

# Solar for Apartment Residents Funding Deed

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Program Reference: **Solar for Apartment Residents**

Department: **NSW Department of Climate Change, Energy, the Environment and Water**

Recipient: **[insert]**

# Contents

Details .....	5
1 Interpretation and definitions.....	7
2 Term.....	12
3 The Recipient's obligations.....	12
4 Adverse Event Notice .....	14
5 Installation standards and requirements .....	14
6 Supplier Warranties.....	15
7 Representations and Warranties.....	15
8 Paying the Grant.....	17
9 Changes to Milestone Amounts and Repayment .....	18
10 Withholding or suspending payment.....	19
11 Assets.....	19
12 GST.....	20
13 Reporting Requirements.....	20
14 Records .....	21
15 Milestones.....	22
16 Intellectual Property.....	22
17 Confidential Information.....	23
18 Privacy.....	24
19 Public Announcements and Acknowledgement.....	26
20 Disclosure of Information .....	27
21 Insurance Requirements.....	27
22 Indemnities and liability.....	28
23 Work Health and Safety.....	29
24 Termination.....	31
25 On termination or expiry .....	33
26 Circumstances giving rise to repayment.....	33
27 Dispute Resolution.....	35
28 Notices .....	36
29 General.....	36
Executed as a deed.....	39

<b>Schedule A - Project Milestones and Assurance Material.....</b>	<b>41</b>
<b>Schedule B – Policies, Regulations, Guidelines and Standards.....</b>	<b>45</b>
<b>Schedule C – Minimum Installation Requirements .....</b>	<b>46</b>
<b>Schedule D – Safety Checklist.....</b>	<b>47</b>

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## Details

'Department' 'DCCEEW'	or Name	The Crown in right of the State of New South Wales acting through the Department of Climate Change, Energy, the Environment and Water
	ABN	27 578 976 844
	Address	4PSQ, 12 Darcy Street Parramatta NSW 2150

Department Authorised Officer	Name
	Position
	Address
	Telephone
	E-mail

'Recipient'	Name
	Strata Details
	Address
	ABN
	Email

[Recipient's Authorised Officer]	Name
<i>[Note: To be included if the Recipient is an entity other than a natural person.]</i>	Position
	Address
	Telephone
	E-mail

Project	The installation of a rooftop solar photovoltaic system and associated works (including racking, inverters and electrical equipment) on the rooftop area and [Insert additional information about enabling works] of the common property <i>[Note: Insert additional location of installation as required.]</i>
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Project Reference Number	[add SmartyGrants reference number]
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Strata	The strata plan [insert] (being folio identifier CP/SP[insert]) and located at [insert property address].
Grant	A maximum total amount [insert] (GST exclusive) payable as Milestone Amounts, as that amount is adjusted in accordance with this Deed.
Eligible Expenditure	As defined in Section 2 of the Guidelines.
Commencement Date	The Commencement Date is the date that this Deed is executed by the parties (or the last date that a party executes this Deed, if executed on different dates).
Project Completion Date	The date that Milestone 3 is completed, which in all cases must be before 30 October 2026.
End Date	The date that is 5 years following the Project Completion Date.
Additional Insurance Policies	As per Clause 21

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## 1 Interpretation and definitions

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### 1.1 Unless the context requires otherwise, in this Deed:

- (a) the terms set out in the left hand column of the Details have the meaning ascribed to them in the right hand column of the Details;
- (b) where any time limit pursuant to this Deed falls on a day which is not a Business Day then the time limit will be deemed to have expired on the next Business Day;
- (c) a reference to a statute, regulation, ordinance or by-law will be deemed to include a reference to all statutes, regulations, ordinances or by-laws amending, consolidating or replacing the same statute, regulation, ordinance or by-law from time to time;
- (d) the meaning of general words are not limited by specific examples introduced by “including” or “for example” or similar expressions;
- (e) references to persons include bodies corporate, government agencies and vice versa;
- (f) references to the parties include references to respective directors, officers, employees and agents of the parties;
- (g) nothing in this Deed is to be interpreted against a party solely on the ground that the party put forward this Deed or any part of it;
- (h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning; and
- (i) words expressing the singular include the plural and vice versa.

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### 1.2 Capitalised terms in this Deed have the meaning set out below, unless the contrary intention appears:

**Activity** means, in respect of a Milestone, the tasks, work or activities identified in the ‘Activity’ column of **Schedule A**.

**Adverse Event** has the meaning given in clause 4.1.

**Assets** means the rooftop solar photovoltaic (PV) system and associated works (including racking, inverters and electrical equipment) purchased, created or otherwise brought into existence wholly, or in part, with the use of the Grant funding, which the Recipient procures the delivery, construction, installation and completion of as part of the Project.

**Assurance Material** are the reports, materials or other evidence (if any) specified in **Schedule A** as evidence of Milestone Completion in respect of each Milestone.

**Authority** includes any government agency, governmental or semi-governmental or local government authority, administrative, regulatory or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality.

**Background IP** means all materials in which Intellectual Property rights subsist that a party makes available for the purpose of this Deed, and which are:

- (a) in existence prior to the Commencement Date; or
- (b) brought into existence independently of this Deed or the Project.

**Best Industry Practice** means the practices required for the management of a program similar to the Program with services similar to the Services, which are performed:

- (a) with the standard of skill, care and diligence which may reasonably be expected of a skilled and experienced professional suitably qualified in the provision of services similar to the Work for a project similar to the Project;
- (b) with due expedition and without unnecessary or unreasonable delays;
- (c) in a manner safe to all people and the environment, and in compliance with all laws;
- (d) by trained and experienced personnel using high quality, safe and proper procedures and industry standards;
- (e) with adequate levels of resources, including personnel, materials and supplies;
- (f) with appropriate sound management;
- (g) using materials of merchantable quality which are fit for purpose; and
- (h) with a commitment to continually adopting innovation to improve service quality and value for money.

**Business Day** means any day other than a Saturday, Sunday or public holiday in New South Wales.

**Claim** means any cost, expense, loss, damage, claim, action, proceeding or other liability (whether in contract, tort or otherwise), however arising and includes legal costs on a full indemnity basis.

**Common Property** means the common property of the Strata.

**Confidential Information** of a party means all trade secrets, financial information and other commercially or scientifically valuable information of whatever description and in whatever form (whether written or oral, visible or invisible) which:

- (a) is by its nature confidential;
- (b) has been designated as confidential by a party;
- (c) is capable of protection at common law or equity as confidential information; or



(d) is derived or produced partly from the information in paragraphs (a), (b) or (c) above, but does not include information that:

(e) is in the public domain; or

(f) is independently known or developed by the party receiving the information other than as a result of a breach of this Deed or any other obligation of confidentiality owed by or to any other person.

**Correctly Rendered Invoice** means a tax invoice that:

(a) complies with the requirements of the GST Law;

(i) sets out:

(ii) details of the Milestone completed for which the Grant or the relevant Milestone Amount is claimed;

(iii) applicable GST; and

(iv) the total amount payable; and

(b) contains any other details, and is accompanied by any other supporting information, reasonably required by the Department.

**Deed** means this funding deed document and includes the Details, Terms, Schedule A, and any other schedules, annexures or other documents cross-referenced in this Deed.

**Encumbrance** means an interest or power:

(a) reserved in or over any interest in any asset, including any retention of title; or

(b) created or otherwise in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust, or power by way of security for the payment of debt or any other monetary obligation or the performance of any other obligation and whether existing or agreed to be granted or created.

**Grant** means the funds released by the Department as specified in the Details section above.

**GST** has the meaning given to this term in the GST Law.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth), any related legislation and any delegated legislation.

**Guidelines** means Solar for Apartment Residents Grant Guidelines dated July 2025 or as may be updated by the Department from time to time, with notice to the Recipient.

**Insolvency Event** means any of the following events:

(a) the Recipient, being an individual, commits an act of bankruptcy;

(b) the Recipient becomes insolvent;

- (c) the Recipient is the subject of a debtors or creditors petition under the *Bankruptcy Act 1966* (Cth);
- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the Recipient or the Recipient enters into a scheme of arrangement with its creditors or is wound up;
- (e) the Recipient assigns any of its property for the benefit of creditors or any class of them;
- (f) a party to whom an encumbrance has been granted takes any step towards taking possession or takes possession of any assets of the Recipient or exercises any power of sale;
- (g) the Recipient has a judgment or order given against it in an amount exceeding \$10,000.00 (or the equivalent in another currency) and that judgment or order is not satisfied or quashed or stayed within 20 Business Days after being given; or
- (h) any event occurs to or in respect of the Recipient that is analogous to, or has a substantially similar effect to, any of the events specified in this definition.

