



Australian Energy Market Commission

Request for Tender (RFT) for:	2021 AEMC Panel
Reference number:	CRP0115
Issue Date:	29 October 2020
Closing Date:	26 November 2020
Place for lodgement:	By email: ben.bronneberg@aemc.gov.au
<p>Please note:</p> <p>Tenderers wishing to receive an electronic version of Annexure B – 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.</p> <p>The Tenderer's Response (ANNEXURE B – Tender Response Schedule) must be completed in the format specified and submitted.</p>	

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Contents

1 Introduction

This Request for Tender (**RFT**) comprises three documents and two annexures:

1. Document 1 sets out the Tendering Conditions (**Tendering Conditions**);
2. Document 2 sets out the Specifications of the 2021 AEMC Panel (**Panel Specifications**);
3. Document 3 sets out the Service Level Agreement requirements (**SLA's**) applicable to each Tenderer under the RFT;
4. Annexure A is the Proposed Panel Agreement (**Proposed Panel Agreement**) which incorporates the following schedules:
 - a. Sub-Panel Category (Schedule 1);
 - b. Service Level Requirements (Schedule 2);
 - c. Rates (Schedule 3);
 - d. Template Request For Proposal (Schedule 4) with Statement of Requirement (Attachment 1); and
 - e. Template Order Form (Schedule 5) with Statement of Requirement (Attachment 2).
5. Annexure B is the Tenderer Response Schedule (**Tenderer Response Schedule**) which is to be completed by each Tenderer and submitted along with any other supporting documentation.

2 About AEMC

- 2.1 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 ministerial forum of Energy Ministers as requested, or on AEMC initiative.

3 The Procurement Objective

- 3.1 AEMC is formalising its requirement for advisory services through this Request for Tender process.
- 3.2 AEMC seeks to establish a panel of service providers to address AEMC's specific service needs. The panel will comprise of 6 sub-panels (**2021 AEMC Panel**). The following are the sub-panels for which service providers may apply:
- a) The economic regulation sub-panel;
 - b) The modelling/forecasting/data analysis sub-panel;
 - c) The consumer analysis sub-panel;
 - d) The market design and operation sub-panel;
 - e) The technical advice sub-panel; and
 - f) The strategic communication sub-panel.
- For further detail regarding each of these sub-panels please refer to Panel Specifications.
- 3.3 AEMC's specific requirements in relation to the provision of advisory services are set out in the Panel Specifications and the Proposed Panel Agreement.
- 3.4 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 Panel Specifications, the Proposed Panel Agreement and the SLA's;
- 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.

4 Period of Panel

- 4.1 The 2021 AEMC Panel will operate from on or around 21 March 2021 for up to 3 years (the **Panel Period**).
- 4.2 Successful Tenderer(s) will be appointed to the 2021 AEMC Panel for an initial period of 2 years with the AEMC having the option to extend the period by two further 6 month periods (**Optional Extension**), with the total panel term not exceeding the duration of the Panel Period. Each Optional Extension will be exercisable by AEMC at its discretion.
- 4.3 Any successful Tenderer appointed to the 2021 AEMC Panel for the initial 2 year period is not guaranteed any extension of that appointment.
- 4.4 AEMC may appoint additional parties to the 2021 AEMC Panel at any time during the Panel Period.

5 Timetable

- 5.1 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:	29 October 2020
Closing date for Tenders:	26 November 2020
Selection of preferred Tenderer(s):	24 December 2020
Execution of contract:	11 February 2021
Commencement of services/Implementation:	21 March 2021

6 Further information and enquiries

- 6.1 The Contact Officer is:
Mr Ben Bronneberg
Lawyer, AEMC
Ben.bronneberg@aemc.gov.au
- 6.2 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 (CRP0115) 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.

7 Briefing Session

- 7.1 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:

- a) **"AEMC"** means the Australian Energy Market Commission including its authorised representatives.
- b) **"Closing Time"** means the time specified at clause 5 – Tender Closing Time.
- c) **"Evaluation Criteria"** means the criteria set out in clause 39 – Evaluation criteria.
- d) **"Freedom of Information"** means Freedom of Information Act 1991 (SA) and the Freedom of Information Act 1982 (CTH).
- e) **"Goods"** means the goods, or other products required by AEMC, as specified in the Proposed Panel Agreement and Document 2 – Panel Specifications.
- f) **"Intellectual Property Rights"** means all intellectual property rights, registered or unregistered, and related rights, including copyright and neighbouring rights, 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.
- g) **"Panel Member(s)"** means a person or organisation that AEMC has appointed as a result of this RFT process.
- h) **"Proposed Panel Agreement"** means the agreement and any other terms and conditions contained in or referred to in ANNEXURE A – Proposed Panel Agreement.
- i) **"Request For Tender"** or **"RFT"** means this document and any other documents so designated by AEMC and published on AEMC's website.
- j) **"Services"** means the services required by AEMC, as specified in the Proposed Panel Agreement and Document 2 – Panel Specifications.
- k) **"Specification"** means any specification or description of AEMC's requirements contained in the Proposed Panel Agreement and Document 2 – Panel Specifications.
- l) **"Statement of Compliance"** means the statement forming part of a Tender indicating the Tenderer's compliance with the Proposed Panel Agreement and Specification.
- m) **"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 Panel Agreement and Specifications.
- n) **"Tenderer"** means any person or organisation that submits a Tender.
- o) **"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 Submitting a response

- 2.1 Tenders must be sent via email to ben.bronneberg@aemc.gov.au with the subject title '(RFT AEMC CRP0115) – 2021 AEMC Panel Tender'.

3 Tender composition

- 3.1 Tenderers are required to lodge via email:
- a) one completed ANNEXURE B – Tender Response Schedule, including attachments in (the current versions of) Microsoft Word and Adobe PDF format; and
 - b) 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.

4 Tender Closing Time

- 4.1 The deadline for lodgement of Tenders is 5.00 pm, 26 November 2020 Australian Eastern Standard Time.
- 4.2 AEMC's determination as to the time a Tender has been lodged will be final.
- 4.3 AEMC may, by written notice on its website, extend the Closing Time.
- 4.4 Where AEMC extends the Closing Time, the new Closing Time will apply equally to all Tenderers.

5 Late Tenders

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

6 Corrections and additions

- 6.1 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 the AEMC via email in accordance with clause 2.1 before the Closing Time.
- 6.2 Whether AEMC takes into account a correction or additional information received after the Closing Time is at AEMC's discretion.

7 Tender validity period

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

8 Ownership of Tenders

- 8.1 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.
- 8.2 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.

9 Clarifications

- 9.1 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.
- 9.2 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.

10 Notice of changes to this RFT

- 10.1 AEMC may, at 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.
- 10.2 AEMC may terminate, suspend or abandon this RFT or the Tendering Process at any time by notice on the AEMC's website.
- 10.3 Alternatively, AEMC may notify Tenderers directly in writing of any changes or modifications to this RFT or Tendering Process.

11 Addenda

- 11.1 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.

12 Probity

- 12.1 AEMC is committed to ensuring that competition for the provision of the Goods/Services is fair and open. For Tenderers this means that:
- a) all evaluation and selection processes will be conducted in accordance with the processes set out in this RFT;
 - b) assessment of Tenders will be conducted consistently and objectively;
 - c) each Tenderer will have access to the same information about the RFT (except to the extent that responses are provided to individual Tenderers);
 - d) information provided in a Tender will be secure, and all confidential information treated as such;
 - e) all actual, potential or perceived conflicts of interest will be addressed.

13 Specified Compliance Statements

- 13.1 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	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. An explanation must be given supporting the claim of partial compliance.
Does not Comply	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. An explanation must be given stating the reason why the requirement is deemed "Does not Comply".

14 Content and Format Requirements

14.1 This RFT contains various Content and Format Requirements.

14.2 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 that the Tender:

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

15 Alterations, erasures or illegibility

15.1 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.

16 Tenderer Details

16.1 Tenderers must provide sufficient information in ANNEXURE B – 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.

16.2 In response to clause 1.4 Contact Name of ANNEXURE B – Tender Response Schedule, Tenderers must nominate a person to answer requests by AEMC for further information or to provide clarification.

17 Confidentiality

17.1 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.

18 Part Offers, Alternative Offers

18.1 In addition to lodging a Tender that complies with the Proposed Panel Agreement and the Document 2 – Panel Specifications, Tenderers may lodge a proposal with an alternative offer.

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

19 Joint Tenders

- 19.1 A joint Tender from two or more Tenderers may be considered by AEMC at its discretion.
- 19.2 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.
- 19.3 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.

20 Proposed Panel Agreement

- 20.1 The terms and conditions on which AEMC intends to engage with the successful Tenderer (if any) will be based on the ANNEXURE A – Proposed Panel Agreement.
- 20.2 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 5 of the Contents section of this RFT, 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, at its absolute discretion, choose not to accept the proposed Tender.

21 Prices

- 21.1 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 Panel Agreement and Specification.

22 Supporting material

- 22.1 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.

23 Security, probity, risk and financial checks

- 23.1 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.
- 23.2 Each Tenderer agrees to provide, at its cost, all reasonable assistance to AEMC in this regard.

