

Tripartite Audit Deed

VICTORIAN ENERGY EFFICIENCY TARGET SCHEME

ESSENTIAL SERVICES COMMISSION (ABN 71 165 498 668)

"Commission"

**THE PERSON SPECIFIED
IN ITEM 1 OF THE SCHEDULE**

"Scheme Participants"

**THE PERSON SPECIFIED
IN ITEM 2 OF THE SCHEDULE**

"Auditor"

TABLE OF CONTENTS

1.	DEFINITIONS AND INTERPRETATION	4
1.1	Definitions	4
1.2	Interpretation	5
2.	AUDITOR APPROVAL	6
2.1	Nomination	6
2.2	Approval	6
2.3	Others	6
3.	DUTY OF CARE	6
3.1	Duty	6
3.2	Acknowledgement	7
4.	CONFLICTS	7
4.1	Existing Conflict	7
4.2	Future Conflict	7
4.3	Notified Conflicts	7
4.4	Priority	8
5.	COMPLIANCE WITH DEED AND ESC VEET Scheme Guidelines	8
5.1	Compliance by Auditor	8
5.2	Compliance with Deed and ESC VEET Scheme Guidelines	8
6.	REPORTS AND BRIEFINGS	8
6.1	Reports	8
6.2	Signing of Audit Report	9
6.3	Rights to Reports	9
6.4	Briefings	9
7.	RECORDS OF AUDIT PROCESS	9
7.1	Retention of Records	9
7.2	Provision to Commission	10
7.3	Consents	10
7.4	Rights in relation to Material	10
8.	AUDITOR and SCHEME PARTICIPANTS	10
8.1	Inconsistencies	10
8.2	Rights Not Limited	10
8.3	Payment of Auditor	11
9.	INDEMNITY AND LIMITATION OF LIABILITY	11
9.1	Indemnity	11
9.2	Limitation of Liability	11
9.3	Professional Indemnity Insurance	11
9.4	Public liability Insurance	11
9.5	Provision of Insurance Information	12
10.	TERMINATION	12
10.1	Termination by Effluxion of Time	12
10.2	Termination by the Commission	12

10.3	Delay	12
10.4	Termination by Scheme Participants or Auditor	12
10.5	On Termination	13
11.	GENERAL	13
11.1	Relationship of the Parties	13
11.2	Subcontractors	13
11.3	Waiver	13
11.4	Variation	13
11.5	Notices Given	14
11.6	Notices Received	14
11.7	Rights Cumulative	14
11.8	Governing Law	14

DEED made in Melbourne on 20..

BETWEEN **ESSENTIAL SERVICES COMMISSION**, of Level 37, 2 Lonsdale Street, Melbourne, Victoria ("**Commission**")

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

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

RECITALS

- A. The Scheme Participants are relevant entities for the purposes of the *Victorian Energy Efficiency Target Act 2007* (Vic) (Act).
- B. Pursuant to the Act the Scheme Participants must (subject to certain conditions) give to the Commission or lodge a VEET Relevant Return for each year.
- C. A VEET Relevant Return must be audited in accordance with the ESC VEET Scheme Guidelines before being so given or lodged.
- D. Amongst other things, the ESC VEET Scheme Guidelines require that an audit of a VEET Relevant Return must only be conducted by a person:
 - (i) nominated by the Scheme Participants required to lodge the VEET Relevant Return; and
 - (ii) approved to do so by the Commission.
- E. The Scheme Participants have requested that the Commission approve the Auditor as the person to conduct each audit of the VEET Relevant Returns required to be given or lodged by the Scheme Participants during the Nominated Term.
- F. The Commission has, subject to the terms and conditions of this Deed, agreed to approve the Auditor as the person to conduct each such audit during the Term.

It is agreed as follows:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise provides:

"**Act**" has the meaning given in recital A.

