



Audit Services

Panel Agreement

June 2023

Contents

1	Instructions	1
2	Details	1
3	Parties	2
4	Audit Services Panels	2
5	Background	2
6	Definitions and Interpretation	3
7	Term	9
8	Appointment of Panel Member	9
9	Audit Services Undertaken for an Auditee	10
10	General Obligations of Panel Member	10
11	Lead Auditors and Personnel	12
12	Periodic Review of Panel Member's Performance	13
13	Inclusion of an Additional Category within the Approved Categories	15
14	Withdrawal of Existing Approved Category	15
15	Appointment to an Additional Panel	16
16	Removal from Existing Panel	16
17	Intellectual Property	17
18	Confidential Information	18
19	Protection of Personal Information	19
20	Conflict of Interest	20
21	Goods and Services Tax	21
22	Indemnity and Liability	22
23	Insurance	22
24	Resolution of Disputes between IPART and the Panel Member	23
25	Access applications under GIPA Act	24
26	Termination	25
27	Amendment of this Agreement	26
28	Assignment	26
29	Notices	27
30	General	27

Schedule 1 Terms and Conditions for Undertaking an Audit Service

1	Preconditions to commencing an Audit Service for an Auditee	29
2	Amendments to the Scope of Work	29
3	Panel Member's acknowledgement in respect of Scope of Work	30
4	Audit Service to be undertaken in accordance with Scope of Work	30
5	Professional indemnity insurance	31
6	Audit Contract between Panel Member and Auditee	31
7	Audit Service is at the expense of the Auditee	32
8	IPART entitled to rely on any Audit Service	32
9	Termination of Audit Service for default	33
10	Panel Member to cease undertaking Audit Service	33
11	Consequences of termination of Audit Service by IPART	33
12	Return of Confidential Information	33

Audit Panel Agreement

1 Instructions

- (1) IPART to complete the 'Details' section at clause 2 below, update all cross-references in the document and send the agreement to the Panel Member for execution.

Note: You can update cross-references by pressing Ctrl + A to select all and then pressing F9. Select 'entire table' if prompted.

- (2) Panel Member to sign the agreement and return it to IPART.
- (3) IPART to sign the agreement and send the final executed agreement to the Panel Member.
- (4) This clause 1 does not form part of the agreement.

2 Details

- (1) Date: Click or tap to enter a date.
- (2) Panel Member: Click or tap here to enter text.
- (3) ABN: Click or tap here to enter text.
- (4) Address: Click or tap here to enter text.
- (5) Audit Services Panels: Electricity Networks
 Energy Security Safeguard
 Water Licensing

- (6) Approved Categories and Personnel:

Name	Role	Panels	Approved Categories

Note: The possible roles are 'Lead Auditor', 'Auditor' and 'Area Specialist'.

Audit Services

Date: Click or tap to enter a date.

3 Parties

3.1 Independent Pricing and Regulatory Tribunal

ABN: 49 202 260 878

A body corporate constituted by the *Independent Pricing and Regulatory Tribunal Act 1992* of Level 16, 2-24 Rawson Place, Sydney NSW 2000.

("IPART")

3.2 Click or tap here to enter text.

ABN: Click or tap here to enter text.

of Click or tap here to enter text.

("Panel Member")

4 Audit Services Panels

The Panel Member is appointed to the Panel or Panels checked below:

Electricity Networks

Energy Security Safeguard

Water Licensing

5 Background

- (1) IPART has established an Electricity Networks Panel, an Energy Security Safeguard Panel and a Water Licensing Panel to undertake Audit Services.
- (2) IPART has agreed to appoint the Panel Member to the Panel or Panels checked in clause 4 above to undertake Audit Services within an Approved Category for an Auditee.
- (3) The Panel Member has agreed to accept that appointment and to undertake any Audit Service on the terms set out in this Agreement.

The parties agree

6 Definitions and Interpretation

6.1 Definitions

In this Agreement, unless the context requires otherwise:

Additional Category means any Category which is not an Approved Category.

Additional Panel means any Panel to which the Panel Member has not been appointed.

Agreement means this Audit Services Panel Agreement between IPART and the Panel Member, including the Schedule.

Approved Category means a Category specified in the table at clause 2(6).

Area Specialist means an individual from the Panel Member who is appointed by IPART to this Classification in respect of one or more of the Approved Categories and is identified accordingly in the table at clause 2(6).

Audit Guidelines means any guideline notified by IPART to the Panel Member as being an Audit Guideline that applies to a Panel. In the absence of any notification by IPART, it means:

- (a) in the case of the Electricity Networks Panel, the document prepared by IPART and entitled "Electricity networks audit guideline – Audit fundamentals, process and findings";
- (b) in the case of the Energy Security Safeguard Panel, the documents prepared by IPART and entitled "ACP Audit Guide" and "Audit Guide – Scheme Participants"; and
- (c) in the case of the Water Licensing Panel, the document prepared by IPART and entitled "Audit Guideline under the *Water Industry Competition Act 2006* (NSW)".

Audit Service means a particular audit of an Auditee that falls within an Approved Category.

Auditee means:

- (1) in the case of the Electricity Networks Panel:
 - (a) a transmission operator under the *Electricity Supply Act 1995* (NSW); or
 - (b) a distribution operator under the *Electricity Supply Act 1995* (NSW); and
- (2) in the case of the Energy Security Safeguard Panel:
 - (a) a person who is required by clause 4 of Schedule 4A to the *Electricity Act 1995* (NSW) to participate in the energy savings scheme (a scheme participant);
 - (b) a person who is required by clause 83 of Schedule 4A to the *Electricity Act 1995* (NSW) to participate in the peak demand reduction scheme (a scheme participant);
 - (c) a person who is required by clause 150 of Schedule 4A to the *Electricity Act 1995* (NSW) to participate in the renewable fuel scheme (a scheme participant);
 - (d) a person who is an accredited certificate provider under part 1 of Schedule 4A to the *Electricity Supply Act 1995* (NSW) and whose accreditation is in force (an ACP);

- (e) a person who is an accredited certificate provider under part 2 of Schedule 4A to the *Electricity Supply Act 1995* (NSW) and whose accreditation is in force (an ACP);
 - (f) a person who is an accredited certificate provider under part 3 of Schedule 4A to the *Electricity Supply Act 1995* (NSW) and whose accreditation is in force (an ACP)
 - (g) a person who proposes to become an accredited certificate provider under any scheme under the energy security safeguard established by section 98B of the *Electricity Supply Act 1995* (NSW); or
 - (h) any other person in respect of whom audits are required or authorised in connection with any scheme under the energy security safeguard established by section 98B of the *Electricity Supply Act 1995* (NSW); and
- (3) in the case of the Water Licensing Panel, a licensee under the *Water Industry Competition Act 2006* (NSW).

