

Funding Contract

Manufacturing Efficiency Funding



Contract Details

Parties to this contract The Crown in right of the State of New South Wales, acting through the Office of Environment and Heritage (the Agency) and <Manufacturing business legal name> (the Business).

Funding Contract Purpose This Funding Contract has been awarded to the Business for the implementation of <insert project description from application> at the Site Address submitted under the <insert offer name>.

Site Address <insert site address>

Contract Number 00000 **Allocated Funding** \$00,000.00

Contract Commencement Date 00/00/2019 **Contract Term** <insert 12 or 18> months from the Contract Commencement Date

Agency Contact

Name: <insert name> Phone: 00 0000 0000

Position: <insert position> Email: <insert email>

Address: <insert address>

Business Contact

Name: <insert name> Phone: 00 0000 0000

Position: <insert position> Email: <insert email>

Address: <insert site address>

1. What the Business must do

1.1 Carrying out of the Project and use of Funding

- (a) The Business must ensure the Project is implemented:
 - (i) in accordance with the requirements of this Funding Contract, including the Delivery Schedule, the Project Plan and Additional Terms;
 - (ii) at the Site Address;
 - (iii) in the order listed in the Delivery Schedule; and
 - (iv) by the Implementation Dates and Delivery Dates specified in the Delivery Schedule.
- (b) The Business must, and must ensure its Representatives, carry out the Project with all due care, skill, diligence and efficiency and in a proper and workmanlike manner.
- (c) The Business must:

- (i) use the Funding solely for the Project; and
- (ii) not use the Project to participate in any other state or federal energy efficiency incentive schemes or programs, including but not limited to the NSW Energy Savings Scheme and the Commonwealth Emissions Reduction Fund.

1.2 Business Representatives

- (a) The Business must ensure that all of its Representatives involved in the Project:
 - (i) are suitably qualified, experienced and competent;
 - (ii) hold all licences, consents, permits or registrations required under any State, Territory or Commonwealth legislation for them to carry out their role in relation to the Project;
 - (iii) are fit and proper people; and
 - (iv) comply with the obligations of the Business in clause 1.3 (as relevant).
- (b) The Business is responsible for all acts and omissions of its Representatives as if they were those of the Business and the Business indemnifies the Agency against all costs, expenses and liabilities incurred by the Agency in connection with the acts or omissions of its Representatives.

1.3 Compliance with Law and Agency policy

The Business must:

- (a) in delivering the Project, comply with all applicable Law (including Planning Law), act in accordance with all relevant Australian industry standards, codes, best practice and guidelines (or where none apply, all relevant international industry standards, codes, best practice and guidelines) and licences;
- (b) comply with the requirements of the Agency Business Ethics Statement, <http://www.services.nsw.gov.au/about-us/business-ethics>
- (c) comply with all Agency standards, policies and procedures notified from time to time (other than any which are expressly inconsistent with the Funding Contract) but including the applicable Government-wide procurement policies at <https://www.procurepoint.nsw.gov.au/policies/nsw-government-procurement-information>.

1.4 Reporting requirements

- (a) The Business must provide the documents referred to in the Delivery Schedule by email to the Agency Contact by the relevant Delivery Date specified in the Delivery Schedule.
- (b) The Agency will, within 30 days of acknowledging receipt via email of documents submitted under clause 1.4(a), either:
 - (i) confirm by email to the Business that the relevant Milestone has been completed to the Agency's satisfaction; or
 - (ii) confirm by email to the Business:
 - A. that the relevant Milestone has not been completed to the Agency's satisfaction;
 - B. the steps the Agency requires the Business to complete the Milestone to the Agency's satisfaction; and
 - C. the new date for submission of the relevant documentation.
- (c) If the Agency gives notice under clause 1.4(b)(ii), the Business must revise the relevant documentation as per the Agency's requirements, and resubmit the documentation to the Agency by email by the date specified in the Agency's notice, in which case the Agency must comply with clause 1.4(b) in relation to the revised documentation.

