

**Audit Deed**

*Between*

**Independent Pricing and Regulatory Tribunal
of New South Wales**

*And*

*And*

**This Deed is** made on 20XX

**Between:** The Independent Pricing and Regulatory Tribunal of New South Wales, a body corporate established under the *Independent Pricing and Regulatory Tribunal Act 1992* (NSW) (“**Tribunal**”); and

The person specified in item 1 of Annexure A (“**Auditee**”); and

The person specified in item 2 of Annexure A (“**Auditor**”).

**Background**

1. The Auditee is required to nominate a person to conduct the Audit. The Audit may only be conducted by a person approved by the Tribunal.
2. The Auditee nominates the Auditor to conduct the Audit and will engage the Auditor under a separate Audit Contract for that purpose. Upon signing this Deed, the Tribunal approves the Auditor to conduct the Audit, subject to the terms and conditions of this Deed.
3. **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 the audit undertaken pursuant to the Audit Requirement, to be conducted by the Auditor, that covers:

1. the matters set out in the Audit Proposal; and
2. the period specified in Item 3 of Annexure A.

"**Audit Contract**" means an agreement between the Auditee and the Auditor under which the Auditee engages the Auditor to conduct the Audit.

"**Audit Proposal**" means the detailed audit proposal for the Audit as approved by IPART, a copy of which is attached in Annexure B to this Deed.

"**Audit Report**" means the Auditor’s written report on the results of the Audit.

“**Audit Requirement**”means the requirement to undertake an audit, or ensure that an audit is undertaken, that is imposed on the Auditee by or under:

1. the conditions of a Licence;
2. the legislative provisions; or
3. the instrument or code made under legislation,

specified in Item 4 of Annexure A.

"**Deed**" means this deed including the Annexures to it.

"**IPART Audit Guidelines**" means any guidelines issued by the Tribunal from time to time that apply to the Audit.

"**Licence**" means any distributor’s licence or transmission operator’s licence granted under the Act and held by the Auditee.

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

"**Minister**" means the Minister administering the Act.

1. **Interpretation**

In this Deed, unless the context otherwise requires:

1. headings are for convenience only and do not affect the interpretation of this Deed;
2. a reference to a statute, code or other law includes regulations and other instruments made under it and any consolidations, amendments, re-enactments or replacements of any of them;
3. words importing the singular include the plural and vice versa;
4. where a word is defined in this Deed, other grammatical forms of that word have corresponding meanings;
5. a reference to a natural person includes a reference to a corporation, association, governmental agency, department or body corporate;
6. a reference to a clause or Annexure is a reference to a clause or Annexure of this Deed;
7. a reference to a party is a reference to a party to this Deed; and
8. a reference to a person or a party includes a reference to that person’s or that party’s executors, administrators, successors, substitutes and permitted assigns.
9. **Nomination of Auditor**
	1. The Auditee nominates the Auditor to conduct the Audit.
	2. Subject to the terms and conditions of this Deed, the Tribunal:
10. confirms that the nomination by the Auditee of the Auditor to conduct the Audit is acceptable to the Tribunal; and
11. approves the Auditor to conduct the Audit.
12. **Auditee’s warranty and acknowledgments**
	1. The Auditee warrants that the Auditor is independent of the Auditee.
	2. The Auditee acknowledges that:
13. the Auditee is responsible for retaining the Auditor to conduct the Audit pursuant to the Audit Contract for the benefit of the Auditee and the Tribunal; and
14. the Auditee will be responsible for payment of the Auditor's fees, costs and expenses relating to the provision of the Audit.
15. **Auditor’s duty of care, warranties and acknowledgements**
	1. The Auditor warrants that it is independent of the Auditee and competent to exercise the functions of an auditor in respect of the Audit.
	2. The Auditor warrants that when it conducts the Audit and prepares the Audit Report, it will:
16. exercise the utmost good faith in the interests of the Tribunal and undertake the Audit in an ethical manner;
17. do so honestly, fairly, professionally, independently and objectively; and
18. use the standard of skill, care and diligence that would be reasonably expected of a person with the requisite skills and expertise in the provision of services of the same or a similar nature to those to be provided by the Auditor in undertaking the Audit, in particular being a person who:
	1. is skilled and has substantiated experience in the areas identified in the IPART Audit Guidelines as areas in which an auditor must have experience; and
	2. has detailed knowledge of the matters which are identified in the IPART Audit Guidelines as matters of which an auditor must have detailed knowledge.
	3. The Auditor acknowledges that:
19. the Tribunal is relying on the Auditor’s warranties in this clause 5 when entering into this Deed;
20. the Tribunal is relying on the Auditor conducting any Audit it conducts (or purports to conduct) in accordance with this Deed; and
21. a failure to conduct the Audit in accordance with this Deed may cause Loss to the Tribunal including as a result of the Tribunal:
	1. improperly exercising or failing to exercise any right or remedy against the Auditee; or
	2. publishing any report or other material (including any comparative report),

in reliance on the Audit Report prepared by the Auditor.

