

20 December 2004

Information Disclosure for EnergyAustralia's Excluded Distribution Services

1. Introduction

The purpose of this document is to satisfy the information disclosure requirements outlined in clause 2.2 of Independent Pricing and Regulatory Tribunal of NSW (IPARTs) *Regulation of Excluded Distribution Services Rule 2004/1, June 2004*, (the Rule) for EnergyAustralia's Excluded Distribution Services (EDSs). Note: EDSs are defined as other than Prescribed Distribution Services, which are subject to the Weighted Average Price Cap (WAPC) form of regulation.

2. Description of EDSs

EnergyAustralia's EDS are set out in IPARTs Determination and consist of the following categories:

1) Customer Funded Connections

new or altered (i.e. capital contributions or capital contributed assets), which can be further categorised according to the industry Code of Practice for Contestable Works:

Level 1: installation of transmission and distribution system assets

Level 2: Category 1: disconnection and reconnection of a customer's installation at the point of supply (formerly consumers terminals)

Category 2: installation of underground service mains

Category 3: installation of overhead service mains

Category 4: installation of Type 5 meters and energising of customer's installations

Level 3: design of Level 1 works (outlined above)

2) Customer Specific Services

at the request of a customer and include the following services:

- asset relocation
- conversion of open wire aerial mains to Aerial Bundled Cable (ABC)
- installation of temporary covering (referred to as 'torapoli pipes' or 'tiger tails') on exposed live aerial mains for the building industry
- Any other service relating to the connection of a customer to EnergyAustralia's distribution system

Note: does not include Emergency Recoverable Works, which is a Prescribed Distribution Service.

3) Metering Services for Type 1 to 4 Meters

as defined by IPART means the following services

- a) provision, installation and maintenance of metering installations;

- b) meter reading and the collection, transfer and provision of metering data; and
- c) meter testing and auditing;

in accordance with Chapter 7 of the National Electricity Code. These meters are ½ hr interval meters of varying accuracy and measurement capability with remote communications installed.

These services are carried out under Full Retail Contestability by EnergyAustralia's TCA for the Responsible Person who is EnergyAustralia Retail as the Retail Licence Holder i.e. these services are not provided by EnergyAustralia as a DNSP Licence Holder.

note: Type 5 and 6 meter provision is covered as a Prescribed Distribution Service

4) Public Lighting Construction and Maintenance.

3. Scope of this Document

This document applies to the first three EDSs outlined above, i.e. Customer Funded Connections, Customer Specific Services and Metering Services for Type 1 to 4 Meters. Separate regulatory arrangements apply to public lighting construction and maintenance, hence these are not considered further in this particular document.

4. Application of Competition Test

EnergyAustralia is of the view that substantial competition exists in its area for the provision of Customer Funded Connections and Metering Services for Type 1 to 4 Meters. It is therefore, considering its position and reserves the right to make a future application to IPART for a determination under clause 2.4 (a) of IPART's Rule, for regulatory exemption under the Competition Test for these particular EDSs.

5. Pricing Methodology for EDSs

EnergyAustralia's high level pricing methodology for the provision of EDSs to customers is outlined below. Note: the overhead and on cost rates outlined below are subject to periodic review:

1) Customer Funded Connections:

$$\text{PRICE} = \text{DIRECT LABOUR} + \text{DIRECT MATERIALS} + \text{OTHER DIRECT COSTS} + \text{PROFIT MARGIN} + 10\% \text{ GST.}$$

This work is fully contestable and there is no shortage of accredited service providers who are available and active in all categories of the market.

The direct labour and materials charges outlined above include oncosts. These oncosts reflect the actual associated costs of providing the direct labour and materials and include employee privileges, local and corporate overheads relevant to the service.

The other direct costs refer to contracted services such as tree trimming, roadway under-bores, footway/roadway reinstatement etc.

The profit margin varies depending on the prevailing market conditions in which the service is provided.

A similar methodology, but without the profit margin is used for the provision of Prescribed Distribution Services.

