Guidance Notes

| **Toolkit guidance** |  |
| --- | --- |
| This template Power Purchase Agreement (PPA) is: |  |
| * suitable for use where the Operator is the community solar organisation | **✓** |
| * suitable for use where the Operator operates and maintains the Solar Power System | **✓** |
| * suitable for use where the Operator owns, and is responsible for installing, the Solar Power System | **✓** |
| * suitable for use where the Customer may purchase the Solar Power System at any time prior to the expiry of the Contract Period | **✓** |
| * suitable for use where the Customer is a tenant of the Site, in which case a supporting lease should be executed between the community solar organisation and the land owner (Note: an alternative template applies for use where the Customer owns the Site) | **✓** |
| * not suitable where the Customer acquires the Solar Power System for $40,000 or less, *or* for personal, domestic of household use or consumption | ✘ |
| * not suitable, and should be revised, for use where the Site is outside Victoria | ✘ |
| * not suitable, and should be revised, for use where a third party owns the Solar Power System | ✘ |
| * not suitable if the Operator wishes to permit the Customer to sell the Site (this event triggers termination) | ✘ |
| * not suitable, and should be revised, for use where either party is a natural person (i.e. not a corporation) | ✘ |
| Two models are commonly used on community solar projects:  **PPA Model** – Operator (being the Community Solar Organisation) operates and maintains the system and the Customer pays for the electricity actually generated by the Solar Power System.  *PPA Model A -* If the Customer owns the Premises, the Customer grants the Operator a leasehold interest in the Premises.  *PPA Model B -* If the Customer does not own the Premises (i.e. the roof space), the Operator must separately execute a lease with the land owner with respect to the Premises.  **Solar Equipment Lease Model** - CSO (being the lessor) operates and maintains the system and the Owner (being the customer/lessee) pays a nominal rental amount for the Solar Power System and may freely use the electricity generated by the Solar Power System.  This PPA establishes the arrangements under the PPA Model B and should be used in conjunction with lease entered between the CSO and the land owner. A solar equipment lease should be used under the Solar Equipment Lease Model. | |
| Under this PPA:   * the Customer obtains no proprietary interest in the Solar Power System once it is installed unless and until it exercises a right to purchase the Solar Power System; and * the Operator owns and operates the Solar Power System. | |
| This template contains the following optional clauses which should be deleted or, where appropriate, marked ‘not used’ if they are not relevant. The optional clauses are colour coded:   * right to purchase (red) * right to connect to grid (orange) * conditions precedent (blue) * payment of deposit by customer (green)   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 (or mark ‘not used’) all other options. | |

Summary of key terms

The following table provides a high level summary of the key terms in this PPA. This summary does not detail all rights and obligations under the PPA and should be read in conjunction with the PPA.

| **Obligation** | |
| --- | --- |
| **Term of PPA** | * The PPA comes into effect on an agreed “Commencement Date” (or on completion of all conditions set out in ***clause 1(c)***), and continues for the agreed “Contract Period” (***clause 1***). |
| **Installation of the System** | * The CSO must install the Solar Power System (the **System**), and the Customer must provide relevant facilities, access and working conditions (***clause 2***). |
| **Electricity sale and payments** | * The Customer must purchase all the electricity generated by the System and pay the “Electricity Payment” for the term of the Contract (***clauses 3 & 4***). * In some circumstances, the Customer must pay a deposit which can be used to reduce some of the Electricity Payments (***clause 5***). |
| **Title, risk and maintenance of the System** | * Unless and until the Purchase Option (if any) is exercised, the Operator will continue to own the System (***clause 6***). * The Operator will carry out routine maintenance on the System. Except in certain circumstances, this will be at the Operator’s cost. During the Term, the Customer must also provide reasonable maintenance (***clause 11***). |
| **Customer’s general responsibilities** | * The Customer must comply with its responsibilities in ***clause 8***,including not altering the System and notifying the Operator about any defects (***clause 8***). |
| **Purchase option and return of the System** | * If specified, the Customer may have the option to purchase the System for a pre-agreed purchase price (which the Operator may waive) (***clause 10***). * If the purchase option isn’t exercised, or the PPA expires or is terminated, the Operator or Customer must decommission and remove the System (***clause 18***). |
| **Limitation of liability &**  **indemnities** | * The Operator is not liable for certain events (e.g. the Customer’s misuse of the System), and may limit its liability in certain events (***clause******14***). * The Customer must indemnify the Operator for loss or damage arising out of its own negligent acts or omissions (***clause 15***). |
| **Termination** | * Clause 16 sets out the grounds for termination, including: * ***the Operator*** may terminate the PPA if the Customer relevantly defaults (e.g. fails to pay or causes the System to be lost / damages beyond repair); * ***the Operator*** may terminate the PPA if the Lease with the Landlord is terminated or expires, or in certain circumstances ifthe Customer ceases to occupy the site; * ***both parties*** may terminate certain circumstances, including if there is a relevant breach of the PPA, insolvency or prolonged force majeure; and * ***the Customer*** may terminate for convenience (***clause 16***). |

