



Australian Energy Market Commission

Request for Tender (RFT) for:	Advisory Services Panel
Reference number:	AEMC1001
Issue Date:	Saturday, 21 August 2010
Closing Date:	Friday, 24 September 2010
Place for lodgement:	Level 5 201 Elizabeth Street SYDNEY NSW 2000
Please note: Tenderers wishing to receive an electronic version of Document 3 – Tender Response Schedule may download it from the AEMC's website www.aemc.gov.au . All addenda and further conditions that may apply to this RFT will be published on the AEMC website www.aemc.gov.au . The Tenderer's Response (Document 3 – Tender Response Schedule) must be completed in the format specified and submitted.	

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Introduction

This Request for Tender (**RFT**) comprises three documents. Document 1 sets out the Tendering Conditions, Document 2 is the Proposed Contract which incorporates the Specification for the required services and the Service Level Agreement and Document 3 is the Tenders Response Schedule which is to be completed by each Tenderer and submitted along with any other supporting documentation.

1 About AEMC

- 1.1 The Council of Australian Governments, through its Ministerial Council on Energy (MCE), established the AEMC in July 2005 to be the rule maker for national energy markets. The AEMC is an independent, national body and its key responsibilities are to consider rule change proposals for the national energy markets, conduct energy market reviews and provide policy advice to the MCE as requested, or on AEMC initiative.

2 The Procurement Objective

- 2.1 AEMC is formalising its requirement for advisory services through this Request for Tender process.
- 2.2 AEMC seeks to establish a panel of providers to provide advice and assistance in relation to:
- a) the economic and related regulation of:
 - The wholesale electricity market;
 - The wholesale gas markets;
 - Electricity transmission networks;
 - Gas transmission networks;
 - Electricity distribution;
 - Gas distribution;
 - The electricity retail market;
 - The gas retail markets; and
 - b) The implementation of strategic communication programmes.
- 2.3 AEMC's specific requirements in relation to the provision of advisory services are set out in the Proposed Contract, Schedule 1 – Specification.
- 2.4 In issuing this RFT, AEMC seeks to identify Tenderers who are:
- able to provide advisory services required by AEMC in the manner set out in Proposed Contract, Schedule 1 – Specification;
 - able to demonstrate a commitment to improving value, efficiency and productivity in connection to AEMC's role in national energy markets; and
 - prepared to work with AEMC to continually improve the quality and level of service provided to AEMC.

3 Period of Panel

- 3.1 AEMC's advisory services panel will operate from 1 November 2010 for up to five years (the **Panel Period**).
- 3.2 Successful Tenderer(s) will be appointed to AEMC's advisory services panel for an initial period of three years with optional one year extensions not exceeding the duration of the Panel Period. Each optional extension will be exercisable by AEMC in its discretion.
- 3.3 Any successful Tenderer appointed to the advisory services panel for the initial three year period is not guaranteed any extension of that appointment.
- 3.4 AEMC may appoint additional parties to the AEMC advisory services panel at any time during the Panel Period.

4 Timetable

- 4.1 An indicative timetable for the conduct of this RFT is described below. This timetable may be amended by AEMC from time to time. Please note that any amendments to the timetable will be published on the AEMC website www.aemc.gov.au.

Event/activity	Proposed date
Issue of RFT:	Saturday, 21 August 2010
Closing date for Tenders:	Friday, 24 September 2010 (at 2 pm NSW time)
Selection of preferred Tenderer(s):	Friday, 22 October 2010
Execution of contract:	No later than Friday 29 October 2010
Commencement of services/Implementation:	Monday, 1 November 2010

5 Further information and enquiries

- 5.1 The Contact Officer is:
Mr Laurie Treloar
Finance & Risk Manager
laurie.treloar@aemc.gov.au
- 5.2 Any questions arising during this RFT process, or requests for clarification or further information, must be made in writing to the Contact Officer. Your email to the Contact Officer must contain the Reference number (AEMC1001) in the subject line.
- 5.3 No statement made by any other employee or agent of the AEMC to any tenderer in respect of the RFT process is binding.

6 Briefing Session

- 6.1 A briefing session will not be held.

Document 1 – Tendering Conditions

1 Definitions

1.1 In this Request for Tender, unless a contrary intention is apparent:

- c) **“AEMC”** means the Australian Energy Market Commission including authorised representatives.
- d) **“Closing Time”** means the time specified at 5 – Tender Closing Time.
- e) **“Evaluation Criteria”** means the criteria set out in 39 – Evaluation criteria.
- f) **“Goods”** means the goods, or other products required by AEMC, as specified in the Proposed Contract, Schedule 1 – Specification.
- g) **“Intellectual Property Rights”** includes copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including any application or right to apply for registration of any of those rights.
- h) **“Panel Member(s)”** means a person or organisation that AEMC has appointed as a result of this RFT process.
- i) **“Proposed Contract”** means the agreement and any other terms and conditions contained in or referred to in Document 2 – Proposed Contract.
- j) **“Request For Tender”** or **“RFT”** means this document and any other documents so designated by AEMC and published on AEMC’s website.
- k) **“Services”** means the services required by AEMC, as specified in the Proposed Contract, Schedule 1 – Specification.
- l) **“Specification”** means any specification or description of AEMC’s requirements contained in the Proposed Contract, Schedule 1 – Specification.
- m) **“Statement of Compliance”** means the statement forming part of a Tender indicating the Tenderer’s compliance with the Proposed Contract, Schedule 1 – Specification.
- n) **“Tender”** means a document lodged by a Tenderer in response to this RFT containing an offer to provide Goods and/or Services in accordance with the Proposed Contract, Schedule 1 – Specification.
- o) **“Tenderer”** means any person or organisation that submits a Tender.
- p) **“Tendering Process”** means the process commenced by the issuing of this Request for Tender and concluding upon formal announcement by AEMC of the selection of successful Tenderer(s) or upon the earlier termination of the process.

2 Packaging

- 2.1 Tenders must be packaged in an envelope or suitably wrapped in plain paper clearly labelled:

RFT AEMC1001 – Advisory Services
ATTN: Mr Laurie Treloar
Finance & Risk Manager
Tender Enclosed

3 Tender Box

- 3.1 It is the Tenderer's responsibility to ensure Tenders are lodged in the tender box located at AEMC's office before the stated closing time.

- 3.2 AEMC's physical address (and location of the tender box) is:

Level 5
201 Elizabeth Street
Sydney NSW 2000

4 Tender composition

- 4.1 Tenderers are required to lodge:

a) on CD:

- i. one completed Document 3 – Tender Response Schedule in (the current versions of) Microsoft Word and Adobe PDF format; and
- ii. any other files the Tenderer wishes to submit, such files to be in a file format that can be read, formatted, displayed and printed by current editions of Microsoft Office or Adobe Acrobat.

b) In hard copy:

- i. One completed Document 3 – Tender Response Schedule (A4 format, marked original, printed single sided) including attachments.

5 Tender Closing Time

- 5.1 The deadline for lodgement of Tenders is 2.00 pm, Friday 24 September 2010 Australian Eastern Standard Time.

- 5.2 AEMC's determination as to the time a Tender has been lodged will be final.

- 5.3 AEMC may, by written notice on its website, extend the Closing Time.

- 5.4 Where AEMC extends the Closing Time, the new Closing Time will apply equally to all Tenderers.

6 Late Tenders

- 6.1 Late tenders may be refused by AEMC in its discretion. Lodgement of Tenders by the Closing Time is entirely the Tenderer's responsibility.

7 Corrections and additions

- 7.1 If a Tenderer becomes aware of an error or omission in its Tender and wishes to lodge a correction or additional information, the material must be lodged with AEMC in writing at the address listed at clause 3.2, before the Closing Time.
- 7.2 Whether AEMC takes into account a correction or additional information received after the Closing Time is at AEMC's discretion.

8 Tender validity period

- 8.1 A Tender must remain open for acceptance by the AEMC for at least 3 months from the Closing Time.

9 Ownership of Tenders

- 9.1 All Tenders become the property of AEMC once lodged. AEMC will only copy, amend, extract or otherwise deal with all or any part of a Tender for the purpose of conducting the RFT process.
- 9.2 Unless AEMC agrees otherwise with a Tenderer, AEMC will keep all Tenders confidential subject to any disclosure obligations under law including any applicable Freedom of Information legislation.

10 Clarifications

- 10.1 AEMC may provide the answer to any query from a Tenderer to all other Tenderers without disclosing the source of the query, including (without limitation) by publishing the answer on AEMC's website.
- 10.2 Without limitation, Tenderers should expect that answers to queries that provide additional substantive information will be provided to all other Tenderers by publication on AEMC's website.

11 Notice of changes to this RFT

- 11.1 AEMC may, in its absolute discretion, cancel or amend any or all aspects of this RFT and the process associated with it, from time to time and without giving reasons. AEMC will publish any amendments to this RFT on its website.
- 11.2 AEMC may terminate, suspend or abandon this RFT or the Tendering Process at any time by notice on the AEMC's website.
- 11.3 Alternatively, AEMC may notify Tenderers directly in writing of any changes or modifications to this RFT or Tendering Process.

12 Addenda

- 12.1 To ensure all potential Tenderers are given fair and equal access to information relating to the RFT, any addendum will be published on AEMC's website.

13 Probity

- 13.1 AEMC is committed to ensuring that competition for the provision of the Goods/Services is fair and open. For Tenderers this means that:

- c) all evaluation and selection processes will be conducted in accordance with the processes set out in this RFT;
- d) assessment of Tenders will be conducted consistently and objectively;
- e) each Tenderer will have access to the same information about the RFT (except to the extent that responses are provided to individual Tenderers);
- f) information provided in a Tender will be secure, and all confidential information treated as such;
- g) all actual, potential or perceived conflicts of interest will be addressed.

14 Specified Compliance Statements

14.1 Where requested to provide a compliance statement Tenderers must only indicate 'Complies', 'Partially Complies' or 'Does Not Comply' in accordance with the following definition given to those terms:

Compliance Statement	Definition
Comply	<p>In the case of a clause of this RFT which imposes a contractual condition, that the condition is agreed to;</p> <p>In the case of a clause of this RFT which specifies a characteristic or performance requirement, that the proposal is to provide the requirement as specified;</p> <p>In the case of a clause of this RFT which is of an informative nature only, that the clause has been read, understood and is agreed; or</p> <p>In the case of a clause of this RFT where information has been requested that the information has been provided in the required level of detail and in the required format.</p> <p>Tenderers are encouraged to briefly explain how their Tender delivers the required outcomes. Failure to provide details may lead to a Tender being considered less effective than other Tenders where more comprehensive explanations were provided.</p>
Partially Comply	<p>Means the condition or characteristic or performance requirement of this RFT can be met by your offer, subject to certain qualifications, which are stated in full.</p> <p>An explanation must be given supporting the claim of partial compliance.</p>
Does not Comply	<p>Means that the contractual condition, characteristic or performance requirement of the clause of this RFT is not met by the proposal. Full details of the extent of non-compliance are to be stated.</p> <p>An explanation must be given stating the reason why the requirement is deemed "Does not Comply".</p>

15 Content and Format Requirements

15.1 This RFT contains various Content and Format Requirements.

15.2 AEMC will only give further consideration to a Tender where, at the time of opening, the Tender meets the Minimum Content and Format Requirements.

