

GENERAL ACCREDITATION CONDITIONS

(DEEMED RETAILER)

1 BACKGROUND

1.1 The Deemed Retailer's Accreditation

Under section 97DB(2)(a) of the Act, the Scheme Administrator has accredited the Deemed Retailer as an abatement certificate provider in relation to the Accredited Generation Activity.

1.2 Requirements of the Act and Regulations

There are a number of provisions of the Act and the Regulations which are relevant to the Deemed Retailer's Accreditation, to these Conditions and to the creation of NGACs in relation to the Accredited Generation Activity. Some of the more important of these provisions are referred to in clause 2.

The Deemed Retailer should ensure it is also familiar with all other relevant provisions of the Act and the Regulations.

The Regulations also impose certain mandatory conditions on the Deemed Retailer's Accreditation. Those conditions are repeated in clause 3.

1.3 Conditions Imposed by Scheme Administrator

Under section 97DD(1)(b) of the Act, the Scheme Administrator may also impose conditions on the Deemed Retailer's Accreditation. The conditions imposed by the Scheme Administrator under section 97DD(1)(b) are set out in clause 4.

1.4 Definitions and Interpretation

Definitions of expressions and rules of interpretation used in these Conditions are set out in clause 5.

2 SOME RELEVANT PROVISIONS OF THE ACT AND THE REGULATIONS

2.1 Abatement Certificates Only to be Created in Relation to the Accredited Generation Activity

Under section 97D(2) of the Act, the Deemed Retailer may only create abatement certificates in relation to the Accredited Generation Activity.

2.2 Duration of Deemed Retailer's Accreditation

Under section 97DC of the Act, the Deemed Retailer's Accreditation remains in force until suspended or cancelled by the Scheme Administrator.

2.3 Variation of Conditions of Accreditation

(a) Under section 97DD(1)(b) of the Act, the Scheme Administrator can impose further accreditation conditions while the Deemed Retailer's Accreditation remains in force.

- (b) Under clause 73J(4) of the Regulations, the Scheme Administrator may, at any time by notice in writing given to the Deemed Retailer, revoke or vary a condition imposed on the Deemed Retailer's Accreditation by the Scheme Administrator.

2.4 Penalties for Breach of Conditions of Accreditation

Section 97DD(5) of the Act prescribes a maximum penalty of 2000 penalty units for contravention of any of the conditions of accreditation imposed under the Regulations or by the Scheme Administrator as set out in these Conditions.

2.5 Suspension or Cancellation of Accreditation

Under clause 73HC of the Regulations, the Scheme Administrator may suspend or cancel the Deemed Retailer's Accreditation on any of the following grounds:

- (a) the Scheme Administrator is satisfied that the Deemed Retailer has ceased to be eligible for accreditation as an abatement certificate provider in respect of the Accredited Generation Activity;
- (b) the Deemed Retailer has requested the suspension or cancellation;
- (c) the Scheme Administrator is satisfied that the Deemed Retailer has contravened a provision of the Act, the Regulations, the Rules or any conditions of accreditation imposed under the Regulations or by the Scheme Administrator as set out in these Conditions;
- (d) the Deemed Retailer has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with the Deemed Retailer's creditors or made an assignment of the Deemed Retailer's remuneration for the benefit of the Deemed Retailer's creditors; or
- (e) the Deemed Retailer is a corporation that is the subject of a winding up order or for which a controller or administrator has been appointed.

2.6 Audits

- (a) Under clause 73M of the Regulations, the Scheme Administrator may at any time conduct or require audits to be conducted of the Deemed Retailer in relation to the following matters:
 - (1) the creation of abatement certificates;
 - (2) the Deemed Retailer's eligibility for accreditation; and
 - (3) the Deemed Retailer's compliance with any conditions of the Deemed Retailer's Accreditation.
- (b) An audit under clause 73M of the Regulations may be conducted for the purpose of:
 - (1) substantiating information provided to the Scheme Administrator; or

- (2) determining whether the Deemed Retailer has complied with the Act, the Regulations, the Rules or any conditions of the Deemed Retailer's Accreditation.
- (c) Under section 97HB of the Act, the Deemed Retailer is liable to pay the cost (as certified by the Scheme Administrator) of any audit conducted under clause 73M of the Regulations.

