Guidance Notes

| **Toolkit guidance** |  |
| --- | --- |
| This template Lease is: |  |
| * suitable for use where the CSO is the community solar organisation | **✓** |
| * suitable for use where the Customer is the consumer of the Generated Electricity | **✓** |
| * suitable for use where the Lessee owns the Site, or where the Lessee is a tenant of the Site (by utilizing the optional clauses) | **✓** |
| * suitable for use where the CSO operates and maintains the Solar Power System | **✓** |
| * suitable for use where the CSO 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 Lease Period | **✓** |
| * 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 a third party owns the Solar Power System | ✘ |
| * not suitable if the CSO 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 Customer (being the lessee) pays a nominal rental amount for the Solar Power System and may freely use the electricity generated by the Solar Power System.  This Lease establishes the arrangements under the Solar Equipment Lease Model. A power purchase agreement should be used under the PPA Model. | |
| Under this Lease:   * 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 CSO 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) * special provisions for ‘tenant-only’ Customer (purple)   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 as ‘not used’) all other options. | |

Summary of key terms

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

| **Obligation** | |
| --- | --- |
| **Term of Lease** | * The Lease comes into effect once it is signed by both parties, or if specified, after certain conditions are met (for example obtaining financing) (***clause 1***). * The Lease expires 20 days after the agreed “Lease Period” ends (***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***). |
| **Lease and maintenance of the System** | * The CSO leases the System to the Customer, and allows the Customer to use the electricity generated by it (***clause 3***). * The CSO continues to own the System, but the Customer takes on the risk of loss, theft, damage or destruction once the equipment is Delivered (***clause 6***). * The CSO will carry out routine maintenance on the System. Except in certain circumstances, this will be at the CSO’s cost. During the Term, the Customer must also provide reasonable maintenance (***clause 13***). |
| **Rent** | * The Customer must pay the CSO a periodic rent (set out in **Schedule 1**), which may increase annually in accordance with **Schedule 1**. * In some circumstances, the Customer must pay a deposit which can be used to reduce some of the rental payments (***clause 5***). |
| **Customer’s general responsibilities** | * The Customer must have obtained relevant licences (***clause 9***). * The Customer must comply with its responsibilities in ***clause 11***,including not altering the System and notifying the CSO about any defects (***clause 11***). |
| **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 CSO may waive) (***clause 12***). * If the purchase option isn’t exercised, or the Lease expires or is terminated, the Customer or CSO must decommission and remove the System (***clause 19***). |
| **Limitation of liability &**  **indemnities** | * The CSO is not liable for certain events (e.g. the Customer’s misuse of the System), and may limit its liability in some events (***clause******15***). * The Customer must indemnify the CSO for loss or damage arising out of its own negligent acts or omissions (***clause 16***). |
| **Termination** | * Clause 17 sets out the grounds for termination, including: * ***the CSO*** may terminate if the Customer relevantly defaults (e.g. fails to pay); * ***the CSO***may terminate in certain circumstances ifthe Customer ceases to occupy the site*;* * ***either party*** may terminate in certain circumstances, including if there is a relevant breach, insolvency or prolonged force majeure; and * ***the Customer*** may terminate for convenience (***clause 17***). |

May 2018

Community Solar Organisation (ACN ###) (CSO)

Host Site Company Name (ACN ##) (Customer)

Solar Equipment Lease

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**Date**

# Parties

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

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

# Background

1. The CSO 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 Lease.
2. The CSO has agreed to lease the Solar Power System to the Customer on the terms and conditions of this Lease.

# Agreed terms

## 

## Term and conditions precedent

#### [***Drafting note -*** ***Delete if no conditions precedent:*** Subject to clause 1(b),] this Lease comes into effect when it has been signed by both parties and expires on the day which is 20 Business Days after the end of the Lease Period, unless terminated earlier in accordance with its terms.

