

DEED made at Melbourne on

2019201

BETWEEN ESSENTIAL SERVICES COMMISSION, of ~~2nd Floor, 35 SpringLevel 37, 2 Lonsdale~~ Street, Melbourne, Victoria ("Commission")

AND THE PERSON WHOSE NAME AND ADDRESS IS SPECIFIED IN ITEM 1 OF THE SCHEDULE ("Licensee")

AND THE PERSON WHOSE NAME AND ADDRESS IS SPECIFIED IN ITEM 2 OF THE SCHEDULE ("Auditor")

RECITALS

- A. The Licensee is the holder of a licence issued under the Relevant Act.
- B. A condition of the Licence, requires, ~~in essence,~~ that, upon request by the Commission, the Licensee appoint an auditor to conduct audits of certain matters, and that the Licensee comply with relevant aspects of any guideline dealing with audits under the relevant Licence condition relating to (amongst other things) the appointment of the auditor, the conduct of the audit and the reporting of the results of the audit.
- C. Pursuant to a Relevant Guideline, as and when specified by the Commission, the Licensee must have audits undertaken by an auditor or auditors appointed by the Licensee and the subject of a current approval by the Commission, with any such approval being subject to any terms and conditions specified by the Commission.
- D. The Licensee has requested that the Commission approve of the Auditor as the auditor to conduct each Audit during the Initial Term.
- E. The Commission has agreed to approve of the Auditor as the auditor to conduct each Audit during the Term, subject to the terms and conditions set out in this Deed.

THIS DEED PROVIDES

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise provides:

"**Audit**" means an audit conducted under a Licence or Relevant Guideline, or which is required under a Licence or Relevant Guideline to be conducted, as applicable.

"**Audit Contract**" means any agreement between the Auditor and the Licensee under which the Auditor is engaged to conduct each or an Audit during the Initial Term.

"**Audit Report**" means a written report on the results of an Audit prepared by the Auditor.

"Audit Team" means, at any time, the group of persons specified as such in item 3 of the Schedule, as the composition of that group may have changed otherwise than in breach of clause 10.

"Business Day" means a day, other than a Saturday or a Sunday, on which banks are open for general banking business in Melbourne.

"Check-~~Auditor~~" has the meaning given to it in clause 7.6.

"Closing Meeting" means, in relation to an Audit, a meeting between the Auditor, the Licensee and the Commission which when called is intended by the Commission to be the final client meeting concerning the conduct of the Audit before the end of the Audit in accordance with typical audit practice.

"Initial Term" means the period specified in item 5 of the Schedule or such longer period as the parties may from time to time agree in writing.

"Licence" means the licence issued to the Licensee pursuant to the Relevant Act.

"Licence Obligation" means an act which, if not done (or an omission with respect to something which, if done) would result in a contravention of a condition of the Licence.

"Prescribed Amount" means the amount specified in item 6 of the Schedule.

"Proscribed Services" means any or all of the following services:

- (a) auditing services with respect to the Licensee or any business conducted under a Licence;
- (b) services which could reasonably be considered to be relevant to the strategic approach adopted (or to be adopted) by or in connection with the Licensee or any business conducted under a Licence;
- (c) services which could reasonably be considered to be relevant to the overall management of the Licensee or any business conducted under a Licence;
- (d) services which could reasonably be considered to be relevant to the formulation or content of planning processes or investment processes adopted (or to be or which may be adopted) by or in connection with the Licensee or any business conducted under a Licence, being processes of relevance to the standard of any services supplied (or to be supplied) by or in connection with the Licensee or any business conducted under a Licence,

but not including services in respect of an audit carried out under the Licence or financial auditing services carried out under the Corporations Act 2001 (Cth).

"Relevant Act" means the Act specified in item 7 of the Schedule.

"Relevant Guideline" means, at any time, a guideline or statement published by the Commission (as revised or substituted prior to the relevant time) dealing with audits

under the condition of the Licence referred to in Recital B and, at the date of this Deed, including the guideline described in item 4 of the Schedule.

“Reported Information” means information reported by the Licensee to the Commission (including performance information for comparative reporting and forecasts for price review purposes)

"Subcontractor" means a contractor who has been appointed by the Auditor under clause 10.

"Term" means the period commencing on the date of commencement of the Initial Term and ending on the date of termination of this Deed.

