

# **LOAN AGREEMENT**

Limited Recourse Loan

BETWEEN:

**THE PERSON** whose details are set out in **Item 1** of the  
**Schedule**

(the **Lender**)

AND:

**COASTAL ECOLOGY PROTECTION GROUP  
INCORPORATED**

(the **Borrower**)

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Between: **THE PERSON** whose details are set out in Item 1 of the Schedule  
(the **Lender**);

And: **COASTAL ECOLOGY PROTECTION GROUP INCORPORATED**  
(A.B.N. 77 336 211 687) of P.O. Box 8038 Grange, SA 5022  
(the **Borrower**).

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## **RECITALS**

- A. The Lender has agreed, at the request of the Borrower, to advance to the Borrower the amount set out in Item 3 of Schedule 1 on the date set out in Item 4 of Schedule 1 by way of an interest-free loan on the terms set out in this Agreement (the **Loan**).
- B. The parties agree that:
- The purpose of the Loan is to provide working capital to the Borrower;
  - The Loan is limited recourse, limited to surplus monies in the general fund of the Borrower from time to time; and
  - The Loan will only be repayable in accordance with the terms of this Agreement, being either by:
    - Payment of an amount equal to the Loan to the Borrower as a deductible donation; or
    - Cash repayment by the Borrower, which will be limited to surplus monies (if any) in the general fund of the Borrower.
- C. The parties have agreed to enter into this Agreement to set out and record the terms of the Loan.

The parties **AGREE AS FOLLOWS**:

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### **1. PROVISION AND ACCEPTANCE OF LOAN**

- 1.1 On or about the date of this Agreement, the Lender agrees to advance the Loan to the Borrower by way of cash advance.
- 1.2 The Borrower agrees to accept the Loan on the terms of this Agreement.

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### **2. REPAYMENT OF LOAN**

#### **2.1 Timing of repayment**

- (a) The Borrower must repay the Loan on or before the 31st of October 2020.

- (b) The Borrower may repay the Loan earlier than the dates set out in clause 2.1 at its option.
- (c) No periodic repayments are required to be made by the Borrower during the term of the Loan.

## **2.2 Method of repayment**

- (a) The parties agree that the Borrower may repay the Loan (at the Borrower's election) by way of:
  - (i) Cash repayment; and/or
  - (ii) Payment of an amount equal to the Loan to the Borrower as a deductible donation by the Lender.
- (b) Any repayment under clause 2.2(a)(ii) will be effective if the Borrower issues the Lender with a receipt for a deductible donation in the amount of the Loan.
- (c) The Lender agrees to accept a repayment in accordance with clause 2.2(a) as a valid repayment of the Loan.

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## **3. LIMITED RECOURSE**

- 3.1 Notwithstanding any other term of this Agreement, the parties agree that the liability of the Borrower in respect of the Loan is limited to the aggregate amount available for payment or satisfaction of the Loan from the surplus monies comprised in the general fund of the Borrower.
- 3.2 If the amounts available to pay or satisfy the Loan from the general fund of the Borrower under clause 3.1 are insufficient to pay or satisfy the Loan, the Borrower is not personally liable for any deficiency, and the Lender must accept the amounts paid or recovered under clause 3.1 in full and final satisfaction of the Loan.
- 3.3 The Lender agrees that it will not:
  - (a) Apply or take any proceedings to have the Borrower wound up or made bankrupt; or
  - (b) Apply for or take any proceedings for the obtaining of a judgment against the Borrower.
- 3.4 In exercise of any right under this Agreement, if the Lender or any attorney or receiver incurs any liability as agent for the Borrower, or for which the Borrower is liable, the aggregate liability of the Borrower is subject to the limitation under clause 3.1.

#### 4. TERMINATION DUE TO UNLAWFULNESS

4.1 If after the date of this Agreement:

- (a) Any order of any court of competent jurisdiction;
- (b) Any change in, or extension of, or application of, any law or regulation, whether or not having the force of law; or
- (c) The official interpretation of any law or regulation by any governmental or other authority, monetary or banking agency or central bank charged with the administration of that law or regulation,

makes it unlawful for the Lender to give effect to or maintain any right or obligation under this Agreement, the Lender may, by notice to the Borrower, declare the Lender's obligation to maintain the Loan is terminated immediately.