1.5 Notice of inability to comply

The Business must immediately notify the Agency in writing of anything that could significantly hinder the ability of the Business to fulfil its obligations under this Funding Contract.

1.6 Related projects

- (a) The Business cannot register Energy Savings Certificates under the NSW Energy Savings Scheme for the Project.
- (b) If the Business registers Energy Savings Certificates at the Site Address with an implementation date that falls within the Contract Term or 12 months thereafter, the Business must, within 5 Business Days of registering Energy Savings Certificates at the Site Address, provide the Agency with an explanation of why the number of proposed Energy Savings Certificates would not be affected by the Project.
- (c) If the Agency considers that the proposed Energy Savings Certificates would be affected by the Project, then without limiting any other remedy that may be available to the Agency the Agency may in its discretion give the Business written notice requiring the Business to repay all or part of the Funding paid to the Business under this Funding Contract.
- (d) If the Agency issues a notice under clause 1.6(c), the Business must repay the amount of Funding specified in the notice to the Agency by the date specified in the notice.

2. Payment terms

2.1 Commissioning Payment

- (a) The Business must meet the following requirements before the Agency will pay the Commissioning Payment:
 - (i) complete Milestone [s] [insert] to the satisfaction of the Agency (as notified under clause 1.4(b)(i));
 - (ii) submit copies of tax invoices for all Project Costs associated with completing Milestone [s] [insert] by email to the Agency; and
 - (iii) submit an invoice for the Commissioning Payment that complies with clause 2.4(a) by email to the Agency.
- (b) Once the Business has complied with all requirements in clause 2.1(a), the Agency will pay the Commissioning Payment to the Business:
 - (i) if the tax invoice for the Commissioning Payment is received by the Agency between 1 April and 30 June in the relevant year, by 1 August in that year; or
 - (ii) if the tax invoice for the Commissioning Payment is received by the Agency between 1 July in one year and 31 March the following year, within 30 days after the Agency confirms receipt of the tax invoice for the Commissioning Payment.

2.2 M&V Payment

- (a) This clause 2.2 applies if the Business has complied with clause 2.1(a) and the Agency has paid the Commissioning Payment.
- (b) The Business must meet the following requirements before the Agency will pay the M&V Payment:
 - (i) complete Milestone [s] [insert] to the satisfaction of the Agency (as notified under clause 1.4(b)(i));
 - (ii) submit copies of tax invoices for all Project Costs associated with completing Milestone [s] [insert] by email to the Agency; and
 - (iii) submit an invoice for the M&V Payment that complies with clause 2.4(a) by email to the Agency.
- (c) Once the Business has complied with the requirements in clause 2.2(b), the Agency will pay the M&V Payment to the Business:
 - (i) if the tax invoice for the M&V Payment is received by the Agency between 1 April and 30 June in the relevant year, by 1 August in that year; or

- (ii) if the tax invoice for the Commissioning Payment is received by the Agency between 1 July in one year and 31 March the following year, within 30 days after the Agency confirms receipt of the tax invoice for the M&V Payment.

2.3 Payment does not affect other rights or obligations

Payment of money under clause 2 is not evidence:

- (a) that the Agency accepts that the Business has carried out the Project in accordance with this Funding Contract; or
- (b) of any waiver by or estoppel against the Agency in relation to any right or action which the Agency may have at any time against the Business.

2.4 Invoices

- (a) An invoice submitted by the Business under clause 2.1(a)(iii) or 2.2(b)(iii) must:
 - (i) be a Tax Invoice;
 - (ii) state the amount of the Commissioning Payment or M&V Payment (as relevant); and
 - (iii) include any other details reasonably requested by the Agency from time to time.
- (b) If the Agency considers an invoice submitted by the Business under clause 2.1(a)(iii) or 2.2(b)(iii) is incorrect, or doesn't comply with clause 2.4(a), then the Agency may, before the relevant Due Date, reject the invoice by written notice to the Business and provide the Business with reasons for the rejection.
- (c) If an invoice is rejected by the Agency in accordance with clause 2.4(b), the Business must pay the amount in the invoice that is not in dispute and the Business must re-issue the invoice with any necessary corrections.

