

February 2025

# Energy Savings Loan Agreement

# Part 1: Transaction specific terms

## Key terms

### 1 Parties

#### EECA

NZBN 9429041901953, a Crown entity established under the Energy Efficiency and Conservation Act 2000 (**EECA**).

#### Borrower

[x] (**Borrower**).

### 2 Background

EECA is offering energy saving loans to support organisations to achieve meaningful energy savings through affordable financing (the **Programme**).

The goals of the **Programme** are to enable organisations to:

- reduce operational energy costs;
- transition to more sustainable practices; and
- improve renewable energy uptake,

(the **Programme Goals**)

The Borrower is a limited liability company established pursuant to the Companies Act 1993.

The Borrower has sought a loan facility from EECA for the purposes of the Project described below. EECA has agreed to provide a loan facility on the terms and conditions set out in this Loan Agreement (**Agreement**).

The transaction specific terms of this Agreement are set out in this **Part 1**, including some defined terms. Additional defined terms and rules of interpretation and the full general terms and conditions are set out in **Part 2**.

### 3 Project

The installation of **[insert asset being installed]** (the **Project Asset**) at **[insert location of installation]**.

(the **Project**)

The funding will be used towards costs associated with:

- the design, project management and planning of the Project;
- procurement, installation and training (as applicable) in relation to the Project Asset;
- monitoring and verification of energy savings in relation to the Project; and
- obtaining necessary permits and certifications in relation to the Project.

### 4 Expected Project Outcomes

The expected outcomes from the Project which align with those of the Programme Goals are:

- [reducing the Borrower's operational energy costs through the]
- [enabling the Borrower to transition to more sustainable practices by; and]
- [enabling the Borrower to improve their renewable energy uptake by].

**[Other outcomes]**

(the **Expected Project Outcomes**).

## Facility

**5 Facility Limit** **\$(Facility Limit).**

**6 Loan Drawdown Availability Period** Drawdowns can be made during the period commencing on (and including) the date of Financial Close, to (and including) the date that is 24 months from Financial Close (**Availability Period**).

**7 Drawdown** The Borrower may draw down the Facility in accordance with the advance table set out below and in accordance with clause 3 (Conditions to Advance).

<b>Advance Number</b>	<b>Advance Deliverable to be provided to EECA</b> (each an Advance Deliverable)	<b>Amount of advance</b> (each an Advance Amount)	<b>Total amounts advanced after relevant Advance(s)</b>
1			
2			
3			

**8 Interest Rate** No interest is payable on the Facility.

**9 Repayment** Amounts Outstanding under the Facility will be repayable in accordance with clause 5 (Repayment) of Part 2.

**10 Maturity Date** **[Insert maturity date]** (the **Maturity Date**).

**11 Security** The Facility will be unsecured.

**12 Financial Year** The financial year of the Borrower, ending on **[insert end date for the borrowers financial year]** (the **Financial Year**).

**13 Practical Completion** The date on which the Borrower provides to EECA a certificate, which is satisfactory to EECA (in its sole discretion), certifying that the Project Asset is fully operational.

**14 Scheduled Practical Completion Date** **[Insert expected project completion date]** (the **Scheduled Practical Completion Date**).

**15 Conditions Precedent**

The Borrower will deliver the following documents to EECA, each in form, substance and manner satisfactory to EECA in its sole discretion:

- a duly executed original of the Agreement;
- a Pre-Project Energy Savings Report (as that term is defined in Part 2 of this Agreement);
- duly executed copies of all agreements relating to the design, purchase and installation of the Project Asset (as applicable);
- written confirmation that all necessary Authorisations have been obtained and copies of those Authorisations; and
- such other document, assurance or information as EECA may, by notice to the Borrower, require.

(together the **Conditions Precedent**).

These Conditions Precedent must be satisfied within a 6 month period from the date of signing, unless otherwise agreed in writing with EECA (the **Expiry Date**).

Additionally in respect of each Advance, the Borrower will deliver to EECA, the deliverables (set out in section 7 above) relevant to such Advance (if any) and any other evidence that EECA considers reasonably necessary to verify that the relevant Advance has been achieved. All evidence shall be in the form, substance and manner satisfactory to EECA in its sole discretion.

(the **Advance Conditions**)

**16 Contact Person**

EECA's Contact Person:

Name:

Email:

Telephone:

**[Relevant contact details to be included]**

Borrower's Contact Person:

Name:

Email:

Telephone:

**17 Address for Notices**

To EECA:

PO Box 388

Wellington, 6140

Attention:

Email:

**[Relevant contact details to be included]**

To the Borrower:

**[Borrower's address to be inserted]**

Attention:

Email:

## Signatures

### Signatures

**SIGNED** for and on behalf of the **ENERGY EFFICIENCY AND CONSERVATION AUTHORITY** by the person named below, being a person duly authorised to enter into obligations on behalf of the Energy Efficiency and Conservation Authority:

-----  
Name:  
Position:  
Date:

**SIGNED** for and on behalf of the **BORROWER** by the persons named below, being duly authorised to enter into obligations on behalf of the Borrower:

-----  
Name:  
Position: Director  
Date:  
-----  
Name:  
Position: Director  
Date:

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# Part 2: General terms and conditions

## 1 Definitions and interpretation

### 1.1 Definitions

In this Agreement, unless the context requires otherwise:

*Advance* means each loan advance made or to be made available to, or at the request of, the Borrower under the Facility or, as the context may require, the principal amount of that Advance outstanding from time to time.

*Advance Amount* has the meaning given to it in Part 1.

*Advance Conditions* has the meaning given to it in Part 1.

*Advance Deliverable* has the meaning given to it in Part 1.

*Agreement* has the meaning given in Part 1.

*Amounts Outstanding* means, at any date, the Principal Amount and other amounts then due and payable by the Borrower to EECA.

*Annual Verified Cost Savings* means the total cost savings identified by the IPMVP Auditor in each *Verified Cost Savings Report*.

*Authorisation* means:

- (a) any consent, authorisation, registration, filing, lodgement, agreement, notarisation, certificate, permission, licence, approval, authority or exemption from, by or with a Governmental Agency or required by any law (including any consent under the Resource Management Act 1991); or
- (b) in relation to anything which will be fully or partly prohibited or restricted by law if a Governmental Agency intervenes or acts in any way within a specified period after lodgement, filing, registration or notification, the expiry of that period without intervention or action.

*Availability Period* has the meaning given in Part 1.

*Borrower* has the meaning given in Part 1.

*Business Day* means any day not being a Saturday or Sunday or public holiday within the meaning of section 44 of the Holidays Act 2003.

*Change in Control* means an event or series of events which result in any person (acting alone) or group of persons (acting in concert) acquiring or ceasing to have the ability:

- (a) to control more than 50% percent of the voting shares in a person;
- (b) to appoint and/or remove the majority of the members of the governing body of a person;
- (c) to otherwise control or having the power to control the affairs and policies of a person; or
- (d) to be in a position to derive the whole or a majority of the benefit of a person.

*Conditions Precedent* has the meaning given in Part 1.

*Default* means an Event of Default or any event or circumstance which would (with the expiry of a grace period, the giving of notice, the making of any determination under the Transaction Documents or any combination of any of the foregoing) be an Event of Default.

