Confidentiality

Agreement

Solar Recovery Corporation Pty Ltd

[insert name of entity]

Confidentiality Agreement

This agreement is made on [insert date] 2021

between

Solar Recovery Corporation Pty Ltd (ACN 647 327 044)

of 22 Holmes Road, Moonee Ponds Victoria 3039

(**SRC**)

and

[insert name]

of [insert address]

(**insert Acronym**)

BACKGROUND

A. The Parties wish to embark on the Approved Purpose. Each party possesses certain Confidential Information which it may be necessary to disclose to the other Party for the Approved Purpose.

B. The Parties have agreed to disclose some of their respective Confidential Information to each other on the terms and conditions of this agreement.

OPERATIVE PROVISIONS

1 Definitions & Interpretations

1.1 Definitions

In this agreement:

Approved Purpose means for the purpose of the Parties exchanging information in order to:

(a) discuss a potential or actual business transaction or business opportunity, which may also lead to a potential or actual provision of Services, or one or more Contracts entered or arrangements made between the parties, as agreed from time to time; and/or

(b) consider, formulate, evaluate, develop, negotiate and/or (if applicable) implement a potential or actual commercial transaction, and any related transactions on such terms as the parties may agree from time to time.

Authorised Person of a Party means an:

(a) officer or employee of the Party or any Related Body Corporate of the Party;

(b) adviser of the Party;

(c) officer or employee of an adviser of the Party.

Business Day means a day on which banks open for trading in Victoria, excluding Saturdays, Sundays and public holidays.

Commencement Date means the date of this agreement.

Confidential Information means any information

(a) relating to the business of a Party or a Related Body Corporate of a Party;

(b) of a Party which is designated by the respective owner as confidential;

(c) of a Party which is of a confidential or sensitive nature, which is marked or denoted as confidential or which a reasonable person to whom that information is disclosed or to whose knowledge the information comes would consider confidential notwithstanding the information was known to the other Party prior to this agreement; or

(d) which is disclosed by a Party to the other Party, directly or indirectly, or otherwise comes to the knowledge of the other Party in relation to or in connection with this agreement, whether that information is in oral, visual or written form or is recorded or embodied in any other medium; or

(e) of any kind whatsoever and whether in writing or not and whether identified as being confidential or not which is disclosed, or made available or accessible to the other Party by or on behalf of a Party and which relates to a Party's business or proposed business, or the business of a Related Body Corporate of a Party, including, without limitation, any trade secrets, know-how, data, documents, manuals, reports, systems, techniques, processes, equipment, business, concepts, technology, intellectual property, analysis, lists of actual or potential customers or partners and suppliers, business or marketing plans, pricing, financial and accounting books, records and regulatory affairs.

Contract means any contract, agreement, understanding or arrangement between the parties.

Ineffective means void, illegal or unenforceable.

Parties means SRC and [insert acronym], and **Party** means, as the context requires, one of them.

Related Body Corporate has the meaning given in sections 9 and 50 of the *Corporations Act 2001* (Cth).

Services means the provision of any services as agreed by the parties from time to time.

1.2 Interpretations

In this agreement unless the context otherwise requires:

(a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or legislative provision;

(b) the singular includes the plural and vice versa;

(c) a reference to an individual or person includes a corporation, partnership, joint venture, association, authority, trust, state or government and vice versa;

(d) a reference to any gender includes all genders;

(e) a reference to a clause is to a clause of this agreement;

(f) a reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions), as amended, novated, supplemented or replaced from time to time;

(g) a reference to any party to this agreement, or any other document or arrangement, includes that party's executors, administrators, substitutes, successors and permitted assigns;

(h) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

(i) where an expression is defined anywhere in this agreement it has the same meaning throughout; and

(j) a reference to "dollars" or "$" is to an amount in Australian currency.

2 Access

The Parties acknowledge that each Party may be given access to certain Confidential Information of the other Party, for the Approved Purpose.

3 Obligation of confidentiality

In consideration of:

(a) being given access to Confidential Information of the other Party; and

(b) the mutual promises contained in this agreement,

each of the Parties agrees that it will keep and will ensure that its Authorised Persons keep confidential the Confidential Information of the other Party unless and until the other Party agrees that the Confidential Information is in the public domain other than by a breach of this agreement.