2.7 Activities that take place before application for accreditation

- (a) Under clause 73KB of the Regulations, the Deemed Retailer is not entitled to create any NGACs in respect of an activity that took place before the NGAC Entitlement Date.
- (b) Paragraph (a) does not apply in respect of activities that took place in the year 2003 or during the period commencing 1 January 2004 and ending on 30 June 2004.

3 CONDITIONS IMPOSED BY THE REGULATIONS

3.1 Claiming Benefits under Other Schemes (*Regulations, clause 73IA*)

The Deemed Retailer must not contravene any Clause 73HA Undertaking given to the Scheme Administrator in connection with the Deemed Retailer's application for the Deemed Retailer's Accreditation.

3.2 Category A Electricity Generation Activities (*Regulations, clause 73IC*)

- (a) The Deemed Retailer must provide such information and assistance to the Scheme Administrator as the Scheme Administrator, by notice in writing to the Deemed Retailer, may require for the purpose of estimating the Commonwealth renewable energy baseline of a power station that supplies electricity to the Deemed Retailer.
- (b) The Deemed Retailer must notify the Scheme Administrator in writing of any change to the power purchase agreement (including any termination of that agreement) that gives rise to the Deemed Retailer's entitlement to accreditation in respect of the Accredited Generation Activity within 21 days after that change occurs.

3.3 Record Keeping (*Regulations, clause 73IF*)

- (a) The Deemed Retailer must keep such records (other than those set out in clause 73IF(1) of the Regulations) as the Scheme Administrator, by notice in writing to the Deemed Retailer, requires the Deemed Retailer to keep.
- (b) A record required to be kept by a Deemed Retailer by or under this clause must be retained by the Deemed Retailer for at least 6 years after the record is made.
- (c) Records are to be kept in a form and manner approved by the Scheme Administrator.

3.4 Co-operation with Audits (*Regulations, clause 73IG*)

- (a) The Deemed Retailer must provide such information and assistance as is necessary to comply with any audit conducted under Division 8 of Part 8B of the Regulations.
- (b) Without limiting subclause (a), the Deemed Retailer must provide such access to premises as is necessary to comply with any schedule or timetable of audits agreed to by the Deemed Retailer (whether before or after the Deemed Retailer's Accreditation).

4 CONDITIONS IMPOSED BY THE SCHEME ADMINISTRATOR

4.1 Preconditions to Creation of NGACs

The Deemed Retailer must not create any NGACs in relation to the Accredited Generation Activity, until:

- (a) the Deemed Retailer has provided to the Scheme Administrator:
 - (1) any Security required under clause 4.7 or any Section 97EF Security required under clause 4.8; and
 - (2) a certificate of currency or any other written evidence (in a form acceptable to the Scheme Administrator) for any insurance required under clause 4.9;
- (b) the Deemed Retailer has in place (to the satisfaction of the Scheme Administrator) access to all of the:
 - (1) information (including access to any relevant information or records held by or under the control of the Generator); and
 - (2) metering equipment for the Accredited Generating System,

necessary to substantiate that all NGACs created in relation to the Accredited Generation Activity are created and calculated in accordance with the Act, the Regulations and the Rules;
- (c) the Deemed Retailer can demonstrate (to the satisfaction of the Scheme Administrator) that any equation, method or NSW Production Baseline the Deemed Retailer proposes to use for the purpose of calculating the number of NGACs created in relation to the Accredited Generation Activity:
 - (1) is consistent with the Approved Calculation Method or the Approved Baseline (as the case may be); and
 - (2) complies with the requirements of the Act, the Regulations and the Rules; and
- (d) the Scheme Administrator notifies the Deemed Retailer in writing that it is satisfied as to the matters referred to in clauses 4.1(b) and 4.1(c).