24 Acknowledgment and disclaimer

- 24.1 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.
- 24.2 It is the responsibility of Tenderers to obtain all information necessary or convenient for the preparation of their Tenders.
- 24.3 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.

25 Tenderer costs

- 25.1 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.
- 25.2 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.

26 No contract

- 26.1 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.
- 26.2 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.

27 Limited liability

- 27.1 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 26, 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.

28 Public statements

- 28.1 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.
- 28.2 AEMC will not withhold its approval to the extent the Tenderer is required to disclose information under law.

29 AEMC's Rights

- 29.1 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;

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- 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 Panel Agreement 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 the ANNEXURE A – Proposed Panel Agreement 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.
- 29.2 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 at its absolute discretion.
- 29.3 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.

30 Conflict of Interest

- 30.1 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 Panel Agreement and Document 2 – Panel Specifications.
- 30.2 If at any time after the Tender is submitted to the 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, at 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.

31 False or misleading claims

- 31.1 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.

32 Unlawful inducements

- 32.1 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.

33 Collusive Tendering

- 33.1 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.

34 Competitive Neutrality

- 34.1 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**).
- 34.2 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.
- 34.3 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.

35 Licence to use and Intellectual Property Rights

- 35.1 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.
- 35.2 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.

36 Status of Tender

- 36.1 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.
- 36.2 AEMC may, at its absolute discretion, disregard any Tender that is, or is stated to be, subject to any one or more of the conditions detailed above.

37 Evaluation process

- 37.1 Following the Closing Time, AEMC intends to evaluate the Tenders received. Tenders will be evaluated against the Evaluation Criteria specified in clause 38 – Evaluation criteria.
- 37.2 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.
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- 37.3 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.
- 37.4 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.
- 37.5 Tenders received are to comply with the format set out in Annexure B – Tenderer 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, at its absolute discretion, elect to pass over and not consider any non-complying Tender.
- 37.6 AEMC may at its absolute discretion consider or accept a non-complying Tender.

38 Evaluation criteria

- 38.1 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 Panel Agreement;
 - j) Conflict of Interest;
 - k) Costing's and price competitiveness;
 - l) Value Added Benefits; and
 - m) Flexibility in charging.

39 Clarification of Tender

- 39.1 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.
- 39.2 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.
- 39.3 The seeking of clarification from any Tenderer by the AEMC is in no way an indication of the success of that Tender proposal.

40 Negotiation and presentation

- 40.1 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.

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- 40.2 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.
- 40.3 At its absolute discretion, AEMC may invite some or all Tenderers to give a presentation to AEMC in relation to their submissions.
- 40.4 AEMC is under no obligation to conduct any negotiations with, or to invite any presentations from, Tenderers.
- 40.5 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.

41 No legally binding contract

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

42 Pre-contractual negotiations

- 42.1 AEMC may, at its absolute discretion, decide not to enter into pre-contractual negotiations with a successful Tenderer.
- 42.2 A Tenderer is bound by its Tender (including the Statement of Compliance to the Proposed Panel Agreement 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.

43 No obligation to enter into contract

- 43.1 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.

44 Tenderer warranties

- 44.1 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;

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- 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, namely 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.

45 Governing law

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

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

46 Value for Money

46.1 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.

46.2 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.

46.3 In evaluating the Tenderer's Responses, AEMC may assign a particular weighting to any or all of the criteria specified in clause 38 – Evaluation criteria. AEMC is under no obligation to advise Tenderers of such weightings.

Document 2 – Specifications of the 2021 AEMC Panel

1 AEMC Intention

AEMC intends to establish a panel of providers, comprising 6 sub-panels to obtain consulting and or subject matter expert advice. The following are the sub-panels for the 2021 AEMC Panel:

- a) **The economic regulation sub-panel:** this category covers topics such as issues around why we should regulate, how to regulate, impact of regulation, design of regulatory mechanisms and how economic regulation should be applied;
- b) **The modelling/forecasting/data analysis sub-panel:** this category covers historic and forecast data and analysis, for markets both domestic and international. It also covers the modelling of policy decisions. Modelling is not limited to financial modelling and can cover market modelling as well as future trends analysis.
- c) **The consumer understanding sub-panel:** this category covers knowledge and analysis of consumer experiences in energy market, NECF, jurisdictional policy and program impacts, consumer responses to changes in markets and the behaviour of energy businesses;
- d) **The market design and operation sub-panel:** this category covers topics such as what is a market, the purpose of market, how to design a market, what features to have in a market, how to operate a market, testing and analysis of the design and operation, as well as impact and analysis of the market on those within and those outside; and
- e) **The technical and non-economic advice sub-panel:** this category covers technical advice that is not economic in nature. For example, advice about infrastructure design and operation and technical and safety requirements; and
- f) **The strategic communication sub-panel:** this category covers advice and assistance the AEMC is likely to require in relation to the implementation of its strategic communication programmes.

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.

2 Categories of advice and assistance to be provided by – economic regulation, modelling/forecasting/data analysis, consumer understanding, market design and operation, and technical and non-economic advice sub-panels

- 2.1 The 2021 AEMC Panel comprising the sub-panels listed in 1.1 a) to e) above (the economic regulation sub-panel, modelling/forecasting/data analysis sub-panel, consumer understanding sub-panel, market design and operation sub-panel and the technical and non-economic advice sub-panel) may be required to provide advice and assistance in relation to the following areas:

- a) wholesale electricity markets;
- b) wholesale gas markets;
- c) electricity transmission and distribution networks;
- d) gas transmission pipelines and distribution networks;
- e) electricity and gas retail markets;
- f) technology relating to energy markets and networks;
- g) consumer engagement and behaviour;

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- h) electricity generation.
- 2.2 Further to clause 2.1 above, relating to the sub-panels in 1 a) to e), the categories of advice and assistance that the AEMC may seek from the 2021 AEMC Panel may include (but not limited to):
- a) Energy market design and operation;
 - b) Energy network design and operation;
 - c) Regulatory analysis and design;
 - d) Energy demand and supply trends;
 - e) Competition and market analysis;
 - f) Economic and financial Modelling;
 - g) Technology relating to energy markets (i.e. Energy metering systems),
 - h) Financial risk management and general financial analysis in the electricity and gas markets;
 - i) Issues relating to consumers in the gas and electricity markets including consumer protection, engagement and hardship issues;
 - j) Infrastructure investment in the electricity and gas markets; and
 - k) conducting surveys and market research into consumer issues relating to electricity and gas markets.
- 2.3 Required deliverables for the sub-panels referred to in 2.1 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 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 Category of advice and assistance – strategic communication sub-panel

- 3.1 The categories of advice and assistance that the AEMC is likely to require in relation to the strategic communication sub-panel referred to in 1 f) of this document may include (but not limited to):
- a) Research;
 - b) Writing;
 - c) Project Management;
 - d) Stakeholder communications;
 - e) Graphic Design;
 - f) Surveys (online);

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- g) Surveys (interpersonal); and
 - h) Digital communication services.
- 3.2 Required deliverables for this sub-panel may include (but not limited to):
- a) Identity Guidelines;
 - b) Leaflets, brochures, documents;
 - c) Publishing strategy;
 - d) Websites;
 - e) Website content;
 - f) Internet products design (online documents, audio feeds);
 - g) Intranet products design (online documents);
 - h) Annual Reports;
 - i) Presentations;
 - j) Communication workshops facilitation;
 - k) Printing services; and
 - l) 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 18.1 of Annexure A - Proposed Panel Agreement:

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

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.

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- 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 ANNEXURE B – 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 ANNEXURE B – Tender Response Schedule.
- 15 Value Added Benefits**
- 15.1 AEMC will consider any benefits offered that exceed the requirements stated in this RFT.

Document 3 – Service Level Agreement Requirements

SLA Requirements

1. AEMC requires its 2021 AEMC Panel 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.

Annexure A – Proposed panel agreement

AGREEMENT INFORMATION

The parties agree as follows:

This AGREEMENT is dated:		____/____/____
Between:	Australian Energy Market Commission ("AEMC")	
ABN:	49 236 270 144	
of:	Level 15, 60 Castlereagh Street, Sydney NSW 2000	
AEMC Agreement Manager:	Sally Hooke, Procurement Officer	
Contact Details:	Level 15, 60 Castlereagh Street SYDNEY NSW 2000 Procurement@aemc.gov.au	
And	(the "Service Provider")	
ABN:		
of:		
Service Provider Agreement Manager:	[insert name and position of person to receive notices]	
Contact Details:	[insert postal address] [insert physical address] [insert email address]	
Whereas	m) AEMC may require the provision of services relevant to the Sub-Panel Category from time to time.	
	n) The Service Provider has represented that it has the skills, qualifications, resources and experience necessary to provide services relevant to the Sub-Panel Category on the terms of this Agreement.	
	o) The Service Provider has agreed that, on the execution of an Order by AEMC and the Service Provider, it will provide the Specific Services to AEMC on the terms of this Agreement.	
	p) The Service Provider acknowledges: <ul style="list-style-type: none">i. that there is no guarantee or assurance that any Specific Services or any particular volume of Specific Services will be ordered from the Service Provider under this Agreement; andii. AEMC's absolute discretion to obtain services (whether the same or similar to the services relevant to the Sub-Panel Category) from any source it chooses.	

