

GENERAL ACCREDITATION CONDITIONS

(DEMAND SIDE ABATEMENT)

1 BACKGROUND

1.1 The Abator's Accreditation

Under section 97DB(2)(a) of the Act, the Scheme Administrator has accredited the Abator as an abatement certificate provider in relation to the Accredited Demand Side Abatement Activities.

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 Abator's Accreditation, to these Conditions and to the creation of NGACs in relation to the Accredited Demand Side Abatement Activities. Some of the more important of these provisions are referred to in clause 2.

The Abator 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 Abator'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 Abator'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 Demand Side Abatement Activities

Under section 97D(2) of the Act, the Abator may only create abatement certificates in relation to the Accredited Demand Side Abatement Activities.

2.2 Duration of Abator's Accreditation

Under section 97DC of the Act, the Abator'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 Abator'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 Abator, revoke or vary a condition imposed on the Abator's Accreditation by the Scheme Administrator.

2.4 Penalties for Breach of Conditions of Accreditation

Section 97DD(5) 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 Abator's Accreditation on any of the following grounds:

- (a) the Scheme Administrator is satisfied that the Abator has ceased to be eligible for accreditation as an abatement certificate provider in respect of the Accredited Demand Side Abatement Activities;
- (b) the Abator has requested the suspension or cancellation;
- (c) the Scheme Administrator is satisfied that the Abator 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 Abator has become bankrupt, applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with the Abator's creditors or made an assignment of the Abator's remuneration for the benefit of the Abator's creditors; or
- (e) the Abator 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 Abator in relation to the following matters:
 - (1) the creation of abatement certificates;
 - (2) the Abator's eligibility for accreditation; and
 - (3) the Abator's compliance with any conditions of the Abator'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 Abator has complied with the Act, the Regulations, the Rules or any conditions of the Abator's Accreditation.

- (c) Under section 97HB of the Act, the Abator 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 Abator 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 Abator must not contravene any Clause 73HA Undertaking given to the Scheme Administrator in connection with the Abator's application for the Abator's Accreditation.

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

- (a) The Abator must keep a record of the following:
 - (1) the location in which the Accredited Demand Side Abatement Activity occurred;
 - (2) the abatement of greenhouse gases (calculated in accordance with the Rules) associated with that activity;
 - (3) the methodology, data and assumptions used to calculate that abatement;
 - (4) if the activity relates to the on-site generation of electricity, the following matters:
 - (A) the amount of electricity supplied by the generating system;
 - (B) the type of fuel or fuels used by the generating system to generate electricity;
 - (C) the source of the fuel or fuels;
 - (D) the amount of each fuel used by the generating system to generate electricity.
- (b) The Abator must keep such other records as the Scheme Administrator, by notice in writing to the Abator, requires the Abator to keep.
- (c) A record required to be kept by an Abator by or under this clause must be retained by the Abator for at least 6 years after the record is made.
- (d) Records are to be kept in a form and manner approved by the Scheme Administrator.

3.3 Co-operation with Audits (*Regulations, clause 731G*)

- (a) The Abator 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 Abator must provide such access to premises as is necessary to comply with any schedule or timetable of audits agreed to by the Abator (whether before or after the Abator's Accreditation).

4 CONDITIONS IMPOSED BY THE SCHEME ADMINISTRATOR

4.1 Preconditions to Creation of NGACs

The Abator must not create any NGACs in relation to the Accredited Demand Side Abatement Activities, until:

- (a) the Abator has provided to the Scheme Administrator:
 - (1) any Security required under clause 4.8 or any Section 97EF Security required under clause 4.9; 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 4.10;
- (b) the Abator has in place (to the satisfaction of the Scheme Administrator) all of the record keeping systems and arrangements necessary to substantiate that all NGACs created in relation to the Accredited Demand Side Abatement Activities are created and calculated in accordance with the Act, the Regulations and the Rules;
- (c) the Abator can demonstrate (to the satisfaction of the Scheme Administrator) that any calculation method that the Abator proposes to use for the purpose of calculating the number of NGACs created in relation to the Accredited Demand Side Abatement Activities:
 - (1) is consistent with the Approved Calculation Method; and
 - (2) complies with the requirements of the Act, the Regulations and the Rules; and
- (d) the Scheme Administrator notifies the Abator 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 Abator'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 Abator) issue to the Abator a written notice approving a change to:
 - (1) the Approved Record Keeping Arrangements; 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 Abator's Accreditation remains in force, the Abator must:

- (a) maintain, keep up to date and keep secure the Approved Record Keeping Arrangements to the standards and requirements of the Scheme Administrator as required by any notice under clause 4.1 or clause 4.2;
- (b) notify the Scheme Administrator of any changes to the Approved Record Keeping Arrangements; and
- (c) calculate and create the correct number of NGACs in relation to the Accredited Demand Side Abatement Activities (in accordance with the Rules) by applying the Approved Calculation Method.