Auditee Material means:

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

Auditor means an individual from the Panel Member who is appointed by IPART to this Classification in respect of one or more of the Approved Categories and is identified accordingly in the table at clause 2(6).

Australian Privacy Commissioner means the person appointed to perform the functions of the Privacy Commissioner under section 12 of the *Australian Information Commissioner Act 2010* (Cth).

Australian Privacy Principles means the Australian Privacy Principles set out in schedule 1 to the *Privacy Act 1988* (Cth).

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

Category means any type of audit established by IPART and described in the Audit Guidelines and may include, by way of examples:

- (1) in the case of the Electricity Networks Panel:
 - (a) Safety management systems of electricity networks;
 - (b) Compliance assessments of critical infrastructure license conditions;
 - (c) Reliability and performance audits for electricity distribution networks;
 - (d) Compliance with the NSW Code of Practice for Authorised Network Operators, Department of Planning and Environment; or
 - (e) Other audits; and

- (2) in the case of the Energy Security Safeguard Panel:
 - (a) Audits of ACPs (excluding PIAM&V method audits);
 - (b) PIAM&V method audits of ACPs;
 - (c) Audits of Scheme Participants; or
 - (d) Other audits; and
- (3) in the case of the Water Licensing Panel:
 - (a) Licence and Regulatory Compliance;
 - (b) Infrastructure Performance;
 - (c) Drinking Water Quality;
 - (d) Recycled Water Quality;
 - (e) Sewage Management;
 - (f) Sustainability Assessment;
 - (g) Environmental Management;
 - (h) Retail Supply; or
 - (i) Other audits.

Change in Control means any circumstances where the power (whether directly or indirectly including through interposed entities, and by whatever means) to do any of the following resides with any person other than those persons holding that power or benefit at the Commencement Date:

- (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.

Classification means the level of responsibility to which an individual from a Panel Member may be appointed in relation to an Approved Category. The possible Classifications are Lead Auditor, Auditor and Area Specialist.

Commencement Date means the date of this Agreement.

Confidential Information has the meaning set out in clause 18.1.

Conflict of Interest means any actual, potential or perceived conflict of interest (including, but not limited to, any past, present, or anticipated agreement, arrangement, understanding or activity) which may affect the Panel Member's ability to perform any Service under this Agreement.

Contract Material means all documentation, information and material (other than Auditee 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).

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 26.1 (in the case of the Agreement being terminated under that clause); or
- (b) the notice of termination issued under clause 26.2 (in the case of the Agreement being terminated under that clause).

Electricity Networks Panel means the "Electricity Networks" panel referred to in clause 4 and clause 5 of this Agreement.

Electricity Networks Panel Member means the party to this Agreement identified as the "Panel Member" in clause 3.2 where that party has been appointed to the Electricity Networks Panel in clause 4 of this Agreement.

Energy Security Safeguard Panel means the "Energy Security Safeguard" panel referred to in clause 4 and clause 5 of this Agreement.

Energy Security Safeguard Panel Member means the party to this Agreement identified as the "Panel Member" in clause 3.2 where that party has been appointed to the Energy Security Safeguard Panel in clause 4 of this Agreement.

Existing Approved Category is a Category which forms part of the Approved Categories immediately prior to IPART giving written notice under clause 14.1 or clause 14.3.

Existing Panel means a Panel to which the Panel Member has been appointed immediately prior to IPART giving written notice under clause 16.1 or clause 16.3.

Government Information has the meaning given to that term in the *Government Information (Public Access) Act 2009* (NSW).

Information Protection Principles has the meaning given to that term in the *Privacy and Personal Information Protection Act 1998* (NSW).

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* (Cth);
- (i) as a result of the operation of section 459F of the *Corporations Act 2001* (Cth), 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* (Cth)) in respect of all or any part its property.

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

IPART means the Independent Pricing and Regulatory Tribunal referred to in clause 3.1 of this Agreement

IPART Material means any documentation, information or material supplied by IPART (by whatever means) to the Panel Member or to an Auditee in connection with the undertaking by the Panel Member of any Audit Service for an Auditee.

Lead Auditor means an individual from the Panel Member who is appointed by IPART to this Classification in respect of one or more of the Categories and is identified accordingly in the table at clause 2(6).

Loss means any cost, expense, loss, liability or damage of any nature or kind (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 or business reputation, increased cost of working or any business interruption costs.

Mandatory Terms means the terms identified in clause 6(2) of Schedule 1.

NSW Privacy Commissioner means the person appointed to perform the functions of Privacy Commissioner under Division 1 of Part 4 of the *Privacy and Personal Information Protection Act 1998* (NSW).

Panel means, as the case may be, the Electricity Networks Panel, the Energy Security Safeguard Panel or the Water Licensing Panel.

Panel Member means, as the case may be, an Electricity Networks Panel Member, an Energy Security Safeguard Panel Member or a Water Licensing Panel Member.

Performance Reviewer means IPART or any other person appointed by IPART for the purpose of reviewing the performance of the Panel Member in providing any Service.

Personal Information means personal information as defined under the Privacy Laws.

Personnel means:

- (a) any person identified in the table at clause 2(6); and
- (b) any other person assisting the Panel Member in providing Services pursuant to this Agreement and notified by the Panel Member to IPART in writing.

Privacy Laws means:

- (a) the *Privacy and Personal Information Protection Act 1998* (NSW); and
- (b) the *Privacy Act 1988* (Cth)

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

Related Parties means:

- (a) where the Panel Member is a "public company" for the purposes of section 228 of the *Corporations Act 2001* (Cth), has the meaning given to the term "related party" in that Act; and
- (b) where the Panel Member is not a "public company" for the purposes of section 228 of the *Corporations Act 2001* (Cth), has the meaning that would be given to the term "related party" in that Act if the Panel Member was a "public company" for the purposes of section 228 of that Act.

Schedule means the schedule to this Agreement entitled 'Schedule 1 Terms and Conditions for Undertaking an Audit Service'

Scope of Work means the detailed particulars of any Service to be provided by a Panel Member to IPART prior to the Service being undertaken and in the form specified in clause 1(1)(b) of Schedule 1.

Service means any Audit Service.

Term means the term of this Agreement referred to in clause 7.

Water Licensing Panel means the "Water Licensing" panel referred to in clause 4 and clause 5 of this Agreement.

Water Licensing Panel Member means the party to this Agreement identified as the "Panel Member" in clause 3.2 where that party has been appointed to the Water Licensing Panel in clause 4 of this Agreement.

6.2 Interpretation

In this Agreement unless the context requires otherwise:

- (1) references to clauses or schedules are references to clauses or schedules of this Agreement;
- (2) the singular includes the plural and vice versa;
- (3) a gender includes the other genders;
- (4) headings are used for convenience only and do not affect the interpretation of this Agreement;

- (5) a reference to a document includes the document as modified from time to time and any document replacing it;
- (6) 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;
- (7) person includes a natural person and any body or entity whether incorporated or not;
- (8) month means calendar month;
- (9) year means 12 months;
- (10) in writing includes any communication sent by letter or email;
- (11) 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;
- (12) including and similar expressions are not words of limitation; and
- (13) 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.

