

Cover letter to be attached

**ACKNOWLEDGEMENT & ACCEPTANCE OF OFFER
OF GRANT FOR ENERGY EFFICIENCY FUND INITIATIVE**

I, (Position),¹ for
and on behalf of [insert entity name (A.B.N XX XXX XXX XXX)] acknowledge and accept
the terms and conditions specified in this Letter of Offer and in Attachments 1 and 2.

Signature:

Print Full Name:

Position/Office:

Date: / /

Signed in the presence of:

Witness:

Print Full Name:

Date: / /

¹ This must be a person with the legal capacity and authority to bind the organisation to the Grant Agreement.

Attachment 1 - Grant Details

Department/Agency administering the Grant: Essential Services Commission of South Australia
(Commission)

Organisation receiving the Grant: [insert Name] (Grantee)

Project Details: [insert details]

Eligible Activities: [include details from organisation's Application]

Outcomes:

Amount of the Grant: \$[*?]* (plus GST)

Funding Period:

Begins:

Ends:

Payment details:

Subject to the provision of [insert evidence required], the Commission will pay [organisation name] the Grant by [*?* insert number] \$[*?* insert amount] plus GST upon a receipt of valid Tax Invoice(s) from [organisation name].

Progress Reports [to be specified for each project]

Interim Deadlines:

[Detail any applicable deadlines (from the Application Form timetable)]

Insurance

Public Liability Insurance [insert amount]

Special Conditions:

[Set out any training requirements]

Attachment 2: Terms and Conditions

1. Purpose of the Grant

The Grantee must use the Grant only for the Project specified in Attachment 1 or any other purpose as agreed by the Commission.

2. Use of Project Funding

2.1. The Grantee may only use the Grant for:

2.1.1. expenditure on the Eligible Activities;

2.1.2. expenditure in accordance with the Project Budget;

2.1.3. expenditure in accordance with the Grant Agreement; or

2.1.4. on any other purpose or activities as agreed on by the Commission.

3. Payment of the Grant

The Grant will be paid by the Commission in accordance with the payment details in Attachment 1.

4. Special Conditions

4.1. The Grantee must comply with the Special Conditions specified in Attachment 1.

4.2. If any of the Special Conditions are inconsistent with another provision of the Grant Agreement, the Special Conditions prevail to the extent of the inconsistency.

5. Grantee's Obligations and Professional Skills

5.1. The Grantee and its approved agents, contractors, employees and volunteers must perform the Project professionally, diligently and competently and in accordance with any occupational health and safety and training requirements as detailed in the Grantee's application and in the special conditions of Attachment 1.

5.2. The Grantee must maintain proper records of the work performed pursuant to the Grant Agreement (including records of activities carried out and accounts of all moneys expended in undertaking the Project).

6. Delays in completing a deadline

6.1. Interim Deadlines

6.1.1. Where Interim Deadlines are outlined in Attachment 1, the Grantee must notify the Commission in writing if an Interim Deadline has not been met or it considers that an Interim Deadline is unlikely to be met.

6.1.2. The notice must set out:

6.1.2.1. the reason for the delay;

6.1.2.2. the anticipated date for achievement;

6.1.2.3. the anticipated effect the delay will have on the achievement of any subsequent deadlines; and

6.1.2.4. any anticipated effect the delay will have on the completion of the Project and compliance with the Project Budget.

6.2. End of Project Deadline

6.2.1. The Grantee must notify the Commission as soon as it becomes aware that there may be a delay to the end of the Project date.

6.2.2. The notice must set out:

6.2.2.1. the reason for the delay;

6.2.2.2. the anticipated end date; and

6.2.2.3. any effect on compliance to the budget.

6.2.3. The Commission must notify the Grantee within 14 days of receiving the notice whether it:

6.2.3.1. accepts the proposed end date;

6.2.3.2. declines the proposed end date and advises a revised date that is acceptable; or

6.2.3.3. declines the proposed end date and requires the Grantee to repay any unspent Grant amount.

7. Subcontracting

7.1. The Grantee must ensure that all agents, contractors, employees and volunteers are competent and have the necessary qualifications (including all training requirements) and experience appropriate to the tasks they perform as part of the approved Project under the Grant Agreement.