*Drawdown Date* means the date of an Advance, being the date on which an Advance is or is to be made.

*Drawdown Notice* means a notice substantially in the form set out in the Schedule to this Agreement (Drawdown Notice).

*EECA* has the meaning given in Part 1.

*Eligible Costs* means the actual costs reasonably incurred by the Borrower in delivering the Project on or after the date of this Agreement (other than where approved by EECA in writing) until the end of the Availability Period.

*Event of Default* means event or circumstance specified as such in clause 16 (Events of Default).

*Expected Cost Savings* means the annual expected cost savings attributable to the Project during its first 12 months of operation in accordance with the IPMVP, as detailed in the Pre-Project Energy Savings Report.

*Expected Project Outcomes* has the meaning given in Part 1.

*Facility* means the loan facility made available on the terms of this Agreement, as set out in Part 1.

*Facility Limit* has the meaning given in Part 1.

*Finance Documents* means:

- (a) this Agreement;
- (b) any Drawdown Notice; and
- (c) any other document designated as a Finance Document by EECA.

*Financial Close* means the date on which EECA issues the confirmation referred to in clause 3.1 (Conditions Precedent).

*Financial Indebtedness* means any indebtedness (whether present or future, actual or contingent) for or in respect of:

- (a) any money borrowed or raised by any means (including amounts owing under any finance lease, any redeemable shares, and any deferred payment for the acquisition of assets or services payable more than 90 days after acquisition) and debit balances with banks or financial institutions;
- (b) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price (and, when calculating the value of any derivative transaction, only the marked to market value must be taken into account);
- (c) any guarantee, security or other commitment designed to assure any creditor against loss in respect of any Financial Indebtedness described in paragraphs (a), (b), (d) and (e) of this definition;
- (d) any indemnity obligation in respect of a guarantee, indemnity, bond, standby or documentary letter of credit or any other instrument issued by a bank or financial institution; or
- (e) any other financial accommodation.

*Financial Year* has the meaning given in Part 1.

*GAAP* means generally accepted accounting principles in New Zealand.

*Governmental Agency* means any government or governmental, intergovernmental, supranational, semi-governmental or judicial entity or authority including any local council or regional authority, any agency or department, any self-regulatory body or organisation established under statute, any stock exchange and any other regulatory, monetary or accountancy body.

*GST* means goods and services tax under the Goods and Services Tax Act 1985 and any other tax of a similar nature.

*Insolvency Event* means, in relation to any person:

- (a) a statutory manager is appointed or any step is taken to appoint, or with a view to appointing, a statutory manager (including a recommendation in that regard by the Financial Markets Authority or any other governmental agency) under the Corporations (Investigation and Management) Act 1989, or an associated person (as that term is defined in the Corporations (Investigation and Management) Act 1989) if it is declared at risk pursuant to the provisions of the Corporations (Investigation and Management) Act 1989;
- (b) except for the purpose of a solvent reconstruction or amalgamation on terms approved in writing by EECA, an application or an order is made, proceedings are commenced, a resolution is passed or an application to a court is made (other than any frivolous or vexatious application, proceeding or resolution which is withdrawn or dismissed within 10 Business Days) for the winding up or dissolution of that person;
- (c) an application is made (other than any frivolous or vexatious application, proceeding or resolution which is withdrawn or dismissed within 10 Business Days) to a court for an order appointing a liquidator or provisional liquidator in respect of that person, or one of them is appointed, whether or not under an order;
- (d) that person is declared or states that it is insolvent, is unable to pay its debts when they fall due or is presumed unable to pay its debts in accordance with section 287 of the Companies Act 1993;
- (e) except for the purpose of a solvent reconstruction or amalgamation on terms approved in writing by EECA, that person ceases, suspends or threatens to cease or suspend the conduct of all or substantially all of its business or disposes of or threatens to dispose of substantially all of its assets;
- (f) except for the purpose of a solvent reconstruction or amalgamation on terms approved in writing by EECA, that person enters into, or resolves to enter into, a scheme of arrangement, administration, compromise or composition with or assignment for the benefit of its creditors or a class of them;
- (g) that person stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (h) an order is made requiring that person to pay any debts of another person that is in liquidation;
- (i) any step is taken for the appointment of a receiver, receiver and manager or similar officer of it or all or any of its assets and undertakings or an encumbrancer takes possession of, or a receiver or receiver and manager is appointed to, all or substantially all of the assets and undertakings of that person or any part thereof;
- (j) a distress, expropriation, attachment or other execution is levied or enforced upon, or commenced (other than any frivolous or vexatious application, proceeding or resolution which is withdrawn or dismissed within 10 Business Days) against all or substantially all of the assets of that person and is not discharged or stayed within 10 Business Days; or
- (k) anything analogous or having a substantially similar effect to any of the events specified above occurs with respect to that person under the laws of any applicable jurisdiction.

*IPMVP* means the International Performance Measurement and Verification Protocol.

*IPMVP Auditor* means a person appointed by the Borrower to produce the Pre-Project Energy Savings Report or a Verified Cost Savings Report (as the case may be) who is certified by the Efficiency Valuation Organisation as holding the Certified Measurement and Verification Professional certification or such other appropriate certification for the verification of cost savings in accordance with the IPMVP (as agreed in writing by EECA).

*Material Adverse Effect* means a material adverse effect on:

- (a) the business, operation, property, prospects or condition (financial or otherwise) of the Borrower;
- (b) the ability of the Borrower to observe or perform its obligations under any Transaction Document; or
- (c) EECA's rights or remedies under, or the validity or enforceability of, or the intended priority of any security held by EECA under, any Finance Document,

and *Material Adverse Change* is to be construed accordingly.

*Maturity Date* has the meaning given in Part 1.

*Part 1* means part 1 (Transaction Specific Terms) of this Agreement.

*Part 2* means part 2 (General Terms and Conditions) of this Agreement.

*Permitted Disposal* means a disposal:

- (a) made in the ordinary course of business of the disposing entity;
- (b) required by law;
- (c) on arm's length terms of assets in exchange for other assets comparable or superior as to type, value and quality;
- (d) of worn out or obsolete assets on arm's length terms; or
- (e) any other disposals agreed to in writing by EECA.

*Permitted Financial Indebtedness* means:

- (a) any Financial Indebtedness that has been notified to EECA prior to the date of this Agreement and that EECA has consented to in writing;
- (b) Financial Indebtedness under the Finance Documents;
- (c) any Additional Permitted Financial Indebtedness, if any is specified in Part 1; and
- (d) any other Financial Indebtedness incurred with the prior written consent of EECA.

*Practical Completion* has the meaning given in Part 1.

*Pre-Project Energy Savings Report* means a report authored by the IPMVP Auditor that details, among other things the Expected Cost Savings and includes a Measurement and Verification plan that complies with the IPMVP verification protocol.

*Principal Amount* means, at any date, the aggregate principal amount of all Advances outstanding as at that date.

*Project Costs* means the total costs of the Project.

*Project Asset* has the meaning given in Part 1.

*Repayment Date* means following the earlier of Practical Completion or 12 months after the Drawdown Date, each of:

- (a) 15 March;
- (b) 15 June;
- (c) 15 September; and
- (d) 15 December,

in the relevant year.

*Scheduled Practical Completion Date* has the meaning given in Part 1.