1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) a reference to this Deed or to another instrument includes any variation or replacement of either of them;
- (b) a reference to a clause or Schedule is a reference to a clause or Schedule of this Deed;
- (c) a reference to a paragraph is a reference to a paragraph of the clause in which the reference appears;
- (d) a reference to a statute, ordinance, code or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them;
- (e) the singular includes the plural and vice versa;
- (f) one gender includes the other genders;
- (g) the word "person" includes a firm, a body corporate, an unincorporated association, a government agency and an authority;
- (h) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (i) headings are for ease of reference only and do not affect interpretation; and
- (j) the terms "including" and "include" mean including or include (as applicable) without limitation.

2. AUDITOR APPROVAL

2.1 Nomination

The Licensee nominates the Auditor as the auditor to conduct each Audit to be undertaken during the Initial Term.

2.2 Approval

The Commission approves of the Auditor as the auditor to conduct each Audit to be undertaken during the Term.

2.3 Others

Nothing in this Deed restricts or qualifies the right of the Commission to approve of another or others as the person or persons to conduct Audits.

3. DUTY OF CARE

3.1 Duty

If the Auditor conducts (or purports to conduct) an Audit, it must:

- (a) do so honestly, fairly, professionally, independently and objectively; and
- (b) in doing so, exercise a standard of skill, care and diligence that would be reasonable to expect of a person who is skilled, and who has substantiated experience, in the provision of services of a nature the same as or similar to those to be provided by the Auditor in connection with the Audit, being a person who, in particular
 - (i) is skilled and has substantiated experience in the areas which are identified in any Relevant Guideline as areas in which an auditor must have experience; and
 - (ii) has a detailed knowledge of the matters which are identified in any Relevant Guideline as matters of which an auditor must have detailed knowledge.

3.2 Acknowledgement

The Auditor acknowledges that:

- (a) the Commission is relying and will rely on the Auditor to conduct in accordance with this Deed any Audit it conducts (or purports to conduct); and
- (b) a failure to so conduct each such Audit may cause loss or damage to the Commission including as a result of the Commission:
 - (i) improperly exercising (or failing to exercise) any right or remedy against the Licensee; or
 - (ii) publishing any report or other material (including any comparative report),

in reliance on material received from, prepared by or checked by the Auditor.

4. CONFLICTS

4.1 Existing Conflict

Subject to clause 4.3, the Auditor represents and warrants to the Commission that the Auditor, and each Subcontractor:

- (a) does not hold any office or possess any property;
- (b) is not engaged in the provision of Proscribed Services;
- (c) has not recently been engaged in the provision of Proscribed Services;
- (d) does not have any interest, obligation or duty (whether owed to the Licensee or any other person),

as a direct or indirect result of which any of its or the Subcontractor's obligations, duties or interests are, or could reasonably be seen to be, in conflict with (in the case of the Auditor) the Auditor's duties to the Commission or (in the case of a Subcontractor) duties which the Subcontractor would owe to the Commission were the Subcontractor party to this Deed, as Auditor. Upon execution of this Deed the Auditor must require that each member of the Audit Team signs and delivers to the Commission a declaration in substantially the same terms as this clause.

4.2 Future Conflict

Subject to clause 4.3, the representation and warranty made under clause 4.1 shall be deemed to have been repeated on each day occurring during the Term, by reference to the facts and circumstances then ~~subsisting~~existing.

4.3 Notified Conflicts

The ~~subsistence~~existence or occurrence of a particular circumstance or event on a day shall not constitute a misrepresentation or breach in respect of the representation and warranty made under clause 4.1, or deemed under clause 4.2 to have been repeated, on that day if (but only insofar as) either prior to that day or (with the consent of the Commission) after that day:

- (a) the Auditor or the Licensee has expressly identified (by notice in writing to the Commission expressed to be given under this clause 4.3) the relevant circumstance or event; and
- (b) the Commission and the Auditor have agreed a protocol in relation to the relevant circumstance or event.

4.4 Protocol

Promptly after a notice under paragraph 4.3(a) is given, the Auditor and the Commission shall meet in an endeavour in good faith to agree a protocol the objectives of which would be to ensure that:

- (a) in the event of any conflict of a type described in clause 4.1 as a direct or indirect result of a circumstance or event identified in that notice, duties owed to the Commission (or in the case of a Subcontractor, which would be owed to the Commission were the Subcontractor party to this Deed, as Auditor) are treated as paramount; and
- (b) no member of the Audit Team is influenced, or could reasonably be considered to be exposed to a material risk of being influenced, as a direct or indirect result of the circumstance or event identified in the notice.