7 Term

This Agreement commence on the date of the Agreement and continues until terminated in accordance with this Agreement.

8 Appointment of Panel Member

8.1 Appointment of Panel Member to Panel to Undertake Services

- (1) IPART appoints the Panel Member to the Panel or Panels checked in clause 4 above to undertake any Audit Service for an Auditee in accordance with the terms and conditions in Schedule 1 (and as otherwise required by this Agreement).
- (2) The Panel Member acknowledges that IPART may, at any time, appoint additional parties to the Panel or Panels as it sees fit.

8.2 Acceptance of Appointment and Acknowledgement by Panel Member

- (1) The Panel Member accepts the appointment referred to in clause 8.1 and agrees to undertake any Audit Service to be performed for an Auditee in accordance with this Agreement.
- (2) The Panel Member acknowledges that in appointing the Panel Member to the Panel or Panels, IPART does not in any way warrant, represent or undertake that the Panel Member will necessarily be engaged to perform any Service under this Agreement.

9 Audit Services Undertaken for an Auditee

9.1 Request by Auditee for Information

The Panel Member acknowledges that at any time during the Term, an Auditee may request the Panel Member to provide to the Auditee a Scope of Work and any other information relating to an Audit Service potentially to be undertaken by the Panel Member for that Auditee.

9.2 Commencement of Services

The Panel Member may only commence provision of an Audit Service to an Auditee if:

- (1) it has received confirmation from the Auditee of its intention to retain the Panel Member in respect of the Audit Service;
- (2) the Panel Member has complied with the requirements set out in clause 1 of Schedule 1; and
- (3) the Panel Member has entered into a separate contract with the Auditee for the provision of the Audit Service, which complies with clause 6 of Schedule 1 (Audit Contract).

9.3 Terms and Conditions for Provision of an Audit Service to a Licensee

- (1) Any Audit Service which the Panel Member is entitled to undertake for an Auditee must be undertaken in accordance with the terms and conditions in Schedule 1, the Audit Guidelines and as otherwise required by this Agreement.
- (2) The Panel Member must submit draft reports to IPART, if requested, following the Panel Member's undertaking of any Audit Service.
- (3) The Panel Member must give reasonable notice to IPART and invite IPART to attend any scheduled meetings and site visits with the Auditee prior to the scheduled meetings and site visits.

10 General Obligations of Panel Member

10.1 Compliance with Law

In undertaking any Service, the Panel Member must comply, and ensure that its Personnel comply, with all of the requirements of this Agreement and any applicable Regulatory Requirement.

10.2 Competency

Without limiting clause 10.1, in undertaking any Service, the Panel Member must:

- (1) exercise the utmost good faith in the interests of IPART and undertake the Service in an ethical manner;
- (2) undertake the Service:

- (a) diligently and efficiently with the standard of skill, care and diligence expected of a person with the requisite skills and experience to provide it;
 - (b) to ensure it is fit for its intended purpose as set out in the Audit Guidelines or otherwise notified to the Panel Member in writing; and
 - (c) in accordance with the Scope of Work for that Service as approved under Schedule 1;
- (3) use suitably qualified Personnel and devote and employ sufficient resources and labour to ensure that the Service is performed in accordance with this Agreement;
 - (4) apply and maintain quality management systems and peer review procedures as required by IPART;
 - (5) apply and maintain safe systems of work consistent with the *Work Health and Safety Act 2011* (NSW);
 - (6) immediately notify IPART of any work health and safety concerns identified by the Panel Member while conducting an Audit Service;
 - (7) use designs, materials, documents and methods of work which do not infringe any third party intellectual property rights;
 - (8) comply with the Audit Guidelines and any other guidelines or policies notified to the Panel Member by IPART from time to time;
 - (9) notify IPART of any information required from IPART by the Panel Member, to enable the Panel Member to undertake the Service;
 - (10) promptly acknowledge any communication received from IPART;
 - (11) comply, and ensure that all Personnel comply, with any lawful direction given by IPART in relation to the Service (including any direction or request to provide information reasonably required by IPART); and
 - (12) immediately notify IPART of any event, issue or circumstance that may give rise to a claim against IPART.

10.3 Information Session or Workshop

- (1) The Panel Member must ensure that all of its Lead Auditors:
 - (a) attend any information session or workshop as required from time to time by IPART for the purpose of ensuring that they maintain, develop and improve the skills and expertise necessary to undertake any Service in accordance with this Agreement; and
 - (b) complete such information session or workshop to the satisfaction of IPART.
- (2) Neither the Panel Member nor any of its Personnel will be entitled to any payment for attending any information session or workshop under clause 10.3(1).
- (3) IPART will not charge the Panel Member or any of its Personnel any fee for providing any information session or workshop under this clause.
- (4) IPART will provide an option to attend an information session or workshop by audio visual link where:

- (a) physical attendance at an information session or workshop is prevented by a public health order made under the *Public Health Act 2010* (NSW), or
- (b) IPART, at its discretion, considers it appropriate.

11 Lead Auditors and Personnel

11.1 Undertaking an Audit Service for an Auditee

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

- (1) a Lead Auditor directs, supervises and leads any Auditor or Area Specialist in the audit team in undertaking any Audit Service and signs all written reports or opinions provided by the Panel Member;
- (2) a Lead Auditor, including one who is independently undertaking an Audit Service, applies and maintains any quality management systems and peer review procedures required by IPART; and
- (3) any other staff, employees or contractors used by the Panel Member in connection with the Audit Service:
 - (a) are used only to assist the Lead Auditor and any Auditor or Area Specialist; and
 - (b) work under the direct control, supervision and direction of the Lead Auditor.

11.2 Change of Lead Auditor, Auditor or Area Specialist

- (1) At any time the Panel Member may apply to IPART for IPART to remove or include an individual as Lead Auditor, Auditor or Area Specialist in relation to one or more of the Approved Categories. The Panel Member may only apply to include an individual in accordance with the selection criteria set out in the application.
- (2) At any time and at its sole discretion IPART may (either on its own initiative or following receipt of an application under clause 11.2(1)) determine that a person should be removed or included as Lead Auditor, Auditor or Area Specialist. IPART may notify the Panel Member accordingly in writing.
- (3) With effect from the Business Day immediately following the date of issue of a written notice under clause 11.2(2) the person specified in that notice will be taken to be removed or included (as the case may be) as Lead Auditor, Auditor or Area Specialist for the purposes of this Agreement.
- (4) The Panel Member agrees to make any amendments to the table at clause 2(6) necessary to reflect the removal or inclusion of a Lead Auditor, Auditor or Area Specialist under this clause 11.2.

