



**INDEPENDENT PRICING AND REGULATORY  
TRIBUNAL  
OF NEW SOUTH WALES**

**PANEL AGREEMENT  
AUDIT SERVICES PANEL**

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# AUDIT SERVICES PANEL AGREEMENT

## PARTIES

- 1 **Independent Pricing and Regulatory Tribunal (“IPART”)**  
ABN 49 202 260 878  
a body corporate constituted by the Independent Pricing and Regulatory Tribunal Act 1992 (NSW)  
of Level 16, 2-24 Rawson Place, Sydney, 2000
- 2 <INSERT COMPANY NAME>  
  
<INSERT COMPANY ABN>  
 (“Panel Member”)

## BACKGROUND

- A IPART has established a panel of persons to undertake Services for IPART and for ESS Participants.
- B IPART has agreed to appoint the Panel Member to the Panel to undertake Services in accordance with this Agreement for:
  - (1) ESS Participants (these Services will also be relied on by IPART); and
  - (2) IPART.
- 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)*.

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

**Agreement** means this Audit Services Panel Agreement.

**Audit** means any audit of an ESS Participant required by IPART (under clause 58 of Schedule 4A of the Act and clauses 55 and 56 of the Regulation) for the purposes of Schedule 4A of the Act.

**Business Day** means a day other than a Saturday, Sunday or public holiday in New South Wales.

**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 Commencement Date.

**Commencement Date** means the date this Agreement takes effect in accordance with clause 21.8.

**Confidential Information** has the meaning set out in clause 10.1.

**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 ESS 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).

**Controller**, in relation to property of a Panel Member, means:

- (a) a receiver, or receiver and manager, of that property; or
- (b) anyone else who (whether or not as an agent for the Panel Member) is in possession, or has control, of that property for the purpose of enforcing a security interest.

**Deed Poll** means a deed poll in the form set out in Schedule 5, as amended from time to time and available on the ESS Website.

**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 17.1 (in the case of the Agreement being terminated under that clause); or

- (b) the notice of termination issued under clause 17.2 (in the case of the Agreement being terminated under that clause).

**ESC** means an energy savings certificate created under Schedule 4A of the Act.

**ESS Participant** means a Scheme Participant or an ACP.

**ESS Participant Material** means:

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

**ESS Website** means the website at [www.ess.nsw.gov.au](http://www.ess.nsw.gov.au).

**Information Protection Principles** means the principles set out in Part 2 of the *Privacy and Personal Information Protection Act 1998 (NSW)*.

**Individual Energy Savings Target** for a Scheme Participant means the amount (expressed in notional megawatt hours) for a year calculated for the Scheme Participant in accordance with Schedule 4A of the Act.

**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*, is taken to have failed to comply with a statutory demand; or
- (j) is subject to the appointment of a Controller 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 or Australian law.

**IPART** means the Independent Pricing and Regulatory Tribunal of New South Wales in its own right and in its capacity as Scheme Administrator and Scheme Regulator under the Act.

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

**Lead Auditor** means:

- (a) any person approved by IPART and identified in Item 3 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.

**Liable Acquisitions** has the meaning given to that term in clause 10 of Schedule 4A of the Act.

**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, increased cost of working or any business interruption costs.

**Panel** means the panel established by IPART to undertake Audit Services.

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

**Performance Reviewer** means IPART or any other person appointed by IPART.

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

**Personnel** means the staff, employees or contractors of the Panel Member who will assist the Lead Auditor in providing the Services.

**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)*.

**Recognised Energy Savings Activity** means an activity in respect of which an ESC may be created under Schedule 4A of the Act.

**Registers** means each of the following:

- (a) the register of ACPs established for the purposes of clause 65 of Schedule 4A of the Act; and
- (b) a register of ESCs established for the purposes of clause 66 of Schedule 4A of the Act.

**Regulation** means the *Electricity Supply (General) Regulation 2014*.

**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 Party:**

- (a) where the Panel Member is a “public company” for the purposes of section 228 of the *Corporations Act 2001*, 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*, 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 .

**Scheme Participant** means a person who is required by clause 4 of Schedule 4A of the Act to participate in the energy savings scheme.