1 Definitions and Interpretation

1.1 In this Agreement unless the contrary intention appears:

"Act" means the *Australian Energy Market Commission Establishment Act 2004* (South Australia);

"AEMC Agreement Manager" means the person or position described as such in the Agreement Information, or such replacement as is confirmed by written notice by the AEMC to the Service Provider;

"AEMC Contract Manager" means the person or position described as such in a Specific Services Contract, or such replacement as is confirmed by written notice by the AEMC to the Service Provider;

"AEMC Material" means any Material provided to the Service Provider by AEMC for the purposes of this Agreement or a Specific Services Contract;

"Agreement" means this deed of standing offer between AEMC and the Service Provider, including its schedules and any attachments;

"Agreement and Contract Material" means any Material created by the Service Provider on or following the Commencement Date, for the purpose of or as a result of performing its obligations under this Agreement or a Specific Services Contract;

"Agreement Information" means the information set out in the table titled 'Agreement Information' starting on page one of this Agreement;

"Agreement Period" means the Initial Agreement Period plus any extension in accordance with clause 4;

"Business Day" means a day that is not a Saturday, Sunday, public holiday or bank holiday in the State of New South Wales;

"Commencement Date" means the date on which this Agreement commences, being 21 March 2021;

"Confidential Information" is defined in clause 15.1;

"Defaulting Party" is defined in clause 24.1;

"Fee" means the amounts 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;

"Force Majeure Event" is defined in clause 26.1;

"Force Majeure Notice" is defined in clause 26.1;

"GST" means any tax imposed under any GST Law and includes GST within the meaning of the GST Act;

"GST Act" means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);

"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;

"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;

"Initial Agreement Period" means the period of two years;

"Intellectual Property Rights" or "IPR" means all intellectual property rights, registered or unregistered, and related rights, including copyright and neighbouring rights, 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;

"Key Personnel" means the Personnel of the Service Provider named as such in the Specific Services Contract or as otherwise added or modified in accordance with clause 10;

"Material" includes property, information, documentation or other material in whatever form, including any reports, specifications, business rules or requirements, user manuals, user guides, operations manuals, training materials and instructions, and the subject matter of any category of Intellectual Property Rights;

"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);

"National Energy Law" has the meaning given in the Act;

"Order" means an order for Specific Services in the form of Schedule 5 executed in accordance with clause 3.10;

"Personnel" of a person means:

- q) the officers, employees, contractors (including subcontractors) and agents of that person; and
- r) the officers, employees, contractors (including subcontractors) and agents of the contractors of that person,

but in the case of the AEMC, excludes the Service Provider and any of its Personnel;

"Pre-existing Material" means any Material, other than the Agreement and Contract Material, which is made available by the Service Provider for the purpose of this Agreement or a Specific Services Contract, on or following the Commencement Date;

"Proposal" means a proposal to provide Specific Services to the AEMC made by the Service Provider in response to a Request for Proposal;

"Rates" means the rates set out in, or determined in accordance with, Schedule 3 – Rates;

"Related Body Corporate" has the meaning set out in section 50 of the *Corporations Act 2001* (Cth);

"Request for Proposal" is defined in clause 3.3;

"Resources" means Personnel (including Key Personnel), Materials, facilities, accommodation, equipment, systems, products, procedures and any other resources necessary to supply the Specific Services;

"Service Level" means the service levels as set out in Schedule 2 – Service Level Requirements that the Service Provider must comply with in providing the services relevant to the Sub-Panel Category, and in relation to the Specific Services as set out in a Specific Services Contract;

"Service Provider Agreement Manager" means the person or position described as such in the Agreement Information, or such replacement as is confirmed by written notice by the Service Provider to the AEMC;

"Service Provider Manager" means the person or position described as such in the Specific Services Contract, or such replacement as is confirmed by written notice by the Service Provider to the AEMC;

"Specific Services" means the services to be provided by the Service Provider under a Specific Services Contract, as specified in that Specific Services Contract;

"Specific Services Contract" means a contract formed under clause 3; and

"Sub-Panel Category" means the sub-panel category (or categories) listed in Schedule 1 – Sub-Panel Category to this document;

"Tax Invoice" has the same meaning as in the GST Act.

"Warranted Material" means the Pre-existing Material and the Agreement and Contract Material.

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- 1.2 In this Agreement, unless the contrary intention appears:
- s) the singular includes the plural and vice versa;
 - t) words importing a gender include any other gender;
 - u) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement, as amended from time to time in accordance with this Agreement;
 - v) 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 from time to time;
 - w) 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;
 - x) a reference to "dollars" or "\$" is a reference to the lawful currency of Australia;
 - y) a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
 - z) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
 - aa) the meaning of general words is not limited by specific examples introduced by "including", "for example" or similar expressions; and
 - bb) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it.
- 1.3 If the Service Provider consists of more than one person, those persons will be jointly and severally liable under this Agreement.
- 1.4 This Agreement comprises the following parts:
- i. clauses 1 to 35 of this document;
 - ii. the schedules to this document; and
 - iii. any other documents incorporated by reference into any of the above documents.
- 1.5 To the extent that there is any inconsistency between any of the terms in those documents listed in clause 1.4, the terms in the document listed first will govern to the extent of the inconsistency.

2 Overview

- 2.1 The Service Provider agrees that it will be responsible for the successful completion of its obligations under this Agreement.

3 Standing offer

- 3.1 The Service Provider hereby makes an irrevocable standing offer to perform services relevant to and as detailed in the Sub-Panel Category for the AEMC at the Rates and on the terms and conditions set out in this Agreement.
- 3.2 The Specific Services will only be provided by the Service Provider when a Specific Services Contract is entered into in accordance with this Agreement.
- 3.3 The AEMC may require the Service Provider to provide a Proposal by issuing a request for proposal substantially in the form of the template Request for Proposal set out in Schedule 4 ("Request for Proposal").

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- 3.4 If AEMC issues a Request for Proposal, the Services Provider must provide a Proposal to AEMC in the format, and within the timeframe, specified in the Request for Proposal unless:
- cc) 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 AEMC Agreement Manager reasonable explanation of this conflict; or
 - dd) the AEMC Agreement Manager and the Service Provider Agreement Manager agree that the Service Provider has insufficient Resources to perform the Specific Services.
- 3.5 Fees for Specific Services must be determined in accordance with the Rates.
- 3.6 Nothing in this Agreement prohibits the AEMC and the Service Provider from communicating about or jointly developing or revising the details to be included in an Order.
- 3.7 At any time after receiving the Proposal, the AEMC may notify the Service Provider that:
- ee) it accepts the Proposal, in which case the parties must promptly arrange for an Order to be executed by their duly authorised representatives;
 - ff) it wishes to negotiate the Proposal; or
 - gg) it does not wish to proceed with the Proposal.
- 3.8 If the AEMC notifies the Service Provider that it wishes to negotiate a Proposal under clause 3.7b), the Service Provider must promptly negotiate in good faith to agree the terms of the Proposal.
- 3.9 If the AEMC and the Service Provider agree the Proposal after negotiations under clause 3.8, the parties must promptly arrange for an Order to be executed by their duly authorised representatives.
- 3.10 The Service Provider's offer contained in this Agreement will be accepted by AEMC and a Specific Services Contract is formed when both parties duly execute a completed Order.
- 3.11 The terms and conditions of a Specific Services Contract are:
- hh) the terms and conditions specified in the Order; and
 - ii) clause 1 and clauses 6 to 35 of this Agreement.
- 3.12 To the extent of any inconsistency between two or more documents which form part of a Specific Services Contract, those documents will be interpreted in the following (descending) order of priority:
- jj) the terms and conditions specified in the Order;
 - kk) clause 1 and clauses 6 to 35 of this Agreement; and
 - ll) any other document referred to in the Order.
- 3.13 Notwithstanding any other provision of this Agreement, AEMC does not guarantee or make any assurance that any Specific Services or any particular volume of Specific Services will be ordered by AEMC from the Service Provider under this Agreement.
- 3.14 Notwithstanding any other provision of this Agreement, AEMC may at its absolute discretion obtain services (whether the same or similar to the services relevant to or listed in the Sub-Panel Category) from any sources it chooses.

4 Duration of Agreement

- 4.1 This Agreement begins on the Commencement Date and continues for the duration of the Agreement Period unless terminated in accordance with its terms.
- 4.2 The Agreement Period may be extended by AEMC for two further period(s) of up to six months each (each an "Agreement Option Period"), on the terms and conditions then in effect, by AEMC giving written notice to the Service Provider.
- 4.3 Any extension in accordance with clause 4.2 takes effect from the end of the then current Agreement Period.

5 Agreement Managers

- 5.1 The AEMC Agreement Manager and the Service Provider Agreement Manager will represent the AEMC and the Service Provider (as the case may be) in all day to day dealings with each other in connection with this Agreement.
- 5.2 The Service Provider must ensure that the Service Provider Agreement Manager:
- mm) is the single point of contact for the AEMC for the purposes of this Agreement;
 - nn) has the authority to perform each of the relevant tasks specifically conferred on the Service Provider Agreement Manager by this Agreement; and
 - oo) is an employee or contractor of the Service Provider.