#### [***Delete if no conditions precedent***] This Lease will not come into effect unless and until:

##### the CSO has secured sufficient third party finance as is reasonably necessary to ensure that the CSO is able to comply with the CSO’s obligations under this Lease;

##### [insert any other conditions precedent]; and

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

#### The Customer must, at the time it signs this Lease, also sign the Declaration.

## Delivery and installation

#### The CSO must install the Solar Power System at the Site on or before the Installation Date.

#### 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.

## Lease of Solar Power System

#### The CSO agrees to grant to the Customer, and the Customer agrees to take on, the lease of the Solar Power System for the Lease Period on the terms of this Lease.

#### The CSO must not, other than in the exercise of its rights or performance of its obligations under this Lease or applicable Laws, interfere with the Customer’s quiet possession of the Solar Power System during the Lease Period.

#### The Customer acknowledges that the supply of electricity generated by the Solar Power System 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 Lease Period.

#### The Customer acknowledges and agrees that:

##### the amount of electricity generated by the Solar Power System will vary, including due to weather conditions; and

##### the CSO does not warrant or guarantee that the Solar Power System will generate any particular amount of electricity.

## Rental Payments

#### The Customer must, for each Payment Interval, pay the Rental Payment for the Payment Interval to the CSO within 10 Business Days after the last day of the Payment Interval.

#### The CSO may increase the Rental Payment in accordance with Schedule 1 by giving the Customer no less than 10 Business Days written notice.

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

##### expressly authorised by this Lease; or

##### required by Law.

#### If the Customer fails to make any payment due to the CSO under this Lease by the due date for payment, then the CSO may charge interest on the overdue amount at the Interest Rate. Such interest will accrue on a daily basis from the due date until full and final payment of the overdue amount is made to the CSO.

## Deposit

#### **[Optional]**

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

#### The Customer acknowledges that the Deposit is pre-payment of a portion of the Rental Payments, which shall reduce the cost of the Rental Payments up to the value of the Deposit.

## Title to Solar Power System

#### The Customer acknowledges and agrees that, although the Solar Power System will be attached to buildings at the Site:

##### the Customer has no ownership, interest or any other right or title in the Solar Power System except as expressly provided in this Lease;

##### the Solar Power System is not and will not become a fixture at the Site or any part of the Site or building at the Site; and

##### subject to clause 17, the Solar Power System can be removed by the CSO at the expense of the Customer if this Lease terminates and the Customer does not exercise its option under clause 12 to purchase the Solar Power System.

#### The Customer must notify any person who:

##### has any rights or interest in the Site (such as a mortgagee, landlord or tenant of the Site); or

##### has any rights or interest in any other property of the Customer (including financiers and potential purchasers),

that the Customer does not own, or have any rights or interest in, the Solar Power System except as expressly provided in this Lease.

#### The risk of loss, theft, damage or destruction of the Solar Power System shall pass to the Customer on Delivery. The Solar Power System shall remain at the sole risk and liability of the Customer unless and until such time as the Solar Power System is redelivered to the CSO (**Risk Period**).

#### The Customer must notify the CSO of any loss, theft, damage or destruction of the Solar Power System immediately upon becoming aware of any such loss, theft, damage or destruction.

## Environmental Credits

#### The CSO 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 CSO, execute any document or agreement necessary to:

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

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

## Personal Property Security Register

#### The Customer must provide all reasonable assistance to the CSO in securing the CSO’s rights and title in and to the Solar Power System, this Lease and any associated Security Interest, including by way of the CSO registering a Financing Statement on the Personal Property Security Register in respect of any such Security Interest.

#### The Customer acknowledges and agrees that, the CSO, as the owner of the Solar Power System, may register or grant to a third party a Security Interest in the Solar Power System at any time.

#### The Customer must not create or seek to create any Security Interest in or in respect of the Solar Power System.

#### Except where required by section 275(7) of the PPSA, information of the kind mentioned in section 275(1) of the PPSA must not be disclosed by either party.