**Installation Agreement** means an agreement between the Supplier and the Recipient which relates to the installation of the Assets.

**Intellectual Property or IP** includes all:

- (a) rights in relation to copyright, inventions, plant varieties, trademarks, designs and patents; and
- (b) other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including trade secrets and know-how,

but does not include Moral Rights.

**Law** means:

- (a) any act, regulation or other statutory instrument or proclamation of any applicable jurisdiction in which any act or obligation in connection with this Deed is or is to be carried out or regulated;
- (b) any licence, permit, authorisation, consent, assessment, approval, determination, certificate, accreditation, registration, clearance, permission, exemptions, notification, application, filing, lodgement, deed, direction or declaration or the like, which must be obtained or satisfied (as the case may be) in connection with the Project;
- (c) any applicable law, whether of a legislative, equitable or common law nature;
- (d) any applicable Australian Standards and industry codes, including where applicable the New Energy Tech Consumer Code;

- (e) any judgment, decree or similar order with a mandatory effect or any binding requirement or mandatory approval of an Authority; and
- (f) fees, rates, taxes, levies or charges imposed by those things referred to in items (a) to (e) of this definition.

**Milestone** means each event specified as a 'Milestone' in **Schedule A**, consisting of the Activities identified in the 'Activity' column in **Schedule A**, and includes the Recipient having done everything which the Deed requires it to do prior to, as a requirement of, or as a condition precedent to, Milestone Completion, as adjusted in accordance with this Deed.

**Milestone Amount** means, in respect of each Milestone, the relevant amount set out in **Schedule A**, as that amount is adjusted in accordance with this Deed.

**Milestone Completion** means, in respect of each Milestone:

- (a) that stage when the Activities identified in respect of that Milestone in the 'Activity' column in **Schedule A** have been completed;
- (b) the Recipient has done everything which the Deed requires it to do prior to, as a requirement of, or as a condition precedent to, Milestone Completion; and
- (c) the Recipient has provided to the Department the relevant Assurance Material (if any), as identified in the 'Assurance Material' column in **Schedule A**,

to the Department's satisfaction and otherwise in accordance with this Deed.

**Milestone Completion Date** means, in respect of each Milestone, the date specified in **Schedule A** by which Milestone Completion is to be achieved.

**Minimum Installation Requirements** means the minimum performance requirements that an installation of Assets must meet as set out in **Schedule C**.

**Moral Rights** has the same meaning as in the *Copyright Act 1968* (Cth).

**Notice** means any approvals, consents, instructions, orders, directions, statements, requests and certificates, or other communication one party gives to another party in writing under this Deed.

**Payment Criteria** has the meaning given in clause 8.2.

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

**Personnel** includes, in relation to a party, that party's:

- (a) officers, employees and agents;
- (b) affiliates, advisers, consultants and subcontractors and each of their officers, employees and agents; and
- (c) any other persons under that party's direction or control.

**Privacy Act** means the *Privacy and Personal Information Protection Act 1998* (NSW).

**Privacy Law** means the Privacy Act and any other legislation imposing an obligation in relation to the collection, use, disclosure, storage or transmission of Personal Information, including any codes, principles or guidelines contained in or arising out of such legislation.

**Project** means the project described in the Details, comprising of the Milestones.

**Project Material** means material created as part of, or in the performance of, the Project, including any documents or data.

**Records** includes documents, information and data stored by any means and all copies and extracts of the same, including all financial and operational records.

**Rooftop Area** has the meaning given in the Details.

**Small-scale Technology Certificates (STCs)** refer to certificates that may be awarded to the Recipients by the Clean Energy Regulator upon the installation of eligible small-scale renewable energy systems, where an STC is equivalent to 1 Megawatt Hour (MWh) of renewable energy generated, stored or displaced by eligible systems as defined by the Clean Energy Regulator.

**Strata** has the meaning given in the Details.

**Supplier** means the supplier and installer of the Assets.

**WHS Legislation** means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulations 2017* (NSW).

**Work** means the work required to undertake the Project.

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## 2 Term

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- 2.1 This Deed will commence on the Commencement Date.
  - 2.2 Unless terminated earlier, this Deed will expire on the End Date.
  - 2.3 The Project must be installed and commissioned, and all reporting requirements finalised, under this Deed by the Project Completion Date. This is an essential term of this Deed.
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## 3 The Recipient's obligations

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- 3.1 The Recipient must:
  - (a) not commence the installation of the Assets until after the date of execution by both parties of this Deed;
  - (b) use the Grant, and any Milestone Amounts only for Eligible Expenditure and in connection with the Project;
  - (c) carry out its obligations under this Deed in accordance with:

- (i) Best Industry Practice; and
  - (ii) all Laws;
- (d) provide financial invoices in accordance with this Deed that demonstrates that the Grant, and any Milestone Amounts have been used for Eligible Expenditure and in connection with the Project;
  - (e) comply with the relevant policies, regulations, guidelines and standards set out in Schedule B and any other policies, regulations, guidelines and standards directed by the Department from time to time;
  - (f) provide access to the Common Property to undertake the Project (including the Milestones);
  - (g) with respect to a Milestone, not claim from the Department an amount exceeding the relevant Milestone Amount;
  - (h) ensure that each Milestone is completed by the relevant Milestone Completion Date;
  - (i) comply with all Laws that are relevant to the Project including WHS legislation and if applicable, any Laws relevant to the Recipient's registration as an entity;
  - (j) comply with:
    - (i) the most recent policies, regulations, guidelines and standards set out in Schedule B, as updated from time to time;
    - (ii) all relevant codes of practice and Australian Standards; and
    - (iii) any other policies, regulations, guidelines, standards and reasonable directions that the Department notifies the Recipient of from time to time;
  - (k) not do anything that has or is reasonably likely to have an adverse impact on the Department's or the New South Wales Government's reputation;
  - (l) complete the Project diligently, to a professional standard and ensure that any Personnel who are engaged on the Project are appropriately qualified, trained and experienced and hold any required clearances;
  - (m) obtain all necessary approvals from relevant Authorities to complete the Project;
  - (n) on request, provide the Department, including its agents and contractors, access to the Common Property to inspect and/or audit the Work, to ensure the Recipient has complied with the terms of this Deed; and
  - (o) ensure that the electricity from the Assets (as applicable) is apportioned by the Strata on a fair and reasonable basis based on electricity generated or supplied by each Asset.

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## 4 Adverse Event Notice

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- 4.1 The Recipient must promptly notify the Department of all of the following as they arise throughout the Term, each an 'Adverse Event':
- (a) an event or circumstance that has, or may, lead to a delay or have an adverse effect with respect to the implementation of the Project;
  - (b) act, or thing (including by omission), that is reasonably likely to have a direct and adverse impact on the Department's or the New South Wales Government's reputation;
  - (c) difficulty or danger in relation to the Work or the Project, including by act or omission; and
  - (d) Insolvency Event occurring with respect to the Recipient.
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- 4.2 Without limitation to any rights or remedies of the Department, following receipt of a Notice under clause 4.1, the Department may in its absolute discretion:
- (a) request further information;
  - (b) suspend payment in accordance with clause 10;
  - (c) give a Notice to the Recipient requiring it to remedy the breach listed in clause 4.1 within the timeframe specified by the Department, at the Recipient's cost and to the Department's satisfaction; and/or
  - (d) terminate this Deed under clause 24.2.
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## 5 Installation standards and requirements

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- 5.1 Subject to clause 5.2, the Recipient, following the Department's request, must promptly provide to the Department a copy of the Installation Agreement entered into or proposed to be entered into and all ancillary information related to the terms of, and the implementation of the requirements of, the Installation Agreement.
- 5.2 The Recipient:
- (a) is not relieved from any or all of its obligations or liabilities under this Deed as a result of entering into any Installation Agreement; and
  - (b) will be solely responsible for the acts and omissions of any Supplier in carrying out the Works as if such acts or omissions were the Recipient's acts or omissions.