**Scheme Rule** means the *Energy Savings Scheme Rule of 2009 (NSW)* as amended from time to time.

**Scope of Work** means the detailed particulars of any Services to be provided by a Panel Member to IPART prior to the Service being undertaken and:

- (a) where the services are provided to an ESS Participant, in accordance with clause 1(a)(3) of Schedule 2; and
- (b) where the services are provided to IPART, in accordance with clause 1(a)(1) of Schedule 3.

**Services** means those services relating to an Audit and:

- (a) where the services are provided under clause 4, the services as agreed in writing by IPART, the Panel Member and an ESS Participant; or
- (b) where the services are provided under clause 5, the services as agreed in writing by IPART and the Panel Member.

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

## 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;
- (i) **year** means 12 months;
- (j) **in writing** includes any communication sent by letter, facsimile transmission or email;
- (k) 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;
- (l) **including** and similar expressions are not words of limitation;



- (m) 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 means the agency or body which performs most closely the functions of the agency or body referred to; and
- (n) the terms and expressions used in this Agreement have the same meaning as in the Act unless the terms are expressly defined in this Agreement.

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## **2 Term**

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

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## **3 Appointment of Panel Member**

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

- (a) IPART appoints the Panel Member to the Panel to undertake any Services for:
  - (1) ESS Participants in accordance with clause 4 and Schedule 2 (and as otherwise required by this Agreement); and
  - (2) IPART in accordance with clause 5 and Schedule 3 (and as otherwise required by this Agreement).
- (b) The Panel Member acknowledges that, at any time during the Term, IPART may appoint additional parties to the Panel as it sees fit.

### **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 any Services for ESS Participants and IPART in accordance with this Agreement.
- (b) The Panel Member acknowledges that in appointing the Panel Member to the Panel, IPART 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 Services Undertaken for ESS Participants**

### **4.1 Panel Member May Undertake Services for ESS Participants**

The Panel Member may undertake any Audit Services for an ESS Participant, provided:

- (a) the Panel Member has been nominated by IPART, or chosen by an ESS Participant, to provide those Services for the ESS Participant;

- (b) the Panel Member has provided written notice to the ESS Participant and to IPART 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 IPART 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) to enable IPART to satisfy itself concerning the Panel Member's notice under clause 4.1(b)(2).

#### **4.2 Services for ESS Participants to be Undertaken under Schedule 2**

Any Services which the Panel Member undertakes for an ESS Participant in accordance with clause 4.1 must be undertaken in accordance with Schedule 2 and as otherwise required by this Agreement.

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## **5 Services Undertaken for IPART**

### **5.1 Issue of Written Request by IPART**

At any time during the Term, IPART may issue a written request to the Panel Member to undertake any Services specified by IPART in that request. That written request must expressly state that it is a written request under this clause.

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

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

- (a) whether or not (at the Panel Member's sole discretion) the Panel Member will undertake the Services; 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 IPART to be Undertaken under Schedule 3**

If the Panel Member issues a written notice to IPART under clause 5.2 stating that the Panel Member is willing to undertake the Services specified, then the Panel Member must undertake those Services for IPART 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 IPART or an ESS Participant the Panel Member must comply, and ensure that its Lead Auditors and Personnel comply with all of the requirements of:

- (a) this Agreement;
- (b) the Act and the Regulation;
- (c) the Scheme Rule; and
- (d) any other applicable Regulatory Requirement.

### **6.2 Competency**

Without limiting clause 6.1, in undertaking any Services for IPART or for an ESS Participant, the Panel Member must:

- (a) exercise good faith in the interests of IPART 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 IPART from time to time;
- (f) notify IPART of any information required from IPART or the ESS Participant by the Panel Member, to enable the Panel Member to undertake the Services;
- (g) promptly acknowledge any communication received from IPART;
- (h) comply, and ensure that all Lead Auditors and Personnel comply, with any lawful direction given by IPART in relation to the Services (including any direction or request to provide information reasonably required by IPART); and
- (i) immediately notify IPART of any event, issue or circumstance that may give rise to a claim against IPART.

