



Memorandum of Understanding

Particulars

Important Notice

The Particulars, Schedules, Annexures and the Terms and Conditions are to be read together and collectively constitute the terms of the Agreement.

Each of the parties to this Agreement should carefully check the whole document and make appropriate deletions, alterations and/or additions. By executing the following pages, each of the parties to this Agreement are acknowledging that they have read and understood all of the Terms and Conditions of the Agreement and have been given a reasonable opportunity to seek independent legal advice.

Item 1. CPHL

Legal Entity	Address
[Insert name] (ABN [insert])	[insert address]

Item 2. BSG

Legal Entity	Address
Bendigo Sustainability Group (ABN 92 157 965 158)	23a Somerville Street, Flora Hill VIC 3550

Item 3. Area

Insert the relevant area for permitted use as may be applicable. XXX local government areas.

Item 4. Permitted Purpose

Collaboration between the parties by sharing Confidential Information, including documents, methodologies, Intellectual Property, information and insights about their respective community renewable energy projects in order to assist each other party to develop new community projects in its region.

Item 5. Key Documents

- (a) Power Purchase Agreement;
- (b) Roof Rental Agreement;
- (c) Community Solar Farm Option to Lease Land;
- (d) Community Solar Farm Land Lease Agreement;
- (e) Special Purpose Vehicle Unit Trust Document set (including Operations Agreement,

Trust Agreement and other related documents),
and all and any other documents which Beck Legal have prepared or assisted in the
preparation of.

Item 6. Additional Provisions

NIL

Signing page

Executed as an Agreement on:

Executed by CPHL:

Executed by **Insert Name** (ABN **[insert]**) in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

Executed by BSG:

**Executed by Bendigo Sustainability Group
(ABN 92 157 965 158)** in accordance with
section 127 of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

Executed by Beck Legal:

Executed by Bowcole Pty Ltd (ACN 163 869 243) trading as Beck Legal in accordance with section 127 of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

Area has the meaning provided to that term in Item 3.

Claim means claims, actions, proceedings, demands, liabilities and obligations (whether performed or unperformed), representations, acts, omissions and proceedings made against the person concerned, however it arises and whether it is present or future, fixed or unascertained, actual or contingent.

Confidential Information means all Information of whatsoever nature, which is disclosed by a Disclosing Party to a Recipient Party (directly or indirectly, and whether oral, written or embodied in other physical form), including the Key Documents or which relates to:

- (a) the business structure or method of operation of that Disclosing Party;
- (b) the accounting and financial affairs of that Disclosing Party;
- (c) the business activities of that Disclosing Party;
- (d) the research and development activities of that Disclosing Party;
- (e) the real and personal property (including Intellectual Property, whether protected by registration or not) of that Disclosing Party;
- (f) a business opportunity that is identified as a result of the sharing of information pursuant to this Agreement;
- (g) any other information which by its nature of the circumstances of its disclosure should reasonably be regarded as confidential or commercially sensitive; or
- (h) the subject matter of and parties to this Agreement,

but does not include any subject information that:

- (i) can be established by the relevant Recipient Party to have been lawfully known to that Recipient Party at the time of its disclosure, or to have subsequently become known to that Recipient Party, other than as a result of disclosure from a third party owing an obligation of confidentiality to the Disclosing Party in respect of the same (directly or indirectly);
- (j) can be established by the relevant Recipient Party to have been lawfully within the public domain at the time of its disclosure, or to have subsequently lawfully entered the public domain, other than by a breach or a deemed breach of the terms of this Agreement by the relevant Recipient Party;
- (k) can be established by the relevant Recipient Party to have been developed by the Recipient Party independently of the Disclosing Party, without reference to and without the benefit of the Confidential Information;
- (l) is required to be disclosed by law; or
- (m) the parties agree (in writing) that it is not confidential.

Disclosing Party means any party to this Agreement who discloses Confidential Information to a Recipient Party under this Agreement.

Information means information, communications or data in any form including, but not limited to, oral, written, graphic or electro-magnetic form, which deals with matters including, but not limited to, a Disclosing Party or the Disclosing Party's services, products, service/product specifications, processes, procedures, policies, prices, rates, terms of loan acceptance, discounts, costs, business

affairs, future plans, ideas, technical data, customer lists, the Disclosing Party's Intellectual Property and/or other aspects of the Disclosing Party's business.

Intellectual Property means, in respect of a party, all intellectual and industrial property rights and interests (including common law rights and interests) owned, held or otherwise lawfully used by that party, including (without limitation):

- (a) patents, service marks, copyright material, registered designs, plant variety rights, trade names, trademarks, symbols and logos;
- (b) patent applications and applications to register plant varieties, trademarks, service marks and designs;
- (c) all source code, object code, formulae, methods, plans, prototypes, algorithms, data, drawings, specifications, characteristics, equipment, designs, inventions, discoveries, improvements, ideas, know-how, experience, processes, software products, trade secrets, price lists, costings, brochures, literary creations, concepts, plans, projections, layout designs, geographical indications, goodwill attaching to intellectual property any other similar information; and
- (d) any right of similar nature to any of the above.

