



INDUSTRY AND INVESTMENT NSW

[NAME OF RETAILER]

**ENERGY ACCOUNTS PAYMENT ASSISTANCE SCHEME
DEED OF AGREEMENT**

This **DEED OF AGREEMENT** is made on _____ day of _____ 2011

BETWEEN

. The State of NSW acting through **INDUSTRY AND INVESTMENT NSW** (hereinafter referred to as "I&I NSW") of 227 Elizabeth St, SYDNEY NSW 2000 of the one part;

AND

XXXXXX of XXXXX ABN XXXXXX (hereinafter referred to as "the Retailer") of the other part.

WHEREAS:

- A. I&I NSW is the NSW Government agency administering the Energy Accounts Payment Assistance scheme (the Scheme);
- B. The objective of the Scheme is to help people who are experiencing financial difficulties and need assistance to pay their home natural gas and/or electricity bills;
- C. The Retailer is licensed or authorised to sell electricity and/or gas to consumers in NSW;
- D. The parties have agreed that the Retailer will deliver the Scheme to Eligible Customers in accordance with the terms and conditions set out in this Deed of Agreement.

SIGNED SEALED AND DELIVERED BY the DEPUTY DIRECTOR-GENERAL, MINERALS AND ENERGY DIVISION, INDUSTRY AND INVESTMENT NEW SOUTH WALES for and on behalf of the Crown in right of the State of New South Wales in the presence of:

Witness

Deputy Director-General

Please print name

Please print name

SIGNED SEALED AND DELIVERED BY

Witness

Director

Please print name

Please print name

NOW THE PARTIES AGREE AS FOLLOWS:-

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TERMS AND CONDITIONS OF DEED

1 DEFINITIONS AND INTERPRETATION

1.1 DEFINITIONS

In this Deed of Agreement, including the Schedule and the Annexures, the following terms shall (unless the context otherwise requires) have the following meanings:

“ACDC” means the Australian Commercial Disputes Centre;

“Application” means the application to deliver the Scheme submitted by the Retailer to I&I NSW and attached as Annexure 1 to this Deed;

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

“Community Welfare Organisation” means any not for profit organisation accredited by I&I NSW to deliver EAPA.

“Confidential Information” means any information which may reasonably be considered to be of a confidential nature, including:

- (a) any information relating to any past, present or prospective customer of the Retailer that is not in the public domain; and
- (b) the terms and conditions of this Deed;

“Customer Support Officer” means a person employed or engaged by the Retailer to deliver the Scheme;

“EAPA” or **“Scheme”** means the Energy Accounts Payment Assistance scheme administered by I&I NSW;

“Eligible Criteria” means the criteria set out in Annexure 2;

“Eligible Customer” means a customer of the Retailer who complies with the Eligibility Criteria set out in Annexure 2 to this Deed;

“Financial Year” means a twelve month period ending on 30 June.

“Government” means the Government of the State of New South Wales;

“GST” means any tax on goods and/or services, including any value-added tax, broad-based consumption tax or other similar tax introduced in Australia;

In respect only of GST the expressions “adjustment note”, “consideration”, “GST”, “input tax credit”, “recipient”, “supply”, and “tax invoice” have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999* and the expression “net dollar margin” has the meaning given to that expression in the guidelines in force under Section 75AV of the *Trade Practices Act 1974* of the Commonwealth;

“GST law” includes any Act, order, ruling or regulation, which imposes or otherwise deals with the administration or imposition of a GST in Australia;

“Guidelines” means the Energy Accounts Payment Assistance Guideline for Community Welfare Organisations – effective date 1 January 2005 as amended from time to time.

“I&I NSW” means Industry and Investment New South Wales, Minerals & Energy Division, Level 17, 227 Elizabeth St, Sydney NSW and includes any other government Department, or body which may from time to time take over responsibility for administering the EAPA scheme;

“Marketing” means engaging in an activity for the purposes of obtaining new customers, or retaining existing customers.

