

Department of **Environment & Climate Change** NSW



FUNDING AGREEMENT

for the provision of a grant from the

Climate Change Fund Renewable Energy Development Program

Funds Manager,
Water and Energy Programs,
Department of Environment and Climate Change
PO Box A290
SYDNEY SOUTH NSW 1232
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FUNDING AGREEMENT

THIS AGREEMENT is made on the _____ day of _____ 2007.

BETWEEN

DEPARTMENT OF ENVIRONMENT AND CLIMATE CHANGE (ABN 30 841 387 271) of 59-61 Goulburn St, Sydney **acting for and on behalf of the Crown in right of the State of New South Wales ("DECC")**

AND

<ORG NAME> (ABN XXXXXXXXX) of **<Address >**(the "**Recipient**").

RECITALS

- A. The NSW Government has established the Climate Change Fund under Part 6A of the *Energy and Utilities Administration Act 1987*.
- B. The Climate Change Fund is administered by the Department of Environment and Climate Change.
- C. The purpose of the Climate Change Fund is to provide funding:
 - to reduce greenhouse gas emissions and the impacts of climate change associated with water and energy activities;
 - to encourage water and energy savings and the recycling of water;
 - to reduce the demand for water and energy, including addressing peak demand for energy;
 - to stimulate investment in innovative water and energy savings measures;
 - to increase public awareness and acceptance of the importance of climate change and water and energy savings measures; and
 - for contributions made by the State for the purposes of national energy regulation.
- D. The Recipient has submitted an application for a grant from the Climate Change Fund – Renewable Energy Development Program), which is attached as Attachment A to this Agreement.
- E. The Minister for Climate Change, Environment and Water approved a grant from the Climate Change Fund to the Recipient to fund all or part of the cost of this application.
- F. The Recipient has agreed to undertake the energy/water savings outlined in the application and accepts the grant on the terms and conditions of this Agreement.

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OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

1.1.1 In this Agreement, except where the context otherwise requires:

“Agreement” means this Agreement including the Schedules and Attachments;

“Attachment” means an attachment to this Agreement;

“Budget” means the budget contained in Schedule 2;

“Business Day” means the day which is not a Saturday, Sunday or public holiday in Sydney, New South Wales;

“Commencement Date” means the date specified in Item 2 of Schedule 1;

“Completion Date” means the date on which the Project must be completed, which is the date specified in the first column of Schedule 3;

“Confidential Information” means any information that is by its nature confidential; and
(a) is designated by a Party as confidential and is described in Item 6 of Schedule 1; or
(b) a Party knows or ought to know is confidential; but does not include information which is or becomes public knowledge other than by breach of this Agreement;

“Creditable Acquisition” has the same meaning given to it in GST Law;

“Final Evaluation Report” means the final report to be provided to DECC by the Recipient under clause 7.2;

“Grant” means the grant specified in Item 4 of Schedule 1;

“GST” means a tax, levy, duty, charge, or deduction imposed by the GST Law calculated by reference to the value of anything supplied but does not include any related additional tax, interest, penalty, fine, or other charge imposed in relation to the late or incorrect payment of GST;

“GST Law” means *A New Tax System (Goods & Services Tax) Act 1999*, related legislation and any delegated legislation made pursuant to such legislation;

“Independent Auditor’s Report” means the certification set out in Schedule 5;

“Input Tax Credit” has the same meaning given to it in GST Law;

“Instalment” means an instalment of the Grant;

“Intellectual Property” includes patent, know-how, copyright, design, semi-conductor or circuit layout rights, trade mark, trade, business or company names or other proprietary rights and any rights to registration of such rights, whether created before or after the Commencement Date in Australia or elsewhere;

“Measurement and Verification Plan” means the plan developed by the Recipient (and approved by DECC) for measuring and verifying the energy/potable water savings achieved by the Recipient in carrying out the Project, which is Attachment C to this Agreement;

“Measurement and Verification Report” means a report of the energy/potable water savings achieved by the Recipient in carrying out the Project as required under clause 7.2 of this Agreement;

“Milestone” is a significant event in the project that signals the commencement and/or completion of some part of the project, or a stage at which agreed parts of the Project will be completed as specified in the first column of Schedule 3;

“Milestone Date” means the date which a Milestone is to be achieved, as set out in the second column of Schedule 3;

“Milestone Report” means a report of the work carried out by the Recipient to achieve a Milestone as required under clause 7.2 of this Agreement;

“Moral Rights” means the right of integrity of authorship, the right of attribution of authorship and the right not to have authorship falsely attributed, more particularly as conferred by the *Copyright Act 1968* (Cth), and rights of a similar nature anywhere in the world whether existing at the Commencement Date or which may come into existence on or after the Commencement Date;

“Party” means a party to this Agreement;

“Project” means the project described in the Project Plan, with the title set out in Item 3 of Schedule 1;

“Project Materials” means all material created by or on the Recipient’s behalf for the purpose of the Project, including documents, software and data stored by any means;

“Project Plan” means the plan which is Attachment B to this Agreement which contains a detailed description of how the Recipient intends to carry out the Project, as amended in accordance with this Agreement;

“Recipient’s Application” means the Recipient’s application for a grant from the Climate Change Fund which is Attachment 1 to this Agreement;

“Reports” means the reports required to be prepared by the Recipient in accordance with clause 7.2;

“Schedule” means a schedule to this Agreement;

“Special Conditions” means any additional conditions applicable to the Project, set out in Item 10 of Schedule 1;

“Supply” has the same meaning given to it in the GST Law;

“Supporting Documentation” means the relevant supporting documentation, as specified in Item 5 of Schedule 1;

“Tax Invoice” means a request for payment that meets the requirements specified in Item 11 of Schedule 1;

“Taxable Supply” has the meaning given to it in the GST Law; and

“Term” means the duration of this Agreement as set out in Item 2 of Schedule 1 or until the date on which this Agreement is terminated, whichever occurs first.

1.2 Interpretation

1.2.1 In this Agreement, except where the context otherwise requires:

- (a) A singular word includes the plural, and vice versa.
- (b) A word which suggests one gender includes the other gender.
- (c) If a word is defined, another part of speech has a corresponding meaning.
- (d) Any person or company shall mean and include the legal personal representative, successor in title, and permitted assigns of such person or company as the circumstances may require.
- (e) Words and expressions importing natural persons include partnerships, bodies corporate, associations and governmental and local authorities and agents.
- (f) A reference to legislation (including subordinate legislation) is to legislation in force from time to time.
- (g) A Party to this Agreement includes a permitted assignee or permitted substitute of that Party.