4.5 Observe Protocol

The Auditor must satisfy and observe each requirement and obligation which is specified in or arises under a protocol agreed under this clause 4.

4.6 Limit on Future Work

Without limiting this clause 4, the Auditor must ensure that no member of the Audit Team performs any fee-earning work for the Licensee during the Term, other than fee-earning work undertaken:

- (a) in the conduct of (and for the purposes of) an Audit; or
- (b) in the provision of services in respect of either an audit carried out under the Licence or financial auditing services carried out under the Corporations Act 2001 (Cth).

4.7 Avoid Conflict Pressures

The Auditor must ensure that no work is undertaken by partners, employees, contractors or agents of the Auditor or of a Subcontractor, being work which influences any members of the Audit Team, or which could reasonably be considered to give rise to a material risk of any members of the Audit Team being influenced, either in relation to services provided in connection with an Audit or the performance by the Auditor of its obligations under this Deed. This clause does not, however, apply:

- (a) to work undertaken by members of the Audit Team of the type to which paragraph 4.6(a) or 4.6(b) applies; or
- (b) to work undertaken by persons who are not members of the Audit Team, being work relating to a circumstance or event the subject of a protocol agreed under this clause 4.

5. COMPLIANCE WITH GUIDELINES

The Auditor must satisfy and observe (and must ensure that each member of the Audit Team satisfies and observes) each requirement and obligation which is specified in or arises under a Relevant Guideline and which is to be satisfied or observed by an auditor or by members of (or a member of) an Audit Team, as applicable.

6. REPORTING

6.1 Audit Reports

The Auditor must prepare ~~(and, promptly after its preparation,~~ provide to the Licensee and the Commission):

- (a) in relation to each Audit, any draft Audit Report by 15 business days (or such shorter period as the Commission may approve in writing) before the Closing Meeting with the Commission.
- (b) in relation to each Audit, a full Audit Report by 5 business days (or such shorter period as the Commission may approve in writing) before the Closing Meeting with the Commission which contains, as a minimum, all of the information required by a Relevant Guideline to be included in such a report (unless directed otherwise by the Commission); and
- (c) if requested to do so by the Commission, a summary Audit Report in relation to an Audit in accordance with any standard reporting format prescribed by the Commission from time to time.

6.2 Signing of full Audit Report

Each full Audit Report described in clause 6.2(a)(b) must include a statement signed on behalf of the Auditor by the partner of the firm (or equivalent) leading the Audit Team which states that:

- (a) ~~(a)~~ —each Relevant Guideline and this Deed have been complied with by the Auditor in conducting the Audit, making audit findings and preparing the full Audit Report; and
- (b) ~~(b)~~ —each audit finding in the report reflects the professional opinion of the Auditor made at no less than the level of confidence (if any) which a Relevant Guideline requires be achieved in relation to the finding (or findings of the nature of the finding concerned).

6.3 ~~Audit Briefings~~ Progress Reports

The Auditor must ~~procure~~ require members of the Audit Team (including the leader of the Audit Team) to ~~brief~~ provide the Commission with regular reports on the ~~Audit Reports in relation to an Audit and all audit findings~~ progress of the ~~Audit Team in relation to the Audit within five (5) Business Days. Those reports must include a meeting before commencement~~ of the Audit, a Closing Meeting with the Commission requesting a briefing or within and such longer period ~~other intermediate updates~~ as the Commission ~~may allow~~ reasonably requires.

6.4 Variance between draft and final Audit Reports

In preparing and providing its final Audit Report, the Auditor must not make material amendments from a draft Audit Report that has been provided to the Licensee or the Commission (or both) unless either:

- (a) the amendment corrects a manifest error or omission and is necessary to sustain the proposed Audit conclusion; or
- (b) the Commission consents to the amendment (such consent not to be unreasonably withheld).