7.2. The Grantee must notify the Commission of intended subcontracts arising from the Grant.

7.3. The Grantee remains responsible for obligations performed by subcontractors to the same extent as if such obligations were performed by the Grantee itself.

- 7.4. The Commission expects no subcontracts will limit liability on the following:
- 7.4.1. personal injury, including sickness and death;
 - 7.4.2. loss of, or damage to, tangible property;
 - 7.4.3. infringement of Intellectual Property Rights;
 - 7.4.4. any liability to a third party arising from any negligent or wrongful act or omission of the Grantee, its employees, agents or subcontractors, or arising from any breach of the Grantee's contractual obligations to the Commission;
 - 7.4.5. an intentional tort; and
 - 7.4.6. fraud or dishonest.

8. Intellectual Property Rights

- 8.1. In carrying out the Project, the Grantee must ensure it does not infringe the Intellectual Property Rights of any person. The Grantee must keep the Commission indemnified against all costs, expenses and liabilities arising from or in connection with any claim that the carrying out of the Project by the Grantee infringes the Intellectual Property Rights of any person.
- 8.2. The Commission owns all Intellectual Property Rights in all things produced by the Grantee as part of the service. The Grantee must not publish any information contained in the materials without the express permission of the Commission.
- 8.3. The Grantee retains ownership of all Intellectual Property Rights existing prior to the date of the Grant Agreement.

9. GST and ABN

- 9.1. Unless otherwise indicated, all amounts and other consideration for any Taxable Supply made under the Grant Agreement are exclusive of any GST.
- 9.2. The Commission is not obliged to make payment of the Grant unless the Grantee has supplied a Tax Invoice within the meaning defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- 9.3. If GST is payable, or notionally payable, on a supply under or in connection with the Grant Agreement, the GST Amount is payable at the same time that the consideration for the supply is provided.
- 9.4. The Grantee represents that it is registered under *A New Tax System (Australian Business Number) Act 1999* (Cth).

10. Insurance

- 10.1. The Grantee must effect and maintain public and products liability insurance in the name of the Grantee for not less than the amount stated in Attachment 1 for any one event or such other amount as the Commission may reasonably require.
- 10.2. The Grantee must effect and maintain workers compensation insurance in accordance with the applicable workers compensation legislation.
- 10.3. The Grantee must hold and maintain any other insurance that is adequate and appropriate given the nature of the Project being undertaken by the Grantee and the risks entailed in the Project.
- 10.4. The Grantee must, if required by the Commission, provide proof that the policies of the insurance required by this clause have been effected and will be maintained for the duration of the Funding Period by providing certificates of currency in relation to those policies.

11. Provision of Information

During the Funding Period, the Grantee must provide any other information relevant to the Project and requested by the Commission (including documents, records, management accounts, financial statements, annual reports).

12. Reporting

- 12.1. The Grantee must provide Progress Reports to the Commission on the progress of the Project.
- 12.2. The Grantee must provide Statements of Expenditure to the Commission at the same time as it provides Progress Reports under clause 12.1.

13. Limitation of Liability

The Commission does not accept any responsibility or liability in the success or otherwise of the Project and is not liable for any losses which the Grantee suffers in undertaking the Project.

14. Confidentiality

- 14.1. The Grantee must not use Confidential Information disclosed by the Commission except for the purpose of undertaking the Project.
- 14.2. The Grantee must do everything reasonably possible to preserve the confidentiality of the Confidential Information.
- 14.3. The Grantee must not disclose any Confidential Information without the Commission's written approval or unless the disclosure is required by law or by an order of a court or tribunal.