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### 5.3 The Recipient must:

- (a) only enter into an Installation Agreement that:
  - (i) meets the Minimum Installation Requirements, as per Schedule C; and
  - (ii) complies with all relevant Law;
- (b) not amend or waive, release or adjust any rights to or under the Installation Agreement in a manner that would mean any of the requirements of clause 5.3(a) are no longer satisfied with respect to the Installation Agreement without the Department's prior written consent;
- (c) ensure that the Supplier carries out the Work in accordance with:
  - (i) the Installation Agreement;
  - (ii) the Minimum Installation Requirements;
  - (iii) Best Industry Practice;
  - (iv) all Laws; and
  - (v) the requirements of this Deed (using any reasonable directions issued by the Recipient in accordance with this Deed); and
- (d) select and appoint an experienced, reputable and qualified Supplier that enables the Recipient to comply with its obligations under this Deed, including with respect to WHS Laws.

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## 6 Supplier Warranties

- 6.1 The Recipient must obtain warranties from the Supplier in respect of the installation of the Assets in accordance with the Minimum Installation Requirements.
- 6.2 Upon the Department's request at any time, the Recipient must promptly provide the Department copies of the warranties referred to in clause 6.1.
- 6.3 The Recipient must ensure that the Supplier has at a minimum, the insurances specified in clause 21.2.

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## 7 Representations and Warranties

- 7.1 The Recipient represents and warrants that:
  - (a) (ownership) the Recipient is the registered proprietor of the Common Property;



- (b) (information) as at the Commencement Date, all information provided by it to the Department is true and correct and not misleading, false or inaccurate, including information contained in the Recipient's application for this Project and this Deed;
- (c) (approvals) the Recipient has obtained all approvals required to enter into this Deed, undertake the Project and accept the Grant and is in compliance with any conditions to which any of these approvals are subject;
- (d) (skills, expertise) it has the expertise, skills, qualifications and resources required to perform its obligations under this Deed and has engaged sufficiently qualified Personnel to ensure the Recipient's compliance with this Deed and all applicable Laws;
- (e) (Encumbrances) no security interest (for example a mortgage), leases or licences have been granted over the Common Property which could impede the Recipient from:
  - (i) carrying out or completing the Project; or
  - (ii) granting the access rights to the Department under clause 3.1(n) of this Deed;
- (f) (validity) the execution, delivery and performance of this Deed by the Recipient has been validly authorised;
- (g) (no conflict of interest) other than those (if any) disclosed by the Recipient to the Department in writing prior to the Commencement Date, to the best of its knowledge, neither the Recipient nor its Personnel have any actual, perceived or potential conflicts of interest in relation to the Project;
- (h) (no contravention) neither its execution of this Deed nor the carrying out by it of the actions that this Deed contemplates, does or will:
  - (i) contravene any law to which it or any of its property is subject or any order of any Governmental Agency that is binding on it or any of its property;
  - (ii) contravene any approval;
  - (iii) contravene any agreement binding on it or any of its property; or
  - (iv) contravene its constitution or the powers or duties of its directors;
- (i) (no litigation) no litigation, arbitration, mediation, conciliation or administrative proceedings are taking place, pending, or to the knowledge of any of its officers after due enquiry, threatened which, if adversely decided, could have a material adverse effect on the Recipient or the Recipient's finances; and
- (j) (solvency) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable.

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## 7.2 The Recipient acknowledges and understands that:



- (a) the Department has entered into an arrangement with the Commonwealth of Australia under which the Commonwealth of Australia has agreed to provide the Department with part or all of the Grant funds for this Project; and
  - (b) as a result of the arrangement between the Department and the Commonwealth of Australia, the Department may be required to:
    - (i) request information from the Recipient; and
    - (ii) share information with the Commonwealth of Australia arising out of or in connection with this Deed or the Project more generally.
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## 8 Paying the Grant

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- 8.1 Following completion of a Milestone, the Recipient may submit to the Department a request for payment of the Milestone Amount.
- 8.2 The Department will pay the relevant Milestone Amount for each Milestone if each of the following has been achieved, being the ‘Payment Criteria’:
- (a) the Recipient has submitted, and the Department has received, a Correctly Rendered Invoice in respect of the relevant Milestone Amount, which clearly identifies the Milestone completed and the Milestone Amount the Recipient is claiming;
  - (b) the Recipient has, in respect of the relevant Milestone, reached Milestone Completion by the Milestone Completion Date provided to the Department:
    - (i) any reports required under this Deed in connection with the relevant Milestone; and
    - (ii) evidence (including all documentation and data) reasonably required to demonstrate the completion of the Milestone to the Department’s satisfaction;
  - (c) the Department is not exercising its rights to withhold or suspend payment under this Deed;
  - (d) the Department has received the required funds from the Commonwealth of Australia attributable to the relevant Milestone; and
  - (e) the Department and, the Commonwealth of Australia (if required under the arrangement with the Commonwealth of Australia), has approved payment of the relevant invoice.
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- 8.3 Payment by the Department to the Recipient of part or all of a Milestone Amount does not constitute an admission that the performance of the relevant Activities associated with a Milestone is in conformity with this Deed and no payment will be deemed to release the Recipient from its obligations under this Deed.

- 8.4 Subject to the terms and conditions of this Deed, including this clause 8, the Department will endeavour to pay Correctly Rendered Invoices within 20 Business Days of the Department confirming that the Payment Criteria has been satisfied.
- 8.5 Unless otherwise agreed, payment of each Milestone Amount will be by direct funds transfer to the Recipient's nominated account.
- 8.6 The Recipient must immediately deposit and keep all Milestone Amounts in its nominated account, which must be an account with an Australian branch of an established bank, building society or credit union, which is solely controlled by the Recipient and allows for the Milestone Amounts to be separately identified.
- 8.7 Interest earned on a Milestone Amount (if any) must be spent on the Project, unless otherwise approved prior in writing by the Department.
- 8.8 The Recipient acknowledges and agrees that the Grant is the only amount payable by the Department to the Recipient under or in connection with this Deed.
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## 9 Changes to Milestone Amounts and Repayment

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- 9.1 Without limiting other rights of the Department under this Deed, the Department may reduce:
- (a) the amount of the Grant; or
  - (b) a Milestone Amount not yet paid to the Recipient under this Deed,
- by giving at least 20 Business Days Notice to the Recipient, if:
- (c) the Department does not receive sufficient funds from the Commonwealth of Australia to provide the full value of the Grant for the Project or the relevant Milestone Amount; or
  - (d) there is a change in any relevant NSW Government or Commonwealth of Australia policy which affects the Grant, a Milestone Amount or the Project.
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- 9.2 If the Grant or a Milestone Amount (as applicable) is reduced under clause 9.1, the parties agree to discuss and determine in good faith any consequential variations required to this Deed as a result of such reduction.

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## 10 Withholding or suspending payment

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10.1 The Department may withhold or suspend payment of any Milestone Amount, if and for as long as:

- (a) an Adverse Event Notice has been issued under clause 4.1 and that Adverse Event persists; or
- (b) the Department reasonably believes that the Recipient:
  - (i) has not complied with this Deed;
  - (ii) is unlikely to achieve a Milestone, or claim a Milestone Amount, in accordance with this Deed; or
  - (iii) or Recipient or an Installer's actions will cause damage to the reputation of the Department, the New South Wales Government or the Project.

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10.2 If the Department withholds or suspends a Milestone Amount under clause 10.1, the Recipient must continue to perform its obligations under this Deed. Any suspension is without limitation to the other rights and remedies of the Department.

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## 11 Assets

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11.1 As the owner of the Assets, the Recipient is responsible for and continues to be responsible for (at its own cost and expense), the ongoing maintenance, support, running and other matters in connection with the Assets. The Recipient bears all risks relating to or arising out of the Assets.

11.2 The Recipient must, until the End Date:

- (a) use the Assets in accordance with, and for the purposes contemplated by, this Deed;
- (b) at its own expense reinstate any part of the Assets that is lost, damaged or destroyed;
- (c) hold any Assets, any part of the Assets, securely and safeguard it against theft, loss, damage, or unauthorised use;
- (d) maintain the Assets in good working order;
- (e) maintain all appropriate insurances for the Assets to their full replacement value;
- (f) not sell, dispose of, cease to use, demolish, eradicate, remove or otherwise interfere with, the Assets or any part of the Assets; and

- (g) if required by Law, maintain registration and licensing of the Assets or any relevant parts of the Assets.

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11.3 The Recipient acknowledges and agrees that disposal of the Assets through sale or otherwise is not consistent with the purpose of the Grant, or the Recipient's obligations under clause 11.2.

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## 12 GST

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12.1 Unless otherwise indicated, all consideration for any supply under this Deed is exclusive of any GST imposed in relation to the supply.