7. RECORDS OF AUDIT PROCESS

7.1 Retention of Records

The Auditor must keep throughout the Term, and for the a period during which it must maintain insurance under clause 11.3 of 6 years commencing on expiration of the Term:

- (a) a record of all correspondence and contacts with the Licensee in relation to each Audit;
- (b) a record of all significant or material changes made to any draft Audit Report or other report prepared in connection with an Audit, and the reasons for each such change;
- (c) each such draft Audit Report or other report;
- (d) each Audit Report and either each report, record and document on which reliance is placed in arriving at a finding in an Audit Report or (insofar as either the Licensee has the relevant report, record or document or it is publicly available) a record of each such report, record and document (being a record which clearly identifies both the relevant report, record or document and each aspect of it on which reliance was so placed); and
- (e) all other records created in connection with an Audit.

7.2 Provision to Commission and Others

- (a) The Licensee must provide to the Commission a copy of:
 - (i) any Audit Report referred to in paragraph 7.1(d), promptly after the Licensee's receipt of it; and
 - (ii) any publicly available report, record or document identified in a record kept by the Auditor under paragraph 7.1(d), promptly after being requested by the Commission to do so.
- (b) Promptly after being requested by the Commission to do so, the Auditor must provide to the Commission a copy of any record or draft report referred to in paragraph 7.1(a), (b) or (c), and of any publicly available report record or document referred to in paragraph 7.1(d) (or a record referred to in paragraph 7.1(d) of any publicly available report record or document), the subject of the request. Any such request may specifically identify the material the subject of it or may identify that material generically or by reference to particular categories.

- (c) Promptly after being requested by a Check-Auditor to do so:
- (i) the Licensee must provide to the Check-Auditor a copy of any report, record or document identified in a record kept by the Auditor under paragraph 7.1(d); and
 - (ii) the Auditor must provide to the Check-Auditor a copy of any report, record or document referred to in paragraph 7.1(d) (or a record referred to in paragraph 7.1(d) of any report, record or document), and a copy of any record referred to in paragraph 7.1(e).

Any such request may specifically identify the material the subject of it or may identify that material generically or by reference to particular categories.

7.3 Records and Documents

Without limiting clause 7.4, the Auditor grants to the Commission an irrevocable, non exclusive licence to use and reproduce, and to sub-license consultants and sub-contractors of the Commission to use and reproduce, (including, without limitation, to publish), records, reports and documents referred to in paragraph 7.2(a) or 7.2(b).

7.4 Audit Reports

The Auditor assigns (and, to the extent that it has any relevant copyright, the Licensee assigns) to the Commission all present and future copyright in each Audit Report and each draft of an Audit Report. The Commission grants to each of the Auditor and the Licensee an irrevocable non-exclusive licence to use, reproduce and adapt such material, and to sub-license others (including Subcontractors) to use, reproduce and adapt such material. This licence to the Auditor does not, however, include (and the Auditor acknowledges that it does not have), any right to publish or communicate to the public any such material (or any adaptation of it).

7.5 Commission Acknowledgement

If the Auditor provides material under clause 7.2 to the Commission or a Check-Auditor engaged by the Commission, the Commission acknowledges that neither its nor the Check-Auditor's use of that information is intended to result in the assumption by the Auditor of an obligation or liability in favour of the Commission additional to the obligations and liabilities assumed by the Auditor in favour of the Commission under this Deed. Nothing in this acknowledgement, however, is intended to limit or qualify the capacity of the Commission to use any such material in connection with the exercise or enforcement (or attempted exercise or enforcement) of any right or remedy of the Commission in respect of an obligation or liability assumed by the Auditor in favour of the Commission under this Deed.

7.6 Check-Auditor

The Commission may engage a consultant ("Check-Auditor") for the purpose (or for a purpose) of checking or auditing work undertaken under or in relation to an Audit. In this regard, the Commission must ensure that the terms of its engagement of any Check-Auditor oblige the Check-Auditor:

- (a) not to disclose to the Commission material provided to the Check-Auditor in exercise of the power under paragraph 7.2(c), ~~being material which~~ if it is not ~~publicly~~ available to the Commission under this Deed or the Licence; and
- (b) not to use such material other than for or in relation to the monitoring or checking of an Audit or the Auditor's performance of obligations relating to an Audit or arising under this Deed.

8. INCONSISTENCY AND RELATIONSHIP

8.1 Inconsistency with Audit Contract

The provisions of this Deed will prevail to the extent of any inconsistency between the provisions of this Deed and an Audit Contract.

