THIS MEMORANDUM is made

BETWEEN:

THE AUSTRALIAN CAPITAL TERRITORY'S ENVIRONMENT AND SUSTAINABLE DEVELOPMENT DIRECTORATE ("ESDD")

and

THE VICTORIAN ESSENTIAL SERVICES COMMISSION ("ESC")

BACKGROUND:

A. The parties have entered into this memorandum of understanding to provide for ongoing information sharing between them.

OPERATIVE PROVISIONS:

1. Definitions

In this memorandum, including the background:

"EEI Act" means the Energy Efficiency (Cost of Living) Improvement Act 2012 (ACT).

"EEIS" means the Energy Efficiency Improvements Scheme as established by the Energy Efficiency (Cost of Living) Improvement Act 2012 (ACT).

"EEISA" means the Energy Efficiency Improvements Scheme Administrator established by the Energy Efficiency (Cost of Living) Improvement Act 2012 (ACT).

"ESC" means the Essential Services Commission established by the Essential Services Commission Act 2001 (Vic).

"ESDD" means the Environment and Sustainable Development Directorate (ACT).

"VEET Act" means the Victorian Energy Efficiency Target Act 2007 (Vic).

"VEET Scheme" means the Victorian Energy Efficiency Target scheme as established by the Victorian Energy Efficiency Target Act 2007 (Vic).

"VEET Regulations" means the Victorian Energy Efficiency Target Regulations 2008 (Vic).
2. Objectives and purpose of this memorandum

2.1 This memorandum seeks to:

(a) provide for the sharing of data, information and processes between the parties in the context of their administration of the EEIS and the VEET scheme;

(b) identify opportunities to harmonise common aspects of the EEIS and the VEET scheme, and enable businesses to participate concurrently in both the EEIS and the VEET scheme; and

(c) support harmonised administration activities as they relate to the EEIS and the VEET scheme.

3. The role of the ESDD and EEISA

3.1 The EEISA is the Scheme Administrator under section 23 of the EEI Act, and is responsible for the general administration of the EEIS.

3.2 The Executive Director, Regulation and Services, ESDD has been appointed as the EEISA, supported by a team from within ESDD.

3.3 The main objectives of the EEIS are to encourage the efficient use of electricity and gas, reduce greenhouse gas emissions associated with stationary energy use, and reduce household and business energy costs.

3.4 The specific functions of the EEISA most relevant to this memorandum will include:

(a) coordinating the development of eligible activities;

(b) approving codes of practice;

(c) establishing reporting and record keeping requirements for electricity retailers;

(d) determining electricity suppliers’ compliance with their obligations at defined points set by legislation and throughout the operation of the Scheme;

(e) taking compliance and enforcement action where required; and

(f) managing public and industry communication and consultation.

4. The role of ESC

4.1 The ESC is the Scheme Administrator under section 7 of the VEET Act, and is responsible for the general administration of the VEET scheme.

4.2 The objects of the VEET Act are to reduce greenhouse gas emissions, encourage efficient use of electricity and gas and to encourage investment, employment and technology development in industries that supply goods and services which reduce the use of electricity and gas by energy consumers.

4.3 The specific functions of the ESC most relevant to this memorandum are those conferred on it by the VEET Act and VEET Regulations. These functions include:
(a) providing for the creation and acquisition of energy efficiency certificates;
(b) accrediting persons to create energy efficiency certificates;
(c) approving new products for eligibility under the VEET scheme;
(d) maintaining a product register of products approved under the VEET scheme; and
(e) engaging in auditing of participant accreditations and installations of approved products.

5. **How the parties will consult**

5.1 Where relevant and as early as practicable, the parties will consult in relation to:
(a) approval of new activities for eligibility under the EEIS and the VEET scheme;
(b) setting of deeming values for new activities and minimum specifications;
(c) reporting and administrative processes under the EEIS and the VEET scheme;
(d) content of product registers maintained under the VEET scheme;
(e) approval of new products for eligibility under the VEET scheme;
(f) auditing of obliged electricity suppliers under the EEIS and of Accredited Persons under the VEET scheme; and
(g) any other matter directly relevant to the purposes of this memorandum.