4.2 The Borrower must, within the lesser of 80 business days of receiving notice under clause 4.1 and the maximum grace period allowed by any relevant law or regulation for compliance by the Lender with its obligations, repay the whole of the Loan to the Lender by way of one of the repayment methods specified in this Agreement.

4.3 The parties acknowledge and agree that the limited recourse provisions in clause 3 apply to the Borrower's obligation to repay the Loan under clause 4.2.

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#### 5. GENERAL PROVISIONS

##### 5.1 Announcements and confidentiality

- (a) Subject to clause 5.1(b), no announcement relating to the subject matter of this Agreement, or any matter ancillary to this Agreement, may be made by either party without the prior written approval of the other party.
- (b) Clause 5.1(a) does not prevent either party making (even in the absence of the approval of the other party) any announcement or disclosure required by law.

##### 5.2 Dispute resolution

- (a) All disputes or differences that arise between the parties (the **Disputants**) about the construction or effect of this Agreement (including any question regarding its existence, validity or termination) or the rights, duties and liabilities of the Disputants under this Agreement (each a **Dispute**), must initially be referred on notice by one Disputant to each other Disputant.
- (b) A Disputant may give notice to the other Disputants that this clause 5.2 applies to the Dispute (a **Dispute Notice**). The Dispute Notice must include a summary of the Dispute and notify a time within a period of ten business days (beginning five business days after the service of the Dispute Notice) and a place in Adelaide, South Australia, at which the Disputants (or their representatives) must meet to try to resolve the Dispute.

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- (c) The Disputants must meet at the time and place specified in the Dispute Notice to try to resolve the Dispute. The Disputants must, if necessary, continue to negotiate for two consecutive business days, unless they otherwise agree to reconvene.
- (d) If the Dispute has not been resolved by the Disputants by the end of the meeting, a Disputant may, within ten business days, apply to the President of the *Law Society of South Australia* to appoint a neutral adviser to assist in a further attempt by the Disputants to resolve the Dispute in good faith by structured negotiations. The neutral adviser is to act as an expert, and not as an arbitrator, and is entitled to appoint any technical experts considered necessary to assist in resolving the Dispute. The costs of the neutral adviser must be met equally by the Disputants.
- (e) If the Disputants fail to appoint a neutral adviser within the ten business days referred to in clause 5.2(d), or the Disputants fail to reach agreement in the structured negotiations within 20 business days of the neutral adviser being appointed, then any Disputant may refer the Dispute to a court of competent jurisdiction.

**5.3 Existing rights**

The expiry or termination of this Agreement is without prejudice to any rights that have already accrued to either of the parties under this Agreement.

**5.4 Amendments**

No amendment to this Agreement binds the parties unless it is made in writing, expressed to be supplemental to, or in substitution for, the whole or part of this Agreement, and signed by the parties.

**5.5 Waiver**

Any waiver of a term of this Agreement must be in writing, and is effective only to the extent that it is specifically set out in writing. No failure, delay or forbearance by a party in exercising any right, power or privilege under this Agreement, and no course of dealing among any of the parties, operates as a waiver of any right, power or privilege.

**5.6 Severance**

If any provision of this Agreement (or part of a provision) is deemed or held to be illegal, invalid or unenforceable (an **Invalid Part**), this Agreement is to be considered divisible and inoperative to the extent of the Invalid Part. In all other respects this Agreement remains in full force and effect, and there must be added automatically a provision as similar as possible to the Invalid Part which is legal, valid and enforceable.

**5.7 Legal effect and advice**

- (a) Each party to this Agreement intends the provisions of this Agreement to be legally binding and enforceable.

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- (b) The parties expressly acknowledge and agree that the solicitor who prepared this Agreement acted as legal counsel to the Borrower and not to any other party to this Agreement, and each other party has been strongly advised to seek and obtain their own independent legal advice on the terms and effect of this Agreement before signing this Agreement.
- (c) Each party acknowledges that it has had the opportunity to receive separate and independent legal advice before entering into this Agreement, and if it has failed to obtain such advice it is not entitled to rely on such failure to not comply with this Agreement. This is an essential term.

**5.8 Parties**

If a party consists of more than one person, this Agreement binds each of them separately and any two or more of them jointly. An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly. When a party has the right or is under an obligation to carry out an act under this Agreement, that act may be carried out by that party, or any one or more of its employees, contractors, agents or representatives.

**5.9 Entire agreement**

This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter of this Agreement. This Agreement supersedes all prior negotiations, understandings, agreements, representations, warranties and correspondence prior to the execution of this Agreement, that now cease to have any force or effect.

**5.10 Execution in parts**

This Agreement may be executed in any number of counterparts. The counterparts together will be taken to constitute the one and the same instrument. This Agreement will have effect on execution by all parties of either this Agreement or a counterpart of this Agreement.

**5.11 Governing law**

This Agreement is governed by, and must be construed in accordance with, the laws of South Australia. The parties agree by their execution of this Agreement to irrevocably submit to the jurisdiction of the courts of South Australia (Adelaide Registry) for all matters arising under or in connection with this Agreement. Each party waives any right it has to object to an action being brought in the courts of South Australia, including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

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**6. INTERPRETATION**

- 6.1 The Recitals are true and correct in every material particular and form part of this Agreement, but any fact or matter referred to in the Recitals that is inconsistent with any term appearing in this Agreement must be read as subject to that term.
- 6.2 In this Agreement, unless the context indicates a contrary intention:

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- (a) Headings are for convenience only, and do not affect interpretation;
- (b) The plural includes the singular, and vice versa;
- (c) If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) A reference to a 'person' includes a reference to an individual, a body corporate (wherever incorporated), a body politic, an association of persons (whether incorporated or unincorporated), a partnership, a trust, a person in the capacity as a trustee, a person in the capacity as the legal personal representative of a deceased estate, and a superannuation fund;
- (e) A reference to a 'business day' means any day that banks are open for business in Adelaide, South Australia, excluding weekends and public holidays;
- (f) A reference to a 'month' is a reference to a calendar month;
- (g) A reference to a 'clause', 'Schedule' or 'Annexure', is a reference to a clause of, or a schedule or annexure to, this Agreement;
- (h) A reference to this Agreement includes a reference to any amendment, novation, variation, supplemental deed or replacement from time to time;
- (i) A reference to a 'party' to this Agreement (or another agreement or document) includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representative);
- (j) Reference to any statute, or any subordinate legislation or instrument includes all statutes, subordinate legislation or instruments amending, modifying, consolidating, re-writing, re-enacting or replacing them, and a reference to a statute includes all subordinate legislation and instruments made under that statute;
- (k) A reference to 'dollars' and '\$' is to Australian currency; and
- (l) Nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement, or any part of it.

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**EXECUTED AS AN AGREEMENT** on \_\_\_\_\_ 20\_\_.

**EXECUTED** by **THE LENDER** in  
the presence of:

\_\_\_\_\_  
(Signature of witness)

\_\_\_\_\_  
(Name of witness)

\_\_\_\_\_  
**The Lender**

**EXECUTED** by **COASTAL  
ECOLOGY PROTECTION  
GROUP INCORPORATED** by its  
duly authorised officer(s):

\_\_\_\_\_  
**Authorised Officer**

\_\_\_\_\_  
**Authorised Officer**

**Schedule 1**  
**General terms**

**Item 1: Lender**

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<b>Full name(s):</b>	
<b>Residential address:</b>	
<b>Phone no:</b>	
<b>Email:</b>	

**Item 2: Borrower**

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Name: Coastal Ecology Protection Group Incorporated

A.B.N.: 77 336 211 687

Address: P.O. Box 8038 Grange SA 5022

**Item 3: Loan amount**

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Amount: \$ \_\_\_\_\_

**Item 4: Loan date**

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Date: \_\_\_\_\_

**END OF SCHEDULE**