## Licence and access

#### The Customer warrants that:

##### it has obtained all necessary licences, authorities and consents in relation to the installation of the Solar Power System at the Licensed Area in accordance with this Lease;

##### it has the authority to grant the Licence under this clause 9; and

##### **[*Drafting note – mark as ‘not used’ if Customer owns the* Site]** the terms of any licence, authority, consent or agreement in relation to the Licensed Area between the Customer and the owner of the Licensed Area acknowledge and protect the CSO’s rights, title and Security Interest in the Solar Panel System, and the CSO’s rights under this Lease.

#### The Customer grants the CSO and its contractors a licence to access and use the Licensed Area from the date of Delivery until either the Solar Power System has been removed from the Site by the CSO or the Customer has purchased the Solar Power System in accordance with clause 12, for the purpose of Delivering, installing, constructing, commissioning, operating, monitoring, inspecting, repairing, maintaining, upgrading, decommissioning, dismantling and removing the Solar Power System (**Licence**).

#### The Customer must ensure access to the Site and the Licensed Area is safe, convenient and unhindered.

## Insurance

The party identified in Schedule 1 must obtain and maintain insurance in accordance with Schedule 1.

## Customer’s responsibilities

The Customer must:

#### grant any licences or consents reasonably necessary for the installation, operation, maintenance and repair of the Solar Power System on the Site, and shall provide reasonable facilities for such inspection, operation, maintenance and repair, unless and until this Lease is terminated or the Customer purchases the Solar Power System pursuant to clause 12;

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

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

#### take all necessary steps to ensure that the CSO and the CSO’s Representative may access the Solar Power System during the Lease Period and for a reasonable period thereafter, including by procuring any required consents or licences from interested parties;

#### 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 CSO;

#### keep the CSO fully informed of all material matters relating to the Solar Power System, including any changes or proposed changes to the ownership of, or the Customer’s interest in, the Site [***Drafting note – delete if the Customer owns the land:***or to any licence, authority, consent or agreement referred to in clause 9(a)];

#### not, without the prior written consent of the CSO, 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 do or permit to be done any act or thing which will or may jeopardise the right, title and/or Security Interest of the CSO in the Solar Power System;

#### not allow the Solar Power System to be confiscated, seized or taken out of its possession or control;

#### if the Solar Power System is confiscated, seized or taken out of the Customer’s possession or control, the Customer must indemnify the CSO on demand against all loss, damage and expenses incurred by the CSO as a result of the confiscation, seizure or loss of possession or control;

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

#### ensure that at all times the Solar Power System remains identifiable as being the CSO’s property;

#### in the case of early termination by the Customer under clause 17(b) of this Lease, allow the CSO and the CSO’s Representatives access to the Site and the Licensed Area or any premises where the Solar Power System is located 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 10.

## Purchase Option

**[Optional]**

#### Subject to clause 12(b), the Customer may purchase the Solar Power System by giving written notice to the CSO no less than 30 Business Days before the date on which the purchase of the Solar Power System is to be complete in accordance with clause 12(c) (**Purchase Option**).

#### The Customer may only exercise the Purchase Option if all amounts due to the CSO under this Lease (as at the date on which the purchase of the Solar Power System is to be complete in accordance with clause 12(c)) have been paid to the CSO in full.

#### Provided the Customer exercises the Purchase Option in accordance with this clause 12 and either:

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

##### the CSO 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 12(a), this Lease shall automatically terminate and such title to the Solar Power System as the CSO 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 12 in the condition and at the location in which it is found on the date of such transfer.

## Maintenance of the Solar Power System

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

#### The CSO must use all reasonable endeavours to remedy, free of charge, any defect in the Solar Power System that manifests during the Lease 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 CSO reasonably determines was caused by the Customer or could have been fixed by the CSO remotely if the Customer had provided reasonable assistance.

#### The Customer must provide the CSO with reasonable assistance to maintain the Solar Power System by:

##### notifying the CSO 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 CSO may temporarily shut down the Solar Power System in order to repair or maintain the Solar Power System, or for safety reasons.

## 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 and installation of appropriate equipment (including meters).

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

#### The Customer must obtain the written consent of the CSO 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 CSO 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 Lease;

##### 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 CSO 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 Lease for any Consequential Loss.