6 Provision of the Specific Services

- 6.1 In performing the Specific Services the Service Provider must:
- pp) exercise due diligence, care, skill and judgement;
 - qq) observe applicable professional standards, principles and practices applying to the relevant industry;
 - rr) meet the timing requirements that may be referred to in the Specific Services Contract, and where no dates are specified, promptly and without delay;
 - ss) comply with all applicable laws, regulations, local laws, rules and codes of practice relating to the provision of the Specific 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 *Work Health and Safety Act 2011* (NSW));
 - tt) not infringe any Intellectual Property Rights or any other rights of any person;
 - uu) use Key Personnel;
 - vv) comply with all performance standards and requirements (however named);
 - ww) without affecting or limiting clauses 22.2 and 29, promptly notify the AEMC if the Service Provider considers that in performing the Specific Services it will exceed any fixed fee, fee cap or other fees proposal agreed in a Specific Services Contract, for any reason;
 - xx) comply with all statements or representations as to its performance of the Specific Services contained in any Specific Services Contract; and
 - yy) otherwise comply with the provisions of this Agreement and the relevant Specific Services Contract.

7 Independent Contractor

- 7.1 The Service Provider is an independent contractor and the Service Provider, and any Personnel employed or engaged by the Service Provider, will not by virtue of this Agreement or a Specific Services Contract become or be deemed to have become a partner or agent of, employed by, or in the service of, the AEMC for the purpose of the Income Tax Assessment Acts or for any other purpose. For the avoidance of doubt, neither this Agreement nor any Specific Services Contract gives the Service Provider or any of its Personnel any authority to bind the AEMC in any way and the AEMC will not be liable to the Service Provider or any of the Service Provider's Personnel for any annual, personal, carer, long service or bereavement leave or any other leave (or entitlement to similar benefits or related payments).
- 7.2 Without limiting clause 7.1, the Service Provider acknowledges that, if the Specific 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, in a Specific Services Contract 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 such an arrangement.

- 7.3 If Personnel of the Service Provider are placed with AEMC for any period of time, as contemplated by clause 7.2 a) above, upon commencement of their placement, such Personnel will be provided with certain of AEMC's policies, including AEMC's Code of Conduct and Work Health and Safety policies, which will be applicable to the Personnel and which the Personnel will be required to comply with. The Service Provider must ensure that all Personnel placed with the AEMC comply with all applicable AEMC policies.

8 Contract Managers

- 8.1 The AEMC Contract Manager and the Service Provider Contract Manager will represent the AEMC and the Service Provider (as the case may be) in all day to day dealing with each other in connection with the relevant Specific Services Contract.
- 8.2 The Service Provider must ensure that the Service Provider Contract Manager:
- a) is the single point of contact for the AEMC for the purposes of the relevant Specific Contract;
 - b) has the authority to perform the tasks specifically conferred on the Service Provider Contract Manager by the relevant Specific Services Contract; and
 - c) is an employee or contractor of the Service Provider.

9 Subcontractors

- 9.1 The Service Provider must not engage subcontractors to carry out any part of the Specific Services or perform any other obligations under this Agreement or a Specific Services Contract without the AEMC's prior written consent. Any such consent does not relieve the Service Provider from its liabilities under this Agreement or a Specific Services Contract.
- 9.2 The Service Provider will be liable to the AEMC for any claims, loss, damage, liability, costs, expense, acts, omissions or defaults of any subcontractor or any employee or agent of the subcontractor as fully as if they were the acts, omissions or defaults of the Service Provider or the employees or agents of the Service Provider.
- 9.3 The Service Provider is responsible for ensuring:
- a) the suitability of a subcontractor for the Specific Services proposed to be carried out; and
 - b) that the Specific Services performed by the subcontractor meets the requirements of this Agreement and the relevant Specific Services Contract.
- 9.4 The Service Provider:
- a) must, on request by the AEMC, provide the AEMC with the names of any of the Service Provider's subcontractors;
 - b) agrees that the AEMC may disclose publicly the names of any of the Service Provider's subcontractors; and
 - c) must ensure that any subcontractor agrees that the AEMC may disclose the subcontractor's name publicly.

10 Specified Personnel

- 10.1 A Specific Services Contract may include one or more requirements that all or part of the Specific Services be performed by one or more:
- 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 10.4 and 10.5 below; or

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- c) any other person, where the specification of that person by the AEMC has been agreed to by the Service Provider.
- 10.2 If in the Specific Services Contract, one or more persons are named as required for a task, then unless the Service Provider obtains the prior agreement in writing to the contrary from the AEMC, the Service Provider must ensure that when such task is performed in the course of the Specific Services, the task is:
- zz) performed by the named person or by one or all of them, as the context requires; and
- aaa) not performed by any other person.
- 10.3 The AEMC may, at any time and without giving any reasons, after giving 14 or more days' prior written notice, require the removal or replacement of any person providing the Specific Services.
- 10.4 The Service Provider may, by written notice to the AEMC, nominate any suitable person to be a Key Personnel. The Service Provider must set out in that notice the qualifications, knowledge and experience of the nominated person and the justification for nominating that person to be a 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.
- 10.5 Within 14 days of notice under clause 10.4, the AEMC may give written notice to the Service Provider, stating whether or not the AEMC accepts the nomination. The AEMC is not required to provide reasons for its decision.
- 10.6 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' prior written notice of its intention to remove or replace any 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.
- 10.7 In the event that the Service Provider is unable to provide any Key Personnel (or any replacement Personnel reasonably acceptable to the AEMC) in accordance with the terms of the applicable Specific Services Contract, then the AEMC may by written notice to the Service Provider terminate the applicable Specific Services Contract with immediate effect and may recover from the Service Provider any loss or damage suffered by the AEMC.
- 10.8 Termination by the AEMC pursuant to clause 10.7 must include the reason for the AEMC's opinion that the relevant replacement person is not acceptable to the AEMC.

11 Record Keeping

- 11.1 The Service Provider must:
- a) keep complete, accurate and up to date records and documentation relating to this Agreement and the Specific Services; and
- b) retain, and where applicable, require its contractors and subcontractors to retain, all records and documentation relating to this Agreement and the Specific Services for a period of seven (7) years.
- 11.2 On reasonable request by the AEMC, the Service Provider must:
- a) make the records and documentation referred to in clause 11.1 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 Specific Services are performed) for audit purposes to the extent relevant to its performance under this Agreement and the performance of the Specific Services under each Specific Services Contract.
- 11.3 The Service Provider must bear its own costs of complying with this clause 11.

12 Protections of information

The Service Provider must ensure that any AEMC Material and the AEMC property provided by the AEMC for the purposes of a Specific Services Contract are protected at all times from unauthorised access, use by a third party, misuse, damage and destruction.

13 Intellectual Property Rights

Pre-existing Material

13.1 This clause 13 does not affect the ownership of the Intellectual Property Rights in any Pre-existing Material.

13.2 The Service Provider grants to the AEMC, a perpetual, irrevocable, world-wide, royalty free, non-exclusive licence (including the right to novate or assign the licence, and to sublicense) to use, reproduce, adapt, modify and communicate the Pre-existing Material for the AEMC's purposes.

13.3 The licence granted to the AEMC under this clause 13 does not include a right to exploit the Pre-existing Material for the AEMC's commercial purposes.

Ownership of Intellectual Property Rights in Agreement and Contract Material

13.4 All Intellectual Property Rights in the Agreement and Contract Material vest in the AEMC on creation.

AEMC Material and Agreement and Contract Material

13.5 To the extent that the Service Provider needs to use any of the AEMC Material or Agreement and Contract Material for the purpose of performing its obligations under this Agreement or a Specific Services Contract, the AEMC grants to the Service Provider, subject to clause 12 and any direction given by AEMC, a royalty-free, non-exclusive, non-transferable licence to use, reproduce, adapt, modify and communicate the AEMC Material or the Agreement and Contract Material solely for the purpose of performing its obligations under this Agreement or providing the Specific Services.

Warranty

13.6 The Service Provider warrants that:

- a) the Warranted Materials and the AEMC's use of the Warranted Materials will not infringe the Intellectual Property Rights of any person; and
- b) it has the necessary rights to vest the Intellectual Property Rights and grant the licences as provided for in this clause 13.

Remedy for breach of warranty

13.7 If someone claims, or the AEMC reasonably believes that someone is likely to claim, that all or part of the Warranted Materials infringe their Intellectual Property Rights, the Service Provider must, in addition to the indemnity under clause 20 and to any other rights that the AEMC may have against it, promptly, at the Service Provider's expense:

- a) use its best efforts to secure the rights for the AEMC to continue to use the affected Warranted Materials free of any claim or liability for infringement; or
- b) replace or modify the affected Warranted Materials so that the Warranted Materials or the use of them does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

Delivery of AEMC Material and Agreement and Contract Material

- 13.8 On the expiry or termination of this Agreement or a Specific Services Contract or on such earlier date as may be specified by the AEMC, the Service Provider must deliver to the AEMC all AEMC Material and Agreement and Contract Material.

