

AGREEMENT made this day of July 2009

BETWEEN THE ENERGY EFFICIENCY AND CONSERVATION AUTHORITY
(“EECA”)

AND [NAME] (“Grantee”)

INTRODUCTION

- A** EECA is the New Zealand Government agency with responsibility for encouraging, supporting and promoting energy efficiency, energy conservation and the use of renewable sources of energy.
- B** In furtherance of those objectives, EECA has been appointed administrator of the Biodiesel Grants Scheme (“Scheme”) for the promotion of biodiesel.
- C** Pursuant to the Scheme, EECA makes available grants directed at supporting producers of biodiesel.
- D** Also pursuant to the Scheme, EECA has issued an invitation for producers of biodiesel to apply to participate in the Scheme and apply for grants. The Grantee, being a producer of biodiesel, has responded with an application to participate in the Scheme. The parties have reached agreement as to the terms upon which EECA will offer and the Grantee will accept a grant.
- E** EECA and the Grantee wish to record the terms of their agreement herein.

AGREEMENT

1 Definitions :

1.1 In this Agreement:

Agreement means this Agreement together with any schedule or annexure hereto;

Auditing means checking compliance with the requirements of the Scheme and this Agreement;

Biodiesel or B100 (100% Biodiesel) means a fuel principally comprising fatty acid methyl ester manufactured from plant oils, used cooking oils, animal fats or algae and meeting the requirements of Schedule 3 of the Engine Fuel Specifications Regulations 2008.

Biodiesel Blend means a blend of Biodiesel and diesel (eg: B5 = 5% Biodiesel / 95% diesel; B20 = 20% Biodiesel / 80% diesel; B50 = 50% Biodiesel / 50% diesel).

Blend up to B20 means a Biodiesel Blend of up to and including but not exceeding 20% Biodiesel and meeting the requirements of the Engine Fuel Specifications Regulations 2008;

Grant means the money to be paid by EECA to the Grantee pursuant to this Agreement.

GST means Goods and Services Tax within the meaning of the Goods and Services Tax Act 1985.

Manufacture means the transesterification process that results in Biodiesel, but does not include the re-processing of Biodiesel.

Producer means a person who manufactures Biodiesel or a Biodiesel Blend in New Zealand and who is eligible for a Grant under the Scheme.

Receiver means a person who first purchases Biodiesel or a Biodiesel Blend from a Producer and uses and/or arranges for the use of that Biodiesel or Biodiesel Blend in the New Zealand market as a Biodiesel Blend up to B20.

2 Term:

- 2.1 Unless terminated earlier pursuant to clause 3, the term of this Agreement shall commence on 1 July 2009 and conclude on 30 June 2012.
- 2.2 EECA has informed the Grantee that it is unable to confirm funding for the continuation of the Scheme beyond 30 June 2012, and the Grantee hereby

acknowledges that it has no basis for any expectation that this Agreement will be renewed beyond that date.

3 Termination:

- 3.1 Either party may terminate this Agreement by notice of termination in the event of a material breach by the other party.
- 3.2 In the event of the New Zealand Government reviewing and deciding to terminate or modify the Scheme, EECA shall be entitled to terminate this Agreement by giving one month's written notice of termination.
- 3.3 The rights and obligations of the parties as set out in this Agreement shall cease on termination of this Agreement, except for the rights and obligations set out in clauses 8, 9 and 10.

4 EECA's Obligations:

- 4.1 EECA agrees that, provided that the Grantee complies in all respects with its obligations hereunder, EECA will pay to the Grantee a Grant calculated pursuant to the Schedule hereto.

5 Grantee's Obligations:

- 5.1 For every calendar month during which this Agreement is in force, the Grantee shall submit to EECA a claim recording the total volume (whether that total volume is nil or more) of Biodiesel or the Biodiesel content of any Biodiesel Blend manufactured and sold by the Grantee to a Receiver during that month.
- 5.2 The claim shall also record information on the types of feedstock and the country of origin for each feedstock used by the Grantee to manufacture the Biodiesel.
- 5.3 Each monthly claim submitted to EECA by the Grantee:
 - 5.3.1 Shall be submitted on the specified form, which is available at and can be downloaded from the EECA website www.biofuels.govt.nz;

- 5.3.2 Shall be submitted by email to biofuels@eeca.govt.nz (but may be submitted by post or facsimile, if special arrangements are first made to do so);
 - 5.3.3 Shall be received by EECA no later than the 15th day of the month following the month to which it relates, or, if the 15th falls on a Saturday, Sunday or Public Holiday, the next working day thereafter;
 - 5.3.4 Shall be in respect only of Biodiesel or the Biodiesel content of any Biodiesel Blend sold by the Grantee during the month preceding the month in which the claim is submitted;
 - 5.3.5 Shall be supported by a declaration from the Receiver of the quantity purchased; that the quality was accepted by the Receiver; that the Biodiesel or any Biodiesel Blend has not been and will not be exported; and that the Biodiesel or any Biodiesel blend has not been and will not be used in a Biodiesel Blend exceeding B20.
 - 5.3.6 Shall be in respect only of Biodiesel or the Biodiesel content of any Biodiesel Blend which complies with the requirements of clauses 6 and 7.
- 6 Minimum Sale:
- 6.1 The Grantee shall not be eligible to receive a Grant in respect of any month in which its sales of Biodiesel or the Biodiesel content of any Biodiesel Blend has been less than 10,000 litres .
- 7 Qualifying Product:
- 7.1 Only Biodiesel which complies with the following requirements may be the subject of a claim by the Grantee:
 - 7.1.1 Biodiesel which is manufactured in New Zealand;
 - 7.1.2 Biodiesel which is not for export;
 - 7.1.3 Biodiesel that meets the requirements of Schedule 3 of the Engine Fuel Specifications Regulations 2008, and is intended for use as a fuel in compression ignition internal combustion engines;

