

## Solar for Apartments Funding Agreement

The State of Victoria through Solar Victoria within the Department of Energy,  
Environment and Climate Action  
ABN 90 719 052 204

and

Owners Corporation No. **XXX**

Plan of Subdivision No. **XXX**

ABN **XXX**

Version current as at 15<sup>th</sup> May 2024

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SAMPLE

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# Solar for Apartments Funding Agreement

## Dated

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## Parties

Name	<b>The State of Victoria through Solar Victoria within the Department of Energy, Environment and Climate Action ABN 90 719 052 204</b>
Address	PO Box 104, Morwell VIC 3840, Att: Chief Executive Officer
Email	<a href="mailto:apartments@team.solar.vic.gov.au">apartments@team.solar.vic.gov.au</a>
Contact	[XXX]
Short name	<b>Solar Victoria</b>

Name	<b>Owners Corporation No. [XXX] on Plan of Subdivision No. [XXX]</b>
Address	[XXX]
Email	[XXX]
Contact	[XXX]
Short name	<b>Applicant</b>

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## Background

- A. **Solar Victoria** administers the discretionary financial benefit and loan 'Solar Homes' program for the purpose of supporting the uptake and accessibility of solar energy products including solar panels, solar hot water systems and solar battery systems in residential properties (**Solar Homes Program**).
- B. The Solar for Apartments Program (**Program**) forms part of the Solar Homes Program.
- C. The Program will provide funding to eligible applicants to install solar on eligible apartment buildings. The Program is funded through an agreed contribution from the Victorian Government and the Commonwealth Government and aims to assist apartment residents to drive down their energy bills through shared solar incentives.
- D. Solar Victoria has conducted an application process to engage appropriate owners corporations to install an Eligible System at an Eligible Property. The Applicant has submitted an Application.
- E. Following the application process, the Applicant has been selected by Solar Victoria to participate in the Program in accordance with its Application and the Eligibility Requirements.
- F. This Agreement is legally binding upon the Applicant and Solar Victoria.

## The parties agree

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### 1. Term

This Agreement commences on the Commencement Date and continues until the later of:

- 1.1 the effective date of termination of this Agreement under clause 18; and
  - 1.2 the date on which the Applicant complies with its final obligations to Solar Victoria's satisfaction under this Agreement in relation to the Program.
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### 2. Applicant's responsibilities

#### 2.1 Eligibility Requirements

The Applicant acknowledges it is only eligible to participate in the Program if it complies with the Eligibility Requirements at all times.

#### 2.2 Conduct of Project

The Applicant must:

- 2.2.1 comply with this Agreement;
- 2.2.2 ensure energy costs/benefits are passed on equitably to participating Occupiable Lots consistent with obligations under the OC Act;
- 2.2.3 ensure the electricity supply to common areas will not exceed the equal proportion available to each participating Occupiable Lot;
- 2.2.4 ensure the OC has acted in accordance with the OC Act;
- 2.2.5 ensure the Eligible System will supply energy behind the meter;
- 2.2.6 ensure the solar PV system will be installed on the OC's common property;
- 2.2.7 ensure that the Authorised Solar Retailer procures from the original equipment manufacturer a minimum 5 year whole-of-product warranty on all Solar Sharing Technology or major components that may be used in the Eligible System;
- 2.2.8 ensure the OC owns and maintains the Eligible System for the life of the system and that it is appropriately insured;
- 2.2.9 ensure the installation of the Eligible System has been authorised by the OC by way of a special resolution in the form that assures Solar Victoria that the Project has been authorised by the OC and meets the relevant eligibility requirements;
- 2.2.10 ensure Solar Sharing Technology is installed subject to the specific requirements set out in this Agreement;
- 2.2.11 participate in data and knowledge sharing such as case studies, ongoing sharing of solar data and annual cost savings where relevant (in particular when Solar Sharing Technology is used) with the Victorian Government;
- 2.2.12 ensure Solar Victoria branding is not used without prior consent/agreement;

- 2.2.13 conduct the Project in accordance with all applicable Laws and Regulatory Requirements-(including by holding all licences, exemptions or registrations it is required under Law to hold in connection with the Project);
- 2.2.14 not act in a manner contrary to, or seek to circumvent, the intentions or objectives of the Project or the Program (including in such a manner that would undermine or adversely affect the goodwill or reputation of the Project, the Program, Solar Victoria, a Minister or the State);
- 2.2.15 comply (and ensure compliance of its Personnel) with any reasonable directions or instructions given by Solar Victoria from time to time;
- 2.2.16 subject to the other provisions of this Agreement, conduct the Project on the basis set out, and in compliance with the Application;
- 2.2.17 ensure that all property related authorisations and landowner consents necessary for the Applicant to install the Eligible System and to comply with its obligations under this Agreement are obtained and maintained; and
- 2.2.18 assume all financial responsibility and meet all costs and general operating expenses in connection with the Project.

## **2.3 Installation of Eligible System**

- 2.3.1 The Applicant is responsible for arranging the installation of the Eligible System by the Authorised Solar Retailer.
- 2.3.2 The Applicant must ensure that the Eligible System installed at the Eligible Property is:
  - (a) an Eligible System on Solar Victoria's Product List or expressly agreed to by Solar Victoria and subject to any conditions specified by Solar Victoria; and
  - (b) installed by an Authorised Solar Retailer.
- 2.3.3 At Solar Victoria's direction, the Applicant must cease, either temporarily or permanently, using a specified:
  - (a) retailer;
  - (b) installer; or
  - (c) licensed electrical inspector (or, if the Applicant is using a third-party Installer, ensure that that Installer ceases using the specified licensed electrical inspector in accordance with Solar Victoria's direction).
- 2.3.4 If any Eligible System is installed in breach of this clause 2.3 or otherwise in a manner which does not comply with this Agreement, Solar Victoria may refuse to pay, or recover any or all Grant funding paid or payable to the Applicant.

## **2.4 Grant**

- 2.4.1 The Applicant must use the Grant only for the purpose of carrying out the Project in accordance with this Agreement.

2.4.2 Nothing in this Agreement implies that:

- (a) Solar Victoria will provide the Grant for the Project or the Applicant above or beyond that specifically provided for under this Agreement; or
- (b) the Applicant may claim any further Grant in respect of the Program or the Project from Solar Victoria or the State of Victoria,

and the Applicant must at all times secure funding from other sources to fully fund its participation in the Project.

## 2.5 Notice obligations

2.5.1 The Applicant must immediately notify Solar Victoria as soon as it becomes aware of any fact, matter or circumstance that may result in, or has resulted in, any aspect of the Eligibility Requirements not being met.

2.5.2 The Applicant must immediately notify Solar Victoria if the Applicant receives any notice or communication from any Government Authority relating to:

- (a) its participation in the Program; or
- (b) any allegation that it has breached any Law or any approval or licence it holds in relation the Program,

and must promptly provide any further information reasonably requested by Solar Victoria in relation to those matters.

2.5.3 The Applicant must immediately notify Solar Victoria of any accident or incident relating to the installation or maintenance of the Eligible System which is required to be notified to any Government Authority.

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## 3. Applicant warranties

### 3.1 Warranties

In entering into this Agreement, the Applicant represents and warrants that:

- 3.1.1 it has full legal capacity and power to enter into and to perform its obligations under this Agreement;
- 3.1.2 all information that it has provided or provides to Solar Victoria will be complete, true and correct;
- 3.1.3 it has undertaken all appropriate enquiries prior to entering into the Program;
- 3.1.4 it satisfies the Eligibility Requirements;
- 3.1.5 it has obtained all necessary approvals and licences to conduct the Project;
- 3.1.6 it has engaged sufficiently qualified Personnel, including the Authorised Solar Retailer, to ensure compliance with this Agreement;
- 3.1.7 it participates in the Program at its own risk including the risk that the costs of the Project are higher than expected than expected;



- 3.1.8 it will use reasonable endeavours to ensure the Project is conducted in a timely manner in accordance with this Agreement;
- 3.1.9 it has not applied or is not seeking to apply for a Grant in a manner that is inconsistent with the Eligibility Requirements;
- 3.1.10 the Eligible System will be used at the Eligible Property;
- 3.1.11 the Eligible System installed at the Eligible Property was not installed prior to the Applicant's application for the Grant, unless otherwise permitted and determined by Solar Victoria in accordance with the criteria and conditions published by Solar Victoria at solar.vic.gov.au (and as varied by Solar Victoria in its absolute discretion from time to time);
- 3.1.12 it is not involved in any bankruptcy, insolvency or other similar proceeding; and
- 3.1.13 to the best of its knowledge, there are no legal, regulatory, contractual or other restrictions that would prevent the Applicant complying with this Agreement.