14 Moral Rights

- 14.1 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; and
- b) use its best endeavours to ensure that each of the Personnel used by the Service Provider in the production or creation of the Agreement and Contract Material gives, in a form acceptable to the AEMC,

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

- 14.2 In this clause 14, Specified Acts means:

- a) falsely attributing the authorship of any Agreement and Contract Material, or any content in the Agreement and Contract Material (including without limitation literary, dramatic, artistic works and cinematograph films within the meaning of the *Copyright Act 1968* (Cth));
- b) materially altering the style, format, colours, content or layout of the Agreement and Contract Material and dealing in any way with the altered Agreement and Contract Material;
- c) reproducing, communicating, adapting, publishing or exhibiting any Agreement and Contract Material; and
- d) adding any additional content or information to the Agreement and Contract Material.

- 14.3 For the purposes of this clause 14, Agreement and Contract Material includes any Pre-existing Material to the extent that it is included in, forms part of or is attached to the Agreement and Contract Material.

15 Protection and Use of Confidential Information

- 15.1 In this clause 15 and for the purposes of this Agreement and each Specific Services Contract, "Confidential Information" means:

- bbb) all information relating to the Agreement and Contract Material; and
- ccc) information which comes into the possession of the Services Provider or its Personnel as a result of or in connection with this Agreement or a Specific Services Contract 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;
 - 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 interest (including any commercial or financial interest) of any regulated entity (within the meaning of the National Energy Law); or

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- vi. which the Service Provider or any of its Personnel becomes aware of as a result of or in connection with performance of its obligations under this Agreement or provision of the Specific 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.
- 15.2 The Service Provider must:
- ddd) not make public, disclose, or use for purposes other than for the purposes of this Agreement or a Specific Services Contract any Confidential Information, without prior written approval of the AEMC;
 - eee) take and enforce proper and adequate precautions to preserve the secrecy and confidentiality of Confidential Information;
 - fff) if it or any of its Personnel improperly disclose or use Confidential Information, immediately cease that disclosure or use, promptly notify the AEMC of that disclosure or use and take all steps required to limit the consequences of that disclosure or use and to prevent any further improper disclosure or use; and
 - ggg) after provision of the Specific Services or termination or expiry of this Agreement or Specific Services Contract, deliver to the AEMC all AEMC Material, Agreement and Contract Material and Confidential Information in the possession of the Service Provider or its Personnel that is capable of being delivered, subject to the Service Provider retaining a copy of all Confidential Information to the extent to which it is required to do so under the terms of its professional indemnity insurances or professional standard.
- 15.3 The obligations of confidentiality set out in this clause 15 will not apply to the extent that the Service Provider can prove that the relevant information:
- hhh) was already lawfully in the Service Provider's possession at the time of its receipt from the AEMC under this Agreement or a Specific Services Contract and free from any obligation of confidentiality;
 - iii) is or has become public knowledge (other than through a breach of an obligation of confidence imposed under this Agreement or a Specific Services Contract);
 - jjj) was published or otherwise becomes part of the public domain other than in circumstances reflecting a breach of this Agreement or a Specific Services Contract by the Service Provider;
 - kkk) is required to be disclosed under law or order of a court or governmental agency, provided that the Service Provider promptly notifies the AEMC of any such required disclosure and that the Service Provider only discloses that part of the confidential information that is required by law or order of court or governmental agency to be disclosed; or
 - lll) was independently developed by the Service Provider without reference to the confidential information of the AEMC, or for the performance of the Specific Services.
- 15.4 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 or any Specific Services Contract.
- 15.5 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 15.
- 15.6 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.
- 15.7 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.
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- 15.8 Any breach of this clause 15 or of a deed executed in accordance with clause 15.6 by any of the Service Provider's Personnel will entitle the AEMC to immediately terminate this Agreement or any Specific Services Contract.
- 15.9 A Service Provider's obligations under this clause continue indefinitely and survive the expiration or termination of this Agreement and any Specific Services Contract.

16 Privacy Protection

- 16.1 The Service Provider must comply with the *Privacy Act 1988* (Cth) including the Australian Privacy Principles set out in that Act and any code approved by the Privacy Commissioner under that Act in the performance of its obligations under this Agreement and each Specific Services Contract. In addition, the Service Provider must 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 and each Specific Services Contract, 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 the *South Australian Government's Information Privacy Principles Instruction 1989* (as revised).
- 16.2 The Service Provider must immediately notify the AEMC if the Service Provider becomes aware of a breach or possible breach of any of the obligations contained in, or referred to in, this clause 16, whether by the Service Provider or any subcontractor.

17 Conflict of Interest

- 17.1 The parties acknowledge that the Service Provider or its Personnel may, prior to entering into this Agreement or a Specific Services Contract, and during the term of this Agreement or a Specific Services Contract, 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 or a Specific Services Contract.
- 17.2 The Service Provider must take action, reasonably satisfactory to the AEMC, to prevent or eliminate a conflict of the sort referred to in clause 17.1, in relation to this Agreement or any Specific Services.
- 17.3 The Service Provider must, during the term of each Specific Services Contract, consult with the AEMC before any of the Service Provider's Personnel who perform the respective Specific Services undertake any work for:
- mmm) 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;
 - nnn) any affiliate or Related Bodies Corporate of any organisation covered by clause 17.3 a); or
 - ooo) any body or organisation other than the AEMC whose responsibilities include responsibilities relating to AEMC's functions under the Act or relating to any organisation covered by clause 17.3 a),
- (collectively referred to as "Interested Parties").
- 17.4 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.
- 17.5 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 17.1 at any time during the performance of Specific Services, and must include in the notice a proposal for managing such conflict.

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- 17.6 After receipt of a notice in accordance with clause 17.5 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.
- 17.7 Any breach of this clause 17 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.

18 Insurance

- 18.1 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 \$20 million in the aggregate or, where a Specific Services Contract 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 Specific Services Contract specifies a higher level of insurance, that specified level of insurance; and
 - c) Workers Compensation insurance: as required by law.
- 18.2 The insurances required under clause 18.1 must be had and maintained from the date this Agreement commences:
- a) in the case of Public Liability Insurance and Workers Compensation insurance, until all work under this Agreement and all Specific Services Contracts has been completed; and
 - b) in the case of Professional Indemnity Insurance, for seven years following completion of all work under this Agreement and all Specific Services Contracts.
- 18.3 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 clauses 18.1 and 18.2 above, the AEMC does not require that the Service Provider hold professional indemnity insurance, public liability insurance or worker's compensation insurance for those Specific 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 Specific 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 18.1 above, or as otherwise specified in writing by the AEMC.
- 18.4 The Service Provider must specify the details of the relevant insurance it holds in any Specific Services Contract entered into under this Agreement.
- 18.5 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 clauses 18.1 and 18.2.

19 Service Provider's warranties

- 19.1 The Service Provider represents, warrants and undertakes that:

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- a) it has the right to enter into this Agreement and the Specific Services Contract and that its performance of its obligations under this Agreement and the Specific Services Contract does not and will not infringe the rights (including any Intellectual Property Rights) of any third party;
 - b) it has all rights, title, interests and property that are reasonably expected to be necessary to lawfully perform the Specific Services and grant the rights to the AEMC under this Agreement and the Specific Services Contract;
 - c) it has obtained all licences, consents, authorisations and registrations as may be necessary or required under all applicable laws and regulations to provide the Specific Services and grant the rights to the AEMC under this Agreement and the Specific Services Contract;
 - d) its Key Personnel have the necessary experience, skill, knowledge, expertise and competence to perform the Specific Services that may be expected to be performed under this Agreement and the Specific Services Contract;
 - e) subject to clause 3.4, its Key Personnel will be available to perform the Specific Services that may be expected to be performed under this Agreement and the Specific Services Contract;
 - f) to the best of its knowledge after making diligent inquiry, at the date of signing this Agreement and any Specific Services Contract, no conflict of interest exists or is likely to arise for the Specific Services that may be expected to be performed under this Agreement or under the Specific Services Contract;
 - g) it holds all insurance policies as required to be held under this Agreement or the Specific Services Contract; and
 - h) if the Service Provider is a trustee, it enters this Agreement or the Specific Services Contract personally and in its capacity as trustee and has the power to perform its obligations under this Agreement and the Specific Services Contract.
- 19.2 The Service Provider agrees to promptly notify and fully disclose to the AEMC in writing any event or occurrence, actual or threatened, which could have an adverse effect on the Service Provider's ability to perform any of its obligations under this Agreement and any Specific Services Contract.

20 Release, Indemnity and limitation of liability

- 20.1 The Service Provider releases and will indemnify the AEMC and its Personnel 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 Personnel 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 act or omission of the Service Provider or its Personnel in connection with this Agreement or any Specific Services Contract, whether unlawful, negligent, fraudulent or not;
 - 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 24; or
 - c) (third party claims for IP infringement) any Warranted Material and/or any act or omission by the Service Provider or any of its Personnel in the performance of the Specific Services, this Agreement or a Specific Services Contract that results in a claim that the Warranted Materials, the AEMC, the Service Provider or any of their Personnel, or the use by the AEMC of any Materials (including any Warranted Materials) provided by the Service Provider in accordance with this Agreement or a Specific Services Contract, is infringing or allegedly infringing the rights (including the Intellectual Property Rights) of any person ("Third Party IP Claim").