“Minister” means the NSW Minister for Energy;

“Parties” means I&I NSW and the Retailer;

“Quarter” means a period of three calendar months ending on 31 March, 30 June, 30 September or 31 December;

“Relative”, in relation to a person, means the spouse (legal or de facto), parent or remoter lineal ancestor, son, daughter or remoter issue, or brother or sister of the person;

“Retailer” means the Retailer and where the context so admits includes the officers, employees, agents and authorised Sub-Retailers of the Retailer.

“Scheme” or **“EAPA”** means the Energy Accounts Payment Assistance scheme administered by I&I NSW;

“State” means the State of New South Wales;

“Supply” has the same meaning given to it in the GST Law; and

“Term” means the term of this Deed as set out in clause 2 including if relevant the term of any extension.

1.2 INTERPRETATION

1.2.1 Except where the context otherwise requires a reference in this Deed to:-

- (a) The singular number includes a reference to a plural number and vice versa;
- (b) A gender includes a reference to the other genders and each of them;
- (c) Any reference to a person or company shall mean and include the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require;
- (d) Any organisations, associations, societies, groups or bodies shall, in the event of them ceasing to exist or being reconstituted, renamed or replaced or if the powers or functions of any of them are transferred to any other entity, body or group, refer respectively to any such entity, body or group, established or constituted in lieu thereof or succeeding to similar powers or functions;
- (e) Statutes, regulations, ordinances or by-laws shall be deemed for all purposes to be extended to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing same from time to time; and
- (f) A month shall be construed as a reference to a calendar month.

1.2.2 Where any time limit pursuant to this Deed falls on a Saturday, Sunday or Public Holiday in the State of New South Wales then that time limit shall be deemed to have expired on the next Business Day.

1.2.3 Where any covenant, condition, agreement, warranty or other provision of this Deed expressly or implicitly binds more than one person then it shall bind each such person separately and all such persons jointly.

1.2.4 Where a word or phrase is given a defined meaning in this Deed, any other part of speech or other grammatical form in respect of such word or phrase shall unless the context otherwise requires have a corresponding meaning.

1.2.5 The headings used in this Deed are for convenience only and shall not affect the interpretation of this Deed.

1.2.6 The Schedule and the Annexures are part of this Deed and are as binding upon the Parties as if the contents thereof had been set out in full in the text of this Deed.

2 TERM OF DEED

- 2.1 The Retailer agrees to deliver the Scheme for its Eligible Customers in accordance with this Deed.
- 2.2 This Deed shall be for the period set out in Item 1 of the Schedule ('the Term'), with one following option to extend the Term for a further period of up to 24 months, such option being exercisable solely at the discretion of I&I NSW and subject to the written acceptance of the Retailer.
- 2.3 I&I NSW may offer the extension to the Retailer at any time during the last nine months of the Term and the extension will only take effect if accepted in writing by the Retailer.
- 2.4 If the offer of extension is accepted, the Term shall be deemed to be extended by a further twenty four months (or as otherwise specified by I&I NSW), and the terms and conditions contained herein shall continue to apply with the exception of:
- (a) the termination date in item 1 of the Schedule, which shall be extended accordingly;
 - (b) the option to extend set out in clause 2.2 which shall be extinguished; and
 - (c) any other amendment to this Deed that the Parties have agreed to in writing
- 2.5 The Retailer shall establish immediately, at no additional cost to I&I NSW, all necessary facilities for the effective conduct and management of all aspects of this Deed so as to deliver the Scheme continuously throughout the whole of the Term.