12.2 If:

- (a) despite any other provision of this Deed, GST is imposed on a supply the Recipient makes to the Department under this Deed; and
- (b) the Department is or will be entitled to receive an input tax credit (as defined in the GST Law) in relation to that supply,

the Department will pay the Recipient an additional amount equal to the GST imposed on that supply, at the time and in the manner payment is otherwise payable under this Deed in relation to that supply.

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12.3 The Recipient must be registered under the GST Law at the time of making any supply under this Deed on which GST is imposed.

12.4 If the Recipient is not registered under the GST Law as required under clause 12.3, the Recipient will not be entitled to receive any additional amount as provided under this clause 12.

12.5 If, for any reason, the Department pays the Recipient an amount under this clause 12 which is more than the GST imposed on the supply, the Recipient must repay the excess to the Department on demand or the Department may set off the excess against any other amounts due to the Recipient.

12.6 Any GST associated with the Small-scale Technology Certificates (STCs) must be remitted directly to the Australian Taxation Office by the Recipient.

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## 13 Reporting Requirements

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13.1 The Recipient must provide:

- (a) the required assurance materials as and when required by this Deed (including without limitation, Schedule A); and

- (b) any additional reports or information that may be reasonably requested by the Department from time to time, including any information the Department requires to report to the Commonwealth of Australia, as and when requested.
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13.2 If the Department does not accept assurance materials as satisfactory, the Recipient must submit a revised assurance materials within 10 Business Days following the Department's request.

13.3 Subject to compliance with Privacy Legislation, the Recipient acknowledges that any assurance materials provided or collated under or in connection with this Deed or Project may be:

- (a) disclosed or provided to any NSW Authority for government purposes, including audit, and consents to it being disclosed as such;
  - (b) disclosed to the Commonwealth of Australia; and
  - (c) be used, adapted or modified by the Department for any government purpose, including for the purpose of evaluation.
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13.4 In addition to the requirements in clause 13.1, the Recipient must comply with any request made by the Department, at the Recipient's cost, for any financial reporting, statements or documents, provided by the Recipient to the Department be independently audited and/or certified. The Department must approve the independent auditor and the certifying party prior to any audit or certification.

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## 14 Records

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14.1 The Recipient:

- (a) must keep complete and accurate Records and books of account with respect to its performance of the Project, and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
- (b) must keep Records relating to the Project so as to enable:
  - (i) all receipts and payments related to the Project to be identified in its nominated account and reported in accordance with this Deed; and
  - (ii) unless notified by the Department, the preparation of financial statements in accordance with Australian Accounting Standards;
- (c) authorises the Department and any State or Commonwealth Government department or agency (and any of their appointed third party service providers authorised to perform audits on their behalf) (Auditors) that has provided moneys to the Department for the purposes of the Project, to undertake on-site audits, to examine and inspect, at

reasonable times and on reasonable Notice, any facilities, any Assets and any Records held by the Recipient, and allow any such Records to be copied; and

- (d) must provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause 14.1(c).

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14.2 The Recipient, and its related entities, must agree to, and comply with, a request from Department or New South Wales Government authorised personnel for the production of specified documents by a certain date, whether in person, by post or electronic means.

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## 15 Milestones

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15.1 The Milestones are set out in Schedule A.

15.2 Payment of any Milestone Amount in relation to a completed Milestone will only be made in accordance with clause 8 of this Deed.

15.3 The Activities which comprise Milestones must be completed or achieved on or before the Milestone Completion Date.

15.4 All Milestones must be completed before the Project Completion Date.

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## 16 Intellectual Property

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16.1 Intellectual Property in all Project Material vests in the Recipient.

16.2 Nothing in this Deed affects the ownership by either party of Intellectual Property rights in any of such party's Background IP.

16.3 The Recipient grants (and will ensure any relevant third party IP owners grant) the Department a permanent, non-exclusive, irrevocable, royalty-free licence (including the right to sub-license) to use, reproduce, communicate, publish, adapt and modify the Intellectual Property in the Project Material and any of the Recipient's Background IP in the Project Material.

16.4 If requested by the Department, the Recipient must provide the Department with a copy of any of the Project Material in the format requested by the Department.

16.5 The Recipient warrants that:

- (a) the use of the Project Material will not infringe any third party's Intellectual Property rights; and

- (b) it has, or will procure, all Intellectual Property rights required to perform the Project, to comply with this Deed and to enable the granting of the licences to the Department under this clause 16.
- 

16.6 The Recipient must obtain all necessary consents from the authors of all Project Materials and Background IP provided or licensed to the Department under this Deed to enable the Department to fully exercise its Intellectual Property rights under this Deed, including with respect to:

- (a) reproducing, communicating, modifying or adapting all or any part of a work, with or without attribution of authorship;
  - (b) adding to a work, or removing part of a work;
  - (c) using a work in a different context to that originally envisaged, but not false attribution of authorship;
  - (d) the use, modification or adaptation of the Project Materials; and
  - (e) any other dealing which might otherwise constitute an infringement of the author's Moral Rights.
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16.7 The Recipient must, at the Recipient's cost, do all acts (and procure that all relevant persons do all acts) as may be necessary to give effect to this clause 16, including by executing (or procuring the execution of) any required documents or effecting any required registrations.

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## 17 Confidential Information

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17.1 Subject to clause 19, neither Party may disclose the other's Confidential Information without its prior written consent unless the disclosure is permitted by this Deed.

17.2 Each party may disclose the other party's Confidential Information:

- (a) to a party's internal management personnel to enable effective management of the Deed or auditing of Deed-related activities;
  - (b) its Personnel and legal and professional advisors;
  - (c) if reasonably required by a person, including a contracted auditor of the Department, for the purpose of performing or auditing this Deed.
- 

17.3 Prior to disclosure to any person under clause 17.2, the disclosing party must ensure that those persons:

- (a) are made aware of the confidential nature of the Confidential Information;

- (b) if those persons are not employees of the party making the relevant disclosure, provide written assurance that it will be kept confidential; and
  - (c) will not use the Confidential Information except for the purposes of this Deed (including enforcing this Deed).
- 

17.4 Each party may disclose the Confidential Information of the other party to the extent that it is required to be disclosed by Law, provided that it:

- (a) to the extent reasonably practicable, gives prior Notice to the other party (the owner of the Confidential Information) of the proposed disclosure with full details of the circumstances and the information to be disclosed;
  - (b) postpones any disclosure required by Law for as long as possible, without prejudicing its own position; and
  - (c) acknowledges that the other party (the owner of the Confidential Information), is entitled to make representations to the relevant court, tribunal or other body seeking or ordering disclosure as to whether the Confidential Information should be disclosed.
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17.5 Notwithstanding any other clause in this Deed, the Department may disclose the Recipient's Confidential Information to:

- (a) a Minister of the Crown in right of the State of New South Wales or to the employees of that Minister's office;
  - (b) the Commonwealth of Australia;
  - (c) the NSW Auditor General or Ombudsman;
  - (d) an Authority, where reasonably necessary to perform a government function, including research and analysis in respect of the Project, monitoring performance of this Deed, evaluation of the outcomes of this Deed and/or the Project;
  - (e) New South Wales Parliament or Parliamentary Committee; or
  - (f) the New South Wales government executive (Cabinet and any employees of the Minister's in Cabinet).
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## 18 Privacy

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18.1 The Recipient must ensure that Personal Information that is provided by the Department or collected by the Recipient under or in connection with this Deed is:

- (a) used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;



- (b) unless otherwise required or authorised by Law, not disclosed without the written consent of:
    - (i) if the relevant Personal Information was not provided by the Department, then the individual to whom the Personal Information relates; or
    - (ii) if the relevant Personal Information was provided by the Department, then the Department.
- 

**18.2 The Recipient must comply with:**

- (a) all directions by the Department to the Recipient relating to the Department's compliance with Privacy Law or resolution of any complaint alleging a breach of Privacy Law relating to the Project;
  - (b) all Privacy Laws which apply to the Recipient arising out of or in connection with this Deed; and
  - (c) any applicable NSW Government policies as notified by the Department from time to time.
- 

**18.3** If the Recipient becomes aware that there has been a Personal Information or security breach, or that there has likely or potentially been a Personal Information or security breach, the Recipient must notify the Department immediately and comply with its directions in relation to that breach.

