

PROJECT FUNDING AGREEMENT

EECA
ENERGY EFFICIENCY AND
CONSERVATION AUTHORITY

Recipient
XXXXXXXXXX

PARTIES

- (1) **ENERGY EFFICIENCY AND CONSERVATION AUTHORITY** (NZBN 9429041901953), a Crown entity constituted under the Energy Efficiency and Conservation Act 2000 ("EECA"); and
- (2) **XXXXXXXXX** (NZBN YYYYYYYYYYY), a New Zealand Limited Company located at **ZZZZZZZZZZZ** ("Recipient").

BACKGROUND

- A. The Recipient has agreed to implement a technology demonstration project, subject to funding support from EECA.
- B. EECA has agreed to provide such funding support to the Recipient on the terms of this Agreement.

AGREEMENT

1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement:

"Agreement" means this project funding agreement, including the Schedule;

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

"Claim" means a claim for EECA Funding made by the Recipient to EECA in the manner specified by EECA;

"Completion Date" means, in relation to each milestone set out in item 2 of the Schedule, the date by which the Recipient must complete that milestone;

"Confidential Information" means information disclosed by a party under this Agreement that is marked as confidential or which might reasonably be expected to be confidential in nature;

"EECA Funding" means the maximum amount of funding payable by EECA to the Recipient to support the Project, as specified in item 1 of the Schedule;

"Equipment" means the equipment being installed, upgraded or replaced under the Project as set out in item 5 of the Schedule;

"Energy Savings Target" means the targeted energy savings for the Project as described in item 9 of the Schedule;

"Force Majeure Event" means an extraordinary event or circumstance beyond the reasonable control of a party such as an Act of God (but excluding lack of funds);

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

"Project" means the technology demonstration project to be undertaken by the Recipient, as described in item 4 of the Schedule;

"Project Reports" means the reports that the Recipient is required to provide to EECA under this Agreement, as described in item 6 of the Schedule;

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

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

"Schedule" means the schedule of contract details 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 3 of the Schedule.

"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 [date] unless the Agreement is terminated earlier in accordance with clause 9.

3. RECIPIENT'S OBLIGATIONS

3.1 The Recipient will:

- (a) undertake the Project at the Site in accordance with this Agreement;
- (b) take full responsibility for the Equipment installed as part of the Project and manage the operation of that Equipment in accordance with good manufacturing, operational and health and safety practices relevant to the business on the Site; and
- (c) implement and manage the Project with all due care and skill and to a professional standard commensurate with the nature of the Project.

4. EECA FUNDING

4.1 EECA will pay the Recipient the EECA Funding in **yy** instalments based on achievement of the milestones by the relevant Completion Dates. The milestones are set out in item 2 of the Schedule.

4.2 To receive EECA Funding, the Recipient must provide EECA with a Claim that contains at least the following details:

- (a) the Recipient's name, address and GST number;
- (b) the milestone against which the Claim is being made;
- (c) evidence of completion of the relevant milestone (unless otherwise agreed by EECA); and
- (d) the amount and GST due.

4.3 Following the receipt and approval of a Claim, EECA will provide the Recipient with a buyer created invoice at the time of making payment.

4.4 Subject to clause 4.5, if EECA receives a valid Claim by the 10th of the month following the month which the Claim relates to, EECA will pay the sum set out in the Claim on the 20th day of that month. Any valid Claims received after the 10th of the month will be paid on the 20th of the following month.

4.5 If EECA disputes the sum in any Claim:

- (a) EECA will notify the Recipient of the dispute following receipt of the Claim;
- (b) EECA will pay the undisputed portion of the Claim in accordance with clause 4.4; and
- (c) the disputed portion will be dealt with under clause 11 (Disputes).

4.6 EECA is not under any obligation to make any payment under this Agreement until EECA has received:

- (a) a valid Claim for the EECA Funding from the Recipient; and
- (b) reasonably satisfactory evidence (if applicable) from the Recipient that the relevant milestone has been completed in accordance with this Agreement.

4.7 If EECA is required to withhold any taxes from any payment required to be made by it under this Agreement, payment of the valid Claims 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.

4.8 The Recipient agrees and warrants that it will use EECA Funding only for the purposes set out in this Agreement. If any of the EECA Funding is not used for the purpose of the Project, the Recipient must immediately repay the EECA Funding.

5. REPAYMENT

5.1 Without limiting any other remedy EECA may have, the Recipient must repay EECA Funding to EECA in the circumstances set out in this clause 5. All repayments must be made within 10 Business Days of a demand in writing by EECA.

5.2 If the actual total costs of the Project are less than the total costs set out in the Proposal, the Recipient (if the Recipient has claimed from EECA the full amount of EECA Funding available under this Agreement) will repay to EECA an amount of EECA Funding proportional to the reduction in total costs (i.e. the same percentage of total costs as set out in the Proposal, but applied against actual costs).

5.3 The Recipient will, on demand by EECA, repay all or part (at EECA's discretion) of the EECA Funding paid by EECA if:

- (a) the Recipient fails to comply with any of its obligations required under this Agreement (including, without limitation, the Project reporting requirements set out in item 2 of the Schedule).

6. INFORMATION MANAGEMENT

6.1 The Recipient must:

- (a) provide EECA with the Project Reports described in item 6 of the Schedule at the specified intervals; and
- (b) keep and maintain full, true and up-to-date Records of the performance of its obligations under this Agreement during the term of this Agreement and for a minimum of three years following termination or expiry of the Agreement;
- (c) allow EECA or its nominee to audit the Records, or audit the performance (including reviewing the Records) from time-to-time as reasonably required by EECA;
- (d) 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 (including the participation of the Recipient at one or more workshops and seminars arranged by EECA);
- (e) give information to EECA relating to the performance of the Recipient's obligations pursuant to this Agreement which EECA reasonably requests. 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;
- (f) co-operate with EECA to provide information immediately if the information is required by EECA to comply with an enquiry or its statutory, parliamentary, or other reporting obligations; and
- (g) make sure that any Records provided to EECA or created for EECA, are securely managed and securely destroyed on their disposal.

6.2 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 Recipient to perform its obligations under this Agreement.

7. INTELLECTUAL PROPERTY

7.1 Any intellectual property already in existence at the commencement of this Agreement shall remain the property of the current owner.

7.2 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.

7.3 The Recipient grants to EECA a perpetual, irrevocable, royalty-free and non-exclusive licence to use its existing intellectual property to the extent necessary in carrying out its obligations under this Agreement.

8. HEALTH AND SAFETY

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

8.2 The Recipient must at all times when undertaking the Project in accordance with this Agreement comply with all WHS Laws.

8.3 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 requested by EECA or any of its personnel to allow EECA to discharge and comply with EECA's obligations under the WHS Laws.

8.4 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) conduct an investigation into the circumstances of a near miss or an incident (including a Serious Incident) affecting or potentially affecting the health and safety of any person promptly after that event occurs 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.

8.5 EECA and the Recipient will schedule a kick-off meeting on commencement of the Project. There is an expectation that health and safety systems and performance will be reviewed in this meeting. 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 working with EECA to complete a hazard and risk identification and management process for the Project to identify potential hazards/risks and developing 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 at the Site if applicable.

8.6 The Recipient must ensure, and provide (on request) evidence to the satisfaction of EECA, that any subcontractor it engages in accordance with this Agreement has the necessary safety systems, expertise and financial standing to carry out the work to be subcontracted.

8.7 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.

9. TERMINATION

9.1 Either party may terminate this Agreement if the other party commits a material or persistent breach of this Agreement and, if such breach is capable of remedy, fails to remedy that breach within 10 Business Days after receipt of a notice from the other party requiring the breach to be remedied.

9.2 EECA may terminate this Agreement on notice with immediate effect if:

- (a) EECA considers in its sole discretion the Recipient has not fulfilled its obligations under clause 3.1; or
- (b) the Recipient becomes insolvent; or
- (c) the Recipient is the subject of enforcement action pursuant to the WHS Laws.

