

Government Investment in Decarbonising Industry Contestable Fund Project Funding Agreement

EECA
Energy Efficiency and Conservation Authority

Recipient
[Recipient]

TE TARI TIAKI PŪNGAO
ENERGY EFFICIENCY & CONSERVATION AUTHORITY



Parties

- (1) **Energy Efficiency and Conservation Authority** (NZBN 9429041901953), a Crown entity constituted under the Energy Efficiency and Conservation Act 2000 ("**EECA**"); and
- (2) [**Recipient**] (NZBN XXX), a [New Zealand registered company] located at [Location] ("**Recipient**").

Background

- A. EECA administers the Government Investment in Decarbonising Industry Fund (the "**GIDI Fund**"). The Fund's aim is to partner with business to accelerate the decarbonisation of industrial processes, and process heat and contribute to the COVID-19 economic recovery by stimulating economic growth and supporting employment.
- B. The Recipient has successfully applied to the GIDI Fund for funding support from EECA, and has agreed to implement a Project.
- C. EECA has agreed to provide such funding support to the Recipient for the purpose of the Project on the terms of this Agreement.

Agreement

1. Definitions and Interpretation

1.1 In this Agreement:

"**Agreement**" means this project funding agreement, including all Schedules;

"**Business Day**" means a day on which registered banks are open for general banking business, other than a Saturday or Sunday, in New Zealand;

"**Co-Funding**" means the co-funding (if any) or any part of the co-funding (as the context requires), described in item 5 of Schedule 1 and to be contributed to the Project in accordance with the terms of this Agreement.

"**Completion Date**" means, in relation to each Milestone, the date set out in item 6 of schedule 1 by which the Recipient must complete that Milestone;

"**Confidential Information**" of a party (*Owner*), means any information in the possession or control of another party (*Holder*) that:

- (a) was originally acquired by the Holder in connection with this Agreement through disclosures made by or at the request of the Owner; and/or
- (b) was originally acquired by the Holder in connection with this Agreement through any access to, or viewing, inspection or evaluation of, the premises, facilities, documents, systems or other assets owned or controlled by the Owner; and/or
- (c) is derived from information of a kind described in paragraph (a) or (b) above, but excludes any information which the Holder can show:
- (d) was lawfully acquired by the Holder, entirely independently of its activities in connection with this Agreement, and is free of any other obligation of confidence owed to the Owner; and/or

(e) has been independently developed by the Holder without reference to the Owner's Confidential Information, and without breaching any other obligation of confidence owed to the Owner.

"Conflict of Interest" means any matter arising from the conduct or relationships of the Recipient and/or its personnel that might reasonably be perceived as impairing the impartiality and objectivity of EECA's decision-making in respect of the award of EECA Funding under this Agreement.

"EECA Funding" means the funding or any part of the Funding (as the context requires) payable by EECA to the Recipient (on a Milestone-by-Milestone basis by way of Payment Milestones) to support the Project in accordance with the terms of this Agreement;

"Equipment" means the equipment being installed, upgraded or replaced under the Project as set out in item 8 of Schedule 1;

"GST" means goods and services tax within the meaning of the Goods and Services Tax Act 1985;

"Insolvency Event" means in relation to a party, where that party suspends or ceases to conduct its principal business or threatens to do so in New Zealand; becomes, is likely to become or is presumed by law to be insolvent; makes or proposes to make any assignment, arrangement, compromise or composition with, or for the benefit of, any of its creditors; has any of its assets subject to any form of seizure or execution; has a receiver, liquidator, administrator, statutory manager or any similar insolvency administrator appointed; is removed from the Register of Companies or suffers any analogous event.

"Maximum Funding Amount" means the amount set out in item 4 of Schedule 1;

"Milestone" means a project milestone to be achieved by the Recipient as set out in the table in item 6 of Schedule 1;

"Payment Milestones" means a payment milestone set out in the table in item 6 of Schedule 1;

"Project" means the project to be undertaken by the Recipient, as described in Schedule 1;

"Project Reports" means the reports that are set out in item 9 of Schedule 1 and that the Recipient is required to provide to EECA under clause 4.3 of this Agreement;

"Proposal" means the proposal for the Project that the Recipient supplied to EECA;

"Records" means all information and data in relation to this Agreement and the delivery of the Project. Records include, but are not limited to, accounting records, reports, invoices, letters, emails, notes of meetings, photographs and other media recordings. Records can be hard copies or soft copies stored electronically;

"Request" means a request for EECA Funding made by the Recipient to EECA in the manner specified in clause 4;