May 2018

Party 1(ACN ###) (Operator)

Party 2 (ACN ###) (Customer)

Community Solar Power Purchase Agreement

Contents

[1 Term 1](#_Toc515461873)

[2 Delivery and installation 2](#_Toc515461874)

[3 Electricity sale and purchase 2](#_Toc515461875)

[4 Billing and payment 2](#_Toc515461876)

[5 Deposit 3](#_Toc515461877)

[[Optional] 3](#_Toc515461878)

[6 Title and Risk 3](#_Toc515461879)

[7 Insurance 3](#_Toc515461880)

[8 Customer’s responsibilities 3](#_Toc515461881)

[9 Customer’s Acknowledgements and Warranties 4](#_Toc515461882)

[10 Purchase Option 4](#_Toc515461883)

[[Optional] 4](#_Toc515461884)

[11 Maintenance 4](#_Toc515461885)

[12 Monitoring 5](#_Toc515461886)

[13 Export of electricity from the Site 5](#_Toc515461887)

[14 Limitation of liability 5](#_Toc515461888)

[15 Indemnity 6](#_Toc515461889)

[16 Termination 6](#_Toc515461890)

[17 Consequences of termination 7](#_Toc515461891)

[18 Return of Solar Power System 7](#_Toc515461892)

[19 Force Majeure 8](#_Toc515461893)

[20 Confidentiality 8](#_Toc515461894)

[21 Complaints and Dispute Resolution 8](#_Toc515461895)

[22 Notices 9](#_Toc515461896)

[23 GST 9](#_Toc515461897)

[24 General 9](#_Toc515461898)

[25 Definitions and Interpretation 10](#_Toc515461899)

[Execution 1](#_Toc515461900)

[Schedule 1 - Projects and tariff details 2](#_Toc515461901)

[Schedule 2 - Premises 4](#_Toc515461902)

[Schedule 3 – Notice to the Customer 1](#_Toc515461903)

[Schedule 4 - Insurance 2](#_Toc515461904)

[Schedule 5 - Purchase Price 4](#_Toc515461905)

**Date**

# Parties

**Party 1** ACN 1 of Address 1 (**Operator**)

**Party 2** ACN 2 of Address 2 (**Customer**)

# Background

1. The Operator is the owner of the Solar Power System unless and until the Customer purchases the Solar Power System on the terms and conditions of this Agreement.
2. The Customer does not own the Premises.
3. On or about the date of this Agreement, the Operator entered into a lease of the Premises with the Landlord for the purpose of the Operator performing its obligations, and exercising its rights, in connection with the Solar Power System on the terms and conditions of this Agreement.
4. The Operator has agreed to supply the Generated Electricity to the Customer on the terms and conditions of this Agreement.
5. The Customer has agreed to purchase all Generated Electricity on the terms and conditions of this Agreement.

# Agreed terms

## **Term**

#### Subject to all conditions precedent being achieved in accordance with clause 1(c), this Agreement is effective from the Commencement Date and shall continue for the Contract Period.

#### The parties may agree to extend the Contract Period, in which case the End Date shall become such later date agreed in writing between the parties.

#### The parties acknowledge and agree that this Agreement will not come into effect unless and until:

##### the location of the Premises on the Site has been agreed in writing between the Customer and the Operator;

##### [***Drafting note: delete if not applicable***] the Operator has secured sufficient third party finance as is reasonably necessary to ensure that the Operator is able to comply with the Operator’s obligations under this Agreement; and

##### [***insert any other conditions precedent***].

## **Delivery and installation**

#### The Operator must install the Solar Power System at the Premises.

#### To facilitate Delivery and installation, the Customer must at its sole expense provide all requisite facilities, access and suitable working conditions to enable Delivery and installation to be carried out safely and expeditiously.

## **Electricity sale and purchase**

#### The Customer must purchase all the Generated Electricity during the Contract Period on the terms of this Agreement.

#### The Customer acknowledges that the generation of electricity by the Solar Power System is variable and the Operator makes no warranty as to:

##### the output of electricity at any specific time; or

##### delivery of a minimum level of Generated Electricity.

#### The Operator is entitled to all Environmental Credits or Solar Incentives created or produced from, or by reference to, the Solar Power System.

#### The Customer must, at the reasonable request and cost of the Operator, execute any document necessary to:

##### accredit and register the Solar Power System in order to procure the benefit of any Environmental Credits or Solar Incentives for the Operator; and

##### create and transfer to the Operator any Environmental Credits or Solar Incentives.

#### The Customer acknowledges that the supply of electricity under this Agreement will not be the Customer’s sole or primary source of electricity supply. The Customer must maintain a current Retail Contract and Network Contract at all times during the Contract Period.