4.2 Variation of Approved Pre-Conditions

- (a) At any time while the Deemed Retailer's Accreditation remains in force, the Scheme Administrator may at its sole discretion and in accordance

with the Act and the Regulations (either on its own initiative or after receiving a written request to do so from the Deemed Retailer) issue to the Deemed Retailer a written notice approving a change to:

- (1) the Approved Baseline; or
 - (2) the Approved Calculation Method.
- (b) Any change notified under clause 4.2(a) will take effect on a date specified in the notice, provided that date is not less than 1 month after the date of the notice.

4.3 Compliance with Approved Pre-Conditions

At all times while the Deemed Retailer's Accreditation remains in force, the Deemed Retailer must:

- (a) have in place (to the satisfaction of the Scheme Administrator) access to the matters referred to in clause 4.1(b);
- (b) notify the Scheme Administrator of any changes to those matters of which it becomes aware; and
- (c) calculate and create the correct number of NGACs in relation to the Accredited Generation Activity (in accordance with the Rules) by applying the Approved Calculation Method and the Approved Baseline.

4.4 Compliance with the Act, the Regulations, the Rules and the Registry Procedures

The Deemed Retailer must at all times comply with all of the requirements of the Act, the Regulations, the Rules and the Registry Procedures, including all requirements relating to the creation, registration, transfer and surrender of abatement certificates.

4.5 Notification Obligations for Exceeding Nominated Number of NGACs

If for any calendar year the Deemed Retailer proposes to create a total number of NGACs (for the Accredited Generation Activity) which exceeds 110% of the Nominated Number of NGACs then, before doing so, the Deemed Retailer must:

- (a) provide at least 1 month's written notice to the Scheme Administrator indicating the Deemed Retailer's intention to do so and specifying:
 - (1) the total number of NGACs the Deemed Retailer proposes to create in that calendar year; and
 - (2) the basis (in accordance with the Act, the Regulations and the Rules) on which the Deemed Retailer claims to be entitled to create that total number of NGACs in that calendar year; and
- (b) provide such information and access to premises and metering equipment to the Scheme Administrator (or any person authorised by the Scheme Administrator) as the Scheme Administrator may require, to enable the Scheme Administrator to verify that the Deemed Retailer is entitled to

create that total number of NGACs in accordance with the Act, the Regulations and the Rules.

4.6 Abatement Certificates Not to be Created for Emissions Already Used for Other Mandatory Emissions Schemes

The Deemed Retailer must not create an NGAC in respect of greenhouse gas emissions abated by the Accredited Generation Activity, if:

- (a) an NGAC or a Renewable Energy Certificate has already been created in respect of that abatement; or
- (b) that abatement has already been used by the Deemed Retailer (or any other person) for the purposes of complying with any other mandatory scheme (whether in New South Wales or in another jurisdiction) intended to promote the reduction of greenhouse gas emissions.

4.7 Abatement Certificate Emissions Not to be Used for Other Mandatory Emission Schemes

If the Deemed Retailer has already created an NGAC in respect of greenhouse gas emissions abated by the Accredited Generation Activity, then the Deemed Retailer must not:

- (a) create a Renewable Energy Certificate in respect of that abatement; or
- (b) use (or allow any other person to use) that abatement for the purposes of complying with another mandatory scheme (whether in New South Wales or in another jurisdiction) intended to promote the reduction of greenhouse gas emissions.

4.8 Deemed Retailer to Provide Security

- (a) If a security amount is specified in the schedule to the Accreditation Notice, then prior to creating any NGACs in relation to the Accredited Generation Activity the Deemed Retailer must provide Security in that amount to the Scheme Administrator.
- (b) Without limiting the Scheme Administrator's rights under the Act, the Regulations, the Rules or these Conditions, the Scheme Administrator may deduct from (or claim against) that Security:
 - (1) any debt, liability, expense, claim or costs incurred by (or claimed against) the Scheme Administrator;
 - (2) as a result of any breach by the Deemed Retailer of the Act, the Regulations, the Rules, these Conditions or the Registry Procedures (other than any failure by the Deemed Retailer to comply with any order made against the Deemed Retailer under section 97EF of the Act).
- (c) Subject to the Scheme Administrator's rights under clause 4.8(b), the Scheme Administrator will release the Security upon the cancellation or expiry of the Deemed Retailer's Accreditation.