The Minimum Content and Format Requirements are:

- a) be presented in the English language;
- b) as appropriate, refer to the relevant clause numbers of this RFT; and
- c) unless otherwise specified, express all measurements in Australian legal units of measurement; and
- d) unless otherwise specified, express all currencies in Australian currency.

16 Alterations, erasures or illegibility

16.1 Tenders containing alterations or erasures, handwritten amendments which are not initialled, or information which is not clear or legible may be excluded from the evaluation process.

17 Tenderer Details

17.1 Tenderers must provide sufficient information in Document 3 – Tender Response Schedule, to enable AEMC to clearly identify the legal entity with which a contract for the requirement in this RFT may be entered. After submission of a Tender, the Tenderer must promptly notify AEMC of any changes to this information.

17.2 In response to Document 3 – Tender Response Schedule – 1.4 Contact Name, Tenderers must nominate a person to answer requests by AEMC for further information or to provide clarification.

18 Confidentiality

18.1 Tenderers should note that AEMC will treat information contained in Tenders as confidential unless AEMC is required to disclose such information under law including any applicable Freedom of Information legislation.

19 Part Offers, Alternative Offers

19.1 In addition to lodging a Tender that complies with the Proposed Contract, Schedule 1 – Specification, Tenderers may lodge a proposal with an alternative offer.

19.2 Alternative offers will be considered at the sole discretion of AEMC.

20 Joint Tenders

20.1 A joint Tender from two or more Tenderers may be considered by AEMC at its discretion.

20.2 A joint Tender must be submitted for and on behalf of each member of the Tendering consortium, and must specify the structure and membership of the consortium, the role of each consortium member in providing the requirement in this RFT, and the extent to which each consortium member guarantees the performance of each other consortium member's role.

- 20.3 A consortium must contract with AEMC as if it were one single entity and provide a single point of contact for the consortium. A joint Tender submitted on the basis that two or more organisations will be jointly and severally liable may be considered.

21 Proposed Contract

- 21.1 The terms and conditions on which AEMC intends to engage with the successful Tenderer (if any) will be based on Document 2 – Proposed Contract.
- 21.2 Any failure by a successful Tenderer to enter into a binding agreement with AEMC by the Execution of contract date as set out in clause 4 of the Introduction, or as amended from time to time by AEMC, will be deemed to be a breach of this RFT by the Tenderer and AEMC may, in its absolute discretion, choose not to accept the proposed Tender.

22 Prices

- 22.1 Unless otherwise specified, prices must:
- a) be expressed in Australian dollars and as exclusive of applicable tax, consumption tax or duties. These taxes and duties are to be identified separately;
 - b) remain unalterable for the period of Tender validity;
 - c) not vary according to the mode of payment; and
 - d) take into account the liability, indemnity and other relevant provisions regarding risk in the Proposed Contract and Specification.

23 Supporting material

- 23.1 The Tenderer may provide such supporting material with their Tender, as the Tenderer considers appropriate. Such material may be considered by AEMC, but does not form part of the Tender for evaluation purposes.

24 Security, probity, risk and financial checks

- 24.1 AEMC reserves the right to perform such security or financial checks and procedures as AEMC considers necessary in relation to the Tenderer, its officers, employees, partners, associates or related entities (including consortium members and their officers or employees if applicable). These checks may include (without limitation) ascertaining risk associated with each Tenderer in relation to:
- a) financial viability;
 - b) corporate history;
 - c) significant litigation (past, present or pending);
 - d) past performance;
 - e) experience, qualifications and skills of resources; and
 - f) other issues of risk.
- 24.2 Each Tenderer agrees to provide, at its cost, all reasonable assistance to AEMC in this regard.

25 Acknowledgment and disclaimer

- 25.1 AEMC, its officers, employees, advisors and agents:
- a) make no express or implied representation or warranty as to the currency, reliability or completeness of the information contained in this RFT;
 - b) make no express or implied representation or warranty that any estimate or forecast will be achieved or that any statement as to future matters will prove correct; and
 - c) to the extent permitted by law, expressly disclaim all liability arising from information contained in or omitted from this RFT or otherwise provided to a Tenderer.
- 25.2 It is the responsibility of Tenderers to obtain all information necessary or convenient for the preparation of their Tenders.
- 25.3 In submitting a Tender, each Tenderer acknowledges that it has not relied on any express or implied statement, representation or warranty as to the truth, accuracy or completeness of the information contained in this RFT, or otherwise provided to a Tenderer by AEMC or on AEMC's behalf.

26 Tenderer costs

- 26.1 All expenses and costs incurred by a Tenderer in connection with this RFT, including (without limitation) preparing and lodging a Tender, providing AEMC with further information, attending interviews and participating in any subsequent negotiations, are the sole responsibility of the Tenderer.
- 26.2 AEMC will not be liable to any Tenderer for, and the Tenderer releases the AEMC from, any costs, losses, damages or expenses incurred by the Tenderer in connection with this RFT.

27 No contract

- 27.1 Nothing in this RFT should be construed to give rise to any contractual obligations or rights, express or implied, by the issue of this RFT or the submission of a Tender in response to it.
- 27.2 No contract or other legal relationship will be created between any Tenderer and AEMC (including for the supply of Services or the appointment of the Tenderer), unless a formal written contract is executed between AEMC and the Tenderer.

28 Limited liability

- 28.1 In the event a court finds there to be a contract between AEMC and a Tenderer regarding the conduct of this RFT process, contrary to clause 27, the Tenderer acknowledges that AEMC's liability for any breach of the terms of such contract is limited to the Tenderer's costs of participation in the RFT process, and does not include liability for any lost profit, lost opportunity or other losses of the Tenderer.

29 Public statements

- 29.1 Tenderers must not make any public statements (including without limitation providing information or documents for publication in any media) in relation to this RFT or any subsequent contract arising out of this RFT, without AEMC's prior written approval.

29.2 AEMC will not withhold its approval to the extent the Tenderer is required to disclose information under law.

30 AEMC's Rights

30.1 Notwithstanding any other provision of this RFT, AEMC reserves the right, subject to this RFT, at any time to:

- a) alter, amend or vary this RFT and the process outlined in this RFT;
- b) if AEMC considers that it is in the public interest to do so, suspend or terminate this RFT process or any part of it;
- c) require additional information or clarification from any Tenderer or anyone else, or provide additional information or clarification to any Tenderer or anyone else;
- d) negotiate or not negotiate with any one or more Tenderers, and discontinue negotiations at any time;
- e) allow, or not allow, the successful Tenderer to enter into the proposed contract in the name of a different legal entity from that which provided a response to this RFT;
- f) add to, alter, delete or exclude any of the requirements of any Tenderer under this RFT;
- g) alter, amend or vary the terms of Document 2 – Proposed Contract at any time, including without limitation during negotiations; and
- h) re-open the RFT, or conduct a further RFT, to select or add other Tenderers or service providers as a successful Tenderer at any time, even after negotiations have concluded with other successful Tenderers.

30.2 For the avoidance of doubt, subject to this RFT, AEMC may exercise its rights under this clause and elsewhere in this RFT at any time and in its absolute discretion.

30.3 For the avoidance of doubt, it may be in the public interest to suspend or terminate this RFT process if:

- a) there is a decision made to cancel or vary the programme to which the procurement relates;
- b) there is a machinery of government change which affects responsibilities between agencies for programmes to which the procurement relates;
- c) unforeseen technological or environmental change occur which affects the business case for the procurement as specified;
- d) unforeseen technical or operational problems occur which can be attributed to inadequate, incorrect or inappropriate specifications in the request document;
- e) there is a discovery of new information materially affecting the policy or operational effectiveness of the continuation of a project and/or procurement as specified; or
- f) funding is unavailable or insufficient through changes to appropriations or inability to obtain authority where necessary.

31 Conflict of Interest

- 31.1 Tenderers must include in their Tender details of any known circumstances that may give rise to an actual or potential conflict of interest with AEMC in responding to this Tender or in the provision of the Goods or Services specified in the Proposed Contract, Schedule 1 – Specification.
- 31.2 If at any time after the Tender is submitted to AEMC, an actual or potential conflict of interest arises or may arise for any Tenderer, that Tenderer must immediately notify AEMC in writing. AEMC may, in its absolute discretion:
- a) enter into discussions to seek to resolve such conflict of interest;
 - b) disregard the Tender submitted by such a Tenderer; or
 - c) take any other action as it considers appropriate.

32 False or misleading claims

- 32.1 If a Tenderer is found to have made false or misleading claims or statements or obtains improper assistance, AEMC may reject that Tenderer's Tender from any further consideration.

33 Unlawful inducements

- 33.1 Tenderers and their officers, employees, agents and advisors must not violate any applicable laws or policies in relation to unlawful inducements in connection with the preparation or lodgement of their Tender and the RFT process.

34 Collusive Tendering

- 34.1 Tenderers and their officers, employees, agents and advisors must not engage in any collusive Tendering, anti-competitive conduct or any other similar conduct with any other Tenderer or person in relation to the preparation or lodgement of their Tender or the RFT process.

35 Competitive Neutrality

- 35.1 In April 1995, all Australian governments reached agreement on a plan to promote enhanced competition in Australia. The resulting National Competition Policy is underpinned by three intergovernmental agreements: the Competition Principles Agreement; the Conduct Code Agreement; and the Agreement to Implement the National Competition Policy and Related Reforms (Implementation Agreement).
- 35.2 Government businesses compete with the private sector in a number of ways and in a variety of markets. Government ownership of a business may result in advantages to that business which are not available to the private sector, impeding the ability of the private sector to compete on equal terms.
- 35.3 The aim of Competitive Neutrality is to offset competitive advantages (resulting from government ownership), enabling a comparable basis for competition between a government business's activities and those of its competitors.