1.2.2 Headings are for convenience only and do not affect interpretation.

1.2.3 No rule of construction operates to the detriment of a party only because that party was responsible for the preparation of this Agreement or any part of it.

1.2.4 If a day on or by which a Party must do something under this Agreement is not a Business Day the Party must do it on or by the next Business Day.

- 1.2.5 Monetary references are references to Australian currency.
- 1.2.6 If the Recipient is comprised of more than one person, each of the Recipient's obligations will bind those persons jointly and severally and will be enforceable against the Recipient jointly and severally.

2. TERM OF THE AGREEMENT

- 2.1.1 This Agreement commences on the Commencement Date and continues for the Term.

3. PROVISION OF GRANT

- 3.1.1 DECC will pay the Grant for the Project to the Recipient in accordance with and subject to the terms of this Agreement.
- 3.1.2 Unless Item 4 of Schedule 1 specifies that the Grant is payable in a lump sum, the Grant is payable in instalments.

4. CLAIMING A PAYMENT

- 4.1.1 Payment of each instalment of the Grant is conditional upon:
- (a) the Recipient meeting each and every obligation imposed on the Recipient (including Milestones) to the satisfaction of DECC; and
 - (b) the Recipient submitting the Supporting Documentation specified in Item 5 of Schedule 1 in a form satisfactory to DECC.
- 4.1.2 Subject to this Agreement, DECC will pay each Instalment to the Recipient on or before the payment date specified in the fourth column of Schedule 3.

5. USE OF THE GRANT

5.1 Expenditure of the Grant

- 5.1.1 The Recipient must use the Grant solely for the purpose of carrying out the Project in accordance with the Agreement.
- 5.1.2 The Recipient must not enter into any arrangements or commitments in relation to the Project that are incompatible or inconsistent with the purpose of the Grant.

5.2 Budget

- 5.2.1 The Recipient must spend the Grant in accordance with the Budget unless otherwise approved in writing by DECC.

5.3 Delayed or inactive projects

- 5.3.1 The Recipient must notify DECC immediately if:

- (a) the Project will not commence within 60 days of the Commencement Date; or
- (b) the Project has been inactive for a period of 60 days or more.

5.4 Repayment of the Grant

- 5.4.1 The Recipient must immediately (or within such time as may be otherwise agreed) repay to DECC any part of the Grant spent on purposes not approved by this Agreement.
- 5.4.2 The Recipient must, within 14 days of the expiry or termination of this Agreement, repay to DECC any unexpended part (or the whole) of the Grant paid to the Recipient.

5.5 Bank account

- 5.5.1 The Recipient must establish and maintain a separate interest-bearing account at a financial institution operating in Australia to process and record all Grant receipts and expenditure, unless the Recipient demonstrates to the satisfaction of DECC that adequate internal controls are in place within an existing interest-bearing account operating in Australia to enable identification of Grant receipts and expenditure.
- 5.5.2 The Recipient must provide written notice to DECC of the details of the bank account used to process and record all Grant receipts and expenditure at or before the time the Recipient provides DECC with an initial Tax Invoice.

5.6 Interest

- 5.6.1 Interest earned on the Grant becomes part of the Grant and must be used by the Recipient for the Project in accordance with the terms of this Agreement, unless otherwise agreed by DECC.

6. PERFORMANCE OF THE PROJECT

6.1 General

- 6.1.1 The Recipient must carry out the Project in accordance with the Project Plan, the Milestones, the expenditure set out in the Budget, any Special Conditions, and any reasonable directions given by DECC from time to time.

6.2 Sub-contractors

- 6.2.1 The Recipient may sub-contract all or part of the conduct of the Project to a sub-contractor subject to the prior written approval of DECC.
- 6.2.2 The Recipient will be responsible for ensuring the suitability of any sub-contractor for the work proposed to be carried out by them and that all work carried out by them meets the requirements of this Agreement. Any approval to sub-contract

given by DECC under clause 6.2.1 does not relieve the Recipient from any of the Recipient's obligations or liabilities under this Agreement.

6.3 Monitoring and evaluation

6.3.1 DECC will monitor and evaluate the Project against:

- (a) the Milestones;
- (b) the Budget; and
- (c) the Recipient's compliance with this Agreement.

6.3.2 The Recipient:

- (a) acknowledges that DECC will maintain regular contact with the Recipient to monitor the implementation of the Project and the Agreement; and
- (b) agrees to co-operate with DECC in the performance of this role.

7. MILESTONES AND REPORTS

7.1 Compliance with Milestones

7.1.1 The Recipient must achieve each Milestone by the relevant Milestone Date.

7.1.2 The Recipient must complete the Project by the Completion Date.

7.2 Reports

7.2.1 The Recipient must prepare and submit to DECC:

- (a) a Milestone Report in relation to each Milestone at the frequency and times specified in Item 12 of Schedule 1;
- (b) the Final Evaluation Report within the time specified in Item 12 of Schedule 1;
- (c) the Measurement and Verification Report prepared in accordance with the Measurement and Verification Plan in Annexure C at the frequency and times specified in Item 12 of Schedule 1;
- (d) if delays are likely to be incurred in achieving Milestone Dates, a status report no later than five business days prior to the Milestone Date. The Report is to set out reasons for the proposed delay, any revision to Milestone Date(s) and proposed action to be taken by the Recipient that will minimise the impact of the delay;
- (e) a Statement of Expenditure at the frequency and times specified in Item 12 of Schedule 1; and
- (f) any other written reports specified in Item 12 of Schedule 1 at the frequency and times specified in that item.

7.3 Form of Reports

7.3.1 The Recipient must prepare the Reports in accordance with any format specified in Schedule 5.

7.3.2 The form of Reports and the manner of submission may be varied from time to time by DECC by written notice to the Recipient.

7.4 Independent verification of Reports

7.4.1 The Recipient must arrange for:

- (a) the annual Statement of Expenditure and the Statement of Expenditure to accompany the Final Evaluation Report to be audited by a qualified public or chartered accountant and for the person conducting the audit to complete the Independent Auditor's Report. Unless the Recipient obtains the prior written approval of DECC, the qualified accountant should not be one of the Recipient's officers or employees;
- (b) an independent third person acceptable to DECC to verify any information contained in a Report if DECC considers that there is a significant error, omission or anomaly in the Report.