#### To the extent permitted by Law, the CSO’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 CSO’s liability for failure to comply with any such condition, warranty, guarantee or other term is limited (at the CSO’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 CSO 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 Lease.

## Termination

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

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

##### **[*Option 1 - Drafting note: mark as ‘not used’ if Customer owns the Site]***any licence, authority, consent or agreement referred to in clause 9(a) is revoked, terminated or otherwise 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 Lease; or

###### enter into a similar lease with the CSO on terms that are acceptable to the CSO,

###### or

##### **[*Option 2 - Drafting note: mark as ‘not used’ and use Option 1 if Customer does not own and is a tenant of the Site*]**the Customer sells the land on which the Solar Power System is located and the new owner does not agree to promptly:

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

###### enter into a similar lease with the CSO on terms that are acceptable to the CSO;

###### or

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

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

##### the other party commits a material breach of any other term of this Lease 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 Lease 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 the terms of this Lease;

##### the other party becomes Insolvent; or

##### 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 Lease.

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

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

##### pays the CSO 50% of the Recoverable Amount [***Drafting note: substitute ‘Recoverable Amount’ with ‘Purchase Price’ if option 1 is selected in clause 18]*** on or before the date of termination.

## Consequences of termination

#### Upon termination of this Lease, without prejudice to any other rights or remedies available to the CSO, the Customer shall pay to the CSO on demand all Rental Payments and other sums due with any interest accrued pursuant to clause 4(d).

#### ***[Option 1- Drafting note: mark as ‘not used’ if Purchase Option does not apply and use Option 2 below***] If this Lease is terminated before the expiry of the Lease Period, other than by the Customer in accordance with clause 17(b)(i), 17(b)(ii) or 17(b)(iii), the Customer is deemed to have exercised the Purchase Option and must pay to the CSO on demand a sum equal to the Purchase Price which shall be payable in addition to the sums payable pursuant to clause 18(a).

#### **[*Option 2 – Drafting note: mark as ‘not used’ if Purchase Option applies and use Option 1 above*]** If this Lease is terminated before the expiry of the Lease Period other than by the Customer under clauses 17(b)(i), 17(b)(ii) or 17(b)(iii), the Customer must pay to the CSO the Recoverable Amount promptly on demand in addition to the amounts referred to in clause 18(a).

#### Termination or expiry of this Lease 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 Lease 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 12], on the first Business Day after the expiry of the Lease 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 CSO at the address nominated by the CSO or, if no address has been nominated for this purpose, the CSO’s address as shown at the beginning of this Lease; or

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

#### The CSO 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 CSO.

## Force Majeure

#### For the purposes of this Lease, 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 Lease (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 19 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 21(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 Lease; and

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

#### The CSO 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 Lease, the Customer must give notice of the complaint to the CSO setting out the details of the complaint and any steps taken to resolve the complaint.

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

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

#### The Customer and the CSO must meet within 10 Business Days of the CSO 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 22 unless the parties have attempted to resolve the dispute in accordance with this clause 22.

#### Each party must continue to perform its obligations under this Lease notwithstanding the existence of a complaint or a dispute referred to under this clause 22.

## Notices

#### Any notice under this Lease 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 of a notice occurs on a day which is not a Business Day or at a time after 5.00 pm in the place of receipt, it is regarded as having been received at 9.00am on the 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 24;

##### ***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 Lease 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 Lease, 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 Rental Payments to which the GST Amount relates and within 12 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 Lease and any transaction contemplated by it.