9.3 Upon termination of the Agreement under clause 9.2 EECA will not be obliged to pay the EECA Funding and any EECA Funding paid to the Recipient will be repayable on demand by EECA.

9.4 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, where the breach occurred before the termination of this Agreement.

10. CONFIDENTIALITY AND PUBLICITY

10.1 Except as permitted by clause 10.2, 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.

10.2 Notwithstanding clause 10.1, a recipient of Confidential Information may disclose any Confidential Information if, and to the extent that, 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, provided that the disclosing party gives the other party

notice of the requirement as soon as practicable before such disclosure is made, and gives the other party copies of any such information to be disclosed.

10.3 Each party will ensure that its personnel:

- (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.

10.4 Subject to clause 10.5 and except as required by law, a party shall make no announcement or disclosure relating to the contents of this Agreement except as agreed by the parties in advance (such approval not to be unreasonably withheld or delayed).

10.5 Either party may publish the results and findings arising from the Project in such manner and media as it thinks fit, provided that the party obtains the other party's prior written approval to any such publication (such approval not to be unreasonably withheld).

10.6 The Recipient acknowledges that EECA is subject to the Official Information Act 1982 and may be required to disclose information pursuant to that Act. The Recipient should mark any commercially sensitive information as "Commercial: In Confidence" if the Recipient wishes to protect specific commercial information. However, EECA does not guarantee that such marked information will be protected from disclosure. The Recipient will immediately forward to EECA any request for information made under the Official Information Act 1982 received by the Recipient.

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

10.8 This clause survives termination of this Agreement.

11. DISPUTES

11.1 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.

11.2 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.

11.3 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.

11.4 Each party will pay its own costs of mediation under this clause 11.

11.5 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 11.1 to 11.3.

12. INSURANCE

12.1 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.

13. INDEMNITY

13.1 The Recipient shall, to the full extent permitted by law, defend, indemnify and hold harmless EECA, from and against any and all damage, loss (including loss of profits), 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.

13.2 Notwithstanding clause 13.1, neither party shall be liable for any breach of this Agreement to the extent such breach is due to a Force Majeure Event, provided that it keeps the other party fully informed of the situation, uses reasonable endeavours to mitigate the effect of the Force Majeure Event and resumes full performance as soon as reasonably practicable.

14. GENERAL

14.1 **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.

14.2 **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 14.1.

14.3 **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.

14.4 **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.

14.5 **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.

14.6 **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.

14.7 **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.

14.8 **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 7 or 8 (as applicable) of the Schedule. 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.

14.9 **Variations:** This Agreement cannot be varied in any manner except by way of agreement in writing signed by the parties.

14.10 **Survival:** Following expiry or termination of this Agreement, clauses 5 (Repayment), 7 (Intellectual Property), 9 (Termination), 10 (Confidentiality and Publicity), 11 (Disputes), 12 (Insurance), and 13 (Indemnity), together with other provisions that are by their nature intended to survive, will remain in effect.

Execution

SIGNED for and on behalf of the)
ENERGY EFFICIENCY AND)
CONSERVATION AUTHORITY by)

Signature

Print Name

Position

Date

SIGNED for and on behalf of)
XXXXXXXXXXXXXXXXXX by)

Signature

Print Name

Position

Date

SCHEDULE 1 : PROJECT DETAILS

1. **EECA Funding** abc

2. **Milestones, Deliverables, Completion Dates and Payments**

<i>Milestone</i>	<i>Deliverable</i>	<i>Completion Date</i>	<i>Payment Amount</i>
S1M1P11	Project Report 1		
S1M2P11	Project Report 2		
S1M3P11	Project Report 3		

3. **Site** location

4. **Project** description

5. **Equipment** List all key equipment – type/model, supplier

6. **Project Reports**
Project Report 1: description
Project Report 2: description
Project Report 3: description

7. **Recipient's address for notices** Full physical address
 For: contact person name
 Email:

8. **EECA's address for notices** Level 8, 44 The Terrace
Wellington 6011
 For: Dinesh Chand
 Email: dinesh.chand@eeca.govt.nz

9. **Emissions Savings Target** Fuel type, quantity, carbon content etc