These services are usually always provided on a 'fixed price' quotation basis

2) Customer Specific Services:

$$\begin{aligned} \text{PRICE} = & (\text{DIRECT LABOUR} + \text{DIRECT LABOUR ONCOSTS}) \times 1.98 \\ & \times 1.1 \text{ contingency allowance for 'fixed price' quotations only} \\ & + (\text{DIRECT MATERIALS} + \text{STORES HANDLING ONCOSTS}) \\ & + \text{DIRECT CONTRACTED LABOUR SERVICES} \times 1.45 \\ & + \text{ALL OTHER DIRECT SERVICES} \\ & + 10\% \text{ GST} \end{aligned}$$

These services are not normally treated as contestable services.

The pricing methodology is based on actual direct costs.

The pricing methodology is similar to that for Customer Funded Connections, except for the following points:

- there is no profit margin
- includes a 10% contingency allowance, on the total direct labour charges, for fixed price quotations, which are usually requested by customers. (Jobs performed on a 'do and charge' basis would not incur this extra 10% margin).
- 98% oncost rate applies to the total direct labour
- 45% oncost rate applies to any direct contracted labour services, (which includes a component for risk).

It is currently proposed within EnergyAustralia, to remove the 98% and 45% oncost rates, to align with the pricing methodology for Customer Funded Connections.

Pricing for the installation of temporary torapoli pipes (tiger tails), would also include a rental charge for the use of this equipment.

3) Metering Services for Type 1 to 4 Meters:

$$\text{PRICE} = \text{DIRECT LABOUR} + \text{DIRECT MATERIALS} + \text{OTHER DIRECT COSTS} + \text{PROFIT MARGIN} + 10\% \text{ GST.}$$

The pricing methodology is similar overall to that outlined for Customer Funded Connections.

An all-inclusive annual charge is calculated for the provision of MP and/or MDA services by EnergyAustralia's TCA. This charge covers the installation and maintenance of the metering installation, including the code compliant communications equipment.

These services are fully contestable under Full Retail Contestability in the National Electricity Market

6. Terms and Conditions for Provision of EDSs

Customers are required to enter into standard commercial contracts for the provision of all of the above services by EnergyAustralia. These contracts include EnergyAustralia's terms and conditions for the provision of these services.

EnergyAustralia provides written quotations to customers on request and these are generally valid for a period of one month.

Quotations for Customer Specific Services can be either firm (fixed price) or 'do and charge' as requested by the customer. As mentioned above, quotations for Customer Funded Connections are usually always provided on a fixed price basis.

Customers must provide a signed 'Acceptance of Offer' (part of the contract) for Customer Funded Connections and Customer Specific Services projects to proceed.

The terms and conditions associated with Customer Funded Connections and Customer Specific Services are included as Attachment 1. The terms and conditions associated with Metering Services are included as Attachment 2.

Attachment 1

Contract Terms and Conditions - Customer Funded Connections and Customer Specific Services

1. Definitions:

GST	has the meaning defined in the "A New Tax System (Goods and Services Tax) Act 1999";
taxable	relates to supplies where GST is payable;
non taxable	relates to supplies where no GST is payable;
completion	the works are completed when they are reasonably capable of being used for their intended purpose;
commencement date	the day set out in Part A item 4;
completion date	the later of (a) the last day of the period set out in Part A item 5; (b) the day set out in a modification notice we give you (see clause 4); or (c) the day agreed by the parties under clause 5;
modification notice	see clause 4(2);
site	the place identified in Part A item 6;
we, our or us	Enerserve, a business of EnergyAustralia;
works	the works described in Part A item 3;
you or your	the customer, to whom this offer and quotation is addressed.

2. We must do the works

We must do the works using reasonable care and skill.

3. What you have to do so that we can do the works

You must:

- **[Information]** as soon as you can after the date of this contract, give us all the information, documents, and other material you have or have under your control relevant to the works; and
- answer any questions we or our workers have about the works; and
- **[access]** see to it that we have enough access to the site to do the works; and
- **[services and utilities]** make sure that the services and utilities identified in Part A item 7 are available at the site for us and our workers to use.

In an emergency, you can do whatever is necessary to protect the works and the site.

4. Delays to commencement date or during the carrying out of the works

- (1) **[New quotation]** If the commencement date is delayed by 2 weeks or longer and that delay is caused by your breach of this contract then we can submit a new quotation to complete the works.
- (2) **[We tell you about expected delays]** We must give you written notice (**a modification notice**) of any breach of this contract by you during the carrying out of the works that does or, we reasonably expect, will, delay us in carrying out our obligations under this contract. The notice must set out:
 - the cause of the delay (as far as we know it); and
 - how long we expect the delay to last; and
 - the new day for completionand may also include any action we recommend you take to minimise the effect of the delay.
- (3) **[Obligations to pay not affected]** This clause 4 does not affect your obligations to pay us.