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

The Abator 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 or for the life of the Demand Side Abatement Project (as specified in Item 6 of Schedule to the Accreditation Notice), the Abator proposes to create a total number of NGACs (for the Accredited Demand Side Abatement Activities) which exceeds 110% of the Nominated Number of NGACs then, before doing so, the Abator must:

- (a) provide at least 1 month's written notice to the Scheme Administrator indicating the Abator's intention to do so and specifying:
 - (i) the total number of NGACs the Abator proposes to create in that calendar year or for the life of the Demand Side Abatement Project (as applicable); and
 - (ii) the basis (in accordance with the Act, the Regulations and the Rules) on which the Abator claims to be entitled to create that total number of NGACs in that calendar year or for the life of the Demand Side Abatement Project (as applicable); 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 Abator 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 Abator must not create an NGAC in respect of greenhouse gas emissions abated by the Accredited Demand Side Abatement Project, if:

- (a) an NGAC or Renewable Energy Certificate has already been created in respect of that abatement; or
- (b) that abatement has already been used by the Abator (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 Abator has already created an NGAC in respect of greenhouse gas emissions abated by the Accredited Demand Side Abatement Project, then the Abator 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 Abator 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 Demand Side Abatement Activities the Abator 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 Abator of the Act, the Regulations, the Rules, these Conditions or the Registry Procedures (other than any failure by the Abator to comply with any order made against the Abator 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 Abator's Accreditation.

4.9 Abator 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 Abator 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 Abator under section 97EF of the Act:
and
 - (2) the Abator 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 Abator 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 Abator's Accreditation.

4.10 Insurance

If an insurance amount is specified in the schedule to the Accreditation Notice, then the Abator 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 Abator 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 Abator that the Scheme Administrator considers that the Abator has (or may have) created too many NGACs in relation to the Accredited Demand Side Abatement Activities as a result of:
- (1) the Abator not correctly or accurately creating or calculating NGACs in accordance with the Act, the Regulations, the Rules or these Conditions; or
 - (2) the Abator's creation and calculation of NGACs not being sufficiently verifiable or supported by the Abator's record keeping arrangements (whether or not these are consistent with the Approved Record Keeping Arrangements);
- then the Abator (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 Abator will create in relation to the Accredited Demand Side Abatement Activity in any future period of time:
- (3) despite any entitlement the Abator may otherwise have to create NGACs in excess of that limit (in relation to the Accredited Demand Side Abatement Activities) during that future period; and
 - (4) so as to compensate or allow for any previous over creation of NGACs by the Abator which the Scheme Administrator considers has (or may have) occurred).

- (b) The Abator must not contravene any voluntary undertaking given to the Scheme Administrator under clause 4.11(a).

4.12 Abator to co-operate with the Scheme Administrator and Auditors

The Abator 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 Abator's compliance with the Act, the Regulations, the Rules, these Conditions or the Registry Procedures.

4.13 Abator's obligations in relation to early creation of NGACs

If the Accreditation Notice entitles the Abator to create NGACs early (as specified in the Schedule), the Abator will demonstrate to the satisfaction of the Scheme Administrator that the entire reduction in greenhouse gas emissions represented by the number of NGACs created occurs after the creation of those NGACs.

5 DEFINITIONS AND INTERPRETATIONS

5.1 Definitions

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

"Abator" means the Abator identified in the Accreditation Notice;

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

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

"Accredited Demand Side Abatement Activities" means the Accredited Demand Side Abatement Activities referred to in the Accreditation Notice;

"Accredited Demand Side Abatement Project" means the Accredited Demand Side Abatement Project referred to in the Accreditation Notice;

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

"Approved Calculation Method" means the Calculation Method, and any manner in which that Calculation Method is to be applied, specified in the schedule to the Accreditation Notice, subject to any changes approved by the Scheme Administrator from time to time under clause 4.2;

"Approved Record Keeping Arrangements" means the record keeping systems and arrangements the subject of a notice by the Scheme Administrator under clause 4.1(d) in respect of clause 4.1(b), 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 Abator 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;

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

"NGAC Entitlement Date" means, for the purpose of clause 73KB(1) of the Regulations, the date on which the Abator lodged with the Scheme Administrator an application (completed to the satisfaction of, and in a form acceptable to, the Scheme Administrator) for accreditation as an abatement certificate provider, which is the date specified in Item 6 of the Schedule to the Accreditation Notice.

"Original Nominator" means each Original Nominator referred to in the Accreditation Notice;

"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;

"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 Tribunal and given by a financial institution or insurer acceptable to the Tribunal; and

- (b) which is given by the Abator for the purposes of clause 4.9 (in addition to any Security given by the Abator 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 Abator's compliance with any order made against the Abator 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.