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

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

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

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

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

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

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

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

#### This Lease 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 Lease 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 Lease 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

### Definitions

In this document these terms have the following meanings:

|  |  |
| --- | --- |
| 1. **Australian Consumer Law** | Schedule 2 of the *Competition and Consumer Act 2010* (Cth) as amended from time to time. |
| 1. **Business Day** | 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 the capital city of the State. |
| 1. **Claim** | 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. |
| 1. **Confidential Information** | Any information of a technical, business or financial nature, or otherwise reasonably identified as confidential, including all information that is:   * 1. personal information for the purposes of the *Privacy Act 1988* (Cth); and   2. not publicly available. |
| 1. **Consequential Loss** | 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. |
| 1. **Corporations Act** | The *Corporations Act 2001* (Cth). |
| 1. **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. |
| 1. **CSO’s Representative** | The person named as such in Schedule 1. |
| 1. **Customer’s Representative** | The person named as such in Schedule 1. |
| 1. **Deposit** | The deposit amount out in Schedule 1. |
| 1. **Declaration** | The declaration to be signed by the Customer set out in Schedule 1. |
| 1. **Delivery** | The transfer of physical possession of the Solar Power System to the Customer at the Site. |
| 1. **Environmental Credits** | Any rights, entitlements, credits, offsets, allowances, benefits or certificates of any kind that relate to greenhouse gas emissions or low-emission or renewable energy and are capable of being created or obtained in respect of the electricity generated by the Solar Power System, including small-scale technology certificates created under the *Renewable Energy (Electricity) Act 2000* (Cth). |
| 1. **Feed-in Amount** | A tariff or other benefit paid by any retailer, Authority or electricity distribution Network operator in connection with the Solar Power System. |
| 1. **Financing Statement** | Has the meaning given in the PPSA. |
| 1. **Force Majeure Event** | The circumstances set out in clause 19. |
| 1. **Insolvent** | 1. In relation to a person, when the person is:    1. insolvent as that term is defined in section 9 of the Corporations Act; or    2. 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 Lease may reasonably deduce it is so subject); or    3. 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    4. is otherwise unable to pay its debts as and when they become due and payable. |
| 1. **Installation Date** | 1. The date in Schedule 1. |
| 1. **Interest Rate** | The interest rate set out in Schedule 1. |
| 1. **Law** | Any statute, regulation, rule, proclamation, ordinance, by-law or code. |
| 1. **Lease** | This Lease, and includes the Recitals and Schedules. |
| 1. **Lease Period** | The period specified as such in Schedule 1. |
| 1. **Licence** | Has the meaning given in clause 9(b). |
| 1. **Licensed Area** | The area at the Site where the Solar Power System (including wires and all other supporting infrastructure) is, or is to be, installed, as described in Schedule 3, and all reasonable access routes on the Site to or from that area. |
| 1. **Network** | The electricity distribution network to which the Site is connected. |
| 1. **Network Contract** | A contract between the Customer and a Network operator in relation to the connection of the Site to the Network. |
| 1. **Payment Interval** | The periods specified as such in Schedule 1. |
| 1. **Personal Properties Security Register** | Has the meaning given in the PPSA. |
| 1. **PPSA** | The *Personal Property Securities Act 2009* (Cth). |
| 1. **Purchase Option** | Has the meaning given in clause 12. |
| 1. **Purchase Price** | The amount specified in Schedule 1 for the period when the Customer gives notice under clause 12(a). |
| 1. **Retail Contract** | A contract between the Customer and a duly authorised retailer of electricity in relation to the electrical point of supply at the Site. |
| 1. **Rental Payment** | The amount specified as such in Schedule 1. |
| 1. **Risk Period** | Has the meaning given in clause 6(c). |
| 1. **Security Interest** | Has the meaning given in the PPSA. |
| 1. **Site** | The Customer’s premises specified described in Schedule 1. |
| 1. **Solar Incentives** | 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. |
| 1. **Solar Power System** | A solar power system, which includes the electricity meter and the items of equipment described in Schedule 2 to this Lease, all substitutions, replacements or renewals of such equipment and all related accessories, manuals and instructions provided for it. |
| 1. **State** | The state of the Commonwealth of Australia set out in Schedule 1. |
| 1. **Total Loss** | That, due to the Customer’s act or omission, the Solar Power System is, in the CSO’s reasonable opinion, damaged beyond repair, lost, stolen, seized or confiscated. |

### Interpretation

In this Lease, unless expressly states otherwise:

#### the background, Schedules, the execution page and the annexures (if any) are each incorporated in and form part of this Lease;

#### a reference to a party includes the party’s executors, administrators, successors and permitted assigns;

#### 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

#### if the time for performing an obligation under this Lease expires on a day which is not a Business Day, then time is extended until the next Business Day.