4 Duties of Parties

4.1 Non-disclosure and use

Each Party will not and will ensure that its Authorised Persons do not:

(a) disclose any of the Confidential Information of the other Party to any other person without the prior written consent of the other Party; or

(b) use any of the Confidential Information of the other Party otherwise than for the Approved Purpose.

4.2 **Uncertainty**

If either Party is uncertain as to whether any information is Confidential Information of the other Party, that Party will treat the information as if it were Confidential Information of the other Party and as not being in the public domain unless and until the other Party agrees in writing that the information is in the public domain.

4.3 **Precautions**

Each Party will take all reasonable precautions to maintain the confidentiality of and to prevent the disclosure or use of the Confidential Information of the other Party.

4.4 **Unauthorised disclosure or use**

Each Party will immediately notify the other Party of any unauthorised disclosure or use of the Confidential Information of the other Party of which that Party becomes aware and will take all steps which the other Party may reasonably require in relation to such unauthorised disclosure or use.

4.5 **Return of Confidential Information**

(a) At the conclusion of the Approved Purpose or upon the written request of the other Party, at its own expense, each Party will immediately:

(i) deliver to the other Party, all records and materials (and copies of those records and materials) containing or embodying the Confidential Information of the other Party in the possession of that Party, its employees and any person to whom that Party has disclosed all or any of the Confidential Information of the other Party (whether or not with the consent of the other Party); and

(ii) destroy and, if applicable, permanently and, to the extent technically possible to do so, irretrievably delete from any and all storage media (digital or electronic or otherwise) Confidential Information of the other Party.

(b) A Party may retain Confidential Information to the extent that this is necessary for corporate governance, compliance with statutory, regulatory or professional obligations or standards, provided that all content which is not strictly necessary for the purposes of such compliance is completely and, to the extent technically possible, irreversibly, redacted.

(c) If requested by a Party, the other Party must provide a sworn statement verifying it has complied with the obligation set out in clause 4.5(a).

5 Permitted Disclosure

(a) A Party may disclose or make available such part(s) of the Confidential Information to its Related Body Corporate, director(s), officer(s), employees, contractors and agents (as applicable) who have a specific need to access the Confidential Information in connection with the Approved Purpose, provided always that those persons or entities have first agreed in writing to keep the Confidential Information in confidence on the same terms and conditions as those set out in this agreement.

(b) Each Party remains fully liable to the other Party for any unauthorised use or disclosure of any of the Confidential Information by any third party to whom it discloses or makes available that Confidential Information.

6 Exceptions

Neither Party will be bound to keep confidential any information if and to the extent that:

(a) the information is, or becomes part of the public domain otherwise than by breach of this agreement by that Party;

(b) the information is lawfully obtained by that Party from another person without any restriction as to use and disclosure;

(c) the information was in that Party's possession prior to disclosure to it by the other Party;

(d) the information is required to be disclosed by the operation of any law, stock exchange, judicial or parliamentary body or governmental agency;

(e) the other Party has authorised in writing the disclosure of the information; or

(f) the information is disclosed by the other Party to the other Party's professional advisers who have agreed to keep confidential the Confidential Information.

7 Term and termination

(a) This agreement commences on the Commencement Date and a Party's rights to access or to use any Confidential Information will cease when the other Party requests the return of the Confidential Information pursuant to clause 4.5(a).

(b) Despite clause 4.5 and except as otherwise provided, the obligations of confidence and non-use contained in this agreement survive termination or expiration of this agreement.

8 No rights conferred

(a) Neither this agreement nor the disclosure of any Confidential Information under this agreement grants or must be deemed to grant any licence or right to a Party to use the Confidential Information or the intellectual property of a Party except as specifically provided in this agreement.

(b) Nothing in this agreement constitutes a binding commitment on the part of either Party to enter into any further Contracts with the other Party.