3 DELIVERY OF THE SCHEME

- 3.1 The Retailer agrees to deliver the Scheme:
- (a) competently,
 - (b) diligently,
 - (c) impartially,
 - (d) as far as reasonably practicable, utilising the latest technology and techniques currently available,
 - (e) in conformance with the specifications and descriptions in this Deed, and
 - (f) in accordance with all representations and warranties as to the Retailer's experience and ability expressly or impliedly made by reference to the Application, this Deed, any associated verbal or written communications, or by law,
 - (g) in accordance with all relevant laws, codes, policies and standards,
- to the complete satisfaction of I&I NSW having regard to the objectives of the Scheme as described by I&I NSW in any of its publications from time to time.
- 3.2 The Retailer shall ensure that in delivering the Scheme it complies with all relevant Commonwealth, State and Local Government laws.
- 3.3 The Retailer acknowledges and agrees it is delivering the Scheme on a non-exclusive basis and that I&I NSW may from time to time arrange for community welfare or other organisations to deliver the Scheme.
- 3.4 I&I NSW reserves the right in its absolute discretion to change the name of the Scheme, the Eligibility Criteria, the Guidelines or any other aspect of the Scheme at any time during the Term.

4 ALLOCATION AND DISTRIBUTION OF EAPA VOUCHERS

- 4.1 I & I will allocate EAPA vouchers to the Retailer after all Customer Support Officers of the Retailer have completed training offered by I&I NSW in connection with the Scheme.
- 4.2 The amount of EAPA vouchers to be allocated to the Retailer to be used in delivering the Scheme is set out in Item 2 of the Schedule (subject to available budget).
- 4.3 The Retailer may only distribute EAPA vouchers to Eligible Customers in accordance with the Guidelines, subject to any exceptions set out in item 4 of the Schedule.
- 4.4 If the Retailer has retained any undistributed EAPA vouchers at the end of the Term or at the end of a Financial Year during the Term, the Retailer must return those vouchers to I&I NSW as soon as practicable after expiry of the relevant period.
- 4.5 If the Retailer has retained any undistributed EAPA vouchers at the end of a Quarter (other than at the end of a Financial Year or at the end of the Term) the Retailer may retain and use those vouchers during the next Quarter.

5 SUB-CONTRACTING/ASSIGNMENT

- 5.1 The Retailer acknowledges and agrees that the obligations to be performed under this Deed are personal to the Retailer, and any person employed or engaged by the Retailer, and the Retailer will not assign and/or sub-contract the whole or any part of this Deed without the prior written consent of I&I NSW.
- 5.2 The Retailer agrees and acknowledges that it will be liable to I&I NSW for any acts, defaults and neglects of any assignee or sub-contractor or any employee or agent of the assignee or sub-contractor as fully as if they were the acts, defaults or neglects of the Retailer and will indemnify and release and keep indemnified and released, I&I NSW from any liability or loss resulting from any or all such acts, defaults and neglects of any assignee or sub-contractor or their employee.
- 5.3 All sub-contract(s) shall include all relevant conditions of this Deed. If there is any difficulty in achieving acceptance of such conditions, the Retailer shall seek guidance from I&I NSW.
- 5.4 The Retailer shall be responsible for ensuring the suitability of any proposed sub-contractor and that all work performed by sub-contractors meets the requirements of this Deed.
- 5.5 Nothing contained in this Deed shall in any way be construed as relieving the Retailer of its responsibility for the performance of the sub-contractor.

6 PERSONNEL

- 6.1 The Retailer must ensure that all Customer Support Officers have qualifications and skills sufficient for that person to be able to deliver the Scheme in accordance with the requirements of this Deed.
- 6.2 The Retailer must ensure that each Customer Support Officer successfully completes any training offered by I&I NSW in connection with the Scheme prior to delivery of the Scheme. I&I NSW agrees to bear the cost of providing the training but the Retailer will be responsible for all its associated internal costs and expenses including but not limited to the release of staff members to attend the training.
- 6.3 The Retailer must ensure that a Customer Support Officer is not employed in any other organisation nor engaged in any other activity that is likely to:
 - (a) raise an actual or potential conflict of interest with his or her duties to the Retailer; or
 - (b) diminish or hinder in any way the ability of the Customer Support Officer to carry out his or her duties as contemplated by this Deed.

- 6.4 The Retailer must ensure that appropriate technical and administrative support is available to support the delivery of the Scheme.

