



# **INDEPENDENT PRICING AND REGULATORY TRIBUNAL**

**OF NEW SOUTH WALES**

## **AUDIT AND TECHNICAL SERVICES PANEL AGREEMENT**

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# Audit and Technical Services Panel Agreement

Date:

## Parties

### 1 Independent Pricing and Regulatory Tribunal

ABN [insert]

a body corporate constituted by the *Independent Pricing and Regulatory Tribunal Act 1992* of Level 8, 1 Market Street Sydney, NSW 2000.

### 2 [Insert Name]

ACN [insert]

of [insert address]

(Panel Member)

## Background

- A The Tribunal has established a panel of persons to undertake Audit Services and Technical Services for the Tribunal and for Scheme Participants.
- B The Tribunal has agreed to appoint the Panel Member to the Panel to undertake:
- (1) any Nominated Audit Services for Scheme Participants (these Services will also be relied on by the Tribunal);
  - (2) any Nominated Audit Services or any Technical Services for the Tribunal,
- in accordance with this Agreement.
- C The Panel Member has agreed to accept that appointment and to undertake any Services on the terms set out in this Agreement.

## The parties agree

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### 1 Definitions and Interpretation

#### 1.1 Definitions

In this Agreement, unless the context requires otherwise:

**Act** means the *Electricity Supply Act 1995 (NSW)*.

**Abatement Certificate** means an abatement certificate created under Part 8A of the Act, being a transferable abatement certificate or a non-transferable abatement certificate.

**ACP Audit** means any audit of a Certificate Provider required by the Tribunal under clause 73M of the Regulation, in relation to:

- (a) the creation of Abatement Certificates by the Certificate Provider;
- (b) the eligibility of the Certificate Provider for accreditation as a Certificate Provider; or
- (c) the Certificate Provider's compliance with any conditions of accreditation, for the purposes of:
- (d) substantiating information provided to the Tribunal; or
- (e) determining whether a Scheme Participant complies with the Act, the Regulations or the Greenhouse Gas Benchmark Rules.

**Additional Audit Services** means any Services which are not Nominated Audit Services or which have been withdrawn from the Nominated Audit Services under clause 10.

**Agreement** means this Agreement.

**Audit Services** means any audit of a Scheme Participant required by the Tribunal (under section 97H or 97HA of the Act) for the purposes of Part 8A of the Act, including (without limitation) an ACP Audit.

**Benchmark Participant** means a person referred to in section 97BB of the Act who is subject to a Greenhouse Gas Benchmark.

**Business Day** means a day on which banks are open for retail banking business other than a Saturday or Sunday in New South Wales.

**Certificate Provider** means a person who is an accredited abatement certificate provider under the Act and whose accreditation is in force.

**Change in Control** means any circumstances where the power (whether directly or indirectly including through interposed entities, and by whatever means):

- (a) to exercise, or control the exercise, of one half or more of the voting power attaching to the shares in the Panel Member;
- (b) to dispose of, or control the disposal of, more than or equal to one half (by value) of the shares in the Panel Member;
- (c) to appoint, or control the appointment of, the Panel Member's directors having more than or equal to one half of the votes at board meetings; or
- (d) to determine, or control the determination of, the conduct of the Panel Member's business,

resides with any person other than those holding that power or benefit at the date of this Agreement.

**Commencement Date** means the date of this Agreement.

**Confidential Information** has the meaning set out in clause 12.1.

**Conflict of Interest** means any agreement, arrangement or understanding or any activity which conflicts or is likely to conflict with or affects the Panel

Member's ability to perform any Services undertaken or being undertaken by the Panel Member under this Agreement.

**Contract Material** means all documentation, information and material (other than Scheme Participant Material) brought into existence as part of (or for the purpose of) the Panel Member undertaking any Services (including, without limitation, any documents, equipment, information and data stored by any means including any Intellectual Property in or in relation to them).

**Deed Poll** means a deed poll in the form set out in Schedule 5.

**Effective Date of Termination** means the date on which termination of the Agreement takes effect, as specified in:

- (a) the notice of termination issued under clause 19.1 (in the case of the Agreement being terminated under that clause); or
- (b) the notice of termination issued under clause 19.2 (in the case of the Agreement being terminated under that clause).

**Existing Nominated Audit Services** are Audit Services which form part of the Nominated Audit Services immediately prior to the Tribunal giving a written notice under clause 10.1 or clause 10.3.

**Greenhouse Gas Benchmark** for a Benchmark Participant means the benchmark for a year, in tonnes of carbon dioxide equivalent of greenhouse gas emissions, determined for the Benchmark Participant under the Act.

**Greenhouse Gas Benchmark Rules** means a greenhouse gas benchmark rules approved under section 97K of the Act.

**Information Privacy Principles** has the meaning given to that term in the *Privacy Act 1988 (Cth)*.

**Insolvent** means any event or circumstance where the Panel Member:

- (a) is, or states that it is, unable to pay its debts as and when they fall due or stops or suspends, or threatens to stop or suspend, payment of any debt;
- (b) is the subject of an application made to a court for the appointment of a liquidator or provisional liquidator that is not set aside, revoked, stayed or dismissed within 14 days of being made;
- (c) enters, or resolves to enter, into any composition, scheme of arrangement, deed of company arrangement with, or assignment for the benefit of, all or any class of its creditors, or proposes a reorganisation, moratorium or other administration involving any of them (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (d) passes any resolution to wind itself up, or otherwise dissolves or gives notice of its intention to do so or is otherwise being dissolved (other than for the purpose of a bona fide and solvent reconstruction or amalgamation);
- (e) becomes subject to an order that it be wound up;

- (f) appoints, or there is appointed, a liquidator or provisional liquidator in respect of it whether or not appointed pursuant to a court order;
- (g) takes any steps to obtain protection, or is granted protection from, all or any of its creditors under any applicable law or an administrator is appointed;
- (h) is or makes a statement from which it may be reasonably deduced that it is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act 2001*;
- (i) as a result of the operation of section 459F of the *Corporations Act 2001*, it is taken to have failed to comply with a statutory demand; or
- (j) is subject to the appointment of a controller (as defined in the *Corporations Act 2001*) in respect of all or any part its property.

**Intellectual Property** means all rights in copyright, patents, registered and unregistered trade marks, registered designs, trade secrets and any other intellectual property right recognised by New South Wales and Australian law.

**Key Personnel** means:

- (a) any person identified in Item 5 of Schedule 1; or
  - (b) any person who has been included as Key Personnel under clause 7.2,
- unless that person has been subsequently removed under clause 7.2.

**Lead Auditor** means:

- (a) any person identified in Item 4 of Schedule 1; or
  - (b) any person who has been included as a Lead Auditor under clause 7.2,
- unless that person has been subsequently removed under clause 7.2.

**Loss** means any cost, expense, loss, liability or damage (however incurred, whether directly or indirectly, and whether or not foreseeable) including loss of profit, loss of revenue, loss of opportunity, loss of use, loss of goodwill, increased cost of working or any business interruption costs.

**Nominated Audit Services** means any Audit Services specified in Item 3 of Schedule 1, subject to clause 9.3 and clause 10.2.

**Notice** means a notice under clause 22.

**Panel** means the panel referred to in clause A of the Background at the beginning of this Agreement.

**Panel Member** means the party to this Agreement identified as the "Panel Member" at the commencement of this Agreement.

**Performance Reviewer** means the Tribunal or any other person appointed by the Tribunal.



**Personal Information** means personal information as defined under the *Privacy Act 1988 (Cth)*.

**Privacy Commissioner** means the person appointed to perform the functions of Privacy Commissioner under Division 1 of Part 4 of the *Privacy Act 1988 (Cth)*.

**Registers** means each of the following:

- (a) the register of accredited abatement Scheme Participants established for the purposes of section 97GA of the Act; and
- (b) a register of abatement certificates established for the purposes of section 97GB of the Act.

**Regulations** means the *Electricity Supply (General) Regulation 2001*.

**Regulatory Authority** means any Federal, State or Territorial government or government authority, agency, department or entity (whether incorporated or not).

**Regulatory Requirement** means any Act of Federal, State or Territory Parliament, regulation, rule, ordinance, Ministerial direction or order that applies to the performance or manner of performance of the Services under this Agreement.

