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# Environmental Upgrade Agreement

[to be inserted] "Council"

[to be inserted] "Finance Provider"

[to be inserted] "Building Owner"

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Title                   **Environmental Upgrade Agreement**

Execution

Date

Parties               **[to be inserted]** (ACN **[to be inserted]**) (Council)

**[to be inserted]** (ACN **[to be inserted]**) (Finance Provider)

**[to be inserted]** (ACN **[to be inserted]**) (Building Owner)

## Recitals

- A       The Building Owner owns the Land upon which the Building is located and wishes to carry out the Environmental Upgrade Works to the Building in order to improve the energy, water or environmental efficiency or sustainability of the Building.
- B       The Finance Provider has agreed to advance funding to the Building Owner for the purpose of funding the Environmental Upgrade Works.
- C       The Council will levy an Environmental Upgrade Charge pursuant to Part 2A of Chapter 6 of the Local Government Act in relation to the land on which the Building is situated for the purpose of the Building Owner repaying the funding provided by the Finance Provider and paying other amounts to the Council.
- D       The Council will collect the Charge Payments from the Building Owner in instalments in accordance with the Agreed Repayment Arrangements and the other provisions of this agreement.
- E       The Council will pay the Charge Payment to the Finance Provider, minus Council's Service Charges, in accordance with the Agreed Repayment Arrangements and will comply with its other obligations under this agreement.
- F       The Council, Finance Provide and Building Owner adopt the Mandatory Provisions of the Environmental Upgrade Template as approved by the Director General of **[insert date]** as set out below.

***[Drafting Note: the operative provisions of this agreement set out below constitute the Mandatory Provisions for the purposes of the Guidelines. Schedules and Annexures are provided as guides but may be varied and supplemented by the Parties]***

## 1. Details

No.	Item	Details
1	Council	Name Address Phone Email Authorised Representative Contact Person
2	Building Owner	Name Address Phone Email Authorised Representative Contact Person
3	Finance Provider	Name Address Phone Email Authorised Representative Contact Person
4	Land	<i>[insert title/folio details, address and local government area]</i>
5	Commencement Date	The date of the first drawdown as listed in <b>Schedule 2 - Funding Amount Schedule</b>
6	Funding Amount	The amount set out in <b>Schedule 2 - Funding Amount Schedule</b>
7	Funding Term	The term set out in <b>Schedule 2 - Funding Amount Schedule.</b>
8	EUA Works	The works described in <b>Schedule 5 - Environmental upgrade works and budget.</b>
9	Tenant Contributions	<i>[Yes/No]</i>

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## **2. Environmental Upgrade Agreement**

- 2.1 The Council, the Finance Provider and the Building Owner agree and acknowledge that this is an Environmental Upgrade Agreement for the purpose of implementing the Environmental Upgrade Works in accordance with section 54D of the Local Government Act.
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## **3. Funding**

### **Amount**

- 3.1 Subject to this Agreement, the Finance Provider agrees to advance the Building Owner the Funding Amount as set out in **Schedule 2 - Funding Amount Schedule**.

### **Purpose**

- 3.2 The Building Owner must use the Funding Amount only for the Environmental Upgrade Works specified in **Schedule 5 - Environmental upgrade works and budget**.

### **Notification of first Funding Amount**

- 3.3 The Finance Provider must notify the Council in writing upon the first provision of the Funding Amount to the Building Owner pursuant to this agreement within three (3) Business Days after that provision of funding occurs.

### **Repayment**

- 3.4 The Building Owner agrees to repay the Funding Amount in accordance with clause 5 (Environmental Upgrade Charge Payments) and **Schedule 3 - Agreed Repayment Arrangements**.

### **Prepayment**

- 3.5 The Building Owner may prepay all or part of the Outstanding Charge Amount (**Prepayment**), subject to the terms agreed with the Finance Provider, by giving not less than twenty-eight (28) days prior written notice to the Council and the Finance Provider specifying the amount and the Charge Payment Date on which the Prepayment will be paid.
- 3.6 On the proposed Charge Payment Date, the Building Owner must pay the Prepayment specified in the notice of prepayment given under clause 3.5.
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## **4. Levying of Environmental Upgrade Charge**

- 4.1 On or before the Commencement Date, the Council must levy the Environmental Upgrade Charge applied to the land on which the Building is situated.
- 4.2 The Parties acknowledge that the Environmental Upgrade Charge has been calculated in accordance with **Schedule 3 - Agreed Repayment Arrangements**.
- 4.3 Within two (2) Business Days of the Council levying the Environmental Upgrade Charge in accordance with clause 4.1, the Council must provide to each of the Building Owner and the Finance Provider a notice that the Environmental Upgrade Charge has been levied.

- 4.4 For the avoidance of doubt, once levied, the Environmental Upgrade Charge is recoverable in full, in accordance with clause 8.3, if the Building Owner defaults under this Agreement.
- 4.5 The Parties acknowledge that section 54J(2) of the Local Government Act applies in respect of the Environmental Upgrade Charge in the same way as it applies in respect of a charge levied under Chapter 15 of the Local Government Act.
- 

## **5. Environmental Upgrade Charge Payments**

### **Building Owner to make Charge Payments**

- 5.1 The Council must send a notice to the Building Owner specifying the Charge Payment amount to be paid in accordance with section 562 of the Local Government Act.
- 5.2 Unless otherwise agreed in writing by the parties, the Building Owner must pay each Charge Payment to the Council by directly debiting the account of the Building Owner nominated in the direct debit authority referred to in clause 5.10 on or before each of the following dates:
- (a) 28 February;
  - (b) 31 May;
  - (c) 31 August;
  - (d) 30 November;
- until such time as the Environmental Upgrade Charge has been fully paid by the Building Owner.