Key Documents means the documents specified at Item 5.

Liabilities means debts, obligations, Claims, losses, liabilities, costs or expenses of any kind and however arising, including reasonable legal fees, penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable.

Particulars means the particulars of agreement which precede the terms and conditions of this Agreement.

Permitted Purpose has the meaning provided to that term in Item 4.

Recipient Party means any party to this Agreement who receives Confidential Information from a Disclosing Party under this Agreement.

Regulatory Authority means:

- (a) any government or local authority and any department, minister or agency of any government; and
- (b) any other authority, agency, commission or similar entity having powers or jurisdiction under any law or regulation or the listing rules of any recognised stock exchange.

Related Body Corporate has the definition given to that term in the *Corporations Act 2001* (Cth).

Representative of a party means any director, officer, employee, agent, consultant or professional adviser of that party or of its Related Body Corporate, together with any party connected to a purchase or potential purchase of the Recipient

1.2 Interpretation

In this Agreement, unless specified to the contrary:

- (a) the background, the Particulars, the execution page and the annexures (if any) are

each incorporated in and form part of this Agreement;

- (b) a reference to the singular includes the plural and vice versa;
- (c) a reference to a given gender includes all other genders;
- (d) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have corresponding meaning;
- (e) use of the word including and similar expressions are not, nor are they to be interpreted as, words of limitation;
- (f) a reference to a person includes a natural person, a company or other entities recognised by law;
- (g) 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;
- (h) a reference to writing includes any mode of reproducing words, figures or symbols in tangible and permanently visible form and includes fax transmission;
- (i) a party includes the successors and permitted transferees and assigns and if a party is a natural person, includes executors and personal legal representatives;
- (j) where any obligation is imposed on, or any benefit enures for, two or more persons, the obligation binds or enures for the benefit of (as the case may be) those persons jointly and each of them severally;
- (k) if the time for performing an obligation under this Agreement expires on a day which is not a Business Day, then time is extended until the next Business Day;
- (l) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislation or legislative provision substituted for, that legislation or legislative provision;
- (m) a reference to any governmental or statutory body includes anybody which replaces, succeeds to the relevant powers and functions of, or which serves substantially the same purposes or objects as such body;
- (n) the Background paragraphs of this Agreement are adopted as and form part of this Agreement; and
- (o) no rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of this Agreement or any part of it.

1.3 **Compliance with Law**

- (a) This Agreement is to be interpreted so that it complies with all applicable State and Commonwealth laws and if any provisions do not comply then it must be read down so as to give it as much effect as possible.
- (b) If it is not possible to give that provision any effect at all, however, then it is to be severed from this Agreement in which case the remainder of this Agreement will continue to have full force and effect.

1.4 **Index and Headings**

The Index and any headings are for ease of reference only and do not affect the interpretation of this

Agreement.

2. Provision of Confidential Information

The Recipient Party acknowledges and agrees that the Confidential Information is confidential and of significant commercial value to the Disclosing Party and that any unauthorised disclosure of the Confidential Information would cause loss or damage to the Disclosing Party.

3. Disclosure of Confidential Information

- (a) The Disclosing Party will provide to the Recipient Party Confidential Information related to the expertise, knowledge and documentation it has developed as a result of the community renewable energy projects it has undertaken.
- (b) The Recipient Party acknowledges that any Confidential Information disclosed to it is being disclosed solely for the Permitted Purpose of this Agreement and is subject to all terms of this Agreement.
- (c) Any and all Key Documents provided by a Disclosing Party may be used by the Recipient Party only within the Area and as expressly permitted by this Agreement.
- (d) The Recipient Party agrees to not to share or distribute the Confidential Information to any third party.

4. Confidentiality

4.1 Recipient's obligations

Except as expressly permitted by this Agreement, the Recipient Party:

- (a) must use the Confidential Information for the Permitted Purpose only;
- (b) must hold the Confidential Information in strict confidence and not disclose it or otherwise make it available to any person;
- (c) must not use any Confidential Information for any purpose other than for the Permitted Purpose or as otherwise permitted by the Disclosing Party;
- (d) must not copy, extract, record or reproduce any Confidential Information;
- (e) must store all Confidential Information so that it is protected from unauthorised access, use, copying, reproduction or disclosure and in a way that it can be retrieved later;
- (f) must not use the Confidential Information whether wholly or partially and whether alone or in concert with any other person in order to develop or market any product or service which is similar to any product or services (including proposed products or services or prototypes) of the Disclosing Party; and

- (g) must promptly notify the Disclosing Party if it becomes aware or suspects that any Confidential Information has been, or is likely to be, held, disclosed, used, copied, reproduced or stored in a way that is inconsistent with the terms of this Agreement.

4.2 **Disclosure to Approved Persons**

- (a) The Recipient Party may disclose Confidential Information to an Approved Person if:
 - (i) that Approved Person reasonably requires access to that Confidential Information for the Permitted Purpose; and
 - (ii) the Recipient Party has informed the Approved Person that the Confidential Information is confidential and that the Approved Person is required to comply with the terms of this Agreement as if it were the Recipient Party.
- (b) The Recipient Party must procure that each of the