



**Australian Government**  
**Department of Resources,  
Energy and Tourism**

**FUNDING AGREEMENT**

**Commonwealth of Australia** represented by the Department of Resources, Energy and  
Tourism  
ABN 46 252 861 927

**Lithgow City Council**  
ABN 59 986 092 492

FUNDING AGREEMENT IN RELATION TO THE LOCAL GOVERNMENT ENERGY  
EFFICIENCY PROGRAM

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## FUNDING AGREEMENT (SHORT FORM)

Funding Agreement in relation to [the Local Government Energy Efficiency Program ]

### Parties

This Agreement is made between and binds the following parties:

1. Commonwealth of Australia (**Commonwealth**) represented by and acting through the **Department of Resources, Energy and Tourism** ABN 46 252 861 927 (**Department**)  
  
AND
2. [Lithgow City Council ABN 59 986 092 492 of 180 Mort Street, Lithgow NSW 2790 ] (**Recipient**)

### Context

- A. The Department is responsible for the delivery of the Program.
- B. The Activity will help achieve the objectives of the Program.
- C. The Department has agreed to provide Funding to the Recipient to support the carrying out of the Activity.
- D. The Recipient agrees to accept the Funding for the Activities, and subject to the terms and conditions, set out in this Agreement.

### Operative provisions

In consideration of the mutual promises contained in this Agreement, the parties to this Agreement agree as follows:

#### 1. Interpretation

##### 1.1. Definitions

1.1.1. In this Agreement, unless the context indicates otherwise:

<b>Activity</b>	means the activity described at Item 4 of Schedule 1, which aims to fulfil one or more of the Program Objectives and includes the provision of Activity Material.
<b>Activity Material</b>	means any Material: a. created for the purpose of this Agreement; b. provided or required to be provided to the Department under the Agreement; or c. derived at any time from the Material referred to in paragraphs a or b.
<b>Agreement</b>	means this document and includes any Schedules and annexures.
<b>Asset</b>	means any item of property, purchased, leased, hired,

	financed, created or otherwise brought into existence either wholly or in part with use of the Funding, which has a value of over \$3,000 exclusive of GST, but excludes any Intellectual Property Rights.
<b>Budget</b>	means a budget for expenditure of the Funding, the Recipient Contributions for the purposes of conducting the Activity or performing obligations under this Agreement, as stipulated at Item 2 of Schedule 2.
<b>Business Day</b>	means any day other than a Saturday, Sunday, or national public holiday (which is a Commonwealth public holiday throughout Australia as promulgated in the Commonwealth of Australia Gazettes).
<b>Commencement Date</b>	means the commencement date specified in the Term at Item 1 of Schedule 1.
<b>Commonwealth Material</b>	means any Material: <ul style="list-style-type: none"> <li>a. provided by the Department to the Recipient for the purposes of this Agreement; or</li> <li>b. derived at any time from the Material referred to in paragraph a,</li> </ul> and does not include Activity Material.
<b>Confidential Information</b>	means Department confidential information and Recipient confidential information.
<b>Deliverable</b>	means the deliverables listed at Item 1 of Schedule 2.
<b>Department</b>	means the Commonwealth represented by and acting through the Department of Resources, Energy and Tourism (or any other Commonwealth department or agency that is, from time to time, responsible for the administration of this Agreement) and includes where the context permits officers, delegates, employees and agents, and successors of the Department.
<b>Department Confidential Information</b>	means: <ol style="list-style-type: none"> <li>1. information which by its nature is confidential; or</li> <li>2. information identified by the Department as confidential; and</li> <li>3. includes the Commonwealth Material and Contract Material,</li> </ol> but excludes: <ol style="list-style-type: none"> <li>4. information that is already or becomes independently known to the Service Provider; or</li> <li>5. information already in the public domain.</li> </ol>
<b>Department</b>	means the Department contact person specified at Item 10 of

<b>Contact</b>	Schedule 1.
<b>Depreciated</b>	means the amount representing the reduction in value of an Asset calculated in accordance with the standards maintained by the Australian Accounting Standards Board created by section 226 of the <i>Australian Securities and Investments Commission Act 2001</i> (Cth).
<b>End Date</b>	means the date that this Agreement expires as specified at Item 1 of Schedule 1.
<b>Existing Material</b>	means all Material in existence prior to the Commencement Date of this Agreement: <ul style="list-style-type: none"> <li>a. incorporated in;</li> <li>b. supplied with, or as part of; or</li> <li>c. required to be supplied with, or as part of, the Activity Material.</li> </ul>
<b>Facility</b>	means the building owned or held under a long-term lease (five years or more remaining at the time of application) by the Recipient where the Replacement System is installed,.
<b>Final Report</b>	means the report required under clause 8.2.
<b>Financial Year</b>	means each period from 1 July to the following 30 June occurring during the Term, or any part of such a period occurring at the beginning or end of the Term.
<b>Funding</b>	means the funding described at Item 1 of Schedule 2.
<b>GST</b>	has the meaning that it has in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth).
<b>Intellectual Property Rights</b>	includes: <ul style="list-style-type: none"> <li>a. all copyright (including rights in relation to phonograms and broadcasts);</li> <li>b. all rights in relation to inventions, plant varieties, trademarks (including service marks), designs, circuit layouts; and</li> <li>c. all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields;</li> </ul> but does not include: <ul style="list-style-type: none"> <li>d. the rights of performers; or</li> <li>e. rights in relation to Confidential Information.</li> </ul>
<b>Interest</b>	means interest calculated at an interest rate equal to the general interest charge rate for a day pursuant to section 8AAD of the <i>Taxation Administration Act 1953</i> (Cth), on a daily compounding basis.