## **Billing and payment**

#### The Operator must each Billing Interval during the Contract Period issue to the Customer an invoice for Electricity Payments in respect of the previous Billing Interval. The invoice must be in the form of a tax invoice and set out the following information:

##### the electricity rate payable for the month;

##### the Generated Electricity for the month;

##### interest payable on any outstanding amounts;

##### any outstanding amounts owing; and

##### the total amount payable by the Customer to the Operator, calculated to two decimal places.

#### The Customer must pay the Operator the Electricity Payments for each Billing Interval within [#] Business Days of receiving an invoice from the Operator.

#### The Operator may increase the Electricity Payments in accordance with Schedule 1 by giving the Customer no less than 10 Business Days written notice.

#### All amounts due under this Agreement shall be paid in full without any set-off or withholding, other than as:

##### expressly authorised by this Agreement; or

##### as required by Law.

#### If the Customer fails to pay any amounts due to the Operator under this Agreement by the due date for payment, then interest may be charged on the overdue amount at the Interest Rate. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount is made to the Operator.

## **Deposit**

### [Optional]

#### The Customer must pay the Operator the Deposit within [#] Business Days of signing this Agreement. The Deposit is non-refundable.

#### The Customer acknowledges that the Deposit is a pre-purchase of electricity, which shall reduce the cost of Electricity Payments up to the value of the Deposit.

## **Title and Risk**

#### The Customer acknowledges and agrees that although the Solar Power System will be attached to buildings at the Site, it shall not become a fixture.

#### The Solar Power System will at all times remain the property of the Operator, and the Customer shall have no right, title or interest in or to the Solar Power System except in accordance with the terms and conditions of this Agreement.

## **Insurance**

#### The party identified in Schedule 4 must obtain and maintain insurance in accordance with that Schedule.

## **Customer’s responsibilities**

#### The Customer must:

#### ensure that the Solar Power System is used only by the Customer and for the purposes for which it is designed.

#### notify the Operator of any defect or failure of the Solar Power System within 24 hours of the defect becoming apparent.

#### permit the Operator and the Operator’s Representative to inspect the Monitoring Device at all reasonable times, and for such purpose to enter upon the Site and must grant reasonable access and facilities for such inspection.

#### make no alteration to the Solar Power System and shall not remove any existing component(s) from the Solar Power System without the prior written consent of the Operator.

#### keep the Operator fully informed of all material matters relating to the Solar Power System, including any changes to the Customer’s occupation of the Site.

#### not, without the prior written consent of the Operator, part with control of (including for the purposes of repair or maintenance), sell or offer for sale, underlet or lend the Solar Power System or allow the creation of any mortgage, charge, lien or other Security Interest in respect of the Solar Power System.

#### not suffer or permit the Solar Power System to be confiscated, seized or taken out of its possession or control under any distress, execution or other legal process, but if the Solar Power System is so confiscated, seized or taken, the Customer shall notify the Operator and the Customer shall at its sole expense use its best endeavours to procure an immediate release of the Solar Power System and shall indemnify the Operator on demand against all losses, costs, charges, damages and expenses incurred as a result of such confiscation.

#### not use the Solar Power System for any unlawful purpose.

#### ensure that at all times the Solar Power System remains identifiable as being the Operator’s property and whenever required shall ensure that a visible sign to that effect is attached to the Solar Power System.

#### in the case of early termination by the Customer under clause 16(b) of this Agreement, allow the Operator and the Operator’s Representatives access to the Site and the Premises for the purpose of removing the Solar Power System; and

#### not do or permit to be done anything which could invalidate the insurances referred to in clause 7.

## **Customer’s Acknowledgements and Warranties**

#### The Customer warrants to the Operator that the Customer has a leasehold interest in, and occupies, the Site for the purpose of this Agreement.

#### The Customer acknowledges that the Customer has read and understood the notice to the Customer set out in Schedule 3.

## **Purchase Option**

### [Optional]

#### Subject to clause 10(b), the Customer may purchase the Solar Power System by giving written notice to the Operator no less than 30 Business Days before the date on which the purchase of the Solar Power System is to be completed in accordance with clause 10(c) (**Purchase Option**).

#### The Customer may only exercise the Purchase Option if all amounts due to the Operator under this Agreement (as at the date on which the purchase of the Solar Power System is to be completed in accordance with clause 10(c)) have been paid to the Operator in full.

#### Provided the Customer exercises the Purchase Option in accordance with this clause 10 and either:

##### the Customer has paid the Purchase Price to the Operator; or

##### the Operator has notified the Customer in writing that it waives its right to this payment,

then, upon the expiry of the notice period referred to in clause 10(a), this Agreement will automatically terminate and such title to the Solar Power System as the Operator has at that time will transfer to the Customer.

#### The Customer acknowledges and agrees that the Solar Power System will transfer to the Customer under this clause 10 in the condition and at the location in which it is found on the date of such transfer and that the Customer will be responsible for any arrangement with the Landlord with respect to the Premises on and from the date of such transfer.

## **Maintenance**

#### The Operator must carry out the operation and routine maintenance of the Solar Power System free of charge for the duration of the Contract Period. The Operator may engage a competent third party to perform the obligations under this clause.

