Guidance Notes

| **Toolkit guidance** |  |
| --- | --- |
| This template Loan Agreement (interest free, unsecured ) is:  |  |
| * suitable for use where the Lender is the community solar organisation
 | **✓** |
| * suitable for use where the Lender does not require interest to be paid on the Loan
 | **✓** |
| * suitable for use where the Lender does not require security for the Loan
 | **✓** |
| * suitable for use where a third party is guaranteeing the loan
 | **✓** |
| * not suitable for use when the loan is secured
 | ✘ |
| * not suitable for use where the Borrower is a special purpose vehicle (an entity specifically

 set up to participate in the transaction, but which owns little or no assets). | ✘ |
| * not suitable for use where the Borrower or the Guarantor is an individual person.
 | ✘ |
| This template contains the following optional clauses which should be deleted if they are not relevant. The optional clauses are colour coded: * If the Borrower is a local council or government entity – **red** shaded
* If Borrower is non-government entity or if there is uncertainty about financial strength – **blue** shaded
* if the Borrower is a trustee – **green** shaded.

Some provisions contain multiple optional clauses, identified as “Option 1”, ”Option 2”, etc. Please carefully read the drafting notes provided with each option, select the option that best suits your circumstances and delete all other options. |

May 2018🡺

[Insert Borrower’s name]

[Insert Guarantor’s name]

[Insert Lender’s name]

Unsecured Loan Agreement (Zero interest)

[Insert name of solar project]

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**Date**

Parties

[Insert the Borrower’s name and details (based on the options below)] (**Borrower**)

***[Option 1 - When the Borrower is a company]***

[Insert Borrower’s name and ACN] of [insert the address of the registered office of the Borrower]

*[****Note:*** *this information is usually obtained from a current ASIC search of the company.]*

***[Option 2 – When the Borrower is a company acting as trustee of a trust]***

[Insert Borrower’s name and ACN] [in its own capacity and] as trustee for the [insert trust name and ABN] of [insert the address of the registered office of the company].

*[****Note:*** *The Borrower may enter into the document as a company in its own right and as trustee of the trust or just as trustee. When the company is only acting as trustee you should insert the words ‘as trustee for’ before the name of the trust and when the Borrower is acting both as trustee and in its own right you should insert the words ‘in its own capacity and as trustee for’ before the name of the trust.]*

***[Option 3 – When the Borrower is a co-operative]***

[Insert Borrower’s name and ABN] of [insert the address of the registered office of the Borrower]

***[Option 4 – When the Borrower is an incorporated association]***

[Insert Borrower’s name and ABN], an association incorporated under the *Associations Incorporation Reform Act 2012* (Vic) [insert registration number] [insert the Borrower’s address]

***[Option 5 – When the Borrower is a council or government entity***

[Insert Borrower’s name and ABN] of [insert the address of the registered office of the Borrower]

[Insert Guarantor’s name, company details and registered office] (**Guarantor**)

[Insert Lender’s name, company details and registered office] (**Lender**)

# Agreed terms

## Key commercial terms

**Loan** **$**[***insert the loan amount***]

**Funding Date** [***insert the date the loan amount will be paid to the Borrower***]

#### [***Optional:*** *Delete definition of ‘Instalment Amount’ if loan will not be paid in instalments. See clause 6.1*.]

**Instalment Amount $**[***insert the amount payable each instalment***]

**Repayment Date** [***insert the date the loan will end and the total loan amount will be repaid to the Lender***]

#### [***Optional:*** *Delete definition of ‘Repayment Start Date’ if loan will not be paid in instalments. See clause 6.1*.]

**Repayment Start Date** [***insert the date the first Instalment Amount will be repaid to the Lender***]

## Definitions

A glossary of defined terms can be found in **Schedule 2**.

## Conditions precedent

The parties acknowledge and agree that the Lender’s obligation to lend the Loan is subject to the conditions precedent that:

#### at least 10 business days before the Funding Date, the Lender has received the following in form and substance satisfactory to it:

#### [***Note:*** *Clause 2(i) and (ii) can be deleted when dealing with a local council or government entity.]*

##### [a copy of the constituent documents and, where relevant, certificate of incorporation of the Borrower;

##### evidence that all action required under the constituent documents of the Borrower in relation to its entry into the Transaction Documents has been properly taken;]

##### each Transaction Document unconditionally executed and delivered by the Transaction Parties expressed to be party to it;

#### the representations and warranties set out in **clause 10.1** are correct and not misleading as at the Funding Date;

#### the Funding Date occurs during the Availability Period; and

#### no Event of Default subsists as at the Funding Date.

## Loan

#### Subject to **clause 3**, the Lender must lend the Loan to the Borrower on the Funding Date.

#### The Borrower must only use the Loan for the Project and any other purpose approved by the Lender and the Borrower must promptly repay to the Lender any part of the Loan not used for those purposes.

#### If requested by the Lender, the Borrower must, within 2 days of request, provide written evidence that the Borrower has used the Loan Amount for the purpose specified in **clause 4(b)**.

## Interest

Subject to **clause 6.3,** no interest shall be payable by the Borrower for any part of the Loan.

## Repayment of the Loan

### Repayment

*[****Note:*** *Include the option that is relevant for the method of repayment.]*

[**Option 1: ‘bullet’ repayment (all money repaid at the end of the term*)*]**

Subject to **clause 13.2**, the Borrower must repay the Monies Owing to the Lender on the Repayment Date.

[**Option 2: repayment of loan in instalments**]

#### Subject to **clause 6.1(b)** the Borrower must repay the Loan Amount to the Lender in consecutive [***insert the frequency for repayments, e.g. “yearly”, “quarterly”, “monthly”****]* instalments, each of the Instalment Amount, commencing on the Repayment Start Date and payable [***insert the timing for repayments, e.g. “annually”, “every three months”, “every month”****]* thereafter, until the Loan Amount is repaid in full.

#### If, on the Repayment Date, the Monies Owing is less than the Instalment Amount, then the Monies Owing (rather the Instalment Amount) is payable.

### Prepayment

*[****Note:*** *Include the option based on whether or not early voluntary repayments will be permitted.]*

[**Option 1: restrictions on early repayments (must have consent of Lender)**]

The Borrower must not prepay the Loan or any part of it except with the prior written consent of the Lender, which consent may be subject to conditions. Any money prepaid may not be reborrowed.

[**Option 2: voluntary prepayments are permitted**]

#### The Borrower may at any time prepay all or part of the Loan owing to the Lender without further bonus or penalty.

#### The Borrower may only make a prepayment under **clause 6.2(a)** by giving to the Lender 5 business days’ notice specifying the prepayment date and the amount of the prepayment.

#### Any money prepaid under **clause 6.2(a)** may not be reborrowed.

### Interest for late repayment

If the Borrower fails to repay any Monies Owing by the Repayment Date in accordance with **clause 6.1**, then:

#### the Lender may, in its discretion charge interest on the whole of any Monies Owing;

#### the Borrower must pay, on demand by the Lender, interest on the Monies Owing from the date of the Lender’s demand,

#### at the rate equal to the [***Commonwealth Bank of Australia***] standard overdraft rate (as at the beginning of the calendar month during which the Lender’s demand was made), applicable to an amount equivalent to the Loan Amount, plus 2% per annum, calculated on a daily basis, until such time as the payment of all outstanding amounts payable under **clause 6.1**, together with all interest payable, have been paid to the Lender.

## How payments are made

### Place, manner and time of payment

The Borrower must make payments to the Lender under this document:

#### at a place and in a manner reasonably required by the Lender;

#### by 11.00 am local time in the place where payment is required to be made; and

#### in immediately available funds and without set-off, counter claim, condition or, unless required by law, deduction or withholding.

### Reimbursement of Taxes

If the Borrower is required by law to deduct or withhold Taxes from any payment it must:

#### make the required deduction and withholding;

#### pay the full amount deducted or withheld in accordance with the relevant law;

#### deliver to the Lender an original receipt for each payment; and

#### pay an additional amount with such payment so that, after all applicable deductions or withholdings, the Lender actually receives for its own benefit the full amount which would have been payable to the Lender if no deduction or withholding had been required.

### Lender’s use of repaid money

The Lender may appropriate any payment towards the satisfaction of any money due for payment by the Borrower in relation to this document in any way that the Lender thinks fit and despite any purported appropriation by the Borrower.

## Sale or vacation of Site

### Notice of sale or vacation

If:

#### the Borrower enters into a binding agreement for the sale of the Site; or

#### the Borrower otherwise becomes aware that it will be required to vacate the Site (for example, in the case of an expiry of a lease for the Site, revocation of a licence or other right to access the Site),

#### the Borrower must immediately give notice in writing to the Lender, specifying the details of the sale or the requirement to vacate (including the date on which the sale is to complete or the Site is to be vacated).

### Loan amount immediately due and payable upon sale or vacation

If the Borrower sells or vacates the Site before the Loan is repaid in full, all outstanding amounts will become immediately due and payable by the Borrower upon completion of the sale or vacation of the Site (as applicable).

## Guarantee

The Guarantor unconditionally and irrevocably guarantees the payment to the Lender of the Loan in accordance with the Guarantee.

## Representations and warranties given by the Borrower

### Representations and warranties

The Borrower and the Guarantor each represents and warrants that:

*[****Note:*** *Include the option that is relevant for the type of borrower.]*

[**Option 1: where the Borrower is a corporation (e.g. a Pty Ltd company)**]

#### **duly incorporated:** if the Borrower is a corporation, it is duly incorporated in accordance with the laws of its place of incorporation, validly exists under those laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted;

[**Option 2: where the Borrower is an incorporated association or company limited by guarantee** ]

#### **duly incorporated:** if the Borrower is a corporation (including an incorporated association and companies limited by guarantee), it is duly incorporated in accordance with the laws of its place of incorporation, validly exists under those laws and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted;

[**Option 3: where the Borrower is a co-operative** ]

#### **duly registered:** if the Borrower is a co-operative, it is validly registered as a co-operative under Chapter 2 of the Co-operatives National Law, applied in Victoria by the *Co-operatives National Law Application Act 2013* (Vic), validly exists under that law and has the capacity to sue or be sued in its own name and to own its property and conduct its business as it is being conducted;

[**Option 4: where the Borrower is a government entity (e.g. a department or part of a local government)**]

#### **authorised by statute**: if the Borrower is a statutory corporation, it is constituted under the *Local Government Act 1989* (Vic) and a body politic of Victoria with perpetual succession and the capacity and power to enter into and perform its obligations under the Transaction Documents to which it is expressed to be a party, to carry out the transactions contemplated by those documents and to carry on its business as now conducted or contemplated.

#### **capacity:** it has capacity unconditionally to execute, deliver and comply with its obligations under the Transaction Documents to which it is a party;

#### **binding obligations:** each Transaction Document constitutes its valid and legally binding obligations and is enforceable against it by the Lender in accordance with its terms;

#### **no contravention:** the unconditional execution and delivery of, and compliance with its obligations by it under the Transaction Documents to which it is a party do not contravene any laws or other of its obligations;

#### **full and correct disclosure:** all material information given to the Lender in relation to this document is correct, complete and not misleading, and it has disclosed to the Lender all information which it has or has access to which is relevant to the assessment by the Lender of the nature and amount of the risks undertaken by the Lender becoming its creditor;

#### **no default:** no Event of Default subsists;

#### [***Optional:*** *Consider including paragraphs 10.1(g) to 10.1(i) if dealing with a non-government entity, or if there is uncertainty about the financial strength of the borrower.]*

#### **[financial statements:** the financial statements given to the Lender are a true, fair and accurate statement of its financial statements and its financial position at the date to which they are prepared;

#### **no change in financial position:** there has been no change in its financial position since the date to which its last financial statements given to the Lender were prepared, which would have or would be reasonably likely to have a Material Adverse Effect;

#### **no proceeding:** except as notified to the Lender in writing before the date of this document, no litigation, arbitration or administrative proceeding is current, pending or, to its knowledge, threatened, which has or the adverse determination of which would have or would be reasonably likely to have a Material Adverse Effect; and**]**

#### [***Optional:*** *Delete paragraph 10.1(j) if the borrower is a trustee*.]

#### **[no trust:** except as notified to the Lender in writing before the date of this document, it does not enter into a Transaction Document as trustee of any trust.**]**

### Lender’s reliance on representations and warranties

#### The Borrower and the Guarantor each acknowledges that the Lender enters into this document in reliance on the representations and warranties.

#### Each representation and warranty survives the execution of this document and is repeated with reference to the facts and circumstances on each day that money is owing (actually or contingently) by the Borrower or the Guarantor (as the case may be) to the Lender under a Transaction Document.

#### [***Optional:*** *Consider including clause 11 if the borrower is a non-government entity, or if there is uncertainty about the borrower’s financial strength.]*

## [Information and reporting by the Borrower]

The Borrower must give to the Lender:

#### as soon as practicable, and in any event within 120 days after the close of each financial year, audited financial statements of the Borrower for that period;

#### as soon as practicable, and in any event within 30 days after the end of each quarter of each financial year, quarterly management accounts of the Borrower for that period; and

#### on demand, any other information in the possession or under the control of the Borrower in relation to:

##### any transaction contemplated by any Transaction Document; and

##### the financial affairs and business operations (including its tax affairs) of the Borrower.]

*[****Optional:*** *You should consider including paragraphs (d)-(h) if dealing with a non-government entity, or if there is uncertainty about the financial strength of the borrower.]*

## Undertakings about the Borrower’s business

The Borrower must:

#### **installation**: use its best endeavours to ensure that the equipment described in **Schedule 1** is installed at the Site as expeditiously as possible, by appropriately qualified installers;

#### **operation and maintenance**: once the equipment described in **Schedule 1** is installed, to properly operate that equipment and maintain it in good working order, [so as to achieve the expected energy savings specified in the Audit Report];

#### **insurance**: effect and maintain insurance with an insurer of recognised standing against any loss or damage to the Solar Power System, for its full replacement value; and provide written evidence of this insurance within 10 business days of a request from the Lender;

#### **negative pledge:** ensure that no Encumbrances exist on its property;

#### **permitted financial transactions:** not:

##### incur any Financial Indebtedness except:

###### under this document;

###### with the prior consent of the Lender; or

###### under any finance lease of any tangible property entered into in the ordinary course of business; or

##### provide any financial accommodation (excluding trade credit in the ordinary course of business) to any person;

#### **disposals:** not dispose of any of its assets, either in a single transaction or in a series of transactions whether related or not and whether voluntary or involuntary, except disposals:

##### made with the prior consent of the Lender; or

##### made for market value in the ordinary course of its ordinary trading business;

#### **change of business:** not substantially change its business or carry on any other business which is substantial in relation to its present business, in each case as conducted as at the date of this document, if it would have or be reasonably likely to have a Material Adverse Effect;

#### **mergers:** not:

##### enter into any merger, reconstruction or amalgamation; or

##### acquire any property or business or make any investment if the property, business or investment is substantial in relation to the Borrower,

if it would have or be likely to have a Material Adverse Effect;

#### **maintain status:** do everything necessary to maintain its corporate existence in good standing and:

##### ensure that it has the right and is duly qualified to conduct its business in all relevant jurisdictions; and

##### obtain and maintain all licences, franchises and rights necessary for the conduct of its business; and

#### **Taxes:** promptly pay when they become due for payment (or reimburse each Lender on demand for) all Taxes payable by it from time to time in its own right or on behalf of any person.

## Events of Default

### Types of Events of Default

Each of the following is an Event of Default:

#### **non-payment:** the Borrower or the Guarantor does not pay any money due for payment by it under this document;

#### **insolvency:**

##### the Borrower or the Guarantor is or states that it is unable to pay from its own money all its debts as and when they become due and payable;

##### the Borrower or the Guarantor is taken or must be presumed to be insolvent or unable to pay its debts under any applicable legislation;

##### an application or order is made for the winding up or dissolution of the Borrower or the Guarantor, or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;

##### an administrator, provisional liquidator, liquidator or person having a similar function under the laws of any relevant jurisdiction is appointed in respect of the Borrower or the Guarantor, or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;

##### a controller is appointed in respect of any property of the Borrower or the Guarantor;

##### the Borrower or the Guarantor is deregistered under the *Corporations Act 2001* (Cth)or notice of its proposed deregistration is given to the corporation;

##### a distress, attachment or execution is levied or becomes enforceable against any property of the Borrower or the Guarantor;

##### the Borrower or the Guarantor enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them;

##### a petition for the making of a sequestration order against the estate of the Borrower or the Guarantor is presented and the petition is not stayed, withdrawn or dismissed within seven days or the Borrower or Guarantor presents a petition against itself;

##### the Borrower or the Guarantor presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or

##### anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs in respect of the Borrower or the Guarantor; or

[***Optional:*** *Include paragraphs (c) to (i) if dealing with a non-government entity, or if there is uncertainty about the financial strength of the borrower.*]

#### **[****other non-compliance:** the Borrower or the Guarantor does not comply with any other obligation under a Transaction Document and, if that default is capable of rectification:

##### it is not rectified within five business days (or any other longer period agreed by the Lender) after it occurs;

##### the Borrower or the Guarantor (as the case may be) does not during that period take all action which in the Lender’s opinion (acting reasonably) is necessary or desirable to quickly fix that default;

#### **untrue warranty:** a representation, warranty or statement made or deemed to be made by the Borrower or the Guarantor under a Transaction Document is untrue or misleading or any reply to any requisition made by the Lender is untrue or misleading in any material respect;

#### **void document:** a Transaction Document is void, voidable or otherwise unenforceable by the Lender or is claimed to be so by the Borrower or the Guarantor;

#### **authorisation ceasing:** an authorisation from a government body necessary to enable:

##### the Borrower to comply with its obligations under the Transaction Documents or carry on its principal business or activity; or

##### the Lender to exercise its rights under the Transaction Documents,

is withheld or ceases to be in full force and effect;

#### **Material Adverse Effect:** an event or series of events whether related or not, including any material adverse change in the property or financial condition of the Borrower, occurs which has or is reasonably likely to have a Material Adverse Effect;

#### **cessation of business:** the Borrower ceases or threatens to cease to carry on its business or a substantial part of its business;

#### **investigation:** an investigation is instituted under the *Corporations Act 2001* (Cth)or other legislation into or an inspector is appointed to investigate the Borrower’s affairs.]

### Lender’s rights if an Event of Default subsists

If an Event of Default subsists the Lender may at any time by notice to the Borrower do either or both of the following:

#### not lend the Loan if it has not already been lent;

#### make the Monies Owing, any unpaid accrued interest or fees and any other money owing by the Borrower to the Lender in relation to the Transaction Documents payable immediately due for payment.

## Costs and expenses

The Borrower must on demand pay and if paid by the Lender reimburse to the Lender:

#### the Lender’s costs and expenses (including legal costs and expenses on a full indemnity basis) in relation to:

##### the negotiation, preparation, execution and stamping of the Transaction Documents and any variation, replacement or discharge of the Transaction Documents; and

##### the exercise or attempted exercise or the preservation of any rights of the Lender under the Transaction Documents; and

#### any Taxes and registration or other fees (including fines and penalties relating to the Taxes and fees) which are payable in relation to the Transaction Documents or any transaction contemplated by any of them.

## Stamp duties and Taxes

### Stamp duties and Taxes

The Borrower must pay all stamp, transaction, registration and other Taxes (including, subject to **clause 15.4**, fines and penalties) that may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of any Transaction Document or any payment or receipt or any other transaction contemplated by any Transaction Document.

### Inclusions

Those Taxes include financial institutions duty or other Taxes payable by return and Taxes passed on or charged to the Lender by a bank or financial institution but excluding any Tax on the overall net income of the Lender.

### GST

#### Unless expressly specified otherwise, all payments to be made by the Borrower under or in connection with any Transaction Document have been calculated or determined without regard to GST.

#### If all or part of any such payment is the consideration for a taxable supply for GST purposes then, when the Borrower makes the payment:

##### it must pay to the Lender an additional amount equal to that payment (or part) multiplied by the appropriate rate of GST (currently 10%); and

##### the Lender will promptly provide to the Borrower a tax invoice complying with the relevant GST legislation.

#### Where under any Transaction Document the Borrower is required to reimburse or indemnify for an amount, the Borrower must pay the relevant amount (including any sum in respect of GST) less any GST input tax credit the Lender determines that it is entitled to claim in respect of that amount.

### Indemnity

The Borrower indemnifies the Lender against any liability resulting from delay or omission to pay those Taxes under this **clause 15** except to the extent the liability results from failure by the Company to pay any Tax after having been put in funds to do so by the Borrower.

## Miscellaneous

### Lender may set-off payments

The Lender may set off any money due for payment by the Lender to the Borrower whatsoever against any money due for payment by the Borrower to the Lender under a Transaction Document.

### Lender’s certificate

#### A certificate by the Lender relating to a Transaction Document is, in the absence of manifest error, conclusive evidence against the Borrower of the matters certified.

#### The Lender is not obliged to give the reasons for its determination or opinion in relation to any matter under a Transaction Document.

### Illegality

If it becomes unlawful for the Lender to give effect to its obligations under this document, it will notify the Borrower in writing and those obligations will cease. The Borrower must, within such period as may be permitted by the relevant law, repay the Loan together with all interest accrued on the Loan to the date of repayment and all other monies payable under this document.

### Business days

#### If the day on which anything, excluding a payment, is to be done by the Borrower under a Transaction Document is not a business day, that thing must be done on the preceding business day.

### Amendment

This document may only be varied or replaced by a document executed by the parties.

### Waiver and exercise of rights

#### A right in favour of the Lender under a Transaction Document or a breach of an obligation of the Borrower under a Transaction Document can only be waived by an instrument properly executed by the Lender. No other act, omission or delay of the Lender will constitute a waiver binding, or estoppel against, the Lender.

#### A single or partial exercise or waiver by the Lender of a right relating to a Transaction Document will not prevent any other exercise of that right or the exercise of any other right.

### Approval and consent

The Lender may conditionally or unconditionally give or withhold any consent to be given under a Transaction Document and is not obliged to give its reasons for doing so.

### Assignment

#### The Borrower must not assign or otherwise dispose of any right under this document without the written consent of the Lender.

#### The Lender’s rights under this document are assignable.

### Counterparts

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

### Governing law and jurisdiction

This document is governed by and will be construed in accordance with the laws applicable in Victoria and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts exercising jurisdiction in that place.

### Construction

Unless expressed to the contrary, in this document:

#### words in the singular include the plural and vice versa;

#### any gender includes the other genders;

#### if a word or phrase is defined its other grammatical forms have corresponding meanings; and

#### a reference to:

##### a person includes a partnership, joint venture, unincorporated association, corporation and a government or statutory body or authority; and

##### a person includes the person’s legal personal representatives, successors, assigns and persons substituted by novation.

*[****Optional:*** *You should consider including clause 17 (Confidentiality) where the parties are not going to provide copies of this document to other community solar organisations.]*

## [Confidentiality]

### Duty of confidence

The Lender and the Borrower agree that:

#### this document does not constitute, or form part of, a security agreement; and

#### information or documents relating to the Transaction Documents is protected by a duty of confidence, and must not be disclosed without the prior written consent of the Lender (acting reasonably).

### Disclosure of information

Each party agrees not to disclose information provided by any other party that is not publicly available (including the existence or contents of any Transaction Document) except:

#### the Lender may disclose to any of its Affiliates and any other person:

##### to (or through) whom the Lender assigns or transfers (or may potentially assign or transfer) all or any of its rights and obligations under this document;

##### which is a rating agency to the extent required by them; or

##### which is a financial institution or other participant in any payment system,

any information about the Borrower and the Transaction Documents as the Lender shall consider reasonably appropriate; and

#### a party may disclose such information:

##### to its officers, employees, legal and other advisers and auditors;

##### to any subsidiary, holding company or subsidiary of the same holding company provided the recipient agrees to act consistently with this clause; or

##### any disclosure the disclosing party reasonably believes is required by any law, regulation or stock exchange.]

## Notices

Notices given under this document must be given to the relevant party by delivery, pre-paid post or facsimile at the party’s address or facsimile number for notices set out below (if any) or such other address as the relevant party may from time to time notify to the other:

#### To the Borrower:

|  |  |
| --- | --- |
| Delivery address: |  |
| Postal address: |  |
| Fax: |  |
| Attention: |  |

#### To the Lender:

|  |  |
| --- | --- |
| Delivery address: |  |
| Postal address: |  |
| Fax: |  |
| Attention: |  |

Schedule 1

1. The Site and solar equipment

**Aerial map of site**:

**Site address**:

**Title reference details**:

**Rights of way**:

**Easements**:

**Other rights benefiting the site**:

**Equipment on site**: [*Include solar panels, mounting frames, power station control systems, communications, meters and telemetry and remote monitoring systems (such as SCADA and CMSS equipment), switchyard (and any overhead lines from the solar generation plan to the switchyard) and all connection equipment to allow the solar generation plant to export electricity directly or indirectly to the local electricity network.*]

 Schedule 2

1. Definitions

In this document these terms have the following meanings:

[***Optional:*** *Delete definition of ‘Accounting Standards’ if the additional Financial Undertakings in* ***clause 12*** *are not included.*]

1. **Accounting Standards** meansAccounting principles and practices consistently applied which are generally accepted in Australia and are consistent with any applicable legislation.

[***Optional:*** *Delete definition of ‘Audit Report’ (and Schedule 4) if the additional Financial Undertaking in* ***clause 12(b)*** *is not included*.]

1. **Audit Report** means the report prepared by the Borrower following the energy assessment of the Borrower’s Site, a copy of which is set out in Schedule 4.
2. **Availability Period** means the period commencing on the date of this document and ending on the date that is 6 months after the date of this document.
3. [***Optional:*** *Delete definition of ‘Encumbrance’ if the additional Financial Undertakings in* ***clause 12*** *are not included.*]
4. **Encumbrance** meansany interest in or right over property and anything which would at any time prevent, restrict or delay the registration of any interest in or dealing with property.
5. **Event of Default** means any event or circumstance described in **clause 13**.
6. [***Optional:*** *Delete definition of ‘Financial Indebtedness’ unless the additional Financial Undertakings in* ***clause 12*** *are included.]*
7. **Financial Indebtedness** means any indebtedness or other liability (present or future, actual or contingent) relating to any financial accommodation including indebtedness or other liability:
	1. for money borrowed or raised;
	2. relating to the sale or negotiation of any negotiable instrument;
	3. as lessee under any finance lease, as hirer under any hire purchase agreement or as purchaser under any title retention agreement;
	4. relating to any preference share or unit categorised as debt under Accounting Standards;
	5. under any commodity, currency or interest rate swap agreement, forward exchange rate agreement or futures contract (as defined in any statute);
	6. under any guarantee or indemnity relating to any financial accommodation; or
	7. for any deferred purchase price (other than in the nature of warranty retention amounts) for any asset or service.
8. **Funding Date** has the meaning given to that term in **clause 1**.

#### **Guarantee** means the guarantee provided by the Guarantor in favour of the Lender on the terms set out in Schedule 3 of this document.

#### **Guaranteed Money** means all money:

* 1. which now or in the future is owing (actually or contingently) by the Borrower to the Lender; or
	2. which having now or in the future become owing (actually or contingently) by a Borrower to the Lender, ceases to be owing under any law relating to the Borrower’s winding up, dissolution, administration, provisional liquidation or any administration having a similar effect and remains unpaid by the Borrower and unreleased by the Lender,

for any reason in connection with the Transaction Documents including money payable by the Borrower alone or jointly and severally with any other person in any capacity.

It includes money by way of principal, interest, fees, costs, indemnities, charges, duties or expenses or payment of liquidated or unliquidated damages for which the Borrower is or at any time may become so liable, or as the result of a breach of or default under any obligation by a Borrower.

If any agreement or transaction between the Borrower and the Lender or any obligation of the Borrower to the Lender is void, voidable or otherwise unenforceable in accordance with its terms by the Lender, it includes all moneys and damages which would have been within this definition if that agreement, transaction or obligation was not void, voidable or otherwise unenforceable.

1. **Insolvency Event** includes any of the events described in **clause 13.1(b)**.
2. **Loan** has the meaning given to that term in **clause 1**.
3. **Material Adverse Effect** means a material adverse effect on either:
	1. the ability of the Borrower to comply with its obligations under any Transaction Document; or
	2. the effectiveness, priority or enforceability of any Transaction Document.
4. **Monies Owing** means so much of the Loan as remains unrepaid from time to time.
5. **Project** meansthe acquisition, installation, construction and operation of the Solar Power System at the Site.
6. **Repayment Date** has the meaning given to that term in **clause 1**.
7. **Site** means the Borrower’s premises described in **Schedule 1**.
8. **Solar Power System** means a solar power system, which includes the electricity meter and the items of equipment listed in **Schedule 1**, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

**Tax** means a tax (including any tax in the nature of a goods and services tax), rate, levy, impost or duty (other than a tax on the net overall income of the Lender) and any interest, penalty, fine or expense relating to any of them.

1. **Transaction Documents** means:
	1. this document; and
	2. any document which the Borrower and the Lender agree is a Transaction Document for the purposes of this document.

Schedule 3

Guarantee

* 1. Guarantee
		1. Guarantee
			1. The Guarantor unconditionally and irrevocably guarantees the payment to the Lender of the Guaranteed Money.
			2. If the Borrower does not pay the Guaranteed Money on time and in accordance with the Transaction Documents, then the Guarantor agrees to pay the Guaranteed Money on demand from the Lender.
			3. A demand may be made at any time and from time to time and whether or not the Lender has made demand on the Borrower.
		2. Nature of guarantee
			1. The guarantee in **clause 1.1** is a continuing obligation despite any intervening payment, settlement or other thing and extends to all of the Guaranteed Money.
			2. As between the Guarantor and the Lender (but without affecting the obligations of the Borrower) the Guarantor is liable under this document in relation to the Guaranteed Money as a sole and principal debtor and not as surety.
		3. Indemnity
			1. The Guarantor indemnifies the Lender against any liability or loss arising and any costs it suffers or incurs:
				1. if the Borrower does not, is not obliged to or is unable to pay the Guaranteed Money in accordance with the Finance Documents;
				2. if the Guarantor is not obliged to pay the Lender an amount under **clause 20.1**;
				3. if the Lender is obliged, or agrees, to pay an amount to a trustee in bankruptcy or liquidator (of an insolvent person) in connection with a payment by the Borrower under or in connection with a Finance Document;
				4. if the Guarantor defaults under the Guarantee in **clause 1.1**; or
				5. in connection with any person exercising, or not exercising, rights under the Guarantee in **clause 1.1**.
			2. The Guarantor agrees to pay amounts due under this indemnity immediately on demand from the Lender.
		4. Reinstatement of rights
			1. Following an Insolvency Event in respect of the Borrower, a person may claim that a transaction (including a payment) in connection with this Guarantee or the Guaranteed Money is void or voidable.
			2. If a claim is made and upheld, conceded or comprised the Lender is immediately entitled as against the Guarantor to the rights in respect of the Guaranteed Money to which it was entitled immediately before the transaction.
		5. Rights of the Lender are protected

Rights given to the Lender under this Guarantee (and the Guarantor’s liabilities under it) are not affected by any act or omission by the Lender or by anything else that might otherwise affect them under law or otherwise, including:

* + - 1. the fact that it varies or novates any agreement under which the Guaranteed Money is expressed to be owing, such as by extending the term;
			2. the fact that it releases the Borrower or gives it a concession, such as more time to pay;
			3. the fact that it releases any person who gives a guarantee or indemnity in connection with any Borrower’s obligations;
			4. the fact that a person becomes a Guarantor after the date of this document;
			5. the fact the obligations of any person who guarantees the Borrower’s obligations (including under this Guarantee) may not be enforceable;
			6. the fact that any person who was intended to guarantee the Borrower’s obligations does not do so or does not do so effectively;
			7. changes in the membership, name or business of any person; or
			8. the fact that a person who is a co-surety or co-indemnifier for payment of the Guaranteed Money is discharged under an agreement or by operation of law.
		1. No merger
			1. This Guarantee does not merge with or adversely affect, and is not adversely affected by, any of the following:
			2. any other guarantee, indemnity or other right or remedy to which the Lender is entitled; or
			3. a judgment which the Lender obtains against the Guarantor in connection with the Guaranteed Money or any other amount payable under this Guarantee.
			4. The Lender may still exercise rights under this Guarantee as well as under the judgment, other guarantee, indemnity or other right or remedy.
		2. Extent of Guarantor’s obligations

If more than one person is named as “Guarantor”, each of them is liable for all the obligations under this Guarantee both individually and jointly with any one or more other persons named as “Guarantor”.

* + 1. Guarantor’s rights are suspended

As long as any of the Guaranteed Money remains unpaid, the Guarantor may not, without the Lender’s consent:

* + - 1. reduce its liability under this Guarantee by claiming that it or the Borrower or any other person has a right of set-off or counterclaim against the Lender;
			2. exercise any legal right to claim to be entitled to the benefit of another guarantee, indemnity given in connection with the Guaranteed Money or any other amount payable under this Guarantee;
			3. claim an amount from the Borrower, or another Guarantor of the Guaranteed Money (including a person who has signed this document as a “Guarantor”), under a right of indemnity in respect of this guarantee; or
			4. claim an amount in the insolvency of the Borrower or of another Guarantor of the Guaranteed Money (including a person who has signed this document as a “Guarantor”).
		1. Guarantor’s right of proof limited

The Guarantor agrees not to exercise a right of proof after an event occurs relating to the insolvency of the Borrower or another Guarantor of the Guaranteed Money (including a person who has signed this document as a “Guarantor”) independently of an attorney appointed under **clause 1.12** of this Guarantee.

* + 1. No set-off against assignees

If the Lender assigns or otherwise deals with its rights under this Guarantee, the Guarantor may not claim against any assignee (or any other person who has an interest in this Guarantee) any right of set-off or other right the Guarantor has against the Lender.

* + 1. Suspense account

The Lender may place in a suspense account any payment it receives from the Guarantor if there is currently an Insolvency Event, or an Insolvency Event is likely to occur, in relation to the Borrower, and need not apply it towards satisfying the Guaranteed Money.

* + 1. Right to prove
			1. The Guarantor irrevocably appoints the Lender and each employee of the Lender whose title contains the word “director”, “company secretary”, “accountant”, “manager” or a similar term and an attorney or a lawyer for the Lender individually as its attorney and agrees to formally approve all action taken by an attorney under this **clause 1.12** of this Guarantee.
			2. Each attorney may, at any time while any Guaranteed Money is outstanding:
				1. do anything which the Guarantor may lawfully do to exercise their right of proof in respect of the Borrower after an Insolvency Event occurs in respect of the Borrower. These things may be done in the Guarantor’s name or in the attorney’s name and they include signing and delivering documents, taking part in legal proceedings and receiving any dividends arising out of the right of proof;
				2. delegates its powers (including this power) and may revoke a delegation; and
				3. exercise its powers even if this involves a conflict of duty and even if it has a personal interest in doing so.
			3. The attorney need not account to the Guarantor for any dividend received on exercising the right of proof under **clause 1.12(b)(i)** except to the extent that any dividend remains after the Lender has received all of the Guaranteed Money and all other amounts payable under the Guarantee.

Schedule 4

[***Optional:*** *Delete if the additional Financial Undertaking in* ***clause 12(b)*** *is not included*.]

Audit Report

Execution

**Executed** as an agreement.

####  *[****Mandatory:*** *Execution blocks will need to be included and properly signed by the Borrower, Guarantor and Lender.]*

#### [***Optional:*** *insert if entity is a company with two directors*.]

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
|

|  |  |  |
| --- | --- | --- |
| **Executed** by [insert name of entity] | )) |  |
| ...........................................................Company Secretary/Director...........................................................Name of Company Secretary/Director (print) |  | ...........................................................Director...........................................................Name of Director (print) |

 |  | ...........................................................Director...........................................................Name of Director (print) |

#### [***Optional:*** *insert if entity is a sole director company*.]

|  |  |
| --- | --- |
| **Executed** by [insert name of entity] | )) |
| ..............................................................Sole Director and Sole Company Secretary...............................................................Name of Sole Director and Sole Company Secretary (print) |  |

#### [***Optional:*** *insert if entity is signing under common seal (note that this is rare).]*

|  |  |  |
| --- | --- | --- |
| **The common seal** of [insert name of entity] is affixed in the presence of: | ))) |  |
| ...............................................................Company Secretary/Director...............................................................Name of Company Secretary/Director (print) |  | ...............................................................Director...............................................................Name of Director (print) |

[***Optional:*** *insert if a duly appointed officer is signing on behalf of an entity.]*

|  |  |  |
| --- | --- | --- |
| **Executed** by [insert name of entity] by its duly appointed officer in the presence of: | ))) |  |
| ..............................................................Witness...............................................................Name of Witness (print) |  | .............................................................Officer...............................................................Name of Officer (print) |

#### [***Optional:*** *insert if a duly appointed officer is signing on behalf of the entity*.]

|  |  |  |
| --- | --- | --- |
| **Executed** by [insert name of entity] by its duly appointed officer in the presence of: | ))) |  |
| ..............................................................Witness...............................................................Name of Witness (print) |  | .............................................................Officer...............................................................Name of Officer (print) |

#### [***Optional:*** *insert if the entity is signing under power of attorney*.]

|  |  |  |
| --- | --- | --- |
| **Executed** by [Insert name of entity] by the party’s attorney pursuant to power of attorney dated ................... who states that no notice of revocation of the power of attorney has been received in the presence of: | ))))))) |  |
| ...............................................................Witness...............................................................Name of Witness (print) |  | ...............................................................Attorney...............................................................Name of Attorney (print) |