<b>Installation</b>	means the successful completed installation of a System. An installation will not be considered successfully completed until the System is fully functional and operational.
<b>Installation Report</b>	means the report required under clause 8.1.
<b>Material</b>	means anything in relation to which Intellectual Property Rights arise.
<b>Milestone</b>	means a stage of completion of the Activity as set out at Item 1 of Schedule 2.
<b>Personnel</b>	means a party's officers, employees, agents, contractor staff or professional advisers engaged in, or in relation to, the performance or management of this Agreement.
<b>Privacy Act</b>	means the <i>Privacy Act 1988</i> (Cth).
<b>Privacy Commissioner</b>	means the Office of the Privacy Commissioner established under the Privacy Act and includes any other entity that may, from time to time, perform the functions of that Office.
<b>Program</b>	means the part of the Department's operations specified at Item 2 of Schedule 1 under which the Department is able to provide the Funding to the Recipient.
<b>Program Objectives</b>	means the program objectives, if any, identified at Item 3 of Schedule 1.
<b>Recipient</b>	as detailed at the commencement of this Agreement and includes, where appropriate, the officers, employees, agents, volunteers and subcontractors, and successors of the recipient.
<b>Recipient Confidential Information</b>	means information that is described as recipient confidential information at Item 6 of Schedule 1.
<b>Recipient Contact</b>	means the recipient contact person specified at Item 8 of Schedule 1.
<b>Recipient Contributions</b>	means the financial resources, other than the Funding, which are specified at Item 1 of Schedule 3 and are used by the Recipient to perform the Activity. Recipient Contributions must not include any amount that has been provided to the Recipient by a Commonwealth, State, Territory or local government or discount applied under the Small-scale Technology Certificates (STC) scheme.
<b>Replacement System</b>	means a solar or heat pump hot water system which replaces all existing components of an existing electric or gas hot water systems as well as existing solar or heat pump hot water systems, which are no longer energy efficient due to relying

	solely on electric/gas booster switches or are no longer operational.
<b>Schedule</b>	means the schedule to this Agreement and may include annexures and incorporate other documents by reference.
<b>Special Conditions</b>	means any special conditions to this Agreement specified in Schedule 4.
<b>Specified Personnel</b>	means the Recipient's Personnel specified at Item 7 of Schedule 1 as personnel required to undertake all or any part of the Activity.
<b>System</b>	means a solar or heat pump hot water system which on Installation attracts 10 or more Small-scale Technology Certificates at the time of Installation and at the location in which the system is installed.
<b>Term</b>	means the period specified at Item 1 of Schedule 1.
<b>Timeframe</b>	means the due dates for the Deliverables and Milestones specified at Item 1 of Schedule 2.

## 1.1. Guidance on construction of Agreement

- 1.1.1. This Agreement records the entire agreement between the parties in relation to its subject matter.
- 1.1.2. As far as possible all provisions of this Agreement will be construed so as not to be void or otherwise unenforceable.
- 1.1.3. If anything in this Agreement is void or otherwise unenforceable then it will be severed and the rest of this Agreement remains in force.
- 1.1.4. A provision of this Agreement will not be construed to the disadvantage of a party solely on the basis that it proposed that provision.

## 1.2. Duration of Term

- 1.2.1. This Agreement is in effect for the Term.

## 2. Activity

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### 2.1. Conduct of Activity

- 2.1.1. The Recipient must carry out the Activity:
  - a. to achieve the Program Objectives;
  - b. to meet the Milestones and provide the Deliverables within the Timeframes;
  - c. in accordance with this Agreement (including any Special Conditions); and
  - d. diligently, effectively and to a high professional standard.

## **2.2. Subcontractors**

- 2.2.1. The Recipient agrees not to subcontract the performance of any obligations under this Agreement without the Department's prior written approval.
- 2.2.2. The Recipient is fully responsible for the performance of the Recipient's obligations under this Agreement regardless of whether the Recipient has subcontracted any of its obligations.

## **2.3. Specified Personnel**

- 2.3.1. The Recipient agrees that the Specified Personnel will perform work in relation to the Activity in accordance with this Agreement.
- 2.3.2. If Specified Personnel are unable to perform the work as required under this clause 2.3, the Recipient agrees to notify the Department immediately.
- 2.3.3. The Recipient agrees, at the request of the Department acting on reasonable grounds, to remove Personnel (including Specified Personnel) from work in relation to the Activity.
- 2.3.4. If the Department exercises its rights under clause 2.3.2 or clause 2.3.3, the Recipient will provide replacement Personnel acceptable to the Department at no additional cost and at the earliest opportunity.
- 2.3.5. If the Recipient is unable to provide acceptable replacement Personnel under clause 2.3.4, the Department may terminate this Agreement in accordance with the provisions of clause 15.2.