"Schedule" means a schedule attached to this Agreement;

"Serious Incident" means any notifiable event as defined by the Health and Safety at Work Act 2015;

"Site" means the site where the Project is to be undertaken, as specified in item 7 of Schedule 1;

“**Worker**” means any person who carries out work for the Recipient in any capacity, including work as an employee, contractor or subcontractor, an employee of a contractor or subcontractor, or a volunteer worker. It also includes anyone else directed or influenced by the Recipient in the exercise of their work;

“**WHS Laws**” means all applicable legislation and regulations in force including, but not limited to, the Health and Safety at Work Act 2015 and any amendments or replacement legislation, the Hazardous Substances and New Organisms Act 1996, the Resource Management Act 1991, the Building Act 2004, and the Human Rights Act 1993 and all relevant Regulations, Approved Codes of Practice, New Zealand Standards and guidance material, and/or other international standards and guidance material regarding best practice requirements for undertaking the Project that the Recipient could reasonably be expected to be aware of.

1.2 Interpretation:

- (a) References to clauses and schedules are to clauses and schedules of this Agreement unless the context requires otherwise.
- (b) The headings in this Agreement are for convenience only and have no legal effect.
- (c) The singular includes the plural and vice versa.
- (d) A reference to a statute includes a legislative instrument or other subordinate legislation made under it and amendments to or replacement of any of them from time to time.

2. Term

- 2.1 This Agreement will commence on the date it is signed by both parties and continue until [TERM] unless the Agreement is terminated earlier in accordance with clause 10 or at law.
- 2.2 This Agreement can be amended or extended by agreement in writing by the parties.

3. Recipient's Obligations

3.1 The Recipient will:

- (a) undertake the Project in accordance with this Agreement, including, if applicable, at the Site;
- (b) take full responsibility for the completion of the Milestones as part of the Project and will take all reasonable steps to ensure that the Milestones are completed by the relevant Completion Date;
- (c) manage the implementation of the Project in accordance with good operational and health and safety practices;
- (d) implement and manage the Project with all due diligence, care and skill and to a professional standard commensurate with the nature of the Project, including ensuring that the Project is carried out by appropriately trained, qualified, experienced and supervised persons;
- (e) notify EECA promptly of any matter that could impact or delay the Milestones or Project Reports or any other aspect of the Project;
- (f) schedule regular meetings, including an initial meeting, with EECA to discuss progress with the Project;
- (g) promptly notify EECA if the Recipient becomes aware of any matter that constitutes a Conflict of Interest, providing full details of the matter;

- (h) not at any time do anything that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of EECA or the New Zealand Government more generally. The Recipient will keep EECA informed of any matter known to the Recipient which could reasonably be expected to have such an effect;
- (i) comply with the project specific conditions detailed in Schedule 2;
- (j) be liable for all acts or omissions of any relevant sub-contractor if the Recipient sub-contracts with any third parties any aspect of its performance under this Agreement and any such sub-contracting will not release the Recipient from liability for the performance of any of its obligations under this Agreement;
- (k) receive and manage all EECA Funding in accordance with good financial management and accounting practices and to a high standard that demonstrates appropriate use of public funds;
- (l) run an open arm's length procurement process pursuant to which contracts for material components of the Project will be awarded to suppliers in accordance with good industry practice for procurement, and the Recipient must provide evidence that it has complied with this obligation if requested by EECA;
- (m) within six months following the date of this Agreement, deliver to EECA a plan (completed to EECA's satisfaction) that sets out the Recipient's pathway to decarbonisation of the Recipient's business as a whole; and
- (n) ensure that the Project is operational (as evidenced by a practical completion certificate or similar, as acceptable to EECA) by 31 October 2023.

3.2 The Recipient warrants that, as at the date of this Agreement:

- (a) it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute binding obligations on it in accordance with its terms;
- (b) all information and representations disclosed or made to EECA by the Recipient in connection with this Agreement are true and correct, do not omit any material matter, and are not likely to mislead or deceive EECA as to any material matter;
- (c) it has disclosed any and all Conflicts of Interest to EECA
- (d) it has disclosed to EECA all matters known to the Recipient, relating to the Project, that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of EECA;
- (e) it has obtained all necessary certificates, licences, permits, approvals and other authorisations necessary for the Project in accordance with all applicable laws and the terms of this agreement;
- (f) it is not aware of any material information that has not been disclosed to EECA which may, if disclosed, materially adversely affect the decision of EECA whether to provide the EECA Funding.