### **Administrative Costs and Service Charges**

- 5.3 The Council may retain any Service Charges and Administrative Costs that have been applied in respect of each Charge Payment made by the Building Owner under clause 5.2.
- 5.4 The parties agree that part 10 of chapter 15 of the Local Government Act does not apply in relation to the Service Charges and Administrative Costs.

### **Penalty Interest**

- 5.5 The Building Owner must pay Penalty Interest on any amount of a Charge Payment that has not been paid by the Building Owner by the Charge Payment Date, calculated at the rate for the time being set under section 566 of the Local Government Act.
- 5.6 The parties acknowledge and agree that the Penalty Interest:
- (a) is taken to be a Council rate or charge which is due and payable in accordance with section 566(4) of the Local Government Act; and
  - (b) is to be recovered by the Council in accordance with section 712 and division 5 of part 2 of the Local Government Act.
- 5.7 The Council must pay to the Finance Provider, by way of electronic transfer into the nominated bank account specified in **Schedule 6 - Finance Provider Remittance Details**, all Penalty Interest received or recovered by the Council whether as a result of the exercise of its powers of enforcement or otherwise within eight (8) Business Days after it has received that Penalty Interest.

- 5.8 The Council is not liable to the Finance Provider if the Council fails to receive or recover Penalty Interest from the Building Owner.

### **Continuation of Charge Payments**

- 5.9 The Building Owner must continue to make all Charge Payments that are due to the Council in accordance with the Agreed Repayment Arrangements even if the Building ceases to be rateable by the Council.

### **Direct Debit Authority by the Building Owner**

- 5.10 For the purpose of paying the Charge Payment, the Building Owner must provide to the Council a completed and signed copy of the direct debit authority included as **Annexure 2 - Direct Debit Authority**.

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## **6. Collection Role of Council**

### **Council to remit Charge Payment, Prepayment and Proceeds to Finance Provider**

- 6.1 The Building Owner and the Finance Provider acknowledge the role of the Council in the collection arrangements set out in this clause 6 and section 54M of the Local Government Act.

- 6.2 The Council must, in accordance with this agreement and section 54G(4) of the Local Government Act, distribute each amount received from the Building Owner as:

- (a) a Charge Payment;
- (b) a Prepayment; or
- (c) each amount received or recovered as Proceeds,

(in each case, other than relevant Service Charges and Administrative Costs) to the Finance Provider by way of electronic funds transfer into the nominated bank account specified in **Schedule 6 - Finance Provider Remittance Details** no later than eight (8) Business Days after the Council has received funds from the Building Owner for that amount.

- 6.3 The Council is not liable to the Finance Provider or any other person under this clause 6 for any amounts other than those received by the Council as cleared funds for Charge Payments, Prepayments or Proceeds.

### **Interest payable by Council**

- 6.4 If the Council makes any payment to the Finance Provider later than on the Business Day on which it is required to make that payment under this agreement, it will pay the Finance Provider interest on that amount, calculated daily at a rate equal to the Reserve Bank of Australia's overnight cash rate for each day the payment is outstanding.

### **Timing of Council obligation**

- 6.5 For the avoidance of doubt, the Council's obligations under this clause 6 in respect of each Charge Payment, any Prepayment and any Proceeds, do not come into effect until the Building Owner has paid the Charge Payment or the Prepayment to the Council, or the Council has received or recovered Proceeds, as cleared funds.

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## 7. Amendments to Repayment Arrangements

### Change in amounts payable by Building Owner

- 7.1 Subject to clause 7.3, the Agreed Repayment Arrangements must be amended if any of the following events (**Adjustment Event**) occurs:
- (a) a Prepayment from the Building Owner to the Council; or
  - (b) the receipt or recovery of Proceeds by the Council.
- 7.2 In the event an Adjustment Event occurs, the Finance Provider must:
- (a) amend the Agreed Repayment Arrangements so that the total amount of the remaining Charge Payments is equal to the sum of the Outstanding Funding and the Administrative Costs outstanding as at the date of the relevant Adjustment Event; and
  - (b) provide the Building Owner and Council with the amended **Schedule 3 - Agreed Repayment Arrangements** within five (5) Business Days of the Adjustment Date.
- 7.3 If the effect of the amendment is to reduce the amount outstanding to zero, no amendment is required.

### Interest rate change

- 7.4 At any time between the Execution Date and the Commencement Date (both inclusive), the Finance Provider may provide to the Council and the Building Owner an amended **Schedule 2 - Funding Amount Schedule** to reflect any change in interest rates that affects the Finance Provider's own cost of funds in respect of compliance with its obligations under this agreement. The Finance Provider's own cost of funds will be determined in good faith by the Finance Provider. That amended Funding Amount schedule will, on and from the date on which it is provided to the Council and the Building Owner, be the Funding Amount schedule for the purpose of this agreement.
- 7.5 Not later than one (1) Business Day after the Finance Provider provides an amended **Schedule 2 - Funding Amount Schedule** to the Council and the Building Owner in accordance with clause 7.4, the Finance Provider must amend **Schedule 3 - Agreed Repayment Arrangements** to reflect the amended Funding Amount schedule and provide a copy of the amended **Schedule 3 - Agreed Repayment Arrangements** to the Council and the Building Owner. The amended **Schedule 3 - Agreed Repayment Arrangements** will become effective on the date provided to the Council and the Building Owner.