7 OTHER RETAILER OBLIGATIONS

- 7.1 The Retailer must at all times during the Term be an Australian incorporated entity licensed or authorised to carry out the retail sale of gas and/or electricity in New South Wales.
- 7.2 The Retailer must provide sufficient facilities and personnel to answer enquiries in relation to the Scheme via telephone and email.
- 7.3 Outside of Business Hours, or when the Customer Support Officers are absent or unable to take a phone call for any other reason during Business Hours, the Retailer must provide voicemail or answering services, and must return and follow up any messages relating to the Scheme by no later than the next Business Day.
- 7.4 The Retailer must, to the greatest extent practicable, accommodate the needs of disabled persons and those from non-English speaking backgrounds in the delivery of the Scheme.
- 7.5 The Retailer shall be solely liable for payment of all overheads, costs and expenses incurred in connection with the performance of this Deed.
- 7.6 The Retailer must bear the cost of all taxes, duties and charges imposed or levied in Australia or overseas in connection with the performance of this Deed.

8 CONFIDENTIALITY

- 8.1 The Retailer must treat and must procure that its employees, agents, representatives, advisers and sub-contractors treat all Confidential Information provided to it in connection with the Scheme as confidential and shall not disclose such information without the prior consent of the person providing the Confidential Information to anyone other than such persons having a need to know who will be required to take appropriate measures to safeguard such information. The Retailer shall maintain all records in conjunction with this Deed in a strictly confidential manner.
- 8.2 The Parties agree to disclose to each other so much of the Confidential Information as may be necessary in connection with this Deed.
- 8.3 The Parties agree and acknowledge that:-
- (a) they will not disclose the Confidential Information to any person without the prior written consent of the other party; and
 - (b) they will take reasonable steps to ensure that the Confidential Information in their possession is kept confidential and protected against unauthorised use and access.
- 8.4 The Parties acknowledge and agree that they may make any disclosures in relation to the Confidential Information in the following circumstances:
- (a) in order to comply with any applicable law, audit requirements or requirement of any regulatory body or any organ of parliament; or
 - (b) to any of their employees to whom it is necessary to disclose the terms if the employee undertakes to keep the terms confidential; or
 - (c) to its legal and/or financial advisers to obtain advice on the operation of this Deed.
- 8.5 Without limiting the generality of this clause 9, the Parties expressly agree that this Deed, its terms and conditions and the negotiations leading up to it, excluding the specifications, are confidential and the Parties agree not to make any disclosure thereof without the prior written consent of the other party.
- 8.6 This clause will survive the expiry or termination of this Deed for so long as any of the Confidential Information remains confidential within the meaning of this Deed.

9 PROMOTION AND MARKETING

- 9.1 The Retailer must not use or refer to its participation in the delivery of the Scheme in any of its Marketing activities.
- 9.2 The Retailer must not engage in any promotional activities that create an actual or possible conflict of interest with the Scheme.

10 CONFLICT OF INTEREST/CODE OF CONDUCT

- 10.1 The Retailer represents and warrants that no conflict of interest exists or is likely to arise in the delivery of the Scheme at the date of this Deed.
- 10.2 If the Retailer becomes aware of the existence of an actual or possible conflict of interest, it must immediately notify I&I NSW in writing. The Retailer must not thereafter undertake any further activities that are the subject of such notification without the express prior written consent of I&I NSW.
- 10.3 The Retailer agrees and warrants that it must notify I&I NSW immediately if it becomes aware of any corrupt or unethical conduct or possible corrupt or unethical conduct relating to the delivery of the Scheme by any of the Retailer personnel, any sub-contractor and/or the Retailer generally.