2.5 Repayment of Funding

Notwithstanding any other provision of this Funding Contract, the Agency, acting reasonably, may recover from the Business (as a debt due and payable on demand) any Funding paid by the Agency to the Business under this Funding Contract to the extent necessary to compensate the Agency for incorrect amounts paid by the Agency (including due to negligence or error by either party) under this clause 2.

3. Work health and safety

3.1 The Business must comply with WHS Law

The Business must:

- (a) carry out the Project strictly in compliance with WHS Law;
- (b) in carrying out the Project, ensure the safety of all Representatives of the Business and other persons affected by any works carried out or procured by the Business in relation to the Project, so far as reasonably practicable;
- (c) implement, maintain and regularly review safety, management, supervisory and other systems to:
 - (i) identify health and safety risks and hazards at the site where the Project will be carried out;
 - (ii) assess health and safety risks and hazards at the site where the Project will be carried out;
 - (iii) eliminate health and safety risks and hazards at the site where the Project will be carried out so far as is reasonably practicable; and
 - (iv) if it is not reasonably practicable to eliminate health and safety risks and hazards, minimise health and safety risks so far as is reasonably practicable;
- (d) ensure that all plant and equipment used by the Business or its Representatives is adequate and safe for the task for which it is used, adequately guarded, adequately protected, approved, regularly serviced and maintained, and free from defect;

- (e) ensure that it does not do anything, allow to be done or fail to do anything that would cause the Agency to be in breach of WHS Law; and
- (f) consult with manufacturers, suppliers and relevant stakeholders to ensure that the proposed installation of new plant and equipment at the Site as part of the Project will meet all relevant laws and industry standards.

3.2 Representatives

The Business must ensure that all of its Representatives employed or engaged in relation to the Project comply with the obligations of the Business under this clause (as relevant).

3.3 Audits

The Agency, or a Representative appointed by the Agency, may conduct audits of the Business' compliance with this clause 3, and the Business must take all reasonable steps to facilitate the conduct of any such audit.

3.4 Agency's Limited Control

The Business and the Agency acknowledge and agree that:

- (a) the Agency does not have any specialist expertise in coordinating, managing or undertaking the Project; and
- (b) the Business does not, and will not, rely on any representation made by the Agency, either by act of omission, as to the adequacy of the Business' compliance with WHS Law.

3.5 Notifiable Incidents

- (a) If a Notifiable Incident occurs, the Business must:
 - (i) immediately report the matter to the Agency, including all relevant details that are known to the Business; and
 - (ii) co-operate with the Agency as required in relation to any Notifiable Incident, including by providing to the Agency any information reasonably requested by the Agency in relation to the Notifiable Incident.
- (b) The Business' obligation under this clause is in addition to any reporting obligation that the Business has under WHS Law.

4. Information Management

4.1 Documentation and Inspections

The Business must:

- (a) keep and make available to the Agency all documentation evidencing the Business has complied with, and is complying with, its obligations under this Funding Contract during the Contract Term and 2 years thereafter;
- (b) provide reasonable access to the Site Address and the documentation referred to in subclause 4.1(a) to allow the Agency to conduct inspections of:
 - (i) the status of the Project; and
 - (ii) the documentation referred to in subclause 4.1(a); and
- (c) respond to any request for information, access or documents from the Agency within 10 business days of a request from the Agency.

4.2 Publicity and Education

- (a) The Business authorises the Agency to:
 - (i) publish the name of the Business, the location of the Project, the title and description of the Project, the amount of Allocated Funding or Funding paid by the Agency to the Business; and
 - (ii) use the Business's de-identified application and project data in training, evaluation and other portfolio purposes.

- (b) The Business will acknowledge the Agency's contribution and the NSW Climate Change Fund in any public statements or written material about the Project. The acknowledgment must be in a form approved by the Agency in writing.

4.3 Privacy and Confidentiality

- (a) The Parties will comply with their obligations under the *Privacy and Personal Information Protection Act 1998* (NSW) in relation to any personal information that is contained in the reports, documents and materials the subject of this Funding Contract. The Business will comply with the Agency's privacy policies as notified in writing to the Business from time to time as if it were bound by that policy.
- (b) The Business will co-operate with the Agency in the resolution of any complaint alleging a breach of the *Privacy and Personal Information Protection Act 1998* (NSW), the Agency's privacy policies, and all other applicable laws, codes and privacy policies.
- (c) The Recipient must not disclose the Confidential Information supplied by the Discloser to any person without the prior written consent of the Discloser.
- (d) If the Recipient discloses Confidential Information with the consent of the Discloser, it must use its best endeavours to ensure that persons receiving the information do not disclose the information other than in accordance with the consent of the Discloser.

5. Insurance, liability and indemnity

5.1 Insurance

Before the Contract Commencement Date, the Business must obtain the following insurances:

- (a) Public liability to a value of \$20,000,000;
- (b) Professional indemnity to a value of \$5,000,000; and
- (c) Workers compensation as required by Law.

The Business must maintain the above insurances for the duration of the Contract Term,

5.2 Evidence of insurance

On request by the Agency, the Business must provide the Agency with certificates of currency proving that the policies of insurance required under clause 5.1 have been effected and are current.

5.3 Liability

A party will not be liable to the other party under or in respect of the Funding Contract whether in contract, tort (including negligence), statute or any other cause of action for Consequential Loss.

5.4 Indemnity and release

The Business shall indemnify and keep indemnified the Agency and its Representatives from and against all costs, losses, actions, claims, demands, proceedings, damages and expenses (including reasonable legal costs and expenses) however caused that may be made or recovered against the Agency or its Representatives in connection with:

- (a) the Business and its Representatives undertaking the Project;
- (b) any act or omission of the Business or its employees or contractors in the course of carrying out the Project resulting in personal injury to or the death of any person, or the loss of or damage to property;
- (c) a breach by the Business of any of its obligations under this Funding Contract,

and the Business hereby agrees to release and discharge the Agency from any actions, proceedings, claims or demands which, but for this provision, might be brought or made against or upon the Agency.

6. GST and taxes

6.1 Taxes generally

The Business is responsible for all taxes arising from or relating to this Funding Contract and must pay Taxes which are imposed on the Business arising from or relating to this Funding Contract.

6.2 GST

The parties agree that:

- (a) unless expressly stated otherwise, all amounts payable by the Agency to the Business under this Funding Contract are exclusive of GST;
- (b) if a supply under this Funding Contract is subject to GST, and the consideration payable or to be provided for the supply is not inclusive of GST, then the party receiving the supply must pay to the party making the supply an additional amount equal to the amount of the consideration multiplied by the applicable GST rate;
- (c) the additional amount is payable at the same time as the consideration for the supply is payable;
- (d) if the additional amount differs from the amount of GST payable by the party making the supply, the parties must adjust the additional amount and
- (e) if a party is entitled to be reimbursed or indemnified under this Funding Contract, the amount to be reimbursed or indemnified does not include any amount for GST for which the party is entitled to an Input Tax Credit.

7. Term and termination

7.1 Term

This Funding Contract commences on the Contract Commencement Date and continues for the Contract Term unless terminated in accordance with this Funding Contract.

7.2 Termination by the Agency

- (a) Without limiting any other rights or remedies of the Agency, the Agency may, by notice, immediately terminate the Funding Contract if:
 - (i) the Business breaches the Funding Contract and the Business does not remedy the breach within 20 days, or such longer time as the Agency states in writing, of receiving notice from the Agency requiring the breach to be remedied; or
 - (ii) the Business, through its actions, puts the reputation of the Agency at risk (in the opinion of the Agency); or
 - (iii) the Business breaches the Funding Contract and, in the opinion of the Agency, the breach cannot be remedied;
 - (iv) the Agency considers that the Business has breached any of the following clauses: clause 1 (what the business must do), clause 3 (work health and safety) or clause 5 (insurance); or
 - (v) the Business becomes Insolvent.
- (b) If the Agency has a right to terminate under clause 7.2(a), the Agency may instead reduce the scope of the Project (and the associated Funding) by written notice to the Business. This does not affect the Agency's right to terminate the Funding Contract for subsequent breaches.