"**AEMO**" means the Australian electricity market operator

"**Audit**" means an audit conducted (or, as applicable, to be conducted) by the Auditor of a Relevant Return.

"Audit Contract" means an agreement between the Auditor and the Scheme Participants under which the Auditor is engaged to conduct an Audit, or each Audit to be conducted, during the Nominated Term.

"Audit Guideline" means any guideline or other document published by the Commission in relation to the conduct of Audits for the purposes of the VEET Scheme.

"Audit Report" means a written report on the results of an Audit prepared (or, as applicable, to be prepared) by the Auditor.

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

"ESC VEET Scheme Guidelines" means the Guidelines made in respect of the VEET Scheme pursuant to section 74 of the Act and includes any Audit Guideline.

"Nominated Term" means the period for which the Scheme Participants have sought the Commission's approval of the auditor, as identified in item 3 of the Schedule.

"Prescribed Amount" means the amount specified in item 5 of the Schedule.

"VEET Relevant Return" means an energy acquisition statement under section 33 of the VEET Act.

"Subcontractor" means a contractor who has been appointed by the Auditor under clause 11.2.

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

"VEET Scheme" means the Victorian Energy Efficiency Target Scheme.

1.2 Interpretation

In this Deed, unless the contrary intention appears:

- (a) a reference to this Deed, the ESC VEET Scheme Guidelines, or to another instrument is a reference to this Deed, the ESC VEET Scheme Guidelines, or the instrument as it or they may have been amended or replaced;
- (b) a reference to a clause or Schedule is a reference to a clause or Schedule of this Deed;
- (c) a reference to a statute (including the Act), ordinance, code or other law includes regulations and other instruments made under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) the singular includes the plural and vice versa;
- (e) one gender includes the other genders;
- (f) the word "person" includes a firm, a body corporate, an unincorporated association, a government agency and an authority;

- (g) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (h) headings are for ease of reference only and do not affect interpretation; and
- (i) the terms "including" and "include" mean including or include (as applicable) without limitation.

2. AUDITOR APPROVAL

2.1 Nomination

The Scheme Participants nominate the Auditor as the person to conduct each Audit during the Nominated Term.

2.2 Approval

The Commission approves of the Auditor as the person to conduct each Audit during the Term.

2.3 Others

Nothing in this Deed restricts or qualifies the right of the Commission to approve of another person to conduct Audits during the Term.

3. DUTY OF CARE

3.1 Duty

In conducting Audits and preparing Audit Reports, the Auditor must:

- (a) act honestly, fairly, professionally, independently and objectively; and
- (b) exercise a standard of skill, care and diligence that would be reasonably expected of a person who is skilled and who has substantiated experience in the provision of services of a similar nature to those to be provided by the Auditor and who, without limitation:
 - (i) is skilled and has substantiated experience in those areas (if any) which are identified in the ESC VEET Scheme Guidelines as areas in which an auditor must have experience; and
 - (ii) has a detailed knowledge of those matters which are identified in the ESC VEET Scheme Guidelines 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 Audits and prepare Audit Reports in accordance with this Deed and the ESC VEET Scheme Guidelines; and
- (b) a failure of the Auditor to do so 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 Scheme Participants; or
 - (ii) publishing a report or other material (including any comparative report), in reliance on material (including an Audit Report) 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, does not have any interest, obligation or duty (whether owed to the Scheme Participants or any other person) which is, or could reasonably be seen to be, in conflict with the duties of the Auditor to the Commission or (in the case of the Subcontractor) the duties which the Subcontractor would owe to the Commission if it were a party to this Deed as Auditor.

4.2 Future Conflict

Subject to clause 4.3, the representation and warranty given 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.

4.3 Notified Conflicts

The subsistence or occurrence of a particular circumstance or event shall not constitute a misrepresentation or breach in respect of the representation and warranty given under clause 4.1, or deemed under clause 4.2 to have been repeated, if and only if:

- (a) the Auditor or the Scheme Participants have 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 has, for the purposes of this Deed, consented to the circumstance or event subsisting or occurring.