**18.4** As soon as reasonably possible after becoming aware of any Personal Information breach or security breach, or when the Department notifies the Recipient that the Department has reasonable cause to believe there has been a Personal Information breach, the Recipient must:

- (a) conduct a root cause analysis and share the results of the analysis and the remediation plan with the Department on request;
- (b) take all reasonable steps to prevent the Personal Information breach from reoccurring; and
- (c) provide to the Department, to the extent known at the time:

- (i) the date of the Personal Information breach;
- (ii) a description of the Personal Information breach;
- (iii) a list of actions taken by the Recipient to mitigate the impact; and
- (iv) a summary of the information and Personal Information lost, accessed or disclosed as a result of the Personal Information breach.

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## 19 Public Announcements and Acknowledgement

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### 19.1 The Recipient must:

- (a) seek the consent of the Department prior to any media statement, media discussion, promotion or public announcement about the Project or the Grant;
- (b) obtain the written approval of the Department for any public announcement (including the substance of the public announcement), except as required by Law;
- (c) refer all media enquiries relating to the Project or the Grant to the Department;
- (d) ensure that the Department and any Minister, and the Commonwealth of Australia and relevant Minister, is provided ample opportunity to participate in any media coverage and/or promotion of the Project or Grant;
- (e) acknowledge the support of the Department and/or the Commonwealth of Australia, as directed by the Department from time to time:
  - (i) in any public statements about the Project;
  - (ii) on the home page of any web content established in connection with the Project; and
  - (iii) on any equipment or other facility funded wholly or in part by the Department;
- (f) use the Department's logo when acknowledging the Department's support of the Project in compliance with the NSW Government Brand Guidelines;
- (g) if requested by the Department, use the Commonwealth of Australia branding or logo when acknowledging the support of the Project in compliance with any guidelines specified by the Department; and
- (h) without limiting the above, otherwise comply with any Department requirements in respect of the form and content of any acknowledgement of the Department's support.

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19.2 If requested, the Recipient must promptly remove its acknowledgement of the Grant and any Department or Commonwealth of Australia logo from any material relating to the Project.

- 19.3 The Department may publish the title and brief description, including outcomes, of the Project and the amount of the Grant, including any information listed for disclosure under the *NSW Grants Administration Guidelines* (if applicable).
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## 20 Disclosure of Information

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- 20.1 The Recipient acknowledges that, under the *Government Information (Public Access) Act 2009* (NSW), the Department may be required to publicly disclose information about this Deed. None of the disclosure obligations require the disclosure of:
- (a) the commercial-in-confidence provisions of a contract;
  - (b) any matter that could reasonably be expected to affect public safety or security; or
  - (c) information which would be exempt from disclosure if it were the subject of an application under the *Government Information (Public Access) Act 2009* (NSW).
- 
- 20.2 If a request has been made under section 121 of the *Government Information (Public Access) Act 2009* (NSW), the Recipient must provide the Department with an immediate right of access to information specified in section 121(1) of the *Government Information (Public Access) Act 2009* (NSW). The Department acknowledges and agrees that it does not require immediate right of access to the information specified in section 121(2) of the *Government Information (Public Access) Act 2009* (NSW).
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## 21 Insurance Requirements

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- 21.1 The Recipient must affect and maintain the following insurances:
- (a) a broad form public liability policy of insurance with a minimum sum insured of at least \$20 million for any single occurrence and unlimited as to the number of occurrences; and
  - (b) workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation.
- 
- 21.2 The Recipient must ensure that the Supplier has and maintains the following insurances (at a minimum):
- (a) a broad form public liability policy of insurance with a minimum sum insured of at least \$20 million for any single occurrence and unlimited as to the number of occurrences;
  - (b) products liability insurance with a minimum sum insured of at least \$10 million for any single occurrence;

- (c) professional indemnity insurance with a minimum sum insured of at least \$5 million for any single occurrence and unlimited in the aggregate as to the number of occurrence;
  - (d) workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation; and
  - (e) the Additional Insurance Policies listed in the Details for the minimum sum provided (if any).
- 

21.3 All insurances under this Deed must be maintained from the date of this Deed until the End Date.

21.4 Upon the Department's request at any time, the Recipient must promptly provide the Department copies of a certificate of currency in respect of any insurance referred to in clauses 21.1 and 21.2.

21.5 The Recipient must promptly notify the Department in writing if the Recipient receives a notice of cancellation in relation to a policy of insurance it is required to hold under this clause 21.

21.6 The Recipient must, as soon as practicable, notify the Department in writing of the occurrence of any event in connection with the Works that gives rise to a Claim under any policy of insurance (other than professional indemnity insurance) that it is required to hold under this Deed. The Recipient must keep the Department informed of all material action and developments concerning the Claim.

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## 22 Indemnities and liability

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22.1 The Recipient must indemnify and keep indemnified the Department, the Crown in right of the State of New South Wales and their officers, employees and agents from and against any loss (including legal costs and expenses on a solicitor/own client basis) or liability incurred or suffered by, or made against, any of those indemnified arising directly or indirectly from any Claim by any person as a result of or in connection with:

- (a) the Grant or the use of any outcomes or Assets arising from the Project;
- (b) the Recipient's breach of this Deed;
- (c) any unlawful or negligent act or omission by the Recipient, the Recipient's employees or the Recipient's contractors or subcontractors in connection with this Deed;
- (d) any illness, injury or death of any person caused or contributed to by the Recipient or the Recipient's Personnel, in connection with this Deed or the Project;
- (e) any loss or damage to real or personal property caused or contributed to by the Recipient or the Recipient's Personnel, in connection with this Deed or the Project; or

- (f) any act or omission by the Recipient or the Recipient's Personnel, in connection with this Deed that is an infringement of any Intellectual Property, or privacy rights of the Department or any third party.
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## 22.2 The Recipient:

- (a) acknowledges and agrees that the Department may enforce the terms of this clause 22 against the Recipient on its own behalf and on behalf of those indemnified; and
  - (b) agrees to those indemnified exercising rights or powers in relation to, or otherwise enforcing, the indemnities as if they were a party to this Deed.
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22.3 The parties agree that the consent of those indemnified will not be required for any amendment to, or waiver of, rights, powers or obligations under this Deed.

22.4 The Recipient's liability to indemnify the Department under this clause 22 will be reduced proportionately to the extent that any negligent or unlawful act or omission by the Department, its officers, employees or agents contributed to the relevant loss or liability.

22.5 The Recipient's liability to indemnify the Department under this clause 22 does not exclude or reduce the liability of, or benefit to, a party that may arise by operation of the common law, statute or the other terms of this Deed.

22.6 The Recipient acknowledges and agrees that the Department will not be liable upon, and the Recipient releases and indemnifies the Department from and against, any Claim by the Recipient, the Recipient's Personnel, or any third party (including the Strata and the Supplier), arising out of or in any way in connection with this Deed or the Project, or any other act or omission of the Department arising out of or in connection with this Deed or the Project.

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## 23 Work Health and Safety

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### 23.1 The Recipient must take reasonable steps to:

- (a) comply with all applicable laws and regulations, including the WHS Legislation when engaging a Supplier to perform Work under this Deed;
  - (b) ensure that the Supplier and all of its Personnel and subcontractors comply with all applicable laws and regulations, including the WHS Legislation; and
  - (c) so far as is reasonably practicable, consult, co-operate and co-ordinate activities with the Department and any other person who, concurrently with the Recipient, has a work health and safety duty under the WHS Legislation in relation to the same matter.
- 

### 23.2 The Recipient must:

- (a) ensure that the performance of any Work does not, or does not allow to be done, or omit to allow to be omitted, anything which may result in the Department being in breach of WHS Legislation; and
  - (b) ensure that the Department is immediately notified of any:
    - (i) non-compliance or potential non-compliance in connection with the WHS Legislation or the risk management plan arising out of, or in connection with, the Project;
    - (ii) incidents, injuries or damage to property of a serious nature arising out of, or in any way in connection with the Project; or
    - (iii) directions, notices, orders issued by an Authority or any enforcement action taken by an Authority arising out of, or in connection with the Project.
- 

**23.3 The Recipient acknowledges and agrees that the:**

- (a) provision of the Grant is subject to the Work being completed safely in accordance with all relevant WHS Legislation including applicable industry codes of practice;
- (b) provision of the Grant is subject to Recipient completing and providing to the Department, the checklist at Schedule D following completion of the installation of the Assets, including any supporting evidence following a request from the Department;
- (c) Schedule D is not a complete or comprehensive list of possible or actual requirements for the supply and installation of the Assets, under WHS Legislation or otherwise;
- (d) Department's access to and acceptance of the checklist does not:

- (i) diminish or reduce the Recipient's WHS Obligations under this Deed or at law;
  - (ii) constitute constructive notice of any circumstances of breach, relating to WHS Obligations or otherwise;
  - (iii) constitute a waiver by the Department of any breach by the Recipient of this Deed or the Recipient's WHS Obligations;
  - (iv) extend to approval or a representation by the Department that installation has been done in accordance with WHS Laws;
  - (v) to the extent permitted by Law, create any additional WHS Obligations on the Department; and
  - (vi) constitute a waiver of, and is without limitation to, any right the Department has under this Deed or at Law.
- 

23.4 The Department may conduct checks and audit information provided by the Recipient to the Department, including the information contained in the checklist at Schedule D.