7.3 Termination by the Business

The Business can terminate the Funding Contract at any time by giving written notice to the Agency.

7.4 Funding on termination

- (a) If this Funding Contract is terminated under clause 7.2:
 - (i) the Business must, if required by the Agency, repay all or part of the Funding the Agency has paid to the Business; and

- (ii) the Agency will not provide any additional payments under this Funding Contract.
- (b) If this contract is terminated by the Business under clause 7.3 and the Business has complied with all obligations under this Funding Contract:
 - (i) the Business can retain Funding already paid to the Business; and
 - (ii) the Agency will not provide any additional payments under this Funding Contract.
- (c) If this Funding Contract is terminated under clause 7.3 and the Business has not complied with all of its obligations under this Funding Contract:
 - (i) the Business must, if required by the Agency, repay all or part of the Funding the Agency has paid to the Business; and
 - (ii) the Agency will not provide any additional payments under this Funding Contract.

7.5 Survival

The following survive termination or expiry of this Funding Contract:

- (a) clause 1.6 (related projects);
- (b) clause 2.5 (repayment of funding);
- (c) clause 4 (information management);
- (d) clause 5.3 (liability);
- (e) clause 5.4 (indemnity and release);
- (f) clause 8 (general); and
- (g) any rights and remedies accrued before termination or expiry.

8. Variations to Funding Contract

- (a) This Funding Contract can only be varied with the written agreement of both Parties.
- (b) The Business may request variations to the Funding Contract, including the Milestones, Implementation Dates and Delivery Dates. Approval of any such request is at the discretion of the Agency.

9. General

9.1 Notices

- (a) Unless stated otherwise in the Funding Contract, all notices, certificates, consents, approvals, waivers and other communications in connection with the Funding Contract must be in writing and hand delivered, posted or emailed to the Agency Contact or Business Contact (as relevant) specified in the Contract Details.
- (b) The receiving party will be deemed to have received a notice issued under this Funding Contract:
 - (i) if hand delivered, on the day on which it is delivered or left at the relevant address;
 - (ii) if sent by post within Australia, the fifth business day after posting; or
 - (iii) if sent by email, when the sender receives confirmation from the recipient that the email has been received.

9.2 Severability

If any part of this Funding Contract is prohibited, void, illegal or unenforceable, then that part is severed from this Funding Contract but without affecting the continued operation of the remainder of the Funding Contract.

9.3 Counterparts

This Funding Contract may be executed in any number of counterparts and the counterparts together constitute the same instrument.

9.4 Indemnities

The indemnities in this Funding Contract are continuing obligations, independent from the other obligations of the parties under the Funding Contract and continue after the Funding Contract ends. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under the Funding Contract.

9.5 Costs

The Parties agree to pay their own legal and other costs and expenses in connection with the preparation, execution and completion of the Funding Contract and other related documentation.

9.6 Governing law and jurisdiction

This Funding Contract is governed by the law in force in New South Wales. Each party submits to the exclusive jurisdiction of the courts of New South Wales.

9.7 Relationship

This Funding Contract does not create a relationship of partnership, employment, principal and agent, or of trustee and beneficiary.

9.8 Entire agreement

The Funding Contract constitutes the entire agreement of the parties about its subject matter and supersedes any previous understandings or agreements on that subject matter.

9.9 Interpretation

- (a) The meanings of the terms used in this Contract are set out in clause 10.
- (b) In this Funding Contract:
 - (i) A reference to a clause is a reference to a clause of this Funding Contract.
 - (ii) A reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them.
 - (iii) A reference to a document includes all amendments or supplements to, or replacements or novations of, that document.
 - (iv) A reference to a party to a document includes that party's successors and permitted assignees.
 - (v) No provision of this Contract will be construed adversely to a party because that party was responsible for the preparation of this agreement or that provision.
- (c) If there is any inconsistency between any of the documents forming part of this Funding Contract, those documents will be interpreted in the following order of priority to the extent of the inconsistency:
 - (i) Additional Terms;
 - (ii) General Terms;
 - (iii) Delivery Schedule;
 - (iv) Project Plan; and
 - (v) Any other schedules or attachments to this Funding Contract.

