Guidance Notes

| **Toolkit guidance** |  |
| --- | --- |
| This template Loan Agreement (Secured) is: |  |
| * suitable for use where the Lender is the community solar organisation | **✓** |
| * suitable for use where the Borrower owns the Site | **✓** |
| * suitable for where the Borrower will be providing Security | **✓** |
| * not suitable for use when the loan is unsecured | ✘ |
| * not suitable for use where a third party is guaranteeing the loan, or where a third party is giving security for the loan | ✘ |
| * 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 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. * If money for the Loan is being raised from a private share issue – **purple** shaded * If purpose of Loan is to permit funding of other Projects or another purpose – **orange** 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 Lender’s name]

Secured Loan Agreement

[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 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***]

**Interest Rate** [***insert %***] per annum.

**Higher Interest Rate** an interest rate equal to the aggregate of [***insert %***] per annum and the Interest Rate.

1. **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 and, at the Lender’s option, either:

###### evidence that it is properly stamped and registered; or

###### all documents and the money required by the Lender to promptly stamp and register the Transaction Documents;

###### [***Optional:*** *If the Lender is raising the money for the Loan from a private share issue, the following optional clause 2(b) should be inserted.]*

#### [the Lender has, at least 5 business days before the Funding Date, completed a share issue in a manner sufficient to allow the Lender to fund the Loan, such share issue to have occurred in form and substance satisfactory to the Lender;

#### the representations and warranties set out in **clause 8.1** 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.

#### *[****Optional:*** *Clause 3(c) and the optional wording in clause 3(b) may need to be included if the purpose of the Loan is to permit the funding of other Projects or another purpose.]*

#### [Subject to **clause 4**(c),] [The/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.

#### [After payment of all costs required to achieve satisfactory completion of the Project, the Borrower may use the Loan to fully or partially fund one or more projects identified in the [***insert (if applicable) relevant project and/or masterplan/renewable energy strategy/framework for future projects***], with the prior written consent of the Lender.]

## Interest

### Payment and rate

#### The Borrower must pay interest on the Monies Owing until it becomes due and payable, and such interest must be paid on each Interest Payment Date.

#### Interest is payable at the Interest Rate.

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

#### [If:

##### an interest payment calculated at the Interest Rate is not received by the Lender on or before the relevant Interest Payment Date, and

##### an Event of Default subsists,

the Borrower must for the period to which it relates pay interest at the Higher Interest Rate.]

#### The Borrower must pay interest on any money which is due and payable but remains unpaid at the Interest Rate until such money is paid in full, and such interest must be paid on demand by the Lender.

### Calculation of interest

Interest will:

#### accrue daily;

#### be computed from and including the day when the money on which interest is payable becomes owing to the Lender by the Borrower until but excluding the day of payment of that money; and

#### be calculated on the actual number of days elapsed on the basis of a 365 day year.

### Interest which is not paid

#### The Lender may capitalise, on a monthly or such other periodical basis as the Lender reasonably determines, any part of any interest which becomes due and payable and is not paid on its due date.

#### Interest is payable in accordance with this document on capitalised interest.

## 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 11.2**, 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.

*[****Note****: The example loan agreement provided for Lismore Community Solar Farm included a certification process whereby the Lender agreed to provide the Borrower with a certificate setting out the Lender’s estimation of the aggregate Monies Owing as at 30 June of each calendar year. VCSA to confirm whether they would like to adopt this approach in order to administer the loan.]*

## 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.

## Representations and warranties given by the Borrower

### Representations and warranties

The Borrower 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:** the Borrower 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 the valid and legally binding obligations of the Borrower which is named in it as a party and is enforceable against the Borrower by the Lender in accordance with its terms;

#### **priority:** each Security Interest which each Transaction Document creates, exists and has the priority which the Lender has agreed to;

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

#### **full and correct disclosure:** all material information given to the Lender in relation to this document is correct, complete and not misleading, and the Borrower 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 a creditor of the Borrower;

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

#### [***Optional:*** *Consider including paragraphs (k) to (m) 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 the financial statements of the Borrower and its financial position at the date to which they are prepared;

#### **no change in financial position:** there has been no change in the financial position of the Borrower 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 the knowledge of the Borrower, 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 (n) if the borrower is a trustee*.]