36 Licence to use and Intellectual Property Rights

- 36.1 Persons obtaining or receiving this RFT and any other documents issued in relation to the Tendering Process may use the RFT and such documents only for the purpose of preparing a Tender.
- 36.2 Such Intellectual Property Rights as may exist in the RFT and any other documents provided to Tenderers by or on behalf of AEMC in connection with the Tendering Process are owned by (and will remain the property of) AEMC except to the extent expressly provided otherwise.

37 Status of Tender

- 37.1 A Tender must not be conditional on:
- a) Board approval of the Tenderer or any related body corporate of the Tenderer being obtained;
 - b) the Tenderer conducting due diligence or any other form of enquiry or investigation;
 - c) the Tenderer (or any other party) obtaining any regulatory approval or consent;
 - d) the Tenderer obtaining the consent or approval of any third party; or
 - e) the Tenderer stating that it wishes to discuss or negotiate any commercial terms of the contract.
- 37.2 AEMC may, in its absolute discretion, disregard any Tender that is, or is stated to be, subject to any one or more of the conditions detailed above.

38 Evaluation process

- 38.1 Following the Closing Time, AEMC intends to evaluate the Tenders received. Tenders will be evaluated against the Evaluation Criteria specified in clause 39 – Evaluation criteria.
- 38.2 Unless the Evaluation criteria explicitly require, AEMC may, but is not in any way bound to, shortlist, to select as successful, or to accept the Tender offering the lowest price.
- 38.3 Should AEMC choose to include a short listing stage in its evaluation process, AEMC is not, at any time, required to notify Tenderers or any other person or organisation interested in submitting a Tender.
- 38.4 A Tenderer's Response will not be deemed to be unsuccessful until such time as the Tenderer is formally notified of that fact by AEMC. The commencement of negotiations by AEMC with one or more other Tenderers is not to be taken as an indication that any particular Tenderer's Response has not been successful.
- 38.5 Tenders received are to comply with the format set out in Document 3 'Tender Response Schedule' and the criteria as set out in the RFT. Any Tender received that does not comply with the criteria set out in the RFT will be deemed to be a Non-Complying Tender. AEMC may, in its absolute discretion, elect to pass over and not consider any non-complying Tender.
- 38.6 AEMC may in its absolute discretion consider or accept a non-complying Tender.

39 Evaluation criteria

- 39.1 Tenders will be evaluated on criteria which include (in no particular order and without limitation) the following grounds:
- a) Professional competence;
 - b) Nominated personnel;
 - c) Capacity to service AEMC requirements;
 - d) Past Performance and current work;
 - e) Quality system for deliverables;
 - f) Innovation;
 - g) Financial viability;
 - h) Insurances (having regard to the insurance provider, levels of insurance coverage and, to the extent that the Tenderer is based in a country other than Australia or New Zealand, any equivalent insurance protections);
 - i) Compliance with Proposed Contract;
 - j) Conflict of Interest;
 - k) Costings and price competitiveness;
 - l) Value Added Benefits; and
 - m) Flexibility in charging.

40 Clarification of Tender

- 40.1 If, in the opinion of AEMC, a Tender is unclear in any respect, AEMC may seek clarification from the Tenderer. Failure to supply clarification to the satisfaction of AEMC may render the Tender liable to disqualification.
- 40.2 AEMC is under no obligation to seek clarification of anything in a Tender and AEMC reserves the right to disregard any clarification that AEMC considers to be unsolicited or otherwise impermissible in accordance with the rules set out in this clause.
- 40.3 The seeking of clarification from any Tenderer by the AEMC is in no way an indication of the success of that Tender proposal.

41 Negotiation and presentation

- 41.1 AEMC may at any stage of the evaluation process elect to engage in detailed discussions and negotiations with any one or more Tenderers, with a view to maximising the benefits of the Tenders submitted.
- 41.2 As part of this negotiation process, AEMC may request such Tenderer(s) to improve one or more aspects of their Tender, including any technical, financial, corporate or legal components.
- 41.3 In its absolute discretion, AEMC may invite some or all Tenderers to give a presentation to AEMC in relation to their submissions.

- 41.4 AEMC is under no obligation to conduct any negotiations with, or to invite any presentations from, Tenderers.
- 41.5 In addition to presentations and negotiation, AEMC may request some or all Tenderers to:
- a) conduct a site visit;
 - b) provide references; and/or
 - c) make themselves available for panel interviews.

42 No legally binding contract

- 42.1 Selection as a successful Tenderer does not give rise to a contract (express or implied) between the successful Tenderer and AEMC. No contractual or other legal relationship will exist between AEMC any Tenderer (whether successful or not) unless or until such time as a binding contract is executed by AEMC and a successful Tenderer.
- 42.2 Subject to any negotiations between a Successful Tenderer and the AEMC, successful Tenderers will be required to enter into a contract based on Document 2 – Proposed Contract.

43 Pre-contractual negotiations

- 43.1 AEMC may, in its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Tenderer.
- 43.2 A Tenderer is bound by its Tender (including the Statement of Compliance to the Proposed Contract forming part of the Tenderer's Response) and, if selected as a successful Tenderer, must enter into a contract on the basis of the Tender without negotiation.

44 No obligation to enter into contract

- 44.1 AEMC is under no obligation to appoint a successful Tenderer or Tenderers (as the case may be), or to enter into a contract with a successful Tenderer or any other person, if it is unable to identify a Tender that complies in all relevant respects with the requirements of AEMC, or if to do so would otherwise not be in the public interest. For the avoidance of any doubt, in these circumstances AEMC will be free to proceed via any alternative process.

45 Tenderer warranties

- 45.1 By submitting a Tender, a Tenderer warrants that:
- a) in lodging its Tender it did not rely on any express or implied statement, warranty or representation, whether oral, written, or otherwise made by or on behalf of AEMC, its officers, employees, agents or advisers other than any statement, warranty or representation expressly contained in the RFT;
 - b) it did not use the improper assistance of AEMC employees or information unlawfully obtained from AEMC in compiling its Tender;
 - c) it has examined this RFT, and any other documents referenced or referred to herein, and any other information made available in writing by AEMC to Tenderers for the purposes of submitting a Tender;

- d) it has sought and examined all necessary information which is obtainable by making reasonable enquiries relevant to the risks and other circumstances affecting its Tender;
- e) it has otherwise obtained all information and advice necessary for the preparation of its Tender;
- f) it is responsible for all costs and expenses related to the preparation and lodgement of its Tender, any subsequent negotiation, and any future process connected with or relating to the Tendering Process;
- g) it otherwise accepts and will comply with the rules set out in this Document 1 – Tendering Conditions of the RFT;
- h) it will provide additional information in a timely manner as requested by AEMC to clarify any matters contained in the Tender; and
- i) it is satisfied as to the correctness and sufficiency of its Tender.

46 Governing law

46.1 This RFT and the Tendering Process is governed by the law of NSW.

46.2 Each Tenderer must comply with all relevant laws in preparing and lodging its Tender and in taking part in the Tendering Process.

47 Value for Money

47.1 In evaluating Tenderer's Responses, AEMC will have regard to each of the specific evaluation and the overall value for money proposition presented in the Tenderer's Response.

47.2 In this context, "value for money" is a measurement of benefits represented by a Tenderer's Response, including:

- a) quality levels;
- b) performance standards; and
- c) risks as measured by AEMC.

47.3 In evaluating the Tenderer's Responses, AEMC may assign a particular weighting to any or all of the criteria specified at 39 – Evaluation criteria. AEMC is under no obligation to advise Tenderers of such weightings.

Document 2 – Proposed Contract

This AGREEMENT is dated:	____/____/2010
Between:	The Australian Energy Market Commission (AEMC)
ABN:	49 236 270 144
Of:	Level 5, 201 Elizabeth Street, Sydney NSW 2000
And	(the Service Provider)
ABN:	
Of:	
Whereas	a) AEMC wishes to engage the Service Provider to provide the Services
	b) AEMC and the Service Provider have agreed to enter into this Agreement on the terms and conditions described below

The parties agree as follows

1 Interpretation

1.1 In this Agreement unless the contrary intention appears -

- a) **"Act"** means the *Australian Energy Market Commission Establishment Act 2004* (South Australia);
- b) **"Agreement"** means this agreement under which the Services are to be performed for the AEMC by the Service Provider. A reference to this Agreement includes a Specific Services Contract once formed;
- c) **"Business day"** means a day that is not a Saturday, Sunday, public holiday or bank holiday in the State of New South Wales;
- d) **"Contract Material"** is defined in clause 13.1;
- e) **"Completion Date"**, means a date which is either:
 - three years after the execution of this Agreement; or
 - if the AEMC notifies the Service Provider that it has decided to extend the period of this Agreement, a further twelve months after the then current term of this Agreement (provided the extensions cannot result in the Completion Date being more than 5 years after the execution date of this Agreement).
- f) **"confidential information"** is defined in clause 14.1;
- g) **"Contract Manager"** means the person or position described as such in Document 3 – Tender Response Schedule – 1.4 Contact Name, or such replacement as is identified by notice to the Service Provider ;
- h) **"dollars" or "\$"** is a reference to the lawful currency of Australia;

- i) **"Fee"** means the amount payable by the AEMC to the Service Provider for performing Specific Services, set out in the corresponding Specific Services Contract, or otherwise, as calculated in accordance with this Agreement;
- j) **"GST"** means any tax imposed under any GST Law and includes GST within the meaning of the GST Act;
- k) **"GST Act"** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- l) **"GST Law"** means the GST Law as defined in the GST Act and includes any Act of the Parliament of Australia that imposes or deals with GST;
- m) **"Identifier"** means an activity title and activity code assigned by the AEMC, and where appropriate, the "activity" might be referred to as a "project" or other term of similar definitive intent;
- n) **"Intellectual Property Rights"** includes copyright and neighbouring rights, and all proprietary rights in relation to inventions (including patents) registered and unregistered trademarks (including service marks), registered designs, confidential information (including trade secrets and know how) and circuit layouts, and all other proprietary rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including any application or right to apply for registration of any of those rights.
- o) **"Key Personnel"** means the personnel of the Service Provider named as such in Document 3 – Tender Response Schedule or as otherwise added or modified in accordance with clause 11;
- p) **"material"** is defined in clause 13.2;
- q) **"Moral Rights"** means the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, as defined in the *Copyright Act 1968* (Cth);
- r) **"Proposal"** has the meaning in clause 4;
- s) **"Request for Proposal"** has the meaning in clause 4;
- t) **"Service Provider's Representative"** means the person or position described as such in Document 3 – Tender Response Schedule;
- u) **"Services"** means the AEMC's requirements as described in Schedule 1 – Specification, to be provided by the Service Provider as may be more particularly defined or described in a Specific Instruction or a Specific Services Contract;
- v) **"Specific Instructions"** means an official purchase order, a notice, letter of engagement or written instruction by an authorised officer of the AEMC, to the Service Provider, which may set out: the nature and scope of required Specific Services; the relevant Identifier; and, subject to this Agreement, any applicable specific terms and conditions to apply, including any Fees, estimates or caps;
- w) **"Specific Services"** means some or all of the Services, as required by the AEMC at its discretion from time to time;
- x) **"Specific Services Contract"** means the contract which arises between the AEMC and the Service Provider as set out in clause 5;
- y) **"Tax Invoice"** has the same meaning as in the GST Act;

- z) the singular includes the plural and vice versa;
 - aa) words importing a gender include any other gender; and
 - bb) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- 1.2 Clause headings and any footnotes have been inserted for convenience and reference only, and are not intended to be part of or affect the meaning or interpretation of any of the terms and conditions of this Agreement.
- 1.3 If the Service Provider consists of more than one person those persons will be jointly and severally liable under this Agreement.