7.4.2 The Recipient must promptly provide all assistance and information required by the independent verifier for the purpose of verifying information in a Report.

7.4.3 Except where otherwise determined by DECC, the Recipient is responsible for:

- (a) its own costs in providing assistance and information under clause 7.4.2; and
- (b) the costs of the independent auditor or verifier under clause 7.4.1 and such costs are not to be paid out of the Grant.

8. RECORDS

8.1.1 The Recipient must ensure that adequate financial and operational records and registers, including those specified or referred to in Schedule 4, are kept and maintained while carrying out the Project.

8.1.2 The Recipient must retain the records referred to in this clause 8.1.1 throughout the Term and for seven (7) years after the expiry or termination, of this Agreement.

9. INSPECTION

9.1.1 The Recipient agrees that DECC may visit the Project at any reasonable time, upon giving the Recipient reasonable notice.

10. AUDIT

10.1.1 An audit of any aspect of the Project or the Recipient's compliance with this Agreement may be conducted at any time by DECC or any person authorised by DECC.

10.1.2 The Recipient must co-operate fully with an audit, including:

- (a) granting the person conducting the audit reasonable access to the Recipient's premises, the Recipient's records and all materials relevant to the Project and the performance of this Agreement;

- (b) permitting the person conducting the audit to inspect and make copies of the Recipient's records and materials relevant to the Project and the performance of this Agreement; and
- (c) making available on request at no additional cost to the person conducting the audit reasonable facilities to enable a legible reproduction to be created of the Recipient's records and materials stored on a medium other than in writing.

10.1.3 DECC must give the Recipient reasonable notice of its requirements in relation to an audit and use its reasonable endeavours to minimise disruption and interference to the Recipient's performance of its obligations under this Agreement arising from an audit.

10.1.4 Except where otherwise determined by DECC, the Recipient is responsible for its own costs of participating in an audit and such costs are not to be paid out of the Grant.

10.1.5 The Recipient must promptly take any reasonable action required by DECC to rectify any error, non-compliance or inaccuracy identified in an audit in relation to the Project or the Recipient's performance of this Agreement.

10.1.6 The Recipient is not entitled to any delay costs or other costs or expenses of whatever nature relating in any way to an audit.

11. RESEARCH AND SURVEYS

11.1.1 The Recipient is required to participate and contribute to requests for the provision of statistical and program information for the purpose of research and surveys conducted by DECC or an authorised representative. No such request will require the breach of any duty of confidentiality owed by the Recipient to clients.

12. COMPLIANCE WITH THE LAW

12.1.1 The Recipient must:

- (a) obtain and hold all rights, licences and consents required to conduct the Project and otherwise fulfil the Recipient's obligations under the Agreement;
- (b) comply with all applicable standards, laws, regulations and policies in relation to the Project, including any standards, laws, regulations or policies specified in Item 7 of Schedule 1; and
- (c) not do anything that would cause DECC to breach its obligations under any law.

13. PUBLICITY

13.1 Acknowledgement

13.1.1 The Recipient must acknowledge the financial support it has received or will receive from the Climate Change Fund under this Agreement in all Public Statements about the Project.

13.2 Form of acknowledgement

13.2.1 The form of the acknowledgement must comply with the terms set out in Item 8 of Schedule 1.

13.3 Publicity by DECC

13.3.1 DECC may publicise the awarding of the Grant at any time after it is awarded, including:

- (a) the Recipient's name;
- (b) the amount of the Grant; and
- (c) the title and description of the Project and the results of the Project.

14. COPYRIGHT AND INTELLECTUAL PROPERTY

14.1 Vesting

14.1.1 Subject to Clause 14.2.2, title to and Intellectual Property in or in relation to Project Materials (other than the Project Materials described in Schedule 1, Item 10 of this Agreement) vests upon its creation in DECC. The Recipient must, upon request by DECC, do all things necessary to vest that title or that Intellectual Property in DECC.

14.1.2 If title to Intellectual Property in or in relation to Project Materials is not capable of being vested in DECC under Clause 14.1.1 because the Recipient itself does not own the Intellectual Property, the Recipient must ensure that DECC is irrevocable licensed (whether by sub-licence from the Recipient or direct licence from the owner) to use the Project Materials or Intellectual Property.

14.1.3 DECC indemnifies the Recipient against any costs, claims, actions or expenses incurred by the Recipient as a result of any reproduction, adaptation or commercialisation by DECC of any Intellectual Property or Project Materials vested in DECC under Clause 14.

14.1.4 The Recipient indemnifies DECC against any, claims, actions and loss or damage arising out of any infringement of Intellectual Property rights by the Recipient its officers, employees, agents or subcontractors in connection with the Project or the use by DECC of the Project Materials for any purpose reasonably contemplated under this Agreement.

14.2 Copies of Project Materials

14.2.1 If Project Materials are produced by the Recipient for publication to the public as part of the Project then three (3) copies of these Project Materials shall be submitted to DECC with the Final Evaluation Report as specified in Item 12 of Schedule 1.

15. INDEMNITY

15.1 Recipient's Indemnity

15.1.1 The Recipient must at all times indemnify, hold harmless and defend DECC and its officers, employees and agents (“those indemnified”) from and against liability or loss (including reasonable legal costs and expenses), which may be suffered or incurred by any of those indemnified by reason of or in connection with:

(a) any infringement or alleged infringement of any Intellectual Property (including Moral Rights) arising from the activities of the Project other than any Intellectual Property supplied by DECC; and

(b) any unlawful, wrongful, wilful or negligent act or omission of the Recipient or the Recipient’s officers, employees, agents, contractors and volunteers.

15.2 Reduction of Indemnity

15.2.1 The Recipient’s liability to indemnify those indemnified under this Agreement shall be reduced proportionally to the extent that any unlawful, wrongful, wilful or negligent act or omission of those indemnified caused or contributed to the liability or loss.

15.3 Continuing Obligation

15.3.1 The indemnity in this clause is a continuing obligation of the Recipient separate and independent of any of the Recipient’s other responsibilities and will continue beyond the Term.

16. INSURANCE

16.1 Obligation to insure

16.1.1 The Recipient must ensure that insurance policies specified in Item 9 of Schedule 1 are taken out and maintained with a reputable insurance company throughout the Term.