- 14.4. The Grantee must notify the Commission promptly if it is aware of any unauthorised disclosure of the Confidential Information.
- 14.5. Confidential Information obtained by the Commission may be disclosed if:
 - 14.5.1. the disclosure is made to another who is also performing functions under the Essential Services Commission Act or an industry regulation Act;
 - 14.5.2. the disclosure is made with the consent of the Grantee;
 - 14.5.3. the disclosure is authorised or required by any other Act or law;
 - 14.5.4. the disclosure is authorised or required by a court or tribunal constituted by law; or
 - 14.5.5. the disclosure is to Parliament, the Governor, Cabinet or a Parliamentary or Cabinet committee or subcommittee;
 - 14.5.6. to any agency, authority, instrumentality, Minister or Officer of the State of South Australia to whom it is customary for the Commission to disclose information (whether or not the Commission is legally obliged to do so); or
 - 14.5.7. the disclosure is authorised by regulation.
- 14.6. The Commission will notify the Grantee before making any Confidential Information public. Under Regulation 4 of the *Essential Services Commission Regulations 2004*, the Commission is authorised to disclose Confidential Information to consultants engaged by the Commission in the performance of its functions.

15. Termination

- 15.1. The Commission may terminate the Grant Agreement at any time without prejudice to any other right or remedy by written notice to the Grantee, if the Grantee:
 - 15.1.1. is subject to any form of Insolvency Administration;
 - 15.1.2. is in breach of the Grant Agreement, the breach is capable of remedy and the Grantee fails to remedy that breach within 14 days from notice of that breach;
 - 15.1.3. is in breach of the Grant Agreement which breach is not capable of remedy;
 - 15.1.4. fails to perform, observe and carry out all agreements and obligations imposed upon the Grantee by the Grant Agreement; or
 - 15.1.5. abandons or refuses to proceed with the Project.
- 15.2. The Grant Agreement may be terminated upon written agreement between the Commission and the Grantee.

- 15.3. Upon termination of the Grant Agreement the Grantee must give the Commission:
- 15.3.1. a Statement of Expenditure incurred by the Grantee under the Project up to the date of termination; and
 - 15.3.2. a Report on the progress of the Project up until the date of the termination.
- 15.4. Upon termination of the Grant Agreement, the Commission may by notice in writing require the Grantee to repay any Grant amount which has not been expended on the Project to date.

16. Repayment of Grant

- 16.1. If at the end of the Funding Period, the Grantee has not expended the entire Grant, then the Grantee must notify the Commission within 14 days after the end of the Funding Period. The Commission may then either require the unexpended amount to be repaid to the Commission or enter into negotiations with the Grantee to extend the Funding Period.
- 16.2. The Grantee must repay to the Commission any funds which are not used in accordance with the Grant Agreement unless there has been written agreement between the parties.

17. Dispute Resolution

In the case a dispute arises between the Grantee and the Commission, before resorting to external dispute resolution mechanisms, the Parties to the Grant Agreement shall in good faith attempt to settle by negotiation any dispute in relation to the Grant Agreement, and where, practical, refer the matter to senior personnel who have not been involved in the dispute and have authority to intervene and facilitate resolution.

18. Rules and Legislation

The Grantee must comply with the laws in force in South Australia in the course of performing its obligations under the Grant Agreement during the Funding Period.

19. Acknowledgements

The Grantee acknowledges the Grant represents a one-off contribution by the Commission towards the Project, and the Grantee agrees any request for subsequent funding will require a new application to the Commission. The Commission is under no obligation to agree to pay any subsequent funding to the Grantee.

20. Grant is personal to the Grantee

The Grantee must not assign or encumber any of its rights and obligations under the Grant Agreement. While the Grantee may elect to enter into a subcontract, the Grantee cannot 'out-source' its obligations.

21. Prohibition on Trade of Credit for REES Energy Efficiency Activities or Energy Audits

21.1. For the purposes of this clause:

21.1.1. "**energy audit**" has the same meaning as in the *Electricity (General) Variation Regulations 2008* and the *Gas Regulations 1997*;

21.1.2. "**energy efficiency activity**" has the same meaning as in the *Electricity (General) Variation Regulations 2008* and the *Gas Regulations 1997*;

21.1.3. "**retailer**" means a relevant electricity retailer or a relevant gas retailer as defined in the *Electricity (General) Variation Regulations 2008* and the *Gas Regulations 1997*;

21.1.4. "**REES**" means the Residential Energy Efficiency Scheme established under Part 2AA of the *Electricity (General) Variation Regulations 2008* and Part 2AA of the *Gas Regulations 1997*;

21.1.5. "**targets**" means the greenhouse gas reduction target, energy audit target and priority group green house gas reduction target applicable to retailers under REES;

21.2. Where the Eligible Activities that are the subject of the Grant are also Energy Audits and/or Energy Efficiency Activities for the purposes of REES ("**REES Credits**"), the Grantee is prohibited from dealing with these REES Credits as though they are tradeable or can be sold, exchanged or otherwise traded to a retailer or another person for the purposes of that retailer or another retailer complying with its targets under REES.