4.9 Deemed Retailer to Provide Section 97EF Security

- (a) If a Section 97EF Security Amount is specified in the schedule to the Accreditation Notice, then prior to creating any NGACs in relation to the Accredited Generation Activity the Deemed Retailer must provide Section 97EF Security in that amount to the Scheme Administrator.
- (b) Without limiting the Scheme Administrator's rights under the Act, the Regulations, the Rules or these Conditions, if:
- (1) an order is made against the Deemed Retailer under section 97EF of the Act; and
 - (2) the Deemed Retailer fails to comply with the order,
- then, the Scheme Administrator may deduct from (or claim against) that Section 97EF Security an amount up to the Compliance Cost, provided the Scheme Administrator has first given the Deemed Retailer the written notice required under clause 73JA(5) of the Regulations.
- (c) Subject to the Scheme Administrator's rights under clause 4.9(b), the Scheme Administrator will release the Section 97EF Security upon the cancellation or expiry of the Deemed Retailer's Accreditation.

4.10 Insurance

If an insurance amount is specified in the schedule to the Accreditation Notice, then the Deemed Retailer must, at its own expense, effect and maintain an insurance policy in that amount (with an insurer and on terms acceptable to the Scheme Administrator) for any debt, liability, expense, claim or cost incurred or suffered by the Scheme Administrator (or by any other person) as a result of any failure of the Deemed Retailer to comply with the Act, the Regulations, the Rules, these Conditions or the Registry Procedures.

4.11 Voluntary Undertaking to Limit Future Creation of NGACs

- (a) If at any time the Scheme Administrator notifies the Deemed Retailer that the Scheme Administrator considers that the Deemed Retailer has (or may have) created too many NGACs in relation to the Accredited Generation Activity as a result of:
- (1) the Deemed Retailer not correctly or accurately creating or calculating NGACs in accordance with the Act, the Regulations, the Rules or these Conditions; or
 - (2) the Deemed Retailer's creation and calculation of NGACs not being sufficiently verifiable or supported by the information available to the Deemed Retailer (or to the Scheme Administrator) or by the Generator's record keeping arrangements or metering equipment;

then the Deemed Retailer (either on its own initiative or following a request from the Scheme Administrator) may give to the Scheme Administrator a voluntary undertaking to limit the number of NGACs the Deemed Retailer will create in relation to the Accredited Generation Activity in any future period of time:

- (3) despite any entitlement the Deemed Retailer may otherwise have to create NGACs in excess of that limit (in relation to the Accredited Generation Activity) during that future period; and
 - (4) so as to compensate or allow for any previous over creation of NGACs by the Deemed Retailer which the Scheme Administrator considers has (or may have) occurred.
- (b) The Deemed Retailer must not contravene any voluntary undertaking given to the Scheme Administrator under clause 4.11(a).

4.12 Deemed Retailer to co-operate with the Scheme Administrator and Auditors

The Deemed Retailer must provide any information, documents, assistance or access to premises required by:

- (a) the Scheme Administrator; or
- (b) any Auditor or other person appointed or authorised by the Scheme Administrator,

for the purposes of monitoring or auditing of the Deemed Retailer's compliance with the Act, the Regulations, the Rules, these Conditions or the Registry Procedures.

4.13 Deemed Retailer's obligations in relation to the Original Nominator

Where the Deemed Retailer and the Original Nominator are different entities, the Deemed Retailer will ensure that the Original Nominator:

- (a) complies with clauses 3, 4.3, 4.4, 4.5, 4.6, 4.10, 4.11 and 4.12 of these Conditions, as if the obligations in those clauses were imposed directly on the Original Nominator; and
- (b) provides an undertaking to the Scheme Administrator, in favour of the Scheme Administrator and in a form approved by the Scheme Administrator, to the effect that the Original Nominator will comply with the clauses of these Conditions referred to in clause 4.13(a).