## **2.4. Review**

- 2.4.1. The Recipient agrees to:
  - a. provide all reasonable assistance required by the Department;
  - b. respond to all of the Department's reasonable requests; and
  - c. provide any information the Department reasonably requires, in relation to conducting a review or evaluation of the Program.

## **3. Payment**

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### **3.1. Making of Payment**

- 3.1.1. Subject to sufficient funds being available for the Program, and compliance by the Recipient with this Agreement, the Department agrees to provide the Recipient with the Funding at the times and in the manner specified in Item 1 of Schedule 2.
- 3.1.2. Without limiting the Department's rights, the Department may suspend any payment in whole or in part until the Recipient has performed its obligations under this Agreement.

## **4. Management of Funding**

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### **4.1. Use of Funding**

- 4.1.1. The Recipient must spend the Funding only for the Activity in accordance with this Agreement and must not use the Funding for any other purpose.
- 4.1.2. The Recipient agrees to do all things necessary to ensure that all payments from the Funding that the Recipient makes to third parties (including subcontractors) are correctly made and properly authorised and that the Recipient maintains proper and diligent control over the incurring of all liabilities.

### **4.2. Keeping of Funding**

- 4.2.1. The Recipient must identify the receipt and expenditure of the Funding separately within the Recipient's accounts and records so that at all times the Funding is identifiable.

### **4.3. Financial Records**

- 4.3.1. The Recipient agrees to keep financial accounts and records relating to the Activity so as to enable:
  - a. all receipts and payments related to the Activity to be identified and reported in accordance with this Agreement;
  - b. provision of the Final Report and the statement; and
  - c. the identification of all the Recipient's taxation liabilities and payments.

### **4.4. Refunds**

- 4.4.1. If, at any time during the Term or as at the End Date or earlier termination of this Agreement, the Department determines that:
  - a. there remains an amount of Funding that has not been spent or legally committed for expenditure in accordance with the Agreement; or
  - b. Funding has not been spent in accordance with the Agreement,then at the discretion of the Department, the Recipient agrees to refund this amount to the Department. This amount must be refunded within 20 Business Days of a notice from the Department, dealt with as notified by the Department, or the Department may reduce further payments of Funding to the Recipient by up to this amount.

### **4.5. Budget**

- 4.5.1. The Recipient must only spend the Funding in accordance with the Budget.

### **4.6. No Additional Funding**

- 4.6.1. The Department is not responsible for the provision of additional money to meet any expenditure in excess of the Funding.



## **5. Taxes, Duties and Government Charges**

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- 5.1.1. Unless otherwise indicated, the Recipient agrees to pay all taxes, duties and government charges imposed or levied in Australia or overseas in connection with the performance of this Agreement. However, if any such tax, duty or government charge, which was not reasonably known to the Recipient on the date of this Agreement, has a material effect on the Recipient's ability to carry out the Activity, the parties agree to renegotiate the scope of the Activity in good faith, having regard to the effect of the tax, duty or government charge.
- 5.1.2. Unless otherwise indicated, any consideration for a supply made under this Agreement is exclusive of any GST imposed on the supply.
- 5.1.3. If one party (the supplier) makes a taxable supply to the other party (the recipient) under this Agreement, on receipt of a tax invoice from the supplier, the recipient will pay without set-off an additional amount to the supplier equal to the GST imposed on the supply in question.
- 5.1.4. No party may claim or retain from the other party any amount in relation to a supply made under this Agreement for which the first party can obtain an input tax credit or decreasing adjustment.

## **6. Recipient Contributions**

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### **6.1. Provision of Recipient Contributions**

- 6.1.1. The Recipient agrees to provide the Recipient Contributions for the Activity.
- 6.1.2. If the Recipient does not provide the Recipient Contributions or provide them in time to enable completion of the Activity, then the Department may:
  - a. suspend payment of the Funding or an instalment of the Funding (as the case may be) until the Recipient contributions are provided; or
  - b. terminate this Agreement in accordance with clause 15.2.

## **7. Assets**

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### **7.1. Acquisition of Asset**

- 7.1.1. The Recipient agrees not to use the Funding to acquire or create any Asset, apart from those detailed at Item 10 of Schedule 1 without obtaining the Department's prior written approval. Approval may be given subject to any conditions the Department may impose.
- 7.1.2. Subject to this clause 7 and the terms of any relevant lease, ownership of any Asset created for the purposes of the Agreement vests in the Recipient.
- 7.1.3. The Recipient must use the Asset for the purposes of this Agreement..
- 7.1.4. The Recipient is fully responsible for all Assets acquired or created with the Funding.

## **7.2. Ongoing Responsibility**

- 7.2.1. The Recipient is responsible for the maintenance of any Asset acquired or created under this Agreement.
- 7.2.2. The Department accepts no liability, either during the Term or after the Term, in relation to any Asset acquired or created under this Agreement.