11.3 Warranty

The Panel Member warrants that each Lead Auditor, Auditor or Area Specialist has and will maintain the requisite skill, competence, and experience to undertake any Service and will remain appropriately qualified and licensed (where applicable) to undertake them.

11.4 Confidentiality

The Panel Member must ensure that all Personnel have agreed to be bound by the confidentiality obligations under clause 18 prior to disclosing Confidential Information to any Personnel.

11.5 Panel Member Responsible

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

12 Periodic Review of Panel Member's Performance

12.1 Conduct of Performance Review

- (1) The Panel Member acknowledges that IPART may commission a performance review in accordance with this clause 12.
- (2) The Performance Reviewer may conduct a performance review:
 - (a) at any time required by IPART at IPART's sole discretion (after first giving the Panel Member 7 days notice in writing); or
 - (b) at regular periodic intervals (as determined by IPART), of all matters relating to the Panel Member's performance of any Service.
- (3) Any performance review under clause 12.1(2) may follow any process or format determined by IPART.
- (4) During the course of any performance review under clause 12.1(2), the Panel Member must:
 - (a) provide to the Performance Reviewer any reports, documents or information required by the Performance Reviewer in connection with any Service undertaken by the Panel Member;
 - (b) authorise Auditees for whom the Panel Member has undertaken any Audit Services to provide the Performance Reviewer with any information or assistance required by the Performance Reviewer;
 - (c) 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 Service;
 - (d) attend any meetings requested by the Performance Reviewer or by IPART in relation to the Performance Review; and
 - (e) promptly provide the Performance Reviewer with such other assistance as IPART may from time to time request.

12.2 Outcomes of Performance Review

- (1) Following completion of any performance review conducted under clause 12.1, IPART will report to the Panel Member on the:
 - (a) conclusions reached and any recommendations made by the Performance Reviewer; and
 - (b) any recommendations of the Performance Reviewer which are endorsed by IPART.
- (2) The recommendations by the Performance Reviewer may include (without limitation) recommendations as to:
 - (a) any steps or measures to be undertaken by the Panel Member (or by any of its Personnel) to maintain, develop or improve the skills or expertise of any Lead Auditors, Auditors, or Area Specialists in relation to any Service;
 - (b) whether the Panel Member (or any of its Personnel) has the appropriate qualifications to apply to IPART for any Additional Categories to be included within the Approved Categories under clause 13;
 - (c) whether the Panel Member (or any of its Personnel) has the appropriate qualifications to apply to IPART for appointment to an Additional Panel under clause 15;
 - (d) any conditions to be imposed on the Panel Member in relation to the undertaking of any Service by the Panel Member (and any amendments to be made to this Agreement by IPART to give effect to those conditions);
 - (e) the withdrawal of any Existing Approved Categories from the Approved Categories under clause 14;
 - (f) the removal the Panel Member for an Existing Panel under clause 16;
 - (g) the removal of a Lead Auditor, Auditor or Area Specialist from an Approved Category as specified in the table at clause 2(6); or
 - (h) the termination of this Agreement by IPART under clause 26.
- (3) Following IPART's report to the Panel Member under clause 12.2(1), the Panel Member must:
 - (a) take any steps or measures which the Performance Reviewer recommends and which are endorsed by IPART; or
 - (b) comply with any conditions which the Performance Reviewer recommends under clause 12.2(2)(d) and which are endorsed by IPART.

13 Inclusion of an Additional Category within the Approved Categories

13.1 Application by the Panel Member

At any time during the Term, the Panel Member may apply to IPART for approval to have an Additional Category included within the Approved Categories (in accordance with the application and approval processes adopted by IPART from time to time).

13.2 Determination by IPART

IPART will determine, at its sole discretion, whether or not to approve the inclusion of any Additional Category within the Approved Categories.

13.3 Consequences of IPART's Determination

If IPART determines under clause 13.2 that an Additional Category should be included within the Approved Categories, then from the date of that determination all references in this Agreement to Approved Categories will be taken to include that Additional Category.

13.4 Amendment of Approved Categories

The Panel Member agrees to make any amendments to the table at clause 2(6) necessary to reflect the inclusion of an Additional Category under clause 13.2.

14 Withdrawal of Existing Approved Category

14.1 Notice of Withdrawal of Existing Approved Category

- (1) At any time during the Term, either party may give 5 Business Days written notice to the other party stating that any Existing Approved Category is being withdrawn from the Approved Categories.
- (2) A written notice under clause 14.1(1) may be given:
 - (a) as a result of any recommendation by the Performance Reviewer under clause 12;
or
 - (b) for any other reason.

14.2 Consequences of Notice of Withdrawal of Existing Approved Category

- (1) With effect from 5 Business Days after the date on which any notice under clause 14.1 is given all references in this Agreement to Approved Categories will be taken to no longer include the Existing Approved Category referred to in that notice.
- (2) The Panel Member agrees to make any amendments to the table at clause 2(6) necessary to reflect the withdrawal of the Existing Approved Category under clause 14.1.

14.3 Suspension of Existing Approved Category by IPART

- (1) Without prejudice to its rights under clause 14.1, IPART may (in the circumstances set out in clauses 14.1(2)) give written notice to the Panel Member that the Panel Member or any Personnel is suspended from undertaking any Existing Approved Category during the Term, with effect from a date to be specified in the notice either:
 - (a) for a period of time specified in the written notice; or
 - (b) until further notice in writing from IPART.
- (2) Neither the Panel Member nor any of its Personnel may undertake any Service the subject of a notice under clause 14.3(1) until expiry of the period referred to in clause 14.3(1)(a) or 14.3(1)(b) (as the case may be).

15 Appointment to an Additional Panel

15.1 Application by the Panel Member

At any time during the Term, the Panel Member may apply to IPART for appointment to an Additional Panel (in accordance with the application and approval processes adopted by IPART from time to time).

15.2 Determination by IPART

IPART will determine, at its sole discretion, whether or not to appoint the Panel Member to an Additional Panel.

15.3 Consequences of IPART's Determination

If IPART determines under clause 15.2 that the Panel Member should be appointed to an Additional Panel, then from the date of that determination the Panel Member will be taken to be a Panel Member of that Additional Panel.

15.4 Amendment to Audit Services Panels

The Panel Member agrees to make any amendments to clause 4 necessary to reflect the appointment to an Additional Panel under clause 15.2.

16 Removal from Existing Panel

16.1 Notice of removal from Existing Panel

- (1) At any time during the Term, either party may give 30 days written notice to the other party stating that the Panel Member is to be removed from one or more Existing Panels.
- (2) A written notice under clause 16.1(1) may be given:
 - (a) as a result of any recommendation by the Performance Reviewer under clause 12;
or
 - (b) for any other reason.