5. Completion

- (1) **[How the day for completion changes]** The day for completion can change as follows:
 - it is changed to the day specified in a modification notice from us (see clause 4); or
 - we and you can agree on a new day for completion.
- (2) **[Completion]** We must complete the works by the day for completion.

6. The price

- (1) **[Payable immediately on completion]** You must pay the total charges on completion of the work.
- (2) **[How prices can change]** The amount payable can change as follows after the date of the contract:
 - any change after the contract date in taxes, duties or levies (whatever they may be called) (but not GST or tax on our income) that we must pay in respect of this contract may result in a change to prices;
 - the reasonable costs to us of any delay specified in a modification notice to you and caused by your breach of this contract will be added to the price;
 - the total charges will be the prices before GST plus the amount of any GST payable on supplies made from 1 July 2000.
- (3) **[Other rights]** This clause 6 does not affect any other right we have under another contract with you (for example, a right to disconnect the site from the electricity supply or to stop supplying electricity to the site).

7. You must warn of defects

You must take reasonable steps to prevent anyone using a part of the works that you know, or that a reasonable person in your position would know, is defective, unsafe or out of repair so as to threaten the safety of a person using it.

8. Indemnities and liabilities

- (1) **[You indemnify us]** You must indemnify us against loss, damage and claims:
 - in respect of damage to real or personal property, or injury to, or death of, a person, arising in respect of the works or the use of the site; and
 - that we suffer in respect of physical conditions on the site that affect the performance of our obligations under this contract.

However, the amount of the indemnity is to be reduced to reflect the extent to which we caused or contributed to the loss or damage concerned (it can be reduced to zero).

- (2) **[We indemnify you]** We must indemnify you against loss, damage and claims in respect of damage to real or personal property, or injury to, or death of, a person, arising in respect of the works or our use of the site. However, the amount of the indemnity is to be reduced to reflect the extent to which you or your workers and agents, and visitors to the site, caused or contributed to the loss or damage concerned (it can be reduced to zero).
 - (3) **[Exclusion of liability]** Despite the other provisions of this contract, we are not liable for any loss or damage:
 - to the physical condition of the site that occurs because of carrying out the works in accordance with this contract; or
 - that you suffer because of a shutdown of electricity supply that we reasonably think is necessary to carry out the works.
 - (4) **[Liability cap]** The most we will ever have to pay in respect of this contract is the sum of the contract price set out in Part A item 2 (disregarding adjustments) plus amounts we actually receive from an insurer in respect of our liability for the loss concerned.
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9. Resolving disputes

Each of us must do our best to resolve any dispute in relation to this contract by negotiation in good faith.

10. Giving notices

Except where this contract makes different provision, the only way to give a notice under this contract is to send it by fax or send it by mail. A notice to a party is to be sent to the party at its address, or the most recent address or fax number the other party has for it. We can assume that you received a notice on the day after it was sent, as long as it is sent in accordance with these procedures. We can assume that a notice that appears to come from you does so. Notices to Enerserve should be addressed to:-

Manager-Business Transactions, 33-45 Judd Street, Oatley 2223, Facsimile (02) 9585 5685.

Attachment 2

Testing and Certification Australia Terms and Conditions: MP, MDA and MDP Services

1. TERMS OF QUOTATION

Each TCA Quotation is issued on condition that it is not a legally binding offer and, accordingly, the Customer's acceptance of the Quotation will not result in a binding contract between TCA and the Customer. However, **(a)** each Quotation is issued on these Terms and Conditions; **(b)** If Customer indicates to TCA that it wishes to accept the Quotation and TCA agrees by written notice to Customer (Acknowledgment of Quotation Acceptance), then these Terms and Conditions, the Quotation and the Acknowledgment of Quotation Acceptance form a contract between TCA and Customer ("Contract"), **(c)** TCA will regard each Quotation as valid for 60 days from its date unless a different period is specified in the Quotation or it is varied, revoked or replaced by TCA before Customer offers to accept it; and **(d)** TCA will regard a varied Quotation as valid for 60 days from the date of the variation.