## **8. Reporting Responsibilities**

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### **8.1. Installation Report**

- 8.1.1. The Recipient must provide to the Department an Installation Report within 20 Business Days of:
  - a. the completion of an Installation or the termination or expiry of this Agreement, whichever is the earlier.
- 8.1.2. The Installation Report must include the following information:
  - a. a completed installation details table and installer certification declaring that the Recipient meets all relevant Australian standards, regulations, codes of practice and workplace health and safety laws associated with installing solar or heat pump hot water systems;
  - b. photographs of the Installation, including photographs of all solar panels or heat pumps, electronic connections and the Facility in its entirety; and
  - c. if a Replacement System is installed, evidence of the destruction of the old system.
- 8.1.3. The Installation Report must be signed by the general manager or an authorised officer and a signed hard copy provided to the Department.

### **8.2. Final Report**

- 8.2.1. The Recipient must provide to the Department a Final Report within 20 Business Days after:
  - a. the expiry of the Term, completion of the Activity or the termination or expiry of this Agreement, whichever is the earlier.
- 8.2.2. The Final Report must include a report detailing all expenditure and money received (including Funding and Recipient Contributions) in relation to the Activity.
- 8.2.3. The Final Report must be accompanied by a statement, in accordance with clause 8.3.1 that:
  - a. all Funding, and Recipient Contributions received were spent for the purpose of the Activity and in accordance with this Agreement, and that the Recipient has complied with the Agreement; and
  - b. at the time the Final Report is provided to the Department, the Recipient is able to pay all the Recipient's debts as and when they fall due and the

Recipient has sufficient resources to discharge all the Recipient's debts at the end of the current Financial Year.

### **8.3. Certification**

8.3.1. The statement referred to in clause 8.2.3 must be provided:

- a. if the Recipient is an incorporated body, by the Recipient's Chairperson, Chief Executive Officer, Chief Financial Officer or a person authorised by the Recipient to execute documents and legally bind the Recipient by their execution. Satisfactory evidence of the authorisation is to be provided to the Department before the statement is made;
- b. if the Recipient is an unincorporated association or partnership, by:
  - i. a majority of the members; or
  - ii. a person or persons authorised by a majority of the members to act on behalf of the members in accordance with the Recipient's Constitution. Satisfactory evidence of the authorisation is to be provided to the Department before the statement is made;
- c. if the Recipient is a joint venture, the Chief Executive Officer or Chief Financial Officer of each joint venturer must certify the one statement; or
- d. if the Recipient is an individual, by that individual.

## **9. Commonwealth Material**

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### **9.1. Ownership**

9.1.1. Ownership of all Commonwealth Material, including Intellectual Property Rights in that Material, remains vested at all times in the Department but the Department grants the Recipient a licence to use, reproduce, adapt and exploit that Material only for the purposes of this Agreement and in accordance with any conditions or restrictions the Department may notify to the Recipient.

## **10. Intellectual Property**

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### **10.1. Ownership**

10.1.1. Subject to this clause 10, Intellectual Property Rights in Activity Material vest immediately in the Recipient.

10.1.2. Clause 10.1.1 does not affect the position between the Recipient and a third party.

### **10.2. Licence of Activity Material**

10.2.1. The Recipient grants to the Department a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, communicate, adapt and exploit Intellectual Property Rights in the Activity Material for any purpose.

### **10.3. Licence of Existing Material**

- 10.3.1. This clause 10 does not affect the ownership of any Intellectual Property Rights in any Existing Material. The Recipient, however, agrees to grant to the Department or procure a permanent, irrevocable, royalty-free, worldwide, non-exclusive licence (including a right of sub-licence) to use, reproduce, communicate, adapt and exploit the Intellectual Property Rights in Existing Material in conjunction with the Activity Material.

## **11. Confidential Information**

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### **11.1. Confidential Information Not to be Disclosed**

- 11.1.1. Subject to clause 11.3, a party must not, without the prior written consent of the other party, disclose any Confidential Information of the other party to a third party, including any subcontractors.

### **11.2. Written Undertakings**

- 11.2.1. A party may at any time require the other party to arrange for:
- a. the other party's Personnel; or
  - b. any person with a Third Party Interest,
- to give a written undertaking in the form of a deed relating to the use and non-disclosure of the first party's Confidential Information.

### **11.3. Exceptions to Obligations**

- 11.3.1. The obligations on the parties under this clause 11 will not be taken to have been breached to the extent that Confidential Information:
- a. is disclosed by a party to its Personnel solely in order to comply with obligations, or to exercise rights, under this Agreement;
  - b. is disclosed to a party's internal management Personnel, solely to enable effective management or auditing of Agreement-related activities;
  - c. is disclosed by the Department to the responsible Minister or Parliamentary Secretary;
  - d. is disclosed by the Department in response to a request by a House or a Committee of the Parliament of the Commonwealth of Australia;
  - e. is shared by the Department within the Department's organisation, or with another Department, where this serves the Commonwealth's legitimate interests;
  - f. is authorised or required by law to be disclosed; or
  - g. is in the public domain otherwise than due to a breach of this clause 11 .

#### **11.4. Period of Confidentiality**

The obligations under this clause 11 will continue after expiry or termination of this Agreement.

#### **11.5. No Reduction in Privacy Obligations**

- 11.5.1. This clause 11 does not detract from any of the Recipient's obligations under the Privacy Act or under clause 12, in relation to the protection of Personal Information (as defined in clause 12.1.1).

