

Agreement to Fund Consumer Advocacy/Research Projects

Application No: [ENTER NO.]

RECITALS

Energy Consumers Australia Limited (ECA) is a national, energy, consumer advocacy body.

ECA's constitutional object is to promote the long-term interests of consumers of energy with respect to the price, quality, safety, reliability, and security of supply of energy services by providing and enabling strong, coordinated, collegiate evidence-based consumer advocacy on national energy market matters of strategic importance or material consequence for energy consumers, in particular for residential and small business customer. ECA works closely with energy consumers and consumer advocates to build knowledge, engage, and influence policy development and educate consumers on national energy market issues.

One of ECA's key functions is to make grants to fund consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas, or both.

You applied to ECA for advocacy and/or research funding on the Application Date, a copy of your Application is annexed to this agreement at Annexure A.

ECA approved the Application to fund the Approved Amount on the Application Approval Date.

ECA proposes to enter into this agreement with you to provide you with the Approved Amount.

By entering into this agreement, you will agree to accept the Approved Amount in accordance with the terms and conditions of this agreement.

KEY TERMS

PARTY DETAILS		
ECA	Energy Consumers Australia Limited (ACN 603 931 326) of Suite 2, Level 20, 570 George Street, Sydney NSW 2000	
	Name:	
	Phone:	
	Email:	
	or as otherwise notified by ECA in writing.	
Recipient (you)	Name:	
	ABN:	
	Address:	
	Phone:	
	Project Manager	
	Project Manager Email	
	Person executing agreement	
	Person executing agreement email	
PROJECT DETAILS		
Project	<i>[insert project title]</i> , as set out in the Application at Annexure A	
Application Date		
Application Approval Date		
Project Deliverables and Delivery Dates	Project Deliverables	Delivery Date
	1.	
	2.	
	3.	
	4.	
	5. Draft Project report	

	6. Final Project report	
	If you wish to change a Delivery Date, you must seek ECA's written approval under clause 3.1.	
FUNDING DETAILS		
Approved Amount	AU\$[insert], exclusive of GST	
Funding Application Variations	AU\$[insert], exclusive of GST OR Not applicable	
Payment Milestones	Amount (exclusive of GST)	Milestone
	1. AU\$[insert]	
	2. AU\$[insert]	
	3. AU\$[insert]	
	4. AU\$[insert]	Delivery to and acceptance by ECA of the final Project report and all associated Project Materials

TERMS AND CONDITIONS

1. Definitions and interpretation

1.1 In this agreement, where capitalised, terms defined in the Key Terms table have the meaning given to them in the table, and except where the context otherwise requires:

Application means your application to ECA which is annexed to this agreement and marked “Annexure A”, and which forms part of this agreement.

Business Day means any day except for Saturdays, Sundays and public holidays in Sydney, Australia.

ECA Constitution means ECA’s Constitution, which is available at <https://energyconsumersaustralia.com.au/>, or as otherwise notified by ECA.

ECA Material means any material provided to you by ECA in relation to this agreement, or to use in the Project Material.

Force Majeure Event means an event or circumstance beyond the reasonable control of and which could not have been reasonably foreseen by the parties, including riot, war, invasion, acts of terrorism, insurrection, epidemic, pandemic, catastrophe, flood, fire, natural disaster, imposition of sanctions, government action, or embargo, but excludes a party’s failure to perform this agreement.

Grant Allocation Guidelines means the guidelines for grant allocation published on ECA’s website, available at <https://energyconsumersaustralia.com.au/>, or as otherwise notified by ECA.

Indigenous Cultural and Intellectual Property Rights or **ICIP Rights** is a reference to Indigenous people’s rights to their heritage, including all objects, sites and knowledge pertaining to a particular Indigenous group or their territory, the nature or use of which has been transmitted or continues to be transmitted from generation to generation, whether existing in tangible form or which may be created in the future based on that heritage, including:

- (a) literary, performing and artistic works, including songs, music, dances, stories, ceremonies, symbols, languages and designs;
- (b) scientific, agricultural, technical and ecological knowledge, including cultigens, medicines and the phenotypes of flora and fauna;
- (c) all items of movable cultural property;
- (d) human remains and tissues;
- (e) immovable cultural property, including sacred and historically significant sites and burial grounds; and
- (f) documentation of Indigenous peoples’ heritage in archives, film, photographs, videotape or audiotape and all forms of media.

Intellectual Property Rights means all intellectual property rights throughout the world including:

- (a) rights in relation to any copyright, including under the *Copyright Act 1968* (Cth), patents, inventions, designs, trademarks, domain names, trade secrets, know-how, and all other intellectual property as defined in Article 2 of the convention establishing the World Intellectual Property Organisation 1967 (whether registered or unregistered);
- (b) any application or right to apply for registration of any of those rights; and
- (c) Moral Rights.

Moral Rights means the rights of an author of copyright material, including the right:

- (a) of attribution of authorship.

- (b) of integrity of authorship; and
- (c) not to have authorship falsely attributed.

Project Materials means any materials created as part of the Project or for the purposes of performing your obligations under this agreement, including the Project Deliverables, material contained in the 'Outputs and outcomes of the project', and any of your pre-existing Intellectual Property Rights that you use in the Project Material or to perform your obligations under this agreement.

Proportionate Liability Legislation means the proportionate liability schemes applicable throughout Australia which apply to this agreement, including under Part 4 of the *Civil Liability Act 2002* (NSW).

1.2 Unless the context otherwise requires, in this agreement:

- (a) a singular word includes a plural, and vice versa;
- (b) any person or company means and includes the legal personal representative, successors in title, and permitted assigns of that person or company, as applicable;
- (c) words and expressions importing natural persons include partnerships, bodies corporate, associations and governmental and local authorities and agents;
- (d) a reference to legislation, including subordinate legislation, is to legislation in force from time to time;
- (e) headings are for convenience only and do not affect interpretation;
- (f) monetary references are references to Australian currency;
- (g) if the Recipient comprises more than one person, each of the Recipient's obligations will bind those persons jointly and severally and will be enforceable against the Recipient jointly and severally; and
- (h) the words "include" and "including" are not words of limitation and mean "include but not limited to" and "including but not limited to".

1.3 If there is any inconsistency between the Application and the other parts of this agreement, the other parts of this agreement will take precedence.

2. Your obligations

2.1 In consideration of ECA paying you the Approved Amount under clause 6, you must:

- (a) commence the Project by the Commencement Date;
- (b) carry out the Project in accordance with the Project plan, objectives and timelines set out in your Application, terms of this agreement, and reasonable directions provided by ECA;
- (c) deliver to ECA the Project Deliverables by the Delivery Dates in accordance with clause 3.

2.2 You must obtain ECA's prior written approval to engage any contractors or consultants to carry out any aspects of the Project. ECA will consider your request, acting reasonably. If ECA approves your request, you must:

- (a) engage that contractor or consultant on the same terms as this agreement, including the Grant Allocation Guidelines, clause 4 (Intellectual property rights), clause 9 (Warranties), clause 10 (Indemnity and liability), clause 13 (Confidentiality) and clause 14 (Privacy);
- (b) pay the contractor or consultant superannuation as required at law;
- (c) if requested by ECA, provide ECA with copies of the contractor or consultant's agreement and invoices; and

- (d) comply with any other conditions that you are notified of by ECA.

3. Delivery requirements

- 3.1 If you suspect you will not be able to meet the Delivery Dates or meet ECA's requirements, you must immediately notify ECA and comply with ECA's reasonable directions in relation to any changes to the Project plan, objectives, and timetable.
- 3.2 ECA may, at its discretion, seek an independent evaluation of the Project. You must participate in that evaluation as reasonably required, at your own cost, and must take all actions reasonably required by ECA to address any issues raised in the evaluation.
- 3.3 ECA may notify you if it does not believe the Project Deliverables are satisfactory within 21 days of receiving those Project Deliverables. You must rectify any problems identified by ECA, at your own cost, and in accordance with any reasonable directions provided by ECA.

4. Intellectual property rights

- 4.1 Subject to clauses 4.4 and 4.5, you will retain ownership of all Intellectual Property Rights which subsist in the Project Material.
- 4.2 You cannot publish or make any Project Material available to the public until ECA notifies you in writing that the Project Deliverables are acceptable, and approves your publication date. ECA will work with you to determine this publication date, with both parties acting reasonably and in good faith.
- 4.3 You must obtain ECA's prior written approval to commercially exploit any Project Material. ECA will not unreasonably decline a request. ECA may require payment as a condition of its approval, for example, in the form of reimbursement of part or all of the Approved Amount.
- 4.4 ECA grants you a non-exclusive licence to use and reproduce the ECA Material in the Project Material but only to the extent necessary for you to perform your obligations under this agreement and to complete the Project. You must comply with any restrictions on use of the ECA Material that you are notified of by ECA.
- 4.5 If you wish to use any third party material in the Project Material, you must obtain a licence to use that third party material on terms which allow you to grant the rights contemplated by this agreement, including under clause 4.8, and Moral Rights consent on the same terms as clause 4.7. On request, you must provide ECA with a copy of any agreements relating to your use of third party material in the Project Material.
- 4.6 If any Indigenous Cultural and Intellectual Property Rights subsist or may subsist in the Project Material, you must:
- (a) prior to using the ICIP Rights material in the Project Material:
- (i) contact and meaningfully consult with the relevant Indigenous community or traditional owner on your proposed use of the ICIP Rights material, and obtain consent from the relevant Indigenous community or traditional owner to use the ICIP Rights material;
- (ii) notify ECA of any cultural protocols, including attributions and passing protocols, that must be followed if you use the ICIP Rights material in the Project Material;
- (iii) obtain a non-exclusive licence to use the ICIP rights material on terms which allow you to grant the rights contemplated by this agreement, including under clause 4.8, and Moral Rights consent on the same terms as clause 4.7, subject always to any cultural protocols notified under clause 4.6(a)(ii);
- (b) comply with ECA's requests in relation to any use of ICIP Rights material in the Project Material, including not using the ICIP Rights material if ECA is not satisfied that you have

obtained the necessary permissions to use that material;

- (c) if requested by ECA, provide ECA with copies of any consents obtained and agreements entered into in relation to the ICIP Rights material used in the Project Material, and written details of the names and addresses of relevant Indigenous community representatives and traditional owners of that ICIP Rights material.

- 4.7 You consent to ECA engaging in, and permitting others to engage in, any acts or omissions that might infringe your Moral Rights in the Project Material for the purpose of exercising its rights under clause 4.8, provided that ECA provides you with an appropriate attribution, and does not exercise its rights in a manner which amounts to derogatory treatment of the Project Material. Any casual or inadvertent failure to provide an appropriate attribution will not be considered breach of this agreement provided the parties reasonable steps to rectify the error.
- 4.8 You grant ECA a non-exclusive, irrevocable and royalty-free licence to, and to authorise others to, use, reproduce, adapt and promote the Project Material, in whole or in part, worldwide in perpetuity, for any purpose relating to ECA's objectives, as set out in the Recitals and ECA Constitution.

5. Acknowledgement

- 5.1 You must ensure the following acknowledgement and disclaimer is included in relation to the Project and in any use of the Project Material, including any publications, promotional material, and third party uses approved under clause 4.3:

"This project was funded by Energy Consumers Australia Limited (www.energyconsumersaustralia.com.au) as part of its grants process for consumer advocacy projects and research projects for the benefit of consumers of electricity and natural gas.

The views expressed in this document do not necessarily reflect the views of Energy Consumers Australia."

6. Payments

- 6.1 Subject to the provisions of this clause 6, ECA will pay you the Approved Amount in accordance with the Payment Milestones, within 30 days of receipt of a valid tax invoice or invoice, as applicable. You must only use the funds paid by ECA to complete the Project and in accordance with the terms of this agreement.
- 6.2 Prior to ECA releasing any payments, you must provide ECA with:
 - (a) written assurance that you have performed your obligations under this agreement which are relevant to that payment; and
 - (b) a valid tax invoice or invoice, as applicable, which includes the Project name, Payment Milestones met, and bank details for payment.
- 6.3 After 3 months from completion of the Project or the last Delivery Date, whichever is earlier, ECA will deem any funds unclaimed by you as being unspent. ECA is not obliged to pay you that portion of the Approved Amount and may return those funds to ECA's uncommitted funds pool for reallocation to other projects at ECA's discretion.
- 6.4 You acknowledge and agree that ECA may withhold payments to you if you refuse, neglect or fail to perform your obligations under this agreement, until those obligations are performed in accordance with this agreement.

7. Advocacy

- 7.1 You must not make any press release or other public announcement relating to this agreement, including that you have entered into this agreement, without the prior written approval of ECA, which

will not be unreasonably withheld. You must comply with ECA's reasonable directions in relation to any approved press release or public announcement.

- 7.2 You must advise ECA of the results of the advocacy covered by the Project as soon as reasonably practicable, but no later than within thirty days of becoming aware of those results.

8. Records and reporting

- 8.1 You must maintain appropriate records, accounts and reports concerning the expenditure of the Approved Amount. You must provide these to ECA on request.

- 8.2 If requested by ECA, you must, as soon as reasonably practicable and no later than 2 months after the request date, provide ECA with a written report which sets out:

- (a) a comprehensive description of the objectives of the Project;
- (b) issues that have been considered for the purposes of the Project;
- (c) outcomes that have been or will be achieved in connection with the Project;
- (d) costs and expenses associated with the Project, including a detailed breakdown of these costs and expenses against the Project plan, objectives and timeline set out in your Application;
- (e) your assessment of the effectiveness of the Project in accordance with any guidelines specified by ECA; and
- (f) any other information reasonably required by ECA.

- 8.3 ECA may conduct an audit of your Project records, accounts and reports, by providing you with 7 days' written notice, on the following terms:

- (a) ECA may, or may engage an independent third party, to conduct an audit of your current and likelihood of future compliance with this agreement;
- (b) you must provide supervised access to your premises, books, records, documents, computer systems, equipment, and other property relevant to this agreement, to facilitate the audit;
- (c) the audit must be conducted during ordinary business hours, unless otherwise agreed with you in writing.

9. Warranties

- 9.1 You warrant and represent to ECA:

- (a) you have the full power and authority to enter into and perform your obligations under this agreement;
- (b) you will complete the Project and perform your obligations under this agreement in a careful and competent manner, to the best of your skill and ability;
- (c) you will comply with all relevant laws and ECA policies that ECA advises you of, including in relation to work, health and safety when attending an ECA site, in relation to the Project and in performing your obligations under this agreement;
- (d) you are not aware of any actual or potential litigation, arbitration, mediation, or proceedings, including investigations which may involve you and which could have an adverse effect on your ability to perform your obligations under this agreement;
- (e) you will promptly notify and fully disclose to ECA in writing of any actual or potential event or occurrence that might have an adverse effect on your ability to perform your obligations under this agreement, including insolvency, bankruptcy and anything analogous to this;
- (f) you have not entered into agreements which may conflict with your obligations under this

agreement, and no conflict is likely to arise in your performance of your obligations under this agreement; and

- (g) the Project Material, including the Project Deliverables and Project report, will not infringe the Intellectual Property Rights of any other person.

9.2 ECA warrants and represents to you that it:

- (a) has the full power and authority to enter into and perform its obligations under this agreement;
- (b) will perform its obligations under this agreement in a careful and competent manner, to the best of its skill and ability; and
- (c) will comply with all relevant laws in performing its obligations under this agreement.

10. Indemnity and liability

10.1 You indemnify ECA and its personnel, including its employees, and contractors, but excluding you (**Indemnified Parties**) against losses, damages, claims, costs, and expenses made against, or suffered or incurred by the Indemnified Parties as a result of any claims or proceedings brought or threatened against any or all of the Indemnified Parties as a result of, or in relation to the performance of your obligations under this agreement and publication of the Project Materials.

10.2 Your liability to indemnify the Indemnified Parties will be reduced proportionally to the extent that the Indemnified Parties' acts or omissions contribute to those losses, damages, claims, costs and expenses. To the extent permitted by law, the Proportionate Liability Legislation is excluded and does not apply to any claims or proceedings in relation to this agreement.

11. Dispute resolution

11.1 Subject to clause 11.2, if a dispute arises in relation to this agreement, the parties must attempt to settle the dispute, acting reasonably and in good faith, in accordance with clauses 11.3 to 11.10 before commencing court proceedings or any other dispute resolution process.

11.2 A party may commence proceedings to seek urgent, interim or interlocutory relief.

11.3 A party claiming that a dispute has arisen in relation to this agreement must provide the other party with written notice of the dispute, including the nature of the claim, facts on which the claim is based, copies of relevant documents relating to the claim, and detailed particulars quantifying the claim.

11.4 The parties must seek to resolve the dispute within 21 days of the other party receiving the claim, and may agree to extend this period in writing.

11.5 If the parties are unable to resolve a dispute within the time period specified or agreed in clause 11.4, either party may refer the dispute to mediation by a mediator agreed by the parties in writing.

11.6 If the parties are unable to agree on a mediator within 14 days after dispute is referred to mediation, either party may refer the matter for mediation by the Chair of Resolution Institute (ACN 008 651 232); or the Chair's designated representative.

11.7 The most recent version of the Resolution Institute Mediation Rules will apply to any mediation.

11.8 Each party must meet its own costs of and in connection with any mediation, except the cost of the mediation, including the mediator's fees and disbursements, which the parties will equally share.

11.9 If the dispute is not settled within 28 days (or a longer period as agreed between the parties in writing) after appointment of the mediator, or if no mediator is appointed within 28 days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law for the resolution of the dispute.

11.10 To the extent practicable to do so, you must continue performing your obligations under this agreement while any disputes are underway, other than any obligations which are the subject of the

dispute.

12. Termination

- 12.1 Either party may terminate this agreement if the other party breaches this agreement and that breach cannot be rectified, or the party fails to rectify the breach within 30 days of receiving written notice by the party terminating the agreement.
- 12.2 ECA may terminate this agreement immediately by providing you with written notice if you:
- (a) become the subject to any form of insolvency or bankruptcy administration;
 - (b) do not commence the Project within 12 months of the date of this agreement and ECA may recover any payments made as a debt immediately due and payable; or
 - (c) suspend any activity on the Project for longer than 60 days.
- 12.3 If ECA terminates the agreement under clauses 12.1 or 12.2, you must immediately repay any amounts paid to you by ECA under this agreement.
- 12.4 Neither party is responsible for their failure to perform their obligations under this agreement if they are prevented from or delayed in performing those obligations due to a Force Majeure Event, provided they:
- (a) notify the other party in writing of the Force Majeure Event and how it has impacted their ability to perform their obligations under this agreement;
 - (b) use reasonable efforts to mitigate the effect of the Force Majeure Event; and
 - (c) perform their obligations under the agreement to the extent they are able, as soon as reasonably practicable.
- 12.5 The parties must work together, acting reasonably and in good faith, to mitigate the effects of a Force Majeure and, where reasonably practicable, to vary this agreement in writing to the extent necessary to achieve its intended outcomes.
- 12.6 If a Force Majeure Event prevents a party from performing their obligations for longer than 90 days, the other party may terminate this agreement by providing written notice.

13. Confidentiality

- 13.1 Subject to clause 13.1, you cannot disclose any information about ECA's confidential affairs, the ECA Material, or any confidential information about the Project or this agreement without ECA's prior written approval.
- 13.2 You may disclose confidential information:
- (a) where required by law;
 - (b) to your professional advisors where necessary for the purpose of obtaining advice about this agreement;
 - (c) where that information enters the public domain, except if it has entered the public domain due to breach of this agreement; and
 - (d) where ECA has approved that disclosure, subject to any conditions notified by ECA.
- 13.3 If you disclose confidential information, you must:
- (a) take reasonable steps to consult with ECA prior to that disclosure, and comply with ECA's reasonable directions in relation to the form and content of the disclosure;
 - (b) only disclose the information to the extent necessary; and
 - (c) if it is not reasonably practicable or lawful for you to consult with ECA under clause 13.3(a),

to the extent permitted by law, notify ECA after the disclosure and provide details of the circumstances, form and content of the disclosure.

14. Privacy

14.1 If you collect, store or use any personal information in relation to this agreement, you must fully comply with the provisions of the *Privacy Act 1988* (Cth) and the ECA privacy policy and not engage in any practices that may breach privacy legislation applicable to the performance of the services. You must:

- (a) notify ECA immediately if you become aware of a breach or possible breach;
- (b) make yourself and your personnel, including any contractors and consultants you engage, available to assist ECA with any privacy audit or investigation initiated in relation to that personal information; and
- (c) provide reasonable access to any systems on which that personal information is collected, stored or used.

15. Assignment and novation

15.1 Neither party may assign, transfer, novate, or otherwise deal in any manner with, all or any part of their benefits or obligations under this agreement, including any rights, remedies, powers and duties, to any other person without the prior written approval of the other party, which must not be unreasonably withheld.

16. Notices

16.1 Any notice under this agreement must be given by email or post to the party's nominated contact as specified in the Key Terms.

16.2 Subject to clause 16.3, notice will be taken to be delivered to and received by a party, where delivered by:

- (a) hand, at the time of delivery;
- (b) post, 3 Business Days after the posting date where delivered in Australia, or 7 Business Days after the posting date where delivered outside Australia;
- (c) email, at the time in the place to which it is sent equivalent to the time shown on the transmission email produced when sent, unless if the sender receives an automated delivery failure notification indicating the email has not been delivered.

16.3 If notice is received after 5pm on a Business Day at the location of the receiving party's address as specified in the Key Terms, that notice will be taken to be received at 9am on the following Business Day in that location.

17. General

17.1 This agreement is governed by the laws of the state of New South Wales, and the parties submit to the jurisdiction of the courts of the state of New South Wales.

17.2 The parties acknowledge that in entering into this agreement they have not relied on representations or warranties about its subject matter, except as they are contained in this agreement.

17.3 This agreement supersedes any previous written or oral agreement or negotiation between the parties in relation to the matters dealt with in this agreement, and contains the whole agreement between the parties relating to the subject matter of this agreement.

17.4 Each provision of this agreement is individually severable. If any provision is or becomes

unenforceable or invalid, it will be treated as being severed from the agreement, but the rest of the agreement will not be affected.

- 17.5 You are not, by virtue of this agreement, or for any purpose, an employee, partner, or agent of the ECA, or invested with any power or authority to bind or represent ECA. You must not represent yourself, and must ensure your personnel, including any contractors and consultants you engage in relation to the Project, do not represent themselves, as being associated with or able to bind or represent ECA.
- 17.6 Clauses 4 (Intellectual property rights), 5 (Acknowledgement), 9 (Warranties), 10 (Indemnity and liability), 11 (Dispute resolution), 13 (Confidentiality), 14 (Privacy), 15 (Assignment and novation), 16 (Notices) and 17 (General) survive termination or expiry of this agreement.

This AGREEMENT is made on the date it is last signed by a party.

EXECUTED AS AN AGREEMENT:

Signed for and on behalf of the **RECIPIENT:**

Signature

Name

Title

Date

Signed for and on behalf of **ENERGY
CONSUMERS AUSTRALIA** by:

Signature

Name

Title

Date

Annexure A

Application to ECA For Advocacy and/or Research Funding

(Attached)