### **3.2 Repetition**

The Applicant repeats each representation and warranty in this clause 3 with reference to the facts and circumstances on the Commencement Date, the date on which the conditions in clause 4 are satisfied and the dates on which the Grant payments are made.

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## **4. Grant**

### **4.1 Payment of Grant**

Within 10 Business Days of Solar Victoria's satisfaction of the Applicant's achievement of the conditions in clause 4.2, Solar Victoria will pay or procure the payment of the Grant in accordance with this clause 4 and Schedule 2:

- 4.1.1 based on the Applicant's progress in achieving the milestones in Schedule 2; and
- 4.1.2 subject to the receipt of invoices and reports as described in Schedule 2.

### **4.2 Conditions of Grant payments**

Without limiting the operation of clause 4.1 and subject to clause 9.1, the payment of the Grant is conditional on:

- 4.2.1 Solar Victoria being satisfied (acting reasonably) that:
  - (a) the Applicant has achieved the milestones in Schedule 2;
  - (b) the Applicant has complied and is complying with this Agreement; and
  - (c) any variations or alterations to the Eligible System were previously approved by Solar Victoria in writing;
- 4.2.2 the Applicant's provision to Solar Victoria, within 60 days of installation, of evidence of the installation of the Eligible System and any reasonable supporting documentation as may be requested by Solar Victoria from time to time for the relevant Grant payment;

- 4.2.3 Solar Victoria being satisfied that the Grant is being (and will be) paid to a bank account in the Applicant's name that the Applicant solely controls, and that the bank is a deposit-taking institution authorised under the *Banking Act 1959* (Cth) to carry on banking business in Australia; and
- 4.2.4 Solar Victoria being satisfied (acting reasonably) that the Applicant has complied with:
- (a) its reporting obligations in clause 5; and
  - (b) its data sharing obligations in clause 6.

### **4.3 GST**

- 4.3.1 For the purposes of this clause 4.3, terms capitalised but not defined in this Agreement (such as GST, Recipient Created Tax Invoice, Adjustment Note, Tax Invoice and Taxable Supply) have the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth). Further, for the purposes of this Agreement, Taxable Supply means the obligations of the Applicant under the terms of this Agreement.
- 4.3.2 All amounts and calculations under this Agreement are inclusive of GST.
- 4.3.3 If a payment to a party under this Agreement is a reimbursement or indemnification, calculated by reference to a loss, cost or expense incurred by that party, then the payment will be reduced by the amount of any input tax credit to which that party is entitled for that loss, cost or expense.
- 4.3.4 The Applicant acknowledges that it is registered for GST when it enters into this Agreement, and that it will notify the Supplier if it ceases to be registered, or if it ceases to satisfy any of the requirements of Tax ruling GSTR2000/10.
- 4.3.5 Solar Victoria must issue a copy of an Recipient Created Tax Invoice to the Applicant within 28 days of the making of, or determining the value of, any Taxable Supply and must retain the original copy.
- 4.3.6 Solar Victoria must issue a copy of an Adjustment Note to the Applicant within 28 days of the adjustment that occurs in respect of supplies for which a Tax Invoice was issued and must retain the original copy.

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## **5. Reports**

- 5.1 Solar Victoria may require the Applicant to provide in connection with the Program any information and documents reasonably required by Solar Victoria to capture lessons learnt, and measure the outcomes and benefits of the Program against the outcomes and benefits set out in the Eligibility Requirements.
- 5.2 The Applicant must promptly comply with all reasonable requests for information from, and directions given by, Solar Victoria related to the Applicant's participation in the Program.

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## 6. Data sharing

### 6.1 Provision of Program Data

- 6.1.1 The Applicant must provide, or otherwise make available, to Solar Victoria the Program Data, including as described in Schedule 1 and Schedule 2 or as may be requested from time to time by Solar Victoria.
- 6.1.2 Solar Victoria may use and disclose the Program Data for the Approved Purpose.

### 6.2 Treatment of Program Data

The Applicant must:

- 6.2.1 obtain any consents, including consents from its Personnel, and make any disclosures necessary for the Applicant to provide the Program Data to Solar Victoria and for Solar Victoria to use the Program Data for the Approved Purpose, including notifications, consents and disclosures required under the Privacy Laws;
- 6.2.2 ensure the Program Data is accurate, complete and current;
- 6.2.3 take all reasonable steps (including as required by the Privacy Laws) to prevent unauthorised access, use or disclosure of the Program Data;
- 6.2.4 report, on a basis advised by Solar Victoria, on the Applicant's data security controls to Solar Victoria's satisfaction; and
- 6.2.5 establish and maintain appropriate safeguards consistent with the Privacy Laws against the destruction, loss or alteration of the Program Data whilst the Program Data is in the Applicant's possession, custody or control.

### 6.3 Collection of electricity data

6.3.1 The Applicant consents to Solar Victoria (or any other Victorian Government entity which administers the Program) collecting information (including on an on-line basis) regarding past and future electricity use, generation and network data at the Nominated Property and the Eligible Property's National Metering Identifier (NMI), including from the Applicant's electricity retailer and the electricity distributor to which the Nominated Property is connected. The Applicant agrees to give any consents, or provide any information required by the electricity retailer or distributor or the Australian Energy Market Operator, which are required for Solar Victoria (or other relevant Victorian government entity) to receive this information (including the information required as set out in clause 6.3.2).

6.3.2 Without limiting clause 6.3.1:

- (a) for the 12-month period prior to the date of the Applicant's application for a Grant under the Program; and
- (b) for a period of 4 calendar years from the Applicant's application for a Grant under the Program (or if the Applicant is dissolved under section 32(g) of the *Subdivision Act 1988* (Vic)),

the Applicant must provide, or consents to Solar Victoria (or any other Victorian Government entity which administers the Program) collecting details of the Applicant's electricity consumption, generation and the rates and charges billed by the Applicant's electricity retailer which can be evidenced by:

- (c) electricity bills from the Applicant's electricity retailer;
- (d) electricity metering data;
- (e) data from solar photovoltaic and battery inverters;
- (f) data from Solar Sharing Technology;
- (g) data from solar photovoltaic and battery monitoring software,

provided the relevant documentation details the consumption, rates and charges paid by the Applicant for electricity usage at the Eligible Property for the relevant period.

6.3.3 The Applicant must provide electricity generation and consumption data from Solar Sharing Technology systems to apartment residents including the NMI for common areas.

6.3.4 Nothing in this clause 6.3 derogates from Solar Victoria's obligations under Privacy Laws.

## **7. Audit**

### **7.1 Audit and inspection**

7.1.1 The Applicant must permit Solar Victoria, its Personnel, its nominees and/or the Auditor-General of Victoria to:

- (a) audit and verify the monies expended in connection with the Program or the Project; and
- (b) inspect any books or accounts relating to the Project, the installation of the Eligible System by the Applicant (or any person for which it is or has been responsible or has engaged in connection with the Eligible System) or this Agreement.

7.1.2 For the purposes of this clause 7.1, the Applicant, at any time and from time to time with reasonable notice (except where otherwise reasonably required or required by Law):

- (a) must permit access to and the copying of the financial and other records and any other materials, to the extent that they relate to the Grant, the Program or the Project, by any Solar Victoria Personnel or nominee and/or the Auditor-General;
- (b) subject to reasonable and appropriate occupational, health and safety and confidentiality restrictions, must permit or procure permission for any Solar Victoria Personnel or nominee and/or the Auditor-General to access any place where an Eligible System is installed and to inspect that Eligible System and make records (including taking photos in relation to that system);

7.1.3 must answer all relevant enquiries put to the Applicant by any Solar Victoria Personnel or nominee and/or the Auditor-General (and within the timeframes required by Solar Victoria);

- 7.1.4 must assist any Solar Victoria Personnel or nominee and/or the Auditor-General in the conduct of the audit or inspection; and
- 7.1.5 must permit any Solar Victoria Personnel or nominee and/or the Auditor-General to inspect any relevant facilities and technologies and to assess quality, quantity and ongoing costs of the Program or Project.