The Commission may give any consent under this clause 4.3 subject to conditions specified by the Commission. Each of the Scheme Participants and the Auditor must satisfy and observe the requirements of any such conditions applicable to it.

4.4 Priority

Without limiting the other provisions of this clause 4, the Auditor and Scheme Participants each undertake to the Commission to ensure that obligations and duties owed by the Auditor to the Commission are treated as prevailing over obligations and duties owed by the Auditor to the Scheme Participants, in the event of any conflict.

5. COMPLIANCE WITH DEED AND ESC VEET Scheme Guidelines

5.1 Compliance by Auditor

The Auditor must satisfy and observe each relevant requirement or obligation which is specified in or arises under the ESC VEET Scheme Guidelines and which is to be satisfied or observed by an auditor in relation to the conduct of an Audit and the preparation of an Audit Report.

5.2 Compliance with Deed and ESC VEET Scheme Guidelines

If:

- (a) as a consequence of clause 5.1 an obligation is imposed on the Auditor which involves an issue being addressed in a particular way; and
- (b) as a consequence of a 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 consistent (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 ESC VEET Scheme Guidelines.

6. REPORTS AND BRIEFINGS

6.1 Reports

Without limitation to clause 5.1, any Audit Report prepared by the Auditor must satisfy the requirements as to form or substance set out in the ESC VEET Scheme Guidelines and include, as a minimum, all of the information required by the ESC VEET Scheme Guidelines to be included in such a report.

6.2 Signing of Audit Report

Each Audit Report prepared by the Auditor must include a statement signed by a partner (or equivalent) of the Auditor that:

- (a) this Deed have been complied with by the Auditor in conducting the Audit and preparing the Audit Report; and
- (b) each finding or conclusion in the Audit Report reflects the professional opinion of the Auditor made at no less than the level of confidence (if any) which the ESC VEET Scheme Guidelines require be achieved in relation to the relevant finding or conclusion.

6.3 Rights to Reports

The Auditor assigns (and, to the extent that it has any relevant copyright, the Scheme Participants assign) to the Commission all present and future copyright in each Audit Report prepared (or purportedly prepared) by the Auditor. The Commission grants to each of the Auditor and the Scheme Participants an irrevocable non-exclusive licence to use, reproduce and adapt each Audit Report, and to sub-license others (including Subcontractors) to use, reproduce and adapt each Audit Report. The licence granted 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 an Audit Report or any adaptation of it, whether in part or whole.

6.4 Briefings

If the Auditor is given not less than 5 Business Days' notice from the Commission to do so, it must procure that the member of its staff primarily responsible for the Audit:

- (a) attend a briefing by the Commission; or
- (b) brief the Commission on the Audit Report in relation to an Audit.

The Scheme Participants may also attend any such briefing if requested by the Commission to do so.

7. RECORDS OF AUDIT PROCESS

7.1 Retention of Records

If the Auditor conducts an Audit, it must retain for at least six years:

- (a) all working papers of the Auditor or any Subcontractor relating to such an Audit; and
- (b) a copy of each Audit Report prepared (or purportedly prepared) by the Auditor and either the material on which reliance is placed in arriving at any finding or conclusion in the Audit Report or (insofar as the Scheme Participants have the relevant material or it is publicly available), a record of such material which clearly identifies both the material and each aspect of it on which reliance was so placed.

7.2 Provision to Commission

Promptly after being requested by the Commission to do so:

- (a) the Auditor must provide to the Commission a copy of any working paper, record or material referred to in clause 7.1(a) or 7.1(b) (not being material identified in a record kept by the Auditor under clause 7.1(b)); and
- (b) the Scheme Participants must provide to the Commission a copy of any material identified in a record kept by the Auditor under paragraph 7.1(b) unless provision of the copy material to the Commission would tend to incriminate the Scheme Participant.