2 Service Provider's warranties

- 2.1 The Service Provider represents and warrants that:
- a) it has the right to enter into this Agreement;
 - b) it has all rights, title, licences, interests and property that are reasonably expected to be necessary to lawfully perform the Services;
 - c) its Key Personnel have the necessary experience, skill, knowledge, expertise and competence to perform the Services that may be expected to be performed under this Agreement;
 - d) subject to clause 3.3, its Key Personnel will be available to perform the Services that may be expected to be performed under this Agreement; and
 - e) to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement, no conflict of interest exists or is likely to arise for the Services that may be expected to be performed under this Agreement;
 - f) it holds all insurance policies as required to be held under this Agreement; and
 - g) if the Service Provider is a trustee, it enters this Agreement personally and in its capacity as trustee and has the power to perform its obligations under this Agreement.

3 The Services

- 3.1 The Service Provider hereby makes a standing offer to perform the Services for the AEMC in accordance with this Agreement.
- 3.2 Subject to clause 6, Specific Services from the Service Provider will be performed only where a Specific Services Contract is entered into with the Service Provider in accordance with this Agreement.
- 3.3 Where the AEMC has:
- a) provided Specific Instructions to the Service Provider without first seeking a Proposal from the Service Provider in accordance with clause 4.1; or
 - b) has requested a Proposal from the Service Provider in accordance with clause 4.4, then:

- c) the Service Provider may decline to accept the Specific Instructions, or to provide a Proposal, if the Service Provider would have a conflict of interest if the Specific Services Contract were formed, provided that at the time of so declining, the Service Provider makes available to the Contract Manager reasonable explanation of this conflict; or
 - d) the Contract Manager and the Service Provider's Representative may agree that no Specific Services Contract will be formed or that a Proposal is to be lodged if, as soon as practicable after the Specific Instructions or Request for Proposal are provided, the Service Provider notifies the AEMC that the Service Provider has insufficient resources to perform the Specific Services.
- 3.4 The Service Provider must perform Specific Services in accordance with the terms of the corresponding Specific Services Contract.
- 3.5 The giving of Specific Instructions or the requesting of a Proposal (and any consequent provision of a Proposal) is not a presumption that the AEMC will use the Service Provider to provide further or future Specific Services.
- 3.6 In performing Services the Service Provider must:
- a) exercise due diligence, care, skill and judgement;
 - b) observe applicable professional standards, principles and practices applying to the relevant industry;
 - c) meet the timing requirements that may be referred to in the Specific Services Contract, and where no dates are specified, promptly and without delay;
 - d) comply with all applicable laws, regulations, local laws, rules and codes of practice relating to the provision of the Services, and ensure it does nothing to place the AEMC in breach of any regulatory requirements (including the requirements and obligations imposed on the AEMC under the *Occupational Health and Safety Act 2000* (NSW));
 - e) not infringe any intellectual or other property right of any person;
 - f) use Key Personnel; and
 - g) comply with all performance standards and requirements (however named);
 - h) without affecting or limiting clauses 20.2 and 26, notify the AEMC if the Service Provider considers that in performing of these Services it will exceed any fixed fee, fee cap or other fees proposal that it has given to the AEMC under clause 4.3, or as otherwise stipulated by the AEMC, for any reason; and
 - i) comply with all statements or representations as to its performance of the Services contained in Schedule 1 – Specification and as set out in any Specific Services Contract.

4 Scoping of Specific Services

No Request for Proposal sought by the AEMC

- 4.1 The AEMC may provide Specific Instructions to the Service Provider without first seeking a Proposal from the Service Provider (and the following clauses 4.2 and 4.3 will apply).
- 4.2 Nothing in this Agreement prohibits the AEMC and the Service Provider from communicating about or jointly developing or revising any Specific Instructions. The AEMC may discuss with the Service Provider any modifications or clarifications of the

Specific Instructions. The Specific Instructions as modified or amended and agreed to by the AEMC will be taken to be the Specific Instructions for the purposes of this Agreement.

- 4.3 The Specific Instructions given by the AEMC may include details such as:
- a) the fees and charges for the Specific Services;
 - b) the Specific Services that the AEMC requires to be performed and the time by which they are to be performed;
 - a) which Key Personnel the AEMC requests to perform the Specific Services.

Request for Proposal sought

- 4.4 The AEMC may provide to the Service Provider a Request for Proposal relating to any Specific Services (and the following clauses 4.5 to 4.10 will apply).
- 4.5 A Request for Proposal must set out the nature and scope of the Specific Services required and may include (among other things) deliverables, timing requirements, procedures and, subject to this Agreement, any conditions that may apply.
- 4.6 A Request for Proposal may reasonably require the Service Provider to:
- a) provide a Proposal by a date;
 - b) identify a cap to apply to the fees and charges for the Specific Services;
 - c) identify a fixed fee to apply to the fees and charges for the Specific Services;
 - d) state which (if any) discretionary fees and charges would apply;
 - e) specify which Key Personnel the Service Provider intends on using;
 - f) confirm the availability of those Key Personnel and the availabilities of other relevant resources; or
 - g) confirm the timing for the delivery of Specific Services.
- 4.7 Unless clause 3.3 applies, the Service Provider must provide to the AEMC a Proposal in response to and in accordance with any Request for Proposal within five (5) Business Days (or within the time as specified in the Request for Proposal).
- 4.8 Nothing in this Agreement prohibits the AEMC and the Service Provider from communicating about or jointly developing or revising any Proposal. In particular, the AEMC may discuss with the Service Provider any modifications to a Proposal, or seek any clarifications to a Proposal, and request the Service Provider to resubmit the Proposal reflecting those modifications or clarifications. The resubmitted Proposal will be taken to be the Proposal for the purposes of this Agreement.
- 4.9 Provision of a Request for Proposal and consequent provision of a Proposal do not constitute the formation of a Specific Services Contract, and must not be taken to mean that a Specific Services Contract will necessarily be made.
- 4.10 The AEMC may, at any time prior to a Specific Services Contract being formed, change a Request for Proposal that it gives or has given to the Service Provider by notice in writing to the Service Provider, provided it gives the Service Provider reasonable time to consider those changes.

5 Documents forming a Specific Services Contract

- 5.1 A Specific Services Contract will only be formed by the AEMC confirming in writing that:
- a) the Service Provider is to undertake the final form of the Specific Instructions as modified or amended in accordance with clause 4.2; or
 - b) the final form of the Proposal as modified or amended in accordance with clause 4.8 is acceptable to the AEMC,

whichever the case may be.

- 5.2 A Specific Services Contract will consist of:
- a) clauses 1 to 30 of this Agreement;
 - b) where relevant, any Request for Proposal given under clause 4.4 and the consequent Proposal (as may be amended or updated in accordance with clause 4.8);
 - c) where relevant, any Specific Instructions given under clause 4.1 (as may be amended or updated in accordance with clause 4.2); and
 - d) any document or provision, or part thereof, that the documents referred to in paragraphs (a), (b), or (c) expressly incorporated as part of the contract.

- 5.3 If there is any conflict between the provisions of the various documents set out in this clause 5, the following descending order of precedence will apply for the purposes of interpretation:
- a) clauses 1 to 30 of this Agreement will prevail over all other provisions;
 - b) where relevant, the provision of Specific Instructions and any special conditions set out in them will prevail over all other provisions;
 - c) where relevant, the terms of a Proposal accepted by the AEMC as modified or amended in accordance with clause 4.8 will prevail over all other provisions.

6 AEMC Not Bound to Order

- 6.1 The AEMC is not obliged at any time to make a Request for Proposal, or to deliver Specific Instructions to the Service Provider, or to enter into a Specific Services Contract, and the AEMC may at any time in its discretion call for tenders for or purchase or acquire the Services or any part of the Services (or services similar to the Services) in any other way from any person.

7 Period of Engagement

- 7.1 The Service Provider's offer to provide the Services will -
- a) commence upon execution of this Agreement; and
 - b) subject to clauses relating to Agreement termination, conclude on the Completion Date.
- 7.2 For avoidance of doubt, conclusion of the Service Provider's Services offer will not relieve the parties from their obligations under any Specific Services Contract that is in force at the time of conclusion.

8 Independent Contractor

8.1 The Service Provider is an independent contractor and the personnel employed or engaged by the Service Provider will not by virtue of this Agreement become or be deemed to have become employed by, or in the service of, the AEMC for the purpose of the Income Tax or Income Tax Assessment Acts or for any other purpose.

8.2 Without limiting clause 8.1, the Service Provider acknowledges that, if the Services require the Service Provider to:

- a) place personnel with AEMC for any period of time; or
- b) otherwise work on AEMC projects that are being administered or run by AEMC staff,

the Service Provider is responsible for its personnel and any work or services provided by those personnel. Nothing in this Agreement or any such arrangement is to be taken to be a secondment or placement of such personnel with the AEMC, unless specifically agreed in writing by the AEMC to be such an arrangement.

8.3 If personnel of the Service Provider are placed with AEMC for any period of time, as contemplated by subclause 8.2a) above, upon commencement of their placement, such personnel will be provided with certain of AEMC's policies, including AEMC's Code of Conduct and Occupational Health and Safety policies, which will be applicable to the personnel and which the personnel will be required to comply with.

9 Service Provider's Representative

9.1 The Service Provider must ensure that, throughout the term of this Agreement, a person is at all times duly appointed as the Service Provider's Representative to act on the Service Provider's behalf for the purposes of administering this Agreement and the performance of the Services by the Service Provider.