10. Dictionary

Additional Terms means the additional terms at Schedule 1 to this Funding Contract (if any).

Agency is the NSW Office of Environment and Heritage representing the Crown in right of the State of New South Wales.

Allocated Funding is the maximum payment from the Agency to the Business for the Project (as specified in the Contract Details).

Business means <insert business name>, their contractors and employees.

Commissioning Payment means the lesser of:

- (a) 30% of Project Costs incurred for completing Milestone[s] [insert]; and
- (b) \$00,000.00.

Confidential Information in relation to the Agency means all information disclosed (including inadvertently) by the Agency or any of its Representatives in connection with this Funding Contract which is by its nature confidential, is designated marked or stipulated as confidential or the Parties know, or acting reasonably ought to know, is confidential.

Confidential Information in relation to the Business means information:

- (a) disclosed by the Business to the Agency in connection with this Funding Contract; and
- (b) which the Business and Agency have agreed in writing to treat as confidential.

Consequential Loss means any loss not arising naturally (that is, according to the usual course of things) from a relevant breach of this Funding Contract, whether or not such loss may reasonably be supposed to have been in the contemplation of the parties at the time they entered the Funding Contract as the probable result of the relevant breach, and which:

- (a) includes loss of profit or loss of anticipated savings;
- (b) does not include:
 - (i) additional internal administrative and management costs and expenses;
 - (ii) expenditure or fees rendered unnecessary;
 - (iii) costs of procuring replacement goods or services;
 - (iv) cost of repairing goods; and
 - (v) legal fees on a full indemnity basis.

Contract Commencement Date means the contract commencement date specified in the Contract Details.

Contract Term means <insert 12 or 18> months commencing on the Contract Commencement Date.

Corporations Act means the *Corporations Act 2001* (Cth).

Delivery Date means each of the delivery dates in the Delivery Schedule.

Delivery Schedule means the schedule at Schedule 2 of this Funding Contract that contains the Milestones for the Business receiving payment under this Funding Contract.

Discloser means the party disclosing Confidential Information.

Due Date means:

- (a) for the Commissioning Payment, the relevant date specified in clause 2.1(b); or
- (b) for the M&V Payment, the relevant date specified in clause 2.2(c).

Energy Use Baseline is the energy use of the equipment or process that will be affected by the Project prior to the Project taking place and specified in the M&V Plan.

Funding is the amount of financial assistance the Agency pays to the Business for the Project, which can be no more than 50% of the Project Costs.

Funding Contract means this contract between the Agency and the Business including any schedules and attachments.

General Terms means the Contract Details on page 1 of this Funding Contract and clauses 1 to 10 (inclusive) of this Funding Contract.

GST means the tax imposed by the GST Act and the related imposition Acts of the Commonwealth.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), as amended from time to time.

Implementation Date means each of the implementation dates in the Delivery Schedule.

Input Tax Credit has the meaning it has in the GST Act.

A person is **Insolvent** if:

- (a) it is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) it has had a controller appointed or is in liquidation, in provisional liquidation, under administration or wound up or has had a receiver or receiver and manager appointed to any part of its property; or
- (c) it is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the parties to this Funding Contract); or
- (d) an application or order has been made (and in the case of an application, it is not stayed, withdrawn or dismissed within 30 days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that person, which is preparatory to or could result in any of (b) or (c) above; or
- (e) it is taken (under section 459F(1) of the Corporations Act) to have failed to comply with a statutory demand; or
- (f) it is the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act (or it makes a statement from which another party to a Administrator Contract reasonably deduces it is so subject); or
- (g) it is otherwise unable to pay its debts when they fall due; or
- (h) something having a substantially similar effect to (b) to (g) happens in connection with that person under the Law of any jurisdiction.