16.2 Production of policies

16.2.1 The Recipient must on request, produce satisfactory evidence to DECC that any or all of the insurance policies required under this Agreement are current.

16.3 Additional terms

16.3.1 The Recipient must comply with the terms and conditions relating to insurance set out in Item 9 of Schedule 1.

17. CONFIDENTIALITY

17.1 Obligation to keep confidential

17.1.1 DECC and the Recipient must keep confidential and not allow, make or cause any disclosure of or in relation to Confidential Information without the prior written consent of the other Party.

17.2 Limited Disclosure

17.2.1 The obligations on the Parties under clause 17.1.1 will not be taken to have been breached to the extent that Confidential Information:

- (a) is disclosed by a Party to its legal and other professional advisers, auditors, contractors, consultants or employees in order to comply with obligations, or to exercise rights, under this Agreement;
- (b) is disclosed to a Party's internal management personnel to enable effective management or auditing of contract-related activities;
- (c) is disclosed by DECC to a Minister of the Crown in right of the State of New South Wales;
- (d) is disclosed by DECC in response to a resolution of a House of the Parliament of New South Wales calling for the production of the Confidential information;
- (e) is shared by DECC with an agency or instrumentality of the State of New South Wales, where reasonably necessary for the exercise of public official functions of that agency or instrumentality;
- (f) is authorised or required by law (including under this Agreement) to be disclosed; or
- (g) is in the public domain otherwise than due to a breach of clause 17.1.1.

17.3 Obligations on disclosure

17.3.1 Where a Party discloses Confidential Information to another person:

- (a) pursuant to clauses 17.2.1 (a), (b) or (e), the disclosing Party must:
 - (i) notify the receiving person that the information is Confidential Information; and
 - (ii) not provide the information unless the receiving person agrees to keep the information confidential; or
- (b) pursuant to clauses 17.2.1 (c) and (d), the disclosing party must notify the receiving party that the information is Confidential Information.

17.4 Additional confidential information

17.4.1 The Parties may agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement.

17.4.2 Where the Parties agree in writing after the date of this Agreement that certain additional information is to constitute Confidential Information for the purposes of this Agreement, this documentation is incorporated into, and becomes part of this Agreement, on the date by which both Parties have signed this documentation.

17.5 Period of confidentiality

17.5.1 The obligations under clause 17.3.1 continue, notwithstanding the expiry or termination of this Contract:

- (a) in relation to an item of information described in Item 6 of Schedule 1, for the period set out in that schedule in respect of that item; and
- (b) in relation to any information which the Parties agree in writing after the date of this Contract is to constitute Confidential Information for the purposes of this Contract, for the period agreed by the Parties in writing in respect of that information.

18. SECURITY

18.1.1 DECC may give notice to the Recipient requiring the Recipient to provide security in relation to and for an amount not more than the Grant, over the relevant assets of the Project or the Project itself, for the purpose of securing the Recipient's obligations to repay the Grant under clause 5.4.1 or clause 5.4.2.

18.1.2 The form of the security is to be agreed between the Parties after DECC gives notice under clause 22. If agreement is not reached within 30 days after DECC gives notice, the Recipient must grant security in the form required by DECC.

18.1.3 The Parties acknowledge that any such security granted under this clause will rank second in priority to any security granted to any financial institution providing finance to the Recipient in relation to the Project.

19. VARIATION

19.1.1 Written agreement between the Recipient and DECC must be obtained for any variation to this Agreement, except for a change in the contact details specified in Item 1 of Schedule 1.

19.1.2 A Party must advise the other Party within seven (7) days of any changes to contact details set out in Item 1 of Schedule 1.

19.1.3 The Project, a Milestone, a Milestone Date, the Completion Date, the Project Plan or the Budget may only be amended by agreement of the Parties.

19.1.4 If a Party wishes to amend the Project, a Milestone, a Milestone Date, the Completion Date, the Project Plan or the Budget, that Party must make a written request to the other Party, setting out details of:

- (a) the proposed change;
- (b) the reasons for the proposed change; and
- (c) how the proposed change will affect the Project and to what extent, if any, the Milestone Dates, the Completion Date, the Project Plan or the Budget should change.

20. TERMINATION

20.1.1 DECC may immediately terminate this Agreement by written notice served on the Recipient if any one or more of the following occurs:

- (a) The Recipient breaches a provision of this Agreement; and
 - (i) the Recipient fails to remedy that breach within the period specified in a notice from DECC requesting the Recipient to remedy the breach; or
 - (ii) the breach is not capable of being remedied;
- (b) The Recipient, if a natural person, is declared bankrupt or bankruptcy proceedings are commenced against it, dies, ceases to be of full legal capacity or otherwise becomes incapable of managing its own affairs;
- (c) The Recipient resolves to go into liquidation or has a summons for the Recipient winding up presented to a Court or enters into any scheme or arrangement with the Recipient creditors under the *Corporations Act (Cth)* or any applicable insolvency law or an administrator, liquidator receiver or official manager is appointed under the *Corporations Act (Cth)* or any applicable insolvency law.

20.1.2 The following clauses of this Agreement survive termination: clause 5 (Use of the Grant), clause 8 (Records), clause 13 (Publicity), clause 14 (Intellectual Property), clause 15 (Indemnity), clause 16 (Insurance), clause 17 (Confidentiality), and any other provision of this Agreement which by its nature should survive termination shall survive termination, expiry or repudiation of this Agreement.

21. DISPUTE RESOLUTION

21.1 Method of Dispute Resolution

21.1.1 The Parties agree that any dispute arising under this Agreement will be dealt with as follows:

- (a) A Party claiming that a dispute has arisen must give written notice of the dispute to the other Party.
- (b) The Parties will seek to resolve the dispute.
- (c) If the dispute is not resolved within a fourteen (14) day period (or within such further period as the Parties agree in writing) then the dispute is to be referred to the Australian Commercial Dispute Centre (ACDC) for mediation.
- (d) The mediation is to be conducted in accordance with the ACDC Mediation Guidelines which set out the procedures to be adopted, the process of selection of the mediator and the costs involved.
- (e) If the dispute is not settled within 28 days (or such other period as agreed to in writing between the parties) after appointment of the mediator, or if no mediator is appointed within 28 days of the referral of the dispute to mediation, the parties may pursue any other procedure available at law for the resolution of the dispute.