*Transaction Document* means:

- (a) each Finance Document; and
- (b) any other document designated as such in writing by EECA and the Borrower.

*Verified Cost Savings Report* means each report authored by the IPMVP Auditor that details, among other things the total cost savings attributable to the Project in the previous 12 months in accordance with the IPMVP.

## 1.2 References

In this Agreement, unless the context requires otherwise:

*an agreement* includes a contract, deed, licence, undertaking and other agreement or legally enforceable arrangement (in each case, whether or not in writing, present and future), and includes that agreement as amended, assigned, novated or substituted from time to time, except to the extent prohibited by a Transaction Document;

*assets or property* includes the whole and any part of the relevant person's business, assets (including leased assets), undertaking, revenues and rights (in each case, present and future), and reference to any property includes any legal or equitable interest in it;

*costs or expenses* includes all expenses, losses, claims, costs (including legal costs on a solicitor and own client basis), disbursements, taxes, travel expenses, out of pocket expenses, commissions, charges and audit, investigative or administrative costs;

*disposal* includes any sale, assignment, exchange, transfer, loan, lease, surrender of lease, licence or parting with possession of, or the granting of any option, right of interest, the payment of money (including a distribution by way of dividend) or any agreement for any of the foregoing (but excludes any such transaction which is a security), and acquisition and acquire are to be construed accordingly;

*financial statements* means the financial statements of the Borrower;

*guarantee* includes any indemnity, letter of credit, letter of comfort, bond, suretyship or other agreement, the economic effect of which is to provide security, or otherwise assume responsibility, for the indebtedness, obligations, solvency or financial condition of another person;

*indebtedness* includes any obligation (whether present or future, actual or contingent, secured or unsecured, joint or several, as principal, surety or otherwise) relating to the payment of money;

*a person* includes any individual, a body corporate, an association of persons (whether corporate or not), a trust, government, a state or agency of a state and any other entity (in each case, whether or not having separate legal personality) or two or more of them and any reference to a particular person or entity includes a reference to that person's or entity's executors, administrators, successors, substitutes (including by novation) and assigns;

*a regulation* includes any regulation, rule, official directive, request or guideline (whether or not having the force of law) of any Governmental Agency, intergovernmental or supranational body, agency, department or regulatory, self-regulatory or other authority or organisation;

*right* includes any consent, power, remedy, authority, discretion or cause of action;

*security* includes:

- (a) any present or future mortgage, charge, encumbrance, lien, pledge, finance lease, sale and lease-back, sale and repurchase, flawed asset arrangement, title retention arrangement, charge or similar interest imposed by statute, or any other arrangement of any nature having similar economic effect to a security; and
- (b) any present or after acquired interest in personal property that is a security interest for the purposes of the Personal Property Securities Act 1999,

and *security interest* is to be construed accordingly;

*shareholder* has the meaning given to that term in the Companies Act 1993.

*Tax* includes any present or future tax, levy, impost, duty or other charge, deduction or withholding of a similar nature (including any penalty or interest payable in connection with any failure to pay or any delay in paying any of the same) imposed, assessed or levied by or on behalf of any Governmental Agency; and

*writing* includes an email communication and any means of reproducing words in a tangible and permanently visible form.

### **1.3 Construction**

In this Agreement:

- (a) unless a contrary indication appears, a reference to a time of day is a reference to New Zealand time;
- (b) headings and the table of contents are for ease of reference only;
- (c) \$, NZ\$ and NZ dollars denote the lawful currency of New Zealand;
- (d) the singular includes the plural and vice versa;
- (e) a reference to *including, for example or such as*, when introducing an example, does not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (f) a Default and/or Event of Default is continuing until it has been waived in writing by, or remedied to the satisfaction of, EECA;
- (g) a party to this Agreement or another agreement includes its successors and its permitted assigns and transferees;
- (h) any legislation includes a modification and re-enactment of, legislation enacted in substitution for, and a regulation, order-in-council and other instrument from time to time issued or made under, that legislation; and
- (i) if a clause in this Part 2 refers to a transaction specific term in Part 1 that is not detailed then any reference to the term in such clause of Part 2, but only to the extent of such term, shall be deemed not to apply.

## 2 The facility

### 2.1 The Facility

Subject to the terms of this Agreement, EECA makes available to the Borrower a term loan facility in an aggregate amount equal to the Facility Limit (the **Facility**).

### 2.2 Purpose

The Borrower must apply all amounts borrowed by it to fund:

- (a) Eligible Costs incurred; and
- (b) any other costs approved in writing by EECA.

## 3 Conditions of advances

### 3.1 Conditions Precedent

The Borrower may not deliver any Drawdown Notice unless EECA has received (or waived the requirement to receive) all of the documents and other evidence listed as Conditions Precedent. EECA will notify the Borrower promptly on being so satisfied.

### 3.2 Conditions to Advances

EECA will only be obliged to make an Advance available if, on the date the Drawdown Notice is received and on the proposed Drawdown Date:

- (a) EECA has confirmed to the Borrower that the Advance Conditions have been satisfied in respect of the relevant Advance (that are the subject of the Drawdown Notice);
- (b) all reporting to be delivered to EECA in accordance with clause 15 (*Information Undertakings*) have been received in form and substance satisfactory to EECA and any questions that EECA has in relation to that reporting has been satisfactorily answered by the Borrower or its advisors (as applicable);
- (c) no Event of Default or Default is continuing or would be likely to result from the proposed Advance;
- (d) each representation in clause 11 (*General Representations*) is true in all respects and not misleading;
- (e) the Advance is not greater than the Advance Amount;
- (f) immediately after the Advance is made, the principal amount of all Advances made under the Facility will not exceed the Facility Limit or the aggregate amount of all Advance Amounts attributable to Advances to which EECA has confirmed the Advance Conditions have been satisfied;
- (g) certification from a director of the Borrower that the requested Advance will be applied in accordance with clause 2.2 (Purpose); and
- (h) any Additional Conditions to Advances, if any are specified in Part 1, have been met to the satisfaction of EECA.

## 4 Payment

### 4.1 Delivery of a Drawdown Notice

The Borrower may utilise the Facility by delivery to EECA of a duly completed Drawdown Notice not later than 12:00pm on a Business Day that is at least ten Business Days prior to the proposed Drawdown Date. The Drawdown Notice must be submitted to EECA's Contact Person.

### 4.2 Completion of a Drawdown Notice

The Drawdown Notice is irrevocable and must specify:

- (a) the proposed Drawdown Date, which must be a Business Day during the Availability Period; and
- (b) the amount of the Advance, which must not cause the relevant Advance Amount to be exceeded; and
- (c) all other matters as specified in the form of Drawdown Notice in the Schedule to this Agreement (*Drawdown Notice*).

### 4.3 Availability

The Borrower may not request any more than one Advance under the Facility in each calendar month, unless otherwise agreed with EECA.

## 5 Repayment

### 5.1 Repayment of Amounts Outstanding

On each Repayment Date the Borrower must repay the following amounts towards the Amounts Outstanding under the Facility:

- (a) up until the delivery of the first Verified Cost Savings Report (which is to be delivered in accordance with clause 15.1(b) of this Part 2), one quarter of the Expected Cost Savings; and
- (b) following the delivery of the first Verified Cost Savings Report, one quarter of the Annual Verified Cost Savings as determined by the most recent Verified Cost Savings Report which has been provided to EECA in accordance with clause 15.1(b) of this Part 2.