23.5 Without limitation to any other remedy or right of the Department, if the Department forms the view that the Recipient or the Supplier (or their subcontractors) have not complied with their obligations under this clause 23, the Department may:

- (a) require the Recipient, at the Recipient's cost, to obtain an independent safety audit from an appropriately qualified person approved by the Department, following which the Recipient must implement any recommendations from that safety audit; and
  - (b) withhold payment of a Milestone Amount and/or require the Recipient to rectify prior to those Works being included in the relevant Milestone Amount for that period.
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## 24 Termination

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24.1 If the Recipient breaches this Deed, nothing in this clause 24 will prejudice the right of the Department to recover damages or exercise any other right or remedy.

24.2 Where a party has breached this Deed:

- (a) the other party may give a Notice to that party requiring it to rectify the breach within 20 Business Days of receiving that Notice; and
- (b) if the party which received the Notice fails to rectify the breach within the time period stipulated under clause 24.2(a), the other party may terminate this Deed immediately by giving a further Notice.

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24.3 Notwithstanding clause 24.2, the Department may terminate this Deed at any time by providing Notice, effective from the date specified in the Notice if:

- (a) the Recipient breaches a provision of this Deed in a manner that, in the Department's sole opinion, is not capable of being remedied;
- (b) the Recipient breaches any of clauses 3 (The Recipient's obligations), 4 (Adverse Event Notice), 11 (Assets), 13 (Reporting Requirements), 15 (Milestones), 23 (Work Health and Safety) or 29.8 (Assignment);
- (c) an Adverse Event Notice has been issued by the Recipient with respect to an event described in clause 4.1;
- (d) an Insolvency Event occurs;
- (e) in the Department's opinion, the Recipient is not carrying out the Project diligently and competently;
- (f) the Department considers that there has been a material change in circumstances in the Recipient's financial position, the Recipient's structure or the Recipient's identity;
- (g) the Recipient has not made significant progress in the performance of its obligations under this Deed to the satisfaction of the Department by the date falling 6 months after the Commencement Date;
- (h) if the Recipient or the Supplier has caused or contributed to any matter that has or is reasonably likely to have a material adverse impact on the Department's or the New South Wales Government's reputation; or
- (i) the Recipient failed to achieve Milestone Completion in respect of a Milestone within 6 months of the Milestone Completion Date for that Milestone.

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24.4 Without prejudice to any of the Department's other rights under this Deed, the Department may at any time, for its sole convenience, and for any or no reason, by written Notice to the Recipient terminate the Deed effective from the time and date stated in the Department's Notice, or if no time and date is stated, at the time the Notice is received by the Recipient.

24.5 If the Department terminates the Deed under clause 24.4, the Recipient will be entitled to payment of any Milestone Amounts that accrued for payment in accordance with this Deed prior to termination, which remain unpaid as at the date of termination.

24.6 The amount that the Recipient is entitled to under clause 24.5 will be a limitation upon the Department's liability to the Recipient arising out of, or in any way in connection with, the termination of the Deed by the Department under clause 24.4 and the Recipient will not be entitled to make, and the Department will not be liable upon, any Claim arising out of, or in any way in connection with, such termination of the Deed, other than for the amount payable under clause 24.5.



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## 25 On termination or expiry

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25.1 Unless the Department otherwise agrees in writing, the Recipient must:

- (a) (Provide Reports and other Material) provide to the Department:
  - (i) any reports due to, or otherwise reasonably requested by, the Department; and
  - (ii) any Project Material which is owned by, or licensed to, the Department under this Deed, in a format, and with associated explanatory material, which permit the Department to exercise its Intellectual Property rights in respect of that Project Material; and
- (b) (Return Confidential Information) following request from the Department at any time, destroy or return (at the Department's election) any documents in its possession or control containing the other party's Confidential Information provided by the Department and provide written confirmation that it has been returned or destroyed (unless any Confidential Information is required to be kept by law or for record keeping obligations under any insurance policy or Laws, in which case that Confidential Information may be kept for that purpose only).

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25.2 Termination or expiry of this Deed does not affect any accrued rights or remedies of a party.

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## 26 Circumstances giving rise to repayment

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26.1 Without limitation to any other rights or remedies of the Department including under this Deed or at Law:

- (a) (misspent Grant): if this Deed is not terminated for breach but any amount of the Grant or a Milestone Amount paid to the Recipient has:
  - (i) been incorrectly claimed by the Recipient or paid by the Department;
  - (ii) not been spent in accordance with this Deed; or
  - (iii) been claimed by the Recipient without all the Activities relevant to that Milestone having been completed or achieved, in accordance with this Deed,the Department in its absolute discretion may require the Recipient to:

- (iv) within 20 Business Days following receipt of on written Notice from the Department:
    - (A) repay all or part the Grant, Milestone Amount or portion of the Milestone Amount (as applicable) paid to the Recipient; or
    - (B) repay part of that amount of the Grant, Milestone Amount or portion of the Milestone Amount (as applicable) and deal with any remaining amount as directed by the Department paid to the Recipient; or
    - (C) otherwise deal with the Grant, Milestone Amount or portion of the Milestone Amount (as applicable) paid to the Recipient, as directed by the Department; or
  - (v) deduct part or all of the Grant, Milestone Amount or portion of the Milestone Amount from any future payments of the Grant or any Milestone Amount, payable by the Department to the Recipient;
- (b) (Asset disposal): if this Deed is not terminated for breach but the Recipient:
- (i) sells, disposes of, ceases to use, demolishes, eradicates, removes or otherwise interferes with all or any part of the Assets in breach of clause 11; or
  - (ii) fails to comply with any obligation under clause 11 and such breach is not remedied within 20 Business Days of the earlier of the Department giving a Notice to the Recipient to remedy or the Recipient becoming aware of the failure to comply;
- the Department in its absolute discretion may require the Recipient, within 20 Business Days following receipt of the Notice, to repay to the Department:
- (iii) the proportion of the value of the Asset following depreciation calculated as at the date of termination which is equivalent to the proportion of the purchase price of the Asset that was funded from the Grant; or
  - (iv) the proportion of the market value of any Asset which is equivalent to the proportion of the purchase price of the Asset that was funded from the Grant; or
  - (v) part or all of the Grant amount as determined by the Department; and
- (c) (breach): if the Recipient breaches this Deed and this Deed is terminated, the Department in its absolute discretion may require that the Recipient within 20 Business Days following receipt of a Notice, repay part or all of the Grant amount as determined by the Department.

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26.2 Without limiting clause 26.1 if the Department terminates this Deed after the completion of Milestone 1 but prior to the completion of Milestone 2, the Department may, by written Notice require the Recipient, within twenty (20) Business Days from receipt of the Notice, to:

- (a) repay the amount of the Grant, Milestone Amount or portion of the Milestone Amount (as applicable) that has not as at the date of such Notice been spent on installation of the Assets (Remaining Amount); or
  - (b) otherwise deal with the Remaining Amount as directed by the Department.
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26.3 The Department may set off the amount of any overpayment, demand for repayment or Claim against any future Milestone Amount.

26.4 Any repayment the Department demands from the Recipient under this clause 26 will be a debt due and owing by the Recipient to the Department.

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## 27 Dispute Resolution

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27.1 If a dispute arises in relation to this Deed (a **Dispute**), a party must comply with this clause 27 before starting arbitration or court proceedings, except proceedings for urgent interlocutory relief.

27.2 A party claiming that a dispute has arisen must notify the other party in writing giving details of the dispute (**Dispute Notice**).

27.3 Following receipt of a Dispute Notice, each party must refer the Dispute to a senior representative, who:

- (a) does not have prior direct involvement in the Dispute; and
  - (b) has authority to negotiate and settle the Dispute.
- 

27.4 If the Dispute is not resolved within 10 Business Days from the date the Dispute Notice is received by the party to whom the Dispute Notice is given, the party which gave the Dispute Notice under clause 27.2 must refer the Dispute for mediation by the Australian Disputes Centre Limited (**ADC**) for resolution in accordance with the mediation rules of the ADC.

