

**GIDI Clean Tech**

**Commercial Lighting Programme Installer Panel Agreement**

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| --- | --- |
| Installer  Legal Name: | [Installer] |
| Contract #: | [contract #] |

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**AGREEMENT**

**DATED :**

**BETWEEN THE ENERGY EFFICIENCY AND CONSERVATION AUTHORITY** (‘**EECA**, **we, us, our**’)

**AND**  **[INSTALLER]** (‘**you**’, ‘**Installer**’),

together, "the Parties"

**INTRODUCTION**

1. The Installer was a respondent to a Request for Proposal in respect of Commercial Lighting Programme Installers Panel (’RFP’) issued by EECA on 5th October 2023. In reliance on the Installer’s RFP response, it has been offered appointment to EECA’s panel of Commercial Lighting Installers as an approved provider of Services to Customers in connection with the Commercial Lighting Co-Funding Programme (the ‘Programme’).
2. The goal of the Programme is to accelerate the uptake of LED lighting technology to replace linear fluorescent luminaires in New Zealand through an energy efficient equipment replacement grant scheme. The Programme is targeted at the medium and small carbon emitters in the commercial and industrial sectors.
3. The parties wish to enter into this agreement that sets out the terms of panel membership and the grant funding arrangements as follows:

# DEFINITIONS

## In this Agreement:

## **Agreement** means this panel agreement and includes all Schedules and Appendices and any Notices to the Installer issued by us (including through EECA Webform) in relation to the Programme.

## **Approved Lighting Products** means a lighting product that meets the technical requirements listed in the RFP and is approved by EECA for instal prior to Programme delivery.

## **Assessment** means a full inspection of a Commercial Property conducted before the Installation at that Commercial Property to determine its eligibility for funding, suitability for an Installation, which Approved Lighting Products should be installed, and any installation requirements specific to the Commercial Property, in accordance with the requirements of the RFP.

## **Audit** means review and/or inspection of an Installation and/or the information submitted by the Installer including records submitted, reports submitted, Claims made, and Installations claimed against.

## **Claim** means a claim submitted by you to EECA, for Payment in respect of the Installation in the manner specified in clause 10.2.

## **Confidential Information** meansinformation relating to this Agreement or disclosed by one party to this Agreement to the other party under this Agreement that is marked as confidential, or which might reasonably be expected to be confidential in nature.

## **Conflict of Interest** means any interest or duty which conflicts or may conflict with any of our interests.

## **Commercial Property** means any commercial or industrial building that is owned by a Customer And is not owned by central government).

## **Complaints** has the meaning given to it in clause 11.1(a) of this Agreement.

## **Customer** means a commercial business or local government organisation operating in New Zealand (or such other business as advised by EECA to the Installer in writing) or individual.

## **Customer Invoice** has the meaning given to it in clause 9.1.

## **EECA Webform** means the web platform (and associated forms) that EECA has established for the Programme, and which is available to the Installer for, amongst other things, the purpose of communicating with EECA in relation to Assessments and Claims.

## **Faults** has the meaning given to it in clause 11.1(a) of this Agreement.

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

## **Funding** means the co-funding or any part of the co-funding (as the context requires) payable by EECA, as described in the relevant Installation Approval Notice, and to be contributed to the relevant Installation in accordance with the terms and conditions of this Agreement.

## **GST** means goods and services tax payable in accordance with the Goods and Services Tax Act 1985.

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

## **Installation** means installing (or, if applicable, the installation of) Approved Lighting Products and, if applicable, installing equipment to undertake Monitoring in the relevant Commercial Property in accordance with the relevant Installation Approval Notice and the provisions of this Agreement and if the context requires, includes the decommissioning of the existing heating system and the safe, sustainable and appropriate disposal of such heating system, and Install has a corresponding meaning.

## **Installation Approval Notice** means the notice on EECA Webform that confirms the Installation is approved and contains details of the confirmed amount of Funding.

## **Maximum Payment Amount** has the meaning given to that term in clause 6.4.

## **Monitoring** means the monitoring of Approved Lighting Products as contemplated by clause 7.3 in order to provide the data and information set out in clause 15.