### 5.2 Repayment on Maturity Date

The Borrower must repay all Amounts Outstanding to EECA on the Maturity Date. In the event that an unexpected change in the operation of the Project Asset that is outside the control of the Borrower leads to reduced energy usage and therefore a shortfall in savings, the Borrower may request an extension to the Maturity Date and if EECA agrees to such extension (such agreement at EECA's absolute discretion) the parties will document the revised maturity date in writing.

## 6 Prepayment and cancellation

### 6.1 Voluntary cancellation

The Borrower may, if it gives EECA not less than three Business Days (or such shorter period as EECA may agree) prior notice, cancel the whole or any part of the unused portion of a Facility.

### 6.2 Voluntary prepayment of Principal Amount

- (a) The Borrower may, if it gives EECA not less than three Business Days (or such shorter period as EECA may agree) prior notice, prepay the whole or any part of the Principal Amount.
- (b) Any amount so prepaid will be applied in the following order:
  - (i) first, to the extent of any balance, to the payment of any scheduled repayments of the Principal Amount that have become payable but remain outstanding; and
  - (ii) secondly, to the extent of any balance, to the payment of any repayments of the Principal Amount scheduled for after the date of such prepayment, and as between such scheduled repayments, from the earliest to the latest repayment date.

### 6.3 Certain reporting obligations to continue

If the Borrower:

- (a) elects to prepay all Amounts Outstanding in accordance with clause 6.2; and
- (b) the date of such prepayment falls on or before the date which is halfway between the date Financial Close occurred and the Maturity Date,

the reporting obligations of the Borrower in clause 15.1(b) of this Agreement shall continue for a period of at least two (2) years following the date of such repayment.

### 6.4 Restrictions

- (a) Any notice of cancellation or prepayment given by the Borrower under this clause 6 must be irrevocable and must specify the date or dates upon which the relevant cancellation or prepayment is to be made and the amount of that cancellation or prepayment.
- (b) No amounts repaid under this Agreement may be re-borrowed.
- (c) The Borrower must not repay or prepay all or any part of the Principal Amount or cancel all or any part of a Facility except at the times and in the manner expressly provided for in this Agreement.
- (d) No amount of a Facility cancelled under this Agreement may be subsequently reinstated.

### 6.5 Mandatory Prepayment of Insurance Claims

- (a) The Borrower must pay to EECA in repayment of the Amounts Outstanding the net proceeds of insurance claims (other than claims in respect of business interruption, public liability, personal injury, directors and officers liability, other third party liability and workers compensation insurance) within six (6) months after having received those proceeds, to the extent that those proceeds are not committed:
  - (i) to be applied to reinstate or replace assets in respect of which those moneys were received; or
  - (ii) to meet a liability in respect of which those moneys were received, or that the Borrower is required to pay to its senior lenders in accordance with the relevant facility agreement, and, where such proceeds are so committed, within 12 months after having received them.

- (b) Available proceeds under clause 6.5(a) will be net of:
  - (i) tax incurred or reserved for or in respect of the claim or the event giving rise to the claim;
  - (ii) costs incurred in relation to closure, removal, relocation, reorganisation and restructure costs, whether prior to, in connection with or as a consequence of the claim or the event giving rise to the claim; and
  - (iii) all other reasonable costs associated with the claim or the event giving rise to the claim.

## 6.6 Mandatory Prepayment of Disposal Proceeds

The Borrower must pay to EECA in repayment of the Amounts Outstanding the net proceeds of any disposal of any part of the Project Asset immediately upon having received those proceeds.

## 7 Taxes

### 7.1 GST

If any supply by EECA to the Borrower in relation to any Finance Document will, at the time of supply, be subject to GST, the Borrower will pay to EECA an amount equal to the applicable GST in addition to the consideration for that supply.

## 8 Intellectual property

- 8.1 EECA acknowledges that the Borrower and its licensors own all pre-existing intellectual property which they contribute to the Project, and all new intellectual property which they create in the course of the Project.
- 8.2 The Borrower grants an irrevocable, perpetual, royalty-free, sub-licensable licence to EECA to use all reports provided by the Borrower under this Agreement.
- 8.3 If EECA Transfers (as defined in clause 17.2) this Agreement in accordance with clause 17 (Assignment), the Borrower grants, on and from the effective date of such Transfer (as defined in clause 17.2), an irrevocable, perpetual, royalty-free, sub-licensable licence to EECA to use all reports provided by the Borrower under this Agreement.
- 8.4 The Borrower warrants that it has obtained (or will obtain, prior to creation of each relevant work) all rights and permissions necessary to enable the grant and exercise of the licence in clauses 8.2 and 8.3 without infringing the intellectual property rights of any third party.

## 9 Indemnities

### 9.1 Indemnities

The Borrower must, within three Business Days of demand, indemnify EECA against any cost, loss or liability incurred by EECA as a result of:

- (a) the occurrence or continuance of a Default;
- (b) a failure by the Borrower to pay any amount due under a Finance Document on its due date or in NZ\$;
- (c) acting or relying on any notice, request or instruction (including by way of email communication) which it believes to be genuine, correct and appropriately authorised;
- (d) the Borrower's, or any of its personnel or subcontractors' negligence, wilful default, fraud or dishonesty; or
- (e) the Borrower, or any of the Borrower's personnel or subcontractors holding itself or themselves out as acting on behalf of EECA.

## **9.2 Survival of indemnities**

The above indemnities survive the termination of this Agreement and payment of all indebtedness due under the Transaction Documents.

## **10 Costs and expenses**

**10.1** EECA reserves the right to recover and the Borrower will promptly, and within three Business Days of demand, pay EECA all legal fees and other costs and expenses incurred by EECA, that are not "credit fees" under the definition of that term in the Credit Contracts and Consumer Finance Act 2003, in connection with:

- (a) the preparation, negotiation, printing, execution, registration and administration of each Transaction Document to the extent that they have been pre-agreed in writing with EECA, including those executed after the date of this Agreement;
- (b) each amendment to, waiver or consent in respect of, or discharge of, a Transaction Document; and
- (c) the exercise, protection, investigation or enforcement of EECA's rights under a Transaction Document.

**10.2** No fees are payable by the Borrower to EECA where prepayments are made in accordance with clause 6 of this Part 2.

## **11 General representations**

The Borrower makes the representations and warranties set out in this clause 11 to EECA.

### **11.1 Status**

It is a company, duly incorporated and validly existing under the laws of New Zealand with power, capacity and authority to own its assets and carry on its business as it is being conducted.

### **11.2 Binding obligations**

Its obligations under each Transaction Document are legal, valid, binding and enforceable obligations subject to general principles of law relating to enforceability of documents.

### **11.3 Non-conflict with other obligations**

The entry into and performance by it of, and the transactions contemplated by, the Transaction Documents do not and will not:

- (a) contravene any law, regulation or authorisation applicable to it;
- (b) conflict with its constitutional documents;
- (c) conflict with any agreement or instrument binding upon it; or
- (d) exceed any limitation on, or constitute an abuse of, the powers of its directors.

### **11.4 Power and authority**

It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, the Transaction Documents and the transactions contemplated by those Transaction Documents.