Law means any applicable statute, regulation, by-law, ordinance, subordinate legislation or rule in force from time to time in Australia, whether made by a State, Territory, the Commonwealth, regulatory body, recognised stock exchange, or a local government, and includes the common law and rules of equity as applicable from time to time.

Milestone means each event specified in the Delivery Schedule.

M&V Payment means the lesser of:

- (a) 50% of the actual Project Costs for the entire Project, minus the Commissioning Payment; and
- (b) the Allocated Funding minus the Commissioning Payment.

Notifiable Incident means any act, event or circumstance which occurs in connection with the Project which is required by the WHS Law to be notified to a regulator, or results in, or as the potential to result in, serious injury to a person or serious damage to property.

Party means a party to the Funding Contract as specified in the Contract Details.

Planning Law means all planning and environmental laws, regulatory and policy requirements in New South Wales.

Project means all activities associated with the planning, installing, commissioning and verifying savings from the monitoring or energy efficiency project that is described in the Contract Details and more fully described in the Delivery Schedule.

Project Costs are the costs incurred by the Business for completing the Milestones, as evidenced by invoices from contractors or suppliers.

Project Plan means the project plan at Schedule 3.

Recipient means the party receiving Confidential Information.

Representative of a party includes an employee, agent, officer, director, auditor, advisor, partner, consultant, joint venturer, contractor or sub-contractor of that party.

Site Address means the site address specified in the Contract Details.

Taxes means taxes, levies, imposts, charges and duties (including, stamp and transaction duties) imposed by any Government agency, together with any related interest, penalties, fines and expenses in connection with them, but excluding GST.

Tax Invoice has the meaning given to it in the GST Act.

WHS Law means any Laws (including Codes of Practice, Australian Standards, directions or notices issued or approved under any Laws) addressing work health and safety which apply in the jurisdiction in which the Project, or any part of the Project, is to be performed, as amended from time to time.

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Execution Page

SIGNED as a deed.

Signed on behalf of **The Crown in right of
the State of New South Wales, acting
through the Office of Environment and
Heritage** in the presence of:)
)
)
)
)

.....
Signature of witness

.....
Signature of delegate

.....
Name and position of witness

.....
Name and position of delegate
Position:

Signed for **[insert name of Business]** by:)
)
)
)
)

.....
Signature of Director

.....
Signature of Director / Secretary

.....
Name of Director

.....
Name of Director / Secretary

Schedule 1 Additional Terms

[Insert any project specific terms]

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Schedule 2 Delivery Schedule

[Insert delivery schedule]

DRAFT

Delivery Schedule – Offer 1 (Metering and process optimisation)

Project name

Project details

Detailed description of project (with information from application form and RFI, if applicable)

Milestones

No.	Milestone	Implementation date	Documentation	Delivery date	Anticipated Cost, subject to clause 2	Anticipated Payment, subject to clause 2
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Note: the anticipated cost and anticipated payment are provided by way of example only. The Agency's obligation to pay the Commissioning Payment and M&V Payment is subject to clause 2 of this Funding Contract.

1	<p>Purchase and install meters</p> <p>All equipment must be installed as per the attached business case in Schedule X</p>	dd/mm/yyyy	<p>Submit the following evidence to the Agency:</p> <ul style="list-style-type: none"> • Correctly rendered tax invoice(s) from suppliers demonstrating incurred costs for milestone 1 • Photo(s) of installed meters • Completed <i>Commissioning Report Template</i> (Schedule X) or equivalent template approved by the agency in writing for installed meters • Correctly rendered tax invoice to OEHL for commissioning payment 	dd/mm/yyyy	\$X	<p>Commissioning payment: 30% of incurred costs for milestone 1, up to \$X.</p>
2	Implement process optimisation	dd/mm/yyyy		dd/mm/yyyy	\$X	