**Related Parties** has the meaning given to that term in the *Corporations Act 2001 (Cth)*.

**Renewable Energy Certificates** means a certificate created under Division 4 of Part 2 of the *Renewable Energy (Electricity) Act 2000 (Cth)*.

**Scheme Participant** means a Benchmark Participant or a Certificate Provider.

**Scheme Participant Material** means:

- (a) any documentation, information or material supplied by a Scheme Participant (by whatever means) to the Panel Member or to the Tribunal in connection with the undertaking of any Services by the Panel Member for the Scheme Participant or for the Tribunal;
- (b) all documentation, information and material brought into existence as part of (or for the purpose of) the Panel Member undertaking any Nominated Audit Services for a Scheme Participant (including, without limitation, any documents, equipment, information and data stored by any means including any Intellectual Property in or in relation to them).

**Services** means Nominated Audit Services or Technical Services.

**Technical Services** means the provision of any advice or assistance required by the Tribunal (whether on its own account or in its capacity as Scheme Administrator) in relation to:

- (a) the Tribunal's determining of any of the following:
  - (1) the extent to which a Scheme Participant has complied with its obligations under the Act or Regulations;

- (2) the methodology for calculating the number of tonnes of carbon dioxide equivalent of greenhouse gas emissions abated or to be abated by an activity, including activities the subject of Renewable Energy Certificates;
- (3) the methodology for calculating the Greenhouse Gas Benchmark for a Benchmark Participant;
- (4) the methodology for determining whether a Benchmark Participant has complied with its Greenhouse Gas Benchmark in any year;
- (5) the methodology for determining the total number of megawatt hours of electricity supplied or purchased by a Scheme Participant in a year;
- (6) the methodology for determining the NSW pool coefficient for greenhouse gas emissions;
- (7) the methodology for determining the state population in any year;
- (b) the preparation of the Tribunal's annual report under section 97HF of the Act;
- (c) assisting the Tribunal with the monitoring and investigation of Scheme Participants for the purpose of determining their compliance with the requirements of the Act, the Regulations or the Greenhouse Gas Benchmark Rules;
- (d) any other matter required by the Tribunal in connection with the performance of the Tribunal's statutory functions, rights or obligations.

**Term** means the term of this Agreement referred to in clause 2.

**Tribunal** means the Independent Regulatory and Pricing Tribunal in its own right and in its capacity as Scheme Administrator under the Act.

**Tribunal Material** means any documentation, information or material supplied by the Tribunal (by whatever means) to the Panel Member or to a Scheme Participant in connection with the undertaking of any Services by the Panel Member for the Scheme Participant or for the Tribunal.

## 1.2 Interpretation

In this Agreement unless the context requires otherwise:

- (a) references to clauses or schedules are references to clauses or schedules of this Agreement;
- (b) the singular includes the plural and vice versa;
- (c) a gender includes the other genders;
- (d) headings are used for convenience only and do not affect the interpretation of this Agreement;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;

- (f) if something is to be done on a day which is not a Business Day then that thing must be done on the next or following Business Day;
- (g) **person** includes a natural person and any body or entity whether incorporated or not;
- (h) **month** means calendar month and "year" means 12 months;
- (i) **in writing** includes any communication sent by letter, facsimile transmission or email;
- (j) a reference to any statute, proclamation, rule, regulation or ordinance includes any amendment, consolidation, modification, re-enactment or reprint of it or any statute, proclamation, rule, regulation or ordinance replacing it. A reference to a specified section, clause, paragraph, schedule or item of any statute, proclamation, rule, regulation or ordinance means a reference to the equivalent section of the statute, proclamation, rule, regulation or ordinance which is for the time being in force;
- (k) **including** and similar expressions are not words of limitation; and
- (l) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed ("defunct body"), means the agency or body which performs most closely the functions of the defunct body.

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## 2 Term

This Agreement commences on the date of the Agreement and continues until it is terminated under clause 19.

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## 3 Appointment of Panel Member

### 3.1 Appointment of Panel Member to Panel to Undertake Services

The Tribunal appoints the Panel Member to the Panel to undertake:

- (a) any Nominated Audit Services for Scheme Participants in accordance with clause 4 and Schedule 2 (and as otherwise required by this Agreement); and
- (b) any Services for the Tribunal in accordance with clause 5 and Schedule 3 (and as otherwise required by this Agreement),

subject to the Panel Member's Lead Auditors and Key Personnel undertaking any training required by the Tribunal under clause 6.3.

### 3.2 Acceptance of Appointment and Acknowledgement by Panel Member

- (a) The Panel Member accepts the appointment referred to in clause 3.1 and agrees to undertake:

- (1) any Nominated Audit Services undertaken for Scheme Participants;  
and
  - (2) any Services undertaken for the Tribunal,
- in accordance with this Agreement.
- (b) The Panel Member acknowledges that in appointing the Panel Member to the Panel, the Tribunal does not in any way warrant, represent or undertake that the Panel Member will necessarily be engaged to perform any Services under this Agreement.

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## **4 Nominated Audit Services Undertaken for Scheme Participants**

### **4.1 Panel Member May Undertake Nominated Audit Services for Scheme Participants**

The Panel Member may undertake any Nominated Audit Services for a Scheme Participant, provided:

- (a) the Panel Member has been nominated by the Tribunal, or chosen by a Scheme Participant, to provide those Services for the Scheme Participant;
- (b) the Panel Member has provided written notice to the Scheme Participant and to the Tribunal that the Panel Member:
  - (1) is willing to undertake those Services; and
  - (2) is not (and for the period during which the Services will be provided is unlikely to be) affected by any Conflict of Interest in undertaking those Services; and
- (c) the Panel Member has provided to the Tribunal such information as may be required by the Tribunal (subject to any confidentiality or other legal obligations of the Panel Member in relation to that information) to enable the Tribunal to satisfy itself concerning the Panel Member's notice under clause 4.1(b)(2).

### **4.2 Nominated Audit Services for Scheme Participants to be Undertaken under Schedule 2**

Any Nominated Audit Services which the Panel Member is entitled to undertake for a Scheme Participant in accordance with clause 4.1, must be undertaken in accordance with Schedule 2 and as otherwise required by this Agreement.

### **4.3 Panel Member Not to Undertake Audit Services other than Nominated Audit Services**

The Panel Member must not undertake for a Scheme Participant any Audit Services (as defined in clause 1.1) which are not Nominated Audit Services.

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## **5 Services Undertaken for the Tribunal**

### **5.1 Issue of Written Request by the Tribunal**

- (a) At any time during the Term of this Agreement, the Tribunal may issue a written request to the Panel Member to undertake any Services specified by the Tribunal in that request.
- (b) For the avoidance of doubt, any written communication to the Panel Member in connection with the undertaking of any Nominated Audit Services by the Panel Member:
  - (1) will only be taken to be a written request under clause 5.1(a) if the written communication expressly states that it is a written request under that clause; and
  - (2) will otherwise be taken to be a written communication relating to Nominated Audit Services proposed to be (or already being) undertaken for a Scheme Participant under clause 4.

### **5.2 Issue of Notice in Response by the Panel Member**

Within 7 days of receiving a written request from the Tribunal under clause 5.1 the Panel Member must issue a written notice to the Tribunal, stating:

- (a) whether or not (at the Panel Member's sole discretion) the Panel Member will undertake the Services specified in the Tribunal's request; and
- (b) (where the Panel Member will undertake those Services) that the Panel Member is not, and for the period during which the Services will be provided is unlikely to be, affected by any Conflict of Interest in undertaking the Services.

### **5.3 Services for the Tribunal to be Undertaken under Schedule 3**

If the Panel Member issues a written notice to the Tribunal under clause 5.2 stating that the Panel Member is willing to undertake Services specified in a written request by the Tribunal issued under clause 5.1, then the Panel Member must undertake those Services for the Tribunal in accordance with Schedule 3 and as otherwise required by this Agreement.

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## **6 General Obligations of Panel Member (Applicable to all Services)**

### **6.1 Compliance with Law**

In undertaking any Services for the Tribunal or for a Scheme Participant the Panel Member must comply, and ensure that its Lead Auditors and Key Personnel comply with all of the requirements of:

- (a) this Agreement;
- (b) the Act and the Regulations;
- (c) the Greenhouse Gas Benchmark Rules; and

- (d) and any other applicable Regulatory Requirement.