## 7.2 Technical audit and assurance

- 7.2.1 The Applicant must procure access and necessary permissions and approvals to enable any Solar Victoria Personnel or nominee to inspect the Eligible System and conduct an audit or assurance review of the Eligible System (**Compliance Audit**). A Compliance Audit will take into account the products used in the Eligible System, the method of installation, compliance with this Agreement or any other issue deemed appropriate by Solar Victoria.
- 7.2.2 Following completion of a Compliance Audit, Solar Victoria may determine, acting reasonably, that the Eligible System is non-compliant with this Agreement on the basis that installation (as determined by the relevant Solar Victoria Personnel or nominee):
  - (a) is unsafe; or
  - (b) needs rectification of non-compliances that impact the performance or safety of the Eligible System,(a '**Non-compliant System**').
- 7.2.3 If Solar Victoria's Personnel or nominee reasonably determines that the Eligible System is a Non-compliant System (whether via a Compliance Audit or otherwise), Solar Victoria will provide written notice to both the Applicant and Authorised Solar Retailer detailing the non-compliance and, if applicable, the findings of the Compliance Audit (**Non-compliant System Notice**).
- 7.2.4 The Applicant must procure access and necessary permissions and approvals to enable the Authorised Solar Retailer or other person nominated by Solar Victoria to rectify the Non-compliant System in accordance with a Non-compliant System Notice.
- 7.2.5 Within 7 days of receiving a Non-compliant System Notice (or in such other time as otherwise reasonably specified by Solar Victoria), the Applicant must rectify the Non-compliant System at its own cost and in accordance with a Non-compliant System Notice within one month of the date of that notice (unless otherwise agreed with Solar Victoria) and to Solar Victoria's written satisfaction.
- 7.2.6 If the Applicant fails to rectify a Non-compliant System as required by this clause to Solar Victoria's satisfaction, Solar Victoria may arrange to rectify the Non-compliant System itself and any costs incurred by Solar Victoria to do so may be recovered from the Applicant as a debt due and payable to Solar Victoria.
- 7.2.7 The Applicant must provide written notice to Solar Victoria setting out the relevant details, updates, notifications and any other relevant information concerning the rectification of the Non-compliant System within one month of the date of the Non-compliant System Notice (unless otherwise agreed with Solar Victoria).
- 7.2.8 Solar Victoria may:

- (a) refuse to pay, or recover (independently or as part of periodic payments of other parts of the Grant) any Grant payment paid or payable for a Non-compliant System; and
- (b) require the Applicant to undertake any other actions or initiatives to address the risk of:
  - (i) any further Non-compliant Systems being installed; or
  - (ii) any other outcomes that are adverse to the Program, Project, Solar Victoria, the Minister or the State.

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## **8. Compliance with Law and policy**

### **8.1 General**

The Applicant must (and must ensure its Personnel) in performing this Agreement comply with all Regulatory Requirements in force from time to time and the Solar Victoria policies and procedures as notified to the Applicant in writing from time to time.

### **8.2 Safety**

#### **8.2.1 General obligations**

In performing its obligations under this Agreement, the Applicant must strictly comply (and use its best endeavours to ensure compliance by its Personnel) with:

- (a) all Health and Safety Laws; and
- (b) all directions from Solar Victoria regarding Solar Victoria's safety management system.

#### **8.2.2 Specific obligations**

Without limiting clause 8.2.1, in performing its obligations under this Agreement, the Applicant must work proactively to ensure, so far as is reasonably practicable, the safety and health of all persons involved in or affected by the Project, including by ensuring that:

- (a) each work environment (including any place of work or places near places of work that are under the Applicant's control and the systems of work operating in such locations) does not expose people to health or safety hazards; and
- (b) procedures are in place to deal with emergencies or OH&S Incidents that may arise during the conduct of the Project.

### **8.3 Audit**

Solar Victoria Personnel or its nominees (for example, WorkSafe Victoria and Energy Safe Victoria), may at any time conduct an audit to determine whether the Applicant is complying with its obligations under clause 8.2 and the Applicant must cooperate with the audit at its cost.

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## **9. Compliance with undertakings and changes in financial circumstances**

### **9.1 Rights to withhold Grant, require refund or terminate Agreement**

Where Solar Victoria is of the reasonable opinion that:

- 9.1.1 the Applicant (either itself or through its Personnel) has failed to comply with any of its material obligations or any of the warranties under this Agreement and, where the non-compliance is capable of remedy by the Applicant, the Applicant has failed to remedy the non-compliance to Solar Victoria's satisfaction and within such reasonable period as specified by Solar Victoria in writing;
- 9.1.2 there has been a change in the financial circumstances of the Applicant that will adversely impact the Applicant's ability to continue meeting its obligations under this Agreement;
- 9.1.3 the Applicant will not or cannot complete the Project;
- 9.1.4 there has been any fraud or corruption relating to the Applicant (including through its Personnel) or the Grant, or there has otherwise been any conduct that may amount to a breach of the Law on the part of the Applicant (including through its Personnel) in connection with this Agreement or the provision or use of any Grant;
- 9.1.5 the Applicant (including through its Personnel) has engaged in conduct which adversely affects the goodwill or reputation of Solar Victoria, a Minister, or the State;
- 9.1.6 the Applicant has become subject to an Insolvency Event;
- 9.1.7 the Applicant (including through its Personnel) in undertaking the Project and/or in meeting its obligations under this Agreement has infringed the Intellectual Property Rights of a third party; or
- 9.1.8 the Applicant (including through its Personnel) has Breached this Agreement (including any documents contemplated in clause 20.4.1);

then Solar Victoria may do one or more of the following:

- 9.1.9 withhold, suspend, cancel or terminate any payment or payments of the Grant due or to fall due under this Agreement;
- 9.1.10 cancel, disqualify or terminate the Applicant's participation in the Program;
- 9.1.11 disqualify any person who is an officer concerned in the management of, or member of, the Applicant for a specified period, from participating, or otherwise being involved in participating in, the Program; or
- 9.1.12 require the Applicant to refund the Grant funding previously paid as Solar Victoria reasonably deems appropriate, together with interest calculated daily at the rate fixed from time to time under Section 2 of the *Penalty Interest Rates Act 1983* (Vic), from the date of the relevant Grant payment until the date on which that amount is refunded;
- 9.1.13 require the Applicant to remedy any failure to comply with this Agreement or the circumstances set out in clauses 9.1.1 to 9.1.8 in accordance with a cure plan approved by Solar Victoria in writing and within a period specified by Solar Victoria; or

- 9.1.14 terminate this Agreement with immediate effect or a later date determined by Solar Victoria by giving written notice to the Applicant in accordance with clause 18.2.

## **9.2 Obligation to notify**

The Applicant must promptly notify Solar Victoria if:

- 9.2.1 any regulation or warranty made or repeated, or taken to be made or repeated, by it or on its behalf in connection with the Program, becomes untrue, incorrect or misleading when made or taken to be made;
- 9.2.2 it is the subject of a regulatory investigation or any proceedings of a court, tribunal or similar body;
- 9.2.3 any event or circumstance occurs or arises that results, or may result in, a significant deterioration in the financial circumstances of the Applicant;
- 9.2.4 the Applicant becomes subject to an Insolvency Event;
- 9.2.5 the Applicant in undertaking the Project and/or in meeting its obligations under this Agreement becomes aware that it has, may have, or is likely to have any Claim, action or demand made against it by a third party for infringement of that third party's Intellectual Property Rights; or
- 9.2.6 the Applicant is unlikely to be able to complete the Project.

## **9.3 No derogation**

Nothing in this Agreement, including clause 9.1, affects any rights or remedies otherwise available to Solar Victoria at law.

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## **10. Intellectual Property**

### **10.1 Existing Intellectual Property**

- 10.1.1 This Agreement does not affect the ownership of, and each party retains all its rights, including Intellectual Property Rights, in and to all of that party's Existing Material.
- 10.1.2 Each party grants to the other party a non-exclusive, royalty-free, limited licence for the Term to use the other party's Existing Material solely to the extent necessary for the purpose of performing its obligations under this Agreement.

### **10.2 Project Intellectual Property**

As between the Applicant and Solar Victoria, all Project Intellectual Property will vest in the Applicant upon creation.

### **10.3 Licences to Solar Victoria**

Subject to clause 12, the Applicant grants to (or must procure for) Solar Victoria a permanent, irrevocable, royalty-free, world-wide, non-exclusive licence to:

- 10.3.1 subject to clause 10.3.2, reproduce, publish, communicate to the public, adapt, modify or otherwise use the Agreement Material; and



10.3.2 to the extent the Agreement Material comprises Project Intellectual Property, use, reproduce for its internal purposes, adapt, modify or otherwise use that Project Intellectual Property,

for the Approved Purpose or for any other non-commercial purposes.