11 INDEMNITIES

- 11.1 The Retailer hereby releases and indemnifies I&I NSW and the Government of New South Wales (including its officers, employees and agents) from and against all liability for and in respect of physical, psychological or emotional injury or harm (including death) to persons, damage to property or losses, damages, costs and expenses, arising directly or indirectly out of any act or omission of the Retailer, its employees, sub-contractors or agents in the course of delivering the Scheme under this Deed and the Retailer agrees to release and discharge I&I NSW and the Government of NSW from any such actions, proceedings, claims or demands which, but for this provision, might be brought or made against or upon I&I NSW or the NSW Government.
- 11.2 The Retailer hereby releases and indemnifies I&I NSW and the Government of NSW against all liability for and in respect of any claim of defamation by any person arising directly or indirectly out of any act or omission of the Retailer, its employees, sub-contractors or agents in the course of delivering the Scheme under this Deed.
- 11.3 The Retailer hereby releases and indemnifies I&I NSW and the Government of NSW against all liability for and in respect of all claims and losses resulting from the publication, translation, reproduction, delivery, use or disposition of any data processed or information gathered under this Deed in a manner not authorised herein or under applicable law.
- 11.4 The Retailer shall be responsible for and shall pay extra costs occasioned by any discrepancies, errors or omissions in data, documentation or other information supplied in writing by it, whether they have been approved by I&I NSW or not, provided that such discrepancies, errors or omissions are not due to inaccurate data or information supplied in writing to the Retailer by I&I NSW.
- 11.5 Where I&I NSW receives notice of the commencement of any legal proceedings arising out of the Retailer's performance of this Deed, I&I NSW shall notify the Retailer without undue delay and the Retailer shall, without limiting the right of I&I NSW to separate legal representation, assume the defence thereof.
- 11.6 This clause survives expiry or earlier termination of this Deed.

12 PERFORMANCE MANAGEMENT, SERVICE EVALUATION AND REPORTING

- 12.1 The Retailer must report to I&I NSW on a quarterly basis using a reporting system as determined by I&I NSW on the matters set out in Annexure 3.
- 12.2 The Retailer must make available a nominated representative to meet and hold discussions with a representative of I&I NSW two times a calendar year during the Term or on as many occasions as deemed necessary by I&I NSW to discuss ongoing satisfaction of the quality of the Retailer's

delivery of the Scheme, initiatives to improve the quality of delivery of the Scheme, and the Retailer's compliance generally with the provisions of this Deed.

12.3 The Retailer shall maintain a regular consultative relationship with I&I NSW and allow I&I NSW or its nominee(s), if so required, to:

- (a) visit the Retailer's (and any sub-contractor's/agent's) premises from which the Service is being delivered; and
- (b) have access to the Retailer's (and sub-contractor's/agent's) accounts, financial, operational and customer records in regard to the Scheme.

12.4 I&I NSW or its nominee(s) may regularly monitor and evaluate the Retailer's performance under this Deed. The Retailer must co-operate in such monitoring and evaluation and provide to I&I NSW all information and reports requested in connection with same, including the matters set out below in this clause and also in Annexure 3. Monitoring and evaluation may include but are not limited to:

- (a) Regular site visits to assess quality of staff and delivery of the Scheme and discussion of Deed issues with staff and management on a needs basis.
- (b) Direct feedback from customers on the quality of service. Customer assessment of the quality of service as satisfactory or better should be at least 75%.
- (c) Provision by the Retailer of regular reports as detailed in Annexure 3 and including, if requested by I&I NSW, customer contact details who have received EAPA from the Retailer, for the reporting period.
- (d) Preparation and provision by the Retailer to I&I NSW of one case study of a successful customer each quarter, if requested by I&I NSW.

12.5 The Retailer:

- (a) must keep complete and accurate records and books of account with respect to its delivery of the Scheme (the "Records"), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
- (b) authorises I&I NSW (including its agents or contractors) and any State or Commonwealth Government department or agency (the "Auditors") that has provided moneys to I&I NSW for the purposes of this Deed, to examine and inspect, at reasonable times and on reasonable notice, any Records held by the Retailer, and allow any such Records to be copied, at no cost to the Retailer; and
- (c) provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.