10 Subcontractors

10.1 The Service Provider must not engage subcontractors to carry out any part of the Services or perform any other obligations under this Agreement without the AEMC's prior written consent and any consent does not relieve the Service Provider from its liabilities under this Agreement

10.2 The Service Provider shall be liable to the AEMC for any claims, loss, damage, liability, costs, expense, acts or defaults of any subcontractor or any employee or agent of the subcontractor as fully as if they were the acts or omission of the Service Provider or the employees or agents of the Service Provider.

10.3 The Service Provider shall be responsible for ensuring the suitability of a subcontractor for the Services proposed to be carried out for ensuring that the Services performed by the subcontractor meets the requirements of this Agreement.

10.4 The Service Provider shall ensure that a subcontractor is aware of all the terms and conditions of the Agreement relevant to the subcontractor's part in the performance of the Agreement including obligations in relation to confidential information identified in clause 14 of this Agreement.

10.5 Prior to a subcontractor carrying out the Services under this clause 10, the Service Provider must:

- a) obtain from that subcontractor and provide, to the extent required by and in a form acceptable to the AEMC, a written assignment from that subcontractor to

the AEMC of any Contract Material (as defined in clause 13) to be developed, created, generated or otherwise produced by that subcontractor;

- b) must, on request by the AEMC, provide the AEMC with the names of any of the Service Provider's subcontractors;
- c) ensure that any subcontractor agrees that the AEMC may disclose the subcontractor's name publicly.

11 Specified Personnel

11.1 Specific Instructions or a Request for a Proposal provided to the Service Provider may include one or more requirements that all or part of the Specific Services be performed by, or only by:

- a) specifically named Key Personnel;
- b) if agreed between AEMC and the Service Provider, a replacement of or addition to the Key Personnel in accordance with clauses 11.4 and 11.5 below; or
- c) any other person, where the specification of that person by the AEMC has been agreed to by the Service Provider.

11.2 If in Document 3 – Tender Response Schedule or a Request for Proposal, one or more persons are named as required for a task, then unless the Service Provider obtains the prior agreement in writing from the AEMC the Service Provider must ensure that when such task is performed in the course of the Services or Specific Services, the task is

- a) performed by the named person or by one of them or, if the context requires, by all of them; and
- b) not performed by any other person.

11.3 The AEMC may, at any time and without giving any reasons, after giving 14 or more days' notice, require the removal or replacement of any person providing the Services who, in the opinion of the Contract Manager, has not performed in a satisfactory manner or is otherwise reasonably considered unacceptable.

11.4 The Service Provider may, by written notice to the AEMC, nominate any suitable person for addition to the Key Personnel. The Service Provider must set out in that notice the qualifications, knowledge and experience of the nominated person and the justification for proposal as a member of the Key Personnel. The Service Provider must also provide any documentation or other information with respect to the nominated person as reasonably requested by the AEMC.

11.5 Within 14 days of notice under clause 11.4, the AEMC must give written notice to the Service Provider, stating whether or not the AEMC accepts the nomination. The AEMC shall not be required to provide reasons for its decision.

11.6 For so long as Key Personnel are within the employ of, or are contracted to, the Service Provider, the Service Provider may remove or replace Key Personnel only with the consent of the AEMC. In all circumstances, the Service Provider must give at least 14 days' notice of its intention to remove or replace any such Key Personnel. Within 14 days of receipt of that notice, the AEMC must give written notice to the Service Provider, stating whether or not the AEMC accepts that removal or replacement. The AEMC will not be required to provide reasons for its decision.

11.7 In the event that the Service Provider, pursuant to exercising its right under clause 11.6 or consequent on an exercise by the AEMC of its rights under clause 11.3, is unable to provide replacement personnel reasonably acceptable to the AEMC, then the AEMC may

by notice to the Service Provider terminate the Agreement with immediate effect and may recover from the Service Provider any loss or damage suffered by the AEMC.

11.8 Termination by the AEMC pursuant to clause 11.7 must include the reason for the AEMC's opinion that the relevant replacement person is not acceptable to the AEMC.

12 Record Keeping

12.1 The Service Provider must:

- a) keep complete, accurate and up to date records and documentation relating to the Services; and
- b) retain, and where applicable, require its contractors and subcontractors to retain, all records and documentation relating to the Services for a period of five (5) years.

12.2 On reasonable request by the AEMC, the Service Provider must:

- a) make the records and documentation referred to in clause 12.1 available to the AEMC or to any nominee or representative of the AEMC; or
- b) provide access to the Service Provider's premises (or other places where the Services are performed) for audit purposes to the extent relevant to the performance of Services under this Agreement.

12.3 The Service Provider must bear its own costs of complying with this clause 12.

13 Rights to and Use of Material

13.1 In this clause 13 and for the purposes of this Agreement and each Specific Services Contract, "**Contract Material**" means all material which is developed, created, generated or otherwise produced specifically for the AEMC as part of or in connection with this Agreement or the provision of the Services. However, it excludes:

- a) any material which, despite being used by the Service Provider to provide any of the Services, either already exists as at the date of this Agreement, is developed, created or generated by the Service Provider during the term of this Agreement or a specific Services Contract independently of the Services, or is a modification or enhancement of that pre-existing or independently developed material; and
- b) any internal working papers of the Service Provider, but only to the extent that the provision of the Services does not require those working papers to be provided to the AEMC and the content of those working papers is not otherwise Contract Material.

13.2 In this clause 13 and for the purposes of this Agreement and each Specific Services Contract, "**material**" includes the content of letters, articles, reports, contracts, licences, applications, technical information, plans, charts, drawings, models, calculations, tables, schedules, software programs and other data, whether in written form or in any other form or medium.

13.3 All present and future Intellectual Property Rights in all Contract Material vests in the AEMC.

13.4 To the extent permitted by applicable laws and for the benefit of the AEMC, the Service Provider must:

- a) give, where the Service Provider is an individual, in a form acceptable to the AEMC;
- b) use its best endeavours to ensure that each person used by the Service Provider in the production or creation of the Contract Material gives, in a form acceptable to the AEMC; and
- c) use its best endeavours to ensure that any holder of Moral Rights in third party material included in the Contract Material gives,

genuine consent in writing to the use of the Contract Material for the Specified Acts described in clause 13.5, even if such use would otherwise be an infringement of its or their Moral Rights.

13.5 In this clause 13, Specified Acts means:

- a) materially altering the style, format, colours, content or layout of the Contract Material and dealing in any way with the altered Contract Material;
- b) reproducing, communicating, adapting, publishing or exhibiting any Contract Material; and
- c) adding any additional content or information to the Contract Material.

13.6 The Service Provider grants to the AEMC a royalty free non-exclusive, irrevocable and perpetual licence to use any material that is not Contract Material but which has been provided by the Service Provider to the AEMC or is otherwise required to enable it to fully utilise or understand the Contract Material.

13.7 Except with the prior written approval of the AEMC, the Service Provider must not use any Contract Material for its own benefit, or for the purposes of any other person.

13.8 At the request of the AEMC, the Service Provider must deliver all Contract Material to the AEMC.

13.9 Despite clauses 13.7 and 13.8, the Service Provider may retain a copy of any Contract Material that the Service Provider reasonably wishes to retain for its own legitimate internal purposes, or which the Service Provider is obliged by law to retain.

13.10 For the avoidance of doubt and except to the extent otherwise agreed between the parties:

- a) all models and software which are delivered or utilized by the Service Provider as part of or in connection with this Agreement or the provision of the Services are understood to be wholly based upon the Service Provider's existing Intellectual Property Rights; and
- b) nothing in this clause 13 is intended to convey ownership of those Intellectual Property Rights to the AEMC.

14 Protection and Use of Confidential Information

14.1 In this clause 14 and for the purposes of this Agreement and each Specific Services Contract, "**confidential information**" means:

- a) the Contract Material; and
- b) information which comes into the possession of the Services Provider or its personnel as a result of or in connection with this Agreement or the provision of

the Services and which relates to, has been provided by or on behalf of, or has otherwise been in the possession of the AEMC and which:

- i. is marked or otherwise identified as confidential;
- ii. is conveyed with a statement by the person conveying it that it is secret or conveyed in confidence;
- iii. by its nature is confidential;
- iv. the Service Provider knows or ought to know is confidential; or
- v. the disclosure of which to, or the use of which by or in the interests of, a person other than the Service Provider or the AEMC (whether a particular person or other persons generally) would, or would be likely to, affect or prejudice the commercial or financial interest of any regulated entity (within the meaning of the Act); or
- vi. which the Service Provider or any of its personnel becomes aware of as a result of or in connection with provision of the Services unless the Service Provider can establish that the information is not of a type to which any of the preceding sub-clauses (i) to (v) applies.

14.2 In this clause 14 "**personnel**" in relation to the Service Provider includes its directors, officers, employees, agents and contractors, and the directors, officers, employees, agents and contractors of its agents and contractors.

14.3 The Service Provider must:

- a) not make public, disclose or use for purposes other than for the purposes of this Agreement any confidential information, without prior written approval of the AEMC;
- b) take and enforce proper and adequate precautions to preserve the secrecy and confidentiality of confidential information;
- c) if it or any of its personnel improperly disclose or use confidential information, take reasonable steps to limit the consequences of that disclosure or use to prevent any further inappropriate disclosure or use; and
- d) after provision of the Services or termination or expiry of this Agreement, deliver to the AEMC all confidential information in the possession of the Service Provider or its personnel that is capable of being delivered.

14.4 Despite clause 14.3(d), the Service Provider will be entitled to keep one copy of all confidential information in safe custody, which may be used only for the Service Provider's own legitimate internal purposes.

14.5 The Service Provider is not obliged by this clause 14 to keep information confidential if that information:

- a) was already fully in the Service Provider's possession at the time of its receipt from the AEMC or under this Agreement and the Service Provider is able to establish this;
- b) has become public knowledge (other than through a breach of an obligation of confidence imposed under this Agreement);
- c) was published or otherwise becomes part of the public domain other than in circumstances reflecting a breach of this Agreement by the Service Provider;

- d) is required to be disclosed under law; or
- e) was independently developed by the Service Provider without reference to the confidential information of the AEMC, or for the performance of the Services, and the Service Provider is able to establish this.