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

### Lender’s reliance on representations and warranties

#### The Borrower 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 to the Lender under a Transaction Document.

#### [***Optional:*** *Consider including clause 9 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 clause 10 (financial undertakings) 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;

#### **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 does not pay any money due for payment by it under this document;

#### **insolvency:**

##### the Borrower 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 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 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 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;

##### the Borrower 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;

##### the Borrower 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 is presented and the petition is not stayed, withdrawn or dismissed within seven days or the Borrower presents a petition against itself;

##### the Borrower 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

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

#### **[other non-compliance:** the Borrower 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 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 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;

#### **loss of priority:** a Security Interest created by or purportedly created by a Collateral Security does not have or ceases to have the priority which it purports to have under the relevant Transaction Document or becomes ineffective to secure the payment of money or observance with the obligations which it purports to secure, otherwise than by any act of the Lender;

#### **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;

#### **enforcement of other security:** a person who holds a Security Interest over property of the Borrower becomes entitled to exercise a right under that Security Interest against the property to recover any money the payment of which is secured by that Security Interest or enforce any other obligation the compliance with which is secured by it;

#### **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 13.4**, 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 13** 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 15 (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;

#### information or documents relating to the Transaction Documents other than:

##### a description of the amount or obligation that is secured by any Security arising under any Transaction Document;

##### a description of the property to which any such Security has attached,

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 (except this paragraph does not require the Lender to disclose any information of the kind referred to in section 275(1) of the *Personal Property Securities Act 2009* (Cth)).]

## 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: |  |

1. Schedule 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.*]

1. Schedule 2: Definitions

In this document these terms have the following meanings:

[***Optional:*** *Delete definition of ‘Accounting Standards’ if the additional Financial Undertakings in* ***clause 10*** *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.
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.

**Collateral Security** means

* 1. any Security which secures the payment of money owing (actually or contingently) from time to time by the Borrower in relation to any of the Transaction Documents; and
  2. without limiting the generality of paragraph (a) *[****Insert****: security being provided by the Borrower (you may include all or any of the options below).]*

#### ***[Option 1 – General Security Agreement]***

* 1. [general security agreement granted by the Borrower to the Lender;

#### ***[Option 2 – Specific Security Agreement]***

* 1. specific security agreement granted by the Borrower to the Lender; and

#### ***[Options 3 – Mortgage]***

* 1. [mortgage]/[caveat] granted by the Borrower over the property located at [insert address] being the land described in certificates of title volume [insert volume no.] folio [insert folio no.].]

***[Note:***If the Borrower has assets which are available to be secured then any security being provided by the Borrower to the Lender should be specifically listed here. The form of security documents are not part of the Toolkit, but can be purchased from Corrs Chambers Westgarth by contacting [Vic.Community.Solar@corrs.com.au](mailto:Vic.Community.Solar@corrs.com.au).

You should also note the following in relation to each security document:

* **General Security Agreement** – You would include reference to this document if the Lender was taking security over all of the Borrower’s assets. The security interest created under the general security agreement will also need to be registered on the Personal Properties and Securities Register (**PPSR**) by the Lender within 20 business days of being created.
* **Specific Security Agreement** – You would include reference to this document if the Lender was taking security over specific assets of the Borrower (but not real property). The security interest created under the specific security agreement will also need to be registered on the PPSR within 20 business days of being created. There are implications under Australian insolvency law if a lender has security over some, but not all or substantially all, of the assets of a borrower. If the borrower appoints a voluntary administrator, there is a risk that the lender will be subject to that administration, and not be able to appoint a receiver to control the winding up of the borrower. You should seek further legal advice on this is it is an issue.
* **Mortgage or caveat** - If the Borrower owns land that is offered as security, the Lender could lodge a mortgage or a caveat over that land at the LandUse Victoria. There is a prescribed form and fee for each mortgage or caveat.]

1. [***Optional:*** *Delete definition of ‘Encumbrance’ if the additional Financial Undertakings in* ***clause 10*** *are not included.*]
2. **Encumbrance** means **a**ny 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. It includes a Security.
3. **Event of Default** means any event or circumstance described in **clause 11**.
4. [***Optional:*** *Delete definition of ‘Financial Indebtedness’ unless the additional Financial Undertakings in* ***clause 10*** *are included.]*
5. **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.
6. **Funding Date** has the meaning given to that term in **clause 1**.
7. **Higher Interest Rate** has the meaning given to that term in **clause 1**.
8. **Interest Payment Date** means [***insert the date(s) that interest will be paid by the Borrower***]
9. **Interest Rate** adopts the meaning given to that term in **clause 1**.
10. **Loan** has the meaning given to that term in **clause 1**.
11. **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.
12. **Monies Owing** means so much of the Loan as remains unrepaid from time to time.
13. **Project** meansthe acquisition, installation, construction and operation of the Solar Power System at the Site.
14. **Repayment Date** has the meaning given to that term in **clause 1**.
15. **Security** meansany document or transaction which reserves or creates a Security Interest.
16. **Security Interest** means any interest or right which secures the payment of a debt or other monetary obligation or the compliance with any other obligation.
17. **Site** means the Borrower’s premises described in **Schedule 1**.
18. **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;
   2. the Collateral Security; [***delete if Collateral Security is not required***] and
   3. any document which the Borrower and the Lender agree is a Transaction Document for the purposes of this document.

Execution

**Executed** as an agreement.

#### *[****Mandatory:*** *Execution blocks will need to be included and properly signed by both Borrower 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) |