

# **Low Emissions Heavy Vehicle Fund SUPPLIER AGREEMENT**

**EECA**

Energy Efficiency and Conservation Authority

**Supplier**

**Supplier Name**

## PARTIES

- (1) **Energy Efficiency and Conservation Authority**, (NZBN 9429041901953) a Crown entity constituted under the Energy Efficiency and Conservation Act 2000 ("**EECA**"); and
- (2) **Supplier Name** (NZBN XXXXXXXXXXXXX), a New Zealand limited company located at **REGISTERED COMPANY ADDRESS AS PER COMPANY REGISTER** ("**Supplier**").

## BACKGROUND

- A. The Supplier was a respondent to the ITR issued by EECA on 1 August 2024, and in reliance on its ITR Response has been offered appointment to EECA's panel of Suppliers as an approved supplier and/or converter of Eligible Vehicles to Customers in connection with the Low Emissions Heavy Vehicle Fund ("**the LEHVF**").
- B. Appointment to the Panel does not expressly or by implication give rise to any obligations of exclusivity between the parties, nor does it expressly or by implication guarantee any future orders or work, funding or opportunities to the Supplier.
- C. Amongst other things, this Agreement sets out:
  - (a) the manner in which the Panel and the Whitelist will be operated by EECA;
  - (b) the rights and obligations of the Supplier as a member of the Panel; and
  - (c) the relationship between EECA, Customers, and the Supplier in relation to the provision of LEHVF Funding for the supply and/or conversion of Eligible Vehicles.

## EECA AND THE SUPPLIER AGREE as follows:

### 1 Definitions and Interpretation

#### 1.1 In this agreement the following terms will have the following meanings:

**Agreement** means this panel agreement;

**Best Industry Practice** means that degree of skill, care and foresight and operating practice that would reasonably and ordinarily be expected of a skilled and competent supplier or supplier of services engaged in the same type of undertaking as that of the Supplier or any contractors (as applicable) under the same or similar circumstances as those contemplated by this Agreement;

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

**Confidential Information** means the subject matter and terms of this Agreement and any information related to the LEHVF and provided by EECA, the Supplier or a Customer to any of those parties and marked as confidential, or commercial in confidence or which might reasonably be expected to be confidential or commercially sensitive;

**Conflict of Interest** means any matter, circumstance, interest or activity of the Supplier, its personnel or contractors, or any other person with whom the Supplier, has a relationship that:

- (a) conflicts with:
  - (i) the obligations of the Supplier (or its personnel or contractors) to EECA under this Agreement; or
  - (ii) the interests of the Supplier in relation to this Agreement and/or the supply and/or conversion of Eligible Vehicles; or

- (b) otherwise impairs or might appear to impair the ability of the Supplier (or any of its personnel or contractors) to diligently and independently perform its obligations under this Agreement;

**Customer** means a person that enters (or proposes to enter into) into an Eligible Vehicle Contract as customer;

**Customer Application Form** means an application form for LEVHF Funding in a form prescribed by EECA (which will be published on EECA's website or otherwise provided to the Supplier, and which may include a consent requirement to enable EECA to collect data on a range of operational factors, such as refuelling processes, key transport routes and estimated kilometres travelled);

**Eligible ICE Convertible Heavy Vehicle** means a new or second-hand internal combustion engine heavy vehicle to be converted to a zero emissions heavy vehicle or hybrid heavy vehicle included in the Whitelist or that EECA has otherwise confirmed is eligible for LEVHF Funding (acting in its sole discretion, with indicative eligibility requirements being set out on EECA's website);

**Eligible New Hybrid Heavy Vehicle** means a new hybrid vehicle on the Whitelist or that EECA has otherwise confirmed is eligible for LEVHF Funding (acting in its sole discretion, with indicative eligibility requirements being set out on EECA's website);

**Eligible New ZEHV** means a vehicle classified as a new zero emissions heavy vehicle (including a previously unregistered internal combustion engine heavy vehicle or heavy vehicle chassis converted to a zero emissions heavy vehicle) included in the Whitelist or that EECA has otherwise confirmed is eligible for LEVHF Funding (acting in its sole discretion, with indicative eligibility requirements being set out on EECA's website);

**Eligible Vehicle** means an Eligible New ZEHV, Eligible New Hybrid Heavy Vehicle or Eligible ICE Convertible Heavy Vehicle (as applicable) and **Eligible Vehicles** means all of them;

**Eligible Vehicle Contract** means a contract for the supply or conversion (as applicable) of an Eligible Vehicle that delivers one of the following outcomes:

- (a) **supply:** the Supplier sells an Eligible New ZEHV or Eligible New Hybrid Heavy Vehicle to a Customer (which may also be the Supplier); or
- (b) **conversion:** the Supplier converts an Eligible ICE Convertible Heavy Vehicle owned by the Customer (which may also be the Supplier) to a zero emissions heavy vehicle or hybrid heavy vehicle that is eligible for LEVHF Funding;