#### 10.4 Program Data

10.4.1 On and from the date of this Agreement until five years after it has given all final reports to Solar Victoria required under this Agreement (to Solar Victoria's satisfaction), the Applicant must store all Program Data including any associated program data obtained by an online storage facility and provide secure authenticated access to Solar Victoria to that online storage facility for the duration of that period.

10.4.2 The Applicant grants to Solar Victoria a perpetual, irrevocable, royalty-free, non-exclusive licence (with the right to sublicense to research partners only) to use, modify, adapt, develop, copy and reproduce the Program Data for the Approved Purpose or for any other non-commercial purposes.

10.4.3 The Applicant warrants that:

- (a) it is authorised to grant the rights, including all Intellectual Property Rights, in and to the Program Data, Agreement Material and the Project Intellectual Property pursuant to this Agreement; and
- (b) the use and reproduction of any Program Data, Agreement Material and the Project Intellectual Property by Solar Victoria for the Approved Purpose will not infringe any rights, including the Intellectual Property Rights, of any person.

#### 10.5 Moral rights

If any Agreement Material that is a copyright work contains information over which a third party (including the Applicant's personnel and subcontractors) has 'Moral Rights' (as defined in the *Copyright Act 1968* (Cth)), the Applicant must ensure that it has in place all necessary consents sufficient to allow Solar Victoria to deal with the Agreement Material in accordance with this Agreement.

#### 10.6 Warranties

The Applicant warrants that:

10.6.1 it is entitled to use for the Project and for the purposes of meeting its obligations under this Agreement, all Existing Material (including all Intellectual Property Rights in that Existing Material) and Project Intellectual Property it uses, procures or provides in connection with this Agreement or the Project (**Warranted Materials**); and

10.6.2 it has the right to grant the licence in this clause 10 and otherwise under this Agreement.

#### 10.7 Remedy for breach of warranty

If the Applicant breaches either of the warranties in clause 10.6, and as a result of the breach of that warranty, a third party claims the State's use of all or part of the Warranted Materials infringes its Intellectual Property Rights, the Applicant must, in addition to its obligations under clause 11 and to any other rights that Solar Victoria may have against it, promptly, at the Applicant's expense:

- 10.7.1 use its best efforts to secure the rights for Solar Victoria to continue to use the affected Warranted Materials as permitted under clause 10 free of any Claim or liability for infringement; or
- 10.7.2 replace or modify the affected Warranted Materials so that the State's use of them as permitted under this clause 10 does not infringe the Intellectual Property Rights of any other person without any degradation of the performance or quality of the affected Warranted Materials.

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## **11. Publicity and promotion**

### **11.1 Publicity by Applicant**

- 11.1.1 The Applicant must only use any marketing material supplied by Solar Victoria (if provided) in the form provided by Solar Victoria and otherwise in accordance with this clause 11.1.
- 11.1.2 Solar Victoria may direct the Applicant to cease using or alter specified marketing material, and the Applicant must immediately comply with any such direction.
- 11.1.3 The Applicant must not use any of Solar Victoria's logos or trademarks in its own marketing material without Solar Victoria's prior written agreement. Any use of any Solar Victoria logos, trademarks or approved brand marks must be aligned with the approved branding and messaging guidelines provided by Solar Victoria to the Applicant from time to time. The Applicant must not use any Solar Victoria logos or trademarks in its own marketing material (or in any other way) to suggest that the Applicant is recommended or endorsed by Solar Victoria.
- 11.1.4 The Applicant must not make any public statements or communications, or publish any media releases, in relation to this Agreement or the Project, other than disclosures that the Applicant is required to make under the rules of any applicable stock exchange, without first providing a copy of the statement, communication or media release to Solar Victoria in accordance with clause 19.1.2 and obtaining the prior written approval of Solar Victoria (not to be unreasonably withheld).
- 11.1.5 The Applicant must not do or omit to do anything which may:
  - (a) damage, bring into disrepute or ridicule Solar Victoria's or the State's name, messages or reputation; or
  - (b) attract public or media attention which may be prejudicial or otherwise detrimental to Solar Victoria's or the State's name, messages or reputation.

## **11.2 Publicity by Solar Victoria**

- 11.2.1 The Applicant agrees that it will cooperate with Solar Victoria in relation to all publicity associated with the Grant and the Project and will provide reasonable assistance required by Solar Victoria from time to time in the preparation of materials used to promote the benefits of the Program to industry and the public, such as a media release or a case study on the Project.
- 11.2.2 Subject to clause 12, Solar Victoria may publicise the benefits accruing to both the Applicant and Solar Victoria as a result of the provision of the Grant. Solar Victoria may include the name of the Applicant, the value of the Grant and the number of Grant payments allocated to the Applicant in its annual report. Solar Victoria will provide a copy of any statement, communication or media release to the Applicant in accordance with clause 19.1.1 and consult the Applicant before any public release of information relating to this Agreement or the Project.
- 11.2.3 The Applicant agrees and acknowledges that, in accordance with Solar Victoria policy, Solar Victoria may publish and make available to the public the terms and conditions of this Agreement in any medium (including the internet), other than any terms or conditions which the parties agree to keep confidential.

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## **12. Confidentiality**

### **12.1 Applicant's obligations of confidentiality**

The Applicant must not disclose or permit the disclosure of Confidential Information of Solar Victoria or any information relating to the Program or the Grant (including this Agreement), except:

- 12.1.1 with the prior written consent of Solar Victoria;
- 12.1.2 to the extent required by Law or by a lawful requirement of any Government Authority or stock exchange;
- 12.1.3 to the extent required in connection with legal proceedings;
- 12.1.4 where otherwise permitted under this Agreement or required for the Applicant to comply with this Agreement; or
- 12.1.5 to its legal advisers or accountants or tax advisers in order to obtain advice in relation to its rights under this Agreement or the Program,

and then only to the extent strictly necessary for that purpose.

### **12.2 Solar Victoria's obligations of confidentiality**

Solar Victoria must not disclose or permit the disclosure of Confidential Information of the Applicant, except:

- 12.2.1 with the prior written consent of the Applicant;
- 12.2.2 to the extent required by Law or by a lawful requirement of any Government Authority;
- 12.2.3 if required in connection with legal proceedings;
- 12.2.4 in an emergency;

- 12.2.5 in connection with a request for information by Parliament or a Parliamentary committee;
- 12.2.6 where otherwise permitted under this Agreement or required for the performance of it or the exercise of rights under it; or
- 12.2.7 to its professional advisers in order to obtain advice in relation to this Agreement or the Program,

and then only to the extent strictly necessary for that purpose.

### **12.3 Disclosure required by Law**

Prior to disclosing Confidential Information of the other party under clause 12.1.2 or clause 12.2.2 a party will, if it is able to do so without breaching any Law and if time constraints reasonably permit, provide prior notice to the other party and give the other party a reasonable opportunity to object to the disclosure.

### **12.4 Obligations on disclosure**

If a party discloses Confidential Information of the other party under (as the context requires) clause 12.1.4 or 12.1.5, clause 12.2.1, 12.2.6 or 12.2.7, the party making the disclosure must ensure that each person to whom the Confidential Information is disclosed is aware of the obligations under this clause 12 and that person must agree to keep the Confidential Information confidential as if it was bound by the obligations of confidentiality imposed on the party making the disclosure under this clause 12. Nothing in this clause 12.4 derogates from Solar Victoria's obligations under freedom of information or Privacy Laws.

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## **13. Collection, use and disclosure of information**

### **13.1 Collection of information**

Solar Victoria may collect information about the Applicant from third parties such as:

- 13.1.1 the Essential Services Commission;
- 13.1.2 the Australian Energy Market Operator;
- 13.1.3 the Clean Energy Council (**CEC**);
- 13.1.4 WorkSafe Victoria;
- 13.1.5 Consumer Affairs Victoria;
- 13.1.6 Energy Safe Victoria;
- 13.1.7 Valuer-General Victoria;
- 13.1.8 the Victorian Building Authority; and
- 13.1.9 Authorised Solar Retailers.

