

Dated

HEALTHIER HOMES
CANTERBURY SCHEME

SERVICE PROVIDER
AGREEMENT

Service Provider Name:

Service Provider Number:

Contact Reference:

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DRAFT

AGREEMENT made this [] day of [] 2019

BETWEEN

- (1) **CANTERBURY REGIONAL COUNCIL** a local council under the Local Government Act 2002 ("the Council")

AND

- (2) **[NAME OF SERVICE PROVIDER] (delete as appropriate)** [a company registered under the Companies Act 1993 with company number [] and having its registered office at []] **OR** [a charitable trust duly incorporated under the Charitable Trusts Act 1957] **OR** [a sole trader with a trading address at []] **OR** [a partnership with its trading address at []] **OR** [a limited partnership registered under the Limited Partnerships Act 2008 and having its registered office at []].

INTRODUCTION/BACKGROUND

- A. The Council is a local authority governed by the Local Government Act 2002. The purpose of the Council is to meet the current and future needs of communities for good-quality local infrastructure, local public services, and performance of regulatory functions in a way that is most cost-effective for households and businesses.
- B. To achieve those objectives in the residential sector, the Council has established the Healthier Homes Canterbury Scheme under which the Council provides access to services and a pre-approved level of funding (up to \$6,000 including GST) (**Funding Amount**) to assist home owners with the installation of products to make their homes perform to a higher level of sustainability, including insulation, ventilation, clean heating appliances and fireplace removal as part of a clean heating package. This is to be operated under a voluntary targeted rate (**VTR**) scheme (**the Healthier Homes Canterbury Scheme**), under which ratepayers are able to pay off the Funding Amount through their rates.
- C. The Council has completed due diligence in relation to the capability and capacity of the Service Provider to provide the service, and also relies on the warranties provided by the Service Provider in this Agreement. The Council wishes to appoint the Service Provider to provide Installation services relating to the Healthier Homes Canterbury Scheme and the Service Provider wishes to accept that appointment. The purpose of this Agreement is to record the terms and conditions applying to that appointment and to any Installation or service carried out by the Services Provider that forms part of the Healthier Homes Canterbury Scheme.
- D. The Healthier Homes Canterbury Scheme will apply only to Qualifying Homes (as defined below).

1. Definitions and Interpretations

1.1 **Definitions:** In this Agreement, unless the context requires otherwise:

- 1.1.1 **Agreement** means this Service Provider Agreement and includes all schedules attached to, and all documents referred to in, this Agreement.
- 1.1.2 **Approved Part** has the meaning in clause 4.4.
- 1.1.3 **Approved Products** means the items that have met standards for installation as part of the Healthier Homes Canterbury Scheme, with the current Approved Products listed in Schedule 1. The list of Approved Products may change from time to time at the Council's sole discretion. The current list of Approved Products will be available at all times from the EECA website and the Council's list of approved products. .
- 1.1.4 **Audit** means review and/ or inspection by the Council of the Service Provider's Records, premises and other property as required. The parties note that EECA has a different definition of this term as outlined in EECA's Quality and Audit Manual and that this definition takes precedence over the EECA definition where EECA is not a party to the audit process.
- 1.1.5 **Best Industry Practice** means, in relation to any activity or service, the best practice or standards (recognised nationally or internationally) for that type of activity or service (in terms of quality, productivity, effectiveness and performance).
- 1.1.6 **Business Day** means any day which is not a Saturday, Sunday or public holiday (as defined in section 44(1) of the Holidays Act 2003).
- 1.1.7 **Claim** means an invoice submitted by the Service Provider to the Council for payment under the terms of this Agreement. (Note also the definition of EECA Claim below).
- 1.1.8 **Commencement Date** means the date that this Agreement is signed by both parties or on **[enter date]**, whichever is later.
- 1.1.9 **Confidential Information** means all of each party's confidential information that comes into the other party's possession or knowledge, and includes this Agreement, all information relating to business secrets, commercial information, processes, methods and other confidential information produced or obtained in connection with or related to this Agreement.
- 1.1.10 **Corrective Action** means the work carried out after an Audit, or an EECA Audit, as relevant, to bring a measure up to the scheme requirements, the investigation as to why corrective action was needed, the actions taken to prevent any recurrence, and, in the context of an EECA Audit, the consequent reporting required through GEM. Correct and corrected have corresponding meanings.
- 1.1.11 **EECA** means the Energy Efficiency and Conservation Authority.