## 6.3 Training

- (a) The Panel Member must ensure that all of its Lead Auditors:
  - (1) 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 Services in accordance with this Agreement; and
  - (2) complete that information session or workshop to the satisfaction of IPART.
- (b) Neither the Panel Member nor any of its Lead Auditors will be entitled to any payment for undertaking any information session or workshop under clause 6.3(a). IPART will not charge the Panel Member or any of its Lead Auditors any fee for providing that information session or workshop.

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## 7 Lead Auditors and Personnel

### 7.1 Lead Auditors 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;
- (b) any other Personnel used by the Panel Member in connection with the Services:
  - (1) are named in the Scope of Work provided to IPART;
  - (2) are used only to assist any Lead Auditor (who must at all times maintain their involvement with the undertaking of the Services as set out in clauses 7.1(a)); and
  - (3) must work under the direct control, supervision and direction of any Lead Auditor.

### 7.2 Change of Lead Auditors

- (a) At any time the Panel Member may apply to IPART for IPART to remove or include a person as a Lead Auditor.
- (b) At any time and at its sole discretion IPART 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 a Lead Auditor and IPART will 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 for the purposes of this Agreement.

### 7.3 Warranty

The Panel Member warrants that each Lead Auditor and 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 Personnel has agreed to be bound by the confidentiality obligations under clause 10 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 Personnel (including for any breach of this Agreement by any Lead Auditor or by any Personnel).

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## **8 Periodic Review of Audit Panel Member's performance**

### **8.1 Conduct of Review**

- (a) The Performance Reviewer may conduct a review:
  - (1) at any time required by IPART (upon first giving the Panel Member 7 days written notice); or
  - (2) at regular periodic intervals (as determined by IPART), of all matters relating to the Panel Member's performance of any Services undertaken for IPART or for any ESS Participant.
- (b) Any review under clause 8.1(a) may follow any process or format determined by IPART.
- (c) During the course of any 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 ESS Participants for whom the Panel Member has undertaken any 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;
  - (4) attend any meetings requested by the Performance Reviewer or IPART in relation to the review; and
  - (5) promptly provide the Performance Reviewer with such other assistance as IPART may from time to time request.

## **8.2 Outcomes of Review**

- (a) Following completion of any review conducted under clause 8.1, IPART 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 IPART.
- (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 Personnel) to maintain, develop or improve the skills or expertise of any Lead Auditors or Personnel in relation to any Services;
  - (2) 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 IPART to give effect to those conditions);
  - (3) the termination of this Agreement by IPART under clause 17.
- (c) Following IPART'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 IPART;
  - (2) comply with any conditions which the Performance Reviewer recommends under clause 8.2(b)(2) and which are endorsed by IPART.

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## **9 Intellectual Property**

### **9.1 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.

### **9.2 Ownership of Contract Material**

Subject to clauses 9.3, 9.4 and 9.5, ownership of Intellectual Property in or in relation to Contract Material vests upon its creation in the Panel Member.

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

- (a) The Panel Member must (at its own cost) grant IPART an irrevocable licence to use and take copies of all:
  - (1) Contract Material;
  - (2) ESS Participant Material; and

- (3) 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 9.2), as may be required by IPART to enable IPART 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) ESS Participant Material; and
  - (3) Intellectual Property in or in relation to the Contract Material or the ESS Participant Material, necessary for the undertaking of any Services.
- (c) The Panel Member is not required to comply with clauses 9.3(a) and 9.3(b) in relation to IPART Material.

#### **9.4 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.

#### **9.5 Limitations on Use**

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

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## **10 Confidential information**

### **10.1 Definition of Confidential Information**

In this clause, "**Confidential Information**" means:

- (a) IPART Material;
- (b) Contract Material;
- (c) ESS Participant Material;
- (d) 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
- (e) any information in connection with the Services or this Agreement.

### **10.2 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 IPART;
- (b) it will not disclose the ESS Participant Material to any person (other than IPART) without the prior written consent of the ESS 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.

### **10.3 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.

### **10.4 Permitted Disclosures**

The Panel Member may disclose the Confidential Information to its Lead Auditors, Personnel, officers, employees or agents, solely for the purpose of undertaking any Services 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.

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

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

### **10.6 Publicity**

- (a) Subject to clause 10.6(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 IPART or for an ESS Participant in accordance with this Agreement, without the written consent of IPART (except to the extent that the announcement or release is required to be made by law or by a stock exchange).
- (b) Despite clause 10.6(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 an ESS Participant or for IPART.