## 6.2 Competency

Without limiting clause 6.1, in undertaking any Services for the Tribunal or for a Scheme Participant, the Panel Member must:

- (a) exercise the utmost good faith in the interests of the Tribunal and undertake the Services in an ethical manner;
- (b) undertake the Services:
  - (1) diligently and efficiently with the standard of skill, care and diligence expected of a person with the requisite skills and expertise to provide the Services; and
  - (2) so as to ensure they are fit for their intended purposes;
- (c) use suitably qualified personnel and devote and employ sufficient resources and labour to ensure that the Services are completed as required by this Agreement;
- (d) use designs, materials, documents, methods of work and Panel Member's Material which do not infringe any third party intellectual property rights;
- (e) comply with any guidelines or policies notified to the Panel Member by the Tribunal from time to time;
- (f) notify the Tribunal of any information required from the Tribunal by the Panel Member, to enable the Panel Member to undertake the Services;
- (g) promptly acknowledge any communication received from the Tribunal; and
- (h) comply, and ensure that all Lead Auditors and Key Personnel comply, with any lawful direction given by the Tribunal in relation to the Services (including any direction or request to provide information reasonably required by the Tribunal); and
- (i) immediately notify the Tribunal of any event, issue or circumstance that may give rise to a claim against the Tribunal.

## 6.3 Training

- (a) The Panel Member must ensure that all of its Lead Auditors and Key Personnel:
  - (1) undertake any training reasonably required from time to time by the Tribunal for the purpose of ensuring that they maintain, develop and improve the skills and expertise necessary to undertake any Services in accordance with this Agreement; and
  - (2) complete that training to the satisfaction of the Tribunal.
- (b) Neither the Panel Member nor any of its Lead Auditors or Key Personnel will be entitled to any payment for undertaking any training under clause 6.3(a). The Tribunal will not charge the Panel Member or any of its Lead Auditors or Key Personnel any fee for providing that training.

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## **7 Lead Auditors and Key Personnel**

### **7.1 Lead Auditors and Key Personnel to Undertake Services**

The Panel Member must ensure that for any Services undertaken by the Panel Member:

- (a) a Lead Auditor must direct, supervise and lead the undertaking of those Services and sign all written reports or opinions provided by the Panel Member (where the Services are Nominated Audit Services);
- (b) the Services are undertaken by the Key Personnel; and
- (c) any other staff, employees or contractors used by the Panel Member in connection with the Services:
  - (1) are used only to assist any Lead Auditor and the Key Personnel (who must at all times maintain their involvement with the undertaking of the Services as set out in clauses 7.1(a) and 7.1(b)); and
  - (2) must work under the direct control, supervision and direction of any Lead Auditor and the Key Personnel.

### **7.2 Change of Lead Auditors and Key Personnel**

- (a) At any time the Panel Member may apply to the Tribunal for the Tribunal to remove or include a person as a Lead Auditor or as Key Personnel.
- (b) At any time and at its sole discretion the Tribunal may (either on its own initiative or following receipt of an application under clause 7.2(a)) determine that a person should be removed or included as:
  - (1) a Lead Auditor; or
  - (2) Key Personnel,and the Tribunal may notify the Panel Member accordingly in writing.
- (c) With effect from the Business Day immediately following the date of issue of a written notice under clause 7.2(b) the person the subject of that notice will be taken to be removed or included (as the case may be) as a Lead Auditor or as Key Personnel for the purposes of this Agreement.

### **7.3 Warranty**

The Panel Member warrants that each Lead Auditor and each of the Key Personnel has and will maintain the requisite skill, competence, and experience to undertake the Services and will remain appropriately qualified and licensed (where applicable) to undertake the Services.

### **7.4 Confidentiality**

The Panel Member must ensure that each Lead Auditor and each of the Key Personnel has agreed to be bound by the confidentiality obligations under clause 12 prior to undertaking any Services.

## **7.5 Panel Member Responsible**

The Panel Member will at all times remain responsible under this Agreement for the undertaking of any Services by any Lead Auditor or any of the Key Personnel (including for any breach of this Agreement by any Lead Auditor or by any Key Personnel).

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# **8 Periodic Review of Panel Member's Performance**

## **8.1 Conduct of Performance Review**

- (a) The Performance Reviewer may conduct a performance review:
  - (1) at any time required by the Tribunal (upon first giving the Panel Member 7 days written notice); or
  - (2) at regular periodic intervals (as determined by the Tribunal),of all matters relating to the Panel Member's performance of any Services undertaken for the Tribunal or for any Scheme Participant.
- (b) Any performance review under clause 8.1(a) may follow any process or format determined by the Tribunal.
- (c) During the course of any performance review under clause 8.1(a), the Panel Member must:
  - (1) provide to the Performance Reviewer any reports, documents or information required by the Performance Reviewer in connection with any Services undertaken by the Panel Member;
  - (2) authorise Scheme Participants for whom the Panel Member has undertaken any Nominated Audit Services to provide the Performance Reviewer with any information or assistance required by the Performance Reviewer;
  - (3) give the Performance Reviewer full and free access during normal business hours to all of the records, documents, books of account and other information maintained by the Panel Member in connection with the undertaking of any Services; and
  - (4) promptly provide the Performance Reviewer with such other assistance as the Tribunal may from time to time request.

## **8.2 Outcomes of Performance Review**

- (a) Following completion of any performance review conducted under clause 8.1, the Tribunal will report to the Panel Member on the:
  - (1) conclusions reached and any recommendations made by the Performance Reviewer; and
  - (2) any recommendations of the Performance Reviewer which are endorsed by the Tribunal.



- (b) The recommendations by the Performance Reviewer may include (without limitation) recommendations as to:
  - (1) any training or any other steps or measures to be undertaken by the Panel Member (or by any of its Lead Auditors or Key Personnel) to maintain, develop or improve the skills or expertise of any Lead Auditors or Key Personnel in relation to any Services;
  - (2) the suitability of the Panel Member (or any of its Lead Auditors or Key Personnel) to apply to the Tribunal for any Additional Services to be included within the Services under clause 9;
  - (3) any conditions to be imposed on the Panel Member in relation to the undertaking of any Services by the Panel Member (and any amendments to be made to this Agreement by the Tribunal to give effect to those conditions);
  - (4) the withdrawal of any Existing Nominated Audit Services from the Nominated Audit Services under clause 10; or
  - (5) the termination of this Agreement by the Tribunal under clause 19.
- (c) Following the Tribunal's report to the Panel Member under clause 8.2(a), the Panel Member must:
  - (1) take any steps or measures and undertake any training which the Performance Reviewer recommends and which are endorsed by the Tribunal;
  - (2) comply with any conditions which the Performance Reviewer recommends under clause 8.2(b)(3) and which are endorsed by the Tribunal.

---

## **9 Inclusion of Additional Audit Services within the Nominated Audit Services**

### **9.1 Application by the Panel Member**

At any time during the Term of this Agreement, the Panel Member may apply to the Tribunal for approval to have Additional Audit Services included within the Nominated Audit Services (in accordance with any application and approval processes adopted by the Tribunal from time to time).

### **9.2 Determination by the Tribunal**

The Tribunal will determine (at its sole discretion):

- (a) any training requirements which must be completed (to the satisfaction of the Tribunal) as a pre-requisite to the granting of any approval for the inclusion of any Additional Audit Services within the Nominated Audit Services;
- (b) whether or not to approve the inclusion of any Additional Audit Services within the Nominated Audit Services.

### **9.3 Consequences of Tribunal's Determination**

If the Tribunal determines under clause 9.2(b) that any Additional Audit Services should be included within the Nominated Audit Services, then from the date of that determination all references in this Agreement to Nominated Audit Services will be taken to include those Additional Audit Services.

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## **10 Withdrawal of Existing Nominated Audit Services from Nominated Audit Services**

### **10.1 Notice of Withdrawal of Existing Nominated Audit Services**

At any time during the Term of this Agreement, whether:

- (a) as a result of any recommendation by the Performance Reviewer under clause 8; or
- (b) for any other reason,

either party may give 7 days written notice to the other stating that any Existing Nominated Audit Services are being withdrawn from the Nominated Audit Services.