#### The Operator must use all reasonable endeavours to remedy, free of charge, any defect in the Solar Power System that manifests during the Contract Period and maintain the Solar Power System in good working order.

#### The Customer will be responsible for the cost of any repair or maintenance that the Operator reasonably determines was caused by the Customer or could have been fixed by the Operator remotely if the Operator had provided reasonable assistance.

#### The Customer must provide the Operator with reasonable assistance in maintaining the Solar Power System by:

##### notifying the Operator immediately if the Customer believes there is or may be a fault or problem with the Solar Power System;

##### minimising shade on the Solar Power System, including by pruning trees; and

##### providing water and auxiliary power as reasonably requested (for example, to clean the solar panels).

#### The Customer acknowledges that the Operator may temporarily shut down the Solar Power System in order to repair or maintain the Solar Power System, or for safety reasons.

## **Monitoring**

#### The quantity of electricity supplied under this Agreement will be measured by the Operator using the Operators’ billable-grade monitoring device (**Monitoring Device**).

#### The Operator must, at its cost:

##### supply, install, operate, maintain and test the Monitoring Device, communication systems, current transformers, labels and programming;

##### maintain the accuracy of the Monitoring Device;

##### read the Monitoring Device and record those readings in a log;

##### provide the Customer with monthly supply data within [#5] Business Days of month end; and

##### maintain supply data logs for no less than 5 years.

#### The Customer may audit the operation of the Monitoring Device upon provision of reasonable prior written notice to the Operator. All costs associated with the scheduling and conduct of any audit carried out in accordance with this clause 12(c) will remain the sole responsibility of the Customer.

## **Export of electricity from the Site**

**[Optional]**

#### The Customer may, at its own cost, arrange for the export of electricity from the Site to the Network. The Customer is responsible for obtaining appropriate consents, complying with the Law and for the installation of appropriate equipment (including meters).

#### The Customer must notify the Operator not less than 20 Business Days prior to exporting electricity from the Site.

#### The Customer must obtain the written consent of the Operator prior to installing equipment (including meters) in connection with the export of electricity from the Site.

#### Any Feed-in Amount that the Customer receives in respect of electricity exported from the Site to the Network shall be to the Customer’s account unless otherwise specified in Schedule 1.

## **Limitation of liability**

#### The Customer acknowledges and agrees that the Operator is not liable for any loss or damage arising out of or in connection with:

##### any negligence, misuse, or mishandling of the Solar Power System by the Customer or its officers, employees, agents and contractors;

##### any failure by the Customer to comply with the terms of this Agreement;

##### the electricity generated by the Solar Power System (provided that the electricity was safe at the time it was generated), being any time before it was transmitted or distributed;

##### any outages, distortions or fluctuations in the electricity supply;

##### the control of use of electricity at the Site; or

##### any fluctuation or distortion (in voltage magnitude, voltage waveform or frequency) or interruption in electricity production from the Solar Power System.

#### The Customer acknowledges and agrees that to the full extent permitted by law, the Operator shall not be liable for:

##### any death, injury or loss that the Customer or any person suffers; or

##### any damage to, or loss or destruction of, property belonging to the Customer or anybody else arising out of the possession, operation or use of the Solar Power System or its repair or maintenance.

#### Subject to Australian Consumer Law, neither party shall be liable under this Agreement for any Consequential Loss.

#### To the extent permitted by Law, the Operator's liability to the Customer for a failure to comply with any condition, warranty, guarantee or other term which might be implied by statute, common law or otherwise is expressly excluded. Where liability cannot be excluded, the Operator's liability for failure to comply with any such condition, warranty, guarantee or other term is limited (at the Operator's option):

##### in the case of goods, to the replacement of the goods, the supply of equivalent goods or the payment of the cost of acquiring equivalent goods; and

##### in the case of a service, to the re-supply of the service or the payment of the cost of having the service supplied again.

## **Indemnity**

The Customer agrees to indemnify the Operator against any losses, damages, Claims, demands, costs and expenses suffered as a result of any negligent action or omission by the Customer in relation to the Solar Power System or this Agreement.

## **Termination**

#### The Operator may terminate this Agreement with immediate effect by giving written notice to the Customer if:

##### the Customer fails to pay any amount due under this Agreement on the due date for payment and remains in default not less than [#] Business Days after being notified to make such payment;

##### the Lease is terminated or expires;

##### the Customer ceases to occupy the land on which the Solar Power System is located and the new occupier does not agree to promptly:

###### take on, by way of novation, the Customer’s rights and obligations under this Agreement; or

###### enter into a similar agreement with the Operator on terms that are acceptable to the Operator;

###### or

##### a Total Loss occurs in relation to the Solar Power System.

#### Either party may terminate this Agreement with immediate effect by giving the other party written notice if:

##### the other party commits a material breach of any other term of this Agreement which breach is irremediable or, if such breach is remediable, fails to remedy that breach within a period of 10 Business Days after being notified to do so;

##### the other party repeatedly breaches any of the terms of this Agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to comply with this Agreement;

##### the other party becomes Insolvent; and

##### a Force Majeure Event continues for more than 2 months and that event, in the reasonable opinion of one of the parties, materially affects the operation of this Agreement.