7.1.4 Biodiesel that is first sold by the Grantee to a Receiver as a Biodiesel Blend up to B20 or for the purposes of blending with diesel to form a Biodiesel Blend up to B20. For the avoidance of doubt, the parties state that the intention of this Agreement is that the Grant provided for herein should only be available where the Grantee is the manufacturer and seller of Biodiesel or any Biodiesel Blend which is intended ultimately to be sold to consumers in a Biodiesel Blend of up to B20 for use in compression ignition internal combustion engines and meets the requirements of the Engine Fuel Specifications Regulations 2008.

8 Records and Auditing:

8.1 As a pre-condition to EECA's obligations and the Grantee's entitlements hereunder, the Grantee:

8.1.1 Shall keep comprehensive and accessible records sufficient to verify the production and sale of Biodiesel and the Biodiesel content of Biodiesel Blends in respect of which claims are made hereunder and accede to any reasonable request made by EECA for access to the same for Auditing purposes;

8.1.2 Shall enter into contractual arrangements with all Receivers requiring those Receivers to keep comprehensive and accessible records sufficient to verify the purchase of Biodiesel and the Biodiesel content of Biodiesel Blends in respect of which claims are made hereunder, and committing those Receivers to accede to any reasonable request made by EECA for access to the same for Auditing purposes.

8.2 EECA shall be entitled at any time during the term of this Agreement, and for a period of one year following its expiry, itself, or through an agent appointed by it for the purpose, to access records kept by the Grantee and any Receiver to whom the Grantee has sold Biodiesel or any Biodiesel Blend in respect of which a claim or claims have been made by the Grantee, in order to verify the legitimacy of such claims.

8.3 In the event that an Audit by EECA of claims made by the Grantee establishes that any claim was not made in all respects in compliance with

this Agreement, EECA shall be entitled to recover any Grant – or proportion of a Grant - paid by it to the Grantee, and the Grantee hereby agrees that any such Grant – or proportion of a Grant – shall constitute a debt due to EECA from the Grantee and be recoverable as such.

9 Publicity:

- 9.1 All information collected by EECA pursuant to this Agreement is official information in terms of the Official Information Act 1982, and the Grantee hereby acknowledges that, pursuant to that legislation, such information may be released to the public upon request unless there is good reason in terms of that legislation to withhold the same.
- 9.2 EECA may publish information about the operation of the Scheme on its website (www.biofuels.govt.nz) or elsewhere and such published information may include:
- 9.2.1 A description of how the Scheme works;
- 9.2.2 Criteria for Grants;
- 9.2.3 The names and contact details of Producers;
- 9.2.4 Aggregated information about grant uptake, monthly volumes of production, and rate of grant payment in cents per litre; and
- 9.2.5 Links to industry associations and other relevant organisations.
- 9.3 The Grantee and any Receiver with whom the Grantee contracts may promote their participation and involvement in the Scheme provided that in doing so they do not state or imply that EECA is manufacturing or supplying Biodiesel or endorses Biodiesel manufactured or supplied by them or endorses the Grantee or any Receiver and may not use the EECA or Energywise™ logos and that any such promotion by the Grantee or a Receiver distinguishes between Biodiesel or any Biodiesel Blend which qualifies under this Agreement and any other biodiesel or biodiesel blend and acknowledges that the Grantee or the Receiver, as the case may be, is participating in the Scheme only in respect of the Biodiesel or Biodiesel Blend that qualifies under this Agreement and the Grantee will, in its

contractual arrangements with Receivers, ensure that it is in a position to procure compliance by those Receivers with this clause.

10 Dispute Resolution/Mediation:

10.1 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 direct negotiations;

10.2 If the dispute or difference is not settled by agreement within 30 business days of the dispute arising then, unless agreed otherwise, it shall be referred to a mediator to be agreed by the parties, or failing agreement within 10 business days, to be appointed by the President of the New Zealand Law Society;

10.3 In the event of a referral to mediation:

10.3.1 The mediator shall be deemed not to be acting as an expert or as an arbitrator;

10.3.2 The mediator shall determine the procedure and timetable for the mediation;

10.3.3 The costs of the mediation shall be shared equally between the parties, unless the parties agree otherwise;

10.4 Neither party may issue legal proceedings (other than for urgent interlocutory relief) in respect of any dispute or difference, unless that party has first taken all reasonable steps to comply with this clause.