### **13.2 Consent to information gathering**

- 13.2.1 The Applicant consents to:

- (a) any person (including those listed in clause 13.1.1) providing information of or about the Applicant to Solar Victoria for the purpose of Solar Victoria validating representations made, or information provided, by the Applicant or for the purpose of Solar Victoria administering the Program; and
  - (b) information collected by Solar Victoria pursuant to clause 13.1.1 being used and disclosed by Solar Victoria to:
    - (i) relevant regulators and CEC and to administer the Program, including to assess ongoing compliance with the Eligibility Requirements and this Agreement by the Applicant; and
    - (ii) for research purposes.
- 13.2.2 The Applicant acknowledges that information provided to Solar Victoria may be provided to a contractor for data handling and analysis services or incorporated into databases or other IT systems and aggregated into documents or other media for public release, provided that arrangements are in place to maintain confidentiality of that information.

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## 14. Privacy

- 14.1 The Applicant must comply, and ensure that its Personnel comply, with all applicable Privacy Laws in relation to any Personal Information provided or accessed by the Applicant under or in connection with this Agreement, including in collecting and handling any Personal Information in connection with the Program and contained in the Program Data, in the same way and to the same extent as Solar Victoria would have been bound by the Privacy Laws in respect of that act or practice had it been directly done or engaged in by Solar Victoria.
- 14.2 Without limiting any other part of this Agreement, the Applicant must ensure:
- 14.2.1 all individuals to whom the personal information relates have provided all necessary consents required under the *Privacy and Data Protection Act 2014* (Vic);
  - 14.2.2 all individuals to whom the personal information relates have been made aware of the identity of Solar Victoria and of the other matters that the Applicant is required under the Privacy Laws to take reasonable steps to ensure that the individuals are aware of; and
  - 14.2.3 the disclosure of the personal information to, and its use by, Solar Victoria is authorised under the Privacy Laws.
- 14.3 The Applicant acknowledges that the personal information that Solar Victoria collects is handled in accordance with the *Privacy and Data Protection Act 2014* (Vic) for the purposes of administering the Solar Homes Program and assessing the Applicant's eligibility to participate in that program.
- 14.4 Solar Victoria will share the information with other State, Territory and Commonwealth government agencies, Members of Parliament, Solar Victoria's delivery partners and third party clean energy industry participants and, if involved in administering the Program, peak-bodies.
- 14.5 Solar Victoria will also use the information, in a de-identified way, to evaluate the effectiveness of the Solar Homes Program and also for the purpose of public policy research into energy affordability and related matters.

- 14.6 Each party must notify the other party of any breach or possible breach of that party's obligations under this clause 14 immediately after becoming aware of such breach or possible breach.

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## **15. Conflict of interest**

### **15.1 Warranty**

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

### **15.2 Conflict during the Term**

If a Conflict arises during the Term (including through the Applicant's involvement with the parties or programs, if any, specified in the Project Plan), the Applicant must notify Solar Victoria in writing immediately of the Conflict, make full disclosure of all relevant information relating to the Conflict and take such steps as Solar Victoria requires to resolve or otherwise deal with the Conflict.

### **15.3 Failure to resolve Conflict**

If the Applicant fails to notify Solar Victoria under this clause 15, or is unable or unwilling to resolve or deal with the Conflict as required, Solar Victoria may terminate this Agreement in accordance with clause 18.2.

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## **16. Indemnity and liability**

### **16.1 Indemnity**

16.1.1 The Applicant must indemnify, keep indemnified and hold harmless Solar Victoria and its Personnel (referred to in this clause as 'those indemnified') from and against all Loss suffered or incurred by those indemnified and arising out of:

- (a) any Claim (including any Claim by a third party) against any of those indemnified in relation to any:
  - (i) omission or negligent act in connection with this Agreement or the Program;
  - (ii) Breach of this Agreement;

(as the context requires) by the Applicant, or the Applicant's Personnel;

- (b) the exercise of any Intellectual Property Rights by those indemnified (including in any Agreement Material) licensed or granted in accordance with this Agreement, including any Claim against those indemnified that any act in relation to the Agreement Material infringes the Intellectual Property Rights of any third party;
- (c) any fraud, reckless act or wilful misconduct of the Applicant or the Applicant's Personnel or other persons acting on the Applicant's behalf or under its direction in the conduct of the Project; or

(d) the breach of any representation or warranty given by the Applicant under this Agreement.

16.1.2 The Applicant's liability to indemnify those indemnified under this clause 16 will be reduced proportionally, and the Applicant will not be liable for Loss, to the extent that any fraud or wilful misconduct on the part of those indemnified directly caused the relevant Loss.

16.1.3 The right of those indemnified to be indemnified under this clause 16 is in addition to, and not exclusive of, any other right, power, or remedy provided by Law and does not require those indemnified to incur a cost or expense or make any payment before enforcing a right of indemnity, but those indemnified are not entitled to be compensated in excess of the amount of the relevant Loss.

## 16.2 Consequential loss

Without prejudice to Solar Victoria's right to recover:

16.2.1 any Grant payments under this Agreement;

16.2.2 any Loss caused by the Applicant in connection with any loss of Data;

16.2.3 any costs incurred by Solar Victoria in connection with engaging consultants or advisers (including legal advisors) in relation to an actual or suspected Breach of this Agreement by the Applicant;

16.2.4 any Loss incurred by Solar Victoria in connection with a third party Claim; or

16.2.5 any loss or damage that was in the reasonable contemplation of the parties at the time of entry into this Agreement,

neither party is liable to the other party under this Agreement at Law or otherwise for any Consequential Loss.

## 16.3 Liability

16.3.1 Solar Victoria, and its Personnel will not be responsible at any time for any liabilities incurred or entered into by the Applicant as a result of, or arising out of the Applicant's responsibilities under, this Agreement or the conduct of the Project.

16.3.2 It is the responsibility of the Applicant to carry out its obligations under this Agreement and to carry out the Project at its own risk and, in so doing, it must comply with the provisions of all Laws and the Regulatory Requirements of any Government Authority in connection with those Laws.

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## 17. Dispute

### 17.1 No court proceedings

If a dispute arises in relation to this Agreement or the Project (**Dispute**), a party must not commence court proceedings or arbitration relating to the Dispute without first complying with this clause 16, except proceedings for urgent interlocutory relief.

### 17.2 Notice of dispute

A party claiming that a Dispute has arisen may give written notice of the Dispute to the other party.

### **17.3 Referral to representatives**

During the 14 days after a notice is given in accordance with clause 17.2, each party must seek to settle the Dispute by referring the Dispute to a representative with authority to settle the Dispute to attempt to settle the Dispute.

### **17.4 Referral to Chief Executive Officers**

If the parties' representatives are unable to settle a dispute within 7 days of the 14 day period referred to in clause 17.3, the Dispute must be referred to Solar Victoria's Chief Executive Officer and the Chief Executive Officer or Managing Director or equivalent of the Applicant within 7 days of the end of that 14 day period.

### **17.5 Referral to further process**

If the Dispute is not resolved within a further period of 14 days of the first meeting of the Applicant's Chief Executive Officer or Managing Director or equivalent and Solar Victoria's Chief Executive Officer, the parties may agree on a process for resolving the Dispute through other means such as further negotiations, mediation, conciliation or independent expert determination.

### **17.6 Failure to resolve Dispute**

Nothing in this clause prevents either party from seeking resolution by any means of any Dispute that has not been resolved by the dispute resolution process in this clause or otherwise.

### **17.7 Injunctive relief**

The parties acknowledge that damages are not a sufficient remedy for any Breach or threatened Breach of a party's obligations of confidentiality under this Agreement and a party will be entitled to specific performance or injunctive relief (as appropriate) as a remedy for any Breach or threatened Breach of confidentiality under the Agreement, in addition to any other remedies available at law or in equity.

### **17.8 Breach of this clause**

Where a party fails to comply with this clause 16 in relation to a Dispute, the other party is not required to comply with this clause 16 in relation to that Dispute.

### **17.9 Parties to continue to fulfil obligations**

The parties must at all times during a Dispute proceed to fulfil their respective obligations under this Agreement.

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## **18. Termination**

### **18.1 Termination for convenience**

Solar Victoria may terminate this Agreement at any time without cause and without needing to provide reasons by giving the Applicant a minimum of 30 days written notice.