**11.5 Authorisations**

All Authorisations required:

- (a) to enable it lawfully to enter into, exercise its rights and comply with its obligations in the Transaction Documents;
- (b) in relation to the validity and enforceability of the Transaction Documents; and
- (c) for it to conduct its business, trade and ordinary activities,

have been obtained or effected and are in full force and effect (or, in each case, will be when required).

**11.6 Ownership**

Except as otherwise notified to EECA on or before the date of this Agreement, it is, and will at all times be, the sole legal and beneficial owner of the Project Asset and all of its other assets that are used in connection with the Project.

**11.7 No Default**

- (a) No Event of Default is continuing or might reasonably be expected to result from the making of the Advance.
- (b) No other event or circumstance is outstanding which constitutes a default under any other agreement or instrument which is binding on it or to which its assets are subject.

**11.8 No misleading information**

- (a) All information provided by it to EECA in connection with the Transaction Documents is true, complete and accurate and is not misleading in any material respect as at the date it was provided.
- (b) There are no facts or circumstances that have not been disclosed to EECA that would make the information referred to in paragraph (a) above untrue or misleading in any material respect.

**11.9 Full disclosure**

- (a) It is not aware of any facts relating to it, the Transaction Documents nor any other matter in connection with them, which would, or would be reasonably likely to, adversely affect the decision of EECA in entering into the Finance Documents that have not been disclosed to EECA in writing.
- (b) It has disclosed to EECA all matters known to it (relating to the Project, it or its personnel) that could reasonably be expected to have an adverse effect on the reputation, good standing or goodwill of EECA.

## **11.10 Financial statements**

- (a) Its latest financial statements as delivered to EECA:
  - (i) include those most recently prepared for the last period and as at the last date for which financial statements have been prepared, and include copies of all documents required by law to accompany them;
  - (ii) were prepared in accordance with GAAP consistently applied unless disclosed to EECA in writing to the contrary;
  - (iii) give a true and fair view of its financial condition and operations as at the date and for the period to which they relate;
  - (iv) discloses or provides for all liabilities, obligations or commitments (contingent or otherwise) as at the date of the financial statements including all costs (unrealised or anticipated) associated with the absolution of all liabilities, obligations or commitments (contingent or otherwise);
  - (v) include a true and complete copy of any auditor's report, if the Borrower's financial statements are audited; and
  - (vi) are signed by two directors (or one, if there is only one director).
- (b) There has been no Material Adverse Change since the last date as at which the latest financial statements were prepared, or, to the extent no financial statements have been prepared, since the date of this Agreement.

## **11.11 No Insolvency Event**

No Insolvency Event has occurred in respect of it.

## **11.12 No security interests**

No security interest exists over or affects, nor is there any agreement to give or permit to exist, any security interest over or affecting the Project Asset and all of its other assets that are used in connection with the Project (other than as approved by EECA in writing).

## **11.13 Pari Passu**

The Borrower's obligations under this Agreement will rank at least *pari passu* with its other unsecured obligations, subject to any obligations preferred by law.

## **11.14 Not trustee**

Except as disclosed to EECA prior to the date of this Agreement, it is not a trustee of any trust or settlement and it does not enter into any Transaction Document, or hold any property, as a trustee.

## **11.15 No proceedings pending or threatened**

No litigation, arbitration or administrative proceedings of or before any court, arbitral body or agency which, if adversely determined, might reasonably be expected to have a Material Adverse Effect have been started or, to the best of its knowledge and belief, threatened against it.

## **11.16 No breach of laws**

It is not in breach of any law binding upon it, and it is in compliance in all material respects with all applicable consents and Authorisations and other requirements (including any certificates of compliance, resource and buildings consents and orders).

**11.17 Financial Indebtedness**

It does not have any Financial Indebtedness outstanding other than Permitted Financial Indebtedness.

**11.18 Transaction Documents**

- (a) Each representation given by the Borrower in each Transaction Document is true.
- (b) There are no side agreements or variations in relation to any Transaction Document other than those disclosed to, and consented to by, EECA.
- (c) Each Transaction Document has been entered into for fair market value and all obligations under each Transaction Document are on arm's length commercial terms.

**12 Representations continuing****12.1 Representations continuing**

The Borrower acknowledges that the representations in clause 11 will be deemed to be repeated on the Drawdown Date and on each Repayment Payment Date so long as this Agreement remains in effect by reference to the facts and circumstances then existing, except that each reference to financial statements is to be construed as a reference to the latest available financial statements of the Borrower.

**13 General undertakings****13.1 Authorisations**

The Borrower must promptly:

- (a) obtain, comply with and do all that is necessary to maintain in full force and effect; and
- (b) on request by EECA, supply certified copies to EECA of, any Authorisation required under any law or regulation of its jurisdiction of incorporation to enable it to perform its obligations under the Transaction Documents required in respect of, and to ensure the legality, validity, enforceability or admissibility in evidence in its jurisdiction of incorporation, of any Transaction Document.

**13.2 Compliance with laws**

The Borrower must duly and promptly comply with all laws applicable to it.

**13.3 Transaction Documents**

- (a) The Borrower must execute, and procure that each other relevant party thereto duly and properly executes, the Transaction Documents at the times and in the manner provided in the Transaction Documents so that those agreements are, on execution, legal, valid and binding obligations, enforceable in accordance with their respective terms.
- (b) The Borrower must comply with its obligations under each Transaction Document to which it is a party.

**13.4 Use of the Facility**

The Borrower must use the Facility solely in accordance with clause 2.2 (*Purpose*) and must use reasonable endeavours to deliver the Expected Project Outcomes.

### **13.5 Conduct of business**

- (a) The Borrower must pay all its Financial Indebtedness when due.
- (b) The Borrower must comply with all consents and all obligations binding on it by law, contract or otherwise.
- (c) The Borrower must keep proper books of account recording its business and activities to a standard required of a prudent operator in equivalent circumstances.

### **13.6 Maintenance of corporate existence**

The Borrower must do all things necessary to maintain its corporate existence and must not transfer its jurisdiction of incorporation or place of domicile for taxation purposes without the prior written consent of EECA.

### **13.7 Insurance**

The Borrower shall:

- (a) insure and keep insured (with reputable insurers acceptable to EECA (acting reasonably)) all its insurable assets (including its inventory) against loss or damage by such causes as should be insured against (including earthquake, explosion, theft, fire and flood protection) in accordance with good commercial practice (including, but not limited to, public liability insurance, building and improvements full replacement/reinstatement insurance and business continuity/interruption insurance);
- (b) upon request from EECA, promptly deliver to EECA a copy of each certificate of currency, each insurance policy undertaken in accordance with this clause and any variations made from time to time;
- (c) promptly pay when due all premiums and other amounts and do all other things necessary to maintain the insurances, and not do anything or permit anything to be done, or not done, which would prejudice any of the insurances required by the Transaction Documents or any claims thereunder;
- (d) as soon as practicable after becoming aware of the same, notify EECA of any proposed cancellation of an insurance policy or reduction in the amount payable under any insurance policy;
- (e) immediately rectify any matter, thing or circumstance that is likely to materially prejudice any of the policies; and
- (f) apply all claim proceeds to the extent that the proceeds are in respect of the Project (including while the Project Asset is being upgraded) at all times to reinstate the relevant asset, unless otherwise approved by EECA or in accordance with clause 6.5 (Mandatory Prepayment).