21.2 Obligation to continue performance

21.2.1 The Parties must continue performing their obligations under this Agreement while the dispute is being resolved, to the extent practicable to do so.

21.3 No Court proceedings

21.3.1 A Party must attempt to settle any dispute in relation to this Agreement in accordance with this clause 21 (Dispute Resolution) before resorting to court proceedings or other dispute resolution process.

21.3.2 Nothing in this clause 21 (Dispute Resolution) will prevent either party from seeking urgent interlocutory relief.

22. NOTICES

22.1 How to give notice

22.1.1 A notice, consent or other communication under this Agreement is only effective if it is:

- (a) in writing, signed by or on behalf of the person giving it;
- (b) directed to the representative of the other party as set out in Item 1 of Schedule 1; and
- (c) forwarded to the address, facsimile number or the email address of that representative as set out in Item 1 of Schedule 1.

22.2 When a notice is given

22.2.1 A notice, consent or other communication that complies with this clause is regarded as given and received:

- (a) in the case of delivery in person – when delivered to the recipient's address for service and a signature received as evidence of delivery;
- (b) in the case of delivery by post – within three (3) Business Days of posting;
- (c) in the case of delivery by facsimile – at the time of dispatch if the sender receives a transmission report which confirms that the facsimile was sent in its entirety to the facsimile number of the recipient; or
- (d) in the case of delivery by email – on receipt of confirmation by the sender that the recipient has received the email.

22.3 Delivery late in the day

22.3.1 Notwithstanding the provisions of this clause 22 (Notices), if delivery or receipt of a communication is on a day which is not a Business Day in the place to which the communication is sent or is later than 5pm (local time in that place) it will be deemed to have been duly given or made at 9am (local time in that place) on the next Business Day in that place.

23. ASSIGNMENT

23.1.1 The Recipient must not assign, charge or otherwise deal with the benefit of this Agreement, without the prior written consent of DECC. For the purposes of this Agreement, any change of control in the shareholding of the Recipient will be deemed to be an assignment by the Recipient.

24. GST

24.1.1 Notwithstanding any other provision of this Agreement, if any Supply by one Party to the other pursuant to this Agreement is deemed to be a Taxable Supply for the purposes of the GST Law and that Party is or becomes liable to pay GST in respect of such Supply:

- (a) the Grant will, subject to clauses 24.1.1(b), 24.1.2, 24.1.3 and 24.1.4, be increased (if GST is payable by the Recipient) or decreased (if GST is payable by DECC) by any such GST liability provided the Supply is deemed to be a Creditable Acquisition so that the party who is the recipient of the Supply is or will be entitled to receive an Input Tax Credit; and
- (b) the Party liable for payment of GST must issue to the party who is the recipient of the Supply a tax invoice in respect of such Taxable Supply.

24.1.2 Any invoice rendered in connection with a Taxable Supply under this Agreement must conform to the requirements of a tax invoice under the GST law.

24.1.3 The Recipient warrants and undertakes that at the time any Supply on which GST is imposed is made by it to DECC under this Agreement, it is or will be registered under the GST Law. If DECC requests written evidence of registration, the Recipient must promptly produce evidence satisfactory to DECC.

24.1.4 The Recipient agrees and acknowledges that in the event it is not registered under the GST Law it will not in any circumstances be entitled to receive the increase in the Grant in accordance with clause 24.1.1 by any amount of GST liability.

25. GENERAL

25.1 Governing law

25.1.1 This Agreement is governed by the law in force in the State of New South Wales.

25.1.2 Each Party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of New South Wales, and the courts of appeal therefrom.

25.2 Non-waiver

25.2.1 No failure or delay by DECC in exercising any right power or remedy under this Agreement and no course of dealing or grant by DECC to the Recipient of any time or other consideration, will operate as a waiver of the breach or a default by the Recipient. Any waiver by DECC of a breach of this Agreement will not be construed as a waiver of any further breach of the same or any other provision.

25.3 Entire Agreement

25.3.1 This Agreement contains the entire agreement between the Parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this Agreement and has no further effect.

25.3.2 Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person may have.

25.3.3 Any provision of this Agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this Agreement enforceable, unless this would materially change the intended effect of this Agreement.

25.4 Operation of indemnities

25.4.1 Each indemnity in this Agreement survives the expiry or termination of this Agreement.

25.4.2 A Party may recover a payment under an indemnity in this Agreement before it makes the payment.

25.5 Consents

25.5.1 Where this Agreement contemplates that DECC may agree or consent to something (however it is described), DECC may:

- (a) agree or consent, or not agree or consent, in its absolute discretion; and
 - (b) agree or consent subject to conditions,
- unless this Agreement expressly contemplates otherwise.

25.6 Inconsistency

25.6.1 In the event of an inconsistency between the terms of this Agreement, for the purpose only of resolving the inconsistency, the documents that comprise this Agreement are to be considered in the following order of decreasing priority:

- (a) the operative provisions of this Agreement;
- (b) the Schedules; and
- (c) Annexure A.

25.7 Conflict of interest

25.7.1 The Recipient warrants that at the date of this Agreement, no conflict of interest exists or is likely to arise in relation to execution of this Agreement or its subject matter. The Recipient undertake to notify DECC, in writing, immediately upon becoming aware of the existence, or possibility, of a conflict of interest and agrees to comply with any reasonable directions of DECC to appropriately manage the conflict of interest, within the time frame stipulated by DECC in writing.

25.8 Relationship

25.8.1 Nothing in this Agreement is intended to create a partnership, joint venture or agency relationship between the parties.

25.8.2 The Recipient shall not hold the Recipient itself out to be an employee, partner, agent or representative of DECC.

25.8.3 All work performed by the Recipient and all contracts made by the Recipient to carry out the Project shall be performed and made by the Recipient as principal and not as agent for DECC. In all dealings in relation to the Project the Recipient shall act solely on the Recipient own account.

SAMPLE

This agreement is executed as a deed on _____ 2007.