### **10.2 Consequences of Notice of Withdrawal of Existing Nominated Audit Services**

With effect on and from 7 days after the date on which any notice under clause 10.1 is given, all references in this Agreement to Nominated Audit Services will be taken to no longer include the Existing Nominated Audit Services referred to in that notice.

### **10.3 Suspension of Existing Nominated Audit Services by the Tribunal**

- (a) Without prejudice to its rights under clause 10.1, the Tribunal may (in the circumstances set out in clauses 10.1(a) or (b)) give written notice to the Panel Member that the Panel Member is suspended from undertaking any Existing Nominated Audit Services during the Term of this Agreement, with effect from a date to be specified in the notice and:
  - (1) for a period of time specified in the notice; or
  - (2) until further written notice from the Tribunal.
- (b) Neither the Panel Member nor any of its Lead Auditors or Key Personnel may undertake any Services the subject of a notice under clause 10.3(a) until expiry of the period referred to in clause 10.3(a)(1) or (2) (as the case may be).

---

## **11 Intellectual Property**

### **11.1 Ownership of Tribunal Material**

The Panel Member acknowledges that the Tribunal is the owner of Tribunal Material and of the Intellectual Property in or in relation to Tribunal Material.

## **11.2 Ownership of Contract Material**

Subject to clauses 11.3, 11.4 and 11.5, ownership of Intellectual Property in or in relation to Contract Material vests upon its creation in the Panel Member.

## **11.3 Panel Member to Make Contract Material Available**

- (a) The Panel Member must (at its own cost) ensure that the Tribunal is irrevocably licensed to use and take copies of all:

- (1) Contract Material;
- (2) Scheme Participant Material; and
- (3) Intellectual Property in or in relation to Contract Material already owned by a person other than the Tribunal (and which therefore cannot vest in the Panel Member under clause 11.2),

as may be required by the Tribunal to enable the Tribunal to fulfil any of its statutory rights or obligations.

- (b) The Panel Member must ensure all licence fees and consents required under law are paid for and obtained as a result of any reproduction, adaptation or use of any:

- (1) Contract Material;
- (2) Scheme Participant Material; or
- (3) Intellectual Property in or in relation to the Contract Material or the Scheme Participant Material,

necessary for the undertaking of any Services.

## **11.4 Delivery of Contract Material**

Upon completion of the undertaking of any Services or upon termination of this Agreement, the Panel Member must comply with the requirements of clause 12 of Schedule 2 and clause 12 of Schedule 3..

## **11.5 Limitations on Use**

The Panel Member must use Tribunal Material and Contract Material only for the purposes of this Agreement, unless the Panel Member has obtained the prior written approval of the Tribunal to do otherwise.

---

# **12 Confidential Information**

## **12.1 Definition of Confidential Information**

In this clause, "Confidential Information" means:

- (a) Tribunal Material;
- (b) Contract Material;

- (c) Scheme Participant Material;
- (d) any information marked confidential or information which the Tribunal stipulates (in writing or otherwise) is information of a confidential nature or which may reasonably be understood to be of a confidential nature; and
- (e) any information in connection with the Services or this Agreement.

## **12.2 Panel Member Must Not Disclose Confidential Information**

The Panel Member agrees that:

- (a) it will not disclose the Confidential Information to any person without the prior written consent of the Tribunal;
- (b) it will not disclose the Scheme Participant Material to any person without the prior written consent of the Scheme Participant;
- (c) it will not make use of or take advantage of the Confidential Information for any purpose other than for the purpose of undertaking any Services; and
- (d) it will take reasonable steps to ensure that the Confidential Information in its possession is kept confidential and protected against unauthorised use or access.

## **12.3 Exclusions from Panel Member's Confidentiality Obligations**

The obligation of confidentiality in this clause does not extend to that Confidential Information which:

- (a) is already within the public domain, other than as a result of a breach of this Agreement; or
- (b) is required to be disclosed by law.

## **12.4 Permitted Disclosures**

The Panel Member may disclose the Confidential Information to its Lead Auditors, Key Personnel, officers, employees or agents, solely for the purpose of undertaking any Services and upon obtaining written assurance from them to maintain the confidentiality of the Confidential Information. If any such person breaches its assurance the Panel Member will be liable to the Tribunal for that breach and for the damages resulting from that breach.

## **12.5 Confidentiality Obligation to Survive Termination of Agreement**

The obligations of confidentiality in this clause will survive the expiration or termination of this Agreement.

## **12.6 Publicity**

- (a) Subject to clause 12.6(b), the Panel Member must not make any press or other public announcement or press release relating to this Agreement or any Services undertaken for the Tribunal or for a Scheme Participant in accordance with this Agreement, without the written consent of the

Tribunal (except to the extent that the announcement or release is required to be made by law or by a stock exchange).

- (b) Despite clause 12.6(a), the Panel Member may make press or other public announcements or press releases stating the fact of:
  - (1) the Panel Member being appointed to the Panel; or
  - (2) the Panel Member undertaking (or having completed) any specific Services for a Scheme Participant or for the Tribunal.

---

## 13 Protection of Personal Information

The Panel Member agrees to:

- (a) use Personal Information held or controlled by it in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (b) take all reasonable measures to ensure that Personal Information in its possession or control in connection with this Agreement is protected against loss and unauthorised access, use, modification or disclosure;
- (c) comply with the Information Privacy Principles contained in the *Privacy Act 1988* to the extent that the content of those principles apply to the types of activities the Panel Member is undertaking under this Agreement, as if the Panel Member were an agency as defined in the Act;
- (d) cooperate with any reasonable demands or inquiries made by the Tribunal on the basis of the exercise of the functions of the Privacy Commissioner under the *Privacy Act 1988* including, but not limited to, a request from the Tribunal to comply with a guideline concerning the handling of Personal Information;
- (e) ensure that any person who has an access level which would enable that person to obtain access to any Personal Information is made aware of, and undertakes in writing, to observe the Information Privacy Principles and other obligations referred to in this clause;
- (f) comply as far as practicable with any policy guidelines laid down by the Commonwealth or issued by the Privacy Commissioner from time to time relating to the handling of Personal Information; and
- (g) comply with any direction of the Tribunal to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Contractor that the Privacy Commissioner considers breaches the obligations in this clause.

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## 14 Conflict of Interest

- (a) The Panel Member and its Related Parties must not enter into any agreement, arrangement or understanding or participate in any activity which amounts to a Conflict of Interest, without the prior written consent of the Tribunal.

- (b) The Panel Member must notify the Tribunal of any potential Conflict of Interest as soon as the Panel Member becomes aware of it.
- (c) Upon being notified under clause 14(b), the Tribunal may:
  - (1) require the Panel Member to provide such information as may be required by the Tribunal (subject to any confidentiality or other legal obligations of the Panel Member in relation to that information); or
  - (2) meet with the Panel Member,to determine the nature of the potential Conflict of Interest.
- (d) Upon considering the nature of the potential Conflict of Interest, the Tribunal may (in its absolute discretion) direct the Panel Member not to enter into any agreement, arrangement or understanding which may amount to a Conflict of Interest and the Panel Member must comply with any such direction.
- (e) Despite anything else in this clause 14, the Panel Member and each of its related Parties must not (on its own account) own, acquire or dispose of any interest in a greenhouse gas abatement certificate under the Act.

---

## 15 Goods and Services Tax

### 15.1 Liability for GST

- (a) If a party (**Supplier**) makes a taxable supply under or in connection with this Agreement, then the party that is required under this Agreement to provide the consideration for that taxable supply (**Payer**) must also, pay an additional amount equal to the GST payable by the Supplier on that taxable supply. Such additional amount is to be paid at the time the Payer is required to provide the first part of the consideration for that supply under the other provisions of this Agreement, however, no such additional amount will be payable until the Supplier has provided the Payer with a tax invoice for the taxable supply in respect of which the additional amount is payable.
- (b) Any consideration that is required to be provided under this Agreement that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount incurred less the amount of any input tax credit to which an entity is entitled for its acquisition to which that cost, expense or other amount relates.

### 15.2 Defined GST Terms

For the purpose of this clause 15:

- (a) the terms "**GST**," "**taxable supply**," "**tax invoice**" and any other terms that are defined in the *A New Tax System (Goods and Services Tax) Act 1999* have the meanings ascribed to them by that Act;
- (b) any reference to GST payable by a party includes any GST payable by the representative member of any GST group of which that party is a member; and

- (c) if the GST law treats part of a supply as a separate supply for the purpose of determining whether GST is payable on that part of the supply, or for the purpose of determining the tax period to which that part of the supply will be attributable, such part of the supply will be treated as a separate supply.