#### The Customer may terminate this Agreement at any time in its discretion provided it:

##### gives the Operator at least 3 months’ written notice of the termination; and

##### pays the Operator 50% of the Recoverable Amount [***Drafting note: substitute ‘Recoverable Amount’ with ‘Purchase Price’ if option 1 is selected in clause 17]*** on or before the date of termination.

## **Consequences of termination**

#### Upon termination of this Agreement, without prejudice to any other rights or remedies available to the Operator, the Customer must pay to the Operator on demand all Electricity Payments and other sums due with any interest accrued pursuant to clause 4(e).

#### **[*Option 1- Drafting note: mark ‘not used’ if Purchase Option does not apply and use Option 2 below*]** If this Agreement is terminated before the End Date, other than by the Customer in accordance with clause 16(b)(i), 16(b)(ii) or 16(b)(iii), the Customer is deemed to have exercised the Purchase Option and must pay to the Operator on demand a sum equal to the Purchase Price which shall be payable in addition to the sums payable pursuant to clause 17(a).

#### **[*Option 2 – Drafting note: mark ‘not used’ if Purchase Option applies and use Option 1 above*]** If this Agreement is terminated before the End Date, other than other than by the Customer in accordance with clause 16(b)(i), 16(b)(ii) or 16(b)(iii), the Customer must pay to the Operator the Recoverable Amount promptly upon demand by the Operator.

#### Termination or expiry of this Agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Agreement that existed at or before the date of termination or expiry.

## **Return of Solar Power System**

#### ***[Drafting note: Delete if ‘Purchase Option’ is not used***: If the Customer does not exercise the Purchase Option in accordance with clause 10,] on the first Business Day after the expiry of the Contract Period or date of termination (as the case may be), the Customer must, at the Customer’s expense:

##### decommission, remove and return the Solar Power System to the Operator at the address nominated by the Operator or, if no address has been nominated for this purpose, the Operator’s address as shown at the beginning of this Agreement; or

##### request that the Operator decommissions and removes the Solar Power System, in which case the Operator must decommission and remove the Solar Power System from the Site within 20 Business Days after the request.

#### The Operator must make good any damage that is caused to any building or other property of the Customer as a direct result of any decommissioning and removal of the Solar Power System by the Operator.

## **Force Majeure**

#### For the purposes of this Agreement, a Force Majeure Event means:

##### a natural disaster including but not limited to bushfire, hurricane or flood;

##### government embargo; or

##### act or threat of terrorism.

#### A party shall not be liable for any failure to fulfil its obligations under this Agreement (other than an obligation to pay money) if and to the extent to which fulfilment has been delayed or prevented by a Force Majeure Event.

#### A party intending to seek relief under this clause 18 must promptly notify the other party of the Force Majeure Event and give the other party an estimate of the period of time required to enable it to resume full performance of its obligations.

#### A notifying party must use reasonable endeavours in all the circumstances to eliminate the occurrence of or minimise the effect of a Force Majeure Event.

## **Confidentiality**

#### Each party must, subject to clause 20(b):

##### keep all Confidential Information confidential and not disclose it to a third party other than the officers, employees and consultants or advisers of the party (or its related bodies corporate) as reasonably required;

##### must only use, disclose or copy the Confidential Information for the purposes of fulfilling its obligations under this Agreement; and

##### ensure reasonable precautions necessary to maintain the secrecy and confidentiality of the Confidential Information are taken.

#### The Operator may request the Customer’s financial information and disclose it to potential investors.

## **Complaints and Dispute Resolution**

#### If the Customer has a complaint in connection with this Agreement, the Customer must give notice of the complaint to the Operator setting out the details of the complaint and any steps taken to resolve the complaint.

#### The Operator must review the complaint and advise the Customer of the outcome of the Operator’s review within 20 Business Days of receiving the complaint.

#### If the Customer disputes the outcome of the Operator’s review of the complaint, the Customer must promptly notify the Operator of the dispute.

#### The Customer and the Operator must meet within 10 Business Days of the Operator receiving notice of the dispute and both parties must use reasonable endeavours to resolve the dispute.

#### Neither party may commence legal proceedings (other than for the purpose of seeking an urgent injunction or urgent declaratory relief) concerning a complaint or a dispute referred to under this clause 21 unless the parties have attempted to resolve the dispute in accordance with this clause 21.

#### Each party must continue to perform its obligations under this Agreement notwithstanding notification of a complaint or a dispute referred to under this clause.

## **Notices**

#### Any communication under this Agreement may be must be in writing and signed by the sender or by an authorised representative of the sender and sent to or left at the address of the addressee in Schedule 1 or, if the addressee has previously notified the sender in writing of an alternative address for notices, that alternative address.