- 1.1.12 **EECA Audit** means an Audit carried out by, on in conjunction with, EECA.
- 1.1.13 **EECA Claim/s** means an electronic report/s uploaded in EECA's GEM system by the Service Provider, for home insulation and only applies where the Installation is made in partnership with EECA.
- 1.1.14 **Engagement Form** means a form issued by the Council to the Service Provider pursuant to clause 4 and substantially similar to the form set out in Schedule 3.
- 1.1.15 **Funding Amount** means the amount to be paid to the Service Provider by the Council, in relation to the Installation, as set out in the Engagement Form order issued by the Council to the Service Provider in relation to that Installation in accordance with clause 4.
- 1.1.16 **GEM** means EECA's online database used for receiving EECA Claims and administering EECA Audits.
- 1.1.17 **Healthier Homes Canterbury Scheme (or scheme)** means the scheme under which the Council provides access to services and funding to assist Home Owners with the Installation of products (or removal of fireplaces) to make their Houses perform to a higher level of sustainability.
- 1.1.18 **Home Owner** means a person wishing to participate in the Healthier Homes Canterbury Scheme and holding legal title to the relevant House.
- 1.1.19 **House** means an existing residential dwelling located within the Council's territory and includes any part of the House.
- 1.1.20 **Insolvency Event** means anything that reasonably indicates that there is a significant risk that the Service Provider is, or will become, unable to pay its debts as they fall due including:
- (a) Any step being taken to put the Service Provider into bankruptcy, wind the Service Provider up or have a receiver, receiver and manager, administrator, liquidator or statutory manager appointed to, or in respect, of the Service Provider or any of its assets.
 - (b) An order being presented for the sequestration of the Service Provider's estate.
 - (c) A meeting of the Service Provider's creditors being called or held or the Service Provider entering into any type of arrangement with, or assignment for, the benefit of all or any of its creditors.
- 1.1.21 **Installation** means the installation by Council approved service providers of insulation, clean heating and ventilation and/or fireplace removal as part of a clean heating package.
- 1.1.22 **Installation Agreement** means the standard form agreement that is attached to the Ratepayer Application Form for the Healthier Homes Canterbury Scheme.

- 1.1.23 **Law** means any rules of common law, statute, regulation, by-law, ordinance or subordinate legislation in force from time to time and, in the case of the Service Provider, includes any applicable industry codes of conduct.
- 1.1.24 **Post-Installation Audit (PIA)** means the check carried out by the Service Provider after each Installation as per the PIA form included in EECA's Quality and Audit Manual (refer to Schedule 2).
- 1.1.25 **Qualifying Home** means a residential dwelling and, where partnering with EECA, that is built before 1 January 2000, and includes any part of that dwelling whether or not it has been renovated or altered since that date. A Qualifying Home also includes:
- (a) a dwelling that is part of a retirement village and occupied under a licence to occupy; and
 - (b) a dwelling owned by a territorial authority.
- A Qualifying Home excludes:
- (a) a residential dwelling of a type that is excluded from the Residential Tenancies Act 1986 under section 5(1)(a) – (k), (m), (q), (r), (t) – (tb), and (x) of that Act; and
 - (b) a residential dwelling owned by Housing New Zealand Corporation, or any other Crown entity, state department or ministry, or state owned enterprise.
- 1.1.26 **Quality Assurance Audit** means an audit carried out in accordance with Part B of Schedule 2 and which may be subject to review by Council, Council's nominated provider or EECA.
- 1.1.27 **Quote** means a quote provided by the Service Provider to the Home Owner for carrying out the Installation and any other services requested by the Home Owner. **Ratepayer** means, in relation to an Installation, the Home Owner;
- 1.1.28 **Ratepayer Application Form** means the standard form application that a Ratepayer must complete to have its eligibility to partake in the Healthier Homes Canterbury Scheme determined by the Council.
- 1.1.29 **Records** means all information, documents and records relating to this Agreement including records and reports submitted by the Service Provider, claims made and Installations claimed for by the Service Provider and the Service Provider's financial records, customer records and Quality Assurance Audit records.
- 1.1.30 **Subcontractor** means any person contracted by the Service Provider to deliver any of the Service Provider's obligations under this Agreement including record-keeping, reporting, assessments, installations of Approved Product or Quality Assurance Audits.
- 1.1.31 **Tax Invoice** means an invoice that meets the requirements of the Goods and Services Tax Act 1985.

1.1.32 **Termination Date** means the earlier of 30 June 2028 or the date this Agreement is terminated in accordance with clause 18 of this Agreement.

1.2 **Interpretation:** In this Agreement, unless the context requires otherwise:

1.2.1 **GST:** GST is payable at the same time and in the same manner as is any other amount payable under this Agreement, where that amount is subject to GST under the Goods and Services Tax Act 1985.

1.2.2 **Headings:** sections, clauses and other headings are for ease of reference only and will not affect the interpretation of this Agreement.

1.2.3 **Obligation:** any obligation not to do anything includes an obligation not to suffer or cause that thing to be done.

1.2.4 **References to clauses and schedules:** references to clauses and schedules are to clauses in, and the schedules to, this Agreement, and each schedule forms part of this Agreement and has effect as if set out in the body of this Agreement.

1.2.5 **References to documents:** references to any documents (however described) are references to that document as modified, notated, supplemented, varied or replaced from time to time by the Council.

1.2.6 **Statutory provisions:** references to any statutory provision include any statutory provision which amends or replaces it or and subordinate legislation made under it.

1.2.7 **Including:** references to "including" or any similar term do not imply any limitation; and

1.2.8 **Singular and plural:** the singular includes the plural and vice versa.

2. **Priority**

2.1 **Entire agreement:** This Agreement contains everything the parties have agreed in relation to the subject matter it covers. Subject to clause 11.1.3, no party may rely on any other agreement document or representations that relate to the subject matter covered in this Agreement and were executed or made before this Agreement was executed.