### Building Owner bound by Amended Repayment Arrangement

- 7.6 The Building Owner agrees to be bound by and to comply with the amended Agreed Repayment Arrangements, whether or not the amended Agreed Repayment Arrangements increases or decreases the total amount of the remaining Charge Payments.

### Refund of overpayments

- 7.7 If the Building Owner has made Charge Payments in excess of the Agreed Repayment Amount (as adjusted), then the Council must refund the excess amount to the Building Owner within twenty (20) Business Days of becoming aware of the overpayment and (if applicable) receiving remittance of the overpayment from the Finance Provider.
- 7.8 The Finance Provider must remit any overpayment received to the Council within ten (10) Business Days of being notified by the Council of the overpayment.



- 7.9 For the avoidance of doubt, nothing in this agreement requires the Council to refund any excess amount to the Building Owner if the Council has paid that amount to the Finance Provider and the Finance Provider has not remitted the excess amount to the Council under clause 7.8.

### **When Agreed Repayment Arrangements cease to apply**

- 7.10 The Agreed Repayment Arrangements cease to apply when the Charge Obligations have been fully discharged by the Building Owner.

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## **8. Enforcement**

### **Council to give notice to Finance Provider**

- 8.1 The Council must, as soon as is reasonably practicable, give notice in writing to the Finance Provider if the Council becomes aware of a failure by the Building Owner to pay by the due date any amount payable under the Charge Obligations.

### **Council's Enforcement Procedure**

- 8.2 The parties agree that the Council may only vary the Enforcement Procedure if the Enforcement Procedure is or becomes inconsistent with applicable laws.

### **Council's enforcement action**

- 8.3 The Council must use its best endeavours to take all necessary action to recover or enforce its rights for payment of the Environmental Upgrade Charge.

### **Sale of Land by Council**

- 8.4 If the Council sells the Land as a result of the Building Owner's failure to pay the Environmental Upgrade Charge then:
- (a) the Environmental Upgrade Charge ceases to be a charge on the Land; and
  - (b) following the application of Proceeds of that sale to discharge any outstanding Charge Payments owed to the Council, if the Environmental Upgrade Charge is not fully discharged, the Building Owner remains liable to pay the outstanding amount.
- 8.5 Notwithstanding clause 8.4, the Council is not obliged to take any action against the Building Owner personally to recover any outstanding amount of the Environmental Upgrade Charge or Penalty Interest which remains unpaid.

### **Council's discretion regarding Enforcement**

- 8.6 The parties agree that the Council:
- (a) may only waive or defer the enforcement of any unpaid Charge Payment if the waiver or deferral is in accordance with both:
    - (i) the process contained in the Enforcement Procedure; and
    - (ii) the Local Government Act and the Local Government Regulation (if applicable); and
  - (b) must notify the Finance Provider of any waiver or deferral of the enforcement of any unpaid Charge Payment it proposes to grant as contemplated under clause 8.6(a).

- 8.7 If the Council waives or defers the enforcement of any unpaid Charge Payment in accordance with clause 8.6, the Council is not liable to the Finance Provider for the Charge Payment which has been waived or deferred, unless that amount is actually received by the Council.

### **Rights of Finance Provider**

- 8.8 Nothing in this clause 8 or any other provision of this agreement will prevent the Finance Provider from taking any action to enforce any of its rights against the Council (whether for breach by the Council of its obligations under this clause 8 or otherwise) including seeking declaratory orders, orders from a court for specific performance, the issue of an injunction or an award for damages.

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## **9. No liability**

- 9.1 For the avoidance of doubt, if the Council has used its best endeavours to take action to recover or enforce its rights against the Building Owner in relation to the Charge Payments, but has not received payment from the Building Owner of the Charge Payments, then the Council is not liable for:
- (a) any failure to receive payment from the Building Owner of the Charge Payments; or
  - (b) paying the Finance Provider any amount under clause 5.7 as if the Council had received that amount from the Building Owner.

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## **10. Council's rights and remedies remain unfettered**

- 10.1 The rights, powers and remedies of the Council under this agreement are in addition to other rights, powers and remedies provided to the Council by law independently of this agreement.
- 10.2 Nothing in this agreement limits or prevents the Council from exercising any rights, powers or remedies provided to the Council by law independently of this agreement, or otherwise obliges the Council to exercise its rights, powers or remedies in a manner which is inconsistent with its functions or powers.

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## **11. Confirmations**

### **Confirmations from Building Owner**

- 11.1 The Building Owner confirms that, as at the Execution Date:
- (a) the Building is an Existing Building;
  - (b) the Building is used wholly or predominantly for commercial, industrial or other non-residential purposes;
  - (c) the Building is not a strata building (as defined in section 54C of the Local Government Act);
  - (d) it holds all Authorisations required as at the date of this agreement to undertake the Environmental Upgrade Works;
  - (e) the Council is not taken to have provided, or to have agreed to provide, any Authorisation solely by virtue of the Council being a party to this agreement; and

- (f) in the event that the Building Owner requires a Lessee to make a Contribution to any Environmental Upgrade Charge, the Lease:
    - (i) contains the specific agreement of the Lessee to make such Contribution; or
    - (ii) requires the Lessee's payment of Council charges for the Building.
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## 12. Recovery of Contributions by Lessees