#### If the delivery or receipt occurs on a day which is not a Business Day or at a time after 5.00 pm (both the day and time being in the place of receipt) it is regarded as having been received at 9.00 am on the next following Business Day.

## **GST**

#### For the purpose of this clause unless the context otherwise requires:

##### ***Adjustment*** means each form of adjustment to consideration provided for in this clause;

##### ***GST*** means any tax imposed on Supply by or through the *New Tax System (Goods and Services Tax) Act 1999* (Cth) (GST Act) and any related Tax Imposition Act. Where any other term is used in this clause which is defined in the GST Act it will have the meaning which it bears in the GST Act; and

##### ***Recipient, Supplier*** and ***Supply*** have the meaning they bear in the GST Act.

#### The parties acknowledge that the consideration under this Agreement excludes GST.

#### The parties agree that in the case of a Supply which is a taxable Supply, in addition to the consideration payable under this Agreement, the Recipient will pay an additional amount (**GST Amount**) equal to the GST payable on the Supply calculated in accordance with the GST Act and on the value stipulated in the GST Act in relation to the Supply.

#### The Recipient must pay the GST Amount at the same time and in the same way as any Electricity Payments to which the GST Amount relates and within [#] Business Days of receipt of a tax invoice and/or adjustment notes in relation to the Supply. The Supplier must do all things reasonably necessary to assist the Recipient to enable it to claim and obtain any input tax credit available to the Recipient in respect of the Supply.

## **General**

#### Each party will promptly execute all documents and do all things that the other party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of this Agreement and any transaction contemplated by it.

#### If anything in this Agreement is unenforceable, illegal or void then it is severed and the rest of this Agreement remains in force.

#### A provision of this Agreement that can and is intended to operate after its conclusion will remain in full force and effect.

#### This Agreement constitutes the entire Agreement and understanding between the parties concerning its subject matter.

#### This Agreement may not be varied unless in writing signed by both parties.

#### Nothing in this Agreement constitutes a partnership, joint venture or agency between the Operator and the Customer.

#### The rights and obligations of the Customer under this Agreement may not be assigned, novated or transferred without the prior written consent of the Operator.

#### Each party must bear its own costs and expenses arising out of and in connection with the negotiation and execution of this Agreement.

#### All duties and taxes which may be payable on or in connection with this Agreement must be borne by the Customer.

#### This Agreement may be executed in counterparts, each of which when executed will be an original and all the counterparts together will constitute one and the same instrument.

#### Any provision of this Agreement which requires a Party to use reasonable endeavours or exercise a function reasonably does not impose any obligation to:

##### commence any legal action or proceeding against any person;

##### perform any act that is uncommercial or unreasonable; or

##### procure absolutely that that thing is done or happens.

#### This Agreement is governed by and construed in accordance with all applicable laws in force in Victoria from time to time and the parties submit to the non-exclusive jurisdiction of the courts of the State.

## **Definitions and Interpretation**

#### **Agreement** means this Agreement, and includes the Recitals and Schedules.

#### **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act* *2010* (Cth) as amended from time to time.

#### **Authority** includes any government or governmental, semi-governmental, administration, fiscal or financial body, department, commission, council, authority, tribunal, agency or entity.

#### **Billing Interval** means the interval that the Operator will invoice the Electricity Payments as set out in Schedule 1.

#### **Business Day** means a day (not being a Saturday or Sunday or public holiday) on which Australian banks (as defined in Section 9 of the Corporations Act) are open for general banking business in Melbourne, Victoria.

#### **Break Fee** means the amount specified as such in Schedule 1.

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

#### **Commencement Date** means the date recorded in Schedule 1 or, if no date is recorded, the date that the Customer takes Delivery of the Solar Power System.

#### **Confidential Information** means information of a technical, business or financial nature, or otherwise reasonably identified as confidential, and includes all information that is:

#### personal information for the purposes of the *Privacy Act 1988* (Cth); and

#### not publicly available.

#### **Consequential Loss** means indirect or consequential loss or damage, including loss of profit, loss of revenue or loss of business however caused, and even if such loss or damage was foreseeable.

#### **Contract Period** means the period commencing on the Commencement Date and ending on the earlier of the date that the Customer purchases the Solar Power System in accordance with clause 10 or the End Date or the date on which this Agreement is terminated.

#### **Corporations Act** means the *Corporations Act* *2001* (Cth).

#### **CPI** means the All Groups Consumer Price Index number for the capital city in Victoria determined by the Australian Bureau of Statistics ABN 26 331 428 522 or the index officially substituted for it.

#### **Customer’s Representative** is the person named in Schedule 1.

#### **Delivery** means the transfer of physical possession of the Solar Power System to the Customer at the Site.

#### **Deposit** means the deposit amount set out in Schedule 1.

#### **Electricity Payments** mean the payments which must be made by or on behalf of Customer for generated solar electricity from the Solar Power System as set out in Schedule 1.