12.6 At all times during the Term the Retailer will promptly provide any information requested by I&I NSW or its nominee(s) in relation to the delivery of the Scheme or any other matter pursuant to this Deed.

13 TERMINATION OF DEED

13.1 If the Retailer:-

- (a) is in breach of any term of this Deed, the default of which is not capable of being remedied; or
- (b) is in breach of any other provision of this Deed and fails to remedy such breach within thirty (30) days of being notified of such breach by I&I NSW; or
- (c) assigns its rights under, or sub-contracts the whole or part of, this Deed without the written consent of I&I NSW; or

- (d) becomes bankrupt, goes into liquidation, has a summons for its winding up presented to a Court, enters into an arrangement or composition with its creditors, fails to pay its debts as they fall due, or if a receiver and manager is appointed in respect of the Retailer; or
- (e) ceases to hold the relevant licence or authorisation for the retail sale of electricity and/or gas in New South Wales; or
- (f) makes or provides any statement, information, representation or material to I&I NSW in connection with its selection to deliver the Scheme that is false or incorrect in a way that affects this Deed or the delivery of the Scheme; or
- (g) where proceedings or investigations are commenced or threatened by the Independent Commission Against Corruption or similar public body against the Retailer including for corrupt conduct,

I&I NSW may, by notice in writing addressed to the Retailer, terminate this Deed without prejudice to any right of action or remedy of I&I NSW which has accrued or which may accrue under this Deed, with immediate effect.

14 TERMINATION BY I&I NSW WITHOUT CAUSE

- 14.1 I&I NSW may at any time and for any reason, upon giving at least 28 days notice in writing to the Retailer, terminate this Deed or any part or further part thereof, and upon such notice being given, the Retailer shall cease or reduce delivery of the Scheme including allocation of any new EAPA vouchers according to the notice and shall forthwith do everything possible to mitigate losses consequent thereto. Without being under liability so to do, I&I NSW shall, at the earliest possible time, inform the Retailer if circumstances arise which make it likely that I&I NSW shall exercise its right pursuant to this clause.

15 CONSEQUENCES OF TERMINATION

- 15.1 Upon termination of this Deed in any circumstances, the Retailer shall, in any manner directed by I&I NSW;
- (a) immediately cease the delivery of the Scheme;
 - (b) return to I&I NSW all documents, unexpended monies or vouchers, equipment, computer programs, publications and other material provided by I&I NSW to the Retailer for the purpose of this Deed;
 - (c) return to I&I NSW all information or data in any format whatsoever that is Confidential to I&I NSW;
- 15.2 Termination by I&I NSW will not release the Retailer from liability in respect of any breach of, or non-performance of any obligation by the Retailer pursuant to this Deed.
- 15.3 Any damages, costs and expenses recoverable by I&I NSW from the Retailer in consequence of the Retailer's breach of this Deed may be deducted from money then due to the Retailer under this Deed and if that money is insufficient for that purpose, the balance remaining unpaid shall be a debt due by the Retailer to I&I NSW and:
- (a) may be set off against any other money due to the Retailer by I&I NSW under this or any other Deed between I&I NSW and the Retailer; or
 - (b) will be payable within 7 days of the issue of a demand by I&I NSW to the Retailer and if not paid within such time shall bear interest at the rate then applicable to the recovery of debts in the NSW Local Court.
- 15.4 The covenants, conditions and provisions of this Deed that are capable of having effect after the expiration of this Deed shall remain in full force and effect following the expiration or termination of this Deed.

16 DISPUTES/ARBITRATION

- 16.1 If a dispute of any kind arises out of or relating to this Deed or any alleged breach of this Deed or the operation, validity or subject matter of this Deed, a party to the dispute may not commence any Court or arbitration proceedings relating to the dispute unless written notice of the dispute has been given to the other party with which it is in dispute specifying the nature of the dispute ("notice of dispute").
- 16.2 On receipt of a notice of dispute in accordance with clause 16.1 the Parties to the dispute must endeavour in good faith to resolve the dispute expeditiously using the informal dispute resolution process provided for in this Deed.

