Funding Agreement

Smart Farming Program

We agree to provide You with the Funding for the Activity, and You agree to accept and use the Funding for the Activity, on the terms of this Agreement.

This Agreement is made up of the parts stated in the General Terms.

Activity Schedule

Agreement Parties

Agency (***We, Us, Our***)	Name:	Energy Corporation of New South Wales, a statutory corporation constituted under section 6 of the *Energy and Utilities Administration Act 1987* (NSW) as infrastructure planner for the Central-West Orana Renewable Energy Zone
	ABN:	13 495 767 706
	Address:	255 George Street, Sydney New South Wales 2000
	Tel:	027808 6920
	Email:	smartfarmingprogram@revenue.nsw.gov.au
	Contact:	Smart Farming Program, Grant Administration Office
Recipient (***You, Your***)	Name:	<insert full legal Recipient name>
	ABN:	<insert>
	Legal entity status:	☐ Company ☐ Incorporated Association ☐ Unincorporated Partnership ☐ Individual ☐ Other: <specify>
	Trustee of a trust:	The Recipient [is] [is not] entering into this Agreement as a trustee of a trust. **Guide Note:** If the Recipient is entering into this Agreement as a trustee of a trust, the Recipient Name entry would generally be [name of trustee] as trustee of [name of trust].
	Business Name:	<insert>
	Address:	<insert>

Agreement Parties	
Tel:	<insert>
Email:	<insert>
Contact:	<insert>

Term	
Agreement Start Date	The date the last party to execute this Agreement executes this Agreement.
Agreement End Date	Means: (a) if the Recipient submits a valid Reimbursement Claim during the Activity Period, the date on which the corresponding Payment Date occurs; or (b) if no valid Reimbursement Claim is submitted during the Activity Period, the Activity End Date.

Activity	
Funding Program:	Smart Farming Program
Activity:	Means the procurement, delivery and installation of Agtech specified in the Recipient's Tech List.
Activity Objectives:	Means the following objectives: (a) to improve on-farm connectivity and encourage the adoption of Agtech that boosts agricultural productivity, improves resource management and strengthens climate resilience; and (b) to contribute to community benefit outcomes within the Central-West Orana Renewable Energy Zone, consistent with the objectives of the *Electricity Infrastructure Investment Act 2020* (NSW) and the community purposes specified in the *Electricity Infrastructure Investment Regulation 2021* (NSW).
Activity Period:	Means the period commencing on the Activity Start Date and expiring on the Activity End Date. ***Activity Start Date:*** The date on which the Recipient receives notice from the Agency confirming that this Agreement has been executed. ***Activity End Date:*** The earlier of: (a) the date that is 120 days after the Activity Start Date; and (b) 28 October 2027, unless the Recipient is granted an extension for exceptional circumstances, as determined by the Agency in its sole discretion and notified to the Recipient, in which case, the Activity End Date will be the date on which such extension expires.
Eligible Area	Means the following six local council areas: (a) Dubbo Regional Council;

	(b) Gilgandra Shire Council; (c) Mid-Western Regional Council; (d) Narromine Shire Council; (e) Upper Hunter Shire Council; and (f) Warrumbungle Shire Council Local Government Areas.
Tech List	Means the list developed by the Recipient and approved by the DPIRD FOTF set out in Annexure A.
DPIRD FOTF	Means the New South Wales Department of Primary Industries and Regional Development, Farms of the Future.

Funding and payment

Funding	The total amount of the ***Funding*** is: (a) if the Recipient is registered for GST, an amount equal to 70% of the Eligible Expenditure (excl. GST) incurred by the Recipient and subject to the operation of clause 4.2; and (b) if the Recipient is not registered for GST, an amount equal to 70% of the Eligible Expenditure (incl. GST).
Eligible Expenditure	Means the actual, direct amount incurred by the Recipient on the items listed in the Recipient's Tech List.
Reimbursement Claim	A written claim for reimbursement of the Eligible Expenditure which is made in accordance with this Agreement.
Payment	Recipient Created Tax Invoices will not be issued by the Agency in respect of the Funding. Subject to this Agreement, the Funding will be paid within 30 business days of receipt of a valid Reimbursement Claim, provided that the Recipient has complied with clause 3.2 of the General Terms (such date, the ***Payment Date***). Payment will be made by direct transfer to Your nominated account: Account Name: ..... Account Number: ..... BSB Number: ..... Bank Name: .....
Contribution	An amount equal to 30% of the aggregate Eligible Expenditure incurred by the Recipient.

Funding Acknowledgement

The Recipient is required to acknowledge the Funding in any public statements about the Activity or the Funding.

Additional Conditions

AC1: Indemnities

a) You must indemnify and keep indemnified Us and Our officers, employees, and agents from and against any claim, loss or damage arising in connection with this Agreement.

b) Your obligation to indemnify Us under this additional condition 1 will be reduced proportionately to the extent that any negligent or unlawful act or omission by Us, Our officers, employees or agents contributed to the relevant loss or damage.

c) This additional condition 1 survives termination or expiry of this Agreement.

Execution

Executed as a Deed:

Signed, sealed and delivered for and on behalf of the Energy Corporation of New South Wales constituted under the *Energy and Utilities Administration Act 1987* (NSW) by its duly authorised delegate, <insert authorised delegate name and position>

Signature

In the presence of:

Name of witness

Signature of witness

Date:

Guide Note: Alternatives 1A and 1B provide for execution by a company not using its common seal. If the company has a sole director who is also sole company secretary, then the signature of that sole director and secretary will suffice (alternative 1B). Otherwise, two directors or one director and one company secretary should sign (alternative 1A). The names of directors can be checked by conducting a paid ASIC Search at https://connectonline.asic.gov.au.

[Alternatives 1A and 1B - where Recipient is a corporation]

Signed, sealed and delivered by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).

By: <insert name and position of director 1>.

Signature

And by <insert name and position of director 2 or company secretary>.

Signature

Date:

Signed, sealed and delivered by <Recipient name and ABN> in accordance with section 127 of the *Corporations Act 2001* (Cth).

By: <insert name and position of sole director/secretary> who states that s/he is the sole director and sole secretary of <Company name>.

Signature

Date:

[Alternative 2 - where Recipient is an individual]

Signed, sealed and delivered by <insert name of individual>.

Signature

In the presence of:

Name of witness who is not party to this Agreement

Signature of witness

Date:

[Alternative 3 - where Recipient is a partnership]

Guide Note: A partner may only execute a deed on behalf of a partnership if s/he has been authorised by deed to do so. (A partner may execute an agreement on behalf of a partnership if there is evidence of an agreement as between the partners authorising the executing partner to do so.) In the absence of the requisite authority, all partners should be asked to sign.

Signed, sealed and delivered by <insert name and position of partner authorised to sign on behalf of the partnership> for and on behalf of <insert partnership name> who is authorised to sign on behalf of the partnership.

By: <insert name and position>

On: <insert date>

Signature

In the presence of:

Name of witness who is not party to this Agreement

Signature of witness

Short Form Funding Agreement General Terms

1. Agreement scope

1.1 This Agreement is made up of:

(a) these General Terms;

(b) the Activity Schedule;

(c) any document referenced in the Activity Schedule.

1.2 Any inconsistency between the above will be resolved in the above order of precedence.

1.3 This Agreement will be for the Term unless terminated earlier in accordance with its terms.

2. Activity

2.1 You must undertake the Activity in accordance with this Agreement including:

(a) conduct the Activity within the Activity Period, in a way that promotes the Activity Objectives, with due care and in accordance with Your Tech List;

(b) comply with applicable laws, Funding Program conditions and any notified NSW Government policies and guidelines;

(c) ensure You obtain all required licences and approvals to conduct the Activity;

(d) not subcontract or vary the Activity without Our prior approval; and

(e) if applicable, complete the Activity by the Activity End Date.

2.2 You must only install and operate items specified in Your Tech List within the Eligible Area and in accordance with any and all applicable obligations under the *Telecommunications Act 1997* (Cth) and *Radiocommunications Act 1992* (Cth) (and all subordinate legislation and instruments made under or pursuant to those Acts).

3. Funding and payment

3.1 You must only submit a Reimbursement Claim in respect of items you have purchased which are listed in Your Tech List.

3.2 You must only submit a Reimbursement Claim in accordance with the following terms:

(a) the Reimbursement Claim must be submitted through the SmartyGrants portal;

(b) the Reimbursement Claim may only be submitted during the Activity Period; and

(c) the Reimbursement Claim must be accompanied by:

(i) a valid tax invoice for the amount of Funding claimed in the Reimbursement Claim, submitted in accordance with the requirements of this Agreement;

(ii) a copy of a $0 balance tax invoice as proof of purchase and payment for items which constitute Eligible Expenditure; and

(iii) photographic evidence of installation of the relevant items which is clear, geotagged and time-stamped.

3.3 You acknowledge that You remain responsible for the Contribution towards the Eligible Expenditure.

3.4 Provided You comply with this Agreement, We will pay the Funding to You in accordance with its terms.

4. Taxes, duties and charges

4.1 It is Your responsibility to pay all taxes, duties and government charges imposed in connection with this Agreement.

4.2 If GST is payable on any supply You make under this Agreement and You are registered for GST, then, on receipt of a correctly rendered tax invoice (or in conjunction with the issue of a recipient created tax invoice (RCTI) if applicable and agreed), We will pay You an amount equal to the GST payable, in addition to and at the same time that the consideration for the supply is provided under this Agreement.