### **18.2 Termination by Solar Victoria**

Solar Victoria may terminate this Agreement immediately or such later date as may be determined by Solar Victoria by notice to the Applicant if:



- 18.2.1 the Applicant (either itself or through its Personnel) commits a Breach which, in the opinion of Solar Victoria, cannot be remedied;
- 18.2.2 the Applicant (either itself or through its Personnel) commits a Breach and the Applicant:
  - (a) fails to commence action to Solar Victoria's satisfaction to remedy the Breach within 10 Business Days (or such longer period of time as may be agreed in writing by Solar Victoria) after Solar Victoria has served notice requiring it to do so; or
  - (b) having commenced action to remedy the Breach, fails to complete that action to Solar Victoria's satisfaction as soon as possible and in any event, within 20 Business Days (or such longer period of time as may be agreed in writing by Solar Victoria) of Solar Victoria's notice;
- 18.2.3 a Change in Control occurs in relation to the Applicant;
- 18.2.4 in the reasonable opinion of Solar Victoria, the Applicant (either itself or through its Personnel) has been fraudulent, dishonest or has engaged in other serious misconduct; or
- 18.2.5 the Applicant (or any of its Personnel) commits an act, fails to act or does anything that, in the opinion of Solar Victoria:
  - (a) is or may be contrary to prevailing community standards;
  - (b) is or may be regarded by the public as unacceptable; or
  - (c) brings (or risks bringing) the reputation of the Applicant, Solar Victoria, the State of Victoria, the Minister, the Program or the Project into disrepute.

### **18.3 Termination by Applicant**

The Applicant may terminate this Agreement immediately by notice to Solar Victoria if Solar Victoria commits a Breach of this Agreement and Solar Victoria:

- 18.3.1 fails to commence action to remedy the Breach within 10 Business Days (or such longer period of time as may be agreed in writing) after the Applicant has served notice requiring it to do so; or
- 18.3.2 having commenced action to remedy the Breach, fails to complete that action as soon as possible and in any event, within 20 Business Days (or such longer period of time as may be agreed in writing) of the Applicant's notice.

### **18.4 Consequences of termination**

On termination of this Agreement for any reason:

- 18.4.1 the Applicant must repay to Solar Victoria all Grant payments provided by Solar Victoria to the Applicant, other than amounts applied by the Applicant in accordance with this Agreement prior to the date of termination; and
- 18.4.2 Solar Victoria will not be liable for payment of any further Grant payments or any other Loss in connection with and after the termination of this Agreement, except for Grant payments due and payable in accordance with this Agreement and in respect of the period up to the termination of this Agreement.

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## 19. Notices

### 19.1 Service of notices

19.1.1 Subject to clause 19.1.2, any notice, demand, consent, approval or communication required by or permitted under this Agreement must be deemed to be duly served if delivered to the Applicant's address for notices specified at the beginning of this Agreement, as varied by any notice given by the Applicant to the sender.

19.1.2 For the purpose of clause 11.1, the Applicant must provide a copy of any proposed public statement, communication or media release to the Secretary by delivering it to the address for Solar Victoria specified at the beginning of this Agreement (addressed with attention to the person specified below that address) as well as serving a copy in accordance with clause 19.1.1.

### 19.2 Methods of service

Notices may be delivered by hand, by prepaid mail, or by electronic mail and must be deemed to be duly served:

19.2.1 in the case of delivery by hand, at the time of delivery;

19.2.2 in the case of prepaid mail, at the time at which it would normally arrive in ordinary course of the post at the address of the receiving party to which it is directed; and

19.2.3 in the case of electronic mail, if the message is correctly addressed and successfully transmitted to that party's electronic mail (e-mail) address, at the time that the sender's computer records that transmission was successful.

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## 20. Defined terms and interpretation

### 20.1 Definitions

In this Agreement:

**Agreement** means this funding agreement, including its schedules, annexures and attachments.

**Agreement Material** means any reports, plans, documents, information, data or other material (whether developed by or on behalf of the Applicant, any of their Related Bodies Corporate or any employee, agent or subcontractor of any of them) which:

- (a) the Applicant provides, or is required to provide, to Solar Victoria under or in connection with this Agreement; or
- (b) is copied or derived at any time from the material referred to in paragraph (a) of this definition.

**Application** means a completed Application Form and all supporting information and materials submitted to Solar Victoria by the Applicant as part of the application process as described in the Eligibility Requirements.

**Application Form** means the application form for the Program in the form required by Solar Victoria.

**Approved Purpose** means the assessment of the Program against its objectives, reporting on the success of the Program and ensuring compliance by the Applicant and other stakeholders with this Agreement as well as the Eligibility Requirements.

**Authorised Solar Retailer** means a solar retailer that is listed as an authorised solar retailer on Solar Victoria's website (<https://www.solar.vic.gov.au/find-authorized-retailer>), as varied from time to time by Solar Victoria.

**Breach** means a breach of any provision of this Agreement, or a provision of any of the documents set out in clause 20.4 of this Agreement.

**Business Day** means a day other than a Saturday, Sunday or a day that is a public holiday in Melbourne.

**Change in Control** means any act, event or circumstance that results in or causes any variation, amendment or modification to the control of the Applicant, where Control has the meaning given in section 50AA(1) of the *Corporations Act 2001* (Cth).

**Charter** means the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

**Claim** means any cause of action, allegation, claim, demand, debt, liability, suit or proceeding of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent or at law (including negligence), in equity, under statute or otherwise.

**Commencement Date** means the date on which this Agreement has been signed by the last of the parties to sign it.

**COES** means a Certificate of Electrical Safety issued under the *Electricity Safety Act 1998* (Vic) and *Electricity Safety (Installations) Regulations 2009* (Vic).

**Confidential Information** of a party (**Disclosing Party**) means all information (regardless of its form) disclosed or otherwise made available by the Disclosing Party to the other party (**Receiving Party**) or of which the Receiving Party otherwise becomes aware in connection with this Agreement and the transactions contemplated by this Agreement which is marked as confidential or which is or which the parties agree in writing is confidential, but does not include information which:

- (a) is or becomes public knowledge other than by a Breach of this Agreement or any other confidentiality obligation of the Receiving Party or any other person;
- (a) the Receiving Party can demonstrate was independently developed by the Receiving Party or in its possession before the date of this Agreement; or
- (b) is lawfully obtained by the Receiving Party from another person entitled to disclose such information.

**Conflict** refers to a conflict of interest, or risk of a conflict of interest, or an apparent conflict of interest arising through the Applicant or engaging in any activity or obtaining any interest that is likely to conflict with or restrict the Applicant or undertaking or participating in the Program fairly and independently and in accordance with this Agreement, but does not include the fact that the Applicant, or a 'related entity' (as that term is defined in the *Corporations Act 2001* (Cth)) of the Applicant or may profit from the Project in accordance with demonstrated and accepted industry standards.

**Consequential Loss** means economic loss, loss of contract, loss of profit or revenue loss of opportunity, loss of production, production stoppage, loss of data or other loss, harm, damage, cost or expense (including legal fees) in the nature of special, indirect or consequential loss or damage.

**Data** means any information provided by or on behalf of a party as part of the Program, excluding Personal Information.

**Dispute** has the meaning given to it in clause 17.1.

**Eligible Property** means an eligible property as specified in the Eligibility Requirements.

**Eligibility Requirements** means the 'Solar for Apartments Program Round 1: Eligibility requirements and how to apply' including the Terms and Conditions published at [www.solar.vic.gov.au](http://www.solar.vic.gov.au), as amended from time to time by Solar Victoria.

**Eligible System** means an eligible solar PV system as specified in the Eligibility Requirements, subject to any additional requirements as specified in Schedule 1.

**Existing Material** means all material, other than Agreement Material, which is made available by a party under this Agreement, including Third Party Material.

**Government Authority** means any governmental, semi-governmental, administrative, fiscal, judicial or quasi-judicial body, government or department, commission, body, instrumentality, minister, tribunal or court, agency or other authority (whether of the State of Victoria, another Australian State or territory or the Commonwealth of Australia).

**Grant** means the grant allocated by Solar Victoria to the Applicant for the Project in relation to the Program as described in Schedule 2.

**Health and Safety Laws** means all workplace, health and safety related Laws, codes of practice, other compliance codes, directions on safety or notices issued by any relevant Government Authority and standards applying to the conduct of the Program and includes the OH&S Act and OH&S Regulations.