3.3 The Recipient acknowledges that EECA has entered into this Agreement in reliance on these warranties.

4. EECA Funding

4.1 EECA will pay the EECA Funding in Payment Milestones. EECA is not required to pay a Payment Milestone until the relevant Milestone for that Payment Milestone has been satisfied (including, if applicable, by reference to the applicable Project deliverable set out in item 6 of Schedule 1), and the Recipient has submitted a corresponding Request and the applicable Project Report in accordance with this Agreement.

- 4.2 The EECA Funding payable under this Agreement will not exceed the Maximum Funding Amount. In addition, the Payment Milestone is the maximum payment to be made by EECA for completion of the applicable Project Milestone and the Payment Milestone must not exceed the percentage amount specified in item 4 of Schedule 1 of the actual costs of delivery of the relevant Milestone.
- 4.3 To receive EECA Funding, the Recipient must provide EECA with a Request and the applicable Project Report. The Request will contain at least the following details:
- (a) the Recipient's name, address and if applicable, GST number and a valid GST invoice complying with the Goods and Services Tax Act 1985;
 - (b) the Proposal number (refer Schedule 1);
 - (c) the Milestone against which the Request is being made and the amount of EECA Funding which is requested, which must not exceed the applicable Payment Milestone and must be in accordance with clause 4.2 and the amount of GST due;
 - (d) reasonable evidence of completion of the relevant Milestone; and
 - (e) certification signed by an authorised signatory of the Recipient confirming that:
 - (i) the Recipient can pay all costs in respect of the Project as and when they fall due;
 - (ii) the amount of qualifying costs incurred by the Recipient on the Project up to the date of the certification, including in respect of the relevant Payment Milestone to which the Request relates (and confirmation that the applicable Milestone has been satisfied and that such costs included in the Request have been paid or are due and payable to the Recipient's contractors to the Project);
 - (iii) a confirmation that the Project is on target to complete by the date as agreed between the parties;
 - (iv) the Recipient is in compliance with the terms of this Agreement and no Termination Event is subsisting and that each of the warranties under this Agreement are correct as at the date of the Request; and
 - (f) any other information required by EECA.
- 4.4 Following the receipt and approval of a Request, EECA will provide the Recipient with a buyer created invoice at the time of making payment.
- 4.5 Subject to clause 4.6, if EECA receives a valid Request by the 10th of the month following the month(s) that the Request relates to, EECA will pay the sum set out in the Request on the 20th day of that month. Any valid Requests received after the 10th of the month will be paid by the 20th of the following month.
- 4.6 If EECA disputes the sum in any Request:
- (a) EECA will notify the Recipient of the dispute following receipt of the Request;
 - (b) EECA will pay the undisputed portion of the Request in accordance with clause 4.5; and
 - (c) the disputed portion will be dealt with under clause 12 (Disputes).
- 4.7 EECA is not under any obligation to make any payment under this Agreement:
- (a) until EECA has received a valid Request for the EECA Funding from the Recipient;

- (b) if the Request is submitted more than 90 days after the date when the Recipient first became entitled to claim payment of the relevant amount;
 - (c) until EECA has received reasonably satisfactory evidence from the Recipient, including any other evidence not expressly contemplated in this Agreement, necessary to demonstrate that the relevant Milestone has been completed in accordance with this Agreement;
 - (d) if the Recipient is not in compliance with the terms of this Agreement; and/or
 - (e) if this Agreement is terminated.
- 4.8 If EECA is required to withhold any taxes from any payment required to be made by it under this Agreement, payment of the valid Requests shall be deemed to have been made in full if EECA makes payment of the invoiced sum, less the taxes so required to be withheld.
- 4.9 If the Recipient is liable for GST on any supply made under this Agreement, EECA will pay the amount of the GST to the Recipient in addition to and at the same time as the Payment Milestone, but only where the Recipient provides EECA with a valid tax invoice for that amount, complying with the requirements of the Goods and Services Tax Act 1985.
- 4.10 The Recipient agrees and warrants that it will use EECA Funding only for the purpose of the Project and in particular, for capital costs in relation to the Project and not for staff or other operating costs. If any of the EECA Funding is not used for the purpose of the Project, the Recipient must immediately repay the EECA Funding.
- 4.11 The Recipient agrees that it has not received and will not receive any other New Zealand Government funding (including from any Crown entity) in connection with this Project.