8.2 Inconsistency with Guidelines

If:

- (a) as a consequence of clause 5~~+~~ an obligation is imposed on the Auditor which involves an issue being addressed in a particular way; and
- (b) as a consequence of another provision of this Deed, an obligation is imposed on the Auditor which also involves that issue being addressed,

then the Auditor must:

- (c) to the extent that such obligations are not inconsistent (in the sense that they are, as a practical matter, both capable of being satisfied), comply with each obligation; and
- (d) to the extent that such obligations are inconsistent (in the sense that they are not, as a practical matter, both capable of being satisfied):
 - (i) notify the Commission of the inconsistency promptly after becoming aware of it; and
 - (ii) comply with the obligation specified in or arising under the Relevant Guideline.

8.3 Inconsistency with Licence

Nothing in this Deed requires that the Licensee act in a way which is in breach of either a law binding on the Licensee or a condition of the Licence held by the Licensee.

8.4 Auditor and Licensee

Subject to the express provisions of this Deed (including, without limitation, clauses 4.4 and 8.1) the Auditor acknowledges that this Deed does not operate to exclude, limit or qualify its obligations or liabilities to the Licensee or any rights or

remedies of the Licensee exercisable against it (whether that obligation, liability, right or remedy arises under the Audit Contract or under law, or otherwise). The Licensee has sole responsibility for negotiating, agreeing and paying any amount to be paid to the Auditor in consideration for its carrying out functions and performing its obligations under the Audit Contract and this Deed.

8.5 Auditor and Commission

The Auditor is an independent consultant and is not, and must not purport to be, a partner, joint venturer or agent of the Commission.

9. AUDIT RESPONSE

9.1 Re-Audits

Promptly after being requested by the Commission to do so, the Auditor must reassess any aspect of an Audit conducted by it insofar as that aspect is relevant to a finding in the Auditor's report on the Audit, being a finding identified in the Commission's request. It is acknowledged that (except to the extent that the Commission otherwise agrees, in writing) the reassessment of any such aspect will entail the repetition of all work undertaken in connection with the Audit (or that should have been so undertaken) which is relevant to the validity or reasonableness of the relevant finding. For the purposes of this Deed, work undertaken in relation to any such reassessment constitutes work undertaken in connection with the relevant Audit.

9.2 Re-Audit Requests

The Commission may only exercise its power under clause 9.1 to request the Auditor to reassess an aspect of an Audit conducted by the Auditor if:

- (a) a copy of the request is given to the Licensee; and
- (b) the Commission believes in good faith that there is reason to suspect that either:
 - (i) there has been inadequate assessment of a matter which was, or should have been, assessed in order to arrive at the finding identified in the Commission's request; or
 - (ii) the relevant finding is or may be wrong or is or may be one which would not have been arrived at had the Auditor conducted the Audit in compliance with clause 3.1,

provided, however, that the grounds for the Commission's belief have been directly raised with the Auditor and the Licensee and neither the Auditor nor the Licensee has (to the Commission's satisfaction) promptly satisfied the Commission's concerns in relation to those grounds.

10. AUDIT TEAM

- (a) The rights and obligations of the Auditor under this Deed are personal to it. Nevertheless, it may appoint a contractor either to act as a member of the Audit Team or to provide the services of certain of the contractor's employees as members of the Audit Team, but only if:
- (i) the Commission has given its prior written consent to the appointment; or
 - (ii) the contractor and, if applicable, each relevant employee of the contractor is identified in item 3 of the Schedule.

The appointment of a Subcontractor does not in any way exclude, limit or restrict any right, power or remedy of the Commission or any obligation, duty or liability of the Auditor.

- (b) Subject to paragraph (c), the Auditor must ensure that there is no change in the composition of the Audit Team without the prior written consent of the Commission.
- (c) The obligation under paragraph (b) does not apply in relation to a change to the composition of the Audit Team constituted by a person ceasing to be a member of that team as a result of:
- (i) incapacity or illness of the person;
 - (ii) the person ceasing to be employed or engaged by the Auditor or a Subcontractor (as the case may be); or
 - (iii) the person ceasing to be engaged in the provision of services in the division or department of the Auditor or the Subcontractor (as the case may be) in which all (or most) other members of the Audit Team engaged by the Auditor or the Subcontractor (as the case may be) are engaged in the provision of services.
- (d) The Auditor must notify the Commission of any change to the composition of the Audit Team pursuant to paragraph (c), promptly after the change occurs.
- (e) The Auditor must ensure that only Audit Team members undertake work undertaken for the purposes of its preparation of any Audit report or undertaken by or on behalf of the Auditor for the purposes of an Audit or in performance of obligations owed under an Audit Contract or this Deed.