### **13.8 Information to be true**

The Borrower must:

- (a) ensure that all information provided by it to EECA (including in connection with the Transaction Documents after the date of this Agreement) is true in all material respects as at the date that information is provided;
- (b) not omit to state any fact or circumstance that would make that information untrue or misleading in any material respect; and
- (c) ensure that all projections and forecasts made by it are prepared in good faith based upon what it believes to be reasonable assumptions.

**13.9 Pay taxes**

The Borrower must file all tax returns as required by law, and pay and discharge all taxes, assessments and governmental charges payable by it or on its property prior to the date that penalties become payable except only to the extent that those taxes, assessments or governmental charges are being contested in good faith by appropriate proceedings and adequate reserves are set aside for their payment.

**13.10 Inspections and Site Visits**

The Borrower must allow EECA and its representatives to inspect the Project Asset on reasonable notice from EECA to the Borrower, and during usual business hours unless otherwise agreed by the Parties.

**13.11 Media and Communications**

- (a) Before making any media statements or press releases regarding the Project, the Borrower will consult with EECA, and will obtain EECA's prior approval to make any such statements or releases, such approval not to be unreasonably withheld.
- (b) The Borrower will refer any enquiries from the media or any other person about the terms or performance of this Agreement to EECA's Contact Person.
- (c) The Borrower does not have the right to enter into any commitment, contract or agreement on behalf of EECA or any associated body, or to make any public statement or comment on behalf of EECA.

**13.12 Further assurance**

The Borrower must promptly, and at its own cost, do all such acts or execute all such agreements (including assignments, transfers, notices and instructions) and will procure that its subsidiaries do all such acts/execute all such agreements as may be necessary (as EECA may specify, in such form as EECA may reasonably require) for the exercise of any rights, powers and remedies of EECA provided by or pursuant to the Transaction Documents or by law.

**Project undertakings****13.13 Project**

The Borrower must:

- (a) operate the Project Asset and carry out the Project by exercising that degree of skill, care, diligence, efficiency, prudence and foresight and operating practice that would reasonably and ordinarily be expected of a skilled, experienced and competent person engaged in the same type of undertaking as that of the Borrower under the same or similar circumstances and in accordance with all applicable consents and Authorisations required under any law or regulation of any competent authority and all statutory requirements (including the Resource Management Act 1991, the Construction Contracts Act 2002 and the Building Act 2004);
- (b) operate the Project Asset in accordance with all relevant guidance set by the IMPVP in relation to the ongoing operation of assets of the same type or similar to the Project Asset;
- (c) inform EECA as soon as it becomes aware of:
  - (i) any delays to the Project;
  - (ii) any proposal to vary the cost, nature, scope, quality, design or sequence of the Project or the date for Scheduled Practical Completion; or
  - (iii) any claim or demand made by or against it in connection with the Project.

- (d) not enter into any material agreement in connection with the Project Asset without EECA's prior written consent; and
- (e) not make or agree to any variations to the scope of the Project without EECA's prior written consent.

#### **13.14 Practical Completion**

The Borrower must ensure that Practical Completion of the Project occurs no later than three months after Scheduled Practical Completion.

#### **13.15 Maintenance of Project Assets**

The Borrower shall maintain or procure the maintenance of all of its Project Assets (and assets necessary for the Project) in accordance with best industry practice and in accordance with any requirements from the manufacturer, including paying all operating expenses in a timely manner.

### **14 Negative undertakings**

#### **14.1 Disposals**

The Borrower must not dispose of any part of the Project Asset other than a Permitted Disposal and in accordance with clause 6.6.

#### **14.2 Merger**

The Borrower must not enter into any amalgamation, demerger, merger or corporate reconstruction other than a solvent amalgamation or reconstruction approved by EECA in writing.

#### **14.3 Financial Indebtedness**

The Borrower must not incur or permit to remain outstanding any Financial Indebtedness except Permitted Financial Indebtedness.

#### **14.4 Capital Expenditure**

The Borrower must not undertake any projects (other than the Project) that require material capital expenditure, except with the prior written consent of EECA.

#### **14.5 Constitutional Documents**

The Borrower must not alter the terms of its constitutional documents, except with the prior written consent of EECA.

#### **14.6 Reputation**

The Borrower will 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. The Borrower will keep EECA informed of any matter known to the Borrower which could reasonably be expected to have such an effect.

#### **14.7 Trustee**

The Borrower must not become a trustee of any trust.

#### **14.8 Authorisations**

The Borrower must not apply to vary or change any resource consents, building consent, planning approvals or any other Authorisations or approvals obtained in relation to the Project without EECA's prior written consent.

## 15 Information undertakings

### 15.1 Reports

The Borrower will provide EECA with the following reports and certificates unless otherwise agreed with EECA:

- (a) Annual accounts: As soon as they are available but in any event within 120 days after the end of each Financial Year, its annual financial statements (with such financial statements being audited if the Borrower prepares audited financial statements or if required by EECA) prepared in accordance with GAAP;
- (b) Verified Cost Savings Reports: Beginning 12 months after Project Completion and following such date no less than at least every 12 months deliver to EECA a Cost Savings Report that detail among other things, the Annual Verified Cost Savings for the prior 12 months; and
- (c) Annual Report: Upon the delivery of each Verified Cost Savings Report in accordance with clause 16.1(b) a report that details project performance and operational improvements made in relation to the Project over the prior 12 months.

### 15.2 Ongoing information

The Borrower must provide EECA with the following:

- (a) promptly upon receipt any material notice given or received by it in relation to the Project; and
- (b) promptly and within 7 days of request:
  - (i) details of any current pending or threatened litigation, claim, arbitration or administrative proceeding which, had it been current or pending or threatened as at the date of this Agreement, would have rendered the representation in clause 11.15 (*No proceedings pending or threatened*) incorrect; and
  - (ii) such further information regarding the financial condition, assets, business and operations of the Borrower or the Project as EECA may request.

### 15.3 Notification of default

The Borrower must notify EECA of the occurrence of any Default, Event of Default immediately upon becoming aware of it (giving full details of it and of any steps taken or to be taken as a result) and upon receipt or a written request to that effect, confirm that, save as notified to EECA, no such event has occurred.

## 16 Events of default

Each of the events or circumstances set out in clause 16 (other than clause 16.14 (*Acceleration*)) is an Event of Default.

### 16.1 Obligations under Finance Documents

The Borrower:

- (a) does not pay on the due date any amount payable pursuant to a Finance Document in the manner and currency required, except where such failure is of a technical or administrative nature and is remedied within 2 Business Days of such failure; or
- (b) fails to comply with any of its other obligations under a Finance Document, and:
  - (i) in respect of any such breach or omission which is capable of being remedied, such breach or omission is not remedied within 20 Business Days of the earlier of the date the Borrower became aware of such breach and the date that notice of the breach or omission was given by EECA to the Borrower; or

- (ii) in respect of any such breach or omission which cannot be remedied, the Borrower has remedied the relevant circumstances or event giving rise to or resulting from that breach (to the satisfaction of EECA) within 20 Business Days of the earlier of the date the Borrower became aware of such breach and the date that notice of the breach or omission was given by EECA to the Borrower; or
- (iii) to satisfy within the time stipulated by EECA anything which EECA makes or has made a condition of its waiving compliance with a condition precedent or amending a Transaction Document.

## **16.2 Breach of Insurance Requirements**

The Borrower breaches the undertakings set out in clause 13.7 (*Insurance*).

## **16.3 Negative undertakings**

The Borrower breaches any of the undertakings set out in clause 14 (*Negative Undertakings*).

## **16.4 Misrepresentation**

Any representation, warranty or statement made or deemed to be made by the Borrower in any Transaction Document or any other document delivered by or on behalf of the Borrower under or in connection with any Transaction Document or related to the Project is or proves to have been incorrect or misleading in any respect when made or deemed to be made and, if the circumstances giving rise to the misrepresentation are capable of remedy, such circumstances are not remedied within 20 Business Days of the earlier of the Borrower becoming aware of the representation, warranty or statement being incorrect or misleading or receipt of written notice from EECA to the Borrower to remedy the default.

## **16.5 Insolvency**

An Insolvency Event occurs in relation to the Borrower.

## **16.6 Repudiation**

Any provision of any Transaction Document:

- (a) ceases to have effect in whole or in part, other than by performance or as permitted by its terms; or
- (b) becomes wholly or partly void, voidable, invalid or unenforceable (other than by reason only of a party waiving its rights), or the performance of any such provision becomes illegal, or the Borrower, or any person on their behalf, makes any allegation or claim to that effect (if in each case EECA is of the view that any matter in (a) or (b) above has, or is likely to have, a Material Adverse Effect).

## **16.7 Compulsory acquisition**

All or any material part of the Borrower's property is compulsorily acquired by or by order of a Governmental Agency or under law and reasonable compensation has not been paid by the Governmental Agency, or any steps are taken to effect any of the same.

## **16.8 Cessation of business**

The Borrower ceases, or threatens to cease, to conduct all or a substantial part of its business.

## **16.9 Litigation**

The Borrower is party to any litigation, tax claim or administrative or arbitration proceedings or to any dispute with any local body, government or other authority having jurisdiction which in the reasonable opinion of EECA has, or is likely to have a Material Adverse Effect if adversely determined.

## **16.10 Material Adverse Effect**

Any event or circumstance or series of events or circumstances arises, whether related or not, which EECA believes has or is reasonably likely to have a Material Adverse Effect.

**16.11 Illegality**

It is, or will become, unlawful for the Borrower to comply with any of its obligations under a Transaction Document in any material respect.

**16.12 Abandons**

The Borrower abandons the Project, is unable to complete the Project or has no intention of resuming or restarting the Project and, for the avoidance of doubt, “abandoned” for this purpose shall not include any temporary stop of the Project works or similar.

**16.13 Authorisations**

- (a) The Borrower is in breach of any Authorisation or directives in relation to the Project; or
- (b) any consent or Authorisation that is required in connection with the Project is lapsed, cancelled or is not renewed for any reason.

**16.14 Acceleration**

On and at any time after the occurrence of an Event of Default EECA may by notice to the Borrower:

- (a) cancel the Facility whereupon the Facility will immediately be cancelled; and/or
- (b) declare that all amounts accrued or outstanding under the Finance Documents, be immediately due and payable (or payable on demand), whereupon they will become immediately due and payable (or payable on demand); and/or
- (c) exercise all or any of its rights under any Finance Document or at law.

**17 Assignment**

**17.1** The Borrower may not assign, transfer, novate or otherwise dispose or deal with all or any part of its rights or obligations under a Transaction Document without the prior written consent of EECA.

**17.2** EECA may assign, transfer, novate or otherwise dispose of or deal with (each a **Transfer** and “Transfers” and “Transferred” has a corresponding meaning) all or any of its rights and obligations under all or any of the Transaction Documents to:

- (a) another Governmental Agency or any entity which constitutes the “Crown” as defined in the Public Finance Act 1989 or any entity referred to in paragraph (c) of that definition (a **Crown Party**), without the consent of the Borrower; or
- (b) any other person with the Borrower’s consent (not to be unreasonably withheld).

The Borrower hereby consents to any Transfer to a Crown Party and will be bound by any such Transfer on and from the effective date specified in the notification of the Transfer provided by EECA to the Borrower. The Borrower agrees to sign promptly on request any document reasonably requested by EECA to confirm or give effect to any such Transfer.

**17.3** Without limiting clause 17.2, if EECA notifies the Borrower that it has Transferred all or any of its rights and obligations under all or any of the Transaction Documents to a Crown Party, then, with effect from the effective date specified in such notification, the Borrower:

- (a) releases EECA from all obligations and liabilities under or in respect of the Transaction Documents;
- (b) agrees that the Crown Party will be entitled to all of the rights and entitlements of EECA under and in respect of the Transaction Documents as if it was named in the Transaction Documents instead of EECA;
- (c) agrees that all of its obligations and liabilities under or in respect of the Transaction Documents that were owed to EECA will be owed to the Crown Party; and
- (d) agrees that it will comply with any other matter specified in the notification related to such Transfer.

## 17.4 Disclosure

EECA may at any time disclose to a proposed assignee, transferee or novatee any information which relates to, or was furnished in connection with, the Transaction Documents.

## 18 Payment mechanics

### 18.1 Payments to EECA

On each date on which the Borrower is required to make a payment under a Finance Document, the Borrower must make the same available to EECA for value on the due date, at the time and to such account specified by EECA.

### 18.2 Partial payments

If EECA receives a payment that is insufficient to discharge all the amounts then due and payable by the Borrower under the Transaction Documents, EECA may apply that payment towards the obligations of the Borrower under the Transaction Documents in such order as EECA determines (in its sole discretion).

### 18.3 Payments to be free and clear

All payments to be made by the Borrower under the Transaction Documents must be calculated and be made:

- (a) free of any restriction or condition; and
- (b) free and clear of and (except to the extent required by law) without any deduction or withholding for or on account of tax or on any other account, whether by way of set-off, counterclaim or otherwise.

### 18.4 Business Days

Any payment which is due to be made on a day that is not a Business Day must be made on the prior Business Day.

## 19 Set-off

The Borrower authorises EECA to apply, without prior notice or demand, any amount owing or due by EECA to the Borrower in connection with any Finance Document or the Project in or towards satisfaction of any unpaid indebtedness due by the Borrower to EECA in connection with any Finance Document or the Project. For this purpose, EECA is authorised to accelerate the date for payment of any such amount owing by EECA to the Borrower.

## 20 Contact persons

All matters or enquiries regarding this Agreement will be directed to each party's contact person set out in Part 1.

## 21 Notices

Each notice or other communication given under this Agreement (each a notice) will be in writing and delivered personally or sent by post or email to the address of the relevant Party set out in Part 1 or to any other address from time to time designated for that purpose by at least 10 Business Days' prior written notice to the other party. A notice under this Agreement is deemed to be received if:

- (a) **Delivery:** delivered personally, when delivered;
- (b) **Post:** posted, 5 Business Days after posting or, in the case of international post, 7 Business Days after posting; and
- (c) **Email:** sent by email:
  - (i) if sent between the hours of 9am and 5pm (New Zealand time) on a Business Day, at the time of transmission; or
  - (ii) if subclause (i) does not apply, at 9am (New Zealand time) on the Business Day most immediately after the time of sending,

provided that an email is not deemed received unless (if receipt is disputed) the party giving notice produces a printed copy of the email which evidences that the email was sent to the email address of the party given notice.

## 22 Calculations and certificates

Any certification or determination by EECA of a rate or amount under any Transaction Document is, in the absence of manifest error, conclusive evidence of the matters to which it relates.

## 23 Partial Invalidity

If, at any time, any provision of the Transaction Documents is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 24 Remedies and waivers

- (a) The rights of EECA under the Finance Documents are cumulative and not exclusive of any rights or remedies provided by law;
- (b) a single or partial exercise by EECA of any right does not preclude further exercises of that right; and
- (c) the exercise of any particular right will not preclude or waive the exercise of any other right.

## 25 Amendments and waivers

- (a) A waiver by EECA of any right under a Finance Document will only be effective to the extent expressly stated in writing by an authorised person on behalf of EECA. A failure by EECA to act, or a delay by EECA in exercising, or a non-exercise by EECA of, any right does not operate as a waiver of that right.
- (b) No amendment to this Agreement will be effective unless it is in writing and signed by an authorised person on behalf of EECA and the Borrower.

## **26 Inconsistency**

In the event of any inconsistency between the provisions of this Agreement and the provisions of any other Transaction Document, the provisions of this Agreement will prevail.

## **27 Confidentiality**

### **27.1 Confidential**

Subject to clause 27.2 and 27.3, each party will keep the other party's confidential information in confidence. However, this will not prohibit:

- (a) either party from using or disclosing any information with the written prior consent of the other party;
- (b) use or disclosure of information that has become generally known to the public other than through a breach of a Finance Document;
- (c) either party from disclosing information to its personnel, its professional advisors or its senior lenders with a need to know, so long as the relevant personnel, professional advisors and senior lenders 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 and in the case of the Borrower, the Borrower receives an acknowledgement from its personnel, professional advisors or senior lenders that they acknowledge, and will comply with, the confidentiality obligations in this Agreement as if they were party to it;
- (d) disclosure required by any law, or any compulsory order or requirement issued pursuant to any law; or
- (e) EECA from using or disclosing to any third party any report licensed under clause 8.2 or clause 8.3, provided that prior to any such disclosure EECA removes all information that is commercially sensitive to the Borrower or its contractors from the relevant work.

The parties agree that the Finance Documents and the terms thereunder constitute confidential documents of EECA.

### **27.2 EECA's ability**

The Borrower acknowledges and agrees that nothing in this Agreement restricts EECA's ability to:

- (a) discuss, and provide all information in respect of, any matters concerning the Borrower, the Project or this Agreement with any Minister of the Crown, any other government agency or any of their respective advisors;
- (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 loan funding, including the Borrower's name, the amount and duration of the loan funding and a brief description of the Project, on websites, in media releases, in general announcements or in annual reports.

### 27.3 Official Information Act 1982

The Borrower acknowledges and agrees that:

- (a) the contents of this Agreement; and
- (b) information provided to EECA,

may be official information in terms of the Official Information Act 1982 and, in line with the purpose and principles of the Official Information Act 1982, this Agreement and such information may be released to the public unless there is good reason, in terms of the Official Information Act 1982, to withhold it.

### 28 Sanctions and anti-money laundering

- (a) The Borrower agrees that EECA may delay, block or refuse to process any transaction without incurring any liability if EECA suspects that:
  - (i) the transaction may breach any laws or regulations in New Zealand or any other country or any other prohibitions that may be applicable to EECA;
  - (ii) the transaction involves any person (natural, corporate or governmental) that is itself sanctioned or is connected, directly or indirectly, to any person that is subject to sanctions imposed by New Zealand, the United States, the United Nations, the European Union or any country; or
  - (iii) the transaction may directly or indirectly involve the proceeds of, or be applied, for the purposes of, conduct which is unlawful in New Zealand or any other country.
- (b) The Borrower must provide all information to EECA which EECA requires in order to manage its money-laundering, terrorism-financing or economic and trade sanctions risk or to comply with any laws or regulations in New Zealand or any other country. The Borrower agrees that EECA may disclose any information concerning the Borrower to any law enforcement, regulatory agency or court where required by any such law or regulation in New Zealand or any other country.
- (c) Unless the Borrower has disclosed that it is acting in a trustee capacity or on behalf of another party, the Borrower warrants that it is acting on its own behalf in entering into this Agreement.
- (d) The Borrower represents and warrants to EECA that the processing of any transaction by EECA in accordance with the Borrower's instructions will not breach any laws or regulations in New Zealand or any other country or involve any sanctioned person.

### 29 Termination and survival

- (a) This Agreement terminates on the earlier of:
  - (i) if Financial Close has not occurred by the Expiry Date, the Expiry Date; and
  - (ii) the date on which EECA is satisfied that all Amounts Outstanding have been repaid in full and no further Amounts Outstanding are capable of arising.
- (b) Clauses 8 (*Intellectual Property*), 10 (*Indemnities*), 13.11 (*Media and Communications*) and 15 (*Information Undertakings*) survive expiry or termination of this Agreement, along with any other parts of this Agreement necessary to give effect to those provisions. Expiry or termination of this Agreement does not affect any accrued rights, including any rights in respect of a breach of this Agreement or Event of Default that occurred before expiry or termination.

## 30 Counterparts

- (a) This Agreement may be executed in any number of counterparts (including scanned and emailed copies). So long as each party has received a counterpart signed by each of the other party, the counterparts together constitute a binding and enforceable agreement.
- (b) Where the Borrower has transmitted to EECA an electronic copy of this Agreement (whether by email or otherwise) EECA is entitled to rely on the contents of that electronic copy as accurately reproducing the original and on that electronic copy (including the signatures) being authentic and complete.

## 31 Relationship

No legal partnership, employer-employee, principal-agent or joint venture relationship is created or evidenced by this Agreement.

## 32 Governing law

This Agreement is governed by New Zealand law, and the parties submit to the exclusive jurisdiction of the courts of New Zealand.

## Schedule: Drawdown notice

To: [EECA]  
From: [Borrower]  
Date:

Dear Sirs / Madams

### **LOAN AGREEMENT DATED [ ] BETWEEN EECA AND [Insert Borrower Name] (THE AGREEMENT)**

- 1 We refer to the Agreement. This is a Drawdown Notice. Terms defined in the Agreement have the same meaning in this Drawdown Notice unless given a different meaning in this Drawdown Notice.
- 2 We wish to drawdown an Advance on the following terms:  
Proposed Drawdown Date: [X] (or, if that is not a Business Day, the next Business Day)  
Amount: [X]
- 3 This Advance relates to Advance number [X], as described in Part 1 of the Agreement.
- 4 We confirm that each condition specified in clause 3.2 of the Agreement (*Conditions to Advance*) is satisfied on the date of this Drawdown Notice.
- 5 We confirm that this Advance will be applied in accordance with clause 2.2 of the Agreement (*Purpose*).
- 6 The proceeds of this Advance should be credited to [account].
- 7 This Drawdown Notice is irrevocable.

Yours faithfully

.....  
authorised signatory for  
[Borrower]

DRIVE

EECA

TE TARI TIAKI PŪNGAO  
ENERGY EFFICIENCY & CONSERVATION AUTHORITY