1. **Conduct of the Audit**

The Auditor must ensure that the Audit:

1. is conducted in accordance with any principles set out in the IPART Audit Guidelines; and
2. covers the matters described in the Audit Proposal.
3. **Audit Report**

The Auditor must prepare:

1. in relation to the Audit, an Audit Report which contains, as a minimum, all of the information described in the Audit Proposal; and
2. if requested to do so by the Tribunal, a separate report setting out the Auditor’s view on the appropriateness and timing of remedial actions that the Auditee intends to take to remedy any identified instances of non-compliance with a legislative obligation or condition of a Licence.
3. **Liability and indemnity**

The Auditee and the Auditor each undertakes to the Tribunal that it will not make any claim against the Tribunal, and each indemnifies the Tribunal against:

1. any claims by the Auditor for the payment of any fees, costs or expenses charged by the Auditor in relation to the Audit; and
2. any claim or Loss the Tribunal pays, incurs or is liable for as a result of the performance of the Audit by the Auditor, including (without limitation) where that claim or Loss arises due to:
3. any breach of the Audit Contract by the Auditee or the Auditor in connection with the performance of the Audit; or
4. any negligent or deliberate act or omission by the Auditee or the Auditor.
5. **Inconsistency**
	1. In the event of any inconsistency between this Deed and the Audit Contract, this Deed will prevail to the extent of the inconsistency.
	2. Nothing in this Deed requires the Auditee or the Auditor to act in a way which is in breach of:
6. any law binding on the Auditee or the Auditor; or
7. a condition of any Licence.
8. **Applicable law**
	1. This Deed is governed by the laws of New South Wales and the parties irrevocably submit to the exclusive jurisdiction of the courts of New South Wales.

**ANNEXURE A**

**Item 1 Auditee**

**Item 2 Auditor**

**Item 3 Audit Period**

**Item 4 Audit Requirement**

“*[Specify the legislative provision(s) or Licence condition(s) that are the source of the requirement for the audit, i.e. select from the following:*

[*For audits of Electricity Network Safety Management Systems*: Clause 11 of the *Electricity Supply (Safety and Network Management) Regulation 2014* (NSW).]

[*For audits of compliance with audit directions*: Condition 15 of the distribution operator’s licence held by the Auditee under the *Electricity Supply Act 1995* (NSW).]

[*For audits of compliance with audit directions*: Condition 13 of the transmission operator’s licence held by the Auditee under the *Electricity Supply Act 1995* (NSW).]

[*For audits of annual reports on compliance with the critical infrastructure licence conditions*: Condition 3 of Appendix 2 of the distribution operator’s licence held by the Auditee under the *Electricity Supply Act 1995* (NSW).]

[*For audits of annual reports on compliance with the critical infrastructure licence conditions*: Condition 3 of Appendix 1 of the transmission operator’s licence held by the Auditee under the *Electricity Supply Act 1995* (NSW).]

[*For audits of performance against the reliability and performance licence conditions*: Condition 6.11 of Appendix 1 of the distribution operator’s licence held by the Auditee under the *Electricity Supply Act 1995* (NSW).]

[*For audits of compliance with the NSW Code of Practice for Authorised Network Operators*: Clause 5.3 of the *NSW Code of Practice for Authorised Network Operators*, being the approved Code under clause 244K of the *Environmental Planning and Assessment Regulation 2000* (NSW).]

**ANNEXURE B – Audit Proposal**

**EXECUTED** as a Deed.

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| Executed for and on behalf of the **Tribunal** by a duly authorised person in the presence of a witness:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signature of witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of witness(Print Name) | )))\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Signed\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Authorised Representative(Print Name) |

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| --- | --- |
| Executed by  in accordance with section 127(1) of the *Corporations Act 2001* (Cth):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Director \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Director (Print Name) | )))\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Director/Company Secretary \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Director/Company Secretary(Print Name) |

**OR**

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| --- | --- |
| Executed by by its Authorised Representative:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of witness(Print Name) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Authorised Representative\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Authorised Representative(Print Name) |

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

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| Executed by in accordance with section 127(1) of the *Corporations Act 2001* (Cth):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Director \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Director (Print Name) | )))\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Director/Company Secretary \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Director/Company Secretary(Print Name) |

**OR**

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| Executed by by its Authorised Representative:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Witness\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of witness(Print Name) | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Authorised Representative\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_Name of Authorised Representative(Print Name) |

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