2.2 **Existing agreements:** For the avoidance of doubt, this Agreement replaces any existing agreement between the Council and the Service Provider relating to the Healthier Homes Canterbury Scheme and neither party shall have any liability to the other party in relation to the termination of that agreement.

3. **Eligibility, Appointment and Term**

3.1 **Eligibility:** Before appointment, the Service Provider must:

3.1.1 advise the Council in writing that it has the capability and capacity to undertake Installations and Audits in accordance with the requirements identified in Schedule 2;

referencing training undertaken and if applicable, work completed in other regions and/or current EECA risk score; and

- 3.1.2 in the case of insulation suppliers, complete one day's administration training (including an overview of EECA's GEM system, basics of the scheme, risk scores, post installation audit (PIA) reports and the Corrective Actions process) at EECA's office in Wellington (unless otherwise advised by the Council). Attendance at this training shall be at the Service Provider's expense.
- 3.2 In the context of insulation suppliers, the Service Provider should note that the first five properties insulated by the Service Provider under this scheme may be audited by EECA, in accordance with Schedule 2.
- 3.3 **Appointment:** The Council appoints the Service Provider, and the Service Provider agrees, to carry out the Installation (on a non-exclusive basis) for the following; insulation, clean heating, and fireplace removal on the terms and conditions set out in this Agreement.
- 3.4 **Term:** This Agreement commences on the Commencement Date and terminates on the Termination Date.
- 3.5 **Amendment:** The Council shall be entitled to make amendments to this Agreement by giving 10 Business Days prior written notice of the corresponding amendment to the Service Provider.
- 3.6 **Post termination work:** No payment shall be made by the Council to the Service Provider in respect of any Installation or any other work carried out after the Termination Date, and no claim for payment under this Agreement shall be made after the expiry of one calendar month from the Termination Date.
4. **Engagement for each Installation**
 - 4.1 **Request to Install:** The Council may, from time to time, request that the Service Provider carry out the Approved Part of an Installation by sending the Service Provider an Engagement Form which has been signed by the Council.
 - 4.2 **Response by Service Provider:** The Service Provider must notify the Council within 5 Business Days of receiving an Engagement Form if it does not wish to carry out the Approved Part of the Installation.
 - 4.3 **Service Provider Bound:** If the Service Provider does not inform the Council that it does not wish to carry out the Approved Part of the Installation in accordance with clause 4.2, it will be deemed to have accepted the appointment and must carry out the Installation under the terms of this Agreement.
 - 4.4 **Approved Part:** The Approved Part of an Installation is that part of an Installation which the Service Provider will carry out for an amount equal to the Funding Amount. If it becomes necessary for any reason to determine the exact part of an Installation which is the Approved Part, the Council may require the Service Provider to provide a detailed break-down of the costs of the Installation.

The Council may then, using that break-down, identify in its sole discretion which specific materials and hours of labour it purchased for the Funding Amount.

- 4.5 **Unapproved Installations:** If the Service Provider undertakes an Installation without an Engagement Form, and without a separate supply agreement with the Home Owner, the Service Provider will not be entitled to be paid by the Council and agrees it will not under any circumstance seek payment from the Home Owner. The Service Provider expressly agrees to the Home Owner having privity of contract in order to enforce this clause against the Service Provider.
- 4.6 **Documents required:** In order for the Council to approve an Installation, the Home Owner must provide the Council with a:
- (a) fully completed Ratepayer Application Form;
 - (b) executed Installation Agreement; and
 - (c) Quote that has been signed as accepted by the Home Owner. The Quote must set out the details of the Installation and that the Installation will not begin until the Installation Agreement has been executed and full approval for the Funding Amount has been provided by Council.
- 4.7 **Engagement Form:** Where the Council approves an Installation, and the Council wishes to engage the Service Provider to complete the Installation, the Council will provide the Service Provider with an Engagement Form in accordance with clause 4.1.
- 4.8 **Funding Amount:** The Funding Amount will be based on the Quote and the Home Owner's Healthier Homes Canterbury Scheme funding balance. The Service Provider acknowledges that Funding Amounts may vary and in no event will they exceed \$6,000 (including GST). For the avoidance of doubt, if the total cost of an Installation exceeds \$6,000 (including GST) (plus any subsidies) then it is the responsibility of the Service Provider to settle payment of any additional amounts with the Home Owner and the Council shall have no liability to pay any such additional amounts.
- 4.9 **Volumes:** The Council makes no representations or guarantees to the Service Provider regarding the number of Installations that the Service Provider will carry out in connection with this Agreement.

5. The Council's Obligations

- 5.1 Subject to clause 10, the Council will pay to the Service Provider the Funding Amount relating to each Installation that has been completed.
- 5.2 The Council will market the Healthier Homes Canterbury Scheme to stimulate demand in the residential sector. The extent of the Council's marketing is at the Council's sole discretion.
- 5.3 The Council will accept and approve Service Providers to deliver the scheme (refer to Section 3.1).