### **12. Privacy**

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#### **12.1. Interpretation and Application of Clause**

- 12.1.1. In this clause 12:

**Information Privacy Principle** has the same meaning as it has in the Privacy Act; and

**Personal Information** has the same meaning as it has in the Privacy Act.

- 12.1.2. This clause applies only where the Recipient deals with Personal Information when, and for the purpose of, conducting the Activity.

#### **12.2. Obligations of Recipient in Relation to Privacy**

- 12.2.1. The Recipient agrees, in conducting the Activity:

- a. not to do any act or engage in any practice which, if done or engaged in by the Department, would be a breach of an Information Privacy Principle; and
- b. to comply with any directions, guidelines, determinations or recommendations of the Department, to the extent that they are consistent with the Information Privacy Principles.

- 12.2.2. The Recipient agrees to notify the Department immediately if it becomes aware of:

- a. a breach or possible breach of any of its obligations under this clause 12; or
- b. any unauthorised access or attempted unauthorised access to Personal Information held by the Recipient in relation to this Agreement.

### **13. Acknowledgement and Publicity**

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#### **13.1.**

- 13.1.1. The Recipient agrees, in any publicity in relation to the Activity, to acknowledge the financial or other support the Recipient has received from the Australian Government, in the manner approved by the Department.

- 13.1.2. The Recipient must obtain the Department's written approval for each public announcement or publication the Recipient makes that relates to the Activity,

the Funding or this Agreement prior to the making of that announcement or publication.

## **14. Indemnity**

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### **14.1. Meaning of 'fault'**

- 14.1.1. In this clause 14, 'fault' means any negligent or unlawful act or omission, or wilful misconduct.

### **14.2. General Indemnity**

- 14.2.1. The Recipient indemnifies (and agrees to keep indemnified) the Department against any:

- a. cost or liability incurred by the Department or the Department's Personnel;
- b. loss of or damage to property of the Department; or
- c. loss or expense incurred by the Department in dealing with any claim against it, including legal costs and expenses on a solicitor/own client basis and the cost of time spent, resources used, or disbursements paid by the Department,

arising from:

- d. any act or omission by the Recipient or the Recipient's Personnel, in connection with this Agreement, where there was fault on the part of the person whose conduct gave rise to that cost, liability, loss, damage, or expense;
- e. any breach by the Recipient of the Agreement;
- f. use or Disposal of the Assets; or
- g. the use by the Department of the Activity Material or Existing Material, including any claims by third parties about the ownership or right to use Intellectual Property Rights in the Activity Material or Existing Material.

### **14.3. Reduction of Scope**

- 14.3.1. The Recipient's liability to indemnify the Department under this clause 14 will be reduced proportionally to the extent that any act or omission involving fault on the part of the Department or its Personnel contributed to the relevant cost, liability, loss, damage or expense.

### **14.4. Preservation of Other Rights**

- 14.4.1. The right of the Department to be indemnified under this clause 14 is in addition to, and not exclusive of, any other right, power or remedy provided by law, but the Department is not entitled to be compensated in excess of the amount of the relevant cost, liability, loss, damage or expense.

## **15. Termination or Reduction in Scope of Agreement**

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### **15.1. Termination for Convenience**

- 15.1.1. The Department may by notice, at any time and in its absolute discretion, terminate this Agreement or reduce the scope of this Agreement immediately.
- 15.1.2. In the event of termination under clause 15.1, the Department will be liable only:
- a. for payments due and owing to the Recipient under the payment provisions of this Agreement as at the date of the notice;
  - b. to reimburse any reasonable costs incurred by the Recipient and directly attributable to the termination of this Agreement or reduction in scope of this Agreement,
- but will not be liable to pay amounts under clauses 15.1.2 a and 15.1.2 b which would, added to any payments already paid to the Recipient under this Agreement, together exceed the Funding set out in the Agreement Details;
- 15.1.3. In the event of a reduction in the scope of this Agreement under clause 15.1, the Department's liability to pay any part of the Funding will reduce in accordance with the reduction in the Activity.

### **15.2. Termination for Fault**

- 15.2.1. The Department may by notice terminate this Agreement immediately if:
- a. the Recipient fails to fulfil, or is in breach of any of its obligations under this Agreement;
  - b. the Department is satisfied that the Recipient's application for Funding includes an incorrect, incomplete, false or misleading statement which would have affected the original decision to approve the Funding;
  - c. being an individual, the Recipient becomes bankrupt; or
  - d. the Recipient comes under one of the forms of external administration referred to in the *Corporations Act 2001* (Cth) or an order has been made for the purpose of placing the Recipient under external administration.
- 15.2.2. Where the Department terminates this Agreement under clause 15.2.1 the Department:
- a. will be liable only for payments due and owing to the Recipient under this Agreement at the date of the notice; and
  - b. will be entitled to recover from the Recipient Funding which:
    - i. has not been legally committed for expenditure by the Recipient under this Agreement and is not payable by the Recipient as a current liability at the date of notice; or
    - ii. has not, in the Department's opinion, been spent by the Recipient in accordance with this Agreement.