### Contributions

- 12.1 The Building Owner may require the Lessees to make Contributions either:
    - (a) through existing lease provisions requiring payment by the Lessee of council rates and charges calculated in accordance with the Methodology and the terms of this agreement; or
    - (b) by specific agreement to make such a contribution through alternative arrangements as set out in a new or amended Lease.
  - 12.2 If a Lessee is required to make Contributions under clause 12.1(a), the Contributions must not exceed a reasonable estimate, made by a suitably qualified consultant on behalf of the Building Owner, of the cost savings to be made by the Lessee as a consequence of the Environmental Upgrade Works in the period to which the Charge Payment relates.
  - 12.3 The parties agree that the Contributions:
    - (a) will be calculated in accordance with the Methodology and/or any provisions of the applicable Lease (to the extent that the Lease addresses the payment by the Lessee of Council rates or charges for the Building) or any other written agreement between the Building Owner and the Lessee; and
    - (b) are set out in **Schedule 4 - Lessee cost savings estimation**.
  - 12.4 The Building Owner must undertake an annual reconciliation of Contributions received from Lessees against the actual Lessee cost savings, wherever possible, as part of its preparation of the Annual Report (Building) and, in the event that the Lessee's Contribution is in excess of the cost savings, the Building Owner must reimburse each Lessee for any excess Contribution in that year.
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## 13. Reporting

### Reporting by Building Owner

- 13.1 On 1 August each year, the Building Owner must provide an Annual Report in accordance with **Schedule 8 - Annual Report (Building) Template** to the Council.
- 13.2 The Annual Report (Building) must include a notice which states that the Environmental Upgrade Works have been completed to the specifications set out in this agreement and provide details (if applicable) of any variations from, or defects associated with, the Environmental Upgrade Works (including but not limited to any part of the Environmental Upgrade Works that have not been completed).

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## 14. Assignment and assumption of rights

### Changes to Council

- 14.1 The functions of the Council under this agreement may be exercised by any successor council to which the assets, rights and liabilities of the Council are transferred if the Council amalgamates, merges or becomes subject to any similar arrangement with another council (as defined in the Local Government Act). For the avoidance of doubt, the assumption of rights and liabilities by a successor council does not require the consent of the Building Owner or the Finance Provider.

### Assignment by Finance Provider

- 14.2 The Finance Provider must not assign or otherwise deal with its rights or novate its obligations under this agreement or allow any interest in them to arise or be varied, in each case, without the prior written consent of Council and the Building Owner (such consent not to be unreasonably withheld or delayed) unless the assignment and novation is to a Permitted Assignee.

### Assignment by Building Owner

- 14.3 The Building Owner must not assign or otherwise deal with its rights or novate its obligations under this agreement or allow any interest in them to arise or be varied, in each case, without the prior written consent of the Finance Provider and the Council (such consent not to be unreasonably withheld or delayed).
- 14.4 For the avoidance of doubt, the entering into of a new lease of all or part of the Land shall not require the consent of the other parties. However, the Building Owner must register any new lease on the title to the Land as soon as reasonably practicable.

### Accession Deed Poll

- 14.5 If an assignment and novation contemplated by this clause 14 involves the transfer of all of the rights and novation of all the obligations of a party under this agreement, the transferor must:
- (a) perform all necessary know your client / anti money laundering checks; and
  - (b) ensure that the transferee enters into and provides to each other party, a deed poll in the form of **Schedule 7 - Accession deed poll** under which the transferee agrees to be bound, with effect on and from the date of the deed poll, by the terms of this agreement as if it was originally named as a party to this agreement instead of the applicable party.

### Release

- 14.6 On the date on which that executed deed poll is delivered to each other party to this agreement, the relevant transferor is released from all of its future obligations under this agreement (but for the avoidance of doubt is not released from any prior breach of this agreement).

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## 15. Sale of Land and Subdivision

### Sale of Land

- 15.1 The Building Owner must notify the Council and the Finance Provider:

- (a) of its intention to Dispose of the Land as soon as reasonably practicable after a decision is taken to sell the Land; and
  - (b) within two (2) Business Days of entering into a contract for the sale of the Land or otherwise entering into a transaction to Dispose of the Land.
- 15.2 The Building Owner must provide the Finance Provider with the details of the transferee of the Land and provide all reasonable assistance to enable the Finance Provider to undertake to its satisfaction, know your client / anti money laundering checks on the transferee, prior to the settlement of the sale or Disposal of the Land and the assignment of this agreement. For the avoidance of doubt, if a transferee fails to satisfy the Finance Provider's know your client / anti money laundering clause 15.4 shall apply.
- 15.3 The Building Owner must take all reasonable steps to assign in full all of its rights and novate its obligations under this agreement to the new owner prior to the completion of the contract for the sale of land.
- 15.4 If the Building Owner fails to procure the execution of a deed poll assigning all of its rights and novating all of its obligations under this agreement to the new owner on or before the date of completion of the contract for the sale of land, the Building Owner must:
- (a) notify the Council and the Finance Provider immediately; and
  - (b) repay the Outstanding Charge Amount in full to the Council in accordance with a notice that the Council shall issue.

### **Subdivision**

- 15.5 The Building Owner must not, without the prior written consent of the Finance Provider and the Council (such consent not to be unreasonably withheld or delayed and which may be given conditionally), lodge a plan of subdivision for registration in respect of the Land.

### **Strata Subdivision**

- 15.6 The Building Owner must fully discharge the Environmental Upgrade Charge before lodging a plan of Strata Subdivision for registration in respect of any part of the Building.

## **16. General**

### **Notices**

- 16.1 All notices must be:
- (a) in legible writing and in English;
  - (b) addressed to the recipient at the address or facsimile number set out in the Details or to any other address or facsimile number that a party may notify to the other;
  - (c) signed by the party, or where the sender is a company by the authorised officer(s) of that company or under the common seal of that company; and
  - (d) sent to the recipient by hand, prepaid post (airmail if to or from a place outside Australia) or facsimile); and
  - (e) if sent by email, in a form which:
    - (i) identifies the sender;

- (ii) is electronically signed by the sender or an authorised officer of the sender; and
- (iii) clearly indicates the subject matter of the notice in the subject heading of the email,

provided that the recipient has not provided written notice to the other parties confirming that it does not wish to receive notices by email.