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- 20.2 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 Personnel and not to settle any such claim without the Service Provider's prior written consent.
- 20.3 Despite clauses 20.1 and 20.2 and any other provisions of this Agreement or a Specific Services Contract and to the extent permitted by law, the Service Provider's liability under each of this Agreement and each Specific Services Contract (whether for breach of contract, in negligence or otherwise) is limited to the amount that is three times the amount of fees paid or payable by the AEMC under all Specific Services Contracts except that there is no cap on the Service Provider's liability where the liability arises from:
- ppp) Third Party IP Claims;
 - qqq) Bodily injury (including sickness and death);
 - rrr) loss of, or damage to, tangible property; or
 - sss) breaches of the Service Provider's obligations of privacy and confidentiality.

21 Supervision

- 21.1 The Service Provider must:
- ttt) have regard to and comply with reasonable requirements of the AEMC Contract Manager;
 - uuu) supply to the AEMC Contract Manager any information reasonably required in connection with the Specific 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
 - vvv) permit the AEMC Contract Manager to enquire of, confer with and have discussions with the Service Provider's Personnel, including (if applicable) subcontractors engaged in the provision of the Specific Services, and do all that is within its power to facilitate any and all such enquiries, conferences and counselling.
- 21.2 Without limiting the audit rights in clause 11, nothing in this clause 21.1 will require the Service Provider to provide the AEMC Contract Manager with access to those parts of its premises where materials or information relating to other clients of the Service Provider are located.

22 Invoicing and Payment

- 22.1 Subject to any specific rights under this Agreement or a Specific Services Contract, the AEMC must pay the Fee for Specific Services, in accordance with this clause 22.
- 22.2 The Service Provider will not be entitled to payment for:
- a) any 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 29.1.
- 22.3 The Service Provider will not be entitled to payment prior to the provision of the Specific Services.
- 22.4 If the Service Provider performs any Specific 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 Service Provider performed the Specific Services; and
 - b) an update of expenses incurred, in accordance with clause 22.7, during that month.
- 22.5 Each Fee must be calculated by reference to relevant principles, limits, formulae, rates and procedures set out in this Agreement and the relevant Specific Services Contract.

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- 22.6 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.
- 22.7 Any expense reasonably incurred by the Service Provider in performing the Specific 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 the 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 the Specific Services.
- 22.8 All invoices submitted to the AEMC must comply with the requirements of the GST Law (as a Tax Invoice).
- 22.9 The Service Provider will pay an amount to, or otherwise reimburse, AEMC in full for the amount of any payroll tax that, in AEMC's opinion, AEMC is liable to pay pursuant to the payroll tax laws in respect of any amounts payable by AEMC under this Agreement (including, for the avoidance of doubt, the Fee).
- 22.10 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.
- 22.11 All invoices submitted to the AEMC must specify:
- a) the Identifier;
 - b) the number of the purchase order covering the Specific 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 Specific Services to which the invoice relates;
 - f) a description (including quantity) of the Specific Services delivered;
 - g) the Service Provider's address for payment;
 - h) where any Specific Services Contract required Specific Services to be performed by specific person or persons as provided for in clause 10.1, 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 Specific Services.
- 22.12 An authorised officer of the AEMC familiar with the conduct of the Specific 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 is properly incurred and attributed, or any of the Service Provider's obligations under this clause 22 has not been complied with.
- 22.13 Subject to certification, the AEMC must pay an invoice to the extent it has been properly submitted under clause 22.10 and certified under clause 22.12 within thirty (30) days of receipt.
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- 22.14 The time limit in clause 22.13 will not apply to an invoice for which the Service Provider has not complied with its obligations under this clause 22.
- 22.15 Payment of an invoice by the AEMC is not:
- a) evidence or an admission that any particular Specific Services have been provided in accordance with this Agreement or the relevant Specific Services Contract;
 - b) evidence of the value of the Specific Services;
 - c) an admission that the Specific 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.
- 22.16 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:
- www) 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; and
 - xxx) any amount payable by the Service Provider to AEMC pursuant to clause 22.9 of this Agreement.
- 22.17 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 a Specific Services Contract (as applicable), pending completion of the terminated Specific Services by another person or the determination of damages.

23 GST

Interpretation

- 23.1 In this clause 23, a word or expression defined in the GST Act has the meaning given to it in that Act.

GST gross up

- 23.2 If a party ("Supplier") makes a supply under or in connection with this Agreement or any Specific Services Contract in respect of which GST is payable, the recipient of the supply ("Recipient") must pay to the Supplier, an additional amount equal to the GST payable on the supply ("GST Amount").

Reimbursements

- 23.3 If a party must reimburse or indemnify another party for a loss, cost or expense, the amount to be reimbursed or indemnified is first reduced by any input tax credit the other party is entitled to for the loss, cost or expense, and then increased in accordance with clause 23.2.

Exclusion of GST from calculations

- 23.4 If a payment is calculated by reference to or as a specified percentage of another amount or revenue stream, that payment will be calculated by reference to or as a specified percentage of the amount or revenue stream exclusive of GST.

Adjustments

- 23.5 If the GST payable by a Supplier on any supply made under or in connection with this Agreement or any Specific Services Contract varies from the GST Amount paid or payable by the Recipient under clause 23.2 such that a further amount of GST is payable in relation to the supply or a refund or credit of GST is obtained in relation to the supply, then the Supplier will provide a corresponding refund or credit to, or will be entitled to receive the amount of that variation from, the Recipient.
- 23.6 Any payment, credit or refund under this clause is deemed to be a payment, credit or refund of the GST Amount payable under clause 23.2.

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- 23.7 If an adjustment event occurs in relation to a supply, the Supplier must issue an adjustment note to the Recipient in relation to that supply within 14 days after becoming aware of the adjustment.

Tax invoice

- 23.8 A party need not make a payment for a taxable supply made under or in connection with this Agreement or any Specific Services Contract until it receives a tax invoice for the supply to which the payment relates.

24 Default

- 24.1 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) ("Defaulting Party"), the other party may give notice to the Defaulting Party specifying the breach.

- 24.2 If the Defaulting Party fails to remedy the breach (or where the breach is not capable of remedy, fails to provide adequate compensation) within 20 days after receipt of such notice, the other party, without prejudice to any other rights or remedies, may by written notice to the Defaulting Party terminate either the relevant Specific Services Contract or this Agreement (or both) with immediate effect and, subject to clause 20, may recover from the Defaulting Party any loss or damage suffered by the other party.

- 24.3 Clause 24.2 is subject to other clauses in this Agreement which explicitly provide for termination or a party's recovery of loss or damage.

- 24.4 If the Service Provider:

yyy) 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

zzz) is a partnership, company or other composite body and undergoes a change in its structure which in the reasonable opinion of the AEMC limits the capacity of the Service Provider to provide the Specific Services under this Agreement or a Specific Services Contract 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.

- 24.5 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.

- 24.6 Termination or expiration of this Agreement does not affect the continuance of any Specific Services Contract formed under this Agreement unless AEMC terminates the Specific Services Contract.

- 24.7 Termination of a Specific Services Contract does not affect the continuance of this Agreement.

- 24.8 Termination or expiration of this Agreement does not affect any accrued rights or remedies of a party.

25 Survival

- 25.1 Clauses 11, 12, 13, 14, 15, 16, 18, 20, 23, 24, 28 and this clause 25 will survive termination or expiration of this Agreement.

26 Force Majeure

- 26.1 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) or riots and any other causes of like nature ("Force Majeure Event"), such party must promptly give a written notice to the other party specifying the nature and effect of the Force Majeure Event and what measures are proposed to remedy or abate it ("Force Majeure Notice").
- 26.2 Upon providing a Force Majeure Notice in accordance with clause 26.1, and while the Force Majeure Event the subject of such notice continues, the obligations which cannot be performed (other than an obligation to pay money) because of the Force Majeure Event will be suspended if the party giving the Force Majeure Notice has taken all proper precautions, due care and reasonable alternatives with the intention of avoiding the delay or failure and of carrying out its obligations under this Agreement and any Specific Services Contract.
- 26.3 The party that is prevented from carrying out its obligations under this Agreement or any Specific Services Contract as a result of a Force Majeure Event must take all action reasonably practicable to:
- b) mitigate any loss suffered as a result of its failure to carry out its obligations;
 - c) continue to perform such obligations as are not affected by the Force Majeure Event; and
 - d) resume performance of its obligations affected by the Force Majeure Event as soon as reasonably possible.
- 26.4 If a party is prevented from carrying out the whole or any part of its obligations under this Agreement or any Specific Services Contract as a result of a Force Majeure Event for a period of 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 written notice to the other party, without prejudice to any of the rights of either party accrued on or prior to the date of termination and without recovery of any loss or damage caused by the termination.
- 26.5 Subject to clause 29, the term of this Agreement and the Specific Services Contract and the timing for the provision of the Specific Services will not be extended by the period of the Force Majeure Event.