16.2 Consequences of Notice of removal from Existing Panel

- (1) With effect from 30 days after the date on which any notice under clause 16.1 is given the Panel Member will no longer be taken to be a Panel Member of that Existing Panel.
- (2) The Panel Member agrees to make any amendments to clause 4 necessary to reflect the removal of the Panel Member from an Existing Panel under clause 16.1.

16.3 Suspension of Panel Member from Existing Panel

- (1) Without prejudice to its rights under clause 16.1, IPART may (in the circumstances set out in clauses 16.1(2)) give written notice to the Panel Member that the Panel Member or any Personnel is suspended from undertaking any service under an Existing Panel, during the Term, with effect from a date to be specified in the notice either:
 - (a) for a period of time specified in the written notice; or
 - (b) until further notice in writing from IPART.
- (2) Neither the Panel Member nor any of its Personnel may undertake any Service the subject of a notice under clause 16.3(1) until expiry of the period referred to in clause 16.3(1)(a) or 16.3(1)(b) (as the case may be).

17 Intellectual Property

17.1 Ownership of IPART Material

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

17.2 Ownership of Contract Material

Subject to clauses 17.3, 17.4 and 17.5, ownership of Intellectual Property in or in relation to Contract Material vests upon its creation in the Panel Member.

17.3 Panel Member to Make Contract Material Available

- (1) The Panel Member must (at its own cost) grant IPART an irrevocable licence to use and take copies of all:
 - (a) Contract Material;
 - (b) Auditee Material; and
 - (c) Intellectual Property in or in relation to Contract Material already owned by a person other than IPART (and which therefore cannot vest in the Panel Member under clause 17.2), as may be required by IPART to enable IPART to fulfil any of its statutory rights or obligations.
- (2) 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:
 - (a) Contract Material;
 - (b) Auditee Material; and

- (c) Intellectual Property in or in relation to the Contract Material or the Licensee Material necessary for the undertaking of any Service.
- (3) The Panel Member is not required to comply with Clause 17.3(1) and 17.3(2) in relation to IPART Material.

17.4 Delivery of Contract Material

- (1) Upon completion of the undertaking of any Service or upon termination or expiry of this Agreement, the Panel Member must comply with the requirements of clause 12 of Schedule 1.

17.5 Limitations on Use

- (1) The Panel Member must use any IPART Material or Contract Material only for the purposes of this Agreement, unless the Panel Member has obtained the prior written approval of IPART to do otherwise. Any approval will be at IPART's sole discretion.
- (2) IPART grants the Panel Member a limited licence for the term of this Agreement to use the IPART Material only for the purpose of performing the Services (and any other purpose approved by IPART in writing under clause 17.5(1)).

18 Confidential Information

18.1 Definition of Confidential Information

In this clause, "Confidential Information" means:

- (1) IPART Material;
- (2) Contract Material;
- (3) Auditee Material;
- (4) any information marked confidential or information which IPART stipulates (in writing or otherwise) is information of a confidential nature or which may reasonably be understood to be of a confidential nature; and
- (5) any information in connection with a Service or this Agreement.

18.2 Panel Member Must Not Disclose Confidential Information

Subject to clauses 18.3 and 18.4, the Panel Member agrees that:

- (1) it will not disclose the Confidential Information to any person without the prior written consent of IPART;
- (2) it will not disclose the Auditee Material to any person without the prior written consent of the Licensee;
- (3) it will not make use of or take advantage of the Confidential Information for any purpose other than for the purpose of undertaking any Service; and
- (4) it will take reasonable steps to ensure that the Confidential Information in its possession is kept confidential and protected against unauthorised use or access.

18.3 Exclusions from Panel Member's Confidentiality Obligations

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

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

18.4 Permitted Disclosures

The Panel Member may disclose the Confidential Information to its Personnel and other officers, employees or agents, solely for the purpose of undertaking any Service and only after obtaining a written undertaking from each of them to maintain the confidentiality of the Confidential Information. If any such person breaches his or her undertaking the Panel Member will be liable to IPART for that breach and for the damages resulting from that breach.

18.5 Confidentiality Obligation to Survive Termination of Agreement

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

18.6 Publicity

- (1) Subject to clause 18.6(2), the Panel Member must not make any press or other public announcement or press release relating to this Agreement or any Service undertaken for IPART or for an Auditee in accordance with this Agreement without the prior written consent of IPART (except to the extent that the announcement or release is required to be made by law or by the rules governing a stock exchange).
- (2) Notwithstanding clause 18.6(1), the Panel Member may make press or other public announcements or press releases only stating the fact of:
 - (a) the Panel Member being appointed to one or more Panels; or
 - (b) the Panel Member undertaking (or having completed) a Service for an Auditee.

19 Protection of Personal Information

The Panel Member agrees to:

- (1) comply with all Privacy Laws and not act (or omit to act) in any way which could cause IPART or an Auditee to contravene Privacy Laws;
- (2) use Personal Information held or controlled by it in connection with this Agreement only for the purposes of fulfilling its obligations under this Agreement;
- (3) 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;

- (4) comply with the Information Protection Principles to the extent that the content of those principles apply to the types of activities the Panel Member is undertaking under this Agreement;
- (5) comply with the Australian Privacy Principles to the extent that the content of those principles apply to the types of activities the Panel Member is undertaking under this Agreement;
- (6) cooperate with any reasonable demands or inquiries made by IPART on the basis of the exercise of the functions of the NSW Privacy Commissioner or the Australian Privacy Commissioner including, but not limited to, a request from IPART to comply with a guideline concerning the handling of Personal Information;
- (7) 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 Protection Principles, the Australian Privacy Principles and other obligations referred to in this clause;
- (8) comply as far as practicable with any policy guidelines laid down by the Government of New South Wales or the Commonwealth Government or issued by the NSW Privacy Commissioner or the Australian Privacy Commissioner from time to time relating to the handling of Personal Information; and
- (9) comply with any direction of IPART to observe any recommendation of the NSW Privacy Commissioner or the Australian Privacy Commissioner relating to any acts or practices of the Panel Member that the NSW Privacy Commissioner or the Australian Privacy Commissioner considers breaches the obligations in this clause.