5. Co-Funding

- 5.1 If Co-Funding is specified in item 5 of Schedule 1, the Recipient must:
- (a) ensure that during the Term of this Agreement the Co-Funding is and remains secured and available to the Recipient to be applied towards the Project; and
 - (b) immediately notify EECA if it becomes aware of any circumstances that may result in the Co-Funding (or any part of the Co-Funding) not being secured and available to the Recipient to be applied towards the Project.
- 5.2 The Recipient must contribute the Co-Funding to satisfy the Project completion.
- 5.3 The Recipient undertakes to pay the Co-Funding (if any) and any and all cost overruns of the Project, and any funding shortfall, and acknowledges that EECA and the New Zealand Government have no obligations or responsibility whatsoever in respect of such Co-Funding, cost overruns or funding shortfalls.

6. Repayment

- 6.1 Without limiting any other remedy EECA may have, the Recipient must repay EECA any amounts of EECA Funding paid to the Recipient in the circumstances set out in this clause 6.
- 6.2 If the actual total costs of the Project are less than the total costs set out in the Proposal, and the Recipient has claimed, and EECA has paid the full amount of EECA Funding available under this Agreement, the Recipient will repay to EECA an amount of EECA Funding proportional to the reduction in total costs (i.e. so that the

EECA Funding does not exceed the percentage of total costs as set out in item 4 of Schedule 1, when applied against actual costs) within 10 days of a demand in writing by EECA.

- 6.3 EECA may at its sole discretion require the Recipient to repay to EECA any amounts of the EECA Funding paid to the Recipient under this Agreement (such repayment to be made within 20 Business Days of EECA's notice) if the Recipient:
- (a) fails to comply with any of its obligations required under this Agreement (including, without limitation, delivery of the Project Reports);
 - (b) materially breaches any of its obligations and does not remedy such breach within 20 Business Days of being notified in writing of the breach by EECA;
 - (c) consistently fails to meet Milestones by the applicable Completion Date;
 - (d) suffers an Insolvency Event;
 - (e) has misspent the EECA Funding or used it other than in accordance with this Agreement;
 - (f) the Recipient has abandoned or discontinued the Project or stated an intention to abandon or discontinue the Project, and does not within 10 Business Days of being requested to do so by EECA demonstrate to EECA's satisfaction that the Recipient will proceed with the Project;
 - (g) is involved in any fraud or corruption, in connection with this Agreement or otherwise;
 - (h) has wilfully or recklessly misled EECA, in connection either with the parties' entry into this Agreement, or the administration of this Agreement, including EECA's decision to provide (or recommend the provision of) the EECA Funding or in determining the amount of the EECA Funding; and/or
 - (i) has wilfully or recklessly committed a material breach of this Agreement.
- 6.4 If Co-Funding is required as set out in item 5 of Schedule 1, on expiry or termination of this Agreement, if the Co-Funding has not been used for the Project, EECA may recover an amount that represents the amount of Co-Funding that has not been used and may set off such amounts against any Funding payable to the Recipient.

7. Information Management

7.1 The Recipient must:

- (a) provide EECA with the Project Reports by the relevant Milestone 'Completion date' specified in item 8 of Schedule 1;
- (b) keep and maintain full, true and up-to-date Records of all matters pertaining to this Agreement and the receipt and handling of the EECA Funding and retain them for a minimum of seven years following termination or expiry of the Agreement;
- (c) co-operate with EECA and provide all information and assistance reasonably requested by EECA to allow EECA to promote, if successful, the Project through the publication of case studies, guides, workshops and seminars;
- (d) provide any information reasonably requested by EECA relating to the performance of the Recipient's obligations pursuant to this Agreement. All information provided by the Recipient must be in a format that is usable by EECA, and delivered within a reasonable time of the request;

- (e) co-operate with EECA to provide any of the information requested under clause 7.1(d) as soon as reasonably practicable if the information is required by EECA to comply with an enquiry or its statutory, parliamentary, or other reporting obligations; and
 - (f) make sure that any Records provided to EECA or created for EECA, are securely managed and securely destroyed on their disposal.
- 7.2 The parties shall otherwise co-operate promptly and share information with each other as necessary to meet the operational objectives of EECA and enable the parties to perform their respective obligations under this Agreement.
- 7.3 The Recipient acknowledges and agrees that:
- (a) EECA may provide the Project Reports and any other information provided to EECA in connection with this Agreement to an independent third party (*Independent Verifier*); and
 - (b) on EECA's instructions, the Independent Verifier may (at EECA's cost) review and verify all such information referenced in clause 7.3(a) above and may provide EECA with a report on such review and verification.