---

## **16 Indemnity and Liability**

### **16.1 Indemnity**

Subject to clauses 16.2 and 16.3, the Panel Member must indemnify, and keep indemnified, the Tribunal and its officers, agents, employees and contractors from and against any Loss incurred by the Tribunal arising out of or in connection with:

- (a) any breach of this Agreement by the Panel Member or any of its Lead Auditors, Key Personnel, officers, agents, employees or contractors; or
- (b) any negligent act or omission of the Panel Member or any of its Lead Auditors, Key Personnel, officers, agents, employees or contractors.

### **16.2 Exclusions**

The indemnity in clause 16.1 above does not cover any Loss which results from:

- (a) the negligence or wilful misconduct by the Tribunal (or its officers, employees, agents or contractors); or
- (b) any breach of this Agreement by the Tribunal (or its officers, employees, agents or contractors).

### **16.3 Limitation of Liability**

Despite any other provision of this Agreement, the Panel Member's liability to the Tribunal for any breach of this Agreement or any negligent act or omission by the Panel Member (or by any of its Lead Auditors, Key Personnel, officers, agents, employees or contractors) will not exceed:

- (a) in respect of the Nominated Audit Services:
  - (1) \$1,000,000 for all claims arising in relation to any single breach of this Agreement or any single negligent act or omission; and
  - (2) a total amount of \$5,000,000 for all claims arising in relation to this Agreement and all negligent acts or omissions relating to any Nominated Audit Services undertaken under this Agreement; and
- (b) in respect of the Technical Services, \$1 million for all claims arising in relation to this Agreement and all negligent acts or omissions relating to any Technical Services undertaken under this Agreement.

### **16.4 Survival**

This clause 16 survives termination or expiration of this Agreement.

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## 17 Insurance

### 17.1 Panel Member to Insure

In addition to the Panel Member's professional indemnity insurance obligations under Schedule 2 and Schedule 3, the Panel Member must at its own expense, effect and maintain the following insurance policies with a reputable insurer:

- (a) public liability insurance cover for an amount of at least \$5 million for any one or more claims arising out of the same set of circumstances; and
- (b) workers compensation insurance which complies with the requirements of the *Workers Compensation Act 1987* and covers the Panel Member's Lead Auditors, Key Personnel, officers, employees, agents and contractors while they are working for the Panel Member or are at the Panel Member's premises.

### 17.2 Terms of Insurance

The Panel Member must inform the Tribunal immediately after:

- (a) the Panel Member becomes aware of any actual or threatened claims made under any of the insurances referred to in clause 17.1; and
- (b) the insurer gives notice of cancellation or suspension of a policy (including for non-payment of premium) or any other notice in respect of any of the insurances referred to in clause 17.1.

### 17.3 Certificates of Insurance

Within 3 Business Days of being requested to do so by the Tribunal, the Panel Member must produce a certificate or certificates of insurance to the Tribunal as evidence that the insurance policies required under this Agreement are in full force and effect.

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## 18 Resolution of disputes

### 18.1 Mandatory Mediation

- (a) If a dispute or difference arises between the parties in relation to the undertaking of any Services (for any Scheme Participant or for the Tribunal) the parties must attempt to resolve the dispute or difference by mediation.
- (b) The mediator will be a person agreed by the parties within 14 days of any party sending a notice in writing to the others requesting mediation. If the parties fail to reach agreement on a mediator within that time, any party may request the Australian Commercial Disputes Centre to appoint a mediator and the mediator will be so appointed.
- (c) During the course of any mediation, each party must be represented by a person having authority to agree to a resolution of the dispute.



## 18.2 Arbitration

- (a) If the dispute or difference has not been resolved by mediation within 28 days after the appointment of the mediator, or such other period as agreed to in writing between the parties, any party may by written notice to the others refer the dispute or difference to arbitration by an arbitrator agreed to by the parties.
- (b) If they are unable to agree on the appointment of an arbitrator within 14 days of one party giving the other a written notice under clause 18.2(a), then either party may send a written request to the President for the time being of the Institute of Arbitrators and Mediators Australia, to appoint an arbitrator and the arbitrator will be so appointed.
- (c) Any arbitration will be conducted in accordance with, and subject to, the *Commercial Arbitration Act 1984 (NSW)* and the Institute of Arbitrators and Mediators Australia Rules for the Conduct of Commercial Arbitrations.

## 18.3 Urgent Proceedings

Despite clauses 18.1 and 18.2, a party may institute court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

## 18.4 Continued Operations Despite Dispute

Despite the commencement of any mediation, arbitration or litigation under this clause, the parties must continue to perform their respective obligations under this Agreement in accordance with its provisions, except to the extent that the obligations which are the subject of the dispute or difference cannot be performed until the dispute or difference has been resolved.

---

# 19 Termination

## 19.1 Termination for Default

The Tribunal may by written notice issued to the Panel Member terminate this Agreement with effect from any date specified in the notice (provided that date is not prior to the date of issue of the notice), if:

- (a) the Panel Member breaches this Agreement and fails to remedy that breach within 10 Business Days of being requested in writing to do so by the Tribunal;
- (b) the Panel Member becomes Insolvent;
- (c) a Change in Control occurs, without the Tribunal's written consent.

## 19.2 Termination for Convenience

At any time during the Term of this agreement and for any reason, either party may by written notice issued to the other terminate this Agreement with effect from a date specified in the notice (provided that date is at least 30 days after the date of issue of the notice).

### **19.3 Consequences of Termination**

- (a) Termination under this clause 19 does not affect any rights, powers, remedies, duties and obligations of the parties which have accrued as at the Effective Date of Termination (including the Panel Member's right to payment for any Services undertaken for the Tribunal up to the Effective Date of Termination).
- (b) Without limiting clause 19.3(a), in the case of any termination of this Agreement under clause 19.1, the Panel Member must compensate the Tribunal for any Loss, incurred by the Tribunal in connection with the matters giving rise to the termination and in connection with such termination.
- (c) The Tribunal may set-off any amount payable by the Panel Member under this clause 19.3, against any amounts owed to the Panel Member by the Tribunal under this Agreement.

### **19.4 Panel Member to Cease**

Upon the Effective Date of Termination the Panel Member will be removed from the Panel and must have completed (or ceased undertaking) any Services.

### **19.5 Tribunal's Rights on Termination or Expiry of Agreement**

On the Effective Date of Termination, the Panel Member:

- (a) must return all Confidential Information to the Tribunal (or to the Scheme Participant, in the case of Scheme Participant Material) in such form or format as is required by the Tribunal; and
- (b) destroy all copies of all Confidential Information in the possession (or under the control) of the Panel Member, except for such copies as the Panel Member may need to retain to enable the Panel Member to comply with any statutory requirements (or the requirements of any statutory or professional body governing or regulating the conduct or activities of the Panel Member).

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## **20 Amendment of this Agreement**

### **20.1 Amendment by Tribunal**

- (a) At any time during the Term of this agreement the Tribunal may amend this Agreement as it sees fit, provided that it has given one month's prior written notice of the amendment to the Panel Member.
- (b) Any amendment made by the Tribunal under clause 20.1(a) will not apply in respect of any Services which the Panel Member has commenced undertaking prior to the date on which the amendment takes effect.

### **20.2 Amendment by the Panel Member**

The Panel Member may only amend this Agreement with the written consent of the Tribunal (which may be given or withheld in the Tribunal's absolute discretion).

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## 21 Assignment

### 21.1 No Assignment Without Consent

Subject to clause 21.2 and 21.3, neither party may assign or novate the benefit of any right, or transfer any obligation or liability, under this Agreement without the prior written consent of the other party.

### 21.2 Assignment by Tribunal

Subject to clause 21.3, the Tribunal may assign or novate the benefit of any right, and transfer any obligation or liability, under this Agreement to any person who:

- (a) assumes the functions and responsibilities of the Tribunal under the Act (whether on its own account or in its capacity as Scheme Administrator) or under any other Regulatory Requirement; or
- (b) becomes responsible for administering any Replacement Greenhouse Gas Emission Reduction Scheme.