## **16. Notices**

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### **16.1. Format, Addressing and Delivery**

16.1.1. A notice under this Agreement is only effective if it is in writing, and dealt with as follows:

- a. *if given by the Recipient to the Department* – addressed to the Department Contact; or
- b. *if given by the Department to the Recipient* – given by the Department and addressed to (and marked for the attention of) the Recipient Contact.

16.1.2. A notice must be:

- a. signed by the person giving the notice and delivered by hand;
- b. signed by the person giving the notice and sent by pre-paid post; or
- c. transmitted electronically by the person giving the notice by electronic mail or facsimile transmission.

### **16.2. When Effective**

16.2.1. A notice is deemed to be effected:

- a. *if delivered by hand* – upon delivery to the relevant address;
- b. *if sent by post* – upon delivery to the relevant address; or
- c. *if transmitted electronically* – upon actual receipt by the addressee.

16.2.2. A notice received after 5.00 pm, or on a weekend or public holiday in the place of receipt, is deemed to be effected on the next Business Day in that place.

## **17. General Provisions**

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### **17.1. Audit and Access**

17.1.1. The Recipient agrees:

- a. to give the Department, or any persons authorised in writing by the Department, access to premises where obligations under this Agreement are being carried out; and
- b. to permit those persons to inspect and take copies of any Material relevant to this Agreement.

17.1.2. The rights referred to in clause 17.1.1. are subject to:

- a. the Department providing reasonable prior notice;
- b. the reasonable security procedures in place at the premises; and
- c. if appropriate, execution of a deed of confidentiality by the persons to whom access is given.

17.1.3. The Auditor-General and the Privacy Commissioner are persons authorised for the purposes of clause 17.1.1.



17.1.4. This clause 17.1 does not detract from the statutory powers of the Auditor-General or the Privacy Commissioner.

**17.2. Access to documents**

17.2.1. In this clause 17.2, 'document' and 'Commonwealth contract' have the same meaning as in the *Freedom of Information Act 1982* (Cth).

17.2.2. The Recipient acknowledges that this Agreement is a Commonwealth contract.

17.2.3. Where the Department has received a request for access to a document created by, or in the possession of this Agreement (and to the entry into this Agreement), the Department may at any time by written notice require the Recipient to provide the document to the Department and the Recipient must, at no additional cost to the Department, promptly comply with the notice.

17.2.4. The Recipient must include in any subcontract relating to the performance of this Agreement provisions that will enable the Recipient to comply with its obligations under this clause 17.2.

**17.3. Insurance**

17.3.1. The Recipient agrees:

- a. to effect and maintain the insurance specified in Item 5 of Schedule 1; and
- b. on request, to provide proof of insurance acceptable to the Department.

17.3.2. This clause 17.3 continues in operation for so long as any obligations remain in connection with this Agreement.

**17.4. Conflict of Interest**

17.4.1. In this clause 17.4:

**Conflict** means any matter, circumstance, interest or activity involving or affecting the Recipient, its Personnel or subcontractors which may or may appear to impair the ability of the Recipient to perform the Activity diligently and independently.

17.4.2. The Recipient warrants that, to the best of its knowledge after making diligent inquiry, at the date of this Agreement no Conflict exists or is likely to arise in the performance of the Recipient's obligations under the Agreement.

17.4.3. If during the Term, a Conflict arises, the Recipient agrees to:

- a. notify the Department immediately;
- b. make full disclosure to the Department of all relevant information relating to the Conflict; and
- c. take any steps the Department reasonably requires to resolve or otherwise deal with that Conflict.

**17.5. Relationship of Parties**

- 17.5.1. The Recipient is not by virtue of this Agreement an officer, employee, partner or agent of the Department, nor does the Recipient have any power or authority to bind or represent the Department.
- 17.5.2. The Recipient agrees:
  - a. not to misrepresent its relationship with the Department; and
  - b. not to engage in any misleading or deceptive conduct in relation to the Activity.

**17.6. Waiver**

- 17.6.1. A failure or delay by a party to exercise any right or remedy it holds under this Agreement or at law does not operate as a waiver of that right.
- 17.6.2. A single or partial exercise by a party of any right or remedy it holds under this Agreement or at law does not prevent the party from exercising the right again or to the extent it has not fully exercised the right.

**17.7. Variation of Agreement**

- 17.7.1. Except for action the Department is expressly authorised to take elsewhere in this Agreement, no variation of this Agreement is binding unless it is agreed in writing and signed by both parties.

**17.8. Assignment**

- 17.8.1. The Recipient cannot assign its obligations, and agrees not to assign its rights, under this Agreement without the Department's prior written approval.

**17.9. Survival**

- 17.9.1. The operation of clauses 2.4, 4.3, 7, 10, 11, 12, 14 and 17.2 and any other provision which expressly or by implication from its nature is intended to continue survive the expiration or earlier termination of this Agreement.
- 17.9.2. Clauses 17.1 and 13 apply for the Term and for a period of 7 years from the date of expiration or earlier termination of the Agreement.

**17.10. Compliance with Legislation and Policies**

- 17.10.1. The Recipient agrees to comply with any provision of a statute or subordinate legislation of the Commonwealth, or of a State, Territory or local authority applicable to its performance of this Agreement.
- 17.10.2. The Recipient agrees, in carrying out its obligations under this Agreement, to comply with any of the Department's policies as notified, referred or made available by the Department to the Recipient (including by reference to an internet site), including those listed in Schedule 4.