- 5.4 The Council will ensure that insulation assessments and Post Installation Audits are completed by the Service Provider, and that Service Providers will manage any Corrective Actions as identified by EECA or the Council.
- 5.5 The Council will deal with any complaints from Home Owners, and may refer any insulation-related complaints to EECA for mediation.

6. Service Provider's Obligations

6.1 In discharging its obligations, the Service Provider agrees:

- 6.1.1 That the Service Provider and any Subcontractor will use due care and skill, and will act with efficiency, diligence and in accordance with Best Industry Practice when carrying out Installations;
- 6.1.2 That the Service Provider and any Subcontractor will comply in all respects with current central and local government legislation and other requirements pertaining to Installations;
- 6.1.3 That the Service Provider and any Subcontractor will comply with current New Zealand Standards pertaining to Installations;
- 6.1.4 That the Service Provider and any Subcontractor will comply in all respects with relevant manufacturer or supplier standards pertaining to Installations;
- 6.1.5 That the Service Provider and any Subcontractor will comply in all respects with any current professional codes of practice pertaining to Installations;
- 6.1.6 That the Service Provider and any Subcontractor will comply in all respects with Schedule 2;
- 6.1.7 That all Installations will only be carried out by those of the Service Provider's employees or Subcontractor's employees with appropriate qualifications and experience to undertake the work;
- 6.1.8 That the Service Provider will not make any claim for payment exceeding \$6,000 (including GST);
- 6.1.9 That the Service Provider will confirm whether a Ratepayer is eligible for the partial government subsidy offered under the Warmer Kiwi Homes programme at the time of issue of the Quote.
- 6.1.10 That the Service Provider will perform a Quality Assurance Audit (in the context of insulation, using EECA's post-installation audit (PIA) form for insulation retrofits) in relation to each and every Installation carried out by the Service Provider or any Subcontractor and will immediately remedy any defects, issues or problems with the installation that it becomes aware of as a result of the auditing process. The costs of complying with this clause will be borne solely by the Service Provider and the Service Provider gives permission for Audit results to be provided to the Council and EECA, where relevant;

- 6.1.11 That the Service Provider will provide a copy of post-installation audit (PIA) forms for insulation retrofits to the Council and/or EECA upon request;
- 6.1.12 That only Approved Products will be installed as part of the Installation;
- 6.1.13 That the Service Provider will submit EECA Claims for insulation installations in EECA's GEM system, within 15 Business Days of completing the retrofit install and provide to EECA all property and installation information identified in GEM data fields, for all insulations completed under the Healthier Homes Canterbury Scheme;
- 6.1.14 That the Service Provider responds to any complaints or Corrective Actions issued through an Audit or, if relevant, an EECA Audit, within 20 Business Days of receipt of the Corrective Action notice (at the Service Provider's expense) and regularly advises the Council regarding progress towards resolving any Corrective Actions. The Service Provider must document the resolution of Corrective Actions after an EECA Audit in GEM;
- 6.1.15 That the Service Provider meet its own costs for accessing and using GEM;
- 6.1.16 That the Service Provider will inform Home Owners of the privacy statement included on the assessment form in EECA's Q&A Manual and how and by whom the Home Owner's personal information will be used.
- 6.1.17 That the Service Provider undertakes to generate its own business through marketing activities in accordance with the marketing guidelines set out in Schedule 4;
- 6.1.18 That the Service Provider and any Subcontractor will maintain good customer service practices and is encouraged to pass on any complaints and compliments they receive in relation to the Healthier Homes Canterbury Scheme to the Council; and
- 6.1.19 Without limiting any other provision in this agreement, if the Service Provider is also a supplier, manufacturer and/or distributor of any Approved Product, it will comply in all respects with the Commerce Act 1986, the Fair Trading Act 1986, and all applicable Laws and industry standards.

6.2 **HSWA:** The Service Provider will take all necessary steps to comply with the Health and Safety at Work Act 2015, and in particular will take all practical steps to avoid injuries to its employees, the employees of any Subcontractor, the employees of any relevant third party and any other person.

7. Requirements for the Service Provider's contract with the Home Owner

7.1 **Separate Contract with Home Owner:** The Service Provider acknowledges that it will need to enter into a separate contract with the Home Owner under which it will be engaged to carry out that part of the Installation which is not the Approved Part of the Installation. All contractual arrangements between the Home Owner and the Service Provider shall include an express acknowledgement that the Council is not a party to that contract and will have no liability in relation

to that contract. The Service Provider acknowledges that the Council has no liability in relation to the Installation or any other services covered by that contract.

- 7.2 **No Claim about Approved Part:** The Service Provider undertakes not to defend or deny any claim against it by a Home Owner on the basis that the claim relates to the Approved Part of an Installation.

8. **Subcontracting**

- 8.1 The Service Provider will remain responsible for all subcontracted responsibilities and obligations and will be liable for the acts or omissions of any Subcontractor as if they were acts or omissions of the Service Provider.