8. Audit

- 8.1 At any time during the term of this Agreement or the 18 months immediately afterwards, EECA may carry out an audit of the Recipient's Requests and/or reporting under this Agreement, and/or one or more aspects of the Recipient's compliance with this agreement. EECA will limit these audits to no more than once every 6 months, and will give not less than 5 Business Days' notice to the Recipient, in each case except for audits initiated in relation to a suspected fraud.
- 8.2 Each audit will be carried out by an independent and reputable provider of auditing services nominated by the EECA, which may include Audit New Zealand. EECA will procure that the auditor gives a confidentiality undertaking in favour of the Recipient that is no less strict than the confidentiality obligations imposed on EECA under this agreement, but to avoid doubt the auditor will not be prevented from disclosing any information to EECA, or from retaining any notes or other information necessary for the auditor to maintain its professional indemnity insurance cover.
- 8.3 The Recipient will co-operate with the audit, and permit the auditor to inspect all premises, hardware, software, equipment, inventory, systems, data, Records or other records, documents, processes and other items in the possession or control of the Recipient or its contractors and agents wherever they might reasonably be considered relevant to the purposes of the audit. The Recipient will ensure its personnel are available to answer questions from the auditor as reasonably required for the purposes of the audit.

9. Intellectual Property

- 9.1 Any intellectual property already in existence at the commencement of this Agreement shall remain the property of that party.
- 9.2 All intellectual property created, or developed, by, or for, the Recipient in performing this Agreement, including all intellectual property rights in the Project will be owned by the Recipient.

9.3 The Recipient grants to EECA a perpetual, irrevocable, royalty-free and non-exclusive licence to use the Recipient's existing and new intellectual property in relation to the Project solely and to the extent strictly necessary for EECA to carry out EECA's obligations pursuant to this Agreement and for no other purpose whatsoever. Without limiting the foregoing, EECA acknowledges EECA is not granted any rights whatsoever to use or exploit commercially or otherwise the Recipient's existing or new intellectual property, or to share such intellectual property with any third parties other than as necessary to fulfil its reporting obligations.

10. Health And Safety

10.1 If there is an inconsistency or ambiguity between this clause and the WHS Laws, the WHS Laws will prevail.

10.2 The Recipient must at all times when undertaking the Project and carrying out activities in connection with the Agreement comply with all applicable laws and regulations, including WHS Laws.

10.3 The Recipient must (and must ensure that its Workers):

- (a) at all times identify and exercise all necessary precautions for the protection of the health and safety of all persons including Workers, EECA, and members of the public who may be affected by the Project or by the performance or purported performance of the Project;
- (b) undertake the Project in a safe manner; and
- (c) do all things reasonably requested by EECA or any of its personnel to allow EECA to discharge and comply with EECA's obligations under the WHS Laws in relation to the project.

10.4 The Recipient will:

- (a) comply with any directions on safety issued by any relevant authority;
- (b) notify EECA and the relevant authorities promptly after any Serious Incident regarding the Project;
- (c) promptly after that event occurs, conduct an investigation into the circumstances of such a near miss or an incident (including a Serious Incident) affecting or potentially affecting the health and safety of any person and promptly notify EECA of the outcome of any such investigation in relation to the Project; and
- (d) if requested by EECA, promptly provide to EECA any documents relating to or created in respect of any investigation (by the Recipient or any regulator) into a near miss or incident (including a Serious Incident) in relation to the Project.

10.5 EECA and the Recipient will schedule an initial meeting as soon as possible after the parties' entry into this Agreement and prior to the commencement of the Project. There is an expectation that health and safety systems and performance, will be reviewed. Topics for discussion will include but are not limited to:

- (a) the Recipient's health and safety system which includes hazard identification, risk assessment, training, supervision and monitoring. If required, the Recipient will work with EECA to complete a hazard and risk identification and management process for the Project to identify potential hazards/risks and develop a system to control those hazards/risks prior to commencing work, where relevant;
- (b) supervision and training of Workers performing work for or participating in the Project if applicable;
- (c) the provision of protective safety equipment to Workers participating in the Project if applicable;
- (d) the provision of first aid equipment for Workers participating in the Project if applicable.

- 10.6 The Recipient must ensure, and provide (on request) evidence to the reasonable satisfaction of EECA, that any subcontractor it engages in accordance with this Agreement has the necessary safety systems and expertise to carry out the work to be subcontracted.
- 10.7 The parties and any subcontractor will consult, co-operate, and co-ordinate activities with each other in order to ensure that each of the parties and the subcontractor meet their obligations under this Agreement and the WHS Laws.

11. Termination

- 11.1 EECA may terminate this Agreement if the Recipient commits a material or persistent breach of this Agreement (including a breach of warranty or condition) and, if such breach is capable of remedy, fails to remedy that breach within 10 Business Days after receipt of a notice from EECA requiring the breach to be remedied.
- 11.2 EECA may terminate this Agreement on notice with immediate effect if:
- (a) EECA considers in its sole discretion the Recipient has not materially fulfilled its obligations under clause 3.1;
 - (b) the Recipient is subject to a Conflict of Interest which cannot be managed to EECA's reasonable satisfaction;
 - (c) the Recipient fails to meet a Milestone by the applicable Completion Date, and such failure has not been remedied within a period which EECA in its sole discretion believes is reasonable;
 - (d) the Recipient consistently fails to meet Milestones by the applicable Completion Date;
 - (e) the Recipient fails to contribute the Co-Funding in accordance with item 5 of Schedule 1 or pay any Project cost overruns or funding shortfalls;
 - (f) the Recipient abandons or discontinues the Project or, where applicable, fails to pay its contractors or other suppliers to the Project as and when due;
 - (g) the Recipient has provided EECA with information in connection with or under this Agreement that is materially incorrect or misleading, and/or omits material information;
 - (h) the Recipient is involved in any intentional or reckless conduct which, in the opinion of EECA, has damaged or could damage the reputation, good standing or goodwill of EECA and or the New Zealand Government, or is involved in any material misrepresentation or any fraud or corruption;
 - (i) the Recipient becomes subject to an Insolvency Event;
 - (j) the Recipient is the subject of enforcement action pursuant to the WHS Laws in relation to the Project; or
 - (k) following the Recipient's compliance with its repayment obligations in clause 6.3.
- 11.3 Upon termination of the Agreement under clause 11.2, EECA will not be obliged to pay the EECA Funding remaining under the Agreement and any EECA Funding paid to the Recipient will be repayable on demand by EECA.
- 11.4 The termination of this Agreement shall be without prejudice to either party's rights and remedies in respect of any breach by the other party to this Agreement.

12. Confidentiality And Publicity

- 12.1 Except as permitted by clause 12.2, each party shall keep the other party's Confidential Information confidential and will not disclose any Confidential Information to any person or use the Confidential Information for any purpose other than to perform this Agreement.
- 12.2 Notwithstanding clause 12.1, a recipient of Confidential Information may disclose any Confidential Information if, and to the extent that, the prior written consent of the other party has been provided; use or disclosure of the information has become generally known to the public other than through a breach of this Agreement; to its contractors and personnel for the purposes of this Agreement, so long as the relevant contractors (including any Independent Verifier enlisted by EECA to verify the Recipient's reporting) and personnel use the information solely to enable that party to perform its obligations and/or take the intended benefit of its rights under this Agreement, and so long as they are informed of the confidential nature of the information; disclosure is required by law (including under the Official Information Act 1982 and the Health and Safety at Work Act 2015) or any governmental authority, regulator, or parliamentary convention.
- 12.3 Each party will ensure that its personnel and its contractors:
- (a) are aware of the confidentiality obligations in this Agreement; and
 - (b) do not use or disclose any of the other party's Confidential Information except as allowed by this Agreement.
- 12.4 Nothing in this agreement restricts EECA's ability to:
- (a) discuss with, and provide to any Minister of the Crown, any other government agency, including the Ministry of Business, Innovation and Employment, or any of their respective advisors, any information concerning this Agreement (including the Project Reports), the Recipient or the Project or the EECA Funding;
 - (b) meet its obligations under any constitutional or parliamentary convention (or other obligation at law) of or in relation to the New Zealand Parliament, the New Zealand House of Representatives or any of its committees, any Minister of the Crown, or the New Zealand Auditor-General, including any obligations under the "no surprises" policy advised by Ministers of the Crown; and
 - (c) publicise and report on the awarding of the EECA Funding, including the name of the Recipient and, the amount and duration of the EECA Funding, and the details of the Project.
- 12.5 Except as required by law, the Recipient shall not make an announcement or disclosure relating to the contents of this Agreement or the Project except as agreed by EECA in advance (such approval not to be unreasonably withheld or delayed).
- 12.6 EECA may publish the results and findings arising from the Project in such manner and media as it thinks fit.
- 12.7 The Recipient acknowledges that EECA is subject to the Official Information Act 1982 (**OIA**) and may be required to disclose information pursuant to that Act. In particular, the Recipient acknowledges that:
- (a) the contents of this Agreement; and
 - (b) information provided to EECA,

may be official information in terms of the OIA and, in line with the purpose and principles of the OIA, this Agreement and such information may be released to the public unless there is good reason, in terms of the OIA, to withhold it.