### 21.3 Assignment Conditional

The Tribunal's rights under clause 21.2 are conditional upon the assignee:

- (a) agreeing to accept responsibility for the Tribunal's obligations under this Agreement; and
- (b) having sufficient financial and operational capacity to meet the Tribunal's obligations under this Agreement.

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## 22 Notices

### 22.1 Notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by a person duly authorised by the sender; and
- (b) must either be delivered to the intended recipient by prepaid post (where posted to an address in another country, by registered airmail) or by hand or fax to the address or fax number last notified by the intended recipient to the sender; and
- (c) will be taken to be duly given or made:
  - (1) in the case of delivery in person, when delivered; and
  - (2) in the case of delivery by post, 2 Business Days after the date of posting (where posted to an address in the same country) or 7 Business Days after the date of posting (where posted to an address in another country); and

(3) in the case of fax, when received in legible form,

but if the result of the foregoing is that a Notice would be taken to be given on a day which is not a Business Day in the place to which the Notice is sent or is later than 4 pm (local time) it will be taken to have been duly given at 9 am on the next Business Day in that place.

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## **23 General**

### **23.1 Remedies Cumulative**

The rights, powers and remedies provided to the parties in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law.

### **23.2 Further Assurances**

Each party agrees to do all things and execute all documents which are reasonably required to give full effect to the provisions of this Agreement and the transactions contemplated by it.

### **23.3 No Merger**

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing any such transaction.

### **23.4 Severability**

If any provision of this Agreement is declared by a court to be illegal, unenforceable or void, that provision will be severed from this Agreement and the remaining provisions of this Agreement will continue to have full force and effect.

### **23.5 Time of the Essence**

Time will be the essence of this Agreement in all respects.

### **23.6 Governing Law**

This Agreement is governed by the laws of New South Wales and each party submits to the non-exclusive jurisdiction of courts of that State.

### **23.7 Waiver**

No right, obligation or remedy arising under or from this Agreement may be waived other than in writing executed by both parties. Any non-exercise or partial exercise of, or any delay in exercising, any right or remedy does not constitute a waiver of that right or remedy.

### **23.8 Entire Agreement**

This Agreement constitutes the entire agreement and understanding of the parties with respect to its subject matter and supersedes any prior agreement, arrangement or understanding, oral or written.

### **23.9 Execution**

This Agreement will not become binding on a party until all parties have executed it. If the parties execute this Agreement on different dates, it will be taken to have effect on and from the date that the last party executes it.

### **23.10 Counterparts**

This Agreement may be executed in one or more counterparts and all of those counterparts taken together will be taken to constitute the Agreement.

### **23.11 Costs**

Except as otherwise specified, each party must bear its own costs arising out of the negotiation, preparation and enforcement of this Agreement.

### **23.12 Stamp Duty**

The Panel Member must pay any stamp duty payable in connection with this Agreement.

## Schedule 1

**Item 1:**                    **Name of Panel Member**

[insert]

**Item 2:**                    **Address of Panel Member**

[insert]

**Item 3:**                    **Nominated Audit Services**

[insert]

**Item 4:**                    **Lead Auditor(s)**

[insert]

**Item 5:**                    **Key Personnel**

Name
[insert]

## **Schedule 2: Terms and Conditions for Nominated Audit Services Undertaken for Scheme Participants**

### **1 Preconditions to Commencing Nominated Audit Services for Scheme Participants**

The Panel Member must not commence undertaking any Nominated Audit Services for a Scheme Participant, until:

- (a) the Panel Member has provided to the Tribunal:
  - (1) a written notice under clause 4.1(b) of the Agreement in respect of those Services;
  - (2) a Deed Poll (in respect of those Services) duly completed and executed by the Scheme Participant;
  - (3) a scope of work for those Services which sets out (in such detail as the Tribunal may require) particulars of:
    - (A) the nature and scope of the Services;
    - (B) a proposed work plan detailing each of the stages of work required to complete the Services;
    - (C) the Lead Auditors and Key Personnel proposed to undertake the Services;
    - (D) the anticipated date for completion of the Services;
    - (E) any other information required by the Tribunal;
- (b)
  - (1) the period referred to in clause 2(a) below has expired, without the Tribunal issuing any notice under that clause to the Panel Member; or
  - (2) the Panel Member has amended the scope of work as required by the Tribunal under any notice issued in accordance with clause 2(a) below;
- (c) the Panel Member has effected professional indemnity insurance, as required under clause 5 below; and
- (d) the Panel Member has entered into a separate contract with the Scheme Participant for the provision of those Services, in accordance with clause 6 below.

### **2 Variations to Scope of Work**

- (a) Within 14 days of receipt of a scope of work under clause 1(a) above, the Tribunal may (by written notice) direct the Panel Member to:
  - (1) amend that scope of work to incorporate any variation requested by the Tribunal (subject to the Panel Member having the technical

capacity and resources necessary to accommodate the variation);  
and

- (2) submit the amended scope of work to the Tribunal within 7 days of the Tribunal's notice.

### **3 Panel Member's Acknowledgement in Respect of Scope of Work**

The Panel Member acknowledges that the rights of the Tribunal (under clauses 1(a) and 2(a) above) in respect of the scope of work are intended entirely for the benefit of the Tribunal and that accordingly:

- (a) the Panel Member will at all times remain responsible for ensuring that the scope of work is prepared with all due care, skill and diligence and that it is fit for the purpose for which it is intended; and
- (b) the Tribunal will not be in any way liable for any Loss suffered or incurred by the Panel Member (or claimed against the Panel Member) in connection with any aspect of the scope of work or the exercise (or non-exercise) of the Tribunal's rights in respect of the scope of work.

### **4 Nominated Audit Services to be Undertaken in Accordance with Scope of Work**

- (a) The Panel Member must undertake any Nominated Audit Services for a Scheme Participant in accordance with:
  - (1) the scope of work for those Services provided to the Tribunal under clause 1(a) above (as amended in accordance with clause 2(a) above); and
  - (2) the requirements of this Agreement.
- (b) The Panel Member must not depart from (or make any further amendments to) that scope of work without obtaining the further written approval of the Tribunal.

### **5 Professional Indemnity Insurance**

Prior to undertaking any Nominated Audit Services for a Scheme Participant, the Panel Member must (at its own expense) effect and maintain:

- (a) a policy of professional indemnity insurance with a reputable insurer;
- (b) in an amount:
  - (1) nominated in writing by the Tribunal within the period of time referred to in clause 2(a) above; or
  - (2) agreed between the Panel Member and the Scheme Participant (if the Tribunal does not nominate an amount in writing within that period of time),

for any one or more claims, arising out of the same set of circumstances.



## **6 Contract with Scheme Participant**

- (a) The Panel Member must enter into a separate contract with any Scheme Participant for whom it provides any Nominated Audit Services.
- (b) That contract may be on such terms and conditions as the Panel Member and the Scheme Participant agree, provided that:
  - (1) the contract expressly provides that any fees and expenses payable to the Panel Member for the Nominated Audit Services are payable by the Scheme Participant (and that the Scheme Participant acknowledges it will have no recourse to the Tribunal for any reimbursement for or contribution towards those fees and expenses);
  - (2) the terms and conditions of the contract are consistent with this Agreement and do not in any way prevent, inhibit or interfere with the Panel Member undertaking the Nominated Audit Services in accordance with the requirements of this Agreement; and
  - (3) the contract expressly provides that if there is any inconsistency between this Agreement and the contract, this Agreement will prevail to the extent of the inconsistency.
- (c) The Panel Member must provide the Tribunal with a copy of any such contract between the Panel Member and a Scheme Participant upon request by the Tribunal.

## **7 Nominated Audit Services Are at the Expense of the Scheme Participant**

The Panel Member acknowledges that any Nominated Audit Services undertaken for a Scheme Participant in accordance with this Schedule:

- (a) will be undertaken at the expense of that Scheme Participant; and
- (b) the Panel Member will accordingly not be entitled to any payment or reimbursement from the Tribunal for any fees or expenses in connection with those Nominated Audit Services.