### **17.11. Applicable Law and Jurisdiction**

- 17.11.1. This Agreement is to be construed in accordance with, and any matter related to it is to be governed by, the law of the Australian Capital Territory.
- 17.11.2. The parties submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory.

## **18. Workplace Health and Safety**

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### **18.1. Interpretation**

In this clause 18:

- a. **notifiable incident** has the same meaning that it has in the Work Health and Safety Act 2011 (Cth);
- b. **WHS** means work health and safety; and
- c. **WHS Rules** means all relevant legislation, codes of practice and national standards relating to work health and safety.

### **18.2. General Duties**

- 18.2.1. The Recipient must, in carrying out the Activity, comply with (and ensure its Personnel, subcontractors and their personnel comply with):
  - a. all relevant WHS Rules; and
  - b. all applicable WHS policies and procedures of the Department, including those that apply to the Department's premises when using those premises (if there is an inconsistency between any of these policies and procedures, the Recipient must comply with those policies and procedures that produce the highest level of health and safety).
- 18.2.2. Without limiting the obligations in clause 18.2.1 the Recipient must, in carrying out this Agreement:
  - a. take reasonable care for the health and safety of its Personnel;
  - b. take reasonable care that its acts or omissions do not adversely affect the health and safety of other persons;
  - c. comply, so far as it is reasonably able, with any reasonable instruction given by the Department in relation to health and safety; and
  - d. actively cooperate with the Department to assist the Department to meet its WHS obligations.

### **18.3. WHS Risk Management**

- 18.3.1. Before commencing the Activity, the Recipient must complete a risk assessment covering the expected scope of the Activity. Following this risk assessment, the Recipient must develop a risk management plan with respect to the identified risks.

- 18.3.2. Before performing any action in connection with the Activity that involves more than a low risk of breach of any relevant WHS Rules, the Recipient must:
- a. notify the Department of the proposed action and the reason why it involves more than a low risk of breach of any relevant WHS Rules; and
  - b. provide the Department with a reasonable period of time to respond to the notification.

#### **18.4. Consultation and Notification Requirements**

- 18.4.1. The Recipient will actively consult with the Department to assist the Department to meet its WHS obligations.
- 18.4.2. The Recipient must notify the Department immediately if it becomes aware that a notifiable incident has occurred. This notification requirement operates in addition to, and is not a replacement for, the Recipient's notification requirements under the WHS Rules.
- 18.4.3. If a WHS inspection, assessment or audit is conducted in relation to any action performed by the Recipient in connection with this Agreement, the Recipient must:
- a. provide the Department, within five Business Days, with a written statement detailing what that inspection, assessment or audit involved; and
  - b. provide the Department with a copy of any materials subsequently received from the inspector, assessor or auditor.
- 18.4.4. The Recipient must notify the Department immediately if it becomes aware that legal proceedings have been brought against it under the WHS Rules. This clause 18.4.4 applies even where the legal proceedings do not relate to work performed by the Recipient in connection with this Agreement.

#### **18.5. Department's Right of Entry**

- 18.5.1. The Department may, by written notice, request access to any premises controlled by the Recipient for the purpose of monitoring the Recipient's compliance with the WHS Rules in carrying out this Agreement.
- 18.5.2. After receiving a request under clause 18.5.1, the Recipient must (unless otherwise agreed in writing) provide the requested access within three Business Days.

#### **18.6. Miscellaneous Obligations**

- 18.6.1. The Department may at any time compel the Recipient – in relation to a particular practice of, or procedure about to be performed by, the Recipient in connection with this Agreement– to do any of the following:
- a. provide the Department with a written statement detailing what that practice or procedure will involve;
  - b. provide the Department with a risk assessment outlining the likelihood that that practice or procedure might breach any relevant WHS Rules;

- c. seek the advice of an appropriately qualified independent expert in relation to the WHS aspects of that practice or procedure; and/or
  - d. appoint an appropriately qualified independent WHS expert to oversee the performance of that practice or procedure.
- 18.6.2. The Recipient will bear all costs associated with any of these actions, unless otherwise agreed in writing.
- 18.6.3. The Department may at any time compel the Recipient to provide it with any of the following:
  - a. a written copy of the Recipient's WHS policies;
  - b. a written copy of the Recipient's risk assessment and risk management documents prepared under clause 18.3.1;
  - c. a written copy of any other relevant WHS documents held by the Recipient; and/or
  - d. a written copy of any WHS licences or permits held by the Recipient.
- 18.6.4. After receiving a request under clause 18.6.2 the Recipient must (unless otherwise agreed in writing):
  - a. provide the information within five Business Days; and
  - b. bear all associated costs.
- 18.6.5. The Recipient must comply with any reasonable request given by the Department for the Recipient's Personnel to attend specified WHS induction or training programs. Unless otherwise agreed in writing, the Recipient will bear all costs associated with this process.
- 18.7. Performance and Breach**
- 18.7.1. If the Department is not satisfied that the Recipient is performing the Activity in accordance with its WHS obligations, the Department may provide a written notification to the Recipient outlining which actions it believes the Recipient is not performing in accordance with its WHS obligations.
- 18.7.2. If, after receiving a written notification under clause 18.7.1 the Recipient does not remedy the specified defects within three Business Days, the Department may:
  - a. compel the Recipient to suspend all work under the Agreement; and
  - b. elect to maintain this suspension until the Recipient remedies the specified defects.
- 18.7.3. If a suspension under clause 18.7.2.b continues over a period of time exceeding ten Business Days, the Department may elect to terminate the Agreement. This right of termination operates in addition to, and does not restrict in any way, clauses 15 of this Agreement.