9 Remedy

Each Party acknowledges and accepts that:

(a) the other Party would suffer financial and other loss and damage if the Confidential Information of the other Party were disclosed to any other person or used for any purpose other than the Approved Purpose and that monetary damages would be an insufficient remedy;

(b) in addition to any other remedy which may be available in law or equity, the other Party is entitled to injunctive relief to prevent a breach of this agreement and to compel specific performance of this agreement; and

(c) it will immediately reimburse the other Party for all costs and expenses, (including legal costs and disbursements on a full indemnity basis) incurred in enforcing the obligations of that Party under this agreement.

10 Indemnity

10.1 Indemnity for costs

Each Party indemnifies the other Party against all costs, expenses, actions or claims directly or indirectly incurred or suffered by the other Party as a result of any breach of this agreement by that Party.

10.2 Scope of indemnity

The indemnity in clause 10.1 extends to and includes all costs, damages and expenses incurred by the other Party in defending or settling any such costs, expenses, actions, suits proceedings, claims or demands (including legal costs and disbursements on a full indemnity basis).

11 Notices

11.1 Method of giving notices

A notice, consent, approval or other communication (each a Notice) under this agreement must be in writing, signed by a person duly authorised by the sender, addressed to the Party to whom it is to be given and:

(a) hand delivered to the recipient's postal address;

(b) sent by pre-paid mail to the recipient's postal address; or

(c) sent by email to the recipient's email address.

11.2 Time of receipt

A Notice given to a Party in accordance with this clause is treated as having been given and received:

(a) if hand delivered to a Party's address, on the day of delivery if a Business Day, otherwise on the next Business Day;

(b) if sent by pre-paid mail, on the third Business Day after posting; or

(c) if sent by email and the sender does not receive a message from its internet service provider or the recipient's mail server indicating that it has not been successfully transmitted, on the day of sending if a Business Day, otherwise on the next Business Day.

12 Entire agreement

(a) This agreement is the entire agreement of the Parties on the subject matter.

(b) The only enforceable obligations and liabilities of the Parties in relation to the subject matter are those that arise out of the provisions contained in this agreement.

(c) All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this agreement.

13 Enforceability

13.1 Effect of ineffectiveness on part of the agreement

Any clause or part of a clause of this agreement which is Ineffective in any jurisdiction is Ineffective only to that extent in that jurisdiction.

13.2 Severance of Ineffective parts of the agreement

Where any clause or part of a clause is Ineffective it may be severed without affecting any other part of this agreement.

14 Waiver

14.1 No waiver except by notice in writing

No right under this agreement is waived or deemed to be waived except by notice in writing signed by the Party waiving the right.

14.2 No waiver of subsequent breaches

A waiver by one Party under clause 14.1 does not prejudice its rights in respect of any subsequent breach of this agreement by the other Party.

14.3 No waiver by extension or delay

The failure to exercise, or any delay in exercising, any right, power or remedy by a Party does not operate as a waiver or an election to abandon the right to exercise any right, power or remedy.

15 Variation

A variation of this agreement will be in writing and signed by the Parties.

16 Authorised signatory

Where this agreement is signed by someone other than the director, then the executing Party warrants:

(a) that it executes this agreement as agent for the director; and

(b) it has appropriate authority to execute this agreement on behalf of the director and to bind the Party to this agreement; and

(c) that the executing Party under this clause agrees to indemnify the other Party in the event that they do not have authority to execute this agreement on behalf of the director.

17 Counterparts

This agreement may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

18 Governing law and jurisdiction

18.1 Governing law

This agreement is governed by the law in force in Victoria.

18.2 Submission to jurisdiction

The parties submit to the non-exclusive jurisdiction of the courts of Victoria and any courts which may hear appeals from those courts in relation to any proceedings in connection with this agreement.

Executed as an agreement on [insert date] 2021

Executed by **Solar Recovery Corporation Pty Ltd (ACN 647 327 044)** in accordance with section 127(1) of the Corporations Act 2001)
)
)

_____

Signature of Chief Executive Officer

Brian C Wilson

Executed by **[insert name of entity (ACN)]** in accordance with section 127(1) of the Corporations Act 2001)
)
)

_____

Signature of director

_____

Name of director

_____

Signature of director

_____

Name of director