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## **11 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 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, as if the Panel Member were a public sector agency as defined in the *Privacy and Personal Information Act 1998* (NSW);
- (d) cooperate with any reasonable demands or inquiries made by IPART on the basis of the exercise of the functions of the Privacy Commissioner including, but not limited to, a request from IPART 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 Protection Principles and other obligations referred to in this clause;
- (f) comply as far as practicable with any policy guidelines laid down by the Government of New South Wales or issued by the Privacy Commissioner from time to time relating to the handling of Personal Information; and
- (g) comply with any direction of IPART to observe any recommendation of the Privacy Commissioner relating to any acts or practices of the Panel Member that the Privacy Commissioner considers breaches the obligations in this clause.

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## **12 Conflict of Interest**

- (a) The Panel Member warrants that neither it, nor any of its Related Parties, has any Conflict of Interest as at the Commencement Date which has not previously been notified to IPART in writing.
- (b) 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 IPART.

- (c) The Panel Member must notify IPART of any potential Conflict of Interest as soon as the Panel Member becomes aware of it.
- (d) Upon being notified under clause 12(c), IPART may:
  - (1) 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
  - (2) meet with the Panel Member, to determine the nature of the potential Conflict of Interest.
- (e) Upon considering the nature of the potential Conflict of Interest, IPART 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 and the Panel Member cannot claim any compensation due to this direction.
- (f) Despite anything else in this clause 12, the Panel Member, each of its Related Parties and its Personnel must not be an ACP and must not (on his, her or its own account) own, acquire or dispose of any interest in an ESC.

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## 13 Goods and Service Tax

### 13.1 Liability for GST

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.

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.

### 13.2 Defined GST Terms

For the purpose of this clause 13:

- (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 (Cth)* 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.

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## **14 Indemnity and Liability**

### **14.1 Indemnity**

Subject to clauses 14.2 and 14.3, the Panel Member must indemnify, and keep indemnified, IPART and its officers, agents and employees from and against any Loss incurred by IPART arising out of or in connection with:

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

### **14.2 Exclusions**

The indemnity, in clause 14.1 above does not cover any Loss which results from:

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

### **14.3 Limitation of Liability**

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

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

### **14.4 Survival**

This clause 14 survives termination of this Agreement.

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## 15 Insurance

### 15.1 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 (NSW)* or equivalent legislation in another Australian State or Territory and covers the Panel Member's Lead Auditors, Personnel, officers, employees, agents and contractors while they are working for the Panel Member or are at the Panel Member's premises.

### 15.2 Terms of Insurance

The Panel Member must inform IPART immediately after:

- (a) the Panel Member becomes aware of any actual or threatened claims in relation to the Services made under any of the insurances referred to in clause 15.1; and
- (b) the insurer gives notice of cancellation or suspension of a policy (including for non-payment of premium) in respect of any of the insurances referred to in clause 15.1.

### 15.3 Certificates of Insurance

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

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## 16 Resolution of disputes

- (a) 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.
- (b) 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.

- (c) Each party must continue to perform its obligations under this Agreement, despite the existence of a dispute.
- (d) 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.

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## **17 Termination**

### **17.1 Termination for Default**

- (a) IPART may terminate this Agreement by providing notice in writing to the Panel Member 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 IPART;
  - (2) the Panel Member becomes Insolvent; or
  - (3) a Change in Control occurs, without IPART's written consent.
- (b) Termination under this clause 17.1 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).

### **17.2 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).

### **17.3 Consequences of Termination**

- (a) Termination under this clause 17 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 IPART up to the Effective Date of Termination).
- (b) Without limiting clause 17.3(a), in the case of any termination of this Agreement under clause 17.1, 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.
- (c) IPART may set-off any amount payable by the Panel Member under this clause 17.3, against any amounts owed to the Panel Member by IPART under this Agreement.

### **17.4 Panel Member to Cease**

Upon the Effective Date of Termination the Panel Member will be removed from the Panel and must cease undertaking any Services.