Schedule 1

|  |  |
| --- | --- |
| **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”] |
| **Installation Date** | [insert date] |
| **Insurance** | [**Option 1 – *Drafting note: delete if Customer is responsible for insuring the Solar Power System and use Option 2 below.*]**  **CSO to Insure** The CSO will insure the Solar Power System for the duration of the Lease Period for an amount and on terms determined by the CSO acting reasonably and as a prudent owner and operator of the Solar Power System.The Customer’s liability under clause 6(c) shall be limited to any loss, theft, damage or destruction of the Solar Power System that the CSO is unable to recover under the policy of insurance referred to in (a).**[OR]** [**Option 2 – *Drafting note: delete if CSO is responsible for insuring the Solar Power System and use Option 1 above.*]**  **Customer to Insure** During the Lease Period and the Risk 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 CSO 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 CSO 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; andinsurance 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 CSO 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 CSO 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 CSO’s request name the CSO 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 CSO 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 Lease, the CSO 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 CSO and proof of premium payment to the CSO to confirm the insurance arrangements]. |
| **Interest Rate** | [insert] |
| **Increase to Rental Payment** | [insert mechanism for calculating agreed increases]  [Drafting note: for CPI adjustment, insert: On and from [#insert date of first adjustment: ‘Day Month Year’], the CSO may increase the Rental Payment by CPI once annually in accordance with clause 4(b).] |
| **Lease Period** | [insert][***#Drafting note – e.g. “dd.mm.yyyy – dd.mm.yyyy”***] |
| **Customer** | [insert name] (ABN ###)  Address: [insert]  Email: [insert] |
| **Customer’s Representative** | [insert name]  Ph. [insert] / Mob. [insert]  Email: [insert] |
| **CSO** | [insert name] (ABN ###)  Address: [insert]  Email: [insert] |
| **CSO’s Representative** | [insert name]  Ph. [insert] / Mob. [insert]  Email: [insert] |
| **Deposit** | [insert] |
| **Site** | [insert site detail, including reference to plot and title number] |
| **State** | [insert] |

**SOLAR POWER SYSTEM**

System Size: [**insert**]kWp

Inverter: [**insert**]

PV Modules: [**insert**]

**RENTAL PAYMENTS AND PAYMENT INTERVALS**

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| **This Lease becomes a TAX INVOICE upon the date it is signed by all parties.**  Supplier: [**insert**]  ABN: [**insert**]  Total finance value: $[**insert**] GST inclusive  GST component of the total finance value: $[**insert**] |

# Table of Rental Payments and Payment Intervals

[#**insert details below**]

| **Pay Period** | **Payment** | **Principal** | **Interest** | **Start Balance** | **End Balance** | **Recoverable Amount [*Drafting note: substitute ‘Recoverable Amount’ with ‘Purchase Price’ if option 1 is selected in clause 18*]** |
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|  | [#insert] | [#insert] | [#insert] | [#insert] | [#insert] | [#insert] |
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DECLARATION

(to be made by Customer)

I/We declare that the goods to be hired by me/us from the CSO are to be hired wholly or predominantly for business purposes.

**IMPORTANT**

You should only sign this declaration if the goods are hired wholly or predominantly for business purposes.

By signing this declaration you may lose your protection under the National Credit Code.

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| ...........................................................  Company Secretary/Director  ...........................................................  Name of Company Secretary/Director (print) |  | ...........................................................  Director  ...........................................................  Name of Director (print) |

Schedule 2

1. Solar Power System

[#insert specification documents of Solar Power System.]

Schedule 3

1. Licensed Area

[#insert detailed description of precise location of the Solar Power System; e.g. attach google earth image with Licensed Area shaded.]

Execution

**Executed** as an Agreement.

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

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