**Insolvency Event** means, in relation to a person:

- (a) the person ceases to carry on business;
- (b) an order is made by a Court of competent jurisdiction for the winding up or dissolution of the person pursuant to the *Corporations Act 2001* (Cth);
- (c) any step is taken to appoint a receiver, receiver and manager, trustee in bankruptcy or similar officer over all or any of the assets or undertakings of the person and is not discontinued or withdrawn within 5 Business Days;
- (d) the person becomes the subject of an Ipso Facto Event;
- (e) any step is taken by a mortgagee to take possession either directly or by an agent over all or any of the assets, operations, or undertakings of the person and is not discontinued or withdrawn within 5 Business Days;
- (f) any step is taken to appoint a liquidator or provisional liquidator to the person and is not discontinued or withdrawn within 5 Business Days;
- (g) any step is taken to appoint an administrator to the person;
- (h) any step is taken to enter into a compromise or deed of arrangement between the person and its creditors; or
- (i) the person is insolvent or is presumed insolvent under the *Corporations Act 2010* (Cth).

**Intellectual Property Rights** means all types of intellectual property rights whether registered or not and includes all copyright and neighbouring rights (including rights in relation to phonograms and broadcasts), all rights in relation to inventions (including patent rights), plant varieties, registered and unregistered trade marks (including service marks), registered and unregistered designs, Know How, the right to have Confidential Information kept confidential and circuit layouts, and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields including as defined in Article 2 of the Convention Establishing the World Intellectual Property Organisation of July 1967.

**Inverter Power Sharing Device (IPSD)** means a device used to share the Solar System supply from an inverter or multiple inverters to provide supplementary supplies to several Occupied Lots.

**Interface Protection** means a combination of protection relay functions that opens the disconnection device associated with the IPSD and prevents its closure.

**IpsO Facto Event** means with respect to a person, occurs if the person is or becomes the subject of:

- (a) an announcement, application, compromise, arrangement, managing controller, or administration as described in section 415D(1), section 434J(1) or section 451E(1) of the *Corporations Act 2001* (Cth); or
- (b) any process which under any law may give rise to a stay on, or prevention of, the exercise of contractual rights.

**Know How** means all information not in the public domain including knowledge, know-how, drawings, designs, diagrams, computer programs, data, formulae, specifications, procedures for experiments and tests, results of experiments and tests, techniques and information.

**Law** includes:

- (a) acts, ordinances, regulations, by-laws, orders, awards and proclamations in force in the State;
- (b) binding requirements, orders, and/or directives and mandatory approvals (including conditions) of a Government Authority which have the force of law,

whether now or at any time in the future in effect.

**Loss** means any loss, damage, cost, expense, claim, charge, liability, suit, action, penalty, compensation, fine or outgoing suffered, paid or incurred whether direct or indirect or consequential, present or future, fixed or unascertained, actual or contingent and whether arising under an indemnity, in contract (including any breach of this Agreement), in equity (including breach of an equitable duty, breach of confidentiality or breach of fiduciary duty), under statute (including breach of statutory duty to the maximum extent possible), in tort (including for negligence or negligent misrepresentation) or other (including in restitution), and includes Consequential Loss.

**Minister** means the Minister for Energy and Resources, Minister for Climate Action and Minister for the State Electricity Commission in the State of Victoria.

**OC** means an owners corporation as defined under the OC Act.

**OC Act** means the *Owners Corporations Act 2006* (Vic).

**Occupiable Lot** means an occupiable lot as defined under the OC Act.

**OH&S Act** means the *Occupational Health and Safety Act 2004* (Vic).

**OH&S Incident** has the meaning given in Part 5 of the OH&S Act and, for the purpose of this Agreement, also means any event or circumstance relating to health or safety that causes or is likely to cause:

- (a) a lost time injury, medical treatment injury, first aid injury or a near miss;
- (b) a threat to community health and safety;
- (c) a threat to the environment;
- (d) a threat to public or private property; or
- (e) the creation of the need for urgent action under statute legislation.

**OH&S Regulations** means the *Occupational Health and Safety Regulations 2017* (Vic).

**Parliament** means the Parliament of Victoria.

**Personal Information** has the same meaning given to that term in the *Privacy and Data Protection Act 2014* (Vic).

**Personnel** means employees, agents, contractors or Subcontractors including representatives but in the case of:

- (a) Solar Victoria, does not mean the Applicant or its Personnel; and
- (b) the Applicant, does not mean Solar Victoria and its Personnel.

**Privacy Laws** means all applicable Laws which relate to the privacy and management of *Personal Information* (including the *Privacy and Data Protection Act 2014* (Vic); *Privacy Act 1988* (Cth); the, *SPAM Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any applicable legislation with similar objectives) and includes any applicable codes of practice made under those applicable Laws.

**Product List** means Solar Victoria's list of products, available as at the Commencement Date, as varied from time to time by Solar Victoria, published by Solar Victoria at <https://www.solar.vic.gov.au/product-lists>.

**Program** means the Solar for Apartments Program.

**Program Data** means any Data to be provided to Solar Victoria by the Applicant under this Agreement, including as may be described in Schedule 1.

**Project** means the installation of an Eligible System at an Eligible Property in accordance with this Agreement.

**Project Intellectual Property** means all Intellectual Property developed by or on behalf of the Applicant, or their Related Bodies Corporate in the course of undertaking the Project, including all Intellectual Property in all information, material and documents written, created or prepared by or on behalf of the Applicant in relation to the Project.

**Regulatory Requirements** means any legislation, ordinance, regulation, bylaws, local laws, orders, proclamations, approvals, authorisation, code of conduct, government policy, consent, exemption, filing, licence, notarisation, permit, registration, waiver and conditions attaching to any of them (as applicable) by any Government Authority and includes any renewal of, or variation to, any of them.

**Related Body Corporate** has the same meaning as under the *Corporations Act 2001* (Cth).

**Solar System** means a solar photovoltaic system and any associated equipment included in the Product List.

**Solar Sharing Technology** means hardware or software or a combination of both, that shares the electricity generated by the Solar System, including an Inverter Power Sharing Device (IPSD).

**Solar Victoria** means the portfolio entity within Victorian Government Department of Energy, Environment and Climate Action and its successor Government departments, and all references to the Department or Solar Victoria will be read and construed as references to the Crown in right of the State of Victoria.

**State** means the Crown in right of the State of Victoria.

**STC Assignment Form** means the small-scale technology certificate assignment form.

**Subcontractor** means a third party engaged by the Applicant to perform some of the Applicant's obligations under this Agreement or any function in relation to the Program on a fee for service basis.

**Taxes** means any taxes, rates, levy, impost, duties or other charges assessed or payable to any Government Authority and includes additional taxes, interests, penalties, charges, fees or other amounts imposed in relation to a failure to file a return or to pay the tax.

**Term** means the term of this Agreement as described in clause 1.

**Third Party Material** means Existing Material in which a third party has Intellectual Property Rights.

**Warranted Materials** has the meaning given to it in clause [10.6.1](#).

## 20.2 Interpretation

In this Agreement, except where the context otherwise requires:

- 20.2.1 writing includes writing in digital form;
- 20.2.2 any legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced and includes any subordinate legislation issued under it;
- 20.2.3 the singular includes the plural and vice versa, and a gender includes other genders;
- 20.2.4 another grammatical form of a defined word or expression has a corresponding meaning;
- 20.2.5 a reference to a clause, paragraph, schedule, attachment or annexure is to a clause or paragraph of, or schedule, attachment or annexure to, this Agreement, and a reference to this Agreement includes any schedule, attachment or annexure;
- 20.2.6 a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- 20.2.7 a reference to **A\$, \$A, dollar, AUD** or **\$** is to Australian currency;
- 20.2.8 a reference to a party is to a party to this Agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;

- 20.2.9 a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- 20.2.10 a reference to any property or assets of a person includes the legal and beneficial interest of that person of those assets or property, whether as owner, lessee or lessor, licensee or licensor, trustee or beneficiary or otherwise;
- 20.2.11 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 20.2.12 a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- 20.2.13 if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- 20.2.14 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

### 20.3 References to Solar Victoria

In this Agreement, references to Solar Victoria include the portfolio entity of that name within the Department of Energy, Environment and Climate Action (**Department**) and its successor Government departments, and all references to Solar Victoria will be read and construed as references to the Crown in right of the State of Victoria. Powers and functions of Solar Victoria under this Agreement may be carried out by officers of Solar Victoria who have delegated authority.