14.6 With the exception of clause 13, nothing contained in this Agreement will restrict the Service Provider from:

- a) use of any ideas, concepts, know how or techniques which it develops or acquires under this Agreement, except to the extent such use infringes the AEMC's Intellectual Property Rights;
- b) disclosing or retaining information to the extent reasonably necessary to enable the exercise, enforcement, or performance of any right, remedy or obligation of the Service Provider under this Agreement;
- c) disclosing information to the extent reasonably necessary to comply with any law or order of a court or governmental agency; or
- d) including the AEMC's name and a factual description of the work performed under this Agreement in:
 - i. a list of references;
 - ii. proposals to third parties; or
 - iii. its annual report.

14.7 The Service Provider may disclose confidential information to its personnel to the extent that such disclosure is necessary to enable it to perform its obligations under this Agreement.

14.8 The Service Provider must ensure that none of its personnel does anything (or fails to do anything) which if done (or failed to be done) by the Service Provider would give rise to a breach of this clause 14.

14.9 If the AEMC requests by notice that it do so, the Service Provider must procure that those of its personnel identified in the request promptly execute a deed of confidentiality in a form acceptable to the AEMC.

14.10 The AEMC may publish (on the internet or otherwise) the name of the Service Provider and the estimated contract value together with the nature and conditions of this Agreement generally.

14.11 Any breach of this clause 14 or of a deed executed in accordance with clause 14.9 by any of the Service Provider's personnel will entitle the AEMC to immediately terminate this Agreement or any Specific Services Contract, and to recover from the Service Provider any loss or damage suffered by the AEMC.

14.12 A Service Provider's obligations under this clause continue for three years after the termination of this Agreement.

15 Privacy Protection

15.1 The Service Provider shall ensure that it acts in accordance with relevant privacy principles or laws with respect to any act done, or practice engaged in, by the Service Provider for the purposes of this Agreement, in the same way and to the same extent as the AEMC would have been bound by them in respect of that act or practice had it been

directly done or engaged in by the AEMC. This includes compliance with all applicable provisions of the *Privacy Act 1988* (Cth).

16 Conflict of Interest

- 16.1 The parties acknowledge that the Service Provider or its directors, officers, or employees (for the purposes of this clause, "**personnel**") may, prior to entering into this Agreement and during the term of this Agreement, hold office, possess or deal in property including shares, engage in a business trade or calling or have obligations whereby, in the absence of preventative action, the Service Provider's duties or interests are or might be directly or indirectly in conflict with its duties or interests under this Agreement.
- 16.2 The Service Provider must take action, reasonably satisfactory to the AEMC, to prevent or eliminate a conflict of the sort referred to in clause 16.1, in relation to any Specific Services.
- 16.3 Preventative action sufficient for the purposes of clause 16.2 will include, without limitation, the Service Provider's declining to accept a Specific Instruction in relation to the Specific Services, in accordance with clause 3.3(a) or declining to submit a Proposal in relation to the Specific Services, in accordance with clause 3.3.
- 16.4 The Service Provider must ensure that during the term of each Specific Services Contract, the Service Provider's personnel who perform the respective Specific Services do not, without prior written consent of the AEMC, undertake any work for:
- a) any organisation that is or may be directly or indirectly involved with or affected by the Specific Services or any decision or action or inaction by the AEMC based on the Specific Services;
 - b) any affiliate of any organisation covered by sub-clause 16.4(a); or
 - c) any body or organisation other than the AEMC whose responsibilities include relating to AEMC's functions under the Act or relating to any organisation covered by sub-clause 16.4 (a),
- (collectively referred to as "**Interested Parties**").
- 16.5 The Service Provider must ensure that during the term of any Specific Services Contract at least, no information related to those Specific Services is directly or indirectly communicated to any of the Service Provider's personnel who is undertaking or is committed to undertake work for any Interested Party.
- 16.6 The Service Provider must immediately give notice to the AEMC of any matter that gives or might give rise to an actual or perceived conflict of interest for the Service Provider, of the kind referred to in clause 16.1 at any time during the performance of Specific Services, and must include in the notice a proposal for managing such conflict.
- 16.7 After receipt of such notice the AEMC may by notice to the Service Provider
- a) terminate the Specific Services Contract and may recover from the Service Provider any loss or damage suffered by the AEMC;
 - b) terminate this Agreement and may recover from the Service Provider any loss or damage suffered by the AEMC; or
 - c) specify an agreed arrangement for effectively managing the conflict in question.
- 16.8 Any breach of this clause 16 by the Service Provider will entitle the AEMC to terminate this Agreement or any Specific Services Contract with immediate effect, and to recover from the Service Provider any loss or damage suffered by the AEMC.

17 Insurance

17.1 The Service Provider must have and maintain in force with a reputable insurance provider insurance cover of the types and, at a minimum, the amounts set out below (if any):

- a) **Public Liability Insurance:** for not less than \$10 million for any single event and unlimited in the aggregate or, where a Request for Proposal specifies a higher level of insurance, that specified level of insurance;
- b) **Professional Indemnity insurance:** for not less than \$1 million for any single event or, where a Request for Proposal specifies a higher level of insurance, that specified level of insurance; and
- c) **Workers Compensation insurance:** as required by law,

from the date when the Services commence until the date on which the Service Provider ceases to have any obligations or liability under or in relation to this Agreement (which date may be after this Agreement ceases to be in effect).

17.2 Where the Service Provider is a New Zealand based entity, the AEMC acknowledges that the Service Provider is not required by New Zealand law to carry professional indemnity insurance, public liability insurance or worker's compensation insurance. Notwithstanding anything in clause 17.1 above, the AEMC does not require that the Service Provider hold professional indemnity insurance, public liability insurance or worker's compensation insurance for those Services that the Service Provider will complete within or will provide from New Zealand provided that:

- a) the Service Provider confirms that all required payments have been made with respect to insurance from the New Zealand Accident Compensation Corporation;
- b) while travelling outside of New Zealand, relevant personnel will be covered by an appropriate travel insurance policy; and
- c) for Services provided by the Service Provider that are not covered by the New Zealand Accident Compensation Scheme (as set out in the New Zealand *Accident and Compensation Act 2001*), the Service Provider obtains such insurance as set out in clause 17.1 above, or as otherwise specified in writing by the AEMC.

17.3 The Service Provider must specify the details of the relevant insurance it holds as specified in Document 3 – Tender Response Schedule.

17.4 On request by the AEMC from time to time, the Service Provider must promptly provide to the AEMC satisfactory evidence that the Service Provider has complied with and continues to comply with clause 17.1.

18 Release and Indemnity

18.1 Subject to clause 18.2, the Service Provider releases and will indemnify the AEMC and its officers, employees and agents from and against any liability, loss, damage, cost or expense (including legal expenses on a full indemnity basis) arising directly or indirectly from or incurred in connection with:

- a) **(third party claims)** any claim, demand, action, suit or proceeding that may be brought by any person against the AEMC or any of its officers, employees or agents in respect of:
 - (i) personal injury to or the death of any person; or
 - (ii) any loss or damage of any kind whatsoever,

arising out of or in connection with any wilful, unlawful or negligent act or omission by the Service Provider or any of its officers, employees or agents in the performance of the Services;

- b) **(breach of contract)** any breach of this Agreement or any Specific Services Contract by the Service Provider, whether or not the AEMC exercises its rights of termination under clause 27; or
- c) **(third party claims for IP infringement)** any act or omission by the Service Provider or any of its officers, employees or agents in the performance of the Services, this Agreement or a Specific Services Contract that results in a claim that the AEMC or any of its officers, employees or agents or the Service Provider is infringing or allegedly infringing the Intellectual Property Rights of any person ("**Third Party IP Claim**").

18.2 The indemnity in clause 18.1 will not apply to the extent that any liability, loss, damage, cost or expense is solely and directly caused by a breach of this Agreement or any Specific Services Contract by the AEMC or any unlawful or negligent act or omission by the AEMC or any of its officers, employees or agents (other than the Service Provider) in connection with this Agreement or any Specific Services Contract.

18.3 The AEMC agrees to provide the Service Provider with prompt notice of a Third Party IP Claim being made against the AEMC or any of its officers, employees or agents and not to settle any such claim without the Service Provider's prior written consent.

18.4 The Service Provider must perform the Services solely at its own risk and the AEMC will not be liable to the Service Provider or its officers, employees, agents or contractors for any loss, damage, injury, disease, illness or death sustained by any person or caused to any property ("**loss**") however caused, with the exception of any loss caused by the negligence of, or breach of duty, statute or contract by the AEMC or any of its officers, employees or agents for which the AEMC may be held liable to the Service Provider.

18.5 Neither the Service Provider nor the AEMC will be liable to the other party for consequential damage (which is agreed to mean any damage not ordinarily arising from a breach), incidental, punitive or special damages or claims in the nature of lost profits or lost opportunity costs in connection with this Agreement or the provision of the Services.

19 Supervision

19.1 The Service Provider must -

- a) have regard to and comply with reasonable requirements of the Contract Manager;
- b) supply to the Contract Manager any information reasonably required in connection with the Services, including without limitation, progress reports and status reports and information requested by any auditor or government body to which the AEMC must provide information; and
- c) permit the Contract Manager to enquire of, confer with and have discussions with the Service Provider's employees, representatives and (if applicable) subcontractors engaged on the provision of the Services, and do all that is within its power to facilitate any and all such enquires conferences and counselling.

19.2 Without limiting the audit rights in clause 12, nothing in this clause 19.1 will require the Service Provider to provide the Contract Manager with access to those parts of its premises where materials or information relating to other clients of the Service Provider are located.