## **8 Tribunal Entitled to Rely on the Nominated Audit Services**

Despite clauses 6 and 7 above, the Panel Member expressly acknowledges that the Tribunal will be entitled to:

- (a) require the Panel Member to perform (and to rely on the Panel Member performing) any Nominated Audit Services undertaken for a Scheme Participant in accordance with the Panel Member's obligations under clause 4 above; and
- (b) rely on any audit reports or other information prepared by the Panel Member (in the course of undertaking any Nominated Audit Services for a Scheme Participant).

## **9 Termination of Nominated Audit Services for Default**

The Tribunal may by written notice issued to the Panel Member and to the Scheme Participant for whom any Nominated Audit Services are undertaken, direct the Panel Member to cease undertaking those Nominated Audit Services, if:

- (a) the Panel Member breaches this Agreement and fails to remedy that breach within 10 business days of:
  - (1) being requested in writing to do so by the Tribunal; and
  - (2) written notice of the breach being sent to the Scheme Participant by the Tribunal;
- (b) the Panel Member becomes Insolvent; or
- (c) a Change in Control occurs, without the Tribunal's written consent.

## **10 Panel Member to Cease Undertaking Nominated Audit Services**

Upon receiving a notice under clause 9 above, the Panel Member must immediately cease undertaking the Services specified in the notice for the Scheme Participant.

## **11 Consequences of Termination of Nominated Audit Services by the Tribunal**

- (a) The issue of any notice under clause 9 above by the Tribunal will not affect any rights, powers, remedies, duties and obligations of the parties which have accrued as at the date of issue of the notice.
- (b) Without limiting clause 11(a) above, upon the issue of any notice by the Tribunal under clause 9 above, the Panel Member must compensate the Tribunal for any Loss incurred by the Tribunal in connection with:
  - (1) the matters giving rise to the issue of the notice; and
  - (2) the Panel Member ceasing to undertake the Services specified in the notice.
- (c) The Tribunal may set off any amount payable by the Panel Member under this clause 11, against any amounts owed to the Panel Member by the Tribunal under this Agreement.
- (d) The rights of the Tribunal under clauses 9 to 11 above are in addition to (and may be exercised separately from and without prejudice to) the Tribunal's rights under clause 19 of this Agreement.

## **12 Return of Confidential Information**

Upon the Panel Member ceasing to undertake any Nominated Audit Services under clause 10 of this Schedule 2 the Panel Member:

- (1) must (if requested by the Tribunal) return to the Tribunal all Tribunal Material relating to those Services in such form or format as is required by the Tribunal; and

- (2) may (subject to clauses 11 and 12 of this Agreement) retain one copy of the Contract Material and such copies of any other Confidential Information (in the possession or under the control of the Panel Member) as the Panel Member may need to enable the Panel Member to comply with any statutory requirements (or the requirements of any statutory or professional body governing or regulating the conduct or activities of the Panel Member).

## **Schedule 3: Terms and Conditions for Services Undertaken for the Tribunal**

### **1 Preconditions to Commencing Services for the Tribunal**

The Panel Member must not commence undertaking any Services for the Tribunal, until:

- (a) the Panel Member has provided to the Tribunal:
    - (1) a detailed scope of works for those Services which sets out (in such detail as the Tribunal may require) particulars of:
      - (A) the nature and scope of the Services;
      - (B) a proposed work plan detailing each of the stages of work required to complete the Services;
      - (C) any Lead Auditors and the Key Personnel proposed to undertake the Services;
      - (D) the anticipated date for completion of the Services;
      - (E) any other information required by the Tribunal; and
    - (2) a written quote for the costs of undertaking those Services in accordance with the above scope of work which must:
      - (A) itemise a separate cost for each stage of work specified in the scope of work;
      - (B) specify the time (or times) at which an invoice may be issued for the whole or any part of the work undertaken in each of those stages;
      - (C) specify a total cost for the Services;
      - (D) apply the rates set out in Schedule 4 when calculating each of the costs referred to above;
  - (b) the Panel Member has made any amendments to the scope of work and to the written quote for costs referred to above, as required under clause 2 below;
  - (c) the Panel Member has effected professional indemnity insurance, as required under clause 6 below; and
  - (d) the Tribunal has given written approval to the Panel Member to proceed with the Services in accordance with the scope of work and the written quote for costs referred to above (as amended pursuant to clause 2 below).
- ### **2 Variations to Scope of Work and Quote**
- (a) At any time prior to commencing the undertaking of the Services, the Tribunal may (by written notice) require the Panel Member to:

- (1) amend the scope of work to incorporate any variation requested by the Tribunal (subject to the Panel Member having the technical capacity and resources necessary to accommodate the variation); and
  - (2) submit the amended scope of work to the Tribunal within 7 days of the Tribunal's notice.
- (b) When submitting an amended scope of work under clause 2(a) above, the Panel Member may also submit an amended written quote for the costs of undertaking the Services (provided it addresses all of the matters referred to in clause 1(a)(2) above in respect of the amended scope of work).

### **3 Panel Member's Acknowledgement in Respect of Scope of Work**

The Panel Member acknowledges that the rights of the Tribunal (under clauses 1 and 2 above) in respect of the scope of work are intended entirely for the benefit of the Tribunal and that accordingly:

- (a) the Panel Member will at all times remain responsible for ensuring that the scope of work is prepared with all due care, skill and diligence and that it is fit for the purpose for which it is intended; and
- (b) the Tribunal will not be in any way liable for any Loss suffered or incurred by the Panel Member (or claimed against the Panel Member) in connection with any aspect of the scope of work or the exercise (or non-exercise) of the Tribunal's rights in respect of the scope of work.

### **4 Services to be Undertaken in Accordance with Approved Scope of Work and Quote**

- (a) The Panel Member must undertake any Services approved by the Tribunal under clause 1(d) above, in accordance with:
  - (1) the scope of work and the written quote for costs for those Services as approved by the Tribunal under clause 1(d) above; and
  - (2) the requirements of this Agreement.
- (b) The Panel Member must not depart from (or make any further amendments to) that scope of work or that written quote for costs without the further written approval of the Tribunal.

### **5 Timing**

- (a) The Panel Member must:
  - (1) perform any Services undertaken for the Tribunal in accordance with the timing requirements specified in the scope of works approved by the Tribunal under clause 1(d) above; and
  - (2) promptly notify the Tribunal in writing of any actual or anticipated failure of the Panel Member to do so.
- (b) If the Panel Member gives the Tribunal notice under clause 5(a) above, the Tribunal may convene a meeting with the Panel Member to discuss the steps that may be available to the Panel Member to:

- (1) ensure that the relevant timing requirement is adhered to;
  - (2) abate the reason for the Panel Member's inability to meet the relevant timing requirement; or
  - (3) adjust the relevant timing requirement.
- (c) The Tribunal may (in its sole discretion) direct the Panel Member to take whatever actions or steps are necessary to implement any action or adjustment referred to in clause 5(b) above, and the Panel Member must (at its own cost) comply with any such direction.
- (d) The Tribunal may (in its sole discretion) extend the time for completion of any Services set out in the scope of works where the delay arises due to the negligent acts or omissions of the Tribunal or circumstances beyond the reasonable control of the Panel Member.

## **6 Professional Indemnity Insurance**

Prior to undertaking any Services for the Tribunal, the Panel Member must (at its own expense) effect and maintain:

- (a) a policy of professional indemnity insurance cover with a reputable insurer;
- (b) in amounts sufficient to cover any liability of the Panel Member to the Tribunal up to the limits specified in clause 16.3 of this Agreement.

## **7 Fees and Payment**

- (a) The Panel Member will be entitled to payment of the fees and expenses specified in any written quote for costs approved under clause 1(d) above (as amended in accordance with clause 2 or clause 4(b) above) for undertaking the Services referred to in that written quote for costs.
- (b) The Panel Member will be entitled to invoice the Tribunal for those fees and expenses at the times and in the amounts specified in that written quote for costs.
- (c) The Tribunal must pay any invoice validly issued under clause 7(b) above within 45 days of issue of the invoice to the Tribunal.

## **8 Termination of Services for Default**

The Tribunal may by written notice issued to the Panel Member direct the Panel Member to cease undertaking any Services undertaken for the Tribunal, if:

- (1) the Panel Member breaches this Agreement and fails to remedy that breach within 10 business days of being requested in writing to do so by the Tribunal;
- (2) the Panel Member becomes Insolvent; or
- (3) a Change in Control occurs, without the Tribunal's written consent.