17 MEDIATION

- 17.1 Initially the dispute will be referred to mediation conducted by ACDC in accordance with the mediation guidelines administered by ACDC from time to time which are incorporated into this Deed by reference.
- 17.2 The Parties to a dispute shall do all things reasonably required to refer the dispute to mediation by ACDC.
- 17.3 Unless directed otherwise by I&I NSW, the Retailer agrees to continue to deliver the Scheme while the dispute is being dealt with in accordance with this clause.
- 17.4 Nothing in this clause will preclude either party from seeking urgent interlocutory relief.

18 GOODS AND SERVICES TAX

- 18.1 Any invoice rendered by a party to this Deed in connection with a Supply under this Deed which seeks to recover an amount of GST payable by that party must conform to the requirements for a tax invoice.
- 18.2 The Retailer warrants and undertakes that at the time any Supply on which GST is imposed is made by it to I&I NSW under this Deed it is or will be registered under the GST Law. If I&I NSW requests written evidence of registration, the Retailer will promptly produce evidence satisfactory to I&I NSW.
- 18.3 If the amount of GST paid or payable by the Retailer on any Supply made under this Deed differs from the amount of GST paid by I&I NSW by reason of the Commissioner of Taxation lawfully adjusting the value of the taxable supply for the purpose of calculating the GST, or if the rate of GST is changed, then the amount of GST paid by I&I NSW shall be adjusted accordingly by a further payment by I&I NSW to the Retailer or the Retailer to I&I NSW as the case requires.

19 PRIVACY COMPLIANCE

- 19.1 The Retailer must ensure it, along with its officers, employees, agents and sub-contractors, comply with the Information Protection Principles set out in the Privacy and Personal Information Protection Act 1998 in respect of any personal information disclosed to the Retailer or acquired by the Retailer in delivering the Scheme.
- 19.2 In particular, the Retailer must notify customers at the time their personal information is collected that the information may be disclosed to I&I NSW for the purpose of administering, monitoring and evaluating the Scheme. The Retailer must expressly advise customers that I&I NSW may contact them to conduct surveys in relation to the Scheme, and provide an opt-out facility for customers who do not wish to be contacted.

20 WAIVER

20.1 Failure by either party at any time to enforce any of the provisions of this Deed must not be construed as a waiver by that party of that provision or in any way affect the validity of this Deed, in whole or in part.

21 ENTIRE AGREEMENT

21.1 This Deed (including the Schedule and Annexures) constitutes the entire agreement between the Parties. Any prior arrangements, agreements, representations or undertakings are superseded. Any variation of or amendment to this Deed (except for the operation of clause 3.4) will not be binding unless agreed in writing by the Parties.

22 NOTICES

22.1 All notices and communications required to be or which may be given or served by I&I NSW to or upon the Retailer shall be sufficiently given or served if signed by I&I NSW or the person acting as such for the time being and if left at or sent by certified mail addressed to the Retailer at the office of the Retailer last known to I&I NSW.

22.2 All notices and communications required to be or which may be given or served by the Retailer to or upon I&I NSW or I&I NSW shall be sufficiently given or served if signed by an authorised officer of the Retailer and if left at or sent by certified mail to the name and address set out in item 3 of the Schedule or such other name and address as may be advised by I&I NSW from time to time.

22.3 Any notice given under this Deed:

- (a) must be in writing addressed to the intended recipient at the address last notified by the intended recipient to the sender;
- (b) must be signed by a person duly authorised by the sender; and
- (c) will be taken to have been given or made:
 - (i) in the case of delivery in person or by post when delivered or received, or left at the above address; and
 - (ii) in the case of delivery by facsimile when a confirmation report is received on the facsimile machine showing confirmation of receipt

but if delivery or receipt occurs on a day other than a business day at the place to which the communication is sent or is later than 4pm (local time) it will be taken to have been duly given or made at the commencement of business on the next day.

