

EECA SERVICE PROVIDER LIST FRAMEWORK AGREEMENT

PARTIES

- (1) **ENERGY EFFICIENCY AND CONSERVATION AUTHORITY**, (NZBN 9429041901953) a Crown entity constituted under the Energy Efficiency and Conservation Act 2000 ("**EECA**"); and
- (2) **[INSERT FULL LEGAL NAME OF EECA SERVICE PROVIDER LIST PARTNER]**, (NZBN [insert]), a duly incorporated company having its registered office at [insert address] ("**Service Provider**").

BACKGROUND

- A. The Service Provider was a respondent to an ITR issued by EECA dated [date], and in reliance on its ITR response has been offered appointment to EECA's LIST of Service Providers as an approved provider of Services to Clients in connection with the Service Provider List Programme.
- B. Appointment to the Service Provider List 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 work, funding or opportunities to the Service Provider.
- C. EECA's Service Provider will involve the provision of Services to businesses with the intention of assisting those businesses to identify and action opportunities to reduce energy emissions.
- D. Amongst other things, this Service Provider List Framework Agreement sets out:
 - (a) the way the Service Provider List will be operated by EECA.
 - (b) the rights and obligations of the Service Provider as a member of the Service Provider List; and
 - (c) the relationship between EECA, the Client, and the Service Provider in relation to the Service Provider List.

EECA AND THE SERVICE PROVIDER AGREE as follows:

1 Definitions

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

Agreement means this framework agreement.

Confidential Information means the subject matter and terms of this Agreement and any information related to EECA's Service Provider List and provided by EECA, the Service Provider or the Client 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.

Client means the business undertaking a project requiring Services.

EECA - Client Agreement means the collaboration agreement for co-funding energy efficiency projects.

Service Provider List Assessment and Report means any report provided to EECA and/or the Client for services outlined in Schedule 1.

EECA Service Provider List means the Service Provider List, further detailed in the ITR.

Insolvency Event means any one or more of the following occurring in relation to the Service Provider:

- (a) it makes any assignment or composition with its creditors.
- (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.
- (c) it suspends payment to its creditors or ceases or threatens to cease operating or convenes a meeting of its creditors to propose a scheme of arrangement with them.
- (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 provide Services.

Key Personnel means the personnel of the Service Provider who are identified by name or title as such in Schedule 1.

LIST means the EECA LIST of Service Providers for the provision of Services, as published on the EECA website.

Service Provider means the party to this Agreement appointed to the Service Provider List

Project means the project work carried out by the Service Provider under contract to the Client.

ITR means the Invitation to Register to the Service Provider List of Service Providers issued by EECA on [date].

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

Services means the assessment services to be completed by the Service Provider for the Client under a separate consultancy agreement agreed between the Service Provider and the Client.

2 **Nature of ITR and ITR Response**

2.1 The Service Provider acknowledges and agrees that EECA has relied upon all statements and representations made by the Service Provider in its ITR Response.

2.2 In the event of any inconsistency between any of the following documents, they will have precedence in the descending order of priority set out below:

- (a) This Agreement.

(b) The ITR.

3 Operation of the Service Provider List

- 3.1 The Service Provider List is established and operated by EECA in accordance with the ITR and will continue for an initial period of two years, unless EECA elects to discontinue it sooner.
- 3.2 The Service Provider is appointed to the Service Provider List on the commencement of this Agreement, and will continue to be a member of Service Provider List subject to clauses 5.1 and 6 below.
- 3.3 The Service Provider's specific category skills, and other business-related details are set out in Schedule 1 of this Agreement. Those project categories and business details are published as part of Service Provider List information.
- 3.4 The Service Provider acknowledges and agrees that EECA does not control the award of any contracts for Services by Clients. EECA offers no guarantee as to any minimum volume of Services that the Service Provider will provide as a Service Provider List member. Clients will be responsible for selecting suppliers of Services. Clients are not obliged to offer all Service Provider List members an opportunity to bid for the provision of Services.
- 3.5 Service Providers are not obliged to accept requests to provide Services made by Clients and are not obliged to exclusively provide services like the Services pursuant to this Agreement.
- 3.6 The Service Provider must nominate a single person or channel to be used for all communications in relation to this Agreement and the Service Provider List. The Service Provider must promptly notify EECA of any change to its nominated point of contact.
- 3.7 EECA will conduct an annual review of the Service Provider List to confirm the products the Service Provider is listed as being qualified to deliver remains accurate. The outcome of the review will be discussed and agreed with the Service Provider's nominated point of contact, and confirmed in writing before any changes are made to the details currently published on the EECA website.

4 Service Provider's Personnel

- 4.1 The Service Provider must ensure that the Services are always provided by suitable and qualified personnel who have the requisite skills and expertise to perform the activities assigned to them in a safe and competent manner. The Service Provider must, if reasonably requested by EECA, provide information as to the qualifications and competencies of the personnel engaged by it to perform any Services. If, in EECA's judgement, any personnel of the Service Provider are not suitable or not performing properly, safely or effectively, EECA may notify the Service Provider of its concerns, and the Service Provider will cooperate with EECA to address those concerns.
- 4.2 The Service Provider must ensure that all Key Personnel are available to lead the provision of the Services during the term of this Agreement. The Service Provider must not change any of the Key Personnel unless EECA approves of the change, or they are incapacitated or elect to leave the Service Provider's employment.
- 4.3 Before any change in Key Personnel, the Service Provider must notify EECA as soon as is practicable and must consult with EECA about the selection of a suitable replacement for the Key Personnel.

5 Term of this Agreement

- 5.1 This Agreement will commence on the date it is signed by both parties (EECA signs second) and subject to any right of renewal agreed in accordance with clause 5.2, will expire on 31 January 2027, unless terminated earlier under clause 6.
- 5.2 At EECA's option, and subject to clause 3.1, this Agreement may be renewed by EECA for up to one additional term, up to three years. Should EECA decide to renew this Agreement, EECA will give the Service Provider 30 days' notice in writing prior to the expiry of the previous term.

6 Termination of this Agreement

- 6.1 EECA may terminate this Agreement immediately by giving notice to the Service Provider if:
- (a) the Service Provider commits a breach of this Agreement or any agreement with a Client 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 the Client;
 - (b) for whatever reason, EECA has insufficient funding to continue with the EECA Service Provider List (provided that any such termination will not affect funding for any projects which have been approved for co-funding in an EECA – Client Agreement prior to the date of notice); or
 - (c) EECA becomes aware of a material misrepresentation in its ITR Response or any misleading or deceptive conduct by the Service Provider in connection with the ITR; or
 - (d) in EECA's sole discretion the Service Provider does anything to damage EECA or the EECA Service Provider List's reputation or brings EECA or the EECA Service Provider List into disrepute; or
 - (e) the Service Provider suffers an Insolvency Event.
 - (f) in EECA's judgement, the Service Provider ceases to have available suitably qualified Key Personnel to provide the Services; or
 - (g) the Service Provider is the subject of enforcement action pursuant to any relevant legislation.
- 6.2 EECA may terminate this Agreement by giving not less than 20 days' notice if EECA determines that the Service Provider fails to meet the criteria and/or performance requirements for the LIST, as set out in the ITR and as may be updated by EECA from time to time during the term of this Agreement, following an annual review.
- 6.3 EECA may terminate this Agreement at its discretion and without cause by giving not less than 90 days' notice to the Service Provider.
- 6.4 EECA will have no liability whatsoever to the Service Provider (including, without limitation, an obligation to compensate the Service Provider in any way) in relation to or in connection with any such termination.

7 Allocation and operation of the Service Provider List

- 7.1 As set out in the "Background" paragraphs above, Service Providers may be invited from time to time by Clients to tender for the right to provide Services following entry by EECA and the Client into an EECA – Client Agreement.
- 7.2 Service Providers will contract directly with Clients, following a client-led secondary procurement process. Service Providers must ensure the terms of any agreement between

them and Clients permit EECA to exercise any rights in relation to the Services granted under the EECA – Client Agreement.

- 7.3 The Service Provider agrees to work with EECA during any engagements with Clients that involve EECA product/s to ensure the quality of the Services is being met and maintained. Obligations for Service Providers are as set out in the ITR.
- 7.4 Payment to the Service Provider for the Services is to be made by the Client in accordance with any contract for services entered into under clause **Error! Reference source not found.**, the price for which is agreed solely between the Client and the Service Provider. The Service Provider acknowledges and agrees that EECA does not guarantee the payment obligations of the Client and is not liable to the Service Provider in any way for any other breach by the Client of any contract for services entered into between the Service Provider and Client.
- 7.5 The parties agree that the expiry or termination of this Agreement will not affect any contract between the Service Provider and Client which started prior to such expiry or termination, and vice versa.
- 7.6 The Service Provider acknowledges and agrees that the Client is not obliged to invite the Service Provider to tender for the provision of any Service Provider List Services nor is it obliged to engage the Service Provider in any capacity whatsoever.
- 7.7 The Service Provider must not engage in collusive, deceptive, or improper conduct in the preparation of any proposals or submissions to Clients or in any discussions or negotiations with Clients or otherwise engage in any anti-competitive or bid rigging conduct with any other LIST members or any other third parties. The Service Provider must not attempt to influence or provide any form of inducement, reward, or benefit to any representative of EECA in relation to the EECA Service Provider List.

8 **Confidentiality**

- 8.1 Each party confirms it will keep any Confidential Information confidential and secure and that it will not use or disclose such information to anyone, unless:
 - (i) The disclosure is made to a Client on a confidential basis, in good faith and in furtherance of the EECA Service Provider List.
 - (ii) It is to its professional advisers, auditors or bankers on a needs-to-know basis.
 - (iii) If the other party gives prior written approval for such use or disclosure.
 - (iv) 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.
- 8.2 The Service Provider acknowledges that EECA's obligations under this clause 8.1 are subject to requirements imposed by the Official Information Act 1982 (OIA), the Privacy Act 1993, 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. Where EECA receives an OIA request that relates to the Service Provider's Confidential Information, EECA will consult with the Service Provider and may ask the Service Provider to

explain why the information is considered by the Service Provider to be confidential or commercially sensitive.

9 Publicity, marketing and announcements

- 9.1 The Service Provider agrees that it will not make any public or media release or statement about the EECA Service Provider List or this Agreement without having first obtained EECA's written consent to the content of such release or statement.
- 9.2 Any promotional and/or marketing material of the Service Provider relating to the EECA Service Provider List must be sent to approval-mark@eeca.govt.nz for EECA's approval allowing a minimum of four (4) calendar days for EECA's approval. EECA's approval must be obtained before any such material is released.
- 9.3 EECA will provide the Service Provider with reasonable notice of any proposed promotional or marketing activity about the EECA Service Provider List.

10 Intellectual Property

- 10.1 Any intellectual property already in existence at the commencement of this Agreement shall remain the property of the current owner.
- 10.2 All intellectual property rights created or developed by either the Service Provider or EECA during the term of this Agreement and in conjunction with any associated specific Projects will be owned by the party that creates or develops the intellectual property.
- 10.3 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 (including in respect of each Project).

11 Liability

- 11.1 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 Service Provider or any other person in respect of the EECA Service Provider List or the provision of Services.
- 11.2 Neither party shall be liable to the other for any loss of profit, loss of business or damage to goodwill, or any indirect, consequential, or special loss or damage arising under or in connection with this Agreement.

12 Disputes

- 12.1 If a dispute arises relating to this Agreement, then then the parties will endeavour in good faith to settle the dispute by agreement.
- 12.2 If the dispute or difference is not settled by agreement within 20 Business Days of the dispute arising then, unless agreed otherwise, either party may refer the dispute to mediation.
- 12.3 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.
- 12.4 Each party will pay its own costs of mediation under this clause.

12.5 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 clause 12.

13 **General**

13.1 This Agreement, the ITR and the ITR Response, 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.

13.2 This Agreement, and any provision of this Agreement, is not to be construed to the disadvantage of a party because that party was responsible for its preparation.

13.3 Each party must do all things and execute all documents that are reasonably necessary to give full effect to this Agreement.

13.4 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.

13.5 The Service Provider may not assign or otherwise transfer the benefit of this Agreement without the prior written consent of EECA.

13.6 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.

13.7 This Agreement cannot be amended or varied except in writing signed by the parties.

13.8 If this Agreement consists of several signed counterparts, each is an original and all the counterparts together constitute the same document.

13.9 Nothing in this Agreement may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

EXECUTION

Energy Efficiency and Conservation Authority

[Insert name of Service Provider]

by:

by:

Authorised signatory

Authorised signatory

Name:

Name:

Occupation:

Occupation:

Address:

Address:

in the presence of:

in the presence of:

Name:

Name:

Occupation:

Occupation:

Address:

Address:

Schedule 1 – Service Provider details

Business name: _____

Key contact: _____

Position: _____

Phone: _____

Email: _____

Service category/ies pre-approved by EECA for Service Provider to deliver: