

# Aboriginal Community Housing Provider – Energy Efficiency Program Funding Deed

Aboriginal Housing Office  
(ABN 52 430 134 196)

and

Recipient organisation (ABN xx xxx xxx xxx)



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## Details

<b>AHO</b>	Name	Aboriginal Housing Office (ABN 52 430 134 196)
	Address	Level 16, 4 Parramatta Square, 12 Darcy Street Parramatta NSW 2150

<b>AHO Representative</b> <i>(refer to clause 16- Notices)</i>	Name	tbc
	Position	tbc
	Address	Level 16, 4 Parramatta Square, 12 Darcy Street, Parramatta, NSW, 2150
	Telephone	tbc
	E-mail	tbc

<b>Recipient</b>	Name	Insert name
	Address	tbc
	ABN	tbc

<b>Recipient's Representative</b> <i>(refer to clause 16 - Notices)</i>	Name	tbc
	Position	tbc
	Address	tbc
	Telephone	tbc
	E-mail	tbc

<b>Project(s)</b>	Insert Recipient organisation – Energy Efficiency Program
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<b>Awarded Amount</b>	A maximum total amount of <b>\$xxxxxxx (GST inclusive)</b> .
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<b>Completion Date</b>	30 June 2025. Any funding not spent prior to this date could be rescinded.
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# Definitions

## Definitions and Interpretation

### 1. Interpretation

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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 table have the meaning ascribed to them in the right-hand column of the Details table;
- (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 same from time to time;
- (d) the meaning of general words is 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; and
- (h) where an expression is defined, any other grammatical form of that expression has a corresponding meaning.

1.2 Definitions

**Activity** means the activity(s) described in **Schedule B**, which aim to fulfil one or more of the Objectives of the Project.

**Activity Period** means the period specified in **Schedule A** during which the Activity must be completed.

**Approval** means any approvals, consents, certificates, permits, endorsements, licences, conditions, or requirements (and any variations to them) which may be required by law for the commencement, carrying out, use and occupation of the Project(s) which may be imposed on the Project(s) by any Authority.

**Associates** means as the context indicates:

- (a) in relation to AHO, officers, employees, agents, contractors and subcontractors of AHO, licensee, consultant, invitee, client or customer and persons for whom AHO is otherwise responsible or vicariously liable in relation to the Recipient;
- (b) in relation to the Recipient, officers, employees, agents, contractors, and subcontractors (including any secondary subcontractor), licensee, consultant, invitee, client or customer of the Recipient and persons for whom the Recipient is otherwise responsible or vicariously liable in relation to the Recipient.

**Australian Accounting Standards** means those set by the Australian Accounting Standards Board.

**Australian Auditing Standards** means those set by the Auditing and Assurance Standards Board.

**Authority** means any governmental or semi-governmental or local government authority, administrative or judicial body or tribunal, department, commission, public authority, agency, Minister, statutory corporation or instrumentality and any private electricity, telecommunications, gas, or other utility company having statutory rights in

relation to the Project. **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.

**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;
- (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.

**Consequential Loss** means any loss of profit, loss of production, loss of financial opportunity, loss of access to markets, loss of business opportunity, loss of goodwill, loss of business reputation, damage to credit rating and direct or indirect financing costs whether or not in the reasonable contemplation of the parties at the time of entering into the Deed, excluding any:

- (a) loss covered by a policy of insurance which is required to be maintained under the Deed; or
- (b) loss which but for an act or omission of the party required to effect and maintain insurance under the Deed (including in respect of its disclosure obligations to any insurer) would have been covered by a policy of insurance.

**Date for Completion** means in relation to an Activity, the date identified in a Subcontract as the date by which the Activity must be completed by the relevant Subcontractor.

**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.

**Excusable Delay** means:

- (a) a breach of the Deed by AHO;
- (b) a State or Federal wide industrial dispute not being limited to the Project, or other sites in the possession of the Recipient;
- (c) delays by an Authority, except where the delay is caused or contributed to by the Recipient or the Recipient's Associates;
- (d) subject to complying with the requirements of clause 2.3(c), a change in a Legislative Requirement;
- (e) subject to a Subcontract for a particular Activity expressly identifying:
  - (i) a Date for Completion for that Activity, and
  - (ii) events which give rise to an entitlement for the Subcontractor to claim extensions of time to the Date for Completion for that Activity,
  - (iii) a valid extension of time granted under that Subcontract, except where such extension of time was caused or contributed to by the Recipient.

**GST Law** means *A New Tax System (Goods and Services Tax) Act 1999*.

**Insolvency Event** means any step taken for the winding up, dissolution or administration of the Recipient or any step the Recipient takes to enter into any arrangement, compromise or composition with or assignment for the benefit of its creditors or any class of them (except for the purposes of a solvent reconstruction or amalgamation).

**Intellectual Property or IP** includes:

- (a) all rights in relation to copyright, inventions, plant varieties, trademarks, designs, patents; and
- (b) all 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.

**Legislative Requirement** includes:

- (a) Acts, Ordinances, regulations, by-laws, orders, awards and proclamations of the jurisdiction where the Project or the particular part thereof is being carried out;
- (b) certificates, licences, consents, permits, approvals and requirements of organisations having jurisdiction in connection with the carrying out of the Project(s); and
- (c) fees and charges payable in connection with the foregoing.

**Milestone Payment** means that part of the Awarded Amount for a particular Activity as set out in Schedule A and which AHO pays to the Recipient in accordance with clause 3.4.

**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.

**Objectives** means the objectives of the Activity described in **Schedule B**, which are the agreed results the Recipient must achieve and ensure the Recipient's Subcontractors achieve.

**Personal Information** has the same meaning as in the *Privacy and Personal Information Protection Act 1998 (NSW)*.

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

**Energy Efficiency** means the NSW Government grant titled "Energy Efficiency Program ." being facilitated by AHO.

**Subcontract** means a contract entered into between the Recipient and a Subcontractor to carry out an Activity (or part thereof).

**Subcontractor** means the person bound to carry out an Activity (or part thereof) under a Subcontract and includes a contractor, consultant, supplier, manufacturer, or project manager.

## 2. The Recipient's obligations

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2.1 The Recipient must:

- (a) ensure the Awarded Amount or any Milestone Payment is used only for the approved Project(s);
- (b) use all reasonable endeavours to ensure each Activity is completed within the Activity Period (subject to any extension of time granted pursuant to clause 2.5(b)) in accordance with this Deed including:

- (i) using all reasonable endeavours to anticipate any delays to the Project(s); and
  - (ii) take any and all necessary steps to prevent any delay occurring, including by implementing appropriate safeguards, systems and processes and, where necessary, reprogramming, expediting and adjusting the Activity forming part of the Project(s);
  - (c) comply with the reporting requirements set out in clause 6.1;
  - (d) comply with all Legislative Requirements relevant to the Project, this Deed, or the Recipient's registration as an entity, including its obligations pursuant to clauses 2.2 and 2.3;
  - (e) comply with all reasonable directions AHO provides to the Recipient; and
  - (f) comply with any other obligations for the Recipient set out in **Schedule A**.
- 2.2 The Recipient must hold and maintain and ensure that its Subcontractors **hold** and maintain, all permits, registrations and licences required to lawfully undertake the Project or an Activity. If the Recipient is unable to perform any of the Project(s) or an Activity (as applicable) which requires a licence or registration including because it or its Subcontractors have:
- (a) failed to obtain a licence or registered.
  - (b) had their licence or registration suspended or cancelled; or
  - (c) had conditions imposed on their licence or registration,
- the Recipient must, and ensure that its Subcontractors must, obtain or regain such licence or registration promptly failing which AHO may exercise a right under clauses 14.1, 14.2 or 14.3.
- 2.3 The Recipient acknowledges and agrees that:
- (a) the Recipient must, in carrying out the Project, comply with, and ensure that any Subcontractors comply with, all applicable Legislative Requirements obtain all necessary Approvals for the Project(s);
  - (b) in carrying out the Project(s) or an Activity (as applicable), the Recipient must not carry on (or permit others to carry on) any illegal act, trade, business, occupation or calling at any time on or around the site of the Project(s) or an Activity (as applicable).
  - (c) if a change in a Legislative Requirement:
    - (i) necessitates a change ("**Change**") to the Project(s);
    - (ii) comes into effect after the date of this Deed which could not reasonably have been anticipated by the Recipient (acting reasonably); and
    - (iii) will delay the Project,
 then the Recipient must:
    - (iv) promptly notify AHO in writing of the Change and the impact it will have on the Project(s);
    - (v) obtain all necessary Approvals for the Change; and
    - (vi) incorporate those Changes into the Project(s);
  - (d) where the Recipient has complied with the requirements of clause 2.3(c), the Recipient will be entitled to make a claim pursuant to clause 2.5(a) for an extension of time relating to, and to the extent of, that Excusable Delay; and

- (e) the Recipient must comply with, and ensure that its Subcontracts provide that Subcontractors will comply with, all applicable AHO Policies set out in **Schedule A**.

2.4 The Recipient:

- (a) must immediately notify AHO and AHO's Representative if the Recipient proposes to make a significant change to the Project(s); and
- (b) acknowledges and agrees that AHO is not obliged to pay any further Milestone Payments if there has been a significant change to the Project(s) which has not been approved by AHO.

2.5 The parties acknowledge and agree that:

- (a) if it becomes apparent to the Recipient that the Project(s) or an Activity is delayed or may be delayed, the Recipient must promptly, and in any event, within fifteen (15) Business Days, notify AHO's Representative in writing with details of the facts related to the actual or potential delay, its cause and likely extent of delay and (if applicable) the Activity impacted;
- (b) if the Recipient:
  - (i) is or will be delayed in completing an Activity within the relevant Activity Period and the delay was caused by an Excusable Delay; and
  - (ii) has complied with clause 2.5(a),

AHO's Representative must assess the extent of the delay, if any, and notify the Recipient of any extension to the Activity Period of the relevant Activity, determined by AHO's Representative (acting reasonably) having regard to any deduction made under clause 2.5(d);

- (c) where AHO considers (acting reasonably) that the Recipient:
  - (i) is or will be delayed in completing an Activity within the relevant Activity Period; and
  - (ii) is not complying with its requirements pursuant to clauses 2.1(b)(i) and 2.1(b)(ii),

and the Recipient has not issued a notice pursuant to clause 2.5(a), AHO may direct the Recipient to prepare and submit to AHO a plan detailing the steps being undertaken by the Recipient to overcome any delay to the Project(s) or an Activity (as applicable) including, where applicable, a work around plan (**Action Plan**);

- (d) AHO's Representative (acting reasonably) will reduce the Recipient's entitlement in clause 2.5(b) to the extent that the Recipient:
  - (i) fails to provide and/or comply with any Action Plan required pursuant to clause 2.5(c);
  - (ii) contributed to the delay; or
  - (iii) failed to take steps necessary to prevent the cause of delay occurring or to avoid or mitigate the effects of the delay in accordance with the requirements of clauses 2.1(b)(i) and 2.1(b)(ii); and
- (e) the Recipient has no entitlement to additional costs or any Claim in the event of any delay or disruption other than to the extent of the funding under this deed. An extension of time pursuant to this clause 2.5 is the Recipient's only remedy for any delay or disruption.

### 3. Paying the Awarded Amount

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- 3.1 AHO will:
- (a) provide the Awarded Amount to the Recipient in accordance with and subject to the terms of this Deed; and
  - (b) the Awarded Amount will be paid by way of Milestone Payments.

- 3.2 Payment of the Awarded Amount or any Milestone Payment under this Deed is conditional on, as at the time for payment set out in clause 3.4:
- (a) there are sufficient funds available in the Awarded Amount
  - (b) AHO receiving a Payment Claim meeting the requirements of clause 3.4;
  - (c) the Recipient complying with the requirements of clauses 2 and 12 and any other obligations for the Recipient set out in **Schedule A** which are specified to be performance obligations for the purposes of this clause 3.2(c); and
  - (d) the Recipient having not abandoned the Project.

For the purposes of this Deed including without limitation this clause 3.2, the Recipient will have abandoned the Project(s) if there has been a cessation of works for any reason other than for an Excusable Delay, for a continuous period of four weeks (or such longer period as AHO may agree to in writing).

- 3.3 The Recipient acknowledges and agrees that:
- (a) subject to clause 3.3(b), the amount of each Milestone Payment for an Activity will be:
    - (i) the value of the works and the services for that Activity, which amount, subject to any reallocation in accordance with clause 4.4(a), will not exceed the amount identified in Schedule A for that Activity, less
    - (ii) the Milestone Payments already paid to the Recipient in respect of the same Activity; and
  - (b) subject to clause 3.7, the Milestone Payments (in the aggregate) can never exceed the Awarded Amount.

- 3.4 The Recipient must give AHO and AHO's Representative a claim for payment (**Payment Claim**):
- (a) upon satisfaction of the requirements set out in clause 3.2(c) as determined by AHO's Representative (acting reasonably); and
  - (b) in the format AHO reasonably requires,

which Payment Claim must be accompanied by the Progress Report to be provided by the Recipient 6.1(a). the amount of each Milestone Payment will be the amounts in the Schedule, the Milestone Payments can never exceed the Awarded Amount

Within 30 days of receiving a Payment Claim under this clause 3.4, AHO must pay the amount claimed (or such lesser amount as AHO, in consultation with the Recipient, acting reasonably determines is then payable).

- 3.5 Notwithstanding clause 3.1, if AHO pays the Recipient a Milestone Payment, this does not constitute an admission that the performance of the Project(s) is in conformity with this Deed and no payment will be deemed to release the Recipient from its obligations under this Deed.
- 3.6 AHO has no obligation to provide the Recipient with:
- (a) subject to clauses 3.2 and 3.7, any funding in addition to the Awarded Amount; or

- (b) any other support or services of any kind.
- 3.7 The Recipient acknowledges and agrees that:
- (a) AHO may, in its absolute discretion, allocate additional funding to the Recipient in excess of the Awarded Amount (**Uplift**);
  - (b) any Uplift issued pursuant to clause 3.7(a) must be used for the Project(s) and not for any other purpose; and
  - (c) AHO has no obligation to exercise its rights pursuant to clause 3.7(a) for the convenience or benefit of the Recipient.
- 3.8 The Recipient must use the Awarded Amount for the purposes of the Project and must not use the Awarded Amount for any other purpose.

## 4. Suspension, Changes to Milestone Payments and Repayment

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### Suspension of the Project

- 4.1 At any time during the Project(s), AHO may by written notice, require the Recipient to immediately suspend the Project(s) or an Activity (**Suspension Notice**) if:
- (a) the Recipient has failed to rectify a breach of this Deed notified to it by AHO in accordance with clause 14.1 within the time period identified in the notice;
  - (b) the Recipient has failed, or in AHO's reasonable opinion, is likely to fail, to deliver the Project(s) or an Activity in accordance with this Deed;
  - (c) the Recipient has misused or is reasonably suspected to have misused Awarded Amount, or in AHO's reasonable opinion, has shown an inability to properly manage the Project(s);
  - (d) the Recipient fails to provide and/or comply with any Action Plan required pursuant to clause 2.5(c); or
  - (e) the Recipient or one of its Associates has breached any Legislative Requirement material to the Project(s), an Activity or the operation of the Recipient.
- 4.2 The Recipient must suspend all or part of the Project(s) or the Activity (as applicable) upon receipt of the Suspension Notice issued pursuant to clause 4.1.
- 4.3 Where:
- (a) the cause the subject of the Suspension Notice is capable of being remedied by the Recipient; and
  - (b) the Recipient has, within ten (10) Business Days of receipt of the Suspension Notice (or such later time as agreed between the parties), remedied the cause the subject of the Suspension Notice,
- AHO may direct the Recipient to recommence the suspended Project(s) or Activity (as applicable) as soon as reasonably practicable.
- 4.4 Where the Recipient fails to comply with the requirements of clause 4.3(b) or the cause the subject of the Suspension Notice is not capable of being remedied, AHO may, by giving written notice to the Recipient:
- (a) where the subject of the Suspension Notice is by reason of clause 4.1(b), elect to reallocate the Milestone Payment (or part thereof) for that Activity to be used for another Activity forming part of the Project; or
  - (b) reduce the Awarded Amount and/or the Project or an Activity (as applicable) to be delivered under this Deed to reflect any suspension of all or part of the Project under clause 4.2.

- 4.5 The Recipient acknowledges and agrees that where AHO reduces the Awarded Amount by reason of the suspension directed pursuant to clause 4.2 (**Omitted Amount**), AHO may:
- (a) fund (from the Omitted Amount or otherwise) a third party to deliver all or part of the Project(s) or Activity (as applicable) that have been suspended under clause 4.2; or
  - (b) reallocate the Omitted Amount,
- and the Recipient will have no entitlement to make any Claim arising out of or in connection with AHO exercising its rights pursuant to this clause 4.5.

### Suspension of Funding

- 4.6 Without limiting its entitlements set out elsewhere in this Deed, AHO may immediately suspend payment of all or part of the Awarded Amount if any of the following occurs:
- (a) the Recipient has failed, or in AHO's reasonable opinion is likely to fail, to deliver the Project(s) or an Activity in accordance with this Deed;
  - (b) the Recipient has misused or is reasonably suspected to have misused the Awarded Amount, or has in AHO's reasonable opinion shown an inability to properly manage the Project;
  - (c) the Recipient has failed to rectify a breach of this Deed notified to it by AHO in accordance with clause 14.1 within the time period identified in the notice;
  - (d) AHO has concerns on reasonable grounds that the Recipient will or is suffering an Insolvency Event; or
  - (e) AHO has directed the Recipient to suspend all or part of the Project pursuant to clause 4.1.
- 4.7 AHO may, by giving written notice to the Recipient, reduce the Awarded Amount to reflect any suspension of payment all or part of the Awarded Amount under clause 4.6.
- 4.8 The Recipient acknowledges and agrees that where AHO reduces the Awarded Amount by reason of the suspension directed pursuant to clause 4.6 (**Omitted Amount**):
- (a) AHO may reallocate the Omitted Amount; and
  - (b) the Recipient will have no entitlement to make any Claim arising out of or in connection with AHO exercising its rights pursuant to this clause 4.8.
- 4.9 The Recipient must repay within twenty-eight (28) days of a demand being sent:
- (a) any Milestone Payment spent in breach of this Deed;
  - (b) all unspent Milestone Payments;
  - (c) any overpayment;
  - (d) any interest earned on any Milestone Payment required to be repaid.
- 4.10 Where the Recipient has failed to comply with this Deed, AHO must calculate the amount of repayment the Recipient must make pursuant to clause 4.9 having regard to the extent the Recipient has failed to complete the Activity of the Project(s) and the amounts properly accrued due to Subcontractors carrying out the Project(s).
- 4.11 AHO may set off the amount of any overpayment or claim for repayment against any future Milestone Payment due.
- 4.12 Any repayment AHO claims from the Recipient under clause 4.10 will be a debt due and owing by the Recipient to AHO.

## Holding of Awarded Amount

- 4.13 Each Milestone Payment must be held in trust for the benefit of AHO from the date it is received in a separate bank account used solely in connection with the Awarded Amount.
- 4.14 The Recipient must not enter into any contract for the expenditure of the Awarded Amount until AHO has notified the Recipient that the contract for the relevant specified amount of the Awarded Amount has been approved by AHO (acting reasonably).

## 5. GST

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- 5.1 Words or expressions used in this clause that are defined in the GST Law have the same meaning given to them in the GST Law.
- 5.2 Unless otherwise indicated, all consideration for any supply under this Deed is inclusive of any GST imposed in relation to the supply.
- 5.3 Where:
- (a) GST is imposed on a supply the Recipient makes to AHO under this Deed; and/or
  - (b) an adjustment event arises in relation to a taxable supply made by the Recipient,
- the Recipient shall indemnify and keep AHO indemnified in respect of any amount determined as payable by AHO on account of any GST imposed in relation to the supply.
- 5.4 Each party agrees to do all things reasonable, including providing valid tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, adjustment or refund in relation to any amount of GST paid or payable in respect of any supply made under or in connection with this Deed.
- 5.5 If the Recipient is not registered under the GST Law the Recipient will not be entitled to receive any additional amount as provided under this clause 5.
- 5.6 If for any reason AHO pays the Recipient an amount under this clause 5 which is more than the GST imposed on the supply, the Recipient must repay the excess to AHO on demand or AHO may set off the excess against any other amounts due to the Recipient.

## 6. Reporting Requirements

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- 6.1 The Recipient must provide AHO or, if directed, AHO's Representative, with:
- (a) written progress reports with each Payment Claim submitted pursuant to clause 3.4 or when otherwise requested by AHO (acting reasonably) (**Progress Reports**) which must include:
    - (i) the status of delivery against schedule;
    - (ii) any delay in the delivery of the Project(s);
    - (iii) details of the Project costs incurred to date, including all remittances in respect of any amounts paid or to be paid by the Recipient to any Subcontractors for the Project(s) or an Activity;
    - (iv) Project risks/ issues;
    - (v) key achievements in the reporting period;
    - (vi) copies of published reports and materials in relation to the Project(s);

- (vii) photographs documenting the progress of the Project;
  - (viii) Aboriginal Participation in Construction (**APIC**) reporting figures where available;
  - (ix) such other information reasonably requested by AHO; and
- (b) a final report for each Activity, outlining the achievements of the Project(s), including Activity acquittal within fifteen (15) Business Days after each Activity has been completed.
- 6.2 The Recipient must also provide any other information AHO reasonably requires from time to time concerning the Project.
- 6.3 If any Progress Report contains information confidential to the Recipient, the Recipient should mark the relevant parts of the report accordingly.
- 6.4 The Recipient must provide financial statements of income and expenditure in respect of the Awarded Amount (**'the Statements'**) to AHO within sixty (60) Business Days after:
- (a) completion of the Activity or any termination of this Deed, whichever is the earliest; and
  - (b) the completion of each financial year in which an Awarded Amount is made.
- 6.5 The Statements must include a definitive statement as to whether:
- (a) the financial information for the Project represents the financial transactions fairly and is based on proper accounts and records; and
  - (b) the Awarded Amount was expended for the Project and in accordance with this Deed.
- 6.6 The Recipient must keep financial accounts and records relating to the Project so as to enable:
- (a) all receipts and payments related to the Project to be identified in the Recipient's accounts and reported in accordance with this Deed;
  - (b) unless notified by AHO, the preparation of financial statements in accordance with Australian Accounting Standards; and
  - (c) generation of an income and expenditure statement for each financial year of the Project with the Awarded Amount, including:
    - (i) a comparison of the income and expenditure in each financial year against the Awarded Amount; and
    - (ii) the audit of those records in accordance with Australian Auditing Standards.

## 7. Intellectual Property

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- 7.1 The Recipient grants to AHO a licence to use any Intellectual Property rights subsisting in any Project Material provided to AHO or AHO's Representative by the Recipient, including the right for AHO to publish, with the Recipient's consent such Project Materials, with the exception of Project Material that is Confidential Information.
- 7.2 The term of the licence granted in clause 7.1 will not survive the expiry or termination of this Deed.

## 8. Confidential Information

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- 8.1 Each party must maintain the confidentiality of all Confidential Information it receives from the other party, including the amount of the Awarded Amount, except:
- (a) to the extent necessary for purposes of administering the Project;

- (b) in accordance with clause 10; or
- (c) as otherwise agreed in writing.

## 9. Privacy

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### 9.1 The Recipient will:

- (a) ensure that Personal Information that is provided by AHO or collected by the Recipient under or in connection with this Deed is used only for the purposes of this Deed and is protected against loss, unauthorised access, use, modification and disclosure, or against other misuse;
- (b) not disclose any Personal Information without the written consent of:
  - (i) the individual to whom the Personal Information relates; or
  - (ii) AHO,unless otherwise required or authorised by law;
- (c) comply with the Information Protection Principles applying to NSW public sector agencies under the *Privacy and Personal Information Protection Act 1998* (NSW) when doing any act or engaging in any practice in relation to Personal Information as if the Recipient were an agency directly subject to that Act; and
- (d) include equivalent requirements regarding Personal Information (including this clause 9) in any subcontract entered into for the provision of any of the Activity under this Deed.

## 10. Public Announcements and Acknowledgement

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### 10.1 The Recipient must:

- (a) seek the consent of AHO, which will not be unreasonably withheld, prior to any public announcement about the Project(s) or Energy Efficiency;
- (b) acknowledge the support of AHO, as directed by AHO from time to time:
  - (i) in any public statements about the Project(s) or Energy Efficiency;
  - (ii) on the home page of any web site established in connection with the Project(s) or Energy Efficiency;
  - (iii) on any equipment or other facility funded wholly or in part by AHO;
- (c) The Recipient must acknowledge AHO's support of the Project and comply with the applicable **NSW Government Guidelines**.

10.2 AHO may publish the title and brief description, including outcomes, of the Project(s), Energy Efficiency and the amount of the Awarded Amount.

## 11. Disclosure of Information

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11.1 The Recipient acknowledges that, under the *Government Information (Public Access) Act 2009*, AHO may be required to publicly disclose information about this Deed at <https://tenders.nsw.gov.au>. 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*.

- 11.2 The Recipient may nominate any items the Recipient consider are confidential and why, to assist AHO in determining what items to disclose.

## 12. Insurance

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- 12.1 The Recipient must, and ensure that its Contractors and Subcontractors, effect and maintain:
- (a) a broad form public liability policy of insurance to the value of at least \$20 million in respect of each claim and in the aggregate as to the number of occurrences in the policy period;
  - (b) workers' compensation insurance as required by all relevant laws of Australia relating to workers compensation;
  - (c) any insurances that are listed in **Schedule A** for the minimum sum provided in **Schedule A**.
- 12.2 The Recipient must not do, permit or suffer any act, matter or thing or omission whereby any of the policies referred to in this clause 12 may be vitiated, rendered void or voidable.
- 12.3 On request by AHO, the Recipient must provide a copy of valid and current certificates of currency for each or any of the policies described above.
- 12.4 Without limitation to clause 12.1, the Recipient warrants that it has and will maintain appropriate insurance in relation to this Deed.

## 13. Indemnities

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- 13.1 The Recipient must indemnify and keep indemnified AHO and AHO's Associates 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 Awarded Amount (or any Milestone amounts) or the use of any outcomes from the Project(s);
  - (b) the Recipient's breach of the Deed;
  - (c) any unlawful or negligent act or omission by the Recipient or its Associates in connection with this Deed;
  - (d) any illness, injury or death of any person caused or contributed to by the Recipient or its Associates, in connection with this Deed;
  - (e) any loss or damage to real or personal property caused or contributed to by the Recipient or its Associates, in connection with this Deed; or
  - (f) any act or omission by the Recipient or its Associates in connection with this Deed that is in infringement of any Intellectual Property, or privacy rights of AHO or any third party.
- 13.2 The Recipient's liability to indemnify AHO under clause 13.1 will be reduced proportionately to the extent that any negligent or unlawful act or omission by AHO contributed to the relevant loss or liability.
- 13.3 The Recipient's liability to indemnify AHO under clause 13.1 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.
- 13.4 Neither party is liable to the other for any Consequential Loss.

## 14. Termination

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- 14.1 Where the Recipient has breached this Deed:
- (a) AHO may give a notice (in accordance with clause 16) to the Recipient requiring it to rectify that breach within the time identified in the notice (which time period must not be less than ten (10) Business Days); and
  - (b) if the Recipient fails to rectify that breach in time stated in the notice, AHO may terminate this Deed immediately by giving a further notice.
- 14.2 AHO may terminate this Deed by notice, with effect on the date stated in the notice, if:
- (a) subject to clause 14.1, the Recipient breaches any of the following provisions: clause 2, clause 6, clause 12 or clause 17.9;
  - (b) the Recipient fails to prevent the recurrence of a breach of any obligation which it has breached on two (2) or more previous occasions, after receiving notice from AHO directing it to do so;
  - (c) AHO is the victim of any fraud or dishonest conduct by the Recipient in connection with this Deed or the Project(s);
  - (d) AHO considers that there has been a material change in circumstances in the Recipient's financial position, structure or identity;
  - (e) the Recipient becomes insolvent, are the subject of a debtors or creditors petition under the *Bankruptcy Act 1966*, resolve to go into administration or liquidation, or if a summons for the Recipient's winding up is presented to a Court or the Recipient enters into any scheme of arrangement with its creditors.
- 14.3 Without prejudice to any of AHO's other rights or entitlements or powers under the Deed, AHO may at any time for its sole convenience by written notice to the Recipient terminate the Deed from the date stated in the notice (which date must not be less than twenty (20) Business Days from the date of the notice) and, subject to clause 14.4, may reallocate any remaining Awarded Amount to another applicant.
- 14.4 If AHO terminates the Deed under clause 14.3, the Recipient:
- (a) Twenty (20) Business Days after the date of the notice issued pursuant to clause 14.3, will be entitled to submit a Payment Claim meeting the requirements of clause 3.4 for payment of the following amounts:
    - (i) for work carried out on the Project(s) or an Activity prior to the date of termination, the amount which would have been payable if the Deed had not been terminated and the Recipient submitted a Payment Claim for work carried out to the date of termination.
    - (ii) the actual costs incurred by the Recipient to terminate any Subcontractors for the Project(s) or an Activity (as applicable), which amount will be capped in the aggregate to 5% of the Awarded Amount;
    - (iii) the costs of services or goods or materials reasonably ordered by the Recipient for the Project(s) or an Activity for which the Recipient is legally bound to pay under a Subcontract provided that the value of the goods or materials is not included in the amount payable under clause 14.4(a)(i) or 14.4(a)(ii),which amount will be determined by AHO's Representative acting reasonably (**Approved Amount**); and
  - (b) must take all reasonable steps possible to mitigate the costs referred to in clauses 14.4(a)(ii) and 14.4(a)(iii).

- 14.5 The parties acknowledge and agree that the Approved Amount calculated under clause 14.4 will be a limitation upon AHO's liability to the Recipient arising out of, or in any way in connection with, termination of the Deed by AHO and the Recipient may not make any Claim against AHO arising out of, or in any way in connection with, the termination of the Deed other than for the amount payable under clause 14.4.
- 14.6 This clause 14 does not exclude or reduce the rights of a party to terminate this Deed arising by operation of the common law or statute or the other terms of this Deed.
- 14.7 On termination or expiry of this Deed:
- (a) accrued rights and obligations are not affected; and
  - (b) AHO will pay any Milestone Payments due (after taking into account any Milestone Payments already made prior to that date).

## 15. Dispute Resolution

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- 15.1 If a dispute arises in relation to this Deed ("a **Dispute**"), a party must comply with this clause 15 before starting arbitration or court proceedings except proceedings for urgent interlocutory relief.
- 15.2 A party claiming that a dispute has arisen must notify the other party in writing giving details of the dispute (**Dispute Notice**) in accordance with the requirements of clause 16.
- 15.3 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.
- 15.4 If the Dispute is not resolved within ten (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 15.2 must refer the Dispute for mediation by the Australian Disputes Centre Limited (ADC) for resolution in accordance with the mediation rules of the ADC.
- 15.5 If the Dispute is not resolved within 40 Business Days after referral to mediation either party may initiate proceedings in court.
- 15.6 Each party must pay its own costs of complying with this clause and split the costs of the mediator evenly.

## 16. Notices

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- 16.1 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 each party's Representative specified in the Details table or as otherwise notified in writing.
- 16.2 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:
    - (i) if posted using 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;
    - (ii) if posted using 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 been 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.
- 16.3 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.

## 17. General

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- 17.1 **Survival:** The following clauses survive termination or expiry of this Deed: clause 5, clause 6, clause 8, clause 12, clause 13, clause 14, clause 17.4, this clause 17.1 and any other clause which by its nature is intended to survive this Deed.
- 17.2 **Subcontractors:** The Recipient remains fully responsible in accordance with the terms of this Deed for the performance of the Project(s) and for any Subcontractors the Recipient engages to carry out any part of the Project(s).
- 17.3 **AHO's Representative**
- (a) AHO may, from time to time, appoint in writing individuals (including those individuals identified in Schedule A) (**AHO's Representative**) to act on AHO's behalf to validate the Recipient's reporting in accordance with the Recipient's Project Plans (as described in Annexure B), and Payment Claims provided that AHO gives the Recipient written notice of respectively:
    - (i) the appointment, including the AHO's Representative's name and functions for which they are acting on AHO's behalf; and
    - (ii) the termination of each appointment.
  - (b) The Recipient must co-operate with AHO's Representative.
  - (c) AHO's Representative has no authority to amend or waive the requirements of this Deed.
- 17.4 **Keeping of records, audit, and rights of access to such records:** The Recipient:
- (a) must keep complete and accurate records and books of account with respect to the Recipient's performance of the Project(s) (the "**Records**"), and must retain such Records for a minimum of seven (7) years after expiry or termination of this Deed;
  - (b) authorise AHO and any State or Commonwealth Government department or agency (the "**Auditors**") that has provided moneys to AHO for the purposes of the Project, to undertake audits, to examine and inspect, at reasonable times and on reasonable notice, any records held by the Recipient and Records, and allow any such Records to be copied; and
  - (c) provide all reasonable assistance in order for the Auditors to properly carry out the inspections and audits referred to in this clause.
- 17.5 **Conflict of Interest:** The Recipient must not carry on or be involved in any capacity in an activity or business, which may conflict with, or adversely affect, the Recipient's ability to carry out its obligations under this Deed, and the Recipient will immediately notify AHO in writing if such a conflict or risk of such a conflict arises.
- 17.6 **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.

**17.7 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 AHO or as otherwise able to bind or represent AHO.

**17.8 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.

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

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

**17.11 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.

## Signing page

Executed as a deed

**Executed** for and on behalf of **Aboriginal Housing Office (ABN 52 430 134 196)** by its representative in the presence of:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of authorised representative(print)

\_\_\_\_\_  
Full name of witness (print)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**Executed by Recipient (ABN XX XXX XXX XXX)** in accordance with s245 of the *Aboriginal Land Rights Act 1983* (NSW) by its authorised representative:

\_\_\_\_\_  
Signature of authorised representative

\_\_\_\_\_  
Signature of witness

\_\_\_\_\_  
Full name of authorised representative print)

\_\_\_\_\_  
Full name of witness (print)

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## Schedule A – Particulars

Item 1	Activity	Refer to Attachment A for full Project Scope
Item 2	Activity Period	tbc
Item 3	Milestone Payment(s)	<p>as described in Attachment B</p> <ul style="list-style-type: none"> <li>• <b>\$XXX incl GST</b>, initial Milestone Payment 1 – First payment equivalent of 50% of the Awarded Amount (includes part 10% project management fee)</li> <li>• <b>\$XXX incl GST</b> Milestone 2 – Second payment equivalent of 40% of the Awarded Amount (includes part 10% project management fee)</li> <li>• <b>\$XXX incl GST</b> Milestone 3 – Final payment equivalent of 10% of the Awarded Amount (includes part 10% project management fee)</li> </ul>
Item 4	AHO Policies (clause 2.3(e))	NA
Item 5	Recipient obligations (clause 2.1(f))	NA
Item 6	Conditions precedent to payment of an Milestone Payment (Clause 3.2(c))	<p>The Recipient must provide AHO with copies of the following:</p> <ul style="list-style-type: none"> <li>• executed or "For Execution" Subcontract(s) for the relevant Activity;</li> <li>• a baseline program for the Activity identifying the relevant Activity Period;</li> <li>• a Cost Control Plan, in a form as described in Schedule B, for the Activity identifying: <ul style="list-style-type: none"> <li>- the allocation of funds comprising the Milestone Payment across each Subcontractor carrying out the Activity (or part thereof); and</li> <li>- contingency amount.</li> </ul> </li> <li>• The above to be supplied within 4 weeks of execution of Deed</li> </ul>
Item 7	Insurances (clause 12.1(c))	<ul style="list-style-type: none"> <li>• Where a Subcontractor is carrying out design or professional services (such as project management), the Subcontractor must effect and maintain professional indemnity insurance with a minimum level of indemnity of not less than \$20 million dollars.</li> </ul>

## Schedule B – Project Plans

The Project Plans comprise the documents set out in the following attachments:

- **Attachment A - Project Scope**
- **Attachment B - Project Schedule / Timeline**
- **Attachment C - Cost Control Plan & Project Cash Flow**
- **Attachment D - Progress Report template**

SAMPLE

## Attachment A - Project Scope

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Energy Efficiency Program delivery means that Recipients are accountable for the planning, design, delivery, subsequent maintenance and tenant communications. The delivery scope is provided by the Scope of Works, as described in this Schedule A, and must be completed within the approved Completion Date and Awarded Amount.

The Project is to be managed in accordance with the Project Scope (Attachment A) to achieve the project objectives. The Project Scope is to be formed on the basis of tender submission for items identified within the Energy Efficiency Program – to the Sixteen (16) nominated properties in listed in the Property Information Schedule, as below in Attachment A

### **Detailed Scope of Works:**

#### **Specific item / s**

It is the Recipients' responsibility to ensure that roofs are of suitable quality.

In relation to Solar PV, nil allowances made for roof repairs or associated works impacting the installations of Solar PV system.

**A smart meter is required as a part of the Solar Installation for it to work. It is recommended that the installer request this for the tenant on the day of installation. Otherwise, the billing customer who pays for the electricity need to contact their electricity retailer to organise an installation.**

#### **Air-Conditioning**

The provider is free to choose suitable air-conditioning requirements.

#### **Fans**

The provider is free to choose suitable fan requirements. Fans with LEDs are highly recommended.

#### **Heat Pump**

The provider is free to choose suitable Heat Pump requirements.

**Summary** – AHO will provide the Recipient with the Awarded Amount. The Recipient must use the Awarded Amount for the Energy Efficiency works as outlined in the above detailed Scope of Works and at the property addresses listed below in the Property Information Schedule

## Property Information Schedule

Address	Solar	Air Con	Fans	Heat Pump

### Quality Assurance:

Subject to clause 2, the Recipient is accountable to undertake quality assurance to ensure each Activity is done.

It is recommended for the Recipient and Sub Contractors to consider the equipment manufacturer's recommended specifications and AHO's Guidelines, tech specifications & sustainability guidelines, where applicable. At the same time, the Recipient can self-determine the definition of what is acceptable and suitable to the home, location, and country.

### Definition of Works Completed:

Subject to clause 1, the definition of Work Completed mean installation completed and quality assurance checked by the Recipient. This includes the submission of an invoice and relevant photo evidence to AHO.

### Reporting Requirements:

Subject to clause 6.1, The Recipient must provide valid evidence of Works Completed, including:

- Invoice with ABN and itemised costings only after work is done and quality assurance inspected by the Recipient.
- A completed installation photo for each item claimed on the invoice. Photos must be of good quality and match the item invoiced. For installations with multiple components, each component should have a photo. Example: indoor air conditioner unit and outdoor air conditioner unit.

**Monthly APIC Reporting:**

Subject to Clause 6, a summary of APIC is to be provided to AHO monthly where available. The AHO Representative will liaise with the Recipient for this purpose.

**Risk Allocation:**

Risks are unexpected events or circumstances. The Recipient is best positioned to control, mitigate, and benefit from managing risks.

Subject to clause 12 and 13, under Energy Efficiency delivery, the Recipient is to be accountable for delivery issues and risks, which includes but are not limited to safety, quality assurance, project management, compliance, tenant satisfaction, reputation, indemnity, suitability for upgrades and on-going maintenance. The included project management fee, which forms part of the total Awarded Amount, and is not an additional payment to the Recipient, provides for this expectation.

**Communicate Risks:**

Subject to clause 6, AHO must be notified immediately for any potential risk which may impact meeting Milestone Payment requirements.

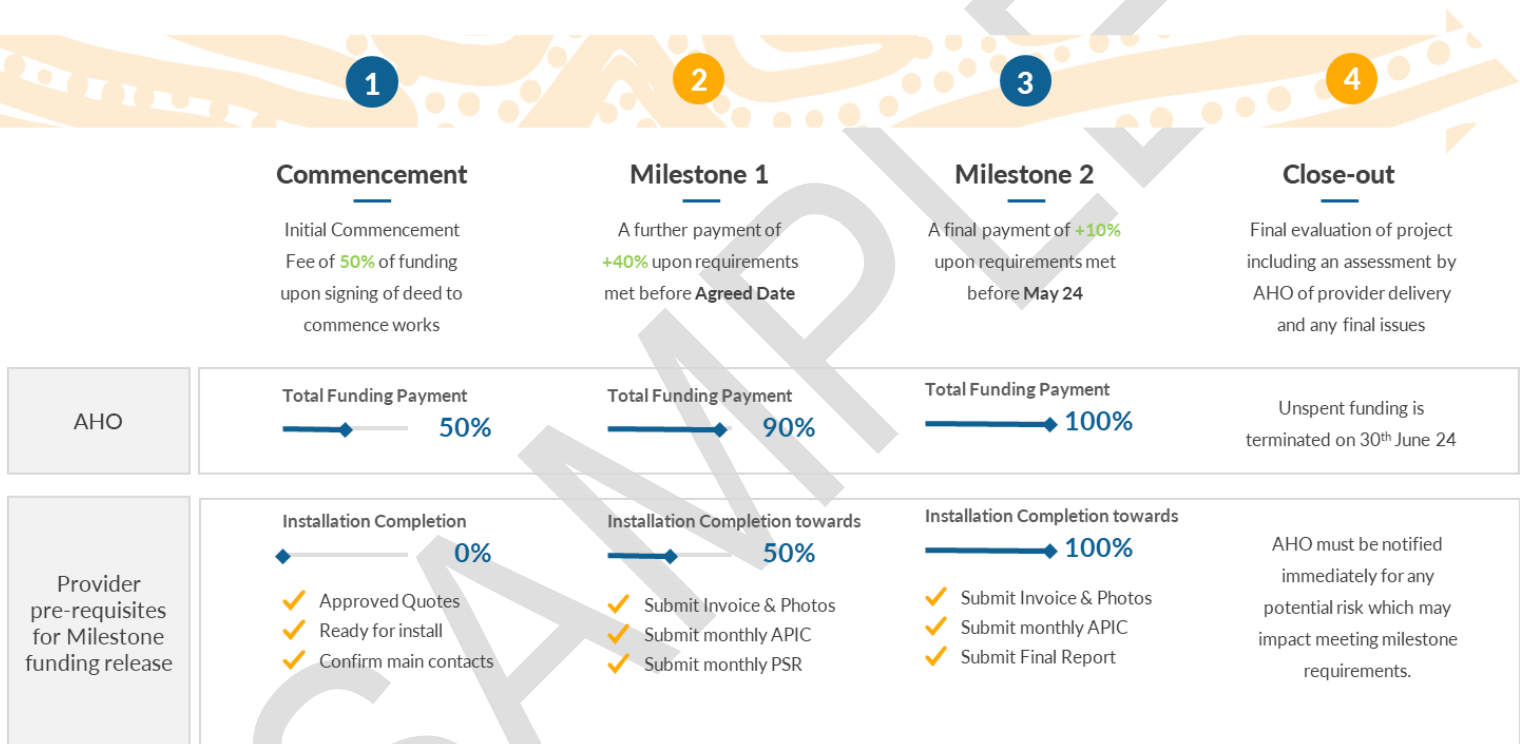
SAMPLE

## Attachment B - Project Schedule/Timeline

The Project is to be managed in accordance with the project program to achieve the project objectives.

Project Start: Upon execution of this Deed  
 Project Completion Date: 30 June 2025

# Project Schedule Expectations



## Attachment C - Cost Control Plan and Project Cash Flow

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The Project is to be managed and delivered in accordance with the Project Cost Control Plan to achieve the Project objectives.

### Funding Source Details:

<b>Funding Source</b>	<b>Value Inc GST</b>	<b>Pro rata %</b>
<b>AHO Energy Efficiency Program</b>		
<b>Total:</b>		

<b>Funding Cost Break-Down</b>	<b>NET</b>	<b>GST</b>	<b>GROSS</b>
<b>Net Costs as per quotation received</b>			
<b>Project Management Fees (10%)</b>			
<b>Total:</b>			

### Financial Requirements:

In addition to the reporting requirements in Clause 6.1, the Recipient must submit:

- A Project Status Report (PSR) every month, or as required by the AHO.
- Payment Claims are submitted in writing and shall include supporting documents to verify the project expenditure in the progress claim. For milestone projects claims are submitted upon completion of the funding deed milestone.
- The cash flow is to be forecast using pro rata percentage to calculate values commencing at the start of the project through to project completion.
- A monthly project cash flow exclusive of contingency, is to be provided with the Deed and updated regularly over the life of the project.
- Expenditure to be monitored and reported monthly.

- Financial completion, unless otherwise agreed, must be achieved prior to 30 June 2024 or within one month of project completion, whichever is sooner.

Change Request Requirements:

The principles for use of unspent funds for extensions of Project Scope include:

- The Project Scope must be a logical extension of the original scope in the funding Deed.
- The works must be associated or complimentary to the original scope.
- Request for scope extensions and use of unspent funds must be submitted to AHO's Representative for approval prior to commencement of change in writing.

Supporting documentation, to be submitted with the change request, and emailed to your AHO representative. Documentation provided must include:

- The proposed scope extension and the complimentary nature to the original scope.
- The reason for the scope extension.
- Project schedule/timeline for the scope extension.
- Cost control plan and project cashflow for the proposed scope extension.



**Table 2:**

<b>Monthly Reporting - APIC</b>		
<b>Month</b>	<b>No of Aboriginal Workers</b>	<b>No of all Workers</b>

SAMPLE