

AGREEMENT TO FUND CONSUMER ADVOCACY/RESEARCH PROJECTS

Application No:

RECIPIENT:

Recipient Name	
Address	
Phone number	
Project Manager	
Email Address	
Person who will execute funding agreement	
Email Address	
ABN (if applicable)	
Date of application	
Project title	
Date of approval of the application	
Approved amount (exclusive of GST, if applicable)	
Variations from funding application (if any)	
Milestones	

This AGREEMENT is made on the date of execution below between the **RECIPIENT** and **ENERGY CONSUMERS AUSTRALIA LIMITED** (ABN 96 603 931 326) (**ECA**) of Suite 2, Level 20, 520 George Street, Sydney.

RECITALS

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).

The Recipient submitted an application to ECA for advocacy and/or research funding on the Date of Application, a copy of which is annexed to this Agreement and marked "A".

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

ECA proposes to enter into an Agreement with the Recipient to provide the Project Funds to the Recipient.

The Recipient has agreed to accept the Project Funds in accordance with the terms and conditions of this Agreement.

OPERATIVE PROVISIONS

1 Definitions and interpretation

1.1 In this Agreement, terms defined in the table on the first page have the meaning given to them in the table, and except where the context otherwise requires:

"Agreement" means this Agreement including any annexures and Schedules attached to it.

"Application" means the application annexed to this Agreement and marked "A," forming part of the Agreement.

"Business Consumer" means a consumer that is not a Domestic Consumer.

"Domestic Consumer" means a domestic consumer as determined by ECA or in any guidelines issued by ECA from time to time.

"Guidelines for grant allocation" means guidelines for grant allocation published on the ECA's website.

"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" includes the following rights of an author of copyright material:

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

“Party” means a party to this Agreement.

“Project” means the project specified in the Description of the Project and the Application.

“Project Funds” means the Approved Amount in respect of the Project.

“Project Materials” means any materials developed or delivered as part of the Project (including the material listed in the "Outputs and outcomes of the project" section of the Application) by or on behalf of the Recipient.

1.2 In this Agreement, except where the context otherwise requires:

- 1.2.1 A singular word includes a plural, and vice versa.
- 1.2.2 A word which suggests one gender includes the other gender.
- 1.2.3 If a word is defined, another part of speech has a corresponding meaning.
- 1.2.4 Any person or company means and includes the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require (including persons taking by novation).
- 1.2.5 Words and expressions importing natural persons include partnerships, bodies corporate, associations and governmental and local authorities and agents.
- 1.2.6 A reference to legislation (including subordinate legislation) is to legislation in force from time to time.
- 1.2.7 A Party to this agreement includes a permitted assignee or permitted substitute of that Party (including persons taking by novation).
- 1.2.8 Headings are for convenience only and do not affect interpretation.
- 1.2.9 Monetary references are references to Australian currency.
- 1.2.10 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.

1.3 To the extent of any inconsistency between the Application and the other parts of this Agreement, the other parts of this Agreement prevail.

1.4 For the purposes of this Agreement, ECA may issue a notice, direction, or other communication in accordance with a procedure determined by ECA.

2 Funds provided.

2.1 ECA will, subject to all the terms and conditions of this Agreement, including any Special Conditions, provide to the Recipient the Approved Amount in accordance with this clause 2.

2.2 The Recipient will invoice (in the form of tax invoice if GST is applicable) ECA for the Approved Amount in accordance with the payment schedule approved by ECA (unless otherwise specified in the Special Conditions). The invoice must contain the Recipient's bank account details for payment.

- 2.3 ECA will pay the Recipient the amount due under an invoice within 30 days after the date of receipt of a correctly rendered invoice or such earlier time as ECA determines in its sole discretion.
- 2.4 ECA may, by notice to the Recipient, hold back payments to the Recipient if the Recipient refuses, neglects or fails to perform its obligations under this Agreement, until such obligations are completed in accordance with this Agreement.

3 Obligations on Recipient

- 3.1 The Recipient will commence the Project within a reasonable timeframe agreed with ECA, following the date of this Agreement.
- 3.2 The Recipient will use the funds provided by ECA only for the purposes of the Project and in accordance with this Agreement.
- 3.3 The Recipient will carry out the Project in accordance with the project plan, objectives and timetable set out in the Application (where applicable). Where the Recipient becomes aware that it will not be able to complete the Project in accordance with these requirements, it will immediately notify ECA and comply with the ECA's reasonable directions in relation to any changes to the project plan, objectives, or timetable.
- 3.4 The Recipient may only engage a contractor or consultant to carry out the entire Project with ECA's prior written consent, and subject to all Intellectual Rights in material developed or delivered as part of the Project vesting in the Recipient. Where ECA provides its consent, the Recipient will if requested by ECA provide copies of the contractor or consultant's contract and invoices with the Recipient's invoice for payment of the Approved Amount.
- 3.5 Where the Recipient intends to engage a contractor or consultant to carry out all or part of the Project, the Recipient must comply with any relevant process and reporting procedures specified in the Guidelines for grant allocation.
- 3.6 The Recipient will maintain, and make available to ECA on request, appropriate records, accounts, and reports concerning the expenditure of the Approved Amount.
- 3.7 The Recipient will, upon 7 days' notice during normal business hours or as otherwise agreed:
- 3.7.1 permit and provide to ECA; or
 - 3.7.2 arrange for an independent third party,
- supervised access to the Recipient's premises, books, records, documents, computer systems, equipment, and other property relevant to the performance of this Agreement to verify compliance by the Recipient with its obligations under this Agreement and its likely capacity to continue to comply with its obligations in the future.
- 3.8 The Recipient will provide ECA:
- 3.8.1 as soon as is reasonably practicable after receiving a written request from ECA during the course of the Project; and
 - 3.8.2 in any event, within 2 months after the completion of the Project,
- with a written report that sets out:
- 3.8.3 a comprehensive description of the objectives of the Project.
 - 3.8.4 the issues that have been considered for the purposes of the Project.
 - 3.8.5 the outcomes that have been achieved in connection with the Project.

- 3.8.6 the costs and expenses associated with the Project, including a detailed breakdown of these costs and expenses against the requirement in clause 3.3; and
- 3.8.7 the Recipient's assessment of the effectiveness of the Project in accordance with any guidelines specified by ECA.
- 3.9 The Recipient will provide a copy of the Project Material to ECA on or prior to publication (including communicating to the public in any media) of any Project Materials. If the Project Material is not substantially in accordance with the Application, ECA, acting reasonably, may direct the Recipient to withdraw or amend the Project Material.
- 3.10 The Recipient must provide to ECA written assurance of the Recipient's performance of the Agreement's special conditions, relevant to the payment of an instalment of the Approved Amount together with an invoice for the instalment. Before final payment, an electronic copy of the written output of the Project including any Project Materials produced by or on behalf of the Recipient must be submitted to ECA.
- 3.11 The Recipient retains ownership of Intellectual Property Rights in the Project Materials.
- 3.12 The Recipient grants to ECA a perpetual, irrevocable, worldwide, royalty-free and licence fee free, non-exclusive licence (including the right of sub licence) to use, reproduce, modify, adapt, publish, edit, transmit, display, distribute or sublicense the Project Materials solely for purposes associated with ECA's objects (as described in the Recitals). In particular, ECA may publish any Project Materials resulting from the Project on its website.
- 3.13 ECA, in its sole discretion, will deem any funds unclaimed by the Recipient under this Agreement three months after the completion date specified in the Application as unspent. ECA will return any such funds to ECA's uncommitted funds unless ECA has approved by notice an extension for the Project.
- 3.14 The Recipient must use its best endeavours to ensure that any author of material comprised in the Project Materials resulting from the Project has provided his or her voluntary and unconditional consent to all or any acts or omissions by the Recipient and its assignees, licensees, or successors in title, including ECA, which would otherwise infringe any Moral Rights the author may have in the Project Materials.
- 3.15 The Recipient will advise ECA of the results of the advocacy covered by the Project within a reasonable period, and in any event, no more than thirty days of becoming aware of those results.
- 3.16 Where ECA decides to seek an independent evaluation of the Project, the Recipient will participate in the evaluation (at its own costs) as reasonably required by ECA, including responding to any issues raised by ECA arising from the evaluation.

4 Warranty, indemnity, and other terms

- 4.1 The Recipient represents and warrants to ECA:
- 4.1.1 it will promptly notify and fully disclosed to ECA in writing any event or occurrence actual or threatened arising during the Agreement period which could have an adverse effect on the Recipient's ability to perform any of its obligations under this Agreement, including any insolvency, bankruptcy, or anything analogous to this.
- 4.1.2 it has full power and authority to enter into, perform and observe its obligations under this Agreement.
- 4.1.3 the execution, delivery and performance of this Agreement has been duly and validly authorised by the Recipient.
- 4.1.4 the execution and delivery of and compliance with its observations by it under this agreement do not:

- a) contravene any law to which it or any of its property is subject or any order or directive from a government agency binding on it.
- b) contravene its Constitution documents.
- c) contravene any agreement or instrument to which it is a party.
- d) contravene or infringe the intellectual property rights of any person; or
- e) contravene any obligation of it to any other person.

4.1.5 No litigation, arbitration, mediation, or proceedings, including investigations are taking place, pending, or threatened against the Recipient, which could have an adverse effect upon its capacity to perform its obligations under this agreement.

4.1.6 it has, and will continue to have and to use, the skills, qualifications, and experience, to perform the Project in an efficient and controlled manner, with a high degree of quality and responsiveness and to a standard that complies with this agreement.

4.1.7 it has and will continue to have the necessary resources, including financial resources to perform the Project, and it will use those resources to perform the Project.

4.2 The recipient acknowledges that ECA, in entering into this Agreement, is relying on the warranties, and represented representations contained in it.

4.3 Intellectual Property Rights and title to, or in relation to ECA material remains vested at all times in ECA.

4.4 The Recipient must not commercially exploit the work or outcomes of the Project without the agreement of ECA. It will be reasonable for ECA, as a condition of its agreement to seek reimbursement of some or all of the Approved Amount paid by ECA under this Agreement in a manner and over a period of time that enables the Recipient to financially benefit from the exploitation. ECA will not unreasonably refuse its agreement.

4.5 The Recipient will unconditionally indemnify and defend ECA and its members of staff, including member, employees, and contractors ("**Those Indemnified**") against losses, damages, claims, costs, and expenses made against, or suffered or incurred by Those Indemnified as a result of carrying out the Project or publication of the Project Materials under the Project. This indemnity continues after the completion of the Project and the termination or expiration of this Agreement.

4.6 Each party's liability for breach of this Agreement, or in tort or for any other common law or statutory cause of action relating to this Agreement, for all claims, is limited in the aggregate to the amount of the Approved Amount.

4.7 If any applicable legislation prohibits the exclusion of liability by a party in the manner contemplated by this clause 4 with respect to particular loss or damage, then:

- a) the exclusion does not apply to that loss or damage; and
- b) that party's liability is only limited or excluded with respect to that loss or damage in the manner permitted under that legislation (if any).

4.8 The Parties acknowledge that ECA has made no contribution, directly or indirectly (other than the grant of funding referred to in clause 2.1), to the Project or the publication of Project Materials under the Project nor have they supplied any information which the Recipient has used or may use in the compilation of such Project Materials.

4.9 The Recipient will include the following acknowledgement and disclaimer in all publications and promotional material relating to the Project:

"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."

- 4.10 Each provision of this clause, including each representation, warranty survives the expiration or termination of this Agreement.

5 Dispute Resolution

- 5.1 If a dispute arises out of or in relation to this Agreement, the Parties must attempt to settle the dispute in accordance with this clause 5 before resorting to court proceedings or any other dispute resolution process:

- 5.1.1 A Party claiming that a dispute has arisen out of or in relation to this Agreement, must give written notice of the dispute to the other Party. The notice must include, among other things, the nature of the dispute. On receipt of this notice, the Parties must within twenty-one days of receipt seek to resolve the dispute.
- 5.1.2 If the dispute is not resolved within a twenty-one-day period, or within such further period as agreed between the Parties in writing, the Parties must submit the dispute to a mediator mutually selected by the Parties.
- 5.1.3 If the Parties do not agree on a mediator within 7 days after the referral of the dispute to mediation, the Parties must submit the dispute to a person appointed by the Chair of Resolution Institute, ACN 008 651 232, Suite 602, Level 6, Tower B, Zenith Centre, 821-843 Pacific Highway, Chatswood, NSW; phone: 02 9251 3366, fax: 02 9251 3733, e-mail: infoaus@resolution.institute.com.au, or the Chair's designated representative.
- 5.1.4 The most recent version of the Resolution Institute Mediation Rules will apply to the mediation. These rules may be amended from time to time and are available from the Resolution Institute.
- 5.1.5 Each party must meet its own costs of and in connection with any mediation under this clause 5.
- 5.1.6 If the dispute is not settled within twenty-eight days (or such other period as agreed between the Parties in writing) after appointment of the mediator, or if no mediator is appointed within twenty-eight 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.
- 5.1.7 To the extent practicable to do so, the Recipient must continue performing this Agreement while a dispute is being dealt with in accordance with this clause 5, other than such obligations or parts of obligations which are the subject of the dispute.
- 5.2 Nothing in this clause 5 will prevent either Party from seeking urgent interlocutory relief.

6 Termination

- 6.1 ECA may terminate this Agreement immediately by notifying the Recipient if the Recipient:
- 6.1.1 is in breach of this Agreement and, where the breach is capable of being remedied, has failed to remedy the breach within 30 days after notice by ECA: or
- 6.1.2 becomes subject to any form of insolvency or bankruptcy administration; or
- 6.1.3 does 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

6.1.4 suspends activity on a Project or does not invoice ECA within 60 days of an invoice date set out in the special conditions.

6.2 On termination:

6.2.1 the Recipient must return any funds that have already been paid but are unspent to ECA;

6.2.2 ECA must pay the Recipient the funds for Project work performed up until the date of termination;

6.2.3 subject to this clause 6.4 and any other obligations that survive termination of this agreement, each party will be regarded as discharged from any further obligations under this agreement.

7 Notice, governing law, entire agreement, and general provisions

7.1 Notice for the purpose of this Agreement may be given by email or post at the address of a Party set out on the first page or at such address as given by a Party to the other for the purpose of this clause.

7.2 A posted notice will be deemed delivered after 3 Business Days. An email notice will be deemed delivered at the time in the place to which it is sent equivalent to the time shown on the transmission email produced when sent.

7.3 This Agreement is governed by the law in New South Wales, and the Parties submit to the jurisdiction of the New South Wales courts.

7.4 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, to the exclusion of any terms implied by law which may be excluded by contract.

7.5 Each provision of this Agreement is individually severable. If any provision is or becomes unenforceable or invalid, it is to be treated as being severed from the Agreement, but the rest of the Agreement will not be affected.

7.6 The Recipient is 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. The Recipient must not, and must ensure its personnel do not, represent itself as associated with or able to bind or represent ECA.

7.7 The Recipient must in carrying out this Agreement comply with the provisions of any relevant law, including, specifically, the Privacy Act, 1988 and any other law or policies notified to the recipient in writing from time to time.

7.8 The Recipient warrants that, to the best of its knowledge, after making diligent enquiry, at the date of signing this agreement, no conflict exists or is likely to arise in the performance of its obligations under this Agreement.

8 Novation or assignment of this agreement

8.1 Neither party may assign, transfer, novate, or otherwise deal in any manner with, all or any part of the benefit of this Agreement and any of its rights, remedies, powers, duties, and obligations under this Agreement to any person without the consent of the other party.

Annexure A

**APPLICATION TO ECA FOR ADVOCACY AND/OR RESEARCH FUNDING
(Attached)**