12.8 The Recipient will notify EECA of any actual or anticipated issues, including but not limited to health and safety events or investigations by a regulator that could impact on the Project agreed under this Agreement.

13. Disputes

13.1 If any dispute or difference arises between the parties in relation to, or arising out of, this Agreement, both parties will endeavour in good faith to settle the dispute by agreement.

13.2 If the dispute or difference is not settled by agreement within 20 Business Days of the dispute arising then, unless agreed otherwise, either party may refer the dispute to mediation.

13.3 If a dispute is referred to mediation, the mediation will be conducted:

- (a) by a single mediator agreed by the parties or if they cannot agree, appointed by the Chair of the Resolution Institute;
- (b) on the terms of the Resolution Institute standard mediation agreement; and
- (c) at a fee to be agreed by the parties or if they cannot agree, at a fee determined by the Chair of the Resolution Institute.

13.4 Each party will pay its own costs of mediation under this clause 13.

13.5 Neither party may issue legal proceedings (other than for urgent interlocutory relief) in respect of such dispute or difference, unless that party has first taken all reasonable steps to comply with clauses 13.1 to 13.3.

14. Insurance

14.1 It is the Recipient's responsibility to ensure the risks of doing business are adequately covered by insurance. The Recipient must within 10 Business Days of a request from EECA provide proof confirming the specific nature and quantity of the insurance cover held and show that this cover is current.

15. Indemnity

15.1 The Recipient shall, to the full extent permitted by law, defend, indemnify and hold harmless EECA, from and against any and all damage, loss, cost, liability, and expense whatsoever (including legal fees, third party claims, all and any actual court costs, witness fees and expenses and all disbursements) directly incurred by reason of:

- (a) any failure by the Recipient to perform any covenant or observe any obligation of the Recipient under this Agreement; or
- (b) any breach by the Recipient of any representation, warranty, or covenant on the part of the Recipient contained in this Agreement; or
- (c) the negligence or wrongful act or omission of the Recipient in performing any of its obligations under this Agreement.

16. Liability

- 16.1 The maximum liability of EECA under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, is limited to the total amount of EECA Funding paid or payable under this Agreement, capped at the Maximum Funding Amount.
- 16.2 EECA is not liable for any claim under or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, where such claim is or relates to any loss of profit, loss of revenue, loss of use, loss of reputation, loss of goodwill, loss of opportunity (in each case whether direct, indirect or consequential) or any other indirect, consequential or incidental loss or damages of any kind whatsoever.

17. General

- 17.1 **Assignment:** The obligations of the Recipient under this Agreement are personal to the Recipient and may only be assigned or transferred with the prior approval in writing of EECA, such approval not to be unreasonably withheld.
- 17.2 **Change of Control:** Any change in the majority shareholding of the Recipient or the effective management control of the Recipient shall be deemed to be an assignment under this Agreement requiring the consent of EECA pursuant to clause 15.1.
- 17.3 **Counterparts:** This Agreement may be signed in any number of counterparts (including electronic copies) and provided that each party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the parties.
- 17.4 **Entire agreement:** The parties acknowledge that this Agreement sets out the entire agreement and understanding of EECA and the Recipient and supersedes all prior oral or written agreements, understandings or arrangements relating to its subject matter.
- 17.5 **Further assurances:** Each party shall, at its own expense, promptly sign and deliver any documents, and do all things, which are reasonably required to give full effect to the provisions of this Agreement.
- 17.6 **New Zealand Law:** This Agreement will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts. All money specified in this Agreement is in New Zealand dollars. Days, dates and times are New Zealand time.
- 17.7 **No partnership:** Nothing contained in this Agreement shall be deemed to constitute either party as being the partner of the other or to constitute either party as being the agent or legal representative of the other. Neither party shall have any authority to act or to assume any obligation or liability on behalf of the other.
- 17.8 **Notices:** Each notice under this Agreement shall be in writing and delivered by courier or sent by email to the address set out in item 10 of Schedule 1. A notice is deemed to be received:
- (a) if delivered by courier, when delivered; or
 - (b) if sent by email, when actually received,
- provided that any notice received after 5 pm on a Business Day or on a non-Business Day shall be deemed to have been received on the next Business Day.