27 Notices

- 27.1 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 manner specified in clause 27.2 to the address or email address as notified for that purpose by the receiving party to the other party in accordance with this Agreement or any Specific Services Contract. For the purposes of this clause and:
- a) this Agreement, the initial notified address or email address of each party will be taken to be the respective postal and email addresses specified in the Agreement Information; and
 - b) a Specific Services Contract, the initial notified address or email address of each party will be taken to be the respective postal and email addresses specified in the Specific Services Contract.
- 27.2 Notices may be delivered by hand, registered mail or email, and will be deemed to be given:
- c) 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; or
 - d) 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, or given later than 5:00 pm, it will be taken to have been duly given at 9:00 am on the next normal Business Day.
- 27.3 A notice takes effect from the latest of:
- e) the time it is given;
-

-
- f) a time specified in the notice; or
 - g) a time specified under this Agreement.

28 Dispute Resolution

- 28.1 Neither party may start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute arising out of this Agreement or a Specific Services Contract unless it has first complied with this clause 28.
- 28.2 Any dispute which arises between the parties in connection with this Agreement or a Specific Services Contract 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.
- 28.3 In the event of a dispute in connection with this Agreement or a Specific Services Contract which cannot be resolved in accordance with clause 28.2 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.
- 28.4 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).
- 28.5 Any information or documents disclosed by a party under this clause 28:
 - a) is confidential; and
 - b) may only be used to attempt to resolve the dispute.
- 28.6 The costs of mediation will be borne equally by the parties.

29 Variation

- 29.1 This Agreement and each Specific Services Contract, including without limitation the Specific Services, may only be varied by written agreement of the parties prior to any variation coming into effect.
- 29.2 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 29.1.

30 Assignment and Novation

- 30.1 Except in relation to the licences granted to the AEMC under clause 13, a party may not assign, novate, transfer, charge, encumber or otherwise deal with any of its rights or obligations under this Agreement or a Specific Services Contract, or attempt or purport to do so, without the prior written consent of the other party.

31 Waiver

- 31.1 A waiver by a party of any breach of this Agreement or a Specific Services Contract by the other party must be in writing and signed by the party waiving the breach and will not be considered as a waiver of any subsequent breach of the same or any other provision of this Agreement or of a Specific Services Contract.

32 Severability

- 32.1 Each provision of this Agreement or any Specific Services Contract is individually severable. If any provision becomes invalid or unenforceable in whole or in part, the validity of the other provisions of this Agreement or any Specific Services Contract and the remainder of the provision in question will not be affected.

33 Execution of document

- 33.1 This Agreement may be executed in any number of counterparts and all those counterparts taken together constitute one instrument.

34 Governing Law and Jurisdiction

- 34.1 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.

35 Entire Agreement

- 35.1 Each of this Agreement and each Specific Services Contract constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with their subject matter.

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

SIGNED, SEALED and DELIVERED on behalf of the AEMC by its duly authorised representative

Name

Position

SIGNED, SEALED and DELIVERED by
ACN

in accordance with Section 127 of the
Corporations Act 2001

Signature of director

Signature of director/company secretary

Name of director (print)

Signature of director/company secretary

Date:

Date:

[execution clause for sole director]

SIGNED, SEALED and DELIVERED by
ACN

in accordance with Section 127 of the
Corporations Act 2001

Signature of director

Name of director (print)

Date:

SIGNED, SEAL and DELIVERED on behalf of
by

Position

Name (Print)

Position

Name (Print)

(Please note that this Schedule is part of Annexure A)

Schedule 1 – Sub-Panel Category

[Note to Tenderer: This schedule forming part of Annexure A will be completed following the AEMC receiving the Tenderer(s) RFT and for the sub-panel categories for which the preferred Tenderer(s) is successfully appointed to the 2021 AEMC Panel. This list details all Sub-Panel Categories for which the Tenderer may apply for and the corresponding services the Tenderer may be required to provide.]

Sub-panel category	Electricity YES/NO	Gas YES/NO
1. The economic regulation sub-panel: to address topics such as why regulate, how to regulate, impact of regulation, design of regulatory mechanisms and how economic regulation should be applied.		
2. The modelling/forecasting/data analysis sub-panel: including historic and forecast data and analysis, for markets both domestic and international. It also covers the modelling of policy decisions. Modelling is not limited to financial modelling and can cover market modelling as well as future trends analysis.		
3. The consumer understanding sub-panel: This category covers knowledge and analysis of consumer experiences in energy market, NECF, jurisdictional policy and program impacts, consumer responses to changes in markets and the behaviour of energy businesses.		
4. The market design and operation sub-panel: This covers topics such as what is a market, the purpose of market, how to design a market, what features to have in a market, how to operate a market, testing and analysis of the design and operation, as well as impact and analysis of the market on those within and those outside.		
5. The technical and non-economic advice sub-panel: This category is designed to cover technical advice that is not economic in nature. For example, advice about infrastructure design and operation and technical and safety requirements.		
6. The Strategic communication sub-panel: This category covers advice and assistance the AEMC is likely to require relating to the implementation of its strategic communication programmes including research, writing, project management, stakeholder communications, graphic design and surveys (online and interpersonal).		

(Please note that this Schedule 46 is part of Annexure

Schedule 2 – Service Level Agreement Requirements

[Note to Tenderer(s): This schedule contains the expected Service Level Agreement requirements to be included in the RFT and the response provided by the preferred Tenderer(s).]

SLA Requirements

1. AEMC requires its 2021 AEMC Panel 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.

(Please note that this Schedule 47 is part of Annexure

Schedule 3 – Rates

[Note to Tenderer(s): This schedule will be completed following receipt of pricing provided by the preferred Tenderer(s) as part of RFT.]

Rates

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	
Details of other costs (in Australian dollars) associated with this contract, including costs for disbursements such as photocopying. Also a listing of other costs (eg. For travel, accommodation, support etc) that you may invoice the AEMC for in the course of providing the services.	

(Please note that this Schedule 48 is part of Annexure

Schedule 4 – Template Request for Proposal

[Note to Tenderer(s): This schedule is included in the Agreement as example text only. It is intended to be completed with the relevant information for particular Specific Services required at the time of issuing a Request for Proposal.]

This Request for Proposal (including its attachments) is issued by the Australian Energy Market Commission (AEMC) in accordance with clause 3.3 of the Panel Agreement for the provision of services dated on or about *[insert date]* (**Agreement**).

RFP number	<i>[insert RFP number]</i>
Identifier	<i>[insert Identifier number]</i>
RFP closing date	<i>[insert closing date of RFP]</i>
Service Provider	<i>[insert Service Provider name]</i>
Service Provider Contract Manager	<i>[insert Service Provider contact name and contact details]</i>
Australian Energy Market Commission contact details for RFP	<i>[insert AEMC contact name and contact details]</i>

Australian Energy Market Commission requirements for this RFP

Item number	Description	Details
1.	Proposed Specific Services Contract Commencement Date	<i>[dd/mm/yy]</i>
2.	Proposed Initial Contract Period	
3.	Contract Period Option	
4.	Specific Services	
5.	Insurance	
6.	Other requirements	

Requirements for response

Item number	Description	Details
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Item number	Description	Details						
7.	Information to be included in Proposal	<p>The Service Provider should provide the following as part of its response to the RFP:</p> <ul style="list-style-type: none">(a) details of the proposed approach to providing the Specific Services;(b) proposed Fees for the Specific Services which must be based on the Rates;(c) examples of previous projects which demonstrate the Service Provider's capacity to successfully deliver services similar to the Specific Services set out in the RFP;(d) CVs for all proposed Key Personnel and other proposed resources; and(e) details of any actual or perceived conflicts of interest in the event that the Service Provider is awarded the Specific Services Contract and the Service Provider's approach to addressing such conflicts.						
8.	Subcontractors	[Service Provider to insert names and ABNs of any proposed subcontractors. If no subcontractors are proposed, insert 'not applicable'.]						
9.	Key Personnel and other resources	<div><div>[Service Provider to insert names and positions of proposed Key Personnel and other resources. Otherwise insert 'not applicable'.]</div><table><tr><th>Name</th><th>Proposed role</th></tr><tr><td></td><td></td></tr><tr><td></td><td></td></tr></table></div>	Name	Proposed role				
Name	Proposed role							
10.	Restrictions on Key Personnel and other resources	[Service Provider to identify any limitations or restrictions on the availability of Key Personnel and other resources to provide the Specific Services.]						

(Please note that this Schedule 4 – Attachment 1 is part of Annexure A)

Schedule 4 - Attachment 1 – Statement of Requirement

[Note to Tenderer(s): This schedule is included in the Agreement as example text only. It will be completed and included in a Request for Proposal if and as required.]

[Note: Please insert relevant details of the Specific Services required. The below is provided as a template to assist in providing structure. If a separate Statement of requirement is not needed, the description of the Services will need to be inserted into items 4 of Schedule 4 and this Attachment 1 deleted.]