27.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.

27.6 Each party must pay its own costs of complying with this clause 27 and pay the costs of the mediator evenly.

27.7 Despite the existence of a Dispute, the parties must:

- (a) continue to perform their respective obligations under this Deed; and
- (b) use reasonable endeavours to mitigate the impact of the Dispute on the performance of their respective obligations under this Deed.

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## 28 Notices

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28.1 Unless otherwise stated in this Deed, all Notices to be given under this Deed must be in writing, and hand-delivered, posted or emailed to, in respect of the:

- (a) Department, the Authorised Officer specified in the Details; and
- (b) Recipient, [the Recipient] **[Note: To be included if the Recipient is a natural person]** / [the Authorised Officer specified in the Details], **[Note: To be included if the Recipient is not a natural person.]**

or, in each case, as otherwise notified in writing.

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28.2 If a Notice is hand-delivered in accordance with clause 28.1, that Notice must also be sent via email to the relevant email address set out in the Details.

28.3 The receiving party will be deemed to have received the Notice as follows:

- (a) if hand delivered, on the day on which it is delivered or left at the relevant address;
  - (b) if sent by post within Australia, if posted using:
    - (i) Express Post, the priority letter service option of regular post, or the priority service option for Registered Mail, on the fourth Business Day after the day on which it is posted; and
    - (ii) the regular post option, on the tenth Business Day after the day on which it is posted;
  - (c) if sent by email before 5.00pm on a Business Day, the first of the following occurring:
    - (i) when the sender receives an automated message confirming delivery; or
    - (ii) four hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not be delivered.
  - (d) if sent by email after 5.00pm on a Business Day or on a day that is not a Business Day, then it will be deemed to be received on the next Business Day.
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28.4 Any such mode of service will be in all respects valid notwithstanding that the party on whom service is affected may be in liquidation, bankruptcy or wound up and notwithstanding any other matter or event whatsoever.

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## 29 General

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**29.1 Survival:** The following clauses survive termination or expiry of this Deed: clauses 5 (Installation standards and requirements), 11.1 (Assets), 13 (Reporting Requirements), 14 (Records), 16 (Intellectual Property), 17 (Confidential Information), 18 (Privacy), 22 (Indemnities and Liability), 24.5 and 24.6 (Termination), 25 (On termination or expiry), 26 (Circumstances giving rise to repayment), 29.10 (Governing Law) and this clause 29.1 (Survival) and any other clause which by its nature is intended to survive termination or expiry of this Deed.

**29.2 Conflict of Interest:**

- (a) The Recipient warrants that no conflict of interest exists in relation to the Project or the Grant at the Commencement Date.
- (b) The Recipient must immediately provide the Department with written Notice upon becoming aware of the existence, or possibility, of an actual or perceived conflict of interest in the performance of the Project or arising out of or in connection with the Grant.
- (c) On receipt of a Notice under this clause 29.2, the Department may:
  - (i) approve the Recipient proceeding with the Project, which may be subject to conditions specified by the Department to ensure appropriate management of the actual or perceived conflict of interest; or
  - (ii) where, in the Department's view, the actual or perceived conflict of interest in the performance of the Project or Grant cannot be appropriately managed, terminate this Deed by Notice in writing to the Recipient effective from the date specified in the Notice.
- (d) If requested, the Recipient must sign a conflict-of-interest declaration in the form required by the Department.

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**29.3 Entire Deed:** This Deed states all the express terms agreed by the parties as to the matters referred to in this Deed. It supersedes all prior contracts, obligations, representations, conduct and understandings between the parties relating to the subject matter of this Deed.

**29.4 Variation:** This Deed may only be varied by agreement in writing including by an exchange of emails confirming any change to Schedule A.

**29.5 Inconsistency:** If there is any inconsistency between provisions of this Deed, then the order of precedence will be:

- (a) the Details; then
- (b) these funding terms; then
- (c) any schedules.

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## 29.6 Negation of employment, partnership or agency

- (a) This Deed does not create a relationship of agency, partnership, and/or employment between the parties.
- (b) The Recipient must not represent itself as being an employee or agent of the Department or as otherwise able to bind or represent the Department.

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## 29.7 Waiver

- (a) If a party fails to exercise any of its rights under this Deed, or delays exercising those rights, that failure or delay will not operate as a waiver of those rights or any future rights or in any respect estop a party from relying on the terms of this Deed to their full force and effect.
- (b) Any waiver by a party of a breach of this Deed must be in writing and will not be construed as a waiver of any further breach of the same or any other provision.

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**29.8 Assignment:** The Recipient must not assign or novate its obligations or interests under this Deed, without the prior written consent of the Department.

**29.9 Counterparts:** This Deed may be signed in any number of counterparts which taken together will constitute one instrument.

**29.10 Governing Law:** The laws of New South Wales govern this Deed and the parties submit to the non-exclusive jurisdiction of the courts in that State.

**29.11 Electronic execution:** Each party consents to this Deed being executed electronically by any method (including by signing on an electronic device, electronic signing platform or by digital signature) and existing in electronic form, and agrees that electronic signature and the method used is a legal valid, reliable and binding method of execution and is conclusive as to the identity of a party and their intention to be bound as if signed by that party's (or any of its duly authorised signatory's) manuscript signature.

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## Executed as a deed

Signed, sealed and delivered for and on behalf of the Crown in right of the State of New South Wales acting through the Department by its authorised signatory but not so as to incur personal liability:

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Signature of Authorised Signatory

*Strike through if not signed electronically\*\* I acknowledge this Deed has been electronically signed by me, the Authorised Signatory named below, affixed at the time and on the date specified below.*

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Signature of Witness

*Strike through if not signed electronically\*\* I acknowledge this Deed has been electronically signed by me, the Witness named below named below, affixed at the time and on the date specified below.*

---

Name of Authorised Signatory

---

Name of Witness

---

Position of Authorised Signatory

---

Address of Witness

---

Date and time

---

Date and time

*Strike through if not witnessing over audio visual link\*\*By signing this document, the witness states that it witnessed the signing of this document over audio visual link (and signed as a witness in counterpart if applicable) in accordance with section 14G of the Electronic Transactions Act 2000 (NSW).*

By entering into this Deed the signatory warrants that the signatory is duly authorised to execute this Deed on behalf of The Owners – Strata Plan No [Insert]

Signed, sealed and delivered by The Owners – Strata Plan No [Insert], the common seal of which was affixed pursuant to section 273 of the *Strata Schemes Management Act 2015* (NSW) and in the presence of 2 lot owners whose signatures appear below:

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Signature of authorised signatory of lot owner  
***Strike through if not signed electronically\*\* I***  
*acknowledge this Deed has been electronically*  
*signed by me, the lot owner named below, affixed at*  
*the time and on the date specified below.*

---

Signature of authorised signatory of lot owner  
***Strike through if not signed electronically\*\* I***  
*acknowledge this Deed has been electronically*  
*signed by me, the lot owner named below,*  
*affixed at the time and on the date specified*  
*below.*

---

Name of lot owner

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Name of lot owner

---

Name of authorised signatory of lot owner  
(BLOCK LETTERS)

---

Name of authorised signatory of lot owner  
(BLOCK LETTERS)

---

Address of lot owner  
(BLOCK LETTERS)

---

Address of lot owner  
(BLOCK LETTERS)

---

Date and time

---

Date and time



## Schedule A - Project Milestones and Assurance Material

Milestone number	Milestone	Activities forming part of Milestone	Assurance Material	Milestone Amount (\$) (ex GST)	Milestone Completion Date
1	Milestone Report 1	The Recipient provides a signed contract for the installation of a solar PV system installation and a tax invoice for the first milestone payment.	<p>Fully executed original copy of this deed.</p> <p>Signed contract for solar PV system installation and payment.</p> <p>A correctly rendered tax invoice for the milestone amount.</p> <p>Such other information reasonably requested by the Department.</p>	20% of Grant amount	Within 10 business days of the Funding Deed being executed.
2	Milestone Report 2	<i>[Drafting note: the Milestone deliverable will be updated in accordance with the application (and as agreed by the Department prior to execution of this Deed)]</i>	<p>Photographic evidence of progress, including construction.</p> <p>A detailed description of any risks and/or issues in installation to date.</p> <p>A detailed description of progress towards the milestones in the original application.</p>	40% of Grant amount	<p>The earlier of the date:</p> <ul style="list-style-type: none"> <li>a. that is 4 weeks following the execution of this Funding Deed; or</li> <li>b. the first Business Day of July 2026.</li> </ul>

Milestone number	Milestone	Activities forming part of Milestone	Assurance Material	Milestone Amount (\$) (ex GST)	Milestone Completion Date
		Report on progress against grant objectives as specified in the Grant Guidelines. This includes evidence showing 50% completion of the installation of the solar system.	A correctly rendered tax invoice for the milestone amount.  Such other information reasonably requested by the Department.		
3	Milestone Report 3	Providing final invoices with respect to the installation of the Assets.  Evidence showing 100% completion of the installation of the solar system, and that the solar PV system is operational.	Photographic evidence of installation and operation of Assets.  Final invoice from the retailer for the solar system installation with itemised cost breakdown.  A certificate compliance electrical work (CCEW), electrical works statement from an Accredited Service Provider (ASP).  A summary describing how they have accomplished the milestones and outcomes in their original application.	40% of Grant amount	The earlier of the date:  a. 20 business days of the work being completed; or  b. 30 October 2026.