#### **End Date means** the date set out in Schedule 1.

#### **Environmental Credits** mean any and all rights, entitlements, credits, offsets, allowances, benefits or certificates of any kind that relate to renewable energy, greenhouse gas emissions or low-emission and which may be obtained by the Operator or the Customer, or to which either party is or becomes entitled to in relation to the generation of electricity by the Solar Power System, including small-scale technology certificates created under the *Renewable Energy (Electricity) Act 2000* (Cth).

#### **Feed-in Amount** means a tariff or other benefit paid by any retailer, Authority or electricity distribution Network operator in connection with the Solar Power System.

#### **Force Majeure Event** means the circumstances set out in clause 18.

#### **Generated Electricity** means the kilowatts generated per Billing Interval by the Solar Power System as determined by the Operator or the Operator’s representative from reading the Monitoring Device.

#### **Insolvent** means, in relation to a person, when the person is:

#### insolvent as that term is defined in Section 9 of the Corporations Act; or

#### the subject of an event described in Sections 459C(2) (a) to (f) or Section 585 of the Corporations Act (or it makes a statement from which another party to this Agreement may reasonably deduce it is so subject); or

#### under administration or suffers the appointment of a controller, administrator, liquidator or provisional liquidator as those terms are defined in Section 9 of the Corporations Act; or

#### is otherwise unable to pay its debts as and when they become due and payable.

#### **Interest rate** means the interest rate applied to overdue Payments as set out in Schedule 1.

#### **Law** means any statute, regulation, rule, proclamation, ordinance, by-law or code.

#### **Landlord** means [#insert name and ABN].

#### **Lease** the lease of the Premises granted by the Landlord to the Operator.

#### **Monitoring Device** means the Operator’s billable-grade monitoring device referred to in clause 12(a).

#### **Network** means the electricity distribution network to which the Site is connected.

#### **Network Contract** means a contract between the Customer and a Network operator in relation to the connection of the Site to the Network.

#### **Operator’s Representative** is the person named in Schedule 1.

#### **Personal Properties Security Register** means the same as in the PPSA.

#### **PPSA** means the *Personal Property Securities Act 2009* (Cth).

#### **Premises** means the location of the Solar Power System on the Site shown in Schedule 2.

#### **Purchase Option** has the meaning in clause 10(a).

#### **Purchase Price** means the amount specified in Schedule 5 for the period when the Customer gives notice under clause 10(a).

#### **Recoverable Amount** means the amount set out in Schedule 5 for the period when the Customer terminates this Agreement under clause 16(c).[***Drafting note: delete definition for ‘Recoverable Amount’ if Purchase Option applies*]**

#### **Retail Contract** means a contract between the Customer and a duly authorised retailer of electricity in relation to the electrical point of supply at the Site.

#### **Security Interest** has the meaning under the PPSA.

#### **Site** means the Customer’s premises described in Schedule 1.

#### **Solar Incentives** mean any accelerated depreciation, installation or productions-based incentives, tax credits and subsidies or other incentives available in respect of the Solar Power System, other than any Feed-in Amount.

#### **Solar Power System** means a solar power system, which includes the items of equipment described in Schedule 1 to this Agreement, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it.

#### **Total Loss** due to the Customer’s default the Solar Power System is, in the Operator’s reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated.

#### In this Agreement unless specified to the contrary:

* + - 1. the background, the Schedules, the execution page and the annexures (if any) are each incorporated in and form part of this Agreement;
      2. a reference to a party includes the party’s executors, administrators, successors and permitted assigns;
      3. if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; and
      4. if the time for performing an obligation under this Agreement expires on a day which is not a Business Day, then time is extended until the next Business Day.

Execution

**Executed** as an Agreement.

|  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- |
| |  |  |  | | --- | --- | --- | | **Executed** by [insert Customer execution block] | )  ) |  | | ...........................................................  Company Secretary/Director  ...........................................................  Name of Company Secretary/Director (print) |  | ...........................................................  Director  ...........................................................  Name of Director (print) | | )  ) | ...........................................................  Director  ...........................................................  Name of Director (print) |

|  |  |  |
| --- | --- | --- |
| **Executed** by [insert Operator execution block] | )  ) |  |
| ...........................................................  Company Secretary/Director  ...........................................................  Name of Company Secretary/Director (print) |  | ...........................................................  Director  ...........................................................  Name of Director (print) |