- 16.2 The parties consent to the method of signature contained in clause 16.1(e) and agree that it satisfies the requirements of applicable law for signature on service of notice by email.

### **Confidentiality**

- 16.3 The parties acknowledge that Council may be required to disclose information about this agreement under the *Government Information (Public Access) Act 2009* (NSW).
- 16.4 Without derogating from clause 16.3, the commercial terms of this agreement are intended to be treated as commercial in confidence.
- 16.5 Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence of or contents of this agreement) except:
- (a) to officers, employees, legal and other advisers and auditors of the parties; or
  - (b) to any party or any related entity of any party, provided the recipient agrees to act consistently with this clause 16.5; or
  - (c) with the consent of the party who provided the information (such consent not to be unreasonably withheld or delayed); or
  - (d) under section 603 of the Local Government Act in relation to certificates as to rates, charges and other amounts; or
  - (e) to the OEH to satisfy Council reporting obligations under section 28 of the Local Government Act; or
  - (f) as required by any law, regulation, regulatory or statutory body or stock exchange; or
  - (g) to Rating Agencies to the extent required by them.

### **Variation**

- 16.6 A provision of this agreement, other than the amount of interest varied in accordance with clause 7.4, **Schedule 2 - Funding Amount Schedule** and **Schedule 3 - Agreed Repayment Arrangements**, must not be varied except in writing signed by each party.

### **Waiver**

- 16.7 Without limitation to clause 8.2, a right created under this agreement is only waived, or a consent under this agreement is only given, if in writing signed by the party or parties to be bound.

### **Termination for convenience**

- 16.8 At any time, this agreement may be terminated in writing signed by each of the parties.

### **Termination for default**

- 16.9 If the Building Owner uses the Funding Amount provided to it on the terms set out in **Schedule 2 - Funding Amount Schedule** for any purpose other than for the purpose of paying the Environmental Upgrade Works Costs under the terms of this agreement or otherwise fails to carry out the Environmental Upgrade Works, the Council shall, upon receipt of evidence of the default, provide written notice to the Finance Provider.
- 16.10 The Finance Provider may, upon receiving written notice from Council in accordance with clause 16.9, in its complete discretion, direct the Council to terminate this agreement.
- 16.11 The Council must give the Building Owner at least one (1) month's notice in writing prior to the termination of this agreement.

### **Consequences of termination**

- 16.12 If this agreement is terminated under clauses 16.8 or 16.9 to 16.11, the Building Owner must, on or prior to the date the termination takes effect:
- make a Prepayment of the aggregate amount of all Charge Payments which are then outstanding in accordance with clause 3.5;
- (a) pay any Break Costs that may be applicable in accordance with **Schedule 2 - Funding Amount Schedule**; and
  - (b) pay any outstanding Services Charges or Administrative Costs.

### **Severability**

- 16.13 Part or all of any provision of this agreement that is illegal or unenforceable will be severed from this agreement and will not affect the continued operation of the remaining provisions of this agreement.

### **Counterparts**

- 16.14 This agreement may consist of a number of copies, each signed by one or more parties. If so, the signed copies are treated as making up the one document.

### **Governing law**

- 16.15 This agreement is governed by the law in force in New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that place.

### **Entire Agreement**

- 16.16 This agreement is the entire agreement of the parties in relation to its subject matter and supersedes all other representations, negotiations, arrangements, communications, understandings or agreements.

### **Additional Conditions**

- 16.17 The parties agree that:
- (a) the Additional Conditions contained within **Schedule 1 - Additional Conditions** to this agreement are binding upon each of the parties; and
  - (b) to the extent of any inconsistency between the Mandatory Provisions and the Additional Conditions contained in **Schedule 1 - Additional Conditions**, the Mandatory Provisions shall prevail.

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## 17. Definitions and Interpretation

### 17.1 Definitions

**Additional Conditions** means the conditions set out in **Schedule 1 - Additional Conditions**.

**Administrative Costs** means, as at a particular Charge Payment Date, any of the following to be paid as part of a Charge Payment:

- (a) a late payment fee, being the amount, or a part of the amount, charged for late payment of a Charge Payment, such amount being limited to cost recovery; and
- (b) a fixed fee for amendments to this agreement or the Charge Payments.

**Adjustment Date** means the date upon which the Agreement Repayment Amount is amended following an Adjustment Event.

**Adjustment Event** means any event specified in clause 7.1.

**Agreed Repayment Arrangements** means the arrangements relating to the payment of the Environmental Upgrade Works provided for by this Agreement and comprised of:

- (a) the Charge Payment Dates;
- (b) the Charge Payments;
- (c) the amount of, or a method for calculating, the Administrative Costs; and
- (d) the total Service Charges,

as set out in **Schedule 3 - Agreed Repayment Arrangements**, as amended from time to time in accordance with clause 7.

**Annual Report (Building)** means an annual report for each financial year in accordance with the template for annual reporting published by the OEH from time to time on the environmental performance of the Building that includes the following information:

- (a) if the Environmental Upgrade Works relate to energy or water consumption or efficiency improvements, actual energy and/or water use of the Building. If a NABERS rating is available for the Building, this should be in the form of an accredited NABERS rating for the Building; and
- (b) actual environmental savings relating to the Environmental Upgrade Works; and
- (c) financial savings and any costs incurred in relation to the Environmental Upgrade Works; and
- (d) where applicable, the total amount of Charge Payments passed on to Lessees.