11 Amendments:

11.1 No amendment to this Agreement is effective unless it is in writing and signed by EECA and the Grantee.

12 Miscellaneous:

12.1 The Grantee must not transfer or assign its rights or obligations under this Agreement without consent from EECA, such consent not to be unreasonably withheld;

- 12.2 The parties acknowledge that this Agreement sets out their entire agreement and understanding and supersedes all prior oral or written agreements, understandings or arrangements, and any representations written or otherwise, made by either party, relating to its subject matter, provided only that the Grantee hereby expressly represents to EECA that the contents of its application to participate in the scheme is true and correct in every particular and acknowledges that EECA is relying on this representation;
- 12.3 Any notice to be given under this Agreement must be made in writing or by facsimile transmission sent to the address set out for the relevant party in this Agreement, or such other address as may be notified by either party to the other from time to time in writing. Any communication by facsimile transmission will be deemed to be received when transmitted to the correct facsimile transmission address of the recipient and any communication in writing will be deemed to be received when left at the specified address of the recipient or on the third day following the date of posting, as applicable;
- 12.4 If any provision in this Agreement is invalid or unenforceable, the remaining provisions will not be affected and will continue in full force and effect;
- 12.5 A failure or delay by either party to exercise a right under this Agreement is not a waiver of that right, and a waiver of a breach of this Agreement is not a waiver or any other breach;
- 12.6 This Agreement will be governed by and construed in accordance with New Zealand Law;
- 12.7 The parties expressly agree that there is no express or implied agreement that the Grantee will be successful in any future application it may make to EECA for funding, but the Grantee has no expectation of future funding other than as provided for in this Agreement and that EECA's obligations to the Grantee are strictly limited to those in this Agreement.

Execution

Executed as an Agreement.

**Signed for and on behalf
of the Energy Efficiency
and Conservation Authority**

by

Mike Underhill, Chief Executive

Signature

Date

in the presence of:

Witness Signature

Name

Address

Occupation

Address of Energy Efficiency and Conservation Authority

Address	Level 8 44 The Terrace PO Box 388 Wellington	Telephone	04 470 2200
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Attention	Trevor Johnson 04 470 2223	Email address	biofuels@eeca.govt.nz
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Signed for and on behalf of

Signature

Name

("Grantee").

Position

Date

in the presence of:

Witness Signature

Name

Address

Occupation

Address of _____ ("Grantee").

Address _____ **Telephone** _____

Attention _____ **Email**
address _____

SCHEDULE

EECA's total annual funding for grants to all Producers during the three year term of this Agreement is as follows:

- 1 July 2009 – 30 June 2010: \$9 million, or \$750,000 per month (1,764,705 litres at 42.5 cents per litre);
- 1 July 2010 – 30 June 2011: \$12 million, or \$1,000,000 per month (2,352,941 litres at 42.5 cents per litre);
- 1 July 2011-30 June 2012: \$15 million, or \$1,250,000 per month (2,941,176 litres at 42.5 cents per litre).

Where the total volume of Biodiesel or Biodiesel content of Biodiesel Blends sold by all Producers in New Zealand :

- in any month during the period 1 July 2009 – 30 June 2010 is less than or equal to 1,764,705 litres ("specified volume") or any "revised specified volume" (see below);
- in any month during the period 1 July 2010 – 30 June 2001 is less than or equal to 2,352,941 litres ("specified volume") or any "revised specified volume" (see below);
- in any month during the period 1 July 2011 – 30 June 2012 is less than or equal to 2,941, 176 litres ("specified volume") or any "revised specified volume" (see below);

then the rate at which EECA shall pay the Grant to the Grantee for that month shall be 42.5 cents per litre of Biodiesel or Biodiesel content of any Biodiesel Blend sold to Receivers.

If in any month the specified volume or any revised specified volume is not claimed, then the shortfall in Grant not claimed in that month will be spread equally over the remaining months of the funding year and a revised specified volume calculated.

For any month in which the total volume of Biodiesel or Biodiesel content of Biodiesel Blends sold by all Producers in New Zealand exceeds the specified volume for that month, then the rate at which EECA shall pay the Grant to the Grantee for that month shall be calculated as follows:

$$\frac{\text{Specified monthly volume (litres)}}{\text{Actual monthly volume (litres)}} \times 42.5 = \text{monthly grant rate in cents per litre}$$

Example 1: If, in the month of July 2010, the total volume of eligible Biodiesel from all Producers is 2 million litres, then the rate of grant funding for that month will be:

$$\frac{\$1,764,705}{\$2,000,000} \times 42.5 \text{ cents} = 37.50 \text{ cents per litre}$$

Example 2: If, in the month of August 2010, the total volume of eligible Biodiesel from all Producers is 2.5 million litres, then the rate of grant funding for that month will be:

$$\frac{\$2,352,941}{\$2,500,000} \times 42.5 \text{ cents} = 40.00 \text{ cents per litre}$$