Milestone number	Milestone	Activities forming part of Milestone	Assurance Material	Milestone Amount (\$) (ex GST)	Milestone Completion Date
			<p>A summary of any lessons learned regarding the procurement and installation of PV systems on strata.</p> <p>A correctly rendered tax invoice for the Milestone amount.</p> <p>Such other information reasonably requested by the Department.</p>		
	Financial Acquittal Report	Financial acquittal report	<p>Copies of the invoices from vendors, representing the items paid for at each milestone, up to the date of the financial acquittal report.</p> <p>Information outlining how the Grant funds have been applied and spent up to the date of the Financial Acquittal Report, in the format provided by the Department.</p> <p>An undertaking by the Recipient that the:</p> <ol style="list-style-type: none"> <li>1. financial information contained in the Financial Acquittal Report is accurate and represents the complete account of financial</li> </ol>		

Milestone number	Milestone	Activities forming part of Milestone	Assurance Material	Milestone Amount (\$) (ex GST)	Milestone Completion Date
			<p>transactions up to the date of the Financial Acquittal Report;</p> <p>2. Financial Acquittal Report has been prepared fairly, and is based on proper accounts and records which comply with Australian accounting standards; and</p> <p>3. Grant funds were expended only for the Project and otherwise in accordance with this Deed.</p>		
			Total Grant amount	[insert] (ex GST)	

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## Schedule B – Policies, Regulations, Guidelines and Standards

Where applicable to the Activity, the following policies, regulations, guidelines and standards must be adhered to:

1. The New South Wales Government Supplier Code of Conduct;
2. The New South Wales Government Code of Practice for Procurement (January 2005);
3. In relation to work, health and safety, the Work Health & Safety Management Guidelines (6ed) (December 2019);
4. In relation to quality management, AS/NZS ISO 9001 and, if applicable, the NSW Government Quality Management Systems Guidelines for Construction (Edition 4 December 2019);
5. In relation to environmental management, AS/NZS ISO 14001, and, if applicable, the NSW Government Environmental Management Systems Guidelines (Edition 4 December 2019);
6. In relation to asset management, AS/NZS ISO 55001;
7. If applicable, the NSW Government Policy on Aboriginal Participation in Construction;
8. The NSW Government Aboriginal Procurement Policy;
9. The Government Resource Efficiency Policy;
10. Training and Skills Policy;
11. PBD2016-03 Construction Standards and Conformance
12. National Construction Code; and
13. Applicable DNSP connection standards, documents and requirements for grid connected assets.

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## Schedule C – Minimum Installation Requirements

The Recipient must ensure that where applicable to the installation, the following installation requirements are met:

- All electrical projects
  - AS 2053 Conduits and Fittings for Electrical Installations.
  - AS 3000 Electrical Installations (Wiring Rules).
  - AS 3008 Electrical Installations - Selection of cables.
  - AS 3100 Approval and Test Specification - General Requirements for Electrical Equipment.
  - AS 61439 Low voltage switchgear and control gear assemblies.
- Solar
  - AS 4777.1 Grid connection of energy systems via inverters - Installation requirements.
  - AS 4777.2 Grid connection of energy systems via inverters - Inverter requirements.
  - AS 5033 Installation and safety requirements of photovoltaic (PV) arrays.
  - AS 1170.2 Structural design actions - General principles
- Battery Energy Storage Systems
  - AS 5139 Safety of battery systems for use with power conversion equipment
- Others (depending on project / type of installation)
  - AS 1170.4 Structural design actions - Earthquake actions in Australia.
  - AS 1657 Fixed Platforms, Walkways, Stairways and Ladders
  - AS 1664 Aluminium Structures.
  - AS 1768 Lightning Protection.
  - AS 1939 Degree of Protection.
  - AS 3798 Guidelines on earthworks for commercial and residential developments.
  - AS 4212 Atmospheric corrosivity zones in Australia.
- Suppliers must at all times hold a Solar Accreditation Australia (SAA) Accreditation and be a New Energy Tech Approved Seller.
- Solar inverters and panels need to be approved by the Clean Energy Council.

## Schedule D – Safety Checklist

<b>Recipient Name:</b>			
<b>Person completing this form:</b>			
<b>Installer name:</b>			
<b>Installation site address:</b>			
<b>Installation site specifics: (per Installer per Property)</b>			
<b>Date:</b>		<b>Signature:</b>	

Summary of Safety Check	Y	N	N/A
<b>Licences, training and workers compensation</b>			
Installer has provided evidence that workers hold a construction induction card (white card). SafeWork NSW licences can be verified at <a href="https://verify.licence.nsw.gov.au/">https://verify.licence.nsw.gov.au/</a> .			
Installer has provided evidence that workers have been adequately trained e.g., for safe work at heights, applying safe work method statements (SWMS), emergency response procedures, and other skills as required.			
Installer has provided evidence of the electrician's electrical licence or electrical supervisors licence e.g. they hold the correct Fair Trading licence. Note: trade licences can be verified at <a href="https://verify.licence.nsw.gov.au/">https://verify.licence.nsw.gov.au/</a> .			
Installer has a current workers compensation policy. Note: see <a href="https://www.icare.nsw.gov.au/employers/who-needs-workers-">https://www.icare.nsw.gov.au/employers/who-needs-workers-</a>			

insurance/who-needs-a-policy#gref to determine if your installer needs a workers compensation policy.			
<b>Planning for Safety</b>			
A competent person has conducted an inspection of the installation site to identify the site-specific safety hazards and safety equipment required, prior to work commencing. For the avoidance of any doubt, ceiling insulation requires a site inspection.			
Recipient has provided the installer with the site-specific safety controls that are required for the job, prior to the installer attending the site.			
A site-specific safe work method statement (SWMS) has been prepared by the installer and provided to the Recipient for high-risk construction work e.g. addressing falls, ceiling insulation, electrical and asbestos risks.			
<b>Falls from heights risks</b>			
<i>When determining the fall prevention equipment that will be used, the installer must take into consideration the roof design (e.g., pitch, slope, configuration) and roof surface type (e.g., skylights, clear plastic sheeting, asbestos, slippery etc) and select the appropriate falls protection equipment, as per the hierarchy of control. The hierarchy of control requires that a fall prevention device such as roof rails is used for roof edges and physical barriers/covers are used for fragile or brittle roofing. Harnesses must only be used as a last resort, when physical edge protection cannot be installed.</i>			
The Installer has arranged for appropriate fall prevention devices for roof edges.			
The Installer has arranged for appropriate fall prevention devices for fragile/brittle roof surfaces/skylights			
If the installer has chosen to use harnesses, did you ask them why they could not install roof rails, scaffold or protective guards and covers?			
Did the installer arrange for adequate access/egress to the roof e.g., using a ladder that is one metre past the landing and fixed at the top?			
<b>Electrical Work</b>			
The installer has a lock out/tag out system to isolate power during solar installation.			



The work is outside the safe approach distance to overhead electrical lines.			
The electrical work is being conducted or appropriately supervised by a licenced electrician? i.e. holds the correct Fair-Trading licence.			
<b>Falling objects and unauthorised access risks</b>			
Installer has a system in place to limit unauthorised persons from accessing the work area e.g. exclusion zone with bollards, fencing, barrier in place etc. Consideration has been given to inclement weather conditions e.g high wind, wet weather			