**Annual Report (Council)** means the Council's annual report prepared in accordance with the template for the Council's annual reporting published by the OEH from time to time, in accordance with section 28 of the Local Government Act.

**Authorisations** means all licences, consents, authorisations, permits or approvals (including all heritage, planning and environmental approvals) necessary to carry out, develop, construct, operate or maintain the Environmental Upgrade Works.

**Building** means the Existing Building identified in Item 4 of the Details set out in clause 1.



**Business Day** means a day on which banks are open for general banking business in Sydney (excluding Saturdays, Sundays and public holidays in that place).

**Charge Payment** means each amount of the Environmental Upgrade Charge payable by the Building Owner to the Council on a Charge Payment Date (including any Service charges and Administrative Costs that have been applied in respect of that Charge Payment Date), as set out in **Schedule 3 - Agreed Repayment Arrangements** (either as a specified amount or as a method for calculating the amount).

**Charge Payment Date** means each date on which Charge Payment is due from the Building Owner to the Council as set out in the Agreed Repayment Arrangements.

**Commencement Date** means the date specified in Item 5 of the Details set out in clause 1.

**Contribution** means the amount to be paid by the Lessee to the Building Owner which, as at the Commencement Date, are described in the Lessee Cost Savings Estimation.

**Dispose** means to assign, transfer, otherwise dispose of or grant or permit or suffer the grant of any legal or equitable interest (either in whole or in part) whether by sale, lease, declaration or creation of a trust or otherwise.

**Enforcement Procedure** means the Council's procedure concerning the waiver, deferral, recovery and enforcement of the Environmental Upgrade Charge and any other charge made under part 2A of chapter 6 of the Local Government Act (by any means) as at the date of this agreement, as set out in **Annexure 1 - Enforcement Procedure**.

**Environmental Improvement** has the meaning given to that term in regulation 136A of the Local Government Regulation.

**Environmental Upgrade Charge** means the sum of all Charge Payments payable by the Building Owner to the Council in relation to the Environmental Upgrade Works under the this agreement and in accordance with the Local Government Act.

**Environmental Upgrade Works** means the works set out in **Schedule 5 - Environmental upgrade works and budget** (which may include any works in relation to the Building that result in an Environmental Improvement), but these works do not include any works carried out prior to the date of this agreement.

**Existing Building** has the meaning given to that term in section 54F(1) of the Local Government Act;

**Funding Amount** means the amount of funding to be advanced by the Finance Provider to the Building Owner as set out in **Schedule 2 - Funding Amount Schedule**.

**Guidelines** means the guidelines entitled "Guidelines for Environmental Upgrade Agreements" issued by the Minister for the Environment.

**Land** means the land upon which the Existing Building is located, as set out in item 4 of clause 1 Details.

**Lease** means an agreement under which a person grants to another person for value a right of occupation of premises.

**Lessee** means each lessee (other than the Building Owner) of the Land under a Lease and each lessee (other than the Building Owner) of the Land which becomes a lessee (other than the Building Owner) under a Lease.

**Lessee Costs Savings Estimation** means the estimate of lessee cost savings set out in **Schedule 4 - Lessee cost savings estimation** as amended from time to time in accordance with clause 1.1.

**Local Government Act** means the Local Government Act 1993 (NSW).

**Local Government Regulation** means the Local Government (General) Regulation 2005 (NSW).

**Loss** means any loss, damage, liability, cost or expense.

**Mandatory Provisions** means the Mandatory Provisions of the Environmental Upgrade Template as approved by the Director General of [insert date] which are set out as the operative provisions of this agreement and which must be complied with by each of the parties.

**Methodology** means the methodology by which the environmental and cost savings to be made by a Lessee arising from the Environmental Upgrade Works are calculated. Such methodology may include the requirements set out in the Guidelines (if applicable) and **Schedule 4 - Lessee cost savings estimation**. The Methodology may permit both savings made directly by the Lessee and a proportion of savings made by all occupants of the Building to be counted towards the cost savings made by the Lessee.

**NABERS** means the National Australian Built Environment Rating System.

**New Lessee** means a Lessee whose Lease has a commencement date after the date of this agreement.

**OEH** means the Office of Environment and Heritage, Department of Premier and Cabinet.

**Outstanding Charge Amount** means, as at any date, the sum of all Charge Payments payable by the Building Owner under this agreement, less the total amount of Charge Payments that have already been paid by the Building Owner as at that date.

**Outstanding Funding** means, at a particular date, the Funding Amount that has been advanced by the Financer to the Building Owner under this agreement, less the aggregate of all amounts paid by the Council to the Finance Provider under this agreement prior to that date, excluding amounts with respect to Penalty Interest paid by the Council to the Finance Provider as contemplated by clauses 5.7 or 6.4

**Penalty Interest** has the meaning given in clause 5.5.

**Permitted Assignee** means the assignment and novation that is permitted under clause 14 of this agreement.

**Prepayment** means each payment from the Building Owner to the Council by way of prepayment of all or part of the Environmental Upgrade Charge in accordance with clauses 3.5 and 3.6.

**Proceeds** means any amount received or recovered by the Council as a result of the exercise of its powers of enforcement with respect to the obligation of the Building Owner to pay the

Environmental Upgrade Charge, including the proceeds of a sale of the Building but excluding amounts with respect to interest paid by the Council to the Finance Provider as contemplated by clause 6.

**Rating Agency** means a company which evaluates the creditworthiness of organisations that issue debt in public markets and assigns a letter grade to the organisations ability to repay debt, including Moody's, Standard and Poor's and Fitch Ratings.