22. Agreement Disclosure

22.1. The Grantee agrees to the public disclosure of the Grant Agreement by the Commission, whether by publication of the Grant Agreement in whole, summary or specific details.

22.2. Nothing in this clause derogates from:

22.2.1. the Grantees obligations under any provision of the Grant Agreement; or

22.2.2. the provisions of the Freedom of Information Act 1991 (SA).

23. Relationship

23.1. Nothing in the Grant Agreement constitutes any relationship of employer and employee or partnership, agency or joint venture between the parties.

23.2. The Commission has no obligations to the Grantee's employees, agents, subcontractors or volunteers.

23.3. The Grantee must pay all remuneration claims and other entitlements payable to its employees and subcontractors.

24. Survival

The clauses of the Grant Agreement relating to documents, Intellectual Property Rights, insurance, public and other statements, confidentiality and dispute resolution survive the expiry or termination of the Grant Agreement.

25. Entire Agreement

- 25.1. The Grant Agreement contains the entire agreement between the parties with respect to its subject matter.
- 25.2. The Grant Agreement supersedes any prior agreement, understanding or representation of the parties on the subject matter.

26. Proper Law

The laws in force in South Australia apply to the Grant Agreement.

27. Jurisdiction of Courts

- 27.1. The courts of South Australia have exclusive jurisdiction to determine any proceeding in relation to the Grant Agreement.
- 27.2. Any proceeding brought in a Federal Court must be instituted in the Adelaide Registry of that Federal Court.
- 27.3. The Grantee undertakes not to apply to transfer any proceedings to another registry of the Federal Court.

28. Notices

- 28.1. A notice includes any notice, consent, approval, authorisation, discretion or other communication required to be in writing under the Grant Agreement.
- 28.2. A notice must be in writing and signed by, or on behalf of, the sender addressed to the recipient and:
 - 28.2.1. delivered to the recipient's address;
 - 28.2.2. sent by pre-paid mail to the recipient's address;
 - 28.2.3. transmitted electronically; or
 - 28.2.4. transmitted by facsimile to the recipient's facsimile number.
- 28.3. A notice given to a person in accordance with this clause is treated as having been given and received:
 - 28.3.1. on the day of delivery if delivered before 5.00pm on a Business Day, otherwise on the next Business Day;
 - 28.3.2. if sent by pre-paid mail, on the third Business Day after posting;
 - 28.3.3. if transmitted electronically, upon actual receipt by the addressee; or
 - 28.3.4. if transmitted by facsimile and a correct and complete transmission report is received on the day of transmission: on that day if the report states that

transmission was completed before 5.00pm on a Business Day, otherwise on the next Business Day, provided that if the recipient receives by facsimile transmission a notice that is illegible, the recipient must notify the sender immediately and the sender must continue to retransmit the notice until the recipient confirms that it has received a legible notice. The rules in relation to transmission reports as stated above apply.

28.4. A party may notify their change of address or facsimile number from time to time by giving written notice to the other party.

29. Waiver

29.1. Any waiver of any provision of the Grant Agreement is ineffective unless it is in writing and signed by the party waiving its rights.

29.2. A waiver by either party in respect of a breach of a provision of the Grant Agreement by the other party is not waiver in respect of any other breach of that or any other provision.

29.3. The failure of either party to enforce at any time any of the provision of the Grant Agreement must not be interpreted as a waiver of such provision.

30. Variation of Agreement

30.1. A party may at any time give written notice to the other proposing a variation to the Grant Agreement.

30.2. Any variation of the Grant Agreement must be in writing and signed by both parties.

31. Severance

If any provision or part of a provision of the Grant Agreement is invalid or unenforceable in any jurisdiction:

31.1. the provision must be read down for the purposes of the operation of that provision in that jurisdiction, if possible, so as to be valid and enforceable; or

31.2. if the provision cannot be read down, it must be severed if it is capable of being severed without affecting the remaining provisions of the Grant Agreement or affecting the validity or enforceability of that provision in any jurisdiction and the parties must consult in good faith to determine whether any amendment or substituted provision is required.