Execution by DECC:

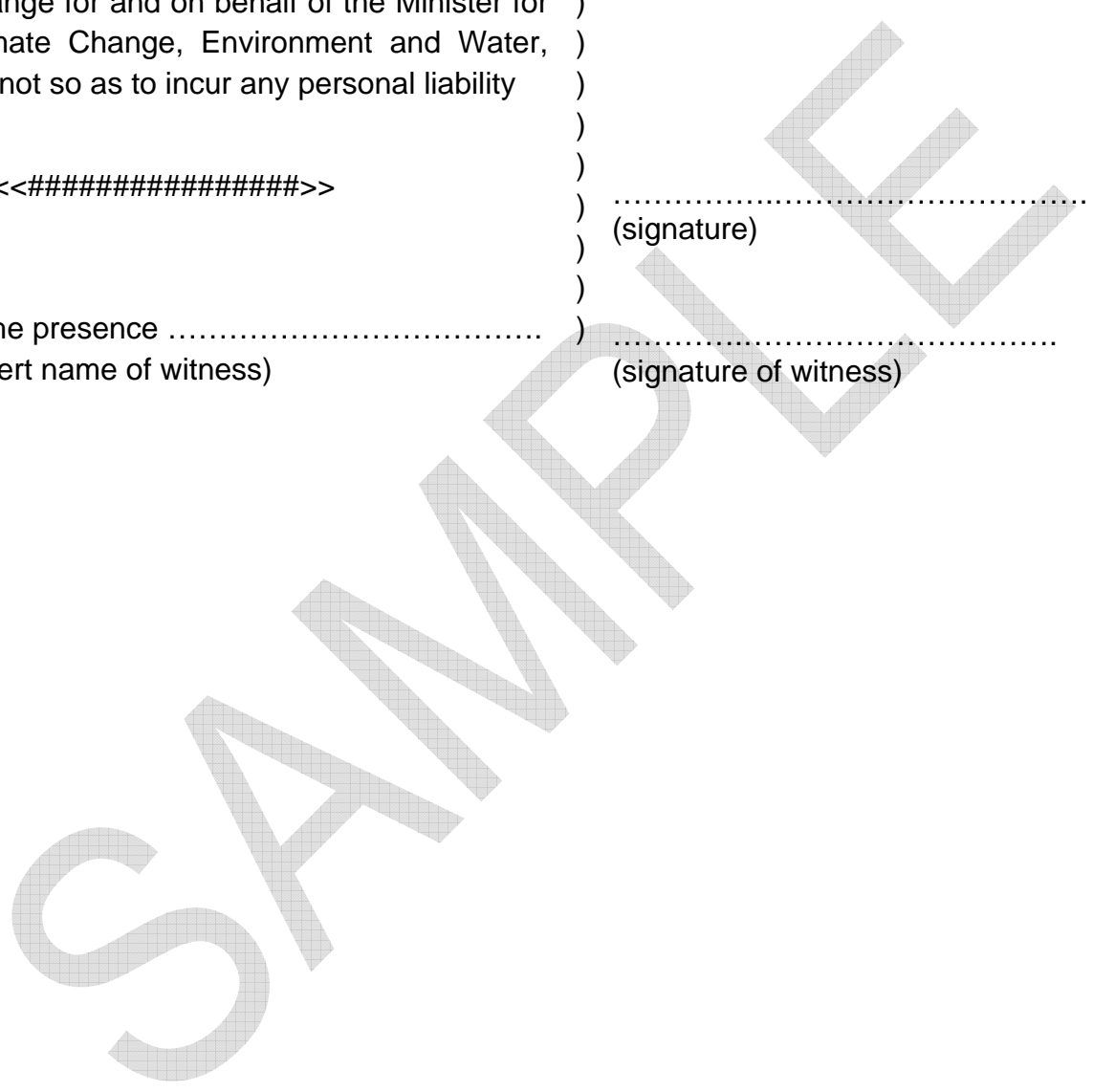
Signed by <#####> of the)
Department of Environment and Climate)
Change for and on behalf of the Minister for)
Climate Change, Environment and Water,)
but not so as to incur any personal liability)

By <<#####>>

.....
(signature)

In the presence)
(insert name of witness)

.....
(signature of witness)



SCHEDULE 1 - AGREEMENT DETAILS

This Schedule forms part of the Agreement between DECC and the Recipient.

Item 1 Contact Details

DECC: contact name: Mr Mark Dodds, Funds Manager
contact address: Level 25, 59 Goulburn Street Sydney
contact telephone: 02 9995 6326
contact facsimile: 02 9995 6648
contact email: mark.dodds@environment.nsw.gov.au

Recipient: contact name:
contact address:
contact telephone:
contact facsimile:
contact email:

Item 2 Term

Commencement Date: The date upon which the Parties sign this Agreement.

Duration: The Agreement continues until the date on which the Recipient is notified that DECC accepts the Final Evaluation Report.

Milestones: The Recipient must meet each Milestone by the Milestone Date specified in Schedule 3.

Item 3 Project Title

<Project Title>

The project is further described in the Project Plan.

Item 4 Funding

Grant

The total amount of the Grant will be up to \$XXXXXX payable in instalments as specified in Schedule 3.

Item 5 Supporting Documentation

The Recipient is required to provide to DECC the following Supporting Documentation in support of a claim for payment of:

First instalment:

- (a) bank account details (BSB Number, Account Name & Account Number);
- (b) completed Tax Invoice (as specified in Item 11);
- (c) Milestone Report; and
- (d) any other documentation requested by DECC by notice in writing.

Subsequent instalments:

- (a) completed Tax Invoice;
- (b) Milestone Report; and
- (c) any other documentation requested by DECC by notice in writing.

Final instalment:

- (a) completed Tax Invoice;
- (b) Milestone Report;
- (c) Statement of Expenditure;
- (d) Measurement and Verification Report;
- (e) Independent Auditor's Report; and
- (f) any other documentation requested by DECC by notice in writing.

Single lump sum payment (if applicable):

- (a) bank account details;
- (b) completed tax invoice; and
- (c) any other documentation requested by DECC by notice in writing.

Item 6 Confidential Information

Item 7 Specified laws and regulations, standards, policy and statements

Item 8 Publicity

Additional terms:

1. The Recipient must ensure that the following wording appears on all Project Materials:
 - (a) "Supported by the NSW Government's Climate Change Fund".
-

Item 9 Insurance

1 Insurance policies

- (a) adequate broad form public liability insurance to cover, as a minimum, all of the Recipient's obligations and liabilities under this Agreement;

- (b) workers' compensation insurance in accordance with applicable legislation in respect of all of the Recipient's employees; and
- (c) where appropriate, professional indemnity insurance.

2 Additional terms

- (a) The minimum cover for public liability insurance is \$20,000,000.
- (b) The minimum cover for professional indemnity insurance (if applicable) is \$5,000,000.