23 SEVERABILITY

23.1 If any part of this Deed is prohibited, void, voidable, illegal or unenforceable, then that part is severed from this Deed but without affecting the continued operation of the remainder of this Deed.

24 NO MERGER

24.1 The rights and obligations of the parties will not merge on completion of any transaction under this Deed. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any transactions.

25 COUNTERPARTS

25.1 This Deed may be executed in any number of counterparts. All counterparts taken together will be taken to constitute one agreement.

26 APPLICABLE LAW

26.1 This Deed will be governed and construed in all respects in accordance with the laws of the State of New South Wales and the Parties to this Deed hereby submit to the non exclusive jurisdiction applicable to the courts of the State of New South Wales and the Commonwealth of Australia in respect of all matters arising under this Deed or relating to this Deed.

27 RIGHTS CUMULATIVE

27.1 The rights and remedies provided under this Deed are cumulative and not exclusive of any rights or remedies provided by law or any other such right or remedy.

28 LEGAL COSTS

28.1 Each party must bear its own legal and other costs and expenses relating directly or indirectly to the preparation of and compliance with its obligations under this Deed.

THE SCHEDULE

DRAFT

Item 1: Term

Commencing on X date and terminating on Y date (Y date will be approximately two years from X date).

Item 2: Allocation of Vouchers

2.1 A maximum of \$250,000 per annum will be allocated to retailer delivery of EAPA.

The Retailer will receive a proportion of the \$250,000 which will be equivalent to the proportion of the EAPA budget that was provided to its customers in the previous financial year on a pro-rata basis.

For example:

The Retailer's customers were allocated 10% of the EAPA budget for the 2009/2010 year.

In the 2010/2011 year, the Retailer will receive 10% of \$250,000 retailer delivery budget for EAPA delivery = \$25,000.

2.2 Vouchers will be issued on a quarterly basis.

Item 3: Notices

Manager, Funding and Programs
Minerals and Energy Division
Industry and Investment NSW
Level 17, 227 Elizabeth St
SYDNEY NSW 2000

Item 4: Exceptions to Guidelines

Not applicable

THE ANNEXURES

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ANNEXURE 1 THE RETAILER'S APPLICATION TO DELIVER THE SCHEME

DRAFT

ANNEXURE 2 CUSTOMER ELIGIBILITY CRITERIA

An Eligible Customer is a small retail customer of the Retailer who is eligible to receive EAPA under the Guidelines and is unable or unwilling to obtain EAPA vouchers from a Community Welfare Organisation that delivers the Scheme for any of the following reasons:

- a) the nearest community welfare organisation is more than 50 kilometres from the customer's residence;
- b) the customer is unable to travel to the nearest community welfare organisation due to disability or lack of public transport;
- c) the customer is related or personally known to staff at the community welfare organisation and has a reasonable and genuine concern for his or her privacy;
- d) there are no EAPA vouchers available at a community welfare organisation within 50 kilometres from the customer's residence.

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ANNEXURE 3 PERFORMANCE MANAGEMENT AND REPORTING REQUIREMENTS

1. Quarterly Activity Report

1.1 The Retailer is required to provide Quarterly activity reports to I&I NSW in a format specified by I&I NSW. The reports will need to be submitted to I&I NSW no later than thirty days after the end of each Quarter. The reports will be made in a manner and form determined by I&I NSW. The information that will be included in the Quarterly Activity Reports includes:

- Number of customers in receipt of vouchers
- Amount of EAPA received by each of those customers
- Reasons for the customer not obtaining vouchers from a community welfare organisation

2. Annual Report

2.1 Within 30 days of the end of each Financial Year during the Term and the Termination Date, the Retailer must submit to I&I NSW an Annual Report summarising the Quarterly Activity Reports for the relevant period and setting out all actions taken by the Retailer in response to program improvement recommendations arising out of ongoing monitoring and evaluation by I&I NSW or its nominee(s).