20 Conflict of Interest

- (1) The Panel Member warrants that neither it, nor any of its Related Parties, has any Conflict of Interest as at the date of this Agreement which has not previously been notified to IPART in writing.
- (2) The Panel Member must not, and must ensure that its Related Parties do 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 IPART.
- (3) The Panel Member must notify IPART in writing of any Conflict of Interest that the Panel Member has, or that any of its Related Parties has, as soon as the Panel Member becomes aware of it.
- (4) Upon being notified of a Conflict of Interest under clause 20(3), IPART may:
 - (a) require the Panel Member to provide such information as may be required by IPART (subject to any confidentiality or other legal obligations of the Panel Member in relation to that information); or
 - (b) meet with the Panel Member to determine the nature of the Conflict of Interest.
- (5) Upon considering the nature of the Conflict of Interest, IPART may (in its absolute discretion):

- (a) direct the Panel Member not to enter into any agreement, arrangement or understanding which may amount to a Conflict of Interest; or
 - (b) direct the Panel Member to take any steps in relation to the Conflict of Interest.
- (6) The Panel Member must comply with a direction under clause 20(5) and cannot claim any compensation due to such a direction.
- (7) In the event of a Conflict of Interest to which IPART has not provided its prior written consent, IPART may (in its absolute discretion):
- (a) issue a written notice to the Panel Member and the Auditee (if applicable) regarding IPART's reservations in relation to relying on any report or opinion provided by the Panel Member in the course of undertaking the Service for which the Conflict of Interest exists and IPART's intention to indicate these reservations in any report prepared by IPART relating to that Service; or
 - (b) disregard any report, opinion or other information prepared by the Panel Member in the course of undertaking the Service for which the Conflict of Interest exists.

21 Goods and Services Tax

21.1 Liability for GST

- (1) 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.
- (2) 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.

21.2 Defined GST Terms

For the purpose of this clause 21

- (1) 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* (Cth) have the meanings ascribed to them by that Act;
- (2) 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
- (3) 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.

22 Indemnity and Liability

22.1 Indemnity

Subject to clause 22.2, the Panel Member must indemnify, and keep indemnified, IPART and its officers, agents, employees and contractors from and against any Loss incurred by IPART arising out of, or in connection with:

- (1) any breach of this Agreement by the Panel Member or any of its Personnel, officers, agents, employees or contractors; or
- (2) any negligent act or omission of the Panel Member or any of its Personnel, officers, agents, employees or contractors.

22.2 Exclusions

The indemnity in clause 22.1 does not cover any Loss which results from:

- (1) the negligence or wilful misconduct by IPART (or its officers, employees, agents or contractors); or
- (2) any breach of this Agreement by IPART (or its officers, employees, agents or contractors).

22.3 Limitation of liability

Despite any other provisions of this Agreement, the Panel Member's liability to IPART for any breach of this Agreement or any negligent act or omissions by the Panel Member (or by and of its Lead Auditors or Personnel) will not exceed:

- (1) \$1 million for all claims arising in relation to any single breach of this Agreement or any single negligent act or omission; and
- (2) A total of \$5 million for all claims arising in relation to this Agreement and all negligent acts or omissions relating to any Audit Service undertaken under this Agreement.

22.4 Survival

- (1) This clause 22 survives termination or expiration of this Agreement.
- (2) Except in relation to clause 18, the Panel Member shall be released from all liability under this Agreement on the date that is five years from date of termination.

23 Insurance

23.1 Panel Member to Insure

The Panel Member must at its own expense, effect and maintain the following insurance policies with a reputable insurer:

- (1) any professional indemnity insurance as set out in Schedule 1;
- (2) public liability insurance cover for an amount of \$5 million (or for a lower amount if permitted in writing by IPART) for any one or more claims arising out of the same set of circumstances; and
- (3) workers compensation insurance which complies with the requirements of the *Workers Compensation Act 1987* (NSW) and covers the Panel Member's Personnel, officers, employees, while they are working for the Panel Member or are at the Panel Member's premises.

23.2 Terms of Insurance

- (1) The Panel Member must ensure that the public liability insurance, professional indemnity insurance and workers compensation insurance policies are effective from the date of this Agreement and are maintained for the Term and at least one year after the date on which this Agreement terminates or expires.
- (2) The Panel Member must inform IPART immediately after:
 - (a) the Panel Member becomes aware of any actual or threatened claims made under any of the insurances referred to in clause 23.1 which arise out of, or in connection with, this Agreement or any Service performed under it; 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 23.1.

23.3 Certificates of Insurance

Within 5 Business Days of being requested to do so by IPART, the Panel Member must submit copies of its certificate or certificates of currency to IPART as evidence that the insurance policies required under clause 23.1 are in full force and effect.

24 Resolution of Disputes between IPART and the Panel Member

- (1) The Panel Member and IPART will endeavour to resolve any dispute speedily by negotiation. If a dispute between the Panel Member and IPART is not resolved by negotiation, the parties may agree to (but are not obliged to) submit the dispute to mediation prior to commencing proceedings in a court or tribunal. The parties agree to share equally in the costs of any mediation.
- (2) If the parties agree to submit the dispute to mediation, they will co-operate with each other and the mediator (including by providing documents and information) to ensure the timely and efficient resolution of the dispute.
- (3) Each party must continue to perform its obligations under this Agreement, despite the existence of a dispute.
- (4) Nothing in this clause prevents a party instituting court proceedings to seek urgent equitable relief in relation to a dispute or difference arising out of or in connection with this Agreement.

25 Access applications under GIPA Act

- (1) The Panel Member must:
 - (a) make and keep proper books of account and all other records relating to the performance of its obligations under the Agreement; and
 - (b) upon request by IPART, provide IPART with immediate access to, and copies of, all Government Information which is contained in records held by the Panel Member
- (2) IPART will take reasonably practicable steps to consult with the Panel Member before providing any person with access to information relating to this Agreement in response to an access application under the *Government Information (Public Access) Act 2009* (GIPA Act), if it appears that:
 - (a) the information:
 - (i) includes Personal Information about the Panel Member or its employees;
 - (ii) concerns the Panel Member's business, commercial, professional or financial interests; or
 - (iii) concerns research that has been, is being, or is intended to be, carried out by or on behalf of the Panel Member;
 - (b) the Panel Member may reasonably be expected to have concerns about the disclosure of the information; and
 - (c) those concerns may reasonably be expected to be relevant to the question of whether there is a public interest consideration against disclosure of the information.
- (3) If, following consultation between IPART and the Panel Member, the Panel Member objects to disclosure of some or all of the information, the Panel Member must provide details of any such objection in writing (including the information objected to and the reasons for any such objection) within a reasonable time period specified by IPART.
- (4) In determining whether there is an overriding public interest against disclosure of Government Information, IPART will take into account any objection received by the Panel Member.
- (5) If the Panel Member objects to the disclosure of some or all of the information but IPART nonetheless decides to release the information, IPART must not provide access until it has given the Panel Member notice of IPART's decision and notice of the Panel Member's right to have that decision reviewed.
- (6) Where IPART has given notice to the Panel Member in accordance with clause 25(5), IPART must not provide access to the information:
 - (a) before the period for applying for review of the decision under Part 5 of the GIPA Act has expired; or
 - (b) where any review of the decision duly applied for is pending.
- (7) The reference in clause 25(6)(a) to the period for applying for review of the decision under Part 5 of the GIPA Act does not include the period that may be available by way of extension of time to apply for review.