20 Invoicing and Payment

- 20.1 Subject to any specific rights under this Agreement (including under a Specific Services Contract), the AEMC must pay the Fee for Specific Services, in accordance with this clause 20.
- 20.2 The Service Provider will not be entitled to payment for:
- a) any Services or Specific Services which were performed without, or otherwise not in accordance with, a corresponding Specific Services Contract; or
 - b) any Fees incurred by the Service Provider in excess of any fixed fee, fee cap or other fees proposal in place unless that excess was pursuant to a variation where the variation and excess amount are approved by the AEMC in accordance with clause 26.
- 20.3 The Service Provider will not be entitled to payment prior to the provision of the Services.
- 20.4 If the Service Provider performs any Services during a month, the Service Provider must provide to the AEMC, within ten (10) Business Days of the start of the following month:
- a) one or more valid invoices respectively relating to each Identifier for which the Contractor performed the Services; and
 - b) an update of expenses incurred, in accordance with clause 20.7, during that month.
- 20.5 Each Fee must be calculated by reference to relevant principles, limits, formulae, rates and procedures set out in this Agreement.
- 20.6 Unless otherwise set out in the relevant Specific Services Contract, each Fee will be inclusive of all foreseen and unforeseen expenses of the Service Provider, including without limitation insurance, duties, imposts, GST and taxes, paid or payable by the Service Provider in respect of the Specific Services.
- 20.7 Any expense reasonably incurred by the Service Provider in performing the Services will be reimbursed by the AEMC:
- a) if that expense or the class of expenses to which it belongs is specified in this Agreement or any relevant Specific Services Contract as a type of expense that the AEMC will reimburse; and
 - b) to the extent that the expense is referable to the performance of Services.
- 20.8 All invoices submitted to the AEMC must comply with the requirements of the GST Law (as a Tax Invoice).
- 20.9 Invoices may be submitted:
- a) on a monthly basis; or
 - b) upon completion of certain milestones,
- such timing to be determined in the AEMC's discretion and notified to the Service Provider upon entering into a Specific Services Contract.
- 20.10 All invoices submitted to the AEMC must specify -
- a) the Identifier;
 - b) the number of the purchase order covering the Services;
 - c) the Fees due to the Service Provider and the basis for their calculation;

- d) the amount of any GST paid or payable by the Service Provider with respect to the invoiced amount;
- e) the period of delivery of the Services to which the invoice relates;
- f) a description (including quantity) of the Services delivered;
- g) the Service Provider's address for payment;
- h) where any Specific Instruction required Services to be performed by specific person or persons as provided for in clause 11.1, the invoice must be accompanied by a signed certificate stating that such Specific Services have been performed by the required personnel; and
- i) where the invoiced expenses include travel to or from anywhere away from metropolitan Sydney, the invoice must be accompanied by a signed certificate stating that the amount invoiced to the AEMC for such travel expenses and any associated accommodation and sustenance expenses reasonably reflects the share of those expenses referable to the Services.

20.11 An authorised officer of the AEMC familiar with the conduct of the Services must certify all invoices as appropriate for payment or may decline to certify any invoice for payment in part or whole if he or she is not reasonably satisfied that the work for which payment is sought has been performed satisfactorily and in accordance with the relevant Specific Services Contract, or the expense for which reimbursement is sought properly incurred and attributed, or any of the Service Provider's obligations under this clause 20 has not been complied with.

20.12 Subject to certification, the AEMC must pay an invoice to the extent it has been properly submitted under clause 20.9 and is certified under clause 20.11 within thirty (30) days of receipt.

20.13 The time limit in clause 20.12 will not apply to an invoice for which the Service Provider has not complied with its obligations under this clause 20.

20.14 Payment of an invoice by the AEMC is not -

- a) evidence or an admission that any particular Services have been provided in accordance with this Agreement or any relevant Specific Services Contract;
- b) evidence of the value of the Services;
- c) an admission that the Services invoiced were satisfactorily performed or the expenses reimbursed properly incurred;
- d) an admission of liability; or
- e) acceptance or approval by the AEMC of the Service Provider's performance,

but must be taken only as a payment on account.

20.15 In addition to all other rights or remedies available to it, the AEMC may deduct or set off against amounts otherwise payable to the Service Provider, all amounts owed by the Service Provider to the AEMC including damages costs or expenses incurred or suffered by the AEMC or for which it is entitled to be reimbursed by the Service Provider.

20.16 In the event of termination of this Agreement or a Specific Services Contract by the AEMC, the AEMC may withhold payment of amounts that may be payable to the Service Provider under this Agreement, or that Specific Services Contract (as applicable), pending completion of the terminated Services by another person or the determination of damages.

21 Notices

- 21.1 Any notice required by or permitted under this Agreement or a Specific Services Contract will be deemed to be duly served if delivered in written form in a matter specified in clause 21.2 to the address, facsimile number or email address as notified for that purpose by the receiving party to the other party in accordance with this Agreement. For the purposes of this clause, the initial notified postal address and email address of the Service Provider will be taken to be the respective postal and email addresses specified in Document 3 – Tender Response Schedule.
- 21.2 Notices may be delivered by hand, registered mail, facsimile or email, and will be deemed to be given -
- a) in the case of hand delivery or registered mail upon written acknowledgment of receipt by an officer or duly authorised employee, agent or representative of the receiving party, or if that is refused, upon delivery;
 - b) in the case of facsimile upon completion of successful transmission; or
 - c) in the case of electronic mail in accordance with the provisions of Division 3 of Part 2 of the *Electronic Transactions Act 2000* (NSW),
- but if the result of the foregoing is that a notice would be taken to be given on a day which is not a normal Business Day at the locale to which the notice is sent, or given later than 5:00 pm (local time), it will be taken to have been duly given at 9:00 am (local time) on the next normal business day in that locale.
- 21.3 A notice takes effect from the latest of:
- a) the time it is given;
 - b) a time specified in the notice; or
 - c) a time specified under this Agreement.

22 Dispute Resolution

- 22.1 Neither party may start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement unless it has first complied with this clause 21.
- 22.2 Any dispute which arises between the parties in connection with this Agreement must be referred to the Chief Executive Officer (or their nominee) of each party with authority to settle the matter, who then must endeavour to resolve the dispute (or agree upon a means of resolving the dispute which may include agreeing to refer the matter for arbitration) within 14 days.
- 22.3 In the event of a dispute in connection with this Agreement which cannot be resolved in accordance with clause 21.2 then the dispute must be referred to a mediator agreed by the parties, for mediation in accordance with the Australian Commercial Disputes Centre (ACDC) Guidelines for Commercial Mediation.
- 22.4 If the parties cannot agree on a mediator, the mediator must be a mediator nominated by the then current chief executive officer of the ACDC or the CEO's nominee (or if no such person is available or willing to nominate a mediator, by the then President of the Law Society of New South Wales).
- 22.5 Any information or documents disclosed by a party under this clause 22:
- a) is confidential; and

b) may only be used to attempt to resolve the dispute.

22.6 The costs of mediation will be borne equally by the parties.

23 Default

23.1 If a party fails to carry out any of its obligations or duties under this Agreement or a Specific Services Contract or breaches this Agreement or a Specific Services Contract (including breaches of warranty), the other party may give notice to the defaulting party specifying the breach.

23.2 If the defaulting party fails to remedy the breach (or where the breach is not capable of remedy, fails to provide adequate compensation) within five (5) Business Days after receipt of such notice, the other party, without prejudice to any other rights or remedies, may by notice to the defaulting party terminate either the relevant Specific Services Contract or this Agreement (or both) with immediate effect and may recover from the defaulting party any direct loss or damage suffered by the non-defaulting party.

23.3 Clause 23.2 is subject to other clauses in this Agreement which explicitly provide for termination or a party's recovery of loss or damage.

24 Change of Service Provider Circumstances

24.1 If the Service Provider -

- a) goes into liquidation, administration, or a receiver or receiver and manager or mortgagee's or chargee's agent is appointed or, in the case of an individual, becomes bankrupt or enters into a scheme or arrangement with creditors; or
- b) being a partnership, company or other composite body undergoes a change in its structure which in the reasonable opinion of the AEMC limits the capacity of the Service Provider to provide the Services under this Agreement or precludes the Service Provider from carrying out its obligations and duties under this Agreement or a Specific Services Contract;

then the Service Provider will be taken to have committed an event of default under this Agreement and each Specific Services Contract and the AEMC may, by notice, terminate this Agreement and any Specific Services Contract with immediate effect and recover from the Service Provider any loss or damage suffered by the AEMC.

25 Force Majeure

25.1 If either the AEMC or the Service Provider is rendered unable to carry out the whole or any part of this Agreement or any Specific Services Contract by any factor or matter beyond that party's reasonable control, including but not limited to acts of God, acts of governments or governmental authorities (other than the AEMC), strikes or riots and any other causes of like nature, then the performance of such obligations as are affected by such cause, shall be excused during the continuance or any inability so caused, and if it continues for at least thirty (30) days either party may terminate this Agreement (if a party is unable to carry out any part of this Agreement) and any Specific Services Contract (if a party is unable to carry out any part of that contract) by notice to the other party, without recovery of any loss or damage.

26 Variation

- 26.1 This Agreement and each Specific Services Contract, including without limitation the Services, may only be varied by written agreement of the parties prior to any variation coming into effect.
- 26.2 Specific Services or associated terms and conditions as set out in a Specific Services Contract may be varied by written agreement of the parties prior to any variation coming into effect, such written agreement is not required to be in the form of a new Request for Proposal to be effective. Any variation must:
- a) stipulate the new or amended Fees (if there is any change); and
 - b) set out the changes to the Specific Services or Specific Services Contract.
- 26.3 No changes to the Fees or claim for any different or additional fee amount is valid unless such change is the result of a variation made and approved in accordance with clause 26.2.
- 26.4 The reasonable requirements of the Contract Manager under clause 26 do not include a variation of any Specific Services in any way which would or may consequentially increase the relevant Fee above any relevant limit described in this Agreement or in any applicable Specific Services Contract.

27 Termination

- 27.1 This Agreement and each Specific Services Contract will terminate on the Completion Date unless terminated earlier pursuant to a right to terminate under this Agreement or a Specific Services Contract. A Specific Services Contract will terminate on its end date (which may be after the Completion Date) unless terminated earlier pursuant to a right to terminate under this Agreement or that Specific Services Contract. If this Agreement or a Specific Services Contract is terminated, each party must take all reasonable steps to mitigate its loss or damage consequent thereto.
- 27.2 Termination of a Specific Services Contract will not operate to terminate this Agreement and termination or expiration of this Agreement will not operate to terminate any Specific Services Contract unless expressly stated in the notice of termination.
- 27.3 Termination or expiration of this Agreement will not prejudice any accrued rights or liabilities of any party or excuse any party from a breach of this Agreement occurring prior to termination or expiration.
- 27.4 Clauses 13, 14, 15, 18, 20 and this clause 27 will survive termination of this Agreement.

28 Assignment and Novation

- 28.1 A party may only assign its rights or novate its rights and obligations under this Agreement with the prior written consent of the other party.

29 Governing Law and Jurisdiction

- 29.1 The law for the time being in force in the State of New South Wales governs this Agreement and any contract formed pursuant to this Agreement, including a Specific Services Contract, and the parties submit to the non-exclusive jurisdiction of the courts of that State.

30 Entire Agreement

- 30.1 A Specific Services Contract will constitute the entire agreement between the AEMC and the Service Provider in relation to the Specific Services to which that contract applies and any previous express or implied representations understandings or agreements must be deemed for all purposes to have been superseded by the Specific Services Contract, and abandoned and of no effect whatsoever.

IN WITNESS WHEREOF the parties have executed this agreement on the date first above written.