32. Auditor General

Nothing in this Grant Agreement derogates from the powers of the Auditor-General under the Public Finance and Audit Act 1987 (South Australia).

33. Disclosure of Project Deliverables

33.1. The Commission may disclose information provided by the Grantee to allow the Commission to publically report on the success of the EEFI Scheme.

- 33.2. This information may include:
- 33.2.1. the quality of the performance of the organisation;
 - 33.2.2. the organisations compliance with the Grant Agreement;
 - 33.2.3. evaluations of the Program;
 - 33.2.4. the types of services undertaken;
 - 33.2.5. what has been achieved against the criteria;
 - 33.2.6. the number of households benefitting from the Project and Program; and
 - 33.2.7. energy efficiency benefits.

34. Definitions

In this Grant Agreement:

- 34.1. **Application** means the Grantee's Application Form submitted to the Commission in applying for the Grant;
- 34.2. **Business Day** means any day that is not a Saturday or Sunday or a public holiday;
- 34.3. **Commission** means the Essential Services Commission of South Australia established as a body corporate under the *Essential Services Commission Act 2002*;
- 34.4. **Confidential Information** means information disclosed which is confidential by its nature or by the circumstances in which it is disclosed or is designated by the parties as confidential or identified in terms connoting its confidentiality, but does not include information which is or becomes public knowledge other than by breach of the Grant Agreement;
- 34.5. **EEFI Scheme** means the Energy Efficiency Fund Initiative (**EEFI**);
- 34.6. **Eligible Activities** means the activities specified in Attachment 1;
- 34.7. **Funding Period** means the time period set out in Attachment 1;
- 34.8. **Grant Agreement** includes the Grantee's Application, the signed Acknowledgement and Acceptance of the Offer, the Grant Details and the Terms and Condition;
- 34.9. **Grant** means the funds made available to the Grantee by the Commission as provided in the Agreement;
- 34.10. **Grantee** means the recipient of the Grant as stated in Attachment 1;
- 34.11. **GST** means the tax imposed under GST Law;
- 34.12. **GST Law** has the meaning attributed in the *A New Tax System (Goods and Services Tax) Act 1999*, and terms related to GST such as **ABN, Taxable Supply** and **Tax Invoice** have the meaning attributed in the GST Law;
- 34.13. **Insolvency Administration** means:

- (a) an administrator is appointed to the Grantee or action is taken to make that appointment;
- (b) the Grantee resolves to be wound up;
- (c) an application is made to a court for an order or an order is made that the Grantee be wound up (whether on grounds of insolvency or otherwise);
- (d) the Corporate Affairs Commission issues a certificate for the winding up of the Grantee;
- (e) the Grantee ceases to carry on business;
- (f) a receiver or a receiver and manager of property of the Grantee is appointed whether by a court or otherwise;
- (g) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of the Grantee or one of them is appointed, whether or not under an order;
- (h) the Grantee enters into a compromise or arrangement with its creditors or a class of them; or
- (i) the Grantee is, or states that it is, unable to pay its debts when they fall due.

34.14. **Intellectual Property Rights** means any patent, copyright, trademark, trade name, design, trade secret, know how or other form of intellectual property rights whether arising before or after the execution of the Grant Agreement and the right to registration of these rights;

34.15. **Interim Deadlines** means the deadlines outlined in Attachment 1;

34.16. **Letter of Offer** means the letter sent to the Grantee regarding the Grant offer for EEFI Scheme funding, to which these Terms and Conditions are attached;

34.17. **Project** means the Project described in Attachment 1;

34.18. **Project Budget** means the Project Budget attached to the Grantee's Application or the Expenditure amounts listed in the Grantee's Application;

34.19. **Progress Report** means the reports to the Commission on the progress of the Project as specified in Attachment 1;

34.20. **Statement of Expenditure** means the statement provided by the Grantee to the Commission detailing the activities undertaken and the amounts expended on those Activities.