2. TERMS OF AGREEMENT

Subject to clause 2A, TCA's sole obligation under the Contract shall be to use reasonable endeavours to provide the Services in accordance with the Contract.

2A. Condition Precedent to TCA obligation to provide certain services.

Customer acknowledges and agrees that TCA will be under no obligation to provide any Services for a Site unless and until **(a)** TCA has issued an Acknowledgment of Quotation Acceptance to Customer for that Site; **(b)** TCA has been formally notified by the Responsible Person (RP) that TCA is permitted to perform the services at that Site; **(c)** Customer has appointed TCA as the Metering Data Agent and/or Metering Provider for that Site in accordance with the Accepted Quotation for that Site, and that appointment has been registered on MSATS; and **(d)** Customer is in compliance with clause 8.

Customer shall take all reasonable steps to ensure that it or its retail supplier appoints TCA as the MDA, MDP and/or MP in respect of each Site (in accordance with the Accepted Quotation for each Site) and that appointment has been registered on MSATS within a reasonable time after the Commencement Date for that Site.

3. ADDITIONAL PRODUCTS OR SERVICES

If TCA identifies that Customer requires additional products or services in order for the Services to be performed or Customer requests additional products or services ("**Additional Products or Services**"), TCA may provide Customer with a written supplementary quotation for the Additional Products or Services and shall proceed with the necessary work if Customer indicates to TCA in writing that it wishes to accept the supplementary quotation. If TCA considers that the Additional Products or Services should be provided before the Services the subject of this Contract proceeds, TCA may suspend the provision of the Services under this Contract pending acceptance of the supplementary quotation by Customer.

The supplementary quotation will be issued to Customer on the terms contained in the quotation. Additional Products or Services performed as a result of acceptance of the supplementary quotation will be performed on terms as agreed between Customer and TCA in relation to that work.

4. TESTING OF METERING INSTALLATIONS

(a) Customer requirements: If TCA is providing MP services to Customer, the Customer may request that TCA test the accuracy or operation of any Metering Installation associated with the provision of those services at any time. If the accuracy or operation of the relevant Metering Installation

complies with the applicable regulations, Customer is responsible to pay for the cost of conducting the tests. TCA must pay for the cost of conducting the tests if the accuracy or operation of the relevant Metering Installation does not comply with the applicable regulations. TCA will set and inform Customer of the rates charged for the tests prior to the testing. TCA will not be obliged to proceed with any testing until the Customer accepts the rates to be charged for the tests. (b) TCA is not obliged to undertake any testing unless Customer provides TCA with safe and adequate access to the relevant Site to conduct such testing.

5. DRAWINGS AND DOCUMENTS

All illustrations, drawings and particulars of Products and/or Services that from time to time accompany a Quotation or appear in a TCA catalogue, advertisement or price list, are for information only and do not form part of the Quotation. All drawings and other documents, including without limitation digital records, accompanying a Quotation or provided through the provision of Products and Services ("**Drawings and Documents**") remain the property of TCA and must be treated as confidential information of TCA. Customer must not use Drawings and Documents for any purpose other than that specified in the Quotation and must not disclose them to a third party. If Customer does not accept the Quotation, the Drawings and Documents must be returned to TCA within 14 days after the Quotation is no longer valid (that is, 60 days after the date of its original issue or variation or replacement).

6. FREIGHT

If Services involve the testing or modification of equipment owned by Customer at TCA's premises, Customer will be responsible for the delivery of the equipment to TCA's premises and the removal of the equipment from TCA's premises on notification to Customer of completion of the test or modification. Removal must occur within 5 business days after such notification by TCA. TCA may agree to organise the return freight of the equipment to Customer on completion of testing, but will only do so as agent of Customer. TCA will not be responsible for the safe return of the equipment to Customer and will not be liable for any loss or damage to the equipment while it is in transit or during loading and unloading.

7. TIME

TCA will use reasonable endeavours to make timely delivery of the Services. However, time is not of the essence in this Contract.

8. SITE

TCA may perform the Services at the Site. Customer must permit TCA the access to the Site that TCA requires to perform the Services and must provide, without cost to TCA, any assistance, facilities and utilities that TCA reasonably requires for the purpose of performing the Services. Immediately on acceptance of the Quotation Customer must notify TCA in writing of any special hazards or danger attaching to the Site.

9. PROTECTION OF PRODUCTS IN CUSTOMER'S POSSESSION

Customer acknowledges that TCA may supply and install Products at a Site in order to provide the Services during the Term. Unless specified in the Accepted Quotation for a Site or otherwise agreed in writing between TCA and Customer, Customer agrees that TCA is and remains the sole legal and beneficial owner of the products installed at the Site by TCA ("**TCA Products**"). Accordingly, Customer agrees that any such TCA Products do not become the property of Customer or a fixture at the Site. Customer will ensure that all TCA Products in its possession are **(a)** protected from damage **(b)** only used for their intended use as specified in the relevant Accepted Quotation and **(c)** not interfered with, modified or altered in any way. Customer must comply with all reasonable directions of TCA in relation to protection of TCA Products.

10. OWNERSHIP

If TCA agrees to sell a product to Customer legal and equitable title remains with TCA until Customer has paid TCA the Price for the product. Before title passes Customer must not **(a)** bail, pledge, mortgage, charge, grant a lien over, lease or assign the Product or grant any other security over it, or **(b)** remove any identification labels from it; and **(c)** Customer must notify TCA in writing of any intended sale of the property where it is located. If the Accepted Quotation does not indicate that TCA intends to sell Customer a Product, the Product remains the property of TCA.

11. PRODUCTS & SERVICES TAX (GST)

Unless expressly stated otherwise, the Total Amount Payable set out in this Contract includes GST (if any); and (b) unless expressly agreed, TCA shall issue a Tax Invoice to Customer before Customer is due to pay for that supply.

12. METER PROVISION SERVICES

Any MP service specified in an Accepted Quotation must be provided in accordance with chapter 7 of the NEC.

13. DATE COMPLIANCE

TCA represents that it has addressed its business critical Y2000 related issues and it confirms that its business critical systems and equipment were Y2000 Compliant as at 31st December 1999.

14. FEES

Billing for Services for each site will be as follows: **MDP or MDA Only Service** - Billing for these Services will apply from the Transfer Date and shall continue through to the End Date **MP Only Service** - Billing for these services will apply from the date installation of TCA's Metering Installation commences and continues through to the date of complete removal of TCA's Metering Installation.. **MP and MDA Combined Service** - For the MDA component of the combined service, billing for these services will apply from the Transfer Date and shall continue through to the End Date. For the MP component of the combined service, billing for these services will apply from the later of; **(a)** the date of commencement of installation of TCA's Metering Installation, or **(b)** the Transfer Date and continue through to the later of, **(i)** the date the Metering Installation is completely removed, or **(ii)** the End Date.. **Additional Products or Services** shall be billed monthly by TCA and identified separately on each monthly invoice. **Other products or services** shall be billed as specified in the Accepted Quotation;

In Addition Customer must, in relation to each Site, pay reasonable costs associated with: **(a)** Services performed at Customer's request outside of normal business hours (7a.m. – 5p.m. each business day); **(b)** travel to the Delivery Address in excess of 100km of the nearest TCA office. If TCA is to apply such cost, then TCA will indicate the full amount separately on the Quotation; **(c)** revisits & re-scheduling of Services to suit Customer requirements; **(d)** handling & disposal of hazardous materials located at the Delivery Address whilst carrying out the Services; **(e)** a non standard communication link which needs to be installed on a problem site. TCA supplies as part of the standard base MP Service, a communication link which is installed in compliance with the NEC. TCA will supply such links up to the value of \$500. If a non standard communication link is required and the cost of such a link is greater than \$500, then the Customer must pay the amount exceeding \$500. If a non standard link is to be installed, then TCA will provide the difference cost via a separate quotation to the Customer; **(f)** the testing of any Metering Point including the meter, current transformer and/or voltage transformer that is required under the NEC to be tested. This includes all costs associated with the provision of compliant test certificates; **(g)** the amount reflecting any additional costs and expenses due to **(i)** any information supplied by Customer which TCA relied on when preparing its Quotation proving to be incorrect or incomplete or **(ii)**