[delete whichever execution block is not used]

The common seal of the Australian Energy Market Commission was fixed to this document on the day of by the authority of the Australian Energy Market Commission pursuant to section 23 of the Australian Energy Market Commission Establishment Act 2004.)
)
)
)

Position

SIGNED on behalf of the AEMC by

Position

THE COMMON SEAL of **[NAME OF SERVICE PROVIDER]** was affixed pursuant to its constitution on / /2010 in the presence of

Position)

Name (print))

)

Position)

Name (print))

SIGNED on behalf of **[NAME OF SERVICE PROVIDER]** by

by

Position

Position

Name (Print)

Name (Print)

Schedule 1 – Specification

Constitution of Panel

1 AEMC Intention

- 1.1 AEMC intends to use this panel to obtain economic and or subject matter expert advice in relation to the broad categories listed below at paragraphs 2 and 3.
- 1.2 AEMC expects that it will obtain most of its significant expert consultancy services from panel members. However AEMC may obtain services outside the panel where AEMC considers the required expertise and or service level cannot be met by existing panel members.
- 1.3 AEMC expects that it will require advice and assistance in relation to:
- a) economic and related regulation; and
 - b) implementation of strategic communication programmes.

2 Categories of advice and assistance to be provided by 2010 Panel – economic and related regulation

- 2.1 The 2010 Panel may be required to provide advice and assistance in relation to the economic and related regulation of the following areas:
- a) wholesale electricity market;
 - b) wholesale gas markets;
 - c) electricity transmission networks;
 - d) gas transmission networks;
 - e) electricity distribution;
 - f) gas distribution;
 - g) electricity retail market; and
 - h) gas retail markets.
- 2.2 Relating to the areas in 2.1 the categories of advice and assistance that AEMC is likely to require relating to economic and related regulation include:
- a) Energy market design and operation;
 - b) Energy network design and operation;
 - c) Regulatory analysis and design;
 - d) Energy demand and supply forecasting;
 - e) Analysis into actual energy demanded;
 - f) Competition and market analysis;

- g) Economic Modelling;
- h) Cost and Price Analysis;
- i) Energy metering systems;
- j) Financial risk management and general financial analysis in the electricity and gas markets;
- k) Issues relating to consumers in the gas and electricity markets including consumer protection and customer hardship issues; and
- l) Infrastructure investment in the electricity and gas markets.

2.3 Required deliverables may include (but not be limited to):

- a) Reports and briefing notes for AEMC staff;
- b) Presentations to AEMC staff and/or Commissioners;
- c) Reports for publication by AEMC;
- d) Review of, and contribution to, draft AEMC documents;
- e) Commentary on submissions to AEMC documents;
- f) Conduct modelling and/or analytical work with requisite explanatory documentation;
- g) Conduct peer reviews of modelling and other advice and reports;
- h) Review of related external analytical work;
- i) Representation at external and/or public meetings;
- j) Technical advice on engineering, operations research and other matters relating to electrical power system operations or gas network operations; and
- k) Advice on the micro-economic effects of potential changes to electricity or gas market rules, with respect to competition, efficiency, and regulatory policy.

3 Categories of advice and assistance – implementation of strategic communication programmes

3.1 The categories of advice and assistance that the AEMC is likely to require in relation to the implementation of its strategic communication programmes include:

- a) Research;
- b) Writing;
- c) Printing;
- d) Project Management;
- e) Stakeholder communications;
- f) Graphic Design;
- g) Surveys (online); and

h) Surveys (interpersonal).

3.2 Required deliverables may include (but are not limited to):

- a) Identity Guidelines;
- b) Leaflets, brochures, documents;
- c) Internet products design (online documents, audio feeds);
- d) Intranet products design (online documents);
- e) Annual Reports;
- f) Presentations;
- g) Communication workshops facilitation;
- h) Printing services;
- i) Journalism (Fact sheets, Q&A); and
- j) Change Management Manuals.

4 Location of service provision

4.1 AEMC may require services to be provided at its Sydney premises for short or extended terms.

5 Conflicts of Interest

5.1 AEMC requires full disclosure of any conflict of interest (perceived or actual). Conflicts of interest (perceived or actual) will not automatically exclude a firm or individual from the Tendering process however AEMC requires Tenderers to demonstrate how conflicts of interest are managed.

6 Insurances

6.1 Membership on this proposed panel is contingent upon panel members maintaining the following insurances, in accordance with clause 17.1:

- a) Public Liability;
- b) Professional Indemnity; and
- c) Workers' compensation.

6.2 Any risks associated with different levels of insurance will form part of AEMC's overall assessment process.

7 Professional competence

7.1 AEMC requires a Panel of professionally competent members, i.e. the individuals responsible for delivering services must be able to demonstrate their competency in respective fields of expertise.

8 Capacity to service AEMC requirements

- 8.1 Occasionally AEMC will require services on short notice. Tenderers need to demonstrate what capacity they have to take on such work.

9 Past Performance and current work

- 9.1 AEMC has determined the risks associated with appointing firms or individuals with little or no experience in the context of this RFT, are significant. Therefore Tenderers must be able to demonstrate proven experience in fields identified in this RFT.

10 Quality system for deliverables

- 10.1 AEMC requires Panel members that can demonstrate how they manage the quality of their services.

11 Financial viability

- 11.1 AEMC needs to satisfy itself that prospective Panel members are financially stable and may request information from prospective Panel members for this purpose.

12 Compliance with Proposed Service Level Agreement

- 12.1 The Service Level Agreement outlines AEMC's broad requirements when a Panel member is engaged to provide services. Panel members who comply in full with the proposed service level agreement are more likely to take precedence over a panel member who complies only partially.

13 Costings

- 13.1 AEMC requires costings to be included in Document 3 – Tender Response Schedule.

14 Flexibility in charging

- 14.1 Any flexibility in charging (e.g. discounts for long term engagements, early payment etc) are to be included in Document 3 – Tender Response Schedule.

15 Value Added Benefits

- 15.1 AEMC will consider any benefits offered that exceed the requirements stated in this RFT.

Schedule 2 – Service Level Agreement

Requirements

1. AEMC requires its advisory service providers to comply with the following requirements:
 - a) Panel members will provide adequate and qualified resources to deliver the services in a timely manner;
 - b) Panel members will be able to draw on the expertise and support services in other areas of the firm as and when required;
 - c) Panel members will provide responsive and communicative services;
 - d) Panel members will bring all actual or potential conflicts of interest to the immediate attention of AEMC;
 - e) Panel members will protect the security and confidentiality of AEMC's information;
 - f) Panel members will be prepared to employ flexible billing arrangements including fixed quotes for quantifiable work, volume discounts and outcome related fees. In general, provide services in an efficient management consistent with any budget provided and mindful of cost constraints;
 - g) Where annual rate increases are agreed, Panel members will provide these in writing prior to the effective date of increase;
 - h) Panel members will report periodically to the Project Manager on Advisory Services work undertaken, including time spent and tasks undertaken, within 7 days of the end of the month;
 - i) Panel members will provide billing that is regular, "no surprises", with sufficient detail of work undertaken, Identifier, name of provider and time spent within ten (10) Business Days of the start of the following month;
 - j) Panel members will be available to discuss and resolve billing issues;
 - k) Panel members will attend AEMC's offices for meetings or as otherwise invited without charging for travel time or travel expenses unless otherwise agreed in advance; and
 - l) Panel members will participate in formal reviews during and at the end of each year of the panel contract which will include a meeting with designated staff.

Document 3 – Tender Response Schedule

1 Tendering Entity

1.1	Name of tenderer	
1.2	ABN	
1.3	Postal Address	
1.4	Contact Name	
1.5	Contact Telephone number(s)	
1.6	Contact facsimile number	
1.7	Contact email address	
1.8	Service Provider's Representative	

2 Tendered Categories

Please indicate with a yes/no response.

Category	Electricity YES/NO	Gas YES/NO
2.1	Energy market design and operation?	
2.2	Energy network design and operation?	
2.3	Regulatory analysis and design?	
2.4	Energy demand and supply forecasting?	
2.5	Analysis into actual energy demanded	
2.6	Economic Modelling?	
2.7	Competition and market analysis?	
2.8	Cost and Price Analysis?	
2.9	Energy metering systems?	
2.10	Financial risk management and general financial analysis in the electricity and gas markets	
2.11	Issues relating to consumers in the gas and electricity markets including consumer protection and customer hardship issues	

Category	Electricity YES/NO	Gas YES/NO
2.12 Infrastructure investment in the electricity and gas markets		
2.13 Implementation of strategic communication programmes	Yes / No	

3 Insurances

3.1 Please provide details of your Public Liability insurance (or equivalent).	
3.2 Please provide details of your Professional Indemnity insurance (or equivalent).	
3.3 Please provide details of your Workers' compensation insurance (or equivalent).	

4 Conflicts of Interest

4.1 Please provide details of any conflict of interest (perceived or actual)	
4.2 Please explain how conflicts of interest are managed	

5 Financial viability

5.1 Please demonstrate your financial viability (preferably supported by a statement from a CPA or equivalent)	
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6 Compliance with Proposed Service Level Agreement and Contract terms

6.1 Please explain any non conformance issues you may have with the draft service level agreement	
6.2 Please explain any non conformance issues you may have with the Proposed Contract	

7 Key Personnel

7.1 Please provide CV (maximum 2 pages) for each person nominated to provide services, clearly identifying which categories (as above) they are nominated for.	<i>(CV's attached. Refer to _____)</i>
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8 Executive Summary

8.1 Please provide an executive summary explaining your understanding of AEMC's requirements	
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9 Past Performance and current work

9.1 Please provide a statement demonstrating your experience in the fields covered in the context of this RFT.	<i>Statement attached. Refer to _____</i>
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10 Professional competence

10.1 How is the professional competency of nominated resources demonstrated?	
10.2 How is the quality of services managed?	

11 Capacity to service AEMC requirements

11.1 Please demonstrate your capacity to meet expected service levels under this panel arrangement.	
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12 Costings

12.1 Include details of hourly/daily weekly fees (in Australian dollars) per named Key Personnel, any proposed increases over the life of the contract, and any volume discounts	<i>Costings attached. Refer to _____</i>
12.2 Provide details of other costs (in Australian dollars) associated with this contract, including costs for disbursements such as photocopying. Also provide a list of other costs (eg. For travel, accommodation, support etc) that you may invoice the AEMC for in the course of providing the services.	<i>Costings attached. Refer to _____</i>

13 Value Added Benefits

13.1 Please identify any value added benefits that exceed the AEMC's stated requirements	
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