Item 10 Special Conditions

- 1. DECC is unable to provide ongoing funds including through the Climate Change Fund. The Recipient accepts that the Grant is non-recurrent.

Item 11 Tax Invoice

- 1. All Tax Invoices must:
 - (a) be clearly addressed to Mr Mark Dodds, Funds Manager, DECC;
 - (b) be sent to PO Box A290 Sydney South NSW 1232;
 - (c) be fully completed;
 - (d) be signed by a person authorised by the Recipient; and
 - (e) display prominently the words "Tax Invoice".
- 2. All Tax Invoices must contain the following information:
 - (a) the name of the Project;
 - (b) the Recipient name;
 - (c) the Recipient ABN;
 - (d) the instalment number;
 - (e) the amount requested;
 - (f) the GST component (listed separately to the amount requested); and
 - (g) the total amount requested.

Item 12 Reports

The Recipient must prepare and submit to DECC the Reports meeting the description and requirements specified below.

REPORT NAME	DESCRIPTION	FREQUENCY AND DATE REQUIRED
Milestone Report	<p>A report of the work performed by the Recipient to achieve a Milestone.</p> <p>The report is to be prepared in the format set out in Schedule 5.</p>	<p>A Milestone Report is required in relation to each Milestone.</p> <p>Each Milestone Report is to be submitted to DECC within 5 Business Days of the applicable Milestone Date.</p>

<p>Statement of Expenditure</p>	<p>A Statement of the Expenditure of the Grant.</p> <p>The report is to be prepared in the format set out in Schedule 5.</p>	<p>A Statement of Expenditure is required to be submitted to DECC:</p> <p>(a) within 60 Business Days of the end of each financial year to which the Grant relates; and</p> <p>(b) with the Final Evaluation Report.</p>
<p>Measurement and Verification Report</p>	<p>A report detailing the measurement and verification of the savings achieved.</p> <p>The report is to be prepared in accordance with the Measurement and Verification Plan in Annexure C and is to include an explanation of any significant variation from forecast savings, where requested by DECC.</p>	<p>A Measurement and Verification Report is required to be submitted to DECC:</p> <p>(a) with the Milestone Reports; and</p> <p>(b) with the Final Evaluation Report.</p>
<p>Final Evaluation Report</p>	<p>A summary report documenting completion of the Project in the format set out in Schedule 5.</p> <p>The following documents must be attached to the Final Evaluation Report:</p> <p>(a) completed Statement of Expenditure prepared in the format set out in Schedule 5;</p> <p>(b) independently completed Independent Auditor's Report prepared in the format set out in Schedule 5;</p> <p>(c) completed Measurement and Verification Report detailing the annual energy/potable water savings until 2017/18 and</p> <p>(d) three copies of the Project Materials (if applicable).</p>	<p>The Final Evaluation Report is to be submitted to DECC within 14 days of the earlier of:</p> <p>(a) the completion of the Project; or</p> <p>(b) the termination of this Agreement.</p> <p>All unspent Grant monies must be returned to DECC with the Final Evaluation Report either by:</p> <p>(a) cheque submitted with the Final Evaluation Report; or</p> <p>(b) electronic funds transfer directly to the DECC bank account on the same day as the final evaluation report is submitted to DECC.</p>

SCHEDULE 2 - BUDGET

This Schedule forms part of the Agreement between DECC and the Recipient.

	TOTAL OTHER SOURCES FUNDING \$	CLIMATE CHANGE FUND (CCF)				TOTAL CCF FUNDS \$	WHOLE PROJECT BUDGET
		07/08	08/09	09/10	010/11		
1. DIRECT PROJECT COSTS							
Salaries and related on-costs (e.g. Annual Leave Expense, Fringe Benefits Tax, Superannuation)							
Consultancies/contracts costs							
Plant/equipment							
Travel & Accommodation							
Other (please specify)							
Subtotal							
2. ADMINISTRATION							
Project general administration (e.g. Telephone & Fax Charges, Printing & Stationery)							
Project publicity/communication							
Accommodation (e.g. Rent)							
Other (please specify)							
Subtotal							
TOTAL							

SCHEDULE 3 - MILESTONES AND PAYMENTS

This Schedule forms part of the Agreement between DECC and the Recipient.

Milestone	Milestone date	Instalment amount	Payment date	Evidence of Milestone Achievement
<i>NB: A significant event in the project signifying the commencement and/or completion of a major deliverable.</i>	<i>NB: The date (dd/mm/yyyy) the milestone will be achieved</i>	<i>NB: Instalment amount required at achievement of milestone.</i>	<i>NB: Will be completed by DECC</i>	<i>NB: Description of evidence to support achievement of milestone (e.g. Tax Invoices, photographs)</i>
Milestone 1	<i>dd/mm/yyyy</i>	<i>\$??,???</i>		Milestone Report 1 (as outlined in Schedule 1, Item 12 & Schedule 5 of this Agreement), including evidence to support achievement of this Milestone.
Milestone 2	<i>dd/mm/yyyy</i>	<i>\$??,???</i>		Milestone Report 2 (as outlined in Schedule 1, Item 12 & Schedule 5 of this Agreement), including evidence to support achievement of this Milestone.
Milestone 3	<i>dd/mm/yyyy</i>	<i>\$??,???</i>		Milestone Report 3 (as outlined in Schedule 1, Item 12 & Schedule 5 of this Agreement), including evidence to support achievement of this Milestone.
Milestone 4	<i>dd/mm/yyyy</i>	<i>\$??,???</i>		Milestone Report 4 (as outlined in Schedule 1, Item 12 & Schedule 5 of this Agreement), including evidence to support achievement of this Milestone.
Milestone 5	<i>dd/mm/yyyy</i>	<i>\$??,???</i>		Milestone Report 5 (as outlined in Schedule 1, Item 12 & Schedule 5 of this Agreement), including evidence to support achievement of this Milestone.
Project Completion	<i>dd/mm/yyyy</i>	<i>\$??,???</i>		Final Evaluation Report (as outlined in Schedule 1, Item 12 & Schedule 5 of this Agreement).

Note: More or less than five milestones may be inserted if required.

SCHEDULE 4 - RECORDS

This Schedule forms part of the Funding Agreement between DECC and the Recipient.