11. INDEMNITY AND LIMITATION OF LIABILITY

11.1 Indemnity

Subject to clause 11.2, the Auditor indemnifies the Commission against any claim, cost, loss, damage, liability or expense made against or, suffered, incurred or payable by, the Commission as a result of or in connection with:

- (a) any breach by the Auditor of this Deed; ~~or~~
- (b) any negligent or wrongful act or omission of the Auditor or of any member of the Audit Team, including a Subcontractor, which occurs in connection with or as a result of the conduct of any Auditor; or
- (c) whether or not the Commission uses, reproduces or publishes an Audit Report or other materials referred to in clause 7.3, any infringement of another person's rights including defamation, breaches of privacy and breaches of intellectual property rights.

11.2 Limitation of Liability

Where the law requires, the Auditor's liability to the Commission will not be limited. In all other cases, the Auditor's liability to the Commission for any loss or cause of action arising in relation to this agreement, including for negligence, is limited as set out below:

- (a) where a scheme approved under the *Professional ~~Services~~Standards Act* 2003 (Vic) (the PSA) applies, in the manner provided by the scheme; or
- (b) where a scheme or the PSA does not apply, an amount equal to 10 times the Auditor's fees up to a maximum of \$75 million.

11.3 Professional Indemnity Insurance

The Auditor must effect and maintain throughout the Term, and for a period of 6 years commencing on expiration of the Term, professional indemnity insurance:

- (a) covering liability which the Auditor might incur as a result of a breach by it of its obligations under clause 3.1 or any other breach of duty owed by it in a professional capacity or liability incurred under clause 11.1;
- (b) for an amount which is not less than the Prescribed Amount, for all claims arising from any one incident or occurrence;
- (c) with an insurer not objected to by the Commission and on terms which (when viewed as a whole) are not materially more onerous on the insured or materially less onerous on the insurer, when compared to terms generally available in the market at the time the insurance was effected.

11.4 Objection by Commission

The Commission may only object to the relevant insurer:

- (a) on reasonable grounds;
- (b) by notice given to the Auditor within a reasonable time after its receipt from the Auditor of details of the name of the insurer.

11.5 Provision of Information

The Auditor must give the Commission promptly after any request ~~therefor~~for it:

- (a) proof reasonably satisfactory to the Commission of the currency and coverage of the relevant insurance; and
- (b) a true and complete copy of renewal certificates and any endorsement slips.

12. TERMINATION

12.1 Termination by effluxion of time

Unless terminated earlier pursuant to this clause 12, this Deed will terminate on expiration of the Initial Term.

12.2 Termination by the Commission

Unless the Commission has (in the context of any particular event) waived its right to do so, the Commission may terminate this Deed by notice to the Licensee given not less than five Business Days after the Commission has notified the Licensee and the Auditor of the Commission's intention to terminate. The Commission may notify the Licensee and the Auditor of the Commission's intention to terminate this Deed at any time after:

- (a) a failure by the Auditor to comply with any obligation owed by it under clause 3.1;
- (b) a failure by the Auditor to comply with any obligation owed by it to the Commission under this Deed (other than an obligation referred to in paragraph (a)) and, if the consequences of that failure are not and are not likely to be material and are capable of remedy, that failure is not remedied to the reasonable satisfaction of the Commission within ~~five~~ five Business Days of its occurrence;
- (c) an unsatisfactory assessment of performance made in a performance appraisal completed by the Commission after due consultation and discussion with the Auditor;
- ~~(e)~~(d) a representation and warranty made by the Auditor under this Deed is, or proves to be, false;
- ~~(d)~~(e) the Auditor is engaged to provide Proscribed Services and a protocol agreed under clause 4 does not apply to that engagement;
- ~~(e)~~(f) there is a change in the composition of the Audit Team (whether or not in breach of clause 10) which, in the opinion of the Commission arrived at in good faith, of itself results in an unacceptable reduction in the level of competence of the Audit Team, as a whole, or which (combined with the effect of other such changes in the composition of the Audit Team) has that result; or

(f)(g) irrespective of the existence of protocols agreed under clause 4, the Commission forms the view in good faith that the circumstances either are such as to threaten the capacity of the Auditor to conduct Audits independently and objectively or are such as could reasonably be perceived to pose such a threat.

12.3 Delay

No delay in giving notice under clause 12.2 shall constitute a waiver of the Commission's right to do so. Further, neither the Auditor nor the Licensee shall be entitled to assume as a result of such a delay that the Commission will not give such a notice. Nevertheless, if the Commission becomes aware that it is entitled to, or that it is likely to be entitled to, give notice of intention to terminate under clause 12.2, it must advise the Auditor and the Licensee of that entitlement (or likely entitlement) as soon as reasonably practicable after it becomes aware of it (but with no obligation to provide that advice prior to the expiration of 5 Business Days after it becomes so aware).

12.4 Termination by Licensee or Auditor

Each of the Licensee and Auditor may terminate this Deed if the Audit Contract is terminated and the termination of the Audit Contract did not constitute or reflect, and is not likely to cause, a failure to satisfy or observe a requirement or obligation specified in or arising under this Deed or any Relevant Guideline. The capacity to exercise this right of termination is, however, subject to the Licensee or Auditor (as applicable) having given the Commission not less than 25 Business Days notice of its intention to terminate this Deed and the Audit Contract, the notice specifying in reasonable detail the basis for termination of the Audit Contract.

12.5 Survival

Clauses 7 and 11 shall survive termination of this Deed. In addition, rights and remedies accrued before termination survive termination.

13. WAIVER AND VARIATION

13.1 Waiver

Any right, remedy or power of a party under this Deed shall be deemed not to have been waived unless the waiver is expressed in writing and signed by or on behalf of the party.

13.2 Variation

This Deed may only be varied in writing, signed by all parties.

14. NOTICES

14.1 Notices Given

Any notices, consent or other communication to be given by one party will be in writing and signed on behalf of that party and may be delivered or sent by hand, ~~pre-~~paid post or facsimile to the address (and using the facsimile number) of the addressee specified in this Deed (the Commission's facsimile number is set out in item 8 of the Schedule) or such other address (or facsimile number) as may be notified by that party to the other parties from time to time.

14.2 Notices Received

A notice, consent or other communication will be taken to be received:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, 2 Business Days after the date of posting; and
- (c) in the case of facsimile, on receipt by the sender of an "error-~~free~~" transmission report,

provided that a notice, consent or other communication which is received later than 4.00pm (local time) or on a day which is not a Business Day will be taken to have been received at 9:00am on the next Business Day.

15. RIGHTS CUMULATIVE

The Licensee and the Auditor acknowledge and agree that the rights and remedies of the Commission, and the obligations and liabilities of the Licensee and the Auditor, under this Deed are cumulative with their other rights, remedies, obligations and liabilities (as applicable). Accordingly, nothing in this Deed shall operate to affect prejudicially the nature or extent of any right or remedy of the Commission or any obligation or liability of either Licensee or Auditor, apart from this Deed.

16. GOVERNING LAW

This Deed is governed by the laws in force in Victoria.

SCHEDULE

Item 1 (Licensee Firm Name, Address, ABN)

Item 2 (Auditor Name, Address, ABN)

Item 3 (Audit Team names)

Item 4 (Current Relevant Guideline)

~~Electricity and Gas Energy~~ Industries Guideline No. 22 Regulatory Audits of ~~Retail~~ Energy Businesses

Item 5 (Initial Term dates)

Item 6 (Prescribed Amount) – limit of liability (clause 11.3)

\$5,000,000.00 Australian dollars

Item 7 (Relevant Act)

Electricity Industry Act 2000 (Vic) or Gas Industry Act 2001 (Vic) insert whichever is relevant

Item 8 (Facsimile Number of Commission)

03-~~9651-3688~~ 9032 1032

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~~Auditor Approval~~Audit Deed

ESSENTIAL SERVICES COMMISSION

"Commission"

**THE PERSON WHOSE NAME AND ADDRESS IS SPECIFIED
IN ITEM 1 OF THE SCHEDULE**

"Licensee"

**THE PERSON WHOSE NAME AND ADDRESS IS SPECIFIED
IN ITEM 2 OF THE SCHEDULE**

"Auditor"