## **17.5 IPART's Rights on Termination or Expiry of Agreement**

On the Effective Date of Termination, the Panel Member:

- (a) must return all Confidential Information to IPART (or to the ESS Participant, in the case of ESS Participant 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).

Nothing in this clause limits the Panel Member's obligations under clause 10 ("Confidential Information") of this Agreement.

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## **18 Amendment of this Agreement**

### **18.1 Amendment by IPART**

- (a) At any time during the Term of this Agreement IPART may amend this Agreement as it sees fit, provided that it has given at least 30 days prior written notice of the amendment to the Panel Member.
- (b) Any amendment made by IPART under clause 18.1(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.
- (c) IPART will notify the Panel Member of its intention to amend the Agreement, and of the nature of the proposed amendment, prior to giving notice to the Panel Member under clause 18.1(a).
- (d) Upon notification by IPART under clause 18.1(c), 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.

### **18.2 Amendment by the Panel Member**

- (a) Subject to clause 18.2, the Panel Member may only amend this Agreement with the written consent of IPART (which may be given or withheld in IPART's absolute discretion).
- (b) The Panel Member may amend the rates set out in Schedule 4 by at least 30 days prior written notice of the amendment to IPART. Any change to the rates set out in Schedule 4 will not apply to a quote already provided to IPART at the date the written notice is given to IPART

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## 19 Assignment

### 19.1 No Assignment Without Consent

Subject to clause 19.2 and 19.3, 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.

### 19.2 Assignment by IPART

Subject to clause 19.3, IPART may assign or novate the benefit of any right, and transfer any obligation or liability, under this Agreement to any person who assumes the functions and responsibilities of IPART under the Act (whether on its own account or in its capacity as Scheme Administrator) or under any other Regulatory Requirement.

### 19.3 Assignment Conditional

IPART's rights under clause 19.2 are conditional upon the assignee:

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

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## 20 Notices

Any notice, demand, consent or other communication (“**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 email to the address or email address 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; and
  - (3) in the case of email, two hours after the email is sent, as recorded on the device from which the email was sent, unless the sender receives an automated message that the email has not been delivered.

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## **21 General**

### **21.1 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.

### **21.2 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.

### **21.3 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.

### **21.4 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.

### **21.5 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.

### **21.6 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.

### **21.7 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.



### **21.8 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.

### **21.9 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.

### **21.10 Costs**

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

### **21.11 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 COMPANY NAME>

**Item 2: Address of Panel Member**

<INSERT ADDRESS>

**Item 3: Lead Auditor(s)**

<INSERT LEAD AUDITOR NAME>

# SCHEDULE 2: TERMS AND CONDITIONS FOR SERVICES UNDERTAKEN FOR ESS PARTICIPANTS

## 1 Preconditions to Commencing Services for ESS Participants

The Panel Member must not commence undertaking any Services for an ESS Participant, until:

- (a) the Panel Member has provided to IPART:
  - (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 ESS Participant;
  - (3) a Scope of Work for those Services which sets out (in such detail as IPART 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 proposed to undertake the Services;
    - (D) all Personnel proposed to assist with undertaking the Services together with information regarding their skills and experience;
    - (E) the anticipated date for completion of the Services;
    - (F) any other information required by IPART;
- (b)
  - (1) the period referred to in clause 2(a) below has expired, without IPART issuing any notice under that clause to the Panel Member; or
  - (2) the Panel Member has amended the Scope of Work as required by IPART 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 ESS Participant for the provision of those Services, in accordance with clause 6 below.

## 2 Variations to Scope of Work

Within 14 days of receipt of a Scope of Work under clause 1(a)(3) above, IPART may (by written notice) direct the Panel Member to:

- (a) amend that Scope of Work to incorporate any variation requested by IPART (subject to the Panel Member having the technical capacity and resources necessary to accommodate the variation); and
- (b) submit the amended Scope of Work to IPART within 7 days of IPART's notice.

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

The Panel Member acknowledges that the rights of IPART (under clauses 1(a) and 2(a) above) in respect of the Scope of Work are intended entirely for the benefit of IPART 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) 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 Services to be Undertaken in Accordance with Scope of Work**

- (a) The Panel Member must undertake any Services for an ESS Participant in accordance with:
  - (1) the Scope of Work for those Services provided to IPART 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 IPART.