- 18.7.4. The Department's decision to suspend the Agreement under clause 18.7.2 will not be construed as frustrating the Recipient's performance of the Agreement.

**18.8. Regulatory Requirements**

- 18.8.1. The Recipient must ensure that all equipment installed is new and meets all relevant Australian Standards.
- 18.8.2. The Recipient must ensure all subcontractors comply with all relevant Australian Standards, regulations, Codes of Practice, Commonwealth, state or territory laws and local government requirements in carrying out the Activity.
- 18.8.3. The Recipient must ensure that the Activity is carried out by appropriately licensed subcontractors.

## SCHEDULE 1 FUNDING AGREEMENT DETAILS

1.	<b>Term</b>	<p>a. Commencement Date:</p> <p>b. End Date: - 30 June 2014</p>
2.	<b>Program</b>	Local Government Energy Efficiency Program
3.	<b>Program Objective</b>	The objective of the Local Government Energy Efficiency Program is to support local governing authorities to install energy efficient solar and heat pump hot water systems in their buildings and community facilities, particularly where those authorities are situated in low socio-economic or otherwise disadvantaged areas.
4.	<b>Activity</b>	The Recipient must install three solar hot water systems at Tony Luchetti Sportsground Grandstand, Barton Avenue, Lithgow NSW 2790.
5.	<b>Insurance</b>	<ul style="list-style-type: none"> <li>• Public Liability Insurance for an amount not less than \$20,000,000 per claim, or occurrence giving rise to a claim, in respect of activities undertaken under this Agreement, where occurrence means either a single occurrence or a series of occurrences if these are linked or occur in connection with one another from one original cause, as the case may be;</li> <li>• Professional Indemnity Insurance for an amount not less than \$20,000,000 per claim for each and every loss;</li> <li>• Statutory workers' compensation insurance and employer's liability insurance, covering employer's liability at common law (if not covered under statute) with a limit of \$50 million for any one loss;</li> <li>• Insurance covering any other insurable risks or events that may give rise to a liability in the Recipient under the indemnity in clause 14 as would be prudent for a person or entity in the position of the Recipient.</li> </ul>
6.	<b>Recipient Confidential Information</b>	[Recipient to complete, if applicable]
7.	<b>Specified Personnel</b>	<p>Col Howarth Plumbing  42 Ian Holt Drive, Lidsdale NSW 2790  ABN 32 002 562 290  Ph: 02 6355 1071</p>

8.	<b>Recipient Contact</b>	Jim Nichols Manager Building and Development Lithgow City Council Ph: 02 6354 9999 <a href="mailto:jim.nichlos@lithgow.nsw.gov.au">jim.nichlos@lithgow.nsw.gov.au</a>
9.	<b>Department Contact</b>	Director, LGEEP Energy Branch Energy Efficiency Division Department of Resources, Energy and Tourism GPO Box 1564 Canberra ACT 2601 Phone: 1800 463 008 <a href="mailto:lgeep@climatechange.gov.au">lgeep@climatechange.gov.au</a>
10.	<b>Assets</b>	Three solar hot water systems (Solar Lord G450U30-0 x 3)



## SCHEDULE 2 MILESTONES AND FUNDING

### 1. Milestones and Funding

The total Funding provided by the Department is up to \$28,453.05 and is GST exclusive.

The Recipient will receive payment of Funding on satisfactory completion of the Milestones specified below:

Milestone and Deliverables	Timeframe	Funding payable on satisfactory completion
Execution of Funding Agreement		\$18,849.15
Complete installation of three solar hot water systems (refer to Item 4 Schedule 1 for locations)	Within 12 months of execution of the Funding Agreement	Nil
Provide an Installation Report to the Department in accordance with clause 8.1.	No later than 20 business days after completion of the Installation	\$9,735.90
Provide the Final Report to the Department in accordance with clause 8.2.	No later than 20 business days after final payment	Nil

### 2. Budget

Expenditure Item	Funding	Recipient Contribution	Total Cost
Purchase and installation of three solar hot water systems (Solar Lord G450U30-0 x 3).	\$28,453.05	\$4,867.95	\$32,453.00

**SCHEDULE 3 CONTRIBUTIONS**

**1. Recipient Contributions**

<b>Purpose of each Recipient Contribution</b>	<b>Amount of each Recipient Contribution GST excl.</b>	<b>Due date for each Recipient Contribution</b>
[To co-fund the purchase and installation of three solar hot water systems (refer to Item 4 Schedule 1 for locations) ]	[\$4,867.95 ]	[At the time of executing the Funding Agreement ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]
[ ]	[ ]	[ ]

**SCHEDULE 4 SPECIAL CONDITIONS**