## **Payment** and **Pay** means the:

### payment of a Claim; and/or

### payment of an Additional Payment specified in Schedule 2,

### in accordance with the provisions of this Agreement, (each a **Payment** as context may require).

## **Personnel** means all individuals engaged by either party in relation to this Agreement or the delivery of Services. Examples include: the owner of the business, its directors, employees, subcontractors, agents, external consultants, specialists, technical support and co-opted or seconded staff.

## **Post Installation Audit** means a check carried out by EECA after an Installation.

## **Programme** has the meaning given to it in paragraph A of the Introduction to this Agreement and it is to meet the objectives outlined in paragraph B of the Introduction to this Agreement.

## **Services** means the services (including Installation) to be provided by you to the Customer in accordance with this Agreement, and also includes the obligations owed to us under this Agreement (including record keeping, reporting, Assessments and Post Installation Audits).

## **Subcontractor** means any person contracted by you to deliver any Services.

## **Working Day** means any day other than:

### a Saturday, a Sunday, a public holiday in Wellington and the Region you operate in as your primary area of business; and

### a day in the period from 22 December in a year to 15 January the following year.

# INTERPRETATION

## In this Agreement, unless the context requires otherwise:

### reference to clauses and schedules are to clauses and schedules in this Agreement unless context otherwise requires;

### the headings are inserted for convenience only and may be ignored in interpreting this Agreement;

### the word including and other similar words do not imply any limitation;

### a person includes any company or body of persons (incorporated or not);

### the plural includes the singular and vice versa; and

### a reference to a statute includes any legislative instrument or other subordinate legislation made under it and amendments to or replacement of any of them from time to time.

# TERM

## This Agreement commences on the date it is signed by both Parties.

## This Agreement will expire on 30 September 2024 unless terminated earlier in accordance with its terms. The term may be extended for up to two periods of one year each by agreement in writing between the parties.

## You must ensure that, on the date the Agreement expires or is terminated, you have completed (or will complete prior to a date specified in writing from us to you) all Installations which are the subject of an Installation Approval Notice. You may submit a Claim for an Installation after the date the Agreement expires or is terminated if you submit the Claim on or before a date specified in writing by us to you.

## We do not commit to providing you with a minimum number of Installations during the term of this Agreement.

# PRIORITY

## Subject to clause 4.3, this Agreement supersedes and replaces any previous agreement between the parties in respect of the Services.

## Any such prior agreement is terminated from the date on which this Agreement commences as specified in clause 3.1. The termination of such a prior agreement does not affect the rights or obligations of either party in respect of any matter arising before that date.

## This Agreement is to be read alongside the RFP and if there is any conflict between the terms of this Agreement and the RFP then the terms of this Agreement are to prevail.

# YOUR GENERAL OBLIGATIONS

## You must:

### act with all the professional skill, experience, and resources necessary to undertake the Services safely and provide all Services to your Customer(s) with reasonable care, skill, and diligence in a professional and competent manner. This includes:

#### ensuring that all Installations are carried out by persons with appropriate qualifications and experience to undertake the work;

#### not putting yourself in a position which would, or has any reasonable potential to, give rise to a Conflict of Interest, except with our prior approval (such approval not to be unreasonably withheld);

### act in accordance with:

#### maintaining good customer service practices, and maintaining a high standard of honesty and integrity at all times in the performance of your obligations under this Agreement; and

#### the best, currently accepted principles and practices applicable to the field of expertise applicable to the Services, having regard to the nature of the Services and the funding provided;

#### all applicable licences, approvals and permits required by law, which you must maintain throughout the term of this Agreement at your cost; and

#### the *Standards of Integrity and Conduct* issued by the Public Service Commission (see [www.publicservice.govt.nz](http://www.publicservice.govt.nz)) and any other relevant codes of conduct notified by us to you from time to time;

### not perform any Services pursuant to this Agreement without having first been prequalified for Health and Safety processes and practices by an independent prequalification provider approved by us, and having provided evidence of this prequalification to us;

### maintain a valid Health and Safety prequalification at all times while performing Services under this Agreement;

### ensure that you have in place and at all times adhere to robust quality and health and safety standards and processes, and provide evidence of the same to us on request;

### not act in a manner that could reasonably be expected to damage our reputation;

### comply in all respects with all legislation, regulations, local government by-laws and other requirements pertaining to the Services in force at the time you provide the Services;

### comply with current standards issued by Standards New Zealand relating to the Services;

### comply in all respects with relevant manufacturer or supplier standards relating to Installations, and the handling, storage, and care of Approved Lighting Products;

### comply in all respects with any applicable professional codes of practice relating to Installations;

### provide us with any information we request, within the timeframes we specify.

## You must notify us immediately if you believe that you will not be able to comply with any aspect of this Agreement or perform any Services in respect of the Programme.

# ASSESSMENT and approval of projects

## You must carry out an Assessment of the Commercial Property in accordance with the terms of this Agreement and in order to complete the relevant EECA Webform.

## Following an Assessment, you shall submit a report in respect of the relevant Assessment to EECA through the EECA Webform. Following the submission of such report, EECA will assess the report. If EECA determines that the Installation that is the subject of the report is eligible for Funding, EECA will provide the Installer with a written notice through the EECA Webform detailing the terms of approval for the relevant Installation, the relevant eligible Funding and whether Monitoring of the Approved Lighting Products that is the subject of the Installation is required (‘**Installation Approval Notice’**).

## EECA’s obligation to contribute the Funding to the relevant Installation and make Payments is subject to clause 7 and the other provisions of this Agreement.

## The maximum amount of Payment (‘**Maximum Payment Amount’**) in respect of an Installation shall be a Funding amount (as specified in the Installation Approval Notice) which equals up to a maximum of 50% of the total cost of the Installation (not including the cost of the equipment for the Monitoring).

# ACCEPTED QUOTE

## The Installer will send the Installation Approval Notice to the Customer.

## As part of the contractual arrangements with the Customer, the Installer will prepare a quote for the Customer detailing the total costs of the Installation and the amount of Funding (which must be consistent with the Installation Approval Notice). If the Customer accepts the quote, in writing you must provide EECA with a copy of such acceptance. Upon acceptance of the quote the Installer will enter into a contract with the Customer in respect of the Installation. The terms of the contract with the Customer are to provide that EECA (and the Government) is only acting as a co-funder of the Installation and does not guarantee, underwrite, or provide any quality assurance in respect of the performance (or non-performance) of the Installer, the Installer itself, the Approved Lighting Products, or the Installation. The Installer must provide EECA with a copy of the contract that it enters into with the Customer.



## If the Installation Approval Notice states that Monitoring of the Approved Lighting Products is required:

### You will obtain the necessary consents from the Customer for the Approved Lighting Products to be monitored and for the Installer and/or an independent evaluator appointed by EECA to access the Commercial Property (as required) in order to obtain the data from the Monitoring. You will provide us with a copy of such consents; and

### You will obtain agreement from the Customer that the data and information obtained by you or an external evaluator through the Monitoring (as set out in clause 15) can be shared with us and that we can use and publicise such data at our discretion (so long as such data, if published, does not identify the Customer or the Commercial Property). You will provide us with a copy of such agreement.

# INSTALLATION

## Once a Customer has accepted your quote in writing and following compliance with clause 7 above, you must carry out the Installation (including, if applicable, the installation of any equipment for Monitoring) within 8 months from date of the Installation Approval Notice.

## You will carry out the Installation (including, if applicable, the installation of any equipment for Monitoring where the type of monitor to be installed is at your discretion but must be capable of undertaking the monitoring in accordance with clause 15) in accordance with the terms and conditions of this Agreement.

# INVOICING

## After an Installation is complete, you must generate and provide an invoice to the Customer (‘**Customer Invoice**’) which must contain the following details:

### EECA’s Funding contribution for the Installation and any Additional Payments; and

### the total amount owing by the Customer to the Installer in respect of the Installation.

# CLAIMS

## EECA agrees to make Payments to the Installer following completion of the Installation and subject to the terms and conditions of this Agreement.

## To receive a Payment, the Installer must provide EECA with a Claim containing at least the following information or attaching the following documents and evidence (containing the relevant details) and such Claim, documents and evidence must be satisfactory to EECA in all respects:



### the sum set out in the Claim must not be an amount that is greater than the Maximum Payment Amount;

### a copy of the Customer Invoice;

### evidence from the Installer that the Customer has paid the total amount owing by the Customer to the Installer, as set out in the Customer Invoice;

### evidence from the Installer that the Installation has been completed in accordance with the Installation Approval Notice including photographic evidence of the Approved Lighting Products post- Installation;

### a valid invoice from the Installer, which is to include as a minimum, the Installer’s name, address and if applicable, GST number and a valid GST invoice complying with the Goods and Services Tax Act 1985;



### the Installation number(s) to which a cost relates;

### a copy of an electrical certificate of compliance verifying project completion and adequacy of the Installation;

### any other information reasonably required by EECA in relation to the Installation.

## Subject to clause 10.4 of this Agreement, if EECA receives a valid Claim (and all other information set out in clause 10.2 of this Agreement) by the 10th of the month following the month(s) that the Claim relates to, EECA will pay the sum set out in the Claim on the 20th day of that month. Any valid Claim’s received after the 10th of the month will be paid by the 20th of the following month.



## If EECA disputes the sum in any Claim:

### EECA will notify the Installer of the dispute following receipt of the Claim;

### EECA will pay the undisputed portion of the Claim (if any) in accordance with clause 10.3 of this Agreement; and

### the disputed portion will be dealt with under clause 25 this Agreement.

## EECA is not under any obligation to make any payment under this Agreement:

### until EECA has received a valid Claim from the Installer in accordance with clause 10.2;

### if a Claim includes an amount that differs from the amount specified in the Customer Invoice;

### if, based on the information we have received, we have reasonable grounds to believe that you have breached this Agreement;

### if a Claim is made in respect of an item that is not an Approved Lighting Product;

### if a Claim is made in respect of an Approved Lighting Product that has not been Installed in accordance with the information provided in the EECA Webform.

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

## If the Installer is liable for GST on any supply made under this Agreement, EECA will pay the amount of the GST to the Installer in addition to and at the same time as the Payment, but only where the Installer provides EECA with a valid tax invoice for that amount, complying with the requirements of the Goods and Services Tax Act 1985.

## The Installer acknowledges and agrees that the Funding (and additional payments in respect of a Claim) must only be used for the relevant Installations and must be used in accordance with any further purposes or terms and conditions set out in the relevant Installation Approval Notice. In addition, the Installer agrees that it will receive and manage all Payments in accordance with good financial management and accounting practices and to a high standard that demonstrates appropriate use of public funds.

## EECA may require the Installer (by written request to the Installer) to repay to EECA any amounts of Funding (and additional payments in respect of a Claim) paid to the Installer under this Agreement if the Installer has misspent the Payments or used it other than in accordance with this Agreement.

## If EECA requires the Installer to repay any amounts of Payments to EECA, the Installer is to make such payment within 20 Working Days of EECA’s request.

# INSTALLER REQUIREMENTS REGARDING COMPLAINTS / WARRANTY

## You must:

### put in place and maintain a process for:

#### receiving and managing complaints from Customers (whether directly or referred by us) who received services from you under the Programme (‘**Complaints**’); and

#### receiving and responding to faults in respect of Approved Lighting Products that are still under warranty (‘**Faults**’) that you Installed; and

### advise Customers of how to access the processes set out in (a) above.

## You must respond promptly to, and deal in a professional manner with, any Complaints and Faults.

## If you are unable to resolve a Complaint or Fault within 20 Working Days after being notified of the Complaint or Fault, you must inform us of the Complaint or Fault and that it remains unresolved.

## If we are notified of a Complaint or Fault pursuant to clause 11.3, we may take steps to terminate this Agreement.

# SUBCONTRACTORS

## You may enter into a contractual arrangement with a subcontractor for any part of the Services, provided that in every case you agree to:

### notify us of the identity of the subcontractor(s) you propose to engage;

### ensure any subcontractor engaged by you to perform the Services (i.e., you do not intend to perform the Services directly) has, prior to performing any Services, complied with the same prequalification requirements imposed on you by clauses 5.1(c) and 5.1(d);

### ensure that any subcontractor(s) engaged by you at all times comply with all requirements imposed on you under this Agreement, including in relation to workmanship, quality, customer care, health and safety, and insurances; and.

### obtain confirmation from the subcontractor(s) that they will not further subcontract the Services or any part of them.

## If you subcontract any aspect of your performance under this Agreement, you are liable for all acts or omissions of the relevant subcontractor, and such subcontracting does not release you from liability for the performance of any of your obligations under this Agreement.

## If we are dissatisfied on reasonable grounds with the performance (past or current) or conduct of a particular person performing or intending to perform any activities in connection with this Agreement (including a person you have subcontracted), we may, after consulting with you, require you to replace that person at your cost, or require that additional measures be put in place to ensure a satisfactory level of performance.

# REPORTING AND RECORDS

## You must promptly provide any reports or information we may reasonably require from time to time.

## During the term of the Agreement and the period ending six years after termination or expiry of the term, you must:

### keep comprehensive and accessible records of each activity pertaining to each Installation (including records of work done in relation to each Installation, the Claim made in relation to that Installation, and any Payments received);

### hold all such records on a computer database accessible to us on request;

### promptly make available to us on request all records and documentation relating to the performance of your obligations under this Agreement (including reasonable access to staff) so we (or our appointed auditors) can audit those records to monitor your compliance with those obligations under this Agreement;

### cooperate with us to provide information immediately if the information is required by us to comply with an enquiry, or our statutory, parliamentary, or other reporting or investigative obligations; and

### ensure that proper accounting standards and controls are exercised in respect of each Claim and Payment received.

# AUDITING AND REVIEWS

## We may audit your performance (including the quality of your Installations) under this Agreement at any time after giving you reasonable notice of the audit. An audit:

### may occur during the term of this Agreement or after its expiry (or termination);

### may be conducted with reference to any information we consider relevant.

## If we notify you that we are undertaking an audit, you must provide us with all information, access, and assistance that we reasonably require to carry out the audit. We will not reimburse you for any costs you incur as a result of us undertaking an audit.

## If we identify any non-compliance with this Agreement by you, you must undertake any corrective actions we specify (at your own cost) within a reasonable timeframe.

## From time to time, and with notice to you, we may put in place performance measurements and/or scoring systems for measuring your performance. If at any time your score or performance under any such measure falls below our pre-advised minimum standards then we may (without prejudice to our other rights and remedies) require you to conduct, at your own expense:

### an independent Audit of your quality assurance policies, processes, and systems, with an independent auditor agreed between the parties; and/or

### an independent validation of a proportion of your Installations and Post Installation Audits by any person appointed by agreement between us and you,

at such times and with such frequency as we may, in our sole discretion, require for so long as your score or performance remains below such minimum standard.

# post completion information

## At the completion of each Installation, the Installer is required to:

### provide the following data in relation to the relevant Approved Lighting Products:

#### how much power is consumed by the Approved Lighting Products in kWh;

#### confirmation of the Approved Lighting Products installed. Information should include quantity and type of luminaires and other control systems installed.

#### an updated LENI calculator completed if there have been changes since the Installation Approval Notice was received.

#### an updated floor plan if there have been changes since the Installation Approval Notice was received.

#### details of how the existing lighting system was recycled, including the name of the recycling company used. This must include a declaration that states the components have been recycled in a way in which they cannot be resold and/or reused, and that mercury and other harmful substances were disposed of appropriately.

#### confirmation that the lighting requirements, as outlined in the LENI calculator were met. Some simple measurements of lighting levels in the areas where Approved Lighting Products have been installed will suffice.

#### photographic evidence of the Approved Lighting Products installed on site.

### capture and report on the data referred to in (a) above as follows:

#### data is to be recorded by the Installer and presented to EECA in an appropriate report format.

#### the report will be provided to EECA no later than one month post Installation.

## In the event that ongoing Monitoring is a requirement in the relevant Installation Approval Notice, the Installer will be required to submit evidence when requested by EECA to demonstrate energy savings achieved through the project up to 12 months after date of install. Evidence may be in the form of either:

### electricity consumption data for the lighting circuits. This option is only applicable if the current lighting system is being separately monitored, and the lighting system will continue to be separately monitored.

### electricity consumption data for a collection of circuits which include the lighting circuit. This option is applicable to situations with e.g., a single electricity meter for a building floor. In this case, the panellist will need to provide information on any other significant changes to the measured electrical load. In the simplest case, with no other changes to the electrical load in the circuits covered by a single meter, any should mostly reflect the expected change due to the lighting upgrade.

### if the lighting system has monitoring capability, panellists can describe how they determined annual energy savings, and/or emissions savings using the measured data and the values.

## EECA will also conduct monitoring evaluations on a selection of Installations. This monitoring will apply to up to 10% of Installations completed by each Installer, with a minimum of 1 evaluation per Installer, per year. This monitoring will be conducted by an evaluator directly contracted by EECA.

# INDEMNITY

## Without limiting any other right we may have and to the extent permitted by law, you must fully protect, indemnify and hold us and our Personnel harmless from and against any direct, indirect or consequential losses (including, without limitation, loss of revenue, opportunity or profits or any other special or punitive losses), liability, damages, actions, proceedings, claims, demands, costs and expenses (including, without limitation solicitor and own client costs), incurred directly or indirectly in connection with or as a consequence of, any breach by you of any term of this Agreement or the negligent or wrongful act or default by you or your Personnel in performing obligations under this Agreement.

# INSURANCE

## You must maintain adequate business insurance, including but not limited to public liability cover during the term of the Agreement and the period ending 6 years after termination or expiry of this Agreement to cover all risks relating to the provision of Services under this Agreement.

## You must produce a copy of the policy and provide us with evidence of payment of the current premium for the policy and any other related information as and when we request.

## You will not do, cause, or permit anything to be done to any Commercial Property that would or could reasonably be expected to render insurance held by the Commercial Property Owner to be void or voidable.

# PROMOTIONS AND MARKETING

## We may promote the Programme to stimulate demand for referrals. The extent of our marketing of the Programme is at our sole discretion.

## You must not make any public or media release or statement about the Programme, this Agreement or release any promotional material without having first obtaining our consent to the content of such release or statement. EECA confirms that the Installer’s subsequent promotion of this Programme to Customers will not be in breach of this clause.

# CONFIDENTIALITY AND PRIVACY

## Each party must keep the other party's Confidential Information confidential and must not disclose such Confidential Information to any person or use such Confidential Information for any purpose other than the purpose of this Agreement. Notwithstanding this clause, either party may disclose Confidential Information:

### to its professional advisers on a need-to-know basis;

### if and to the extent required by law or any government agency, to a Minister of the Crown or parliamentary officer or body, provided that the party gives the other party notice of the requirement as soon as practicable before such disclosure is made; or

### if and to the extent the information is obtained or developed independently of the information disclosed by the disclosing party.

## You acknowledge that:

### we are subject to the Official Information Act 1982, and we may be obliged to release information including Confidential Information under this Act if so requested and if there is no good reason pursuant to the provisions in this Act to withhold that information; and

### we may be required to disclose information including Confidential Information in response to a Parliamentary or Select Committee question, or to a Minister of the Crown.

## You should mark any commercially sensitive information as ‘Commercial: In Confidence’ if you wish to protect specific commercial information. However, we do not guarantee that such marked information will be protected from disclosure.

## You must collect, use, disclose, store, or otherwise handle personal information (as defined in the Privacy Act 2020) so as not to cause a breach of the Privacy Act 2020, including by:

### ensuring all documentation and communications in relation to Customers is collected, processed, used, disclosed, and stored in accordance with the Privacy Act 2020; and

### informing Customers that any information collected about them in relation to the provision of Services may be disclosed to us and used, collected, processed, and stored by us for the purposes of this Agreement or the Programme.

## Each party will ensure that its Personnel:

### are aware of the confidentiality obligations in this Agreement; and

### do not use or disclose any of the other party’s Confidential Information except as allowed by this Agreement.

## Nothing in this agreement restricts EECA's ability to:

### discuss with, and provide to any Minister of the Crown, any other government agency, including the Ministry of Business, Innovation and Employment, or any of their respective advisors, any information concerning this Agreement;

### 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

### publicise and report on the awarding of the Funding, including the name of the Installer, the amount and duration of the Funding, and the details of the Installation.

# CONFLICTS of INTEREST

## You must:

### immediately notify us if you become aware that you are or may be conflicted in your performance of any obligations under this Agreement; and

### assist us to address or avoid any actual or potential Conflicts of Interest notified to EECA under clause 20.1(a) above.

# INTELLECTUAL PROPERTY

## We are the sole and exclusive owner of all intellectual property rights in the name ‘EECA’, and you do not have any rights in relation to the same except as expressly authorised by us in this Agreement or otherwise in writing.

## Any intellectual property rights already in existence that are not covered by clause 21.1 of this Agreement at the commencement of this Agreement will remain the property of the current owner. Each party grants the other party a royalty-free, non-exclusive licence to use its existing intellectual property to the extent necessary to carry out the Programme.

## All intellectual property rights created or developed by either of us during the term of this Agreement and in conjunction with the Programme (‘**New IP**’) will be owned by the party that creates or develops the rights, provided that the other party will have a perpetual, irrevocable and royalty-free licence to use such New IP for the purposes of the Programme, unless otherwise agreed between the parties in writing.

# REVIEW OF INSTALLER

## In addition to audits, we may conduct reviews of your performance. This may include reviewing any aspect of your performance of this Agreement, including, but not limited to:

### volume of Installations;

### quality of Installations;

### complaints from Customers;

### timeliness and accuracy of administration; and

### health and safety processes,

and as against the minimum key performance requirements set out in Schedule 1, which may be amended by us from time to time by notice in writing to you.

## If you do not meet the minimum key performance requirements for any one of the criteria set out in Schedule 1, we may, in our sole discretion, take one or more of the following actions:

### discuss with you how the Services may be improved and agree on an action plan;

### suspend you from the Programme for a period of time;

### set aside your inability to meet the minimum key performance requirements; or

### terminate this Agreement effective within 20 Working Days.

# RECTIFYING BREACHES AND TERMINATION

*Rectifying breaches*

## Without prejudice to any other remedy available, if we determine that you have been, or are in breach of any term of this Agreement, we may:

### advise you in writing of the details of the breach and require the breach to be rectified within 20 Working Days of notification;

### carry out follow-up or additional audits and recover the cost of doing so from you; and

### withhold Payments until the breach is remedied.

*Termination by you*

## You may terminate this Agreement at any time by giving 20 Working Days' notice to us.

*Termination by us*

## We may terminate this Agreement at any time by giving 20 Working Days' notice to you.

## In addition to clause 23.3, we may terminate this Agreement immediately, by giving notice, if you:

### breach clause 29.3 of this Agreement (assignment);

### suffer an Insolvency Event;

### are unable to deliver the Programme for a period of 20 Working Days or more due to a Force Majeure Event;

### are in breach of any of your obligations under this Agreement and we reasonably believe the breach cannot be remedied;

### repeatedly fail to perform or comply with your obligations under this Agreement whether those obligations are minor or significant;

### do something or fail to do something that, in our opinion, results in damage to our reputation or business;

### have a Conflict of Interest that, in our opinion, is so material as to impact adversely on the delivery of the Programme or on us; or

### provide information to us that is misleading or inaccurate in any material respect.

## We may also terminate this Agreement immediately if the New Zealand Government decides to terminate or modify the Programme.

*Your obligations on termination or expiry of this Agreement*

## On receiving a notice of termination from us, you must:

### stop providing the Services as specified in the notice;

### comply with any conditions contained in the notice;

### immediately do everything reasonably possible to reduce your losses, costs and expenses arising from the termination of this Agreement; and

### if we request you to do so, immediately return or securely destroy all Confidential Information and other material or property belonging to us.

*Consequences of termination or expiry of this Agreement*

## The termination or expiry of this Agreement does not affect those rights of each party that:

### accrued prior to the date of termination; or

### relate to any breach or failure to perform an obligation under this Agreement that arose prior to the date of termination.

## If this Agreement is terminated, we:

### will only be liable to make Payments in respect of Installations that are the subject of an Installation Approval Notice and were completed in accordance with this Agreement before the effective date of termination; and

### .

*Handing over the Services on termination or expiry of this Agreement*

## You will, within 10 Working Days of the date of termination of this Agreement, provide all reasonable assistance and cooperation necessary to facilitate a smooth handover of the Services to any person appointed by the Customer. us or any person appointed by us.

## Following termination or expiry of this Agreement, provisions that are by their nature intended to survive remain in effect.

# COMMUNICATION

## Any notice or other formal communication to be given under this Agreement must be given in writing and transmitted by email (first preference) or by courier, hand delivery or postal service to the persons, positions and addresses set out in the table below and any others notified by either party to the other during the term of this Agreement.

## A notice is deemed to be received:

### if delivered by hand, on the date on which it is delivered;

### if sent by post within New Zealand, on the 3rd Working Day after the date on which it was sent;

### if sent by courier, on the date on which it is delivered; or

### if sent by email, at the time the email enters the recipient's information system as evidenced by a delivery receipt requested by the sender and it is not returned undelivered or as an error.

## A notice received after 5pm on a Working Day or on a day that is not a Working Day will be considered to be received on the next Working Day.

## The relevant persons, positions and addresses of the parties are:

| **Us** | | **You** |
| --- | --- | --- |
| Name: |  |  |
| Role: |  |  |
| Address: |  |  |
| Email: |  |  |

# DISPUTES

## If a dispute arising out of this Agreement occurs between the parties, then the parties will, in good faith, try to resolve that dispute including by escalating the dispute to their respective chief executives for resolution.

## If the parties cannot resolve their dispute within twenty (20) Working Days of one party giving the other notice of a dispute, either party may by notice to the other refer the dispute to mediation. The mediation will be conducted in Wellington under the Resolution Institute standard mediation agreement. If the parties are unable to agree on a mediator or the fees for mediation within 5 Working Days of the notice of mediation being given, the mediator and/or fees will be determined by the chair of the Resolution Institute. No party may commence any proceedings relating to a dispute (except to seek urgent equitable relief) unless the party has complied with this clause.

# NON-WAIVER

## A failure or delay of either party to exercise a right under this Agreement is not a waiver of that right, and a waiver of a breach of this Agreement is not a waiver of any other breach.

# EXPECTATIONS

## Our obligations to you are strictly limited to those set out in this Agreement, and you agree that you have no expectation of future funding other than as provided for in this Agreement.

# VARIATIONS

## This Agreement cannot be substantially varied in any manner except by way of agreement between the parties. We may make minor administrative amendments to this Agreement without your agreement. Any such amendments will take effect when you have been given reasonable notice of it.

## You may send us an application to vary the Agreement on a case-by-case basis. Any approval of a variation is at our sole discretion.

# GENERAL

## If any provision in this Agreement is invalid or unenforceable, the remaining provisions are not affected and continue in full force and effect.

## A party is not 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. In the event that such breach continues for a period of not less than 20 Working Days, either party may terminate this Agreement on written notice to the other.

## The Installer may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of EECA. A change in the effective control of you is deemed to be an assignment.

## Any costs or amounts recoverable by us under this Agreement will be a debt owed by you to us. We may set off any amount you owe us against any amount payable by us under this Agreement.

## Each party will, at its own expense, promptly sign and deliver any documents, and do all things that are reasonably required to give full effect to the provisions of this Agreement.

## This Agreement is governed and must be interpreted in accordance with the laws of New Zealand. All money is in New Zealand dollars. Dates and times are New Zealand time.

## This Agreement may be executed in any number of counterparts (including any facsimile or scanned PDF counterpart), each of which will be deemed to be an original, but all of which together will constitute the same instrument.

**EXECUTION**

|  |  |  |  |
| --- | --- | --- | --- |
| **SIGNED** for and on behalf of | ) |  |  |
| **ENERGY EFFICIENCY AND CONSERVATION AUTHORITY** by | )  ) |  |  |
|  | ) |  | Signature |
| [Print Name] |  |  | Position |
|  |  |  | Date |

|  |  |  |  |
| --- | --- | --- | --- |
| **SIGNED** for and on behalf of | ) |  |  |
| **INSTALLER** by | )  ) |  |  |
|  | ) |  | Signature |
| [Print Name] |  |  | Position |
|  |  |  | Date |

schedule 1 - minimum service requirements

|  |  |
| --- | --- |
| **Factor** | **Minimum Key Performance Requirements** |
| \*Quality – achieves the specified standard | Number of audits that pass as a percentage of total audits completed is **95% or greater** |
| \*Administration - financial | At least 95% of Claims are submitted within 15 Working Days of completion of Installation, or within the timeframe specified by EECA. |
| \*Administration – Documentation compliance | Documentation reviews of selected Claims show documents comply with programme requirements |
| \*Health and Safety – Safe Work Practices | You and any Subcontractors maintain current prequalification’s  Your Subcontractors have been notified to EECA before engaging in Programme work |