4.3 If the Activity Schedule specifies that RCTIs will issue in respect of the Funding, You agree that:

(a) We will issue You with an RCTI; and

(b) You will not issue a tax invoice,

in respect of any taxable supply that You make under this Agreement.

4.4 You must immediately notify Us if Your GST registration changes.

4.5 If, for any reason, We pay You an amount which is more than the GST imposed on a particular supply by You to Us, You must immediately repay Us the excess or We may set off the excess against any other amounts due to You.

5. Withholding and repayment

5.1 We may, by notice, withhold payment of any Funding if We reasonably believe that You have not complied or are unlikely to comply with this Agreement, or that Your actions will damage Our reputation or that of the Funding Program.

5.2 Without limiting any other right or remedy under this Agreement, We may require You to repay any Funding within no less than twenty (20) Business Days of notice from Us to do so if:

(a) You have incorrectly claimed the Funding, including by submitting any false or misleading information in Your Funding application, Your Reimbursement Claim or supporting evidence to Your Reimbursement Claim or We have overpaid You;

(b) You have not spent the Funding in accordance with this Agreement;

(c) You have not installed and operated the relevant items for a minimum period of 12 months unless otherwise approved by the

Agency in its sole and absolute discretion, subject to clause 5.3;

(d) You have obtained a refund for the relevant items; or

(e) You have otherwise failed to comply with this Agreement.

5.3 If any item in respect of which Eligible Expenditure has been incurred is, or is found to be, faulty or defective, or if You make a claim under any applicable defects warranty in respect of such an item, You must promptly provide Us with written notice.

5.4 If after the termination or expiry of this Agreement We become aware of any fact, matter or circumstance which, had it been known to Us prior to such termination or expiry, would have entitled Us to require repayment of Funding under clause 5.2, We may exercise Our rights under clause 5.2 as if this Agreement had not terminated or expired.

5.5 If You do not make any required repayment of Funding by the due date, We may recover the amount as a debt due to Us without the need for further proof.

6. Acknowledgement

6.1 If required in the Activity Schedule, You must acknowledge the Funding in any public statements about the Activity or the Funding, using the form of acknowledgement (if any) stated in the Activity Schedule.

6.2 You may only use Our logo or the NSW Government logo with Our prior approval and in accordance with the NSW Government Brand Framework, as notified from time to time.

6.3 If requested, You must use Your best efforts to ensure We have the opportunity to participate in media coverage or other promotion of the Activity.

6.4 You must promptly remove Our acknowledgement and logo from any material relating to the Activity if We reasonably request it.

7. Reports

7.1 You must comply with any requirements stated in the Activity Schedule for Reports including acquittals.

7.2 If We do not accept a Report as satisfactory, You must submit a revised Report within ten (10) Business Days of Our request.

8. Records and audit

8.1 You must keep complete and accurate records of the Activity and expenditure of the Funding and any Contribution (including invoices and receipts) for the Activity Period plus six (6) months thereafter and make them available to Us on request.

8.2 We may audit expenditure of the Funding, and You must cooperate in any audits including by permitting reasonable access to, and copying of, Your records and providing reasonable assistance to the auditor. Any such audit will be at Our expense.

9. Intellectual Property

9.1 **IP** means all industrial and intellectual property rights, whether created now or in the future, whether recognised in Australia or overseas, whether or not they are registered or capable of being registered and includes (without limitation), the rights in patents, knowhow, copyright, designs, semi-conductor or circuit layout rights, trade marks, trade secrets, plant breeder's rights, business or company names or other proprietary rights.

9.2 You grant (and will ensure any relevant third party IP owners grant) to Us and the Crown in right of the State of New South Wales a permanent, non-exclusive, irrevocable, royalty-free licence (including the right to sub-license) to the IP in the material You provide to Us under this Agreement, or is provided to Us on Your behalf under this Agreement, including to use, reproduce, communicate, publish, adapt and modify, for non-commercial, government purposes.

9.3 You must obtain, and, if requested, provide to Us in conjunction with the required Final Report, signed moral rights consents from all creators of the material You provide to Us or is provided to Us on Your behalf, to the use and adaptation of that material by the Agency and the Crown in right of the State of New South Wales without restriction or any requirement to attribute authorship to the creators.

9.4 You warrant that the use of the material provided by You to Us or provided to Us on Your behalf in accordance with this Agreement or in accordance with the licence granted in clause 9.2 will not infringe any third party's IP rights.