5.2 Each party, having regard to their respective roles in relation to the EEIS and the VEET scheme, will:
(a) consult with and involve the other in the performance of any function that has or is likely to have material implications for the other;
(b) ensure that such consultation occurs as early as practicable in the parties’ regulatory, advisory or decision making processes;
(c) on request, where possible and in consideration of other priorities, provide the other with timely advice on the matters listed above under 5.1;
(d) identify opportunities to coordinate strategic planning and undertake knowledge sharing initiatives to optimise material understanding of roles and strategic directions; and
(e) identify relevant project officers to allow for the coordination of particular projects.

6. **How the parties will manage their relationship and resolve disputes**

6.1 Each party will ensure that, at all times while this memorandum is in force, one of its staff members is designated and known to the other as its contact officer for the purposes of this memorandum.
6.2 At the date of this memorandum, the contact officer for the ESC is the Manager VEET and the contact officer for the ESDD will be the EEISA. Each party will give notice of any change to its contact officer to the other promptly after the change is made.

6.3 Each party will ensure that its contact officer:
(a) makes themselves (or a nominee) available at all relevant times to address any questions, concerns or disputes arising out of the operation of this memorandum which are raised by either party;
(b) instigates periodic reviews of this memorandum, directed in particular to the potential for improvement in its terms or operation and to the effect (if any) of regulatory change on its terms, operation or utility; and
(c) arranges (in conjunction with the other’s contact officer) such meetings of appropriate staff of the parties as and when necessary or desirable to facilitate the efficient and effective operation of this memorandum.

6.4 If there is a dispute between the parties as to the terms or operation of this memorandum, each party will ensure that its contact officer endeavours in good faith to resolve that dispute with the other’s contact officer. If, however, a contact officer gives notice to the other party’s contact officer of the view that the dispute is unlikely to be resolved by discussions between the contact officers, then each party’s contact officer must promptly:
(a) brief the Chairperson or Director General (or a nominee of the party’s Chairperson or Director General) of details of the relevant dispute; and
(b) arrange with the other’s contact officer for a meeting of the Chairperson or Director General (or their respective nominees), with the objective of settling the dispute amicably.

7. **Use and disclosure of information**

7.1 The capacity of a party to use or disclose information, or take information into account, is or may be (depending on the nature or source of the information) restricted by law.

7.2 The disclosure and use of information by the parties under this memorandum will be done in accordance with the following:
(a) the disclosing party will ensure that it only shares information in compliance with any laws restricting or governing the disclosure and use of the information, for example any applicable privacy laws, or any legal or equitable obligations of confidence that apply in respect of the information;
(b) the disclosing party may impose conditions on the receiving party’s use of the information, and will notify the receiving party of the conditions that apply to the use and disclosure of information given, to ensure that all legal obligations relating to the use and disclosure of the information are complied with; and
(c) the receiving party must only use information in accordance with any conditions it is given notice of by the disclosing party, and only for the purposes set out in this memorandum.
7.3 If a party discloses information to the other party under this memorandum, the disclosing party may place restrictions on the receiving party’s use or disclosure of that information, being restrictions it believes in good faith to be necessary for compliance with binding restrictions on disclosure. A party receiving information will observe any such restriction noting, however, that this requirement does not limit:

(a) any other legal obligation of a party relating to the disclosure or use of information; and

(b) any right of a party concerning information obtained otherwise than under this memorandum.

7.4 The parties agree that information captured by section 34 of the Freedom of Information Act 1989 (ACT) will not be liable to disclosure.

7.5 The parties agree that information captured by section 29 of the Freedom of Information Act 1982 (Vic) will not be liable to disclosure.
EXECUTED AS A MEMORANDUM:

Signed on the behalf of the ENVIRONMENT AND SUSTAINABLE DEVELOPMENT DIRECTORATE by a duly authorised officer on the 31st day of October 2012

David Papps
Director-General

THE COMMON SEAL of the ESSENTIAL SERVICES COMMISSION was duly affixed pursuant to the authority of the Commission on the 16th day of October 2012

Dr Ron Ben-David
Chairperson