Schedule 1

Project Details

|  |  |
| --- | --- |
| **Billing Interval** | [insert: “monthly”, “quarterly”, “bi-annually” or “yearly”] |
| **Break Fee** | [insert] applied and added to the Purchase Price if the Customer terminates the contract before the End Date. |
| **Commencement Date** | [insert] |
| **Customer** | [insert Customer name]  Address: [insert Customer’s address]  Email: [insert Customer’s email address] |
| **Customer’s Representative** | [insert name]  Ph. [insert] / Mob. [insert]  Email: [insert] |
| **Deposit** | [insert] |
| **Electricity Payments** | Generated Electricity x Electricity Rate |
| **Electricity Rate** | [insert] increased by 2.5% per annum |
| **End Date** | [insert] |
| **Feed-in Amount** | [If Feed-in Amount is not to Customer’s account, then specify (refer to optional clause “Export of Electricity from the Site”] |
| **Interest Rate** | [insert]% per annum (on overdue payments) |
| **Increase to Electricity Payments** | [insert mechanism for calculating agreed increases]  [Drafting note: for CPI adjustment, insert: On and from [#insert date of first adjustment: ‘Day Month Year’], the Operator may increase the Electricity Payments by CPI once annually in accordance with clause 4(c).] |
| **Operator** | insert Operator name]  Address: [insert Operator’s address]  Email: [insert Operator’s email address] |
| **Operator’s Representative** | [insert name]  Ph. [insert] / Mob. [insert]  Email: [insert] |
| **Site** | [[insert address and title reference] |
| **Solar Power System** | [insert details of Solar Power System] |

Schedule 2

1. Premises

***[Drafting note: Insert detailed description of the Premises. E.g. this Schedule should include an accurate map/image of the Site with the location of the Premises clearly marked.]***

Schedule 3

1. Notice to the Customer

*Electricity Industry Act 2000* (Vic) - General Exemption Order

The Customer acknowledges the following:

#### This Agreement is covered by the Australian Consumer Law.

#### Under the Australian Consumer Law, the Supplier must not:

#### engage in conduct which is misleading or deceptive or is likely to mislead or deceive;

#### engage in unconscionable conduct in connection with the supply or possible supply of goods or services; or

#### make false or misleading representations in connection with the supply or possible supply of goods or services.

#### Under the Australian Consumer Law, the Buyers are entitled to various remedies including:

#### actions against the manufacturers of the Equipment (see Part 3-5 of the Australian Consumer Law); and

#### actions for damages for loss or damage suffered as a result of the Supplier’s contravention of the Australian Consumer Law, such action to be commenced within 6 years from the day on which the cause of action accrued (see Part 5-2 of the Australian Consumer Law).

#### This Agreement is separate to the Customer’s contracts with their licensed retailer and distributor, which are subject to the *Electricity Industry Act 2000* (Vic).

As between the Customer and the Operator, the Customer acknowledges and agrees that the information above contains all of the information required to be provided by the Operator to the Customer under condition (g) of the General Exemption Amendment Order 2015 issued under section 17 of the *Electricity Industry Act 2000* (Vic)

Schedule 4

1. Insurance

[**Option 1 – *Drafting note: delete if Customer is responsible for insuring the Solar Power System and use Option 2 below.*]**

**Operator to Insure**

#### The Operator will insure the Solar Power System for the duration of the Contract Period for an amount and on terms determined by the Operator acting reasonably and as a prudent owner and operator of the Solar Power System.

#### The Customer’s liability shall be limited to any loss, theft, damage or destruction of the Solar Power System that the Operator is unable to recover under the policy of insurance referred to in (a)]

#### **[OR]**

[**Option 2 – *Drafting note: delete if Operator is responsible for insuring the Solar Power System and use Option 1 above.*]**

**Customer to Insure**

#### During the Contract Period, the Customer shall, at its own expense, obtain and maintain the following insurances:

##### insurance of the Solar Power System to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident, and such other risks as the Operator may from time to time nominate in writing;

##### insurance for such amounts as a prudent owner or operator of the Solar Power System would insure for, or such amount as the Operator may from time to time reasonably require, to cover any third party or public liability risks of whatever nature and however arising in connection with the Solar Power System; and

##### insurance against such other or further risks relating to the Solar Power System as may be required by law, together with such other insurance as the Operator may from time to time consider reasonably necessary and advise to the Customer.

#### All insurance policies procured by the Customer shall be endorsed to provide the Operator with at least 20 Business Days' prior written notice of cancellation or material change (including any reduction in coverage or policy amount) and shall upon the Operator’s request name the Operator on the policies as a loss payee in relation to any claim relating to the Solar Power System. The Customer shall be responsible for paying any deductibles due on any claims under such insurance policies.

#### The Customer must give immediate written notice to the Operator in the event of any loss, accident or damage to the Solar Power System arising out of or in connection with the Customer’s possession or use of the Solar Power System.

#### If the Customer fails to effect or maintain any of the insurances required under this Agreement, the Operator shall be entitled to effect and maintain the same, pay such premiums as may be necessary for that purpose and recover the same as a debt due from the Customer.

#### The Customer shall, on demand, supply copies of the relevant insurance policies or other insurance confirmation acceptable to the Operator and proof of premium payment to the Operator to confirm the insurance arrangements].

Schedule 5

1. Purchase Price

| **Period** | **Recoverable Amount [*Drafting note: substitute ‘Recoverable Amount’ with ‘Purchase Price’ if option 1 is selected in clause 17*]** |
| --- | --- |
| 1. [#insert] | [#insert] |
| 1. [#insert] | [#insert] |
| 1. [#insert] | [#insert] |
| 1. [#insert] | [#insert] |
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