9. **Performance Management**

- 9.1 The Service Provider must, at all times, deliver Installations in accordance with the standards and procedures outlined in Schedule 2.
- 9.2 The Council may review the Service Provider's performance under this Agreement at any time on notice to the Service Provider. The Service Provider agrees to fully co-operate with any performance reviews including attending any performance review meetings and providing all Records requested by the Council.
- 9.3 The Service Provider must complete the work identified in any Corrective Actions issued by the Council or EECA (where relevant) following a Post-Installation Audit , within 20 Business Days of receipt of the Corrective Action notice.

10. **Invoicing and Payment**

- 10.1 **Invoicing:** The Service Provider may make a Claim for the Funding Amount for an Installation only on completion of the Installation. Each Claim must be in the form of a valid Tax Invoice and shall be mailed to the address set out in clause 23.
- 10.2 **General invoicing requirements:** Each Claim must specify:
- 10.2.1 the details of the Installation completed (including the Approved Products installed);
 - 10.2.2 the relevant Healthier Homes Canterbury Scheme reference and Healthier Homes Canterbury Scheme customer number;
 - 10.2.3 the relevant Council Engagement Form which must correspond with the relevant Healthier Homes Canterbury Scheme customer number required in clause 10.2.2;
 - 10.2.4 the date the Installation was completed;
 - 10.2.5 the contract reference on the front of this Agreement;
 - 10.2.6 the Funding Amount; and

10.2.7 such other information as the Council may reasonably request from time to time.

10.3 **Payment:** Subject to clause 4 any valid Claim received by the Council from the Service Provider will be payable 20 days following the date that the Council receives confirmation that the work has been completed to the Council's satisfaction and EECA's satisfaction. The Council will not be required to pay any Claim which does not meet the requirements of this Agreement.

10.4 **Tax:** Subject to the Council's obligation to pay any GST chargeable on the Funding Amount, the Service Provider will be responsible for all taxes, levies or duties assessed on, or in relation to, the Service Provider's provision of the Installation services.

11. Warranties

11.1 **Warranties:** The Service Provider warrants, undertakes and represents to the Council on a continuing basis that:

11.1.1 **Expertise:** it has the expertise, experience, resources, capacity and ability to, and will, perform and discharge its obligations under this Agreement with due care and skill, in a timely manner, efficiently, diligently and in accordance with Best Industry Practice and this Agreement is valid binding and enforceable against the Service Provider;

11.1.2 **Compliance:** at the time that each Installation is completed:

- (a) it is free from material defects in design, materials, workmanship, performance and Installation;
- (b) it complies with all applicable Laws affecting it or any of its functions or facilities and all applicable requirements of this Agreement; and
- (c) it is fit for the purpose for which it is provided.

11.1.3 **Complete and accurate:** all information, representations, warranties and undertakings made by it to the Council (whether before or after the Commencement Date) are true, complete and accurate in all respects.

11.2 **Third party warranties:** The Service Provider will hold all warranties and guarantees provided by third parties to the Service Provider in relation to any part of any Installation, on trust for itself, the Council and the Home Owner, and agrees to:

11.2.1 notify the Council in writing if the Service Provider intends to make a claim under any of those warranties or guarantees;

11.2.2 exercise its rights under any of those third party warranties and guarantees as directed by the Council (provided that it may still exercise those rights unilaterally as it sees fit, unless the proposed exercise of those rights is inconsistent with a direction by the Council or would be materially detrimental to the interests of the Council); and

11.2.3 receive any payments in relation to any of those warranties and guarantees as trustee for itself, the Council and the Home Owner, and apply those payments first to satisfying any claims against the Council in relation to the Installation.

11.3 **Deemed breach of warranty:** Without limiting clause 11.1, if any person makes a successful claim against the Council under section 6 or 8 of the Consumer Guarantees Act 1993 in relation to an Installation, a corresponding breach of the warranty in clause 11.1 shall be deemed to have occurred.

12. Insurance

12.1 **Service Provider to maintain insurance:** Unless the parties agree otherwise in writing, the Service Provider will effect and maintain the following insurance during the term of this Agreement and for the period ending six (6) years after the Termination Date:

12.1.1 public and products liability insurance for a minimum amount of \$2,000,000 (and an excess of no more than \$5,000) covering any liability arising from or relating to the provision of services and/or goods under this Agreement.

12.2 **Evidence:** The Service Provider will provide a copy of the policy and evidence of payment of the current premium relating to each insurance policy required by this Agreement to Council on the Commencement Date and on request thereafter.

12.3 **Acceptable insurers:** All insurance required by this Agreement must be with insurers that are reasonably acceptable to the Council and the public liability insurance shall provide cover for the vicarious liability of the Council.

12.4 **Subcontractors:** The Service Provider will ensure that its Subcontractors have insurance in place that meets the requirements of this Agreement as if they were the Service Provider.

12.5 **No voiding of Home Owner insurance:** The Service Provider will not do, cause or permit to be done anything to any House that would render any insurance held by the Home Owner or the occupier of the House void or voidable.

13. Indemnity

13.1 **Indemnity:** The Service Provider indemnifies the Council, its officers, employees, subcontractors and agents ("**Indemnified Parties**") at all times from and against any losses, expenses, claims, damages and/or costs (enforcement on a solicitor and own client basis) suffered or incurred by any of the Indemnified Parties in connection with any breach by the Service Provider or any of its officers, employees, Subcontractors or agents of this Agreement (including any warranties that may be implied into this Agreement by statute or otherwise) or otherwise caused (directly or indirectly) by an act or omission or alleged act or omission of the Service Provider or any of its officers, employees, Subcontractors or agents.