- (a) The Recipient must provide to DECC a copy of the Recipient constitution or memorandum and Articles of Association, if requested.
- (b) The Recipient is required to maintain minimum organisational records (including accounting and financial records) under the various forms of incorporation legislation in external scrutiny of the organisation's yearly activities.
- (c) The Recipient is required to maintain a complete set of accounting records and financial records, including:

Accounting Records

- Cash Book
- Bank Deposit Book
- Cheque Butts
- Petty Cash Book (kept on imprest system)
- Pre-numbered Official Receipt Book
- Monthly Bank Reconciliation of Cash Book
- Documentation of all Expenditure with evidence of approval (e.g. Management Committee of Officers as authorised under the organisation's approved constitution)
- Wages Records/Time Sheets (where staff are employed).

The above may be encompassed in an adequate computerised accounting system.

Financial Records

- Balance Sheet
- Profit & Loss Statement or Receipts and Payments
- Cash Flow Statement
- Assets/Inventory Register

SCHEDULE 5 – FORMAT OF REPORTS

This Schedule forms part of the Agreement between DECC and the Recipient.

Notes:

1. The Recipient must prepare and submit to DECC Milestone Reports and the Final Evaluation Report in the format set out below. The times and frequency for submitting the Reports are specified in Schedule 1. DECC may from time to time vary the format of reports and manner of submission by written notice to the Recipient.
2. All reports must be sent to: Mr Mark Dodds, Funds Manager, Water & Energy Programs, Sustainability Programs Division, DECC

A. FORMAT OF MILESTONE AND FINAL EVALUATION REPORTS

Name of Grant Recipient:

Name of Project:

Milestone / Final Evaluation Report:

Summary of activities undertaken during the reporting period:

Actual Outcomes (must include details of energy/potable water savings):

Measurement and Verification Report

Comments:

Note: The actual outcomes for the Final Evaluation Report is to include the Measurement and Verification Report, prepared in accordance with the agreed Measurement and Verification Plan. This report will detail the annual energy/potable water savings until 2017/18 and, if required by DECC, include an explanation of any significant variation from forecast savings as stated in Attachment B.

I, the undersigned, being a person duly authorised by the Grant recipient certify that:

- (a) the information contained in this report is true and correct;
- (b) the expenditure of the Grant received to date has been solely on the Project; and
- (c) there is no matter or circumstances of which I am aware, that would constitute a breach by the Recipient of any term of the Funding Agreement between DECC and the Recipient dated [*insert date*] that has not been notified by the Recipient.

.....
Signature of authorised signatory

.....
Date

.....
Printed name and title of authorised signatory

B. FORMAT OF STATEMENT OF EXPENDITURE AND CERTIFICATION

	TOTAL OTHER SOURCES FUNDING \$	CLIMATE CHANGE FUND (CCF)				TOTAL CCF FUNDS \$	WHOLE PROJECT BUDGET
		07/08	08/09	09/10	10/11		
1. DIRECT PROJECT COSTS							
Salaries and related on-costs (e.g. Annual Leave Expense, Fringe Benefits Tax, Superannuation)							
Consultancies/contracts costs							
Plant/equipment							
Travel & Accommodation							
Other (please specify)							
Subtotal							
2. ADMINISTRATION							
Project general administration (e.g. Telephone & Fax Charges, Printing & Stationery)							
Project publicity/communication							
Accommodation (e.g. Rent)							
Other (please specify)							
Subtotal							
TOTAL EXPENDITURE							
TOTAL BUDGET							
SURPLUS/(DEFICIT)							

I certify that:

- (i) all the Project expenditure identified above has been expended solely on the Project and for the purposes stated in the Agreement; and
- (ii) the amount unexpended above (Surplus) has been refunded to DECC (only applies to Final Evaluation Report).

Full Name:..... Signature:.....

Position..... Date:.....

Independent Auditor’s Report

I have audited the Statement of Expenditure and contributions relating the Project set out above and in my opinion:

- (i) the above statement of expenditure is accordance with relevant proper accounts and records; and
- (ii) those conditions of the Funding Agreement that impose limitations and restrictions on expenditure of money have been complied with and expenditure and contributions are in accordance with the Agreement and any approved variations to it.

Full Name:..... Signature:.....

Position..... Date:.....

SAMPLE

ATTACHMENT A - RECIPIENT'S APPLICATION

This Attachment forms part of the Funding Agreement between DECC and the Recipient.

SAMPLE

ATTACHMENT B –PROJECT PLAN

This Attachment forms part of the Funding Agreement between DECC and the Recipient.

Note for Applicants:

If the Project Plan is as specified in the application, this will be noted here

BUT

If the Project Plan has been varied from that specified in the application, the revised Project Plan will be detailed in this Attachment (including revised savings).

SAMPLE

ATTACHMENT C – MEASUREMENT AND VERIFICATION PLAN

This Attachment forms part of the Funding Agreement between DECC and the Recipient.

Note for Applicants:

The Measurement and Verification Plan will be developed by the Recipient and approved by DEUS after the offer of funding, however, it must include the following table/s:

WATER SAVINGS PROJECTS

Water Savings at Project Completion		Water Savings 12 Months after Project Completion	
Date:		Date:	
Water Consumption (kL):		Water Consumption (kL)	
Business Activity Indicator (BAI) units (e.g. tonnes of product, number of customers, irrigation area):		Business Activity Indicator (BAI) units (e.g. tonnes of product, number of customers, irrigation area):	
BAI for previous 12 months (i.e. BAI amount for 12 months prior to project completion):		BAI for previous 12 months (i.e. BAI amount for 12 months following project completion):	

ENERGY SAVINGS PROJECTS

Estimated Energy Savings at Project Completion		Actual Energy Savings 12 Months after Project Completion	
Date:		Date:	
Energy Savings (MWh):		Energy Savings (MWh):	
Summer Peak demand savings (kW)		Summer Peak demand savings (kW)	
Winter peak demand savings (kW)		Winter peak demand savings (kW)	
Other Energy savings in GJ		Other Energy savings in GJ	
Total Greenhouse gas Emission savings in tCO₂-e		Total Greenhouse gas Emission savings in tCO₂-e	
Cost Savings \$		Cost Savings \$	
Business Activity Indicator (BAI) units (e.g. tonnes of product, number of customers):		Business Activity Indicator (BAI) units (e.g. tonnes of product, number of customers):	
BAI for previous 12 months (i.e. BAI amount for 12 months prior to project completion):		BAI for previous 12 months (i.e. BAI amount for 12 months following project completion):	