10. Confidentiality and privacy

10.1 Neither of us may disclose the other's confidential information without prior written consent unless the disclosure is:

(a) required or authorised by law, Parliament, Our responsible Minister, the Audit Office of New South Wales, the NSW Ombudsman, the Information and Privacy Commission of New South Wales or this Agreement;

(b) required to perform this Agreement;

(c) required by Us for a governmental purpose including research and analysis, monitoring, evaluation and reporting; or

(d) to the recipient party's professional advisers for the purpose of advice, or to its insurer for the purpose of claim management; and

(e) required by Us to Our employees, agents, subcontractors or DPIRD FOTF, to help Us manage the Funding Program effectively.

10.2 Each of us will ensure that any third party to which either of us discloses confidential information under a permitted disclosure is made aware of the confidential nature of the information.

10.3 You must deal with personal information consistently with the information protection principles under the

Privacy and Personal Information Protection Act 1998 and must not cause Us to breach that Act.

10.4 You must immediately notify Us if You become aware of a breach of privacy.

11. Adverse events

You must promptly notify Us of anything likely to have an adverse impact on the Activity (for example, a delay) and, in consultation with Us, take available steps to lessen that impact.

12. Insurance

Not Used

13. Disputes

Except in the case of urgent, interlocutory proceedings, neither of us must begin legal proceedings in relation to a dispute without first trying for no less than ten (10) business days to negotiate a resolution.

14. Termination for cause

14.1 We may terminate this Agreement by notice if We are reasonably satisfied that You have:

(a) breached this Agreement and We consider that the breach cannot be remedied or You have not remedied the breach within ten (10) business days of receipt of a notice from Us to do so;

(b) acted in a way that will cause damage to Our reputation or to the reputation of the Funding Program; or

(c) provided false or misleading information in Your Funding application.

15. On termination

Unless otherwise agreed, You must, within ten (10) business days of termination provide any Reports, or other agreed material then due or that We reasonably request.

16. General

16.1 In this Agreement, unless the context otherwise dictates, the terms set out in the Activity Schedule have the meaning ascribed to them in the Activity Schedule.

16.2 This Agreement does not make You Our employee, agent or partner.

16.3 This Agreement may only be varied in writing, signed by both of us.

16.4 You must not sub-contract or transfer this Agreement to another party without Our prior consent.

16.5 A notice under this Agreement:

(a) must be in writing and delivered to the other party at its address or email address as specified in the Activity Schedule or as that party otherwise directs.

(b) is taken to be delivered:

(i) if by hand or by registered post, on delivery to the address for service and a signature received as evidence of delivery;

(ii) if by post (other than registered post), on the sixth (6th) business day after posting; and

(iii) if by email, on receipt by the sender of confirmation of delivery (by confirmation of delivery notification from an email server or a written acknowledgement from the recipient)

provided that, if delivery or receipt is on a non-business day or is later than 5pm (Sydney, NSW time) it will be taken to be delivered at 9am on the next business day.

16.6 This Agreement may be executed in any number of counterpart copies which taken together will form one agreement.

16.7 Clauses 5 (Withholding and repayment), 6 (Acknowledgement), 7 (Reports), 8 (Records and audit), 9 (Intellectual Property), 10 (Confidentiality and privacy), 13 (Disputes), 15 (On termination), this clause 16.7 and any other clause or provision of this Agreement that of its nature survives expiry or termination shall survive the expiry or termination of this Agreement.

16.8 This Agreement is governed by the laws of NSW and the parties submit to the jurisdiction of the courts of that State.

16.9 Electronic Signature and Exchange Permitted

(a) In relation to the electronic exchange of documents:

(i) Parties may exchange executed counterparts of this Agreement, or any other document required to be executed under this Agreement, by delivery from one Party to the other Party by emailing a pdf (portable document format) copy of the executed counterpart to that other Party as an attachment to an email or by transmitting the executed counterpart electronically via a secure digital platform such as DocuSign ("Electronic Delivery"); and

(ii) Electronic Delivery of an executed counterpart will constitute effective delivery of the executed counterpart as if the original had been received, from the date and time that the email was sent, provided that the sending Party does not receive a delivery failure message within a period of 24 hours of the email being sent.

(b) Electronic signatures complying with a law applicable in New South Wales will be deemed original signatures for the purposes of this Agreement and any such digital, scanned or electronically applied signature is to be treated in all respects as having the same effect as an original signature.

16.10 If an act is done under this Agreement on a non-business day, or is done later than 5pm (Sydney, NSW time), it will be taken to have been done at 9am on the next business day.

Annexure A – Tech List

<insert applicable Tech List>