26 Termination

26.1 Termination for Default

- (1) IPART may terminate this Agreement by providing notice in writing to the Panel Member 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 IPART;
 - (b) the Panel Member becomes Insolvent;
 - (c) a Change in Control occurs without IPART's prior written consent.
- (2) Termination under this clause 26.1 will take effect from any date specified in the notice (provided that this date is not prior to the date on which the notice is provided to the Panel Member).

26.2 Termination for Convenience

At any time during the Term and for any reason, either party may terminate this Agreement by providing notice in writing to the other party with effect from any date specified in the notice (provided that date is at least 20 days after the date of the notice).

26.3 Consequences of Termination

- (1) Termination under this clause 26 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 Service undertaken for IPART up to the Effective Date of Termination).
- (2) Without limiting clause 26.3(1), in the case of any termination of this Agreement under clause 26.1, the Panel Member must compensate IPART for any Loss incurred by IPART in connection with matters giving rise to the termination and in connection with such termination.

26.4 Panel Member to Cease undertaking Services

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

26.5 IPART's Rights on Termination or Expiry of Agreement

- (1) On the Effective Date of Termination or expiry of this Agreement, the Panel Member:
 - (a) must return all Confidential Information to IPART (or to the Licensee, in the case of Auditee Material) in such form or format as is required by IPART; 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).

- (2) Nothing in this clause limits the Panel Member's obligations under clause 18 ("Confidential Information") of this Agreement.

27 Amendment of this Agreement

27.1 Amendment by IPART

- (1) At any time during the Term IPART may amend this Agreement as it sees fit, provided that it has given 30 days prior notice in writing of the amendment to the Panel Member.
- (2) Any amendment made by IPART under clause 27.1(1) will not apply in respect of any Service which the Panel Member has commenced undertaking prior to the date on which the amendment takes effect.
- (3) IPART will notify the Panel Member of its intention to amend the Agreement, and the nature of the proposed amendment, prior to giving notice to the Panel Member under clause 27.1(1).
- (4) Upon notification by IPART under clause 27.1(3), the Panel Member may, within 10 Business Days, make submissions to IPART in relation to the proposed amendment, which IPART may (at its sole discretion), take into account before finalising the amendment.

Note: If a Panel Member is concerned by any amendment by IPART under clause 27.1, the Panel Member may terminate the Agreement for convenience under clause 26.2 before the amendments come into effect.

27.2 Amendment by the Panel Member

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

28 Assignment

28.1 No Assignment without Consent

Subject to clause 28.2 and 28.3, 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.

28.2 Assignment by IPART

Subject to clause 28.3, IPART may assign or novate the benefit of any right, and transfer any obligation or liability, under this Agreement to any person ("assignee") who assumes the functions and responsibilities of IPART under the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) or under any other Regulatory Requirement.

28.3 Assignment Conditional

IPART's rights under clause 28.2 are conditional upon the assignee:

- (1) agreeing to accept responsibility for IPART's obligations under this Agreement; and

- (2) having sufficient financial and operational capacity to meet IPART's obligations under this Agreement.

29 Notices

Any notice, demand, consent or other communication given or made under this Agreement:

- (1) must be in writing and signed by a person duly authorised by the sender; and
- (2) 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 email to the address or email address last notified by the intended recipient to the sender; and
- (3) will be taken to be duly given or made:
 - (a) in the case of delivery in person, when delivered; and
 - (b) 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
 - (c) in the case of email, when the sender's system registers that the email has passed the internet gateway of the sender's system and no delivery failure or out of office message is received by the sender within 24 hours of sending, 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.

30 General

30.1 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.

30.2 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.

30.3 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.

30.4 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.

30.5 Time of the Essence

Time is of the essence of this Agreement in all respects.

30.6 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.

30.7 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.

30.8 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.

30.9 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.

30.10 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.

30.11 Costs

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

30.12 Stamp Duty

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

Schedule 1 Terms and Conditions for Undertaking an Audit Service

1 Preconditions to commencing an Audit Service for an Auditee

The Panel Member must not commence undertaking any Audit Service for an Auditee, until:

- (1) the Panel Member has provided to IPART:
 - (a) a signed declaration that the Panel Member is not aware of any Conflict of Interest that it has, or that any of its Related Parties has, in relation to the Audit Service, in any form required by IPART;
 - (b) a Scope of Work for the Audit Service which sets out (in such detail as IPART may require) particulars of:
 - (i) the nature and scope of the Audit Service, which the Auditee has approved;
 - (ii) a proposed work plan detailing each of the stages of work required to complete the Audit Service;
 - (iii) any Lead Auditors, Auditors or Area Specialists proposed to undertake the Audit Service;
 - (iv) the anticipated date for completion of the Audit Service;
 - (v) any other information required by IPART;
- (2) either of the following has occurred:
 - (a) the period referred to in clause 2(1) below has expired, without IPART issuing any notice under that clause to the Panel Member; or
 - (b) the Panel Member has amended the Scope of Work as required by IPART under any notice issued in accordance with clause 2(1) below;
- (3) the Panel Member has effected professional indemnity insurance, as required under clause 5 below, and has provided to IPART proof of insurance, if required; and
- (4) the Panel Member has entered into a separate contract with the Auditee for the provision of the Audit Service, in accordance with clause 6 below.

2 Amendments to the Scope of Work

- (1) Within 15 Business Days of receipt of a Scope of Work under clause 1(1) of this Schedule 1, IPART may (by written notice) direct the Panel Member to:
 - (a) amend that Scope of Work to incorporate any amendment requested by IPART (subject to the Panel Member having the experience and resources necessary to accommodate the amendment); and

- (b) submit the amended Scope of Work to IPART within 10 Business Days of IPART's notice.
- (2) Subject to clause 2(3) below, the Panel Member must not depart from (or make any further amendments to) the Scope of Work at any time after either:
 - (a) the expiration of the period of 15 Business Days referred to in clause 2(1) of this Schedule 1 if IPART has not directed any amendments under that clause; or
 - (b) the Panel Member having amended and submitted the Scope of Work as required by IPART under any notice issued in accordance with clause 2(1) of this Schedule 1,
- (3) Despite clause 2(2) above, the Panel Member may make amendments to the Scope of Work provided that:
 - (a) the Panel Member has submitted a written request to IPART incorporating a variation to the Scope of Work; and
 - (b) IPART has provided written approval with respect to the requested variation.
- (4) Provided that the Panel Member notifies IPART in writing within 10 Business Days of receiving a direction from IPART under clause 2(1) of this Schedule 1, the Panel Member may decline to provide the Audit Service under the Scope of Work as if it were amended by IPART's direction.

3 Panel Member's acknowledgement in respect of Scope of Work

The Panel Member acknowledges that the rights of IPART (under clauses 1 and 2 of this Schedule 1) in respect of the Scope of Work are intended entirely for the benefit of IPART and that accordingly:

- (1) 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
- (2) IPART 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 IPART's rights in respect of the Scope of Work.