5 DEFINITIONS AND INTERPRETATIONS

5.1 Definitions

In these Conditions of Accreditation, the following expressions have the following meanings:

"Accreditation Notice" means the Accreditation Notice to which these Conditions are attached;

"Accredited Generating System" means the Accredited Generating System referred to in the Accreditation Notice;

"Accredited Generation Activity" means the Accredited Generation Activity referred to in the Accreditation Notice;

"Act" means the Electricity Supply Act (NSW) 1995;

"Approved Baseline" means the New South Wales Production Baseline specified in the Accreditation Notice, subject to any changes approved by the Scheme Administrator from time to time under clause 4.2;

"Approved Calculation Method" means each of the equations or methods, and any manner in which those equations or methods are to be applied, specified in the Accreditation Notice, subject to any changes approved by the Scheme Administrator from time to time under clause 4.2;

"Auditor" means an auditor from the panel of auditors established by the Scheme Administrator from time to time for the purposes of conducting audits under Part 8A of the Act;

"Clause 73HA Undertaking" means an undertaking (as required by the Scheme Administrator under clause 73HA of the Regulations) not to claim any benefit under a mandatory Greenhouse Gas Scheme if such an action would result in a benefit being obtained under both that Scheme and the Abatement Certificate Scheme established by Part 8A of the Act in respect of the same output or Greenhouse Gas Abatement;

"Compliance Cost" means the compliance cost (as defined in clause 73JA of the Regulations) in respect of any failure by the Deemed Retailer to comply with an order under section 97EF referred to in clause 4.9.

"Conditions" means these Conditions of Accreditation, as amended or varied from time to time in accordance with the Act and the Regulations;

"Deemed Retailer" means the Deemed Retailer identified in the Accreditation Notice;

"Deemed Retailer's Accreditation" means the accreditation of the Deemed Retailer as an abatement certificate provider referred to in clause 1.1;

"Generator" means the person who is the Generator (within the meaning of the Generation Rule) in respect of the Accredited Generating System;

"NGAC" means New South Wales Greenhouse Abatement Certificates created under the Act.

"Registers" means the register of accredited abatement certificate providers and the register of abatement certificates established by the Scheme Administrator under section 97G of the Act;

"Registry Operator" means any person appointed from time to time by the Scheme Administrator to assist it with the establishment or operation of the Registers;

"Registry Procedures" means all procedures, rules, processes and requirements established or published by the Scheme Administrator (or any Registry Operator) in connection with the Registers;

"Regulations" means the Electricity Supply (General) Regulations 2001;

"Renewable Energy Certificate" means a renewable energy certificate created under the Renewable Energy (Electricity) Act 2000 (Commonwealth);

"Rules" means the greenhouse gas benchmark rules established under the Act and the Regulations;

"Scheme Administrator" means the Independent Pricing and Regulatory Tribunal, in its capacity as Scheme Administrator under Part 8A of the Act;

"Section 97EF Security" means:

- (a) security in the form of cash or an unconditional undertaking or guarantee in terms acceptable to the Scheme Administrator and given by a financial institution or insurer acceptable to the Scheme Administrator; and
- (b) which is given by the Deemed Retailer for the purposes of clause 4.9 (in addition to any Security given by the Deemed Retailer for the purposes of clause 4.8).

"Section 97EF Security Amount" means an amount so described in the schedule to the Accreditation Notice which:

- (a) is required by the Scheme Administrator to secure or guarantee the Deemed Retailer's compliance with any order made against the Deemed Retailer under section 97EF of the Act; and
- (b) has been determined by the Scheme Administrator having regard to the matters set out in clause 73JA(2) of the Regulations.

"Security" means security in the form of cash or an unconditional undertaking or guarantee in terms acceptable to the Scheme Administrator and given by a financial institution or insurer acceptable to the Scheme Administrator.

5.2 Interpretation

In these Conditions, unless the context requires otherwise:

- (a) references to clauses are references to clauses of these Conditions;
- (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 these Conditions;
- (e) a reference to a document includes the document as modified from time to time and any document replacing it;
- (f) person includes a natural person and any body or entity whether incorporated or not;
- (g) month means calendar month and "year" means 12 months;
- (h) 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;

- (i) including and similar expressions are not words of limitation; and
- (j) a reference to any agency or body, if that agency or body ceases to exist or is reconstituted, renamed or replaced or has its powers or functions removed ("defunct body"), means the agency or body which performs most closely the functions of the defunct body.