1 Background

1.1 [please insert background to the Specific Services Contract]

2 The Specific Services

2.1 The AEMC is seeking [please insert].

2.2 The report(s) prepared by the Service Provider should consider [please insert].

3 Stakeholder consultation

3.1 The AEMC seeks to undertake an open and transparent process in all of its work. As a result, part of this consultancy will involve a level of public and stakeholder consultation. It is anticipated that there will be three main components to the stakeholder consultation, these are:

- m) presentation to, and comment from, the AEMC's [please insert] Reference Group – an expert reference group of relevant industry, consumer and government representatives is to be formed in order to provide guidance and direction to the AEMC and its consultants on [please insert]. More specifically, this will include refining the scope of work prior to commencement of the consultancy;
- n) publication of relevant reports for stakeholder comment – the AEMC intends to publish the reports provided as part of this consultancy for public comment. Consultants will be required to address stakeholder issues prior to the publishing of a final report or reports; and
- o) public forum – the AEMC may decide to hold a public forum on the consultant's draft report in order to present the findings and obtain comment from relevant stakeholders.

4 Deliverables

4.1 The required deliverables are (but may not be limited to):

- p) the preparation of a draft report(s) with draft recommendations to be published on the AEMC's website;
- q) the preparation of a final report(s) addressing comments made by stakeholders and containing final recommendations to be published on the AEMC's website;
- r) presentation of the draft report(s) to the AEMC and possibly to a public forum or forums; and
- s) Attendance at meetings with AEMC staff and the [please insert] Reference Group as required.

5 Timing

Relevant milestones for the consultancy are set out below.

Date	Milestone
	Initial meeting between the consultant and the AEMC
	Consultant's Draft Report due to AEMC and its Reference Group
	AEMC publishes consultant's revised Draft Report
	Public submissions on the consultants Draft Report due
	Consultant's Draft Report incorporating consideration of public submissions due to AEMC and its Reference Group
	AEMC publishes consultant's Final Report

(Please note that this Schedule 5 is part of Annexure A)

Schedule 5 – Template Order

This Order (including its attachments, if any), sets out the terms and Fees for the Specific Services.

[Note to Tenderer: This schedule is included in the Agreement as example text only. When entering into a Specific Services Contract, it will be completed on the basis of the relevant Request for Proposal and the relevant proposal submitted by the Service Provider.]

1.	Specific Services Contract number	<i>[insert]</i>
2.	Identifier	<i>[insert Identifier number]</i>
3.	Date of Specific Services Contract	<i>[insert]</i>
4.	Commencement Date	<i>[insert]</i>
5.	Initial Contract Period	<i>[insert length of initial period]</i>
6.	Contract Option Period	<i>[insert any option periods if applicable]</i>
7.	Description of Specific Services	<i>[insert any relevant background and description of services, deliverables, milestones and other timing requirements – a statement of requirement can be attached to describe the services if required, please see example template at Schedule 4 – Attachment 1. If the attached statement of requirement is being included, please insert: 'Please see Statement of Requirement at Attachment 1.']</i>
8.	Subcontractors	<i>[insert details of subcontractors to be used in the provision of the Specific Services]</i>
9.	AEMC Contract Manager	<i>[insert name or position of Contract Manager]</i>
10.	Service Provider Contract Manager	<i>[insert name or position of Service Provider Contract Manager]</i>
11.	Key Personnel	<i>[insert names of the Service Provider's Key Personnel]</i>
12.	Insurance	<i>[insert details of insurance held as required by clause 17.3.]</i> <i>[insert higher amounts of insurance requirements if applicable]</i>
13.	Fees	<i>[insert details of the Fees applicable to the Specific Services based on the Price]</i>

14.	Other requirements	<i>[insert details of any specific terms and conditions and/or requirements applicable to the provision of the Specific Services]</i>
15.	Notices	<p>Australian Energy Market Commission:</p> <p>[xxxx], Procurement Officer Level 15, 60 Castlereagh Street SYDNEY NSW 2000 [xxxx]@aemc.gov.au</p> <p>Service Provider</p> <p><i>[insert name and position of person to receive notices]</i></p> <p><i>[insert postal address]</i></p> <p><i>[insert physical address]</i></p> <p><i>[insert email address]</i></p>

(Please note that this Schedule is part of Annexure A)

Schedule 5 - Attachment 1 – Statement of Requirement

[Note to Tenderer: This schedule is included in the Agreement as example text only to provide internal guidance to AEMC when preparing an Order. When entering into a Specific Services Contract, it will be completed on the basis of the relevant Request for Proposal and the relevant proposal submitted by the Service Provider, if and as required.]

[Note: Please insert relevant details of the Specific Services required. The below is provided as a template to assist in providing structure. If a separate Statement of requirement is not needed, please include the description of the Services in item 7 of Schedule 5 and delete this Attachment 1.]

1 Background

- 1.1 [please insert background to the Specific Services Contract]

2 The Specific Services

- 2.1 The AEMC is seeking [please insert].
- 2.2 The report(s) prepared by the Service Provider should consider [please insert].

3 Stakeholder consultation

- 3.1 The AEMC seeks to undertake an open and transparent process in all of its work. As a result, part of this consultancy will involve a level of public and stakeholder consultation. It is anticipated that there will be three main components to the stakeholder consultation, these are:
- t) presentation to, and comment from, the AEMC's [please insert] Reference Group – an expert reference group of relevant industry, consumer and government representatives is to be formed in order to provide guidance and direction to the AEMC and its consultants on [please insert]. More specifically, this will include refining the scope of work prior to commencement of the consultancy;
 - u) publication of relevant reports for stakeholder comment – the AEMC intends to publish the reports provided as part of this consultancy for public comment. Consultants will be required to address stakeholder issues prior to the publishing of a final report or reports; and
 - v) public forum – the AEMC may decide to hold a public forum on the consultant's draft report in order to present the findings and obtain comment from relevant stakeholders.

4 Deliverables

- 4.1 The required deliverables are (but may not be limited to):
- w) the preparation of a draft report(s) with draft recommendations to be published on the AEMC's website;
 - x) the preparation of a final report(s) addressing comments made by stakeholders and containing final recommendations to be published on the AEMC's website;
 - y) presentation of the draft report(s) to the AEMC and possibly to a public forum or forums; and
 - z) Attendance at meetings with AEMC staff and the [please insert] Reference Group as required.

5 Timing

Relevant milestones for the consultancy are set out below.

Date	Milestone
	Initial meeting between the consultant and the AEMC
	Consultant's Draft Report due to AEMC and its Reference Group
	AEMC publishes consultant's revised Draft Report
	Public submissions on the consultants Draft Report due
	Consultant's Draft Report incorporating consideration of public submissions due to AEMC and its Reference Group
	AEMC publishes consultant's Final Report

SIGNED on behalf of the AEMC by its authorised representative

Name

Position

.....

Signature of the Chairperson/Commissioner

.....

Signature of Witness

.....

Name of Chairperson/Commissioner

.....

Name of Witness

[execution clause for company other than sole director company]

EXECUTED by
ACN

in accordance with Section 127 of the
Corporations Act 2001

Signature of director

Signature of director/company secretary

Name of director (print)

Signature of director/company secretary

Date:

Date:

[execution clause for sole director]

EXECUTED by
ACN

in accordance with Section 127 of the
Corporations Act 2001

Signature of director

Name of director (print)

Date:

SIGNED on behalf of

by

Position

Name (Print)

Position

Name (Print)

ANNEXURE B – Tender Response Schedule

1 Tendering Entity

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

2 Tendered Categories

Please indicate with a yes/no response.

Sub-panel category you wish to apply for	Electricity YES/NO	Gas YES/NO
2.2 The economic regulation sub-panel: to address topics such as why regulate, how to regulate, impact of regulation, design of regulatory mechanisms and how economic regulation should be applied		
2.3 The modelling/forecasting/data analysis sub-panel: including historic and forecast data and analysis, for markets both domestic and international. It also covers the modelling of policy decisions. Modelling is not limited to financial modelling and can cover market modelling as well as future trends analysis		
2.4 The consumer understanding sub-panel: This category covers knowledge and analysis of consumer experiences in energy market, NECF, jurisdictional policy and program impacts, consumer responses to changes in markets and the behaviour of energy businesses		
2.5 The market design and operation sub-panel: This covers topics such as what is a market, the purpose of market, how to design a market, what features to have in a market, how to operate a market, testing and analysis of the design and operation, as well as impact and analysis of the market on those within and those outside		

Sub-panel category you wish to apply for	Electricity YES/NO	Gas YES/NO
2.6 The technical and non-economic advice sub-panel: This category is designed to cover technical advice that is not economic in nature. For example, advice about infrastructure design and operation and technical and safety requirements		
2.7 The Strategic communication sub-panel: This category covers advice and assistance the AEMC is likely to require relating to the implementation of its strategic communication programmes including research, writing, project management, stakeholder communications, graphic design and surveys (online and interpersonal).	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)	
--	--

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 Panel Agreement	

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.	(CV's attached. Refer to _____)
8 Executive Summary	
8.1 Please provide an executive summary explaining your understanding of AEMC's requirements	
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.	Statement attached. Refer to _____
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.	
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	Costings attached. Refer to _____
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.	Costings attached. Refer to _____
13 Value Added Benefits	
13.1 Please identify any value added benefits that exceed the AEMC's stated requirements	