**Service Charges** means an amount applied by the Council on a one-off or periodic basis to cover the Council's reasonable costs of administering the collection of the Environmental Upgrade Charge, as set out in **Schedule 3 - Agreed Repayment Arrangements**.

**Termination Date** means the date of termination of this agreement as contemplated in clause 16.8.

## Interpretation

17.2 In this Agreement, unless the context indicates a contrary intention:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the expression "person" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (c) a reference to any Party includes that Party's executors, administrators, successors and permitted assigns, including any person taking by way of novation and, in the case of a trustee, includes any substituted or additional trustee;
- (d) a reference to any document (including this Agreement) is to that document as varied, novated, ratified or replaced from time to time;
- (e) a reference to any statute or to any statutory provision includes any statutory modification or re-enactment of it or any statutory provision substituted for it, and all ordinances, by-laws, regulations, rules and statutory instruments (however described) issued under it;
- (f) words importing the singular include the plural (and vice versa), and words indicating a gender include every other gender;
- (g) references to Parties, clauses, schedules, exhibits or annexures are references to Parties, clauses, schedules, exhibits and annexures to or of this Agreement, and a reference to this Agreement includes any schedule, exhibit or annexure to this Agreement;
- (h) where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning; and
- (i) the word "includes" in any form is not a word of limitation.

17.3 Additional Conditions adopted for the purposes of this agreement do not form part of the Mandatory Provisions, but if included in a schedule to this agreement shall form part of this agreement and be binding upon the parties.

## Inconsistency

17.4 To the extent that there is any inconsistency between any documents, the order of priority of application is:

- (a) this agreement;
- (b) the schedules to this agreement; and
- (c) the other documents.

## Execution

**Executed** as an agreement.

**Insert appropriate execution clause for each party here**

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## **Schedule 1 - Additional Conditions**

*[Drafting Note: the parties have the option of inserting any additional conditions they consider necessary in this Schedule, including conditions set out in the document "EUA Additional Conditions"]*

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## Schedule 2 - Funding Amount Schedule

*[Drafting Note: The following table outlines minimum information to be provided by the Finance Provider to the Building Owner. The table has been provided as a guide only and is intended to be summarise the terms of the agreement between the Finance Provider and the Building Owner.]*

### **Funding Amount Terms**

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Finance Provider Interest Rate	
Funding Term (years)	
Finance Provider Establishment Fee	

### **Funding Amount to be advanced by Finance Provider to Building Owner**

<b>Drawdown Date</b>	<b>Drawdown (Value \$)</b>
<b>Total Funding</b>	[insert total ]

### Schedule 3 - Agreed Repayment Arrangements

*[Drafting Note: the following table outlines minimum information to be provided by the Finance Provider and Council. The table has been provided as a guide only. Additional information or alternative formats may be submitted, or requested by other parties. Please add or delete rows as relevant to the loan terms.]*

<b>Repayments from Building Owner</b>				
Payment Period	Charge Payment Date	Charge Payment Amount	Service Charges	Total Charge Payment
			<i>[insert one-off charge or insert recurring service charge for each Charge Payment]</i>	<i>[insert sum]</i>
<b>Environmental Upgrade Charge</b>				<i>[insert total sum of all Charge Payments]</i>

#### **Administrative Costs**

Amendment Fee  
(as applicable) \_\_\_\_\_

Late Payment / Direct Debit Dishonour Fee  
(as applicable, interest may apply) \_\_\_\_\_

## Schedule 4 - Lessee cost savings estimation

[Drafting Note: the following table outlines an example of minimum information to be provided by the Building Owner and their representative. This Schedule only needs to be completed if the Building Owner intends to pass on upgrade costs to their Lessees(s). The table has been provided as a guide only. Additional information and/or alternative formats may be submitted, or requested by other parties. A Table would be allocated for each Lessee, with rows added depending on the term of the loan.]

<b>Lessee 1: (Insert Name, Address, Net Lettable Area)</b>						
<b>Charge No.</b>	<b>Year</b>	<b>Charge payment period</b>	<b>Type of cost saving (water, electricity, waste etc.)</b>	<b>Estimated savings per quarter (kWh, m<sup>3</sup>)</b> (a) Tenancy only (b) X% of house	<b>Estimated savings per quarter (\$)</b> (a) Tenancy only (b) X% of house	<b>Maximum Lessee contribution in charge period</b>
1						
2						
3						
4						
<b>Total Annual Contribution by Lessee (\$):</b>						
5						
6						
7						
8						
<b>Total Annual Contribution by Lessee (\$):</b>						
9						
10						
11						
12						
<b>Total Annual Contribution by Lessee (\$):</b>						

### METHODOLOGY

Qualified professionals should describe all the relevant inputs used to calculate Lessee savings so that a Lessee can see how the contributions have been derived.



## Schedule 5 - Environmental upgrade works and budget

[Drafting Note: the following table outlines the minimum information to be provided by the Building Owner and their representative. This table has been provided as a guide only. Additional information or alternative formats may be submitted, or requested by other parties. Please delete the blue example entry when submitting the Agreement.]