13.2 Nothing in this Agreement limits the Council's rights against the Service Provider at common law or equity or under the provisions of subpart 3 of the Contract and Commercial Law Act 2017. The

indemnity referred to in clause 13.1 will not apply to the extent that the Service Provider's performance has been prevented by a failure by the Council to perform a material obligation under this Agreement.

13.3 The Service Provider is prohibited from making any claim against EECA in respect of:

13.3.1 any audits undertaken by EECA as part of the Healthier Homes Canterbury Scheme; and

13.3.2 any defect in the EECA material referred to in Schedule 2 or an Approved Product being defective.

13.4 This clause is included for the benefit of EECA and the Service Provider expressly agrees to EECA having privity of contract in order to enforce this clause against the Service Provider.

14. Records and Reporting

14.1 **Records:** The Service Provider shall:

14.1.1 keep full Records and comply with any directions, instructions or policies relating to records provided to the Service Provider by the Council; and

14.1.2 on request by the Council, immediately provide to the Council for inspection all Records within the Service Provider's possession or control.

14.2 **Reporting:** At the end of each quarter, the Service Provider may be required to provide a report setting out its marketing or promotion activities relating to the Healthier Homes Canterbury Scheme to the Council.

15. Audit

15.1 **Notice:** The Council may Audit the Service Provider upon giving ten (10) Business Days' notice to the Service Provider.

15.2 **Procedure:** The parties agree to act reasonably for the purpose of clause 15.1 including promptly meeting to discuss in good faith the scope of, and procedure for, the Audit. The Council may require the Service Provider to provide copies of relevant Records, and may inspect the Service Provider's premises and other property as required.

16. Marketing and Public Communication

16.1 **Council promotion:** The Council may from time to time market or promote any information relating to its Healthier Homes Canterbury Scheme publicly (other than information that is commercially sensitive).

16.2 **Service Provider promotion:** The Service Provider will promote the Healthier Homes Canterbury Scheme for the duration of this Agreement but must only do so in accordance with the marketing and/or promotional guidelines contained in Schedule 4.

16.3 **Media issues:** The Service Provider must consider any potential media issues which may arise in relation to the provision of the Installations or this Agreement and provide the Council with reasonable notice of any potential media issues.

16.4 **Public communication:** The Service Provider will not make or be involved in any way in making any public communication in respect of this Agreement or the Healthier Homes Canterbury Scheme at any time to any third party (including any section of the media) without the prior written approval of the Council, which may be withheld at the Council's sole discretion.

17. **Dispute resolution**

17.1 **General:** If a dispute arises under this Agreement, neither party may commence any court proceedings relating to the dispute unless it has first complied with this clause 17. However, nothing in this clause 17 restricts or limits the right of either party to obtain urgent injunctive relief or terminate this Agreement where this Agreement provides such a right.

17.2 **Dispute Notice:** If a dispute arises under this Agreement, either party may, at any time, give written notice ("**Dispute Notice**") to the other:

17.2.1 specifying the nature of the dispute and the position which that party believes to be correct; and

17.2.2 requesting a meeting take place to attempt to resolve the dispute.

17.3 **Meeting:** The parties' representatives will meet within five Business Days of the receipt of the Dispute Notice and endeavour to resolve the dispute. If the dispute is not resolved within 10 Business Days of a party's receipt of a Dispute Notice, the dispute will be referred to senior officers of the parties, who will meet and endeavour to resolve the dispute.

17.4 **During dispute:** If there is a dispute:

(a) the Service Provider must continue to perform the Installation; and

(b) the Council must pay the Service Provider in accordance with the provisions of this Agreement, other than for any amount referable to the dispute.

17.5 **Mediation:** should EECA be requested by the Council to assist in the resolution of any complaints between Home Owners and Service Providers (including the mediation of any disputes), then both parties participating in the mediation shall agree in writing that they waive all liability against EECA as the mediator.

18. **Termination**

18.1 **Termination by Council:** This Agreement may be terminated by the Council in the following circumstances:

18.1.1 At any time giving 60 days' notice in writing, without the need to give any reason for that action.

18.1.2 Immediately if the Service Provider is in breach of any obligation under this Agreement and fails to remedy that breach within 10 Business Days after written notice is given to the Service Provider specifying the breach and requiring it to be remedied.

18.1.3 Immediately if the Service Provider suffers an Insolvency Event.

18.1.4 Immediately if the Service Provider breaches clause 22 (requiring the Service Provider to obtain the Council's written consent prior to any assignment of this Agreement).

18.2 **Termination by the Service Provider:** This Agreement may be terminated by the Service Provider at any time giving 60 days' notice in writing, without the need to give any reason for that action.

18.3 **Consequences of termination:** Upon the Termination Date, the Service Provider will (on request) immediately deliver up to the Council representative or destroy all property including correspondence, documents and papers belonging to the Council in the possession of, or under the control of the Service Provider.

19. Confidentiality

19.1 Each party agrees:

19.1.1 to hold in confidence all Confidential Information received from the other party; and

19.1.2 not to use or disclose, or permit the use or disclosure of, Confidential Information, except in accordance with the provisions of this Agreement and with the consent of the other party.

19.2 Each party's obligations to the other under this clause 19 will not extend to any Confidential Information that:

19.2.1 is, at the date of its disclosure, already in the recipient party's possession from sources other than the disclosing party;

19.2.2 is or becomes publicly available from sources other than the recipient party;

19.2.3 after the date of its disclosure, becomes available to the recipient party from a third party that has no obligation or confidentiality to the other party with respect to that information;

19.2.4 for the purposes contemplated by this Agreement, is necessarily required to be used and disclosed to a third party; or

19.2.5 the recipient party is required by law, court order, or regulatory authority to disclose.

19.3 **LGOIMA:** Notwithstanding this clause 19, the parties acknowledge that the Council is subject to the Local Government Official Information and Meetings Act 1987 ("**LGOIMA**") and to the extent that the Council holds any information about this Agreement or the Service Provider, the Council may be required under the LGOIMA to release such information and the Service Provider agrees to cooperate with the Council, as reasonably required, in order for the Council to discharge its obligations under the LGOIMA and to provide copies of any record on the Service Provider's file, or within the Service Provider's possession or control, relating to this Agreement where receipt of

such record may be required for the Council to comply with any of its statutory obligations (for example, under the LGOIMA or the Public Records Act 2005).

19.4 **OIA:** The parties acknowledge that EECA is subject to the Official Information Act 1982 (“**OIA**”), and that EECA may be required under the OIA to release any records provided in GEM or in relation to EECA Claims for insulation under the Healthier Homes Canterbury Scheme.

19.5 **Survival:** The obligations imposed under this clause 19 shall survive, and continue to apply after, the expiration or termination of this Agreement.

20. Conflict of Interest

20.1 **Notification:** Both parties agree that they will immediately advise the other if it is perceived that an actual or potential conflict of interest, or matter of political or commercial sensitivity has arisen, or will arise, between the interests of the Council on the one hand and the interests of the Service Provider and/or the Home Owner on the other hand.

20.2 **Negotiation:** The parties will negotiate with each other in good faith to resolve any conflict or matter of sensitivity in a manner which is reasonably satisfactory to the achievement of the legal, commercial or political objectives of the Council and the professional or commercial objectives of the Service Provider and/or the Home Owner.

21. Regulatory Capacity

21.1 **No fettering:** The parties acknowledge that this Agreement does not bind or fetter the Council in its regulatory capacity. The Council, acting in its regulatory capacity, is not bound to grant any consent or permission which Council, the Service Provider, the Home Owner or anyone else needs to give effect to this Agreement or to carry out an installation.

21.2 **No damages:** The Service Provider will not be entitled to any damages or other payment should the Council, acting in its regulatory capacity, either decline any consent or permission, or issue that consent or permission on terms that are unsatisfactory to any party.

22. Assignments and Transfers

22.1 The Service Provider will not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Council.

22.2 Where the Service Provider is a limited liability company, it will be deemed to be an assignment under clause 22.1 if:

22.2.1 the legal or beneficial ownership of 30% or more of the shares of the Service Provider changes (having regard to the shareholding in the Service Provider at the Commencement Date); or

22.2.2 effective control of the Service Provider changes or passes to a person not having effective control of the Service Provider at the Commencement Date.

23. Notices

23.1 **Writing:** Notices given under this Agreement will be in writing and:

23.1.1 delivered or posted to the other party at its address below and marked for the attention of the relevant department or officer (if any) set out below; or

23.1.2 faxed to the other party at its fax number below and marked for the attention of the relevant department or officer (if any) set out below:

Service Provider:

Address: []

Attention: []

Council:

Address: []

Attention: []

23.2 **Timing:** If any notice or communication is given on a day that is not a Business Day or after 5pm on a Business Day in the place of the party to whom it is sent, it is to be treated as having been given at the beginning of the next Business Day.

23.3 **ETA:** Section 214 of the Contract and Commercial Law Act 2017 does not apply in respect of any notice given by fax as provided for in this Agreement.

24. Severability

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

25. Governing Law and Jurisdiction:

This Agreement is governed by the laws of New Zealand. The parties submit to the non-exclusive jurisdiction of the courts of New Zealand.

Execution

Signed for and on behalf of Canterbury Regional Council under delegated authority by:

Signature

Witness signature

Name

Witness name

Position

Witness address

Witness occupation

Signed for and on behalf of [Service Provider] by:

Signature

Witness signature

Name

Witness name

Position

Witness address

Witness occupation

**SCHEDULE 1
APPROVED PRODUCTS**

The Service Provider will only use the products contained on EECA's list of accepted products for insulation, as published on its Energywise website.