the delivery of the Products, Services or Additional Products or Services being interrupted or delayed by or as a result of any act of omission of Customer or Customer's employees, contractors or agents or (iii) a change in regulatory requirements, thus affecting the Products, Services or Additional Products or Services provided or (iv) safety related induction courses requested by Customer. Customer must pay for any reasonable costs that TCA incurs in fulfilling Customer requirements at such courses. TCA shall be reimbursed for costs relating to travel, accommodation and labour that it incurs during the period of the course. TCA will provide reasonable justification of such costs when invoicing Customer; (h) TCA may in its absolute discretion, increase the Price on each anniversary of the commencement of the Services, by a percentage equal to the percentage rise (if any) in the Consumer Price Index (All Groups) Sydney over the preceding 12 months; and (i) a revisit to the Customer Site in order to upgrade the installation with a meter containing features exceeding the base requirement of the NEC. TCA supplies as part of the standard base MP Service, an electricity meter that complies with the NEC. If the Customer chooses to take TCA value added services that requires a higher specification meter, and such a request occurs before TCA installs the meter, then there will be no additional charge to the Customer. If the request for Services require TCA to make a site re-visit in order to upgrade an already installed standard base meter, then the Customer must pay to TCA an amount of \$150, once-off.

15. INVOICE

Unless otherwise arranged, invoices will be issued to the Customer by TCA for amounts payable by Customer to TCA under the Contract ("**Total Amount Payable**"). 21 days after the end of each month (or as agreed between the parties) TCA will issue to Customer a Tax Invoice for the Total Amount Payable during that month. Customer must pay the full amount owing to TCA within 21 days of receipt of the invoice or at the times agreed between the parties. Customer must pay interest on any late payments at the rate of the maximum per annum reference lending rate published by the Commonwealth Bank of Australia Limited at the date of default plus 2%.

16. TERM AND RENEWAL

The Contract commences for a Site on the date when TCA provides Customer an Acknowledgment of Quotation Acceptance for the Quotation for the Site ("**Commencement Date**") and ends on the later of (a) the completion of the Term or (b) the deliberate cessation of power services by Customer's retail supplier to the Delivery Address associated with the Site. At least 30 days before the completion of the Term for a Site, Customer must notify TCA in writing whether it wishes to terminate the Contract with respect to all Products, Services or Additional Products or Services for that Site. If this notification does not occur, the Term shall be extended by 12 months from the end of the then current Term, at prices to be agreed by TCA and Customer. If TCA and Customer cannot agree on revised Prices before the end of the then current Term, then TCA's current market rates for the Products, Services or Additional Products and Services will apply.

17. TERMINATION

Either party may terminate the Contract with respect to all or any of the products, Services or Additional Products or Services for a Site on written notice if: (a) the other party is in breach of the Contract and fails to remedy the breach within 10 days after notice in writing has been provided by the terminating party specifying the breach; or (b) the other party becomes insolvent or (c) if Force Majeure occurs for a period greater than 2 months. Customer may terminate the Contract if TCA ceases to be registered as a Metering Provider and/or Metering Data Agent under the NEC, MSATS system or any other NEC prescribed system that may be used from time to time to facilitate provision of specific Services. If the Contract is terminated in respect of any or all of the products, Services or Additional Products or Services, Customer must (a) pay to TCA all amounts then outstanding under any invoice, and (b) pay TCA for work done and expenditure made by TCA under the Contract since the date of the last invoice and up to the date of termination and (c) reimburse TCA for any direct or indirect loss suffered by TCA as a result of the termination including,

without limitation, the Total Amount Owing and the legal costs incurred by TCA in relation to the termination and the prior breach and **(d)** allow TCA access to the Delivery Address to obtain and remove any products or other equipment owned by TCA at the date of termination. TCA may remove such items at the end of the Contract if it chooses.

18. LIMITATION OF LIABILITY

Where any law implies any term, condition or warranty in a Contract, and that law voids or prohibits provisions in a contract excluding or modifying the application of, exercise of, or liability under such term, condition or warranty, such term, condition or warranty shall be deemed to be included in these Terms and Conditions. However, TCA's liability for any breach of such term, condition or warranty shall be limited, at TCA's option, to any one or more of the following: **(a)** if the breach relates to goods: **(i)** the replacement of the goods or the supply of equivalent goods; **(ii)** the repair of such goods; **(iii)** the payment of the cost of replacing the goods or of acquiring equivalent goods; or **(iv)** the payment of the cost of having the goods repaired: **(b)** if the breach relates to services: **(i)** the supplying of services again; or **(ii)** the payment or cost of having the services supplied again.

19. EXCLUSION OF LIABILITY

To the full extent permitted by applicable law, under no circumstances and under no legal theory, whether in tort, contract or otherwise, shall TCA be liable to Customer or to any other person for any direct, indirect, consequential or financial loss or damage or other loss or damage of any character including any loss or damage by way of loss of revenue, loss of use, increased cost of working, loss of profit, loss of data, loss of goodwill, or work stoppage, computer failure, failure to provide the Products, Services or Additional Products and Services or malfunction of the Products or Additional Products, even if TCA has been advised of the possibility of such loss or damage.

20. INDEMNITY

Customer indemnifies and holds harmless TCA and each of its employees, officers, agents and contractors against all losses, costs, damages, liabilities, claims, expenses, harm or injury which any of them may suffer or incur out of or in connection with: **(a)** any breach by Customer of the Contract or **(b)** the misrepresentation, misleading or deceptive conduct, negligence and/or other wrongful act or omission of Customer, its employees, agents or contractors in connection with the Contract.

21. FORCE MAJEURE:

If TCA is delayed or is unable wholly or in part to perform any obligation under the Contract by reason of Force Majeure this Contract shall remain in effect except that such obligation shall be suspended and accordingly, TCA will not be liable for non-performance of that obligation for the period during which TCA is affected. In this clause "Force Majeure" means any event beyond the reasonable control of TCA, including any failure in the telecommunications network that prevents the transmission of metering data. Despite the foregoing, a party's obligation to pay any sum of money pursuant to any obligation under the Contract will not be released or discharged as a result of a Force Majeure.

22. PRIVACY

TCA will handle any personal information obtained during the provision of the Services in accordance with its privacy policy. A copy of the TCA Privacy Policy is available on request or may be viewed on the TCA website: www.tcaust.com.

23. VARIATION:

All variations to this Contract must be in writing signed by duly authorised representatives of each party.

24. ASSIGNMENT

Customer must not assign its rights or transfer its obligations under this Contract without the prior written consent of TCA. TCA may assign its rights or transfer obligations under the Contract at any time.

25. PRECEDENCE & SURVIVAL

If there is an inconsistency between the Accepted Quotation and these Terms and Conditions, the provisions of the Terms and Conditions prevail but only to the extent of the inconsistency.

Clauses 5, 6, 8, 9, 10, 14, 15, 17, 18, 19 and 31 survive the termination or end of the Contract.

26. ENTIRE AGREEMENT

The Contract is the entire agreement of the parties in relation to the Contract and supersedes all other statements, representations, negotiations, arrangements, understandings, quotations, tenders and agreements.

27. SEVERANCE

If any provision of the Contract is held by any court or tribunal to be invalid or otherwise unenforceable, that provision, to the extent of that invalidity or unenforceability, will no longer apply and the remaining provisions of this Contract shall continue to bind the parties.

28. PROPER LAW

The law in effect in New South Wales governs the Contract. TCA and Customer irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts exercising jurisdiction there and waive, without limitation, any claim or objection based on absence of jurisdiction or inconvenient forum.

29. NOTICES

Every notice, approval, consent or other communication issued by a party under the Contract must be in writing signed by a duly authorised person of the party and provided to an appropriate authorised person of the other party ("**Recipient**") by way of prepaid post addressed to the Recipient or sent by facsimile transmission to the facsimile number of the Recipient. Notice will be deemed to have been duly given on receipt by the sender of a transmission control report from the dispatching machine indicating that the facsimile was sent in its entirety to the facsimile number of the Recipient. However, if the time of delivery or completion of the facsimile transmission is after 4p.m. on any business day in New South Wales or during any day that is not a business day in New South Wales, the notice shall be deemed to have been issued on the next business day..

30. DISPUTE RESOLUTION

If a dispute arises out of the Contract in relation Products, Services or Additional Products and Services being provided to meet the requirements of the NEC, the NEC dispute resolution process defined in clause 8.2 of the NEC will apply to any dispute between TCA and Customers who are Code participants under the NEC. Otherwise, if a dispute arises out of the Contract (including between TCA and a Customer who is not a Code Participant under the NEC), and the parties have not resolved the dispute within 7 days after one party gives written notice of the dispute to the other, the parties must endeavour to resolve the dispute through mediation. The mediator must be a person appointed by LEADR and the mediation shall be conducted in accordance with the mediation rules of LEADR. If the dispute is not resolved within 28 days after the appointment of a mediator, either party may, after giving written notice to the other party, commence court or arbitration proceedings. Nothing in this

clause restricts the right of TCA or Customer to seek urgent interlocutory relief or to terminate the Contract in accordance with its terms.