### **5 Professional Indemnity Insurance**

Prior to undertaking any Services for an ESS 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 IPART within the period of time referred to in clause 2(a) above; or
  - (2) agreed between the Panel Member and the ESS Participant (if IPART 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 ESS Participant**

- (a) The Panel Member must enter into a separate contract with any ESS Participant for whom it provides any Services.
- (b) That contract may be on such terms and conditions as the Panel Member and the ESS Participant agree, provided that:
  - (1) the contract expressly provides that any fees and expenses payable to the Panel Member for the Services are payable by the ESS Participant (and that the ESS Participant acknowledges it will have no recourse

to IPART 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 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 IPART with a copy of any such contract between the Panel Member and an ESS Participant upon request by IPART.

## **7 Services are at the Expense of the ESS Participant**

The Panel Member acknowledges that any Services undertaken for an ESS Participant in accordance with this Schedule:

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

## **8 IPART Entitled to Rely on the Services**

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

- (a) require the Panel Member to perform (and to rely on the Panel Member performing) any Services undertaken for an ESS 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 Services for an ESS Participant).

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

IPART may by written notice issued to the Panel Member and to the ESS Participant for whom any Services are undertaken, direct the Panel Member to cease undertaking those 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 IPART; and
  - (2) written notice of the breach being sent to the ESS Participant by IPART;
- (b) the Panel Member becomes Insolvent; or
- (c) a Change in Control occurs, without IPART's written consent.

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

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

## **11 Consequences of Termination of Services by IPART**

- (a) The issue of any notice under clause 9 above 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.
- (b) Without limiting clause 11(a) above, upon the issue of any notice by IPART under clause 9 above, the Panel Member must compensate IPART for any Loss incurred by IPART 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) IPART may set off any amount payable by the Panel Member under this clause 11, against any amounts owed to the Panel Member by IPART under this Agreement.
- (d) The rights of IPART under clauses 9 to 11 above are in addition to (and may be exercised separately from and without prejudice to) IPART's rights under clause 17 of this Agreement.

## **12 Return of Confidential Information**

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

- (a) must (if requested by IPART) return to IPART all IPART Material relating to those Services in such form or format as is required by IPART; and
- (b) may (subject to clauses 9 and 10 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 IPART

## 1 Preconditions to Commencing Services for IPART

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

- (a) the Panel Member has provided to IPART:
  - (1) a detailed Scope of Work for those Services which sets out (in such detail as IPART 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 proposed to undertake the Services;
    - (D) all Personnel proposed to assist with undertaking the Services together with information regarding their skills and experience;
    - (E) the anticipated date for completion of the Services;
    - (F) any other information required by IPART; 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, subject to any variation to the rates as approved by IPART;
- (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) IPART 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, IPART may (by written notice) require the Panel Member to:

- (1) amend the Scope of Work to incorporate any variation requested by IPART (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 IPART within 7 days of IPART'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 IPART (under clauses 1 and 2 above) in respect of the Scope of Work are intended entirely for the benefit of IPART 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) 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 Services to be Undertaken in Accordance with Approved Scope of Work and Quote**

- (a) The Panel Member must undertake any Services approved by IPART 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 IPART 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 IPART.

### **5 Timing**

- (a) The Panel Member must:
  - (1) perform any Services undertaken for IPART in accordance with the timing requirements specified in the Scope of Works approved by IPART under clause 1(d) above; and
  - (2) promptly notify IPART in writing of any actual or anticipated failure of the Panel Member to do so.
- (b) If the Panel Member gives IPART notice under clause 5(a) above, IPART 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) IPART 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) IPART 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 IPART or circumstances beyond the reasonable control of the Panel Member.

## **6 Professional Indemnity Insurance**

Prior to undertaking any Services for IPART, 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 IPART up to the limits specified in clause 14.3 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 IPART for those fees and expenses at the times and in the amounts specified in that written quote for costs.
- (c) IPART must pay any invoice validly issued under clause 7(b) above within 45 days of issue of the invoice to IPART.

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

IPART may by written notice issued to the Panel Member direct the Panel Member to cease undertaking any Services undertaken for IPART, 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; or
- (c) a Change in Control occurs, without IPART's written consent.