Upgrade Works	Schedule of Items / Equipment	Budget	Environmental Benefit
<i>For example: Install 100kW grid-connected solar photovoltaic system</i>	<i>• 400 x 250W monocrystalline panels</i>		<i>Reduce fossil fuel electricity use by XXMWh, saving XX Tonnes of CO2 per annum</i>
	<i>• 6 x XYZ Inverters</i>		
	<i>• Metering supply and installation</i>		
	<i>• PV framing and installation</i>		
	<i>• Monitoring – Bluetooth smartweb box</i>		

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## Schedule 6 - Finance Provider Remittance Details

*[Drafting Note: Finance Provider to insert bank details for remittance. The table below is a guide only and may be varied by the parties ]*

<b>Loan Reference</b>	
<b>Financial Institution</b>	
<b>Account Name</b>	
<b>BSB</b>	
<b>Account Number</b>	
<b>Email for remittance advice</b>	
<b>Contact Name</b>	
<b>Contact Number</b>	

Signed by Finance Provider:

Date:

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## Schedule 7 - Accession deed poll

Accession Deed Poll dated [ ]

**By:** [Insert full name of relevant transferee] [Insert ABN] (Transferee)

**In favour of:** Each other party to the Environmental Upgrade Agreement, as defined below (**Beneficiary**)

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### 1. Definitions and interpretation

- (a) **Environmental Upgrade Agreement** means the agreement entitled "Environmental Upgrade Agreement (NSW)" dated on or about [ ] between the Council, [ ] and [ ].
- (b) Unless otherwise defined, expressions used in this deed poll have the meanings given to them in the Environmental Upgrade Agreement.
- (c) Clause 1.2 of the Environmental Upgrade Agreement applies in this deed poll as if it was set out in full in this deed poll and as if all references in that clause to "this agreement" were references to this deed poll.

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### 2. Agreements, confirmations and representations

The Transferee:

- (a) enters this deed poll for valuable consideration, the receipt of which is acknowledged; and
- (b) agrees to:
  - (i) become, with effect on and from the date of this deed poll, *[the Council /the Building Owner/the Finance Provider]* under the Environmental Upgrade Agreement;
  - (ii) be bound by the Environmental Upgrade Agreement in that capacity with effect on and from the date of this deed poll; and
  - (iii) comply with and perform its obligations as *[the Council /the Building Owner/the Finance Provider]* under the Environmental Upgrade Agreement.

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### 3. Governing law

This deed poll is governed by the law applying in New South Wales.

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**4. Deed Poll**

This document is executed as a deed poll by the Transferee in favour of each Beneficiary. Each Beneficiary has the benefit of this deed poll and is entitled to enforce this deed poll, whether itself or with any one or more other Beneficiaries even though it is not a party to this deed poll.

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**5. Attorneys**

Each person who executes this deed poll on behalf of the Transferee under a power of attorney warrants that he or she has no notice of the revocation of that power or of any fact or circumstance that might affect his or her authority to execute this deed poll under that power.

Executed as a deed poll.

***[Insert signing panel]***

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## Schedule 8 - Annual Report (Building) Template

### Reporting Year (Financial):

#### Section 1: Building Details

Street Number:	Street Name:
Suburb:	Postcode:
Council LGA:	
Primary Building Use (please circle): Office Retail Industrial Accommodation Other (please specify)	

#### Section 2: Owner Details

Name:	Contact Number:
Address:	
Email:	

#### Section 3: Completion

Have the Environmental Upgrade Works outlined in **Schedule 5 – Environmental upgrade works and budget** been completed? (please circle) Yes No

Provide details of any variations:

#### Section 4: Environmental Upgrade Work (EUW) Performance

Report only work performed in the Reporting Year. If works undertaken had more than one environmental benefit, please duplicate following table for each type of environmental benefit.

Anticipated savings are based on estimates in **Schedule 5 – Environmental upgrade works and budget**. Please report; energy savings in kWh or Megajoules AND tonnes of CO<sub>2</sub>-e, water savings in kL, waste or material savings in tonnes or m<sup>3</sup> for each type of waste or material, transport savings in tonnes of CO<sub>2</sub>-e, pollution savings in ppm or mg/m<sup>3</sup>, and monitoring or other savings in tonnes of CO<sub>2</sub>-e, if relevant. If all works have not been completed during the financial year, provide a summary of any works started and completed and/or started and not completed during the Reporting Year.

Environmental Benefit:
Description of Upgrade Work:

Date Commenced:	Cost Incurred:
Date Completed (or anticipated):	
Estimated Cost Savings:	Actual Cost Savings:
Estimated Environmental Savings:	Actual Environmental Savings:

### Section 5: Lessee Pass Through

Were upgrade contributions collected from any lessees this financial year?	Yes No (please circle) Comment:
Were there any differences between the estimated lessee contribution amounts and the actual contribution amounts?	Yes No (please circle) Comment:
If the lessees were overcharged, has a reconciliation taken place?	Yes No (please circle) Comment:

### Section 6: NABERS Details

Post-upgrade works, has the building achieved a NABERS accredited rating? Yes No (please circle)

If yes, please circle the relevant NABERS categories and note the number of stars achieved for that category:

Category	Type	Star Rating
Energy (without GreenPower)	Base Tenant Whole building	
Energy (with GreenPower) Water	Base Tenant Whole building	
Waste	Base Tenant Whole building	

Indoor Environment	Base Tenant Whole building	
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**Section 7: Summary and sign-off**

Total cost incurred for all Environmental Upgrade Works carried out in the reporting year:  
 .....AUD

Total actual savings as a result of all Environmental Upgrade Works carried out in the reporting year:  
 .....AUD

**Signed by Owner:**

**Date:**

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## **Annexure 1 - Enforcement Procedure**

*[Drafting Note: Council to annex its enforcement procedure]*



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## Annexure 2 - Direct Debit Authority

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*[Drafting Note: Council to annex its standard direct debit authority form]*

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### **Annexure 3 - Energy Performance Contract**

*[Drafting Note: if an Energy Performance Contract is used, it may be referened in the Additional Conditions and annexed here.]*