31. DEFINITIONS

In these Terms and Conditions: **"Accepted Quotation"** means the Quotation accepted by the Customer and the subject of these Terms and Conditions; **"Acknowledgement of Quotation Acceptance"** is defined in clause 1; **"Commencement Date"** is defined in clause 16; **"Contract"** is defined in clause 1; **"Customer"** is the person to whom the Accepted Quotation is directed, being either the electricity Retailer for the Site(s) or the electricity consumer at the Site(s); **"Date Compliant"** means neither performance nor functionality is affected by dates prior to, during and after the year 2000; **"Delivery Address"** means each address specified in an Accepted Quotation to which TCA will require access to provide Services at the Site(s) the subject of the Accepted Quotation; **"End Date"** means in respect of a Site, the earlier of the date on which the Contract is terminated or ends or the circumstances described in clause 16(b) occur; **"Force Majeure"** is defined in clause 21; The terms **"GST"** and **"Tax Invoice"** have the meanings given to them in the A New Tax System (Products and Services Tax) Act 1999; **"LEADR"** means the organisation of that same name that performs Alternative Dispute Resolution; **"MDA"** refers to an entity accredited by NEMMCO as the single point of responsibility for delivery of metering data from a National Meter Identifier (as defined in NEC) to affected retailers, Local Network Service Providers (as defined in NEC) and NEMMCO **"MDP"** means the entity responsible for the collection, processing and transfer of energy data from the meter or data logger to NEMMCO as defined in *NEMMCO Consumer Administration and Transfer Solution Procedures – Part 1 Principles and Obligations* or its replacement as the relevant NEMMCO policy statement issued from time to time; **"Metering Provider"** has the meaning given to it in the NEC; **"Metering Data Agent"** means a person accredited and registered as a metering data agent by NEMMCO pursuant to the NEC; **"Metering Installation"** means the metering installation (as defined in the NEC) for a Site; **"Metering Point"** has the meaning given to it in the NEC; **"MP"** means a Metering Provider Category "A", "B", "C" or "D", established by NEMMCO in connection with the process for accreditation and registration of any person as a Metering Provider in accordance with the NEC. **"MSATS"** means the market administration system as used by the electricity market for site registrations; **"MDP or MDA Only"** means the provision of data Services to meet the requirements specified by NEMMCO; **"MP & MDA Compliant"** means the provision of MP and MDA Services to meet the requirements of NEMMCO. **"MP Only"** means the provision of MP Services to meet the requirements of NEMMCO; **"NEC"** means the National Electricity Code as given force and effect by the National Electricity (New South Wales) Act 1997; **"NEMMCO"** means the National Electricity Market Management Company (ABN 94 072 010 327) **"Price"** means the price or prices set out in the Accepted Quotation for the provision of products and/or services for a Site (and includes the cost of delivery of the products to the Delivery Address) as varied in accordance with these Terms and Conditions; **"Products"** means a meter and communications device (if applicable) that meets the requirements of Chapter 7 of the NEC selected by TCA for provision of Services; **"Quotation"** means a written TCA quotation referring to these Terms and Conditions; **"Services"** for a Site, means any of the MDP or MDA Only, MP Only or MP & MDA Compliant services and/or Products specified in the Accepted Quotation for that Site subject to any qualifications or variations indicated in the Accepted Quotation or otherwise indicated in writing to Customer by TCA; **"Site"** means each site the subject of an Accepted Quotation, at which is located a Metering Point specified for delivery of the services set out in the Accepted Quotation; **"TCA"** means Testing and Certification Australia, ABN 67 505 337 385); **"TCA Products"** is defined in clause 9; **"Term"** in respect of a Site, is the period described in the Accepted Quotation for that Site beginning on the Commencement Date; **"Total Amount Owning"** is the total amount identified on the Accepted Quotation with respect to the terminating Service(s) minus all payments received for the terminating Service(s) up until the date of termination; **"Total Amount Payable"** is the Price plus GST; **"Transfer Date"** means, in respect of a Site, the date on which all the conditions precedent in clause 2A have been satisfied for that Site.