### 20.4 Precedence of documents

- 20.4.1 To the extent of any inconsistency, the documents comprising this Agreement must be read in the following order of precedence:
- (a) clauses 1 to 21 of this Agreement;
  - (b) Schedule 1 (Project particulars);
  - (c) the remaining schedules to this Agreement;
  - (d) the Eligibility Requirements;
  - (e) the Notices to Market published by Solar Victoria from time to time at [www.solar.vic.gov.au](http://www.solar.vic.gov.au);
  - (f) any other guidelines or instructions for the Program published by Solar Victoria from time to time at [www.solar.vic.gov.au](http://www.solar.vic.gov.au); and
  - (g) the General Terms and Conditions for the Solar Homes Program published by Solar Victoria from time to time at [www.solar.vic.gov.au](http://www.solar.vic.gov.au).
- 20.4.2 Subject to clause 20.4.1, the Applicant agrees that the documents in clause 20.4.1(d) and clause 20.4.1(f) above are deemed to be incorporated in and form part of this Agreement.



20.4.3 If any inconsistency between two or more documents referred to in clause 20.4.1 is not removed or resolved by the method referred to in clause 20.4.1, Solar Victoria must make a reasonable determination resolving the inconsistency. No determination by Solar Victoria under this clause 20.4.3 will be construed as giving rise to a variation under this Agreement. The Applicant must seek a determination in writing from Solar Victoria with regard to any uncertainty under this Agreement.

## **20.5 Headings**

Headings are for ease of reference only and do not affect interpretation.

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## **21. General**

### **21.1 Governing law and jurisdiction**

This Agreement is to be governed by the Laws of the State of Victoria. Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of Victoria and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

### **21.2 Equal opportunity, anti-discrimination and privacy legislation**

The Applicant must comply (and ensure compliance by its Personnel) with the provisions of all applicable Commonwealth and State privacy, anti-discrimination and equal opportunity legislation.

### **21.3 Negation of partnership and agency**

The Applicant will not, by virtue of this Agreement, or for any purpose, be deemed to be a partner or agent of Solar Victoria or as having any power or authority to bind or represent the State, and must not represent that it has any such authority.

### **21.4 Assignment**

The Applicant must not assign or otherwise deal with this Agreement or any right under it without the prior written consent of Solar Victoria (acting reasonably).

### **21.5 Further assurance**

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

### **21.6 Decisions by Solar Victoria**

Subject to any Laws governing the Program and except as otherwise provided in this Agreement, any decision made or opinions formed by Solar Victoria in connection with the Program may be made or formed by Solar Victoria in its sole discretion and are final.

### **21.7 Set-off**

Without limiting recourse to other means, Solar Victoria may offset any debt owed to it by the Applicant under this Agreement or otherwise in connection with the Program against any other amount the Applicant may owe Solar Victoria.

## **21.8 Severance**

21.8.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable (including on the basis that the provision is an unfair term of a standard form contract), that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

21.8.2 If it is not possible to read down a provision as required in clause 21.8.1, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

## **21.9 Entire agreement**

This Agreement constitutes the entire agreement between the parties and supersedes all communications, negotiations, arrangements and agreements, whether oral or written, between the parties with respect to the subject matter of this Agreement.

## **21.10 Counterparts**

This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one document.

## **21.11 Interpretation**

No rule of construction applies to the disadvantage of the party preparing this Agreement on the basis that it prepared or put forward this Agreement

## **21.12 Variation**

No agreement or understanding varying or extending this Agreement will be legally binding upon either party unless in writing and signed by both parties.

## **21.13 Waiver**

No right or obligation under this Agreement will be deemed to be waived except upon written acknowledgement signed by the party waiving the right or obligation in each instance.

## **21.14 Electronic execution**

A party may sign this Agreement, and any variations to it, by electronic means where permitted by Law. Each other party consents to that party signing by electronic means.

## **21.15 Survival**

Clauses 2.3, 2.4, 3, 4, 5, 6, 8, 9, 10, 11, 12, 13, 14, 16, 18.4, 19, 20 and this clause survive termination or expiry of this Agreement.

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# Signing Page

Executed as an agreement

Signed by

**Name and position of authorised representative**  
Director, Incentive Programs  
Solar Victoria

for and on behalf of the State of Victoria  
through Solar Victoria within the Department  
of Energy, Environment and Climate Action

**Executed by Owners Corporation No. [###] on Plan of Subdivision No. [###]**  
by persons who declare they are Lot Owners of separate lots and members of the Owners  
Corporation or by a director of a corporation that is a Lot Owner, in accordance with s 10 of the  
*Owners Corporations Act 2006* (Vic) in accordance with a resolution dated \_\_\_\_\_:

---

Signature

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Signature

---

Name (print full name)

---

Name (print full name)

---

Address

---

Address

---

Position: Lot Owner / Director of Lot Owner

---

Position: Lot Owner / Director of Lot Owner

---

Name of corporation that is a Lot Owner  
(If signed by a director)

---

Name of corporation that is a Lot Owner  
(If signed by a director)

## Schedule 1 Project particulars

### Why the Department is funding this Project:

To support the uptake of Solar Systems specifically in apartment buildings less than eight stories tall. The Department wants to support apartment owners and renters to access the benefits of renewable energy and the Solar Homes Program.

### The people who are intended to benefit most from this Project are:

Residents who live in the Eligible Property located in [insert suburb].

No	Particular	Details
1.	<b>Description of the Project</b>	The Grant must be used in accordance with the Eligibility Requirements for the installation of the Eligible System, operated by the Applicant, as part of the Program being delivered by Solar Victoria. The Applicant is required to undertake the Project, and provide all necessary evidence of completion as set out in Schedule 2.
2.	<b>Eligible Systems</b> (Clause 20.1)	Solar System [insert #kW] for [insert #] residential apartment dwellings. For Solar Systems which utilise an IPSD, the Applicant must ensure that the Authorised Solar Retailer includes in the Project, Interface Protection compliant with AS/NZS 4777.1:2016 <i>Grid connection of energy systems via inverters, Part 1: Installation requirements</i> , and subject to any DNSP requirements.
3.	<b>Program Data</b> (Clause 20.1)	Not used.
4.	<b>Applicant representative(s) contact details</b>	<b>Primary contact:</b> Name Role Email Phone <b>Secondary contact:</b> Name Role Email Phone
5.	<b>Solar Victoria contact(s) contact details</b>	Name Role Email

## Schedule 2 Grant

### Background

The Grant covers the full or part of the costs of the solar PV system being installed, up to a maximum of \$2,800 per residential apartment lot or up to a maximum of 100% of the costs of installation (whichever is the lesser), as determined by Solar Victoria in its absolute discretion. The Applicant must fund any difference between the Grant and the actual costs of purchase and installation of the Eligible System.

### Grant

The funding for the Project comes from Solar Homes program – Solar for Apartments Program and the Commonwealth Government Community Solar Banks program.

The total funding for the Project is **[insert \$\$\$]** (incl. GST).

### Milestones

The Grant will be paid in the following instalments:

No	Milestone	Details	Evidence due date	Payment amount (including GST)
1.	First milestone	<p>Payment when evidence that the Eligible System has been ordered is provided by the Applicant to Solar Victoria.</p> <p>The evidence must be an invoice from the Authorised Solar Retailer to the OC that itemises:</p> <ol style="list-style-type: none"> <li>1) the costs for the Eligible System; and</li> <li>2) any deposits/payments made towards installation under this Agreement.</li> </ol>	<b>XX/XX/XXXX</b>	<b>[\$XX,XXX]</b>
2.	Second milestone	<p>Payment when evidence of installation of the Eligible System is provided to Solar Victoria's satisfaction, including:</p> <ol style="list-style-type: none"> <li>1) an invoice from the Authorised Solar Retailer detailing a summary of the activity undertaken, including but not limited to: <ol style="list-style-type: none"> <li>a. confirmation of the number of participating apartment lots (i.e. completion of <input checked="" type="checkbox"/> apartment lots and any deviations agreed between Solar Victoria and the Applicant in writing);</li> <li>b. the Eligible System details (product make/model, size);</li> <li>c. total costs (including any deposits made or</li> </ol> </li> </ol>	<p><b>XX/XX/XXXX</b></p> <p>(60 days after installation of the Eligible System)</p>	<b>[\$XX,XXX]</b>

		<p>deductions including STC assignments or Victorian energy efficiency certificates); and</p> <p>d. date of installation of the Eligible System;</p> <p>2) the STC Assignment Form for each participating apartment building/lot (whichever relevant); and</p> <p>3) a COES for the supply and installation of a Solar System for each participating apartment lot.</p>		
3.	Third milestone	Participation in sharing data and/or an online case study to demonstrate the outcomes (including any energy or cost savings) for installing solar PV in an apartment building.	XX/XX/XXXX	No financial payment

SAMPLE