- 17.9 **Waiver:** No failure, delay or indulgence by any party in exercising any power or right conferred on that party by this Agreement shall operate as a waiver. A single exercise of any of those powers or rights does not preclude further exercises of those powers or rights or the exercise of any other powers or rights.
- 17.10 **Rights:** The exercise by a party of any express right set out in this Agreement is without prejudice to any other rights, powers or remedies available to a party in contract, at law or in equity, including any rights, powers or remedies which would be available if the express rights were not set out in this Agreement.
- 17.11 **Severance:** Any provision of this Agreement that is invalid or unenforceable will be deemed deleted, and will not affect the other provisions of this Agreement, all of which remain in force to the extent permitted by law, subject to any modifications made necessary by the deletion of the invalid or unenforceable provision
- 17.12 **Variations:** This Agreement cannot be varied in any manner except by way of agreement in writing signed by the parties.
- 17.13 **Survival:** Following expiry or termination of this Agreement, clauses 6 (Repayment of EECA Funding), 8 (Intellectual Property), 10 (Termination), 11 (Confidentiality and Publicity), 12 (Disputes), 13 (Insurance), 14 (Indemnity), and items [x] of Schedule 2 (clause 3.1(g) Project Specific Conditions), together with other provisions that are by their nature intended to survive, will remain in effect.

Execution

Signed for and on behalf of
**Energy Efficiency And Conservation
Authority** by

Print Name

Signature

Position

Date

Signed for and on behalf of
[Recipient] by

Print Name

Signature

Position

Date

Schedule 1: Project Details, Deliverables And Reporting

1. **RFP proposal number:** G01-000
2. **Project title:** [Title]
3. **Project description:** [Brief description of Project]
4. **EECA Funding and payments** EECA Funding is capped at a maximum of \$[approved amount] plus GST.

EECA Funding cannot exceed [XX]% of the actual costs of delivery of the Project.
5. **Co-Funding** The Recipient is required to provide remaining co-funding to satisfy the Project completion, either by directly providing such funds, by procuring a third party (non government) to provide such funds, or both.

6. Milestones

Milestone	Description and Deliverable	Completion date	Payment Milestone (Excl. GST) and subject to item 4 above	Funding percentage
S1MXP13	Project design complete [if required] <ul style="list-style-type: none"> • Project plans & approvals • Project kick off meeting completed • Health & safety discussion completed 		\$xxx	10% of the funding
S1MXP13	Major asset ordering complete [if required]		\$xxx	XX% of the funding
S1MXP13	Project progress payment 01 - 50% work scope completion		\$xxx	XX% of the funding
S1MXP13	Project progress payment 02 - 70% work scope completion		\$xxx	XX% of the funding
S1MXP13	Installation & commissioning complete [if required]		\$xxx	25% of the funding
S1MXP13	Measurement and reporting		Nil	

7. **Site** [Physical address of project site]

8. Project Reporting

The Recipient will provide the following reports to EECA:

- (a) Project timetable and activity schedules (S1MXP13), covering the key project milestones deliverables.

- (b) A detailed health and safety assurance plan and Project risk assessment and mitigation measures (SIMXP13).
- (c) Project progress report 01 (SIMXP13) covering Updated Project budget and proof of key equipment ordering.
- (d) Measurement & verification plan (SIMXP13), demonstrating how the energy and emission reductions are to be measured.
- (e) Equipment installation and commissioning report (SIMXP13), including;
 - (i) Project expenditure report as per template provided by EECA to the Recipient.
 - (ii) Provide proof of costs associated with equipment purchase and installation; and
 - (iii) Details of any issues encountered during installation and commissioning.
- (f) Employment stimulus report of the Project (SIMXP13):
 - (i) As per the template provided by EECA to the Recipient.
- (g) Complete final Energy and carbon savings report/s (SIMXP13) documented using the template provided by EECA to the Recipient:

9. Address for notices:

Recipient

Recipient name

Recipient address

Attention: Name

Email: Recipient email

EECA

Energy Efficiency & Conservation Authority

Level 8, 44 The Terrace
Wellington 6011

Attention: EECA Contact Point

Email: GIDIFund@eeca.govt.nz

Schedule 2: Project Specific Conditions

The Recipient will:

1. Develop a project plan, to be available to EECA on request, to manage the Project, including the performance of the Recipient's obligations under this Agreement; and which must include as appropriate:
 - (a) A detailed health and safety assurance plan;
 - (b) Project timetable and activity schedules;
 - (c) Updated Project budget;
 - (d) Project delivery resources; and
 - (e) Project risk assessment and mitigation measures;
2. Where relevant to the Project, the Recipient will:
 - (a) [insert relevant project details here]
 - (b) [include project specific reporting elements here – including regular reporting where required]
3. In addition, the Recipient will:
 - (a) [include any additional information here]