List of accepted insulation products

<https://www.energywise.govt.nz/funding-and-support/payment-options-for-insulation-and-heating/list-of-accepted-insulation-products/>

The Service Provider will only use the heat pumps and flued gas heaters contained on EECA's list of accepted heating devices

List of accepted heating products

<https://www.energywise.govt.nz/funding-and-support/payment-options-for-insulation-and-heating/list-of-accepted-heating-products/>

The Service Provider will only use the solid fuel burners contained on Environment Canterbury's list of authorised burners and that are legally able to be installed in any particular location as defined in the Canterbury Air Regional Plan.

List of authorised solid fuel burners

<https://www.ecan.govt.nz/data/authorised-burners/>

<https://www.ecan.govt.nz/your-region/plans-strategies-and-bylaws/canterbury-air-regional-plan/>

SCHEDULE 2
STANDARDS AND PROCEDURES FOR THE INSTALLATION OF THE APPROVED PRODUCTS

Part A

All installations must comply with the following:

General Standards
Building Act 2004
Consumer Guarantees Act 1993
Electrical Act 1992
Electrical (Safety) Regulations 2010

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Standard	Title
Insulation	
NZS4246:2016	Installing insulation in residential buildings
AS/NZS4859.1:2002	Materials for the thermal insulation of buildings – general criteria and technical provisions.
Energy Efficiency and Conservation Authority	Voluntary Targeted Rates (VTR) Quality and Audit Manual
Energy Efficiency and Conservation Authority	Voluntary Targeted Rates (VTR) Service Provider Guidelines
Ventilation	
NZS 4303:1990	Ventilation for acceptable indoor air quality
AS/NZS 1668.1:2015	The use of ventilation and air conditioning in buildings (where applicable).
Clean Heat	
AS/NZS 3823.2:2011	Performance of electrical appliances - Air conditioners and heat pumps - Energy labelling and minimum energy performance standards (MEPS) requirements
AS/NZS 4012:1999	Domestic solid fuel burning appliances - Method for determination of power output and efficiency
AS/NZS 4013	Determination of particle emissions factors
AS/NZS 4014.6:2007	Domestic solid fuel burning appliances - Test fuels - Wood pellets

Part B

Installation Audit: Quality Assurance Auditing must where relevant be carried out in accordance with the EECA Quality & Audit Manual in respect to insulation and the Healthier Homes Canterbury Audit Manual for other installations. This will include

- a) recording all requisite information in the EECA/Healthier Homes Canterbury Assessment Form in the appropriate manual; and
- b) Checking the quality of the Installation using the EECA/Healthier Homes Canterbury Audit Check List that is in the appropriate manual.

Note that EECA, through its contracted audit representative (currently Opus International Consultants), will complete an independent audit of at least 5% of the total number of insulation retrofits undertaken through the Healthier Homes Canterbury Scheme. EECA may audit the first five properties insulated by a new Service Provider.

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SCHEDULE 3 ENGAGEMENT FORM

Engagement Form

Name of Service Provider	
Date of Service Provider Agreement	
Quote reference of Service Provider	
Approved Installation	
Funding Amount	

We refer to the above referenced Quote that was provided by you to a ratepayer of Canterbury Regional Council (**Ratepayer**) to carry out the work specified in the Quote (**Services**).

Canterbury Regional Council hereby confirms that it has approved the Ratepayer's application to have the Services performed under the Healthier Homes Canterbury Scheme.

In accordance with clause 4.1 of the Service Provider Agreement between you and Canterbury Regional Council, you are hereby instructed to carry out the Services for the Funding Amount set out above.

As stated at clause 4.3 of the Service Provider Agreement, if you do not inform us within 5 Business Days of receipt of this engagement form that you do not wish to carry out the Approved Part of the Installation, you must carry out the Installation.

At all material times, the Installation provided by you remains subject to the terms of the Service Provider Agreement. Any Services provided by you which exceed the Funding Amount are not covered by the Service Provider Agreement, and such Services must be provided by you under the terms of a separate agreement between you and the Ratepayer.

Signed for and on behalf of **Canterbury Regional Council** under delegated authority by:

Signature

SCHEDULE 4
MARKETING GUIDE NOTE FOR SERVICE PROVIDERS

The Service Provider is permitted to promote its business involvement in the Healthier Homes Canterbury Scheme. In doing this, the Service Provider:

1. may not use the Council logo in any of the Service Provider's promotional materials (electronic or print) unless expressly permitted by the Council;
2. may not use the EECA logo or branding in any of the Service Provider's promotional materials (electronic or print) unless expressly permitted by EECA;
3. may not advise any potential customers that the Service Provider represents the Council;
and
4. may refer to the Service Provider's participation in this scheme.

The parties agree that the Service Provider is an independent contractor to the Council and that no person used by the Service Provider to perform any activities in connection with this Agreement is an employee, agent or partner of the Council.

When the Service Provider refers to its participation in the scheme the Service Provider is required to use one of the following descriptors:

An approved Council supplier.

A Healthier Homes Canterbury recognised service provider.

Healthier Homes Canterbury funding available. Conditions apply.

Registered product in the Healthier Homes Canterbury Scheme

The Service Provider may only use the descriptors above for the purpose expressly authorised by the Council.

Written approval is required for any proposed communications that refer to the Council or EECA.