters; or
 - Assisting with the metering of small on-site renewable generation projects and working with government agencies to ensure that the project is eligible for the rebate;

(Note: Tenderers must indicate in Price Schedule B the additional cost, if any, to provide value added services offered. Also refer to clause 12). These costs may be factored in the evaluation of tenders.

14. Optional Service Requirements

14.1 Access to Pulse Outputs

- 14.1.1 A separate Customer accessible terminal block with potential free pulse outputs for Watts and VAr. Any necessary change to the meter to provide these pulses shall be included in the separate optional cost. These outputs may be used for local recording systems and/or input into building management systems. The terminals shall be labelled to detail the Watts and VAr terminals. A label shall also be provided to detail the number of Watts and VAr per pulse output.

14.2 Bi-Directional Metering

- 14.2.1 Re-program the existing type 4 meter or upgrade the type 4 meter to allow bi-directional recording of Watts and VAr on sites that have on site generation (eg solar, wind or bio-gas). Import and export units are to be sent daily to the service provider data storage system. All data shall be assessable by Customer sites and departments through the Web as required.

14.3 On Site Renewable Generation Type 4 Metering

- 14.3.1 Add a whole current or current transformer type 4 meter including metering panel associated wiring, fuses, current transformers (as required) and communication device or module to allow monitoring, storage and data provision on a daily basis of Watts and VAr generated from on site renewable energy generation systems. All data shall be assessable by Customer sites and departments through the Web as required.

(Note: Tenderers are required to provide in Price Schedule B separate all inclusive pricing for the respective optional services in clause 14 above)

APPENDIX 1 TO PART E (STATEMENT OF REQUIREMENTS)

ENERGY AND NETWORK TIME OF USE DEFINITIONS (Clause 2.2.4 refers)

ENERGY TIME OF USE DEFINITIONS:

Peak: 7am to 9 am and 5 pm to 8 pm on normal business days;

Shoulder: 9 am to 5 pm and 8 pm to 10 pm on normal business days;

Off Peak: midnight to 7 am and 10 pm to midnight on normal business days and all day on weekends (i.e. Saturday and Sunday) and on public holidays.

NETWORK TIME OF USE DEFINITIONS:

Country Energy Network Area:

Peak: 7am to 9 am and 5 pm to 8 pm on weekdays;

Shoulder: 9 am to 5 pm and 8 pm to 10 pm on weekdays;

Off Peak: all other times

Note:

1. When a Public Holiday falls on a weekday; peak, shoulder and off peak rates still apply as per periods stated above.
2. For sites located in the Country Energy Far West Region; times are based on Eastern Standard Time without Daylight Saving Time correction.
3. Daylight Saving Time will commence the last Sunday in October at 2 am and finishes on the last Sunday in March at 3 am of the following year.

Energy Australia Network Area:

The following time periods apply to all network tariffs except EA024 and EA025:

Peak: 2 pm to 8 pm on working weekdays;

Shoulder: 7 am to 2 pm and 8 pm to 10 pm on working weekdays;

Off Peak: all other times

Note: All times take into account Daylight Saving Time (DST) during the period gazetted by the NSW Government.

Integral Energy Network Area:

The following time periods apply to all network tariffs except Domestic ToU time periods:

Peak: 1 pm to 8 pm on working weekdays;

Shoulder: 7 am to 1 pm and 8 pm to 10 pm on working weekdays;

Off Peak: all other times

Note: The above Integral Energy non Domestic ToU periods apply during Eastern Standard Time (EST) and during Daylight Saving Time (DST).