4 Audit Service to be undertaken in accordance with Scope of Work

The Panel Member must undertake any Audit Service for an Auditee in accordance with:

- (1) the Scope of Work for the Audit Service provided to IPART under clause 1(1) of this Schedule 1 or, if applicable, the Scope of Work as amended under clause 2 of this Schedule 1; and
- (2) the terms and conditions of this Agreement.

5 Professional indemnity insurance

For the purposes of clause 1(3) of this Schedule 1 and without limiting clause 23 of the Agreement, prior to undertaking any Audit Service for an Auditee, the Panel Member must (at its own expense):

- (1) confirm in writing the limit of its current professional indemnity policy and that it is in full force and effect; and
- (2) if required by notice in writing by IPART, take out and maintain a policy of professional indemnity insurance for a greater amount, up to a maximum amount of \$5 million.

6 Audit Contract between Panel Member and Auditee

- (1) The Panel Member must enter into an Audit Contract with any Auditee for whom it provides any Audit Service.
- (2) The Audit Contract may be on such terms and conditions as the Panel Member and the Auditee agree, provided that:
 - (a) the Auditee expressly acknowledges and agrees in the Audit Contract that the Panel Member has obligations to IPART under this Agreement in relation to the performance of the Audit Service and that these obligations apply in addition to any obligations that the Panel Member owes to the Auditee under the Audit Contract;
 - (b) the Auditee expressly acknowledges and agrees in the Audit Contract that IPART's rights under this Agreement are for IPART's benefit only and IPART is under no obligation to exercise those rights for the benefit of the Auditee;
 - (c) the Audit Contract expressly provides that any fees and expenses payable to the Panel Member for the Audit Service is payable by the Auditee (and that the Auditee acknowledges it will have no recourse to IPART for any reimbursement for or contribution towards those fees and expenses);
 - (d) the Audit Contract expressly provides that the Auditee will indemnify IPART against any claims by the Panel Member for payment of any of the fees and expenses referred to in clause 6(2)(c) above;
 - (e) the Auditee expressly acknowledges that only the Panel Member is responsible for the performance of the Audit Service and that IPART is not, in any way, responsible for the performance of the Audit Service;
 - (f) the Audit Contract expressly provides that the Auditee undertakes not to make any claim against IPART for any Loss suffered by the Auditee (or by any person claiming against the Auditee) as result of the Panel Member's performance of the Audit Service, including where that Loss arises as a result of:
 - (i) any breach of the Audit Contract by the Panel Member; or
 - (ii) any negligent or deliberate act or omission by the Panel Member;
 - (g) the terms and conditions of the Audit Contract are consistent with this Agreement and do not in any way prevent, inhibit or interfere with the Panel Member

- undertaking the Audit Service in accordance with the requirements of this Agreement; and
- (h) the contract expressly provides that if there is any inconsistency between this Agreement and the Audit Contract, this Agreement will prevail to the extent of the inconsistency.
- (3) The Panel Member:
- (a) acknowledges and agrees that the Mandatory Terms are to be included in each Audit Contract for IPART's benefit only;
 - (b) will take all necessary steps (at its own cost) to enforce the Mandatory Terms included in each Audit Contract against an Auditee, including by instituting and maintaining proceedings against an Auditee; and
 - (c) should the Panel Member not fulfil its obligation under clause 6(3)(b) above, or alternatively, at the request of IPART, which may not be unreasonably refused, authorises IPART to enforce the Mandatory Terms included in each Audit Contract against an Auditee so that IPART can take the benefit of the Mandatory Terms, including by instituting and maintaining proceedings against an Auditee.
- (4) The Panel Member must provide IPART with a copy of any such Audit Contract between that Panel Member and an Auditee within 5 Business Days of receiving a request from IPART for the Audit Contract.

7 Audit Service is at the expense of the Auditee

The Panel Member acknowledges that any Audit Service undertaken for an Auditee in accordance with this Schedule 1:

- (1) will be undertaken at the expense of that Auditee; and
- (2) the Panel Member will accordingly not be entitled to any payment or reimbursement from IPART for any fees or expenses in connection with the Audit Service.

8 IPART entitled to rely on any Audit Service

Despite clauses 6 and 7 of this Schedule 1, the Panel Member expressly acknowledges that IPART will be entitled to:

- (1) require the Panel Member to perform (and to rely on the Panel Member performing) any Audit Service undertaken for an Auditee in accordance with the Panel Member's obligations under clause 4 of this Schedule 1;
- (2) rely on any audit reports or other information prepared by the Panel Member (in the course of undertaking any Audit Service for an Auditee); or
- (3) disregard any audit report or other information prepared by the Panel Member where there is a Conflict of Interest in relation to which IPART has not provided its prior written consent.

9 Termination of Audit Service for default

IPART may by issuing a notice to the Panel Member and to the Auditee for whom an Audit Service is being undertaken, direct the Panel Member to cease undertaking the Audit Service, if:

- (1) the Panel Member breaches this Agreement and fails to remedy that breach within 10 Business Days of:
 - (a) being requested in writing to do so by IPART; and
 - (b) written notice of the breach being sent to the Auditee by IPART;
- (2) the Panel Member becomes Insolvent; or
- (3) a Change in Control occurs, without IPART's prior written consent.

10 Panel Member to cease undertaking Audit Service

Upon receiving a notice under clause 9 of this Schedule 1, the Panel Member must immediately cease undertaking the Audit Service specified in the notice for the Auditee.

11 Consequences of termination of Audit Service by IPART

- (1) The issue of any notice under clause 9 of this Schedule 1 by IPART 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.
- (2) Without limiting clause 11(1) of this Schedule 1, upon the issue of any notice by IPART under clause 9 of this Schedule 1, the Panel Member must compensate IPART for any Loss incurred by IPART in connection with:
 - (a) the matters giving rise to the issue of the notice; and
 - (b) the Panel Member ceasing to undertake the Audit Service specified in the notice.
- (3) The rights of IPART under clauses 9 to 11 of this Schedule 1 are in addition to (and may be exercised separately from and without prejudice to) IPART's rights under clause 26 of this Agreement.

12 Return of Confidential Information

Upon the Panel Member ceasing to undertake any Audit Service under clause 10 of this Schedule 1 the Panel Member:

- (1) must (if requested by IPART) return to IPART all IPART Material relating to the Audit Service in such form or format as is required by IPART; and
- (2) may (subject to clauses 17 and 18 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).

Executed as an agreement

Signed for and on behalf of the Independent Pricing and Regulatory Tribunal (ABN 49 202 260 878):

X

Michelle Coco
Executive Director, Regulation & Compliance

Signed for and on behalf of [Click or tap here to enter text.](#) (ACN [Click or tap here to enter text.](#))
in accordance with section 127(1) of the *Corporations Act 2001*:

X

Director/Company Secretary

Name of Director/Company Secretary:

X

Director

Name of Director: