

AGREEMENT TO FUND CONSUMER ADVOCACY/RESEARCH PROJECTS

Application No

RECIPIENT

Recipient Name	
Address	
Phone number	
ABN (if applicable)	
Date of application	
Description of project	
Date of approval of the application	
Approved amount (exclusive of GST, if applicable)	
Special conditions (if any)	

This AGREEMENT is made on the date of execution below between the **RECIPIENT** and the **AUSTRALIAN ENERGY MARKET COMMISSION** of Level 5, 201 Elizabeth Street, Sydney NSW 2000, ABN 49 236 270 144 (the Commission) as directed by the Consumer Advocacy Panel (the Panel).

RECITALS

The Consumer Advocacy Panel was established under the *Australian Energy Market Commission Establishment Act 2004*. The Panel's functions include determining how grants for consumer advocacy projects and research projects for the benefit of consumers of electricity or natural gas (or both) are to be allocated (the Purpose).

The Commission's statutory functions include making, as directed by the Panel, grants towards such projects.

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

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

The Panel directed the Commission to enter into an Agreement with the Recipient to provide the advocacy and research funds to the Recipient.

The Recipient has agreed to accept the 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”.

“Business Consumer” means a consumer that is not a Domestic Consumer.

“Domestic Consumer” means a domestic consumer as determined by the Panel or in any guidelines issued by the Panel.

“Guidelines for grant allocation” means guidelines for grant allocation published on the Panel’s website.

“Party” means a party to this Agreement.

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

“Report” means an output, as identified in the "Outputs and Outcomes" section of the Application, which is in written form and is intended to be published for the purpose of contributing to public advocacy, and includes research reports and submissions to inquiries or public bodies, but does not include media releases, briefing notes, presentations or other material which is intended to be a summary.

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.
- 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.
- 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 is comprised of 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, the Panel may issue a notice, direction or other communication in accordance with a procedure determined by the Panel.

2 Funds provided

- 2.1 The Commission 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 The Recipient will invoice (in the form of tax invoice if GST is applicable) the Commission for the Approved Amount in accordance with the payment schedule approved by the Panel (unless otherwise specified in the Special Conditions). The invoice must contain the Recipient's bank account details for payment.
- 2.3 The Commission will pay the Recipient the amount due under an invoice within 30 days after the date of receipt of a correctly rendered invoice.
- 2.4 The Commission 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 10 days of the date of this Agreement.
- 3.2 The Recipient will use the funds provided by the Commission only for the purposes of the Project and in accordance with this Agreement.
- 3.3 The Recipient will, except to the extent this obligation is reduced or waived by the Panel, fund the Project so that:
 - 3.3.1 if the Project relates to Business Consumers, the Approved Amount is no more than 80% of the cost of the Project; or
 - 3.3.2 if the Project relates to Domestic Consumers, the Approved Amount is no more than 90% of the cost of the Project.
- 3.4 The Recipient will carry out the Project in accordance with the project plan 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 the Panel and comply with the Panel's reasonable directions in relation to any changes to the project plan or timetable.
- 3.5 The Recipient may only engage a contractor or consultant to carry out the entire Project with the Panel's prior consent. Where the Panel provides its consent, the Recipient will if requested by the Panel provide copies of the contractor or consultant's invoices with the Recipient's invoice for payment of the Approved Amount.
- 3.6 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.
- 3.7 The Recipient will maintain, and make available to the Panel on request, appropriate records, accounts and reports concerning the expenditure of the Approved Amount.
- 3.8 The Recipient will, upon 7 days notice during normal business hours or as otherwise agreed:
 - 3.8.1 permit and provide to the Panel; or
 - 3.8.2 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.

3.9 The Recipient will provide the Panel:

3.9.1 as soon as is reasonably practicable after receiving a written request from the Panel during the course of the Project; and

3.9.2 in any event, within 2 months after the completion of the Project,

with a report that sets out:

3.9.3 a comprehensive description of the objectives of the Project;

3.9.4 the issues that have been considered for the purposes of the Project;

3.9.5 the outcomes that have been achieved in connection with the Project;

3.9.6 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

3.9.7 the Recipient's assessment of the effectiveness of the Project in accordance with any guidelines specified by the Panel.

3.10 Prior to publishing a Report, the Recipient must:

3.10.1 provide the Panel with a draft of the Report, for the purposes of obtaining comments in relation to matters of fact, data and related calculations from representatives of the Ministerial Council of Energy;

3.10.2 consider any comments in relation to matters of fact, data and related calculations made by representatives of the Ministerial Council of Energy; and

3.10.3 if the Recipient does not accept the comments made by representatives of the Ministerial Council of Energy, provide in the Report an explanation for not accepting the comments.

3.11 The Recipient must not publish a Report:

3.11.1 until it has complied with the provisions of clause 3.10;

3.11.2 until the Panel has informed the Recipient that there are no comments in relation to the Report; or

3.11.3 until 11 business days after providing the Report to the Panel in accordance with clause 3.10.1 if the Panel has not responded to the Report,

whichever is earlier.

3.12 Draft or other reports relevant to the payment of an instalment of the Approved Amount must be provided to the Panel together with an invoice for the instalment. Before final payment, an electronic copy of the written output of the Project must be submitted to the Panel (except where the Project results in advocacy comprising oral submissions, in which case speaking notes or a transcript of the submissions must be submitted within one month of submission).

3.13 The Recipient retains ownership of intellectual property rights in 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. The Recipient licenses the Panel to exercise those intellectual property rights. In particular, the Panel may publish any report resulting from the Project on its website.

3.14 The Recipient will advise the Panel of the results of the advocacy covered by the Project within a reasonable period of becoming aware of those results.

3.15 Where the Panel decides to seek an independent evaluation of the Project, the Recipient will participate in the evaluation as reasonably required by the Panel, including responding to any issues raised by the Panel arising from the evaluation.

4 Warranty, indemnity and other terms

4.1 The Recipient must not commercially exploit the work or outcomes of the Project without the agreement of the Commission. It will be reasonable for the Commission in its agreement to seek reimbursement of the moneys the Commission had paid under this Agreement in a manner and over a period of time that enables the Recipient to financially benefit from the exploitation. The Commission will not unreasonably refuse its agreement.

4.2 The Recipient will indemnify and defend the Commission, the Panel and their members of staff, including commissioners, members, employees and contactors ("**Those Indemnified**") against losses, damages, claims, costs, and expenses made against, or suffered or incurred by Those Indemnified as a result of the carrying out of the Project or publication of the reports under the Project. This indemnity continues after the completion of the Project and the termination or expiration of this Agreement.

- 4.3 The Commission'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.
- 4.4 The Parties acknowledge that the Commission and the Panel have made no contribution, directly or indirectly (other than the grant of funding referred to in clause 2), to the Project or the publication of reports under the Project nor have they supplied any information which the Recipient has used, or may use in the compilation of such reports.
- 4.5 The Recipient will include the following acknowledgement and disclaimer in all publications relating to the Project:

"This project was funded by the Consumer Advocacy Panel (www.advocacypanel.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 the Consumer Advocacy Panel or the Australian Energy Market Commission."

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 LEADR (Lawyers Engaged in Alternative Dispute Resolution) , ACN 008 651 232, level 9, 15-17 Young Street, Sydney; phone: 02 9251 3366, fax: 02 9251 3733, e-mail: leadr@leadr.com.au, or the Chair's designated representative).

5.1.4 The LEADR Mediation Rules, as amended from time and time by LEADR and which is available from LEADR, will apply to the mediation.

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

Signed for and on behalf of Australian Energy)
Market Commission by its Chief Executive)
Steven Graham)

(Signature of Chief Executive)

in the presence of:)
)

.....)
(Print Name of Witness))

(Signature of Witness)