Any such request by the Commission may identify the working paper, record or material either specifically, generically or by reference to particular categories.

7.3 Consents

The Scheme Participants consent to the Auditor's use and disclosure of information as contemplated by this Deed. It also consents to the disclosure by the Auditor to the Commission of information obtained by the Auditor in connection with an Audit.

7.4 Rights in relation to Material

- (a) Subject to clause 7.4(b), the Auditor grants to the Commission an irrevocable, non-exclusive licence to use and reproduce any Audit Report, working paper or record of material prepared by the auditor referred to in paragraph 7.1.
- (b) The Commission will not release any Audit Report, working paper or record of material prepared by the auditor in relation to the Scheme Participants to any third party unless the Scheme Participants have given their prior written consent to such release (which consent must not be unreasonably withheld).

8. AUDITOR and SCHEME PARTICIPANTS

8.1 Inconsistencies

Insofar as a provision of this Deed is inconsistent with a provision of the Audit Contract, the provision of this Deed prevails.

8.2 Rights Not Limited

Subject to the express provisions of this Deed (including, without limitation, clause 8.1) the Auditor acknowledges that this Deed does not operate to exclude, limit or qualify its obligations or liabilities to the Scheme Participants or any rights or remedies of the Scheme Participants exercisable against it (whether that obligation, liability, right or remedy arises under an Audit Contract or under law, or otherwise).

8.3 Payment of Auditor

The Scheme Participants have sole responsibility for negotiating, agreeing and paying any amount to be paid to the Auditor in consideration for its carrying out functions under an Audit Contract and this Deed.

9. INDEMNITY AND LIMITATION OF LIABILITY

9.1 Indemnity

Subject to clause 9.2, the Auditor indemnifies the Commission against any claim, cost, loss, damage, liability or expense made against, 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 act or omission of the Auditor which occurs in connection with or as a result of the conduct of any Audit or the preparation of an Audit Report.

9.2 Limitation of Liability

- (a) With regard to auditors that are subject to a scheme approved under the *Professional Standards Act 2003* (Vic) (the PSA), to the maximum extent permitted by law:
 - (i) the auditor's liability to the Commission for any loss or causes of action arising in relation to this Deed, including for negligence will be limited in the manner provided by that scheme; or
 - (ii) where the scheme or the PSA is silent, the auditor's liability to the Commission will be limited to the amount which is the lesser of ten times the fees or \$75 million.
- (b) With regard to auditors that are not subject to a scheme approved under the PSA, the maximum amount recoverable by the Commission under clause 9.1 in respect of claims, costs, losses, damages, liabilities and expenses that do not relate to either damage to or destruction of property or to injury to or death of any person is the Prescribed Amount.

9.3 Professional Indemnity Insurance

The Auditor must effect professional indemnity insurance for an amount which is not less than the Prescribed Amount and must maintain that insurance throughout the Term and for a period of 6 years commencing on expiration of the Term.

9.4 Public liability Insurance

The Auditor must effect public liability insurance for an amount which is not less than the Prescribed Amount and must maintain that insurance throughout the Term and for a period of 6 years commencing on expiration of the Term.

9.5 Provision of Insurance Information

The Auditor must give the Commission, promptly on request, proof reasonably satisfactory to the Commission of the currency and coverage of the insurance referred to in clauses 9.3 and 9.4.

10. TERMINATION

10.1 Termination by Effluxion of Time

Unless terminated earlier pursuant to this clause 10, this Deed will terminate on expiration of the Nominated Term.

10.2 Termination by the Commission

Unless it has expressly waived its right to do so in respect of any particular event, the Commission may terminate this Deed on not less than five Business Days' notice in writing to the Scheme Participants and the Auditor 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 5 Business Days of notice from the Commission to the Auditor specifying such failure;
- (c) a representation or warranty made by the Auditor under this Deed is or proves to be false; or
- (d) the Commission forms the view in good faith that the circumstances are either such as to threaten the capacity of the Auditor to conduct Audits independently or objectively or are such as could reasonably be perceived to pose such a threat.

Termination by the Commission will terminate this Deed.

10.3 Delay

No delay in giving notice under clause 10.2(b) shall constitute a waiver of the Commission's right to do so. Further, neither the Auditor nor the Scheme Participants 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 termination under clause 10.2(b), it must advise the Auditor and the Scheme Participants of that entitlement (or likely entitlement) within 5 Business Days after it becomes so aware.

10.4 Termination by Scheme Participants or Auditor

Each of the Scheme Participants and Auditor may terminate this Deed if the Audit Contract is terminated, provided that the Audit Contract was not terminated as a result of:

- (a) a failure to satisfy or observe a requirement or obligation specified in or arising under this Deed or the ESC Rules; or
- (b) an adverse finding or conclusion in an Audit Report or the likelihood of an adverse finding or conclusion in an Audit Report.

This right of termination may only be exercised if the Scheme Participants or Auditor (as applicable) have given the Commission not less than 25 Business Days written notice of its intention to terminate this Deed, specifying in reasonable detail the basis for termination of the Audit Contract.

10.5 On Termination

Clauses 7 and 9 shall survive termination of this Deed. In addition, rights and remedies of the parties accrued before termination shall survive termination. Termination will, however, result in immediate revocation of the Commission's approval of the Auditor pursuant to clause 2.

11. GENERAL

11.1 Relationship of the Parties

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

11.2 Subcontractors

The rights and obligations of the Auditor under this Deed are personal to it. Nevertheless, it may appoint a contractor to provide services to the Auditor in connection with the conduct of an Audit or preparation of an Audit Report but only if:

- (a) the Commission has given its prior written consent to the appointment; or
- (b) the contractor is identified in item 4 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. Without limitation, for the purposes of clauses 3 and 9.1, any act or omission of a Subcontractor in the conduct of an Audit or preparation of an Audit Report will be deemed an act or omission of the Auditor.

11.3 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.

11.4 Variation

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

11.5 Notices Given

Any notices, consent or other communication which must be or may be given under this Deed by a party must be in writing and signed on behalf of that party and may be delivered or sent by hand or pre-paid post to the address of the addressee specified in the Schedule or by facsimile using the facsimile number of the addressee specified in the Schedule or such other address or facsimile number as may be notified by that addressee to the other parties from time to time.

11.6 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.

11.7 Rights Cumulative

The rights, remedies and powers of the parties under this Deed are cumulative and not exclusive of any rights, remedies or powers provided to the parties by law.

11.8 Governing Law

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

EXECUTED by and for the)
ESSENTIAL SERVICES COMMISSION)
by being SIGNED, SEALED AND DELIVERED)
by Jeff Cefai under power of attorney dated)
02/10/2013)

IN THE PRESENCE OF

.....
Name of Witness

Date:

EXECUTED AS A DEED by [insert person)
named in item 1 of the schedule] being)
signed by:)

.....
Signature of Director

Date:

.....
Print Name

.....
Signature of Company Secretary

Date:

.....
Print Name

EXECUTED AS A DEED by [insert person
named in item 2 of the schedule] being
signed by

.....

Signature of [Director/Attorney]

Date:

.....

Print Name

.....

Signature of [Director/Company Secretary]

Date:

.....

Print Name

SCHEDULE

Item 1 (Name, Address, Facsimile Number and ABN of Scheme Participants)

Item 2 (Name, Address, Facsimile Number and ABN of Auditor)

Item 3 (Nominated Term)

Commencement date:

Expiry date (minimum term expiry 6 months after the compliance year being audited):

Item 4 (Subcontractors)

Item 5 (Prescribed Amount)

\$2,000,000

Item 6 (Facsimile Number of Commission)

03 9032 1301