**Excluded Customer** means:

- (a) all Public Service agencies and departments, Non-Public Service departments and Crown Entities (excluding, for the avoidance of doubt, Local Authorities (as defined in the Local Government Act 2002)); and
- (b) any entity that EECA reasonably considers to be unsuitable to receive funding from the New Zealand Government;

**Financial Year** means EECA's financial year, running annually from 1 July to 30 June;

**GETS** means the Government Electronic Tendering Service;

**GCM** means, for a vehicle that is permitted to tow another vehicle, the maximum permitted combined mass of the towing vehicle and any combination of attached trailers or vehicles, determined by the vehicle manufacturer and approved by Waka Kotahi, or determined by Waka Kotahi;

**GVM** means, in respect of an Eligible Vehicle (following conversion (if applicable)), the maximum allowable weight of the Eligible Vehicle (including empty weight, payload, driver and any fuel);

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

**Insolvency Event** means any one or more of the following events or circumstances occurs in relation to the Supplier:

- (a) it makes any assignment or composition with its creditors; or
- (b) it cannot pay its debts when they fall due, or is deemed unable to pay them in accordance with section 287 of the Companies Act 1993; or
- (c) it suspends payment to its creditors or ceases or threatens to cease operating or convenes a meeting of its creditors to propose a creditor compromise with them; or
- (d) it has a liquidator, voluntary administrator, receiver, manager or statutory manager appointed over it or any of its assets; or
- (e) it is subject to any other event or circumstance threatening its solvency or ability to supply and/or convert Eligible Vehicles;

**ITR** means the intention to register request for a Panel of Suppliers issued by EECA on 1 August 2024;

**ITR Response** means the Supplier's response to the ITR, including any subsequent questions and answers provided by the Supplier to EECA;

**LEHVF** has the meaning given in Recital A of the Background;

**LEHVF Funding** means an available grant-fund of up to \$27,750,000 (plus GST) (or more or less, as decided by EECA in its sole discretion) that will be made available by EECA in connection with the supply or conversion of Eligible Vehicles;

**Panel** means EECA's panel of suppliers who are involved in the supply and/or conversion of Eligible Vehicles;

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

**Related Party** has the meaning given to the term 'related company' in section 2(3) of the Companies Act 1993, but applying each reference to "company" to mean any body corporate of any nature;

**Supplier Contract Schedule** means the schedule of LEHVF Funding commitments that have been approved by EECA in respect of Eligible Vehicles supplied and/or converted by the Supplier, substantially in the form of Schedule 2 of this Agreement;

**Supplier Grant Form** means an application for LEHVF Funding submitted by the Supplier to EECA, in a form prescribed by EECA (which will be published on EECA's website or otherwise provided to the Supplier); and

**Whitelist** means the list of Eligible Vehicles that EECA has approved as being eligible for LEHVF Funding from to time and published on EECA's website.

## 1.2 Interpretation:

- (a) References to clauses and schedules are to clauses and schedules of this Agreement unless the context requires otherwise.

- (b) The headings in this Agreement are for convenience only and have no legal effect.
- (c) The singular includes the plural and vice versa.
- (d) All references to monetary amounts are to the lawful currency of New Zealand.
- (e) Days, dates and times are New Zealand time.
- (f) The “conversion costs” in respect of the conversion of an Eligible ICE Convertible Heavy Vehicle do not include the cost of the original vehicle, nor any items needed to operate the vehicle as a zero emissions vehicle or low emissions vehicle (as applicable).
- (g) A Customer that is eligible to receive LEHVF Funding will receive the benefit of the LEHVF Funding by way of a contribution to the purchase price or conversion cost (as applicable) payable under the relevant Eligible Vehicle Contract and will not receive cash payments directly from EECA (or via the Supplier).

## 2 **Appointment to Panel:**

- 2.1 The Supplier is appointed to the Panel and will continue to be a member of the Panel until the expiry or termination of this Agreement.
- 2.2 The Supplier must nominate a primary person, and a secondary person to be used in the primary person’s absence, to be used for all communications in relation to this Agreement and the Panel. The Supplier must promptly notify EECA of any change to its nominated point of contact.

## 3 **Term of this Agreement**

- 3.1 This Agreement will commence on the last date it is signed by the parties and will expire on 30 June 2028, unless terminated earlier in accordance with clause 15.

## 4 **Operation of the Panel**

- 4.1 The Panel is established and operated by EECA in accordance with the ITR (including any revisions of that ITR), and the Panel will continue for an initial period from the date of the first Panel agreement to 30 June 2028, unless:
  - (a) EECA, in its sole discretion, elects to discontinue the Panel earlier; or
  - (b) all LEHVF Funding is exhausted earlier.
- 4.2 EECA will commit the LEHVF Funding to eligible Customers in relation to the supply or conversion of Eligible Vehicles on a first in first served basis but subject to the caps on LEHVF Funding for the Supplier, Customers and hybrid vehicles, as provided for in this Agreement.
- 4.3 The Supplier acknowledges that EECA may undertake interim reviews of the Panel and the LEHVF during the term of this Agreement to ensure the Panel and LEHVF are fit for purpose. As a result of such reviews, the amount of LEHVF Funding available and caps on LEHVF Funding (including as set out in clauses 8 and 9) may change at EECA’s sole discretion by notice from EECA to the Supplier and this Agreement will be deemed to be amended accordingly (without any action required of the Supplier).

## 5 **Operation of the Whitelist**

- 5.1 At any time, the Supplier may suggest to EECA that a vehicle (and the relevant specifications and model of a vehicle) is added to or removed from the Whitelist.
- 5.2 EECA, in its sole discretion, may choose which vehicles (and the relevant specifications and model of a vehicle) are added to or removed from the Whitelist at any given time.
- 5.3 In respect of a vehicle on the Whitelist, the Supplier must promptly inform EECA of the occurrence of any of the following events or circumstances in relation to that vehicle:

- (a) a new model of that vehicle becomes available for supply; or
  - (b) a model of that vehicle has ceased to be available for supply; or
  - (c) the Supplier has issues in their ability to supply that vehicle; or
  - (d) customers of the Supplier have issues with the quality of that vehicle; or
  - (e) any other circumstance which a Supplier considers affects the specifications or quality of a vehicle, as notified by the manufacturer (including through commissioning testing) or otherwise.
- 5.4 In respect of any vehicle on the Whitelist supplied by the Supplier, the Supplier must inform EECA within 90 days of any changes to that vehicle's pricing (increase or decrease) or if any pricing change is expected. In the event of a price increase of a vehicle, the Supplier must provide EECA with evidence (including providing sales price comparisons across all vehicle offerings) that the increased price is not related to LEHVF Funding that may be provided in respect of that vehicle.
- 6 Customer Application Form for LEHVF Funding**
- 6.1 Upon (or immediately prior to) entry into an agreement for the supply or conversion (as applicable) of an Eligible Vehicle under an Eligible Vehicle Contract, the Customer (via the Supplier) may submit a Customer Application Form to EECA. The Supplier agrees that it will facilitate and assist its Customers with the submission of all Customer Application Forms.
- 6.2 EECA may reasonably request any information from the Supplier in relation to the assessment of any submitted Customer Application Form. The Supplier agrees that it will act reasonably in responding to such an information request and will deliver all information reasonably requested without delay.
- 6.3 Following the receipt of a Customer Application Form, EECA will notify the Supplier:
- (a) if the Customer is eligible to receive LEHVF Funding in respect of the Eligible Vehicle that is the subject of that Customer Application Form and if the Customer Application Form has been approved by EECA; and
  - (b) if so eligible and approved, the amount of LEHVF Funding that the Customer is entitled to and EECA will deliver to the Supplier an updated copy of the Supplier Contract Schedule and from the date of delivery, that copy of the Supplier Contract Schedule shall be treated as the Supplier Contract Schedule for the purposes of this Agreement.
- 6.4 The Supplier acknowledges and agrees that the amount of EECA Funding confirmed in accordance with clause 6.3 is the maximum amount of LEHVF Funding for the relevant Eligible Vehicle and EECA has no obligation to fund any increase in the purchase price or conversion costs (as applicable) of an Eligible Vehicle.
- 6.5 The Supplier acknowledges and agrees that in respect of any approved unpaid LEHVF Funding, in the event that after the relevant LEHVF Funding has been approved:
- (a) a Customer is later found to have been ineligible to receive LEHVF Funding or becomes ineligible to receive the relevant LEHVF Funding after EECA has notified the Supplier of the Customer's eligibility to receive LEHVF Funding; and/or
  - (b) the relevant Eligible Vehicle is removed from the Whitelist; and/or
  - (c) a Customer was insolvent or becomes insolvent at or after the time that EECA notifies the Supplier of the Customer's eligibility to receive LEHVF Funding; and/or

- (d) the relevant Eligible Vehicle is not registered or re-registered or conversion completed (as applicable) within the agreed timeframe (which shall be a maximum of 18 months after the relevant Eligible Vehicle Contract is entered into),

EECA (in its sole discretion) is entitled to cancel its approval of the relevant approved unpaid LEHVF Funding and (if so cancelled) EECA will not provide the relevant LEHVF Funding to the Customer. EECA shall deliver to the Supplier an updated copy of the Supplier Contract Schedule and from the date of delivery, that copy of the Supplier Contract Schedule shall be treated as the Supplier Contract Schedule for the purposes of this Agreement.

- 6.6 EECA may reject any Customer Application Form submitted in respect of an Eligible Vehicle Contract entered into before the date of this Agreement.
- 6.7 In the event that this Agreement is terminated as a result of a Supplier breach of this Agreement, EECA (in its sole discretion) is entitled to cancel its approval of any approved but unpaid LEHVF Funding and (if so cancelled) EECA will not provide the relevant LEHVF Funding to the Customer.
- 6.8 In the event that an Eligible Vehicle Contract for which EECA has approved LEHVF Funding is terminated (by either party to that Eligible Vehicle Contract), EECA's approval of the relevant LEHVF Funding will be automatically cancelled and EECA will not provide the relevant LEHVF Funding to the Customer.

## **7 Supplier Grant Form for Payment of LEHVF Funding**

- 7.1 Upon registration or re-registration (as applicable) of an Eligible Vehicle for which there is an approved Customer Application Form and for which EECA has approved LEHVF Funding, the Supplier may submit a Supplier Grant Form to EECA which, among other things, will require evidence that the relevant LEHVF Funding amount has been (or will be) applied against the purchase price or conversion cost (as applicable) of the relevant Eligible Vehicle. EECA may reasonably request any other evidence related to its assessment of that Supplier Grant Form (including in relation to the relevant Eligible Vehicle and Customer) and the Supplier must provide all such evidence to EECA promptly.
- 7.2 Subject to EECA's approval of a Supplier Grant Form, EECA will pay the relevant LEHVF Funding amount to the Supplier to be applied in accordance with this Agreement.
- 7.3 If EECA is required by law to withhold any taxes from any payment of LEHVF Funding required to be made by it under this Agreement, payment of the LEHVF Funding 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.

## **8 LEHVF Funding Available**

- 8.1 The indicative amounts of LEHVF Funding available in respect of the supply or conversion (as applicable) of an Eligible Vehicle are set out in Schedule 1. These indicative amounts are subject to change at EECA's sole discretion at any time. Any such changes will be notified to the Supplier and recorded on EECA's publicly available website.
- 8.2 If a Customer:
  - (a) purchases or converts (as applicable) an Eligible Vehicle from/using a Related Party; or
  - (b) is also the Supplier under this Agreement and purchases or converts (as applicable) an Eligible Vehicle for itself,

EECA will only be liable to pay LEHVF Funding (assuming other requirements relating to the LEHVF Funding are satisfied) in respect of the purchase price (including any installation costs) or conversion costs (as applicable) of the relevant vehicle to the extent that EECA is satisfied

that the purchase price or conversions costs (as applicable) would be reasonable between unrelated parties acting on arms-length terms.

**9 Caps on LEHVF Funding**

9.1 The Supplier acknowledges and agrees that the maximum amount of LEHVF Funding (in aggregate) that it and its Related Parties may process in respect of the supply and conversion of Eligible Vehicles is to be no more than:

- (a) \$4,000,000 (excluding GST) for each of the Financial Years ending on 30 June 2025 and 30 June 2026, in respect of applications for LEHVF Funding approved in those Financial Years; and
- (b) any other limit imposed by EECA in respect of applications for LEHVF Funding in a subsequent Financial Year.

9.2 The Supplier acknowledges and agrees that the maximum amount of LEHVF Funding (in aggregate) available to a Customer (in respect of Eligible Vehicle Contracts with the Supplier or another supplier) and that Customer's Related Parties (considered as a group) in respect of the supply and conversion of Eligible Vehicles is to be no more than:

- (a) \$1,000,000 (excluding GST) for each of the Financial Years ending on 30 June 2025 and 30 June 2026, in respect of applications for LEHVF Funding approved in those Financial Years; and
- (b) any other limit imposed by EECA in respect of applications for LEHVF Funding in a subsequent Financial Year.

9.3 The Supplier acknowledges and agrees that no more than \$5,000,000 of LEHVF Funding (in aggregate across all Panel members and all Customers) will be available to fund the supply and conversion of hybrid vehicles (new or converted) during the term of the Panel.

9.4 The Supplier acknowledges and agrees that EECA may only be liable to pay LEHVF Funding once in respect of the purchase price or conversion cost (as applicable) of a particular Eligible Vehicle. If a Customer disposes of an Eligible Vehicle which has been part-funded by LEHVF Funding, EECA will not have any additional liability to pay LEHVF Funding to the purchaser of that vehicle.

9.5 The Supplier acknowledges and agrees that EECA does not control the award of any Eligible Vehicle Contracts with Customers. EECA offers no guarantee as to any minimum volume of Eligible Vehicles that the Supplier will supply and/or convert as a member of the Panel.

**10 Eligibility for LEHVF Funding:**

10.1 In order to be eligible to receive LEHVF Funding, a Customer:

- (a) must be a New Zealand registered legal entity or an entity legally registered to trade in New Zealand, that is not an Excluded Customer; and
- (b) will use the intended Eligible Vehicle in New Zealand.

10.2 A Customer is not entitled to receive LEHVF Funding in respect of a vehicle that the Customer has received or is to receive funding in respect of the capital cost of that vehicle from an alternative central government scheme.

**11 Supplier's obligations as a supplier and/or converter**

11.1 The Supplier must report to EECA regularly on the progress of each Eligible Vehicle Contract, and without delay, must inform EECA of the occurrence of any of the following events or circumstances that occur following entry into an Eligible Vehicle Contract, and provide reasonable particulars of the same:



- (a) a delay or potential delay to the delivery or conversion (as applicable) of the relevant Eligible Vehicle;
  - (b) a breach by a party to the Eligible Vehicle Contract;
  - (c) the Eligible Vehicle Contract is terminated, supplemented or amended;
  - (d) the Customer makes a warranty claim or other claim in respect of defects of the relevant Eligible Vehicle;
  - (e) (if applicable) the relevant Eligible New ZEHV or Eligible New Hybrid Heavy Vehicle is returned to the Supplier by the Customer within two years of the relevant vehicle being supplied to the Customer; and
  - (f) the Supplier becomes aware of any other material information in relation to the relevant Eligible Vehicle and/or customer that may be of interest to EECA or becomes aware that any information provided to EECA in respect of a Customer Application form or Supplier Grant Form is false.
- 11.2 EECA may reasonably request any information from the Supplier in relation to any Eligible Vehicle Contract or any Eligible Vehicle (including service history of an Eligible Vehicle). The Supplier agrees that it will obtain all necessary approvals from the relevant Customer to provide that information to EECA and will act reasonably in responding to such an information request and will deliver all information reasonably requested without delay.
- 11.3 Payment to the Supplier of the purchase price or conversion cost (as applicable) of an Eligible Vehicle is to be made by the relevant Customer in accordance with the relevant Eligible Vehicle Contract and the purchase price or conversion cost (as applicable) will be agreed between that Customer and the Supplier.
- 11.4 The Supplier acknowledges and agrees that EECA does not underwrite or guarantee the obligations of any Customer in respect of an Eligible Vehicle Contract (including payment obligations) and is not liable to the Supplier in any way for:
- (a) any breach by a Customer of an Eligible Vehicle Contract; or
  - (b) payment of the purchase price or conversion cost (as applicable) under an Eligible Vehicle Contract.
- 11.5 The Supplier must not engage in collusive, deceptive or improper conduct in dealings with Customers or in any discussions or negotiations with Customers or otherwise engage in any anti-competitive or bid rigging conduct with any other Panel members or any other third parties. The Supplier must not attempt to influence or provide any form of inducement, reward or benefit to any representative of EECA in relation to the LEHVF.
- 11.6 The Supplier must address any potential or actual Conflict of Interest in relation to itself or its personnel or contractors in accordance with Best Industry Practice, or where required by EECA, to EECA's satisfaction.
- 12 Supply of Eligible New ZEHVs and Eligible New Hybrid Vehicles**
- 12.1 In its role as a supplier of Eligible Vehicles (if applicable), the Supplier must:
- (a) **before supply:** use its reasonable endeavours to progress the supply of such vehicles as efficiently and quickly as possible;
  - (b) **upon supply:** use its reasonable endeavours to assist in the commissioning and registration (including the obtaining of all necessary regulatory certifications) of such vehicles; and

- (c) **after supply:** perform its ongoing service obligations in relation to such vehicles to the best of its ability.

### 13 Conversion of Eligible ICE Convertible Heavy Vehicles

13.1 In its role as a converter of Eligible Vehicles (if applicable), the Supplier must:

- (a) **before and during conversion:** use its reasonable endeavours to progress the conversion of such vehicles as efficiently and quickly as possible;
- (b) **upon conversion:** use its reasonable endeavours to assist in the commissioning and re-registration (including the obtaining of all necessary regulatory certifications) of such vehicles; and
- (c) **after conversion:** perform its ongoing service obligations in relation to such vehicles to the best of its ability.

### 14 Warranties

14.1 The Supplier warrants that, as at the commencement of this Agreement:

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

14.2 The Supplier acknowledges and agrees that EECA has relied upon the warranties in this clause 14 and all statements and representations made by the Supplier in its ITR Response.

### 15 Termination

15.1 EECA may terminate this Agreement with immediate effect by giving notice to the Supplier if:

- (a) the Supplier commits a breach of this Agreement and that breach is either incapable of remedy or, if capable of being remedied, remains unremedied within 30 days after receiving written notice of the breach by EECA; or
- (b) the Supplier repeatedly breaches an Eligible Vehicle Contract or commits repeated breaches of Eligible Vehicle Contracts; or
- (c) for whatever reason, EECA has insufficient funding to continue with the LEHVF; or
- (d) EECA, in its sole discretion, has elected to discontinue the Panel (as contemplated by clause 4.1(a)); or
- (e) EECA becomes aware of a material misrepresentation in the ITR Response or any misleading or deceptive conduct by the Supplier in connection with the ITR; or

- (f) in EECA's sole discretion, EECA considers that the Supplier has done anything which has damaged or is likely to damage EECA or the LEHVF's reputation or brings or is likely to bring EECA or the LEHVF into disrepute (including a breach of clause 18.3); or
  - (g) the Supplier suffers an Insolvency Event; or
  - (h) the Supplier breaches clause 11.6; or
  - (i) the Supplier breaches clause 25.4; or
  - (j) in EECA's sole discretion, EECA considers that the Supplier has ceased to have available suitably qualified personnel to supply and/or convert Eligible Vehicles.
- 15.2 EECA may terminate this Agreement with immediate effect by giving not less than 20 working days' notice if EECA determines that the Supplier fails to meet the criteria and/or performance requirements for the Panel as set out in the ITR and this Agreement.
- 15.3 EECA may terminate this Agreement with immediate effect at its sole discretion and without cause by giving not less than 10 working days' notice to the Supplier.
- 15.4 EECA will have no liability whatsoever to the Supplier (including, without limitation, an obligation to compensate the Supplier in any way) in relation to or in connection with any termination of this Agreement.
- 15.5 Termination of this Agreement in accordance with this clause 15 will be without prejudice to either's party's rights and remedies in respect of any breach by the other party to this Agreement.
- 15.6 The parties agree that the expiry or termination of this Agreement will not affect any Eligible Vehicle Contract which started prior to such expiry or termination.
- 15.7 The parties agree that the expiry of this Agreement will not affect any rights or obligations between EECA and the Supplier (including any provision of LEHVF Funding that has been approved but not yet been paid to the Supplier) which existed prior to such expiry.
- 16 Repayment**
- 16.1 Without limiting any other remedy EECA may have:
- (a) if for whatever reason, the Supplier does not apply any amounts of LEHVF Funding in accordance with this Agreement, the Supplier must on demand repay all such amounts to EECA;
  - (b) if the Supplier refunds a Customer for the purchase price or conversions costs (as applicable) of an Eligible Vehicle for which EECA has provided LEHVF Funding in respect of, the Supplier must on demand refund EECA an amount of the LEHVF Funding equal to the proportion that the refund bears in relation to the purchase price or conversion costs (as applicable) paid; and
  - (c) if the Supplier fraudulently obtains any LEHVF Funding, the Supplier must repay all LEHVF Funding to EECA.
- 16.2 This clause 16 survives expiry or termination of this Agreement.
- 17 Confidentiality**
- 17.1 Each party confirms it will keep any Confidential Information secure and that it will not use or disclose such information to anyone, unless:
- (a) the disclosure is made to a Customer on a confidential basis, in good faith and in furtherance of the LEHVF;
  - (b) it is to its professional advisers, auditors or bankers on a needs-to-know basis;

- (c) if the other party gives prior written approval for such use or disclosure; and
  - (d) the use or disclosure is required by law, or governmental authority, or the rules of any registered securities exchange (where the securities are listed) and the disclosing party gives the other party notice prior to the use or disclosure and copies of the relevant information.
- 17.2 The Supplier acknowledges that EECA's obligations under this clause are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 2020, parliamentary and constitutional convention and any other obligations imposed by law. EECA will not be in breach of its obligations if Confidential Information is disclosed by EECA to the appropriate authority because of suspected collusive or anticompetitive tendering behaviour.
- 17.3 Nothing in this Agreement restricts EECA's ability to:
  - (a) discuss with, and provide to any Minister of the Crown, any other government agency, including (without limitation) the Ministry of Business, Innovation and Employment and The Treasury, or any of their respective personnel, any information concerning this Agreement;
  - (b) meet its obligations under any constitutional or parliamentary convention (or other obligation at law) of or in relation to the New Zealand Parliament, the New Zealand House of Representatives or any of its committees, any Minister of the Crown, or the New Zealand Auditor-General, including any obligations under the "no surprises" policy advised by Ministers of the Crown; and
  - (c) publicise and report on the awarding of LEHVF Funding, including the name of the Customer and the amount of the LEHVF Funding.
- 18 **Publicity, marketing and announcements**
- 18.1 The Supplier agrees that it will not make any public or media release or statement about the LEHVF or this Agreement without having first obtained EECA's written consent to the content of such release or statement.
- 18.2 Any promotional and/or marketing material of the Supplier relating to the LEHVF or this Agreement must be sent to EECA for EECA's approval allowing a minimum of four (4) Business Days for EECA's approval. EECA's approval must be obtained before any such material is released.
- 18.3 Without limiting clauses 18.1 and 18.2, the Supplier must not make any public statement damaging or likely to be damaging to EECA's reputation.
- 19 **Intellectual Property**
- 19.1 Any intellectual property already in existence at the commencement of this Agreement shall remain the property of the current owner.
- 19.2 All intellectual property rights created or developed by either the Supplier or EECA during the term of this Agreement and in conjunction with this Agreement will be owned by the party that creates or develops the intellectual property.
- 19.3 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 their respective obligations under this Agreement.
- 20 **Information Management**
- 20.1 The Supplier must:

- (a) keep and maintain full, true and up-to-date Records of the performance of its obligations under this Agreement during the term of this Agreement and for a minimum of three years following termination or expiry of this Agreement;
  - (b) allow EECA or its nominee on request and subject to reasonable notice to audit the Records, or audit the performance of the Supplier under this Agreement (including reviewing the Records) from time-to-time, as reasonably required by EECA;
  - (c) co-operate with EECA and provide all information and assistance reasonably requested by EECA to allow EECA to promote the LEHVF;
  - (d) provide to EECA any information reasonably requested by EECA relating to the performance of the Customer's obligations pursuant to this Agreement. All information provided by the Customer must be in a format that is usable by EECA, and delivered within a reasonable time of the request;
  - (e) co-operate with EECA to provide any of the information requested under clause 20.1(d) as soon as reasonably practicable if the information is required by EECA to comply with an enquiry or its statutory, parliamentary, or other reporting obligations; and
  - (f) make sure that any Records provided to EECA or created for EECA, are securely managed and securely destroyed on their disposal.
- 20.2 The parties shall otherwise co-operate promptly and share information with each other as necessary to meet the operational objectives of EECA and enable the parties to perform their respective obligations under this Agreement.
- 20.3 Following expiry or termination of this Agreement, clause 20.1 will remain in effect.
- 21 Liability**
- 21.1 EECA will not be liable in contract, tort, equity, or in any other way whatsoever for any direct or indirect damage, loss or cost incurred by the Supplier or any other person (including a Customer) in respect of the LEHVF or the supply or conversion of Eligible Vehicles.
- 21.2 For the avoidance of any doubt, in no event shall either party be liable (whether in contract, tort (including negligence) or otherwise) for any loss of profits, business, anticipated savings or other economic loss or for any indirect, special or consequential loss.
- 22 Indemnity**
- 22.1 The Supplier shall, to the full extent permitted by law, defend, indemnify and hold harmless EECA, from and against any and all direct damage, loss, cost, liability, and expense whatsoever (including legal fees, third party claims, all and any actual court costs, witness fees and expenses and all disbursements) directly incurred, by reason of:
- (a) any failure by the Supplier to perform any covenant or observe any obligation of the Supplier under this Agreement; or
  - (b) any breach by the Supplier of any representation, warranty, or covenant on the part of the Supplier contained in this Agreement; or
  - (c) the negligence or wrongful act or omission of the Supplier in performing any of its obligations under this Agreement.
- 23 Disputes**
- 23.1 If a dispute arises relating to this Agreement, then then the parties will endeavour in good faith to settle the dispute by agreement.

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

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

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

23.4 Each party will pay its own costs of mediation under this clause 23.

23.5 Neither party may issue legal proceedings (other than for urgent interlocutory relief) in respect of such dispute or difference, unless that party has first taken all reasonable steps to comply with this clause 23.

## 24 Notices

24.1 Each notice under this Agreement shall be in writing and delivered by courier or sent by email to the address set out under each party's signature block (or another address notified to the other party in writing after the commencement of this Agreement). A notice is deemed to be received:

- (a) if delivered by courier, when delivered; or
- (b) if sent by email, when actually received,

provided that any notice received after 5 pm on a Business Day or on a non-Business Day shall be deemed to have been received on the next Business Day.

## 25 General

25.1 **Entire agreement:** this Agreement contains the entire understanding between the parties concerning the subject matter of the Agreement and supersedes, terminates and replaces all prior agreements and communications between the parties.

25.2 **Further assurances:** each party must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

25.3 **No waiver:** a failure, delay, relaxation or indulgence by a party in exercising any power or right conferred on the party by this Agreement does not operate as a waiver of the power or right.

25.4 **Assignment:** the Supplier may not assign or otherwise transfer the benefit of this Agreement without the prior written consent of EECA.

25.5 **Consents:** where anything depends on the consent or approval of a party, unless this Agreement provides otherwise, that consent or approval may be given conditionally or unconditionally or withheld, in the absolute discretion of that party.

25.6 **Amendments:** this Agreement cannot be amended or varied except in writing signed by the parties.

25.7 **Counterparts:** this Agreement may be signed in any number of counterparts (including electronic copies) and provided that each party has signed a counterpart, the counterparts, when taken together, will constitute a binding and enforceable agreement between the parties.

25.8 **No partnership:** nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

- 25.9 **New Zealand Law:** this Agreement will be governed by and construed in accordance with the laws of New Zealand and the parties submit to the non-exclusive jurisdiction of the New Zealand courts.
- 25.10 **Survival:** Following expiry or termination of this Agreement, clause 11 (Supplier's obligations as a supplier and/or converter) will remain in effect together with any provisions that are intended to remain in effect.

**EXECUTION**

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

by:

\_\_\_\_\_  
Name:

Position:

Date:

**Signed for and on behalf of [Supplier's name]**

by:

\_\_\_\_\_  
Name:

Position:

Date:

In the presence of:

\_\_\_\_\_  
Name:

Occupation:

Address:

**Notices to EECA:**

Level 8, 44 The Terrace  
Wellington 6011  
PO Box 388  
Wellington 6140

Attention: LET: LEHVF Administrator

Email: LEHVF@eeca.govt.nz

**Notices to [Supplier's name]:**

**[Supplier's address for notices]**

Attention: **[Supplier contact for notices]**

Email: **[Supplier email address for notices]**

**Schedule 1 – LEHVF Funding for Eligible Vehicles (indicative)****1. Grant Levels for purchase of Eligible New ZEHVs**

Size (GVM) of vehicle	Grant Available
<b>Light</b> (over 5.9 tonne to 12 tonne GVM)	25% of purchase price, capped at \$35,000+GST
<b>Medium</b> (over 12 tonne GVM and up to 39 tonne GCM)	25% of purchase price, capped at \$90,000+GST
<b>Heavy</b> (over 12 tonne GVM and above 39 tonne GCM)	25% of purchase price, capped at \$200,000+GST

**2. Grant Levels for conversion of Eligible ICE Convertible Heavy Vehicles to zero emissions heavy vehicles**

Size (GVM) of retrofitted vehicle	Grant Available
<b>Light</b> (over 5.9 tonne to 12 tonne GVM)	25% of conversion cost, capped at \$17,500+GST
<b>Medium</b> (over 12 tonne GVM and up to 39 tonne GCM)	25% of conversion cost, capped at \$45,000+GST
<b>Heavy</b> (over 12 tonne GVM and above 39 tonne GCM)	25% of conversion cost, capped at \$100,000+GST

**3. Grant Levels for purchase of Eligible New Hybrid Heavy Vehicles**

Size (GVM) of vehicle	Grant Available
<b>Light</b> (over 5.9 tonne to 12 tonne GVM)	25% of purchase cost, capped at \$8,750+GST
<b>Medium</b> (over 12 tonne GVM and up to 39 tonne GCM)	25% of purchase cost, capped at \$22,500+GST
<b>Heavy</b> (over 12 tonne GVM and above 39 tonne GCM)	25% of purchase cost, capped at \$50,000+GST

**4. Grant Levels for conversion of new or second-hand Eligible ICE Convertible Heavy Vehicles to hybrid heavy vehicles**

Size (GVM) of vehicle	Grant Available
<b>Light</b> (over 5.9 tonne to 12 tonne GVM)	25% of conversion cost, capped at \$8,750+GST
<b>Medium</b> (over 12 tonne GVM and up to 39 tonne GCM)	25% of conversion cost, capped at \$22,500+GST
<b>Heavy</b> (over 12 tonne GVM and above 39 tonne GCM)	25% of conversion cost, capped at \$50,000+GST



**Schedule 2 – Supplier Contract Schedule**

Customer Application Form Number	Customer	Description of vehicle	Sale and purchase agreement: 1. Due date to EECA, or 2. If received by EECA (dd/mm/yyyy)	Registration: 1. Date by which vehicle is to be registered/re-registered in New Zealand, or 2. Registration no. (dd/mm/yyyy)	LEHVF Funding payable (plus GST) up to the lesser of:  1.The amounts shown below, and 2. 25% of the vehicle sale value (only including EECA approved features/add-ons)
1.					
2.					
Total approved grant-funding - Financial Year ending on 30 June 2025					\$
1.					
2.					
Total approved grant-funding - Financial Year ending on 30 June 2026					\$
1.					
2.					
Total approved grant-funding - Financial Year ending on 30 June 2027					\$
1.					
2.					
Total approved grant-funding - Financial Year ending on 30 June 2028					\$