3	Complete M&V and other eligible activities	dd/mm/yyyy	Submit the following evidence to the Agency:	dd/mm/yyyy	\$X	M&V payment: 50% of total incurred project costs for milestones 1 to 3 less the Commissioning payment, up to \$X.
			<ul style="list-style-type: none">• completed <i>M&V Plan and Report Template</i> (Schedule X) in accordance with the IPMVP framework or equivalent method approved by the Agency in writing• Correctly rendered tax invoice(s) from suppliers demonstrating other eligible incurred costs for milestones 1 to 3• Correctly rendered tax invoice to OEHL for M&V payment			

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Delivery Schedule – Offer 2a (Simple energy efficiency upgrades)

Project name

Project details

Detailed description of project (with information from application form and RFI, if applicable)

Milestones

No.	Milestone	Implementation date	Documentation	Delivery date	Anticipated Cost, subject to clause 2	Anticipated Payment, subject to clause 2
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Note: the anticipated cost and anticipated payment are provided by way of example only. The Agency's obligation to pay the Commissioning Payment and M&V Payment is subject to clause 2 of this Funding Contract.

1	Purchase and install energy efficient equipment	dd/mm/yyyy	Submit the following evidence to the Agency: <ul style="list-style-type: none"> • Correctly rendered tax invoice(s) from suppliers demonstrating incurred costs for milestone 1 • Photo(s) of installed equipment (in situ and nameplate) • Completed <i>Commissioning Report Template</i> (Schedule X) or equivalent template approved by the agency in writing for installed equipment • Correctly rendered tax invoice to OEHL for commissioning payment 	dd/mm/yyyy	\$X	Commissioning payment: 50% of incurred costs for milestone 1, up to \$X.
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Delivery Schedule – Offer 2b (Measured and verified energy efficiency upgrades)

Project name

Project details

Detailed description of project (with information from application form and RFI, if applicable)

Milestones

No.	Milestone	Implementation date	Documentation	Delivery date	Anticipated Cost, subject to clause 2	Anticipated Payment, subject to clause 2
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Note: the anticipated cost and anticipated payment are provided by way of example only. The Agency's obligation to pay the Commissioning Payment and M&V Payment is subject to clause 2 of this Funding Contract.

1	(OPTIONAL): Purchase and install meters All equipment must be installed as per the attached business case in Schedule X	dd/mm/yyyy		dd/mm/yyyy	\$X	
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2	Log pre-installation data and develop M&V Plan	dd/mm/yyyy	Submit the following evidence to the Agency: <ul style="list-style-type: none"> completed Part A of the <i>M&V Plan and Report Template</i> (Schedule X) including the Energy Use Baseline in accordance with the International Performance Measurement and Verification Protocol (IPMVP) framework or equivalent method approved by the Agency in writing 	dd/mm/yyyy	\$X	
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3	Purchase and install the energy efficient equipment	dd/mm/yyyy	Submit the following evidence to the Agency:	dd/mm/yyyy	\$X	Commissioning payment: 30% of incurred costs for milestones 1 to 3, up to \$X.
	All equipment must be installed as per the attached business case in Schedule X		<ul style="list-style-type: none"> • Correctly rendered tax invoice(s) from suppliers demonstrating incurred costs for milestones 1-3 • Photo(s) of installed meters and equipment (in situ and nameplate) • Completed <i>Commissioning Report Template</i> (Schedule X) or equivalent template approved by the agency in writing for installed meters and equipment • Correctly rendered tax invoice to OEH for commissioning payment 			
4	Log post-installation data and complete M&V Report	dd/mm/yyyy	Submit the following evidence to the Agency:	dd/mm/yyyy	\$X	M&V payment: 50% of total incurred project costs less the Commissioning payment, up to \$X.
			<ul style="list-style-type: none"> • completed Part B of the <i>M&V Plan and Report Template</i> (Schedule X) in accordance with the IPMVP framework or equivalent method approved by the Agency in writing • Correctly rendered tax invoice(s) from suppliers demonstrating incurred costs for milestone 4 • Correctly rendered tax invoice to OEH for M&V payment 			

Schedule 3 Project Plan

[Insert Project Plan]

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