## **9 Termination of Services for Convenience**

At any time during the Term of this Agreement and for any reason, the Tribunal may by written notice to the Panel Member direct the Panel Member to cease undertaking any Services undertaken for the Tribunal.

## **10 Panel Member to Cease undertaking Services**

Upon receiving a notice under clause 8 or clause 9 above, the Panel Member must immediately cease undertaking the Services specified in the notice.

## **11 Consequences of Termination of Services by the Tribunal**

- (a) The issue of a notice under clause 8 or clause 9 above by the Tribunal will not affect any rights, powers, remedies, duties and obligations of the parties which have accrued as at the date of issue of the notice (including any right of the Panel Member to payment for Services undertaken for the Tribunal up to the date of issue of the notice to the Panel Member).
- (b) Without limiting clause 11(a) above, upon the issue of any notice by the Tribunal under clause 8 above, the Panel Member must compensate the Tribunal for any Loss incurred by the Tribunal in connection with:
  - (1) the matters giving rise to the issue of the notice; and
  - (2) the Panel Member ceasing to undertake the Services the subject of the notice.
- (c) The Tribunal may set off any amount payable by the Panel Member under this clause 11, against any amounts owed to the Panel Member by the Tribunal under this Agreement.
- (d) The rights of the Tribunal under clauses 8 to 11 above are in addition to (and may be exercised separately from and without prejudice to) the Tribunal's rights under clause 19 of this Agreement.

## **12 Return of Confidential Information**

Upon the Panel Member ceasing to undertake any Services for the Tribunal under clause 10 of this Schedule 3 the Panel Member:

- (a) must (if requested by the Tribunal) return to the Tribunal all Confidential Information (or to the Scheme Participant, in the case of Scheme Participant Material) relating to the Services in such form or format as is required by the Tribunal; and
- (b) may (subject to clauses 11 and 12 of this Agreement) retain one copy of the Contract Material and such copies of any other Confidential Information (in the possession or under the control of the Panel Member) as the Panel Member may need to retain to enable the Panel Member to comply with any statutory requirements (or the requirements of any statutory or professional body governing or regulating the conduct or activities of the Panel Member).

## Schedule 4: Rates for Services Undertaken for Tribunal

*[Panel Members should set out their rates for undertaking any Services under this Agreement.]*

*This could include, for example:*

- *hourly, daily, weekly or monthly rates for different categories (or types) of professional service providers;*
- *fixed time periods of 1 or more years during which the rates will apply; and*
- *the basis (if any) on which rates may be periodically increased (for example at the end of each 1, 2 or 3 year period)]*



## Schedule 5: Scheme Participant Deed Poll

### DEED POLL

**Date:**

**By:** *[insert full name, ACN and address of Scheme Participant]*  
of *[insert address]* ("the Scheme Participant")

### Background

- A The Panel Member is a person appointed by the Tribunal to the Panel.
- B The Scheme Participant wishes to retain the Panel Member to provide the Services for the Scheme Participant.
- C In consideration for the Tribunal allowing the Scheme Participant to choose and retain the Panel Member to provide the Services, the Scheme Participant has agreed to execute this Deed in favour of the Tribunal.

### Operative Provisions

#### 1 Definitions

In this Deed, the following expressions have the following meanings unless the context requires otherwise:

**"Act"** means the Electricity Supply Act (NSW) 1995;

**"Audit Services"** means an audit required by the Tribunal (under Section 97H or 97HA of the Act) for the purposes of Part 8A of the Act and may include (without limitation) an audit under clause 73M of the Regulations;

**"Loss"** means any cost, expense, loss, liability or damage (however incurred, whether directly or indirectly, and whether or not foreseeable) including loss of profit, loss of revenue, loss of opportunity, loss of use, loss of goodwill, increased cost of working or any business interruption costs;

**"Panel Member"** means the Panel Member identified in Item 1 of the Annexure to this Deed;

**"Regulations"** means the Electricity Supply (General) Regulation 2001;

**"Scheme Participant"** means the party identified as the "Scheme Participant" at the beginning of this Deed;

**"Scheme Participant Contract"** means any contract between the Scheme Participant and the Panel Member for the provision of the Services;

**"Services"** means the Audit Services relating to the Scheme Participant specified in Item 2 of the Annexure to this Deed;

**"Tribunal Contract"** means the contract between the Tribunal and the Scheme Participant referred to in Item 3 of the Annexure to this Deed.

## **2 Acknowledgments and Undertakings by the Scheme Participant**

In consideration for the Tribunal allowing the Scheme Participant to choose and retain the Panel Member to undertake the Services, the Scheme Participant gives the acknowledgements and undertakings to the Tribunal set out in this Deed.

## **3 Acknowledgments**

The Scheme Participant acknowledges that:

- (a) the Panel Member has obligations to the Tribunal under the Tribunal Contract in relation to the Services (in addition to any obligations owed by the Panel Member to the Scheme Participant);
- (b) those obligations under the Tribunal Contract are for the benefit of the Tribunal only and the Tribunal is under no obligation to exercise them for the benefit of the Scheme Participant;
- (c) the Scheme Participant is separately responsible for retaining the Panel Member to provide the Services for the benefit of the Scheme Participant and the Panel Member will be doing so in its own right (and not as the agent or contractor of the Tribunal);
- (d) the Scheme Participant will not in any way hold the Tribunal responsible for the performance of the Services by the Panel Member, or for any exercise of the Tribunal's rights under the Tribunal Contract in relation to the Services (including, without limitation, any approval by the Tribunal of a scope of works for the Services for the Tribunal's own purposes);
- (e) the Scheme Participant will be responsible for payment of the Panel Member's fees, costs and expenses relating to the provision of the Services; and
- (f) in the event of any inconsistency between any Scheme Participant Contract and the Tribunal Contract, the Tribunal Contract will prevail to the extent of the inconsistency.

## **4 Undertakings and Indemnities**

The Scheme Participant undertakes to the Tribunal that it will not make any claim against the Tribunal and indemnifies the Tribunal against:

- (a) any claims by the Panel Member for the payment of any fees, costs or expenses charged by the Panel Member in relation to the Services; and
- (b) any claim by the Scheme Participant for any Loss suffered by the Scheme Participant (or by any other person claiming against the Scheme Participant) as a result of the performance of the Services by the Panel Member, including (without limitation) where that Loss arises due to:
  - (1) any breach of the Scheme Participant Contract by the Panel Member in connection with the performance of the Services; or
  - (2) any negligent or deliberate act or omission by the Panel Member.

**ANNEXURE****Item 1: Name of Panel Member**

[insert full name and address of Panel Member]

**Item 2: Services**

[insert details of the particular Audit Services for which the Panel Member is being retained by the Scheme Participant]

**Item 3: Tribunal Contract**

The contract dated [insert date] between the Tribunal and the Panel Member governing (among other things) the undertaking of Audit Services by the Panel Member (as a member of the panel appointed by the Tribunal to undertake audits required by the Tribunal under the Act).

**EXECUTED** as a Deed.

**Executed by** \_\_\_\_\_ )  
\_\_\_\_\_ [*insert* \_\_\_\_\_ )  
***Scheme Participant's name*** \_\_\_\_\_ )  
ACN \_\_\_\_\_ [*insert ACN* \_\_\_\_\_ )  
***of Scheme Participant*** \_\_\_\_\_ )  
in accordance with  
section 127(1) of the Corporations Act  
2001:

\_\_\_\_\_  
Director/Company Secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Director/Company Secretary  
(Print Name)

\_\_\_\_\_  
Name of Director (Print Name)

**Executed** as an agreement

**Signed** for and on behalf of )  
the **Independent Pricing and** )  
**Regulatory Tribunal** ABN **[insert]** )  
in the presence of: )

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Signature of Authorised Person

\_\_\_\_\_  
Name of Witness (Print Name)

\_\_\_\_\_  
Name of Authorised Person

**Signed** for and on behalf of )  
**[Insert Panel Member's Name]** )  
ACN **[insert]** )  
in accordance with section 127(1) of the )  
Corporations Act 2001:

\_\_\_\_\_  
Director/Company Secretary

\_\_\_\_\_  
Director

\_\_\_\_\_  
Name of Director/Company Secretary  
(Print Name)

\_\_\_\_\_  
Name of Director (Print Name)