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

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

#### **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 IPART**

- (a) The issue of a notice under clause 8 or clause 9 above 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 (including any right of the Panel Member to payment for Services undertaken for IPART 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 IPART under clause 8 above, the Panel Member must compensate IPART for any Loss incurred by IPART 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) IPART may set off any amount payable by the Panel Member under this clause 11, against any amounts owed to the Panel Member by IPART under this Agreement.
- (d) The rights of IPART under clauses 8 to 11 above are in addition to (and may be exercised separately from and without prejudice to) IPART's rights under clause 17 of this Agreement.

#### **12 Return of Confidential Information**

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

- (a) must (if requested by IPART) return to IPART all Confidential Information (or to the ESS Participant, in the case of ESS Participant Material) relating to the Services in such form or format as is required by IPART; and
- (b) may (subject to clauses 9 and 10 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 IPART

Name	Hourly rate (excl GST)	GST	Total hourly rate (incl GST)	Daily rate (excl GST)	Daily GST	Total daily rate (incl GST)
<INSERT LEAD AUDITOR NAME>	\$	\$	\$	\$	\$	\$

# SCHEDULE 5: ESS PARTICIPANT DEED POLL

## DEED POLL

### Date:

**By:** <INSERT FULL NAME AND ACN>  
of <INSERT ADDRESS OF ESS PARTICIPANT> ("**the ESS Participant**")

### Background

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

### 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 1995 (NSW)*;

"**Audit**" means an audit required by IPART (under clause 58 of Schedule 4A of the Act and clauses 55 and 56 of the Regulation) for the purposes of Schedule 4A of the Act;

"**IPART Contract**" means the contract between IPART and the Panel Member referred to in Item 3 of the Annexure to this Deed.

"**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, 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;

"**Panel**" means the panel established by IPART to undertake Services;

"**Regulation**" means the *Electricity Supply (General) Regulation 2014*;

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

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

**"Services"** means those services relating to Audit for the ESS Participant specified in Item 2 of the Annexure to this Deed;

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

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

## **3 Acknowledgments**

The ESS Participant acknowledges that:

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

## **4 Undertakings and Indemnities**

The ESS Participant undertakes to IPART that it will not make any claim against IPART and indemnifies IPART 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 ESS Participant for any Loss suffered by the ESS Participant (or by any other person claiming against the ESS 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 ESS 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, ABN AND PANEL MEMBER ADDRESS>

### **Item 2: Services**

<INSERT DETAILS OF SERVICES FOR THE ESS PARTICIPANT>

### **Item 3: IPART Contract**

The contract dated <INSERT DATE> between IPART and the Panel Member governing (among other things) the undertaking of Services by the Panel Member (as a member of the panel appointed by IPART to undertake audits required by IPART under the Act).

EXECUTED as a Deed.

<INSERT DATE>

Executed by <INSERT ESS PARTICIPANT )  
NAME> )  
ABN <INSERT ABN> )  
in accordance with section 127(1) of the )  
Corporations Act 2001: )

\_\_\_\_\_  
Director or Authorised Representative

\_\_\_\_\_  
Director/Company Secretary or Authorised Representative

\_\_\_\_\_  
Name of Director or Authorised Representative  
(Print Name)

\_\_\_\_\_  
Name of Director/Company Secretary or Authorised Representative  
(Print Name)

OR

Executed by <INSERT ESS PARTICIPANT )  
NAME> )  
ABN <INSERT ABN> by its Authorised )  
Representative: )  
)

\_\_\_\_\_  
Authorised Representative

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Name of Authorised Representative  
(Print Name)

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

A copy of the signatory's authority must be attached.



**EXECUTED** as an agreement

<INSERT DATE>

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

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Signature of Witness

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Signature of Authorised Person

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Name of Witness  
(Print Name)

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Name of Authorised Person  
(Print Name)

**Signed** for and on behalf of )  
<INSERT COMPANY NAME> )  
ABN <INSERT ABN> )  
pursuant to section 127(1) of the )  
*Corporations Act 2001*: )

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Signature of Director

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Signature of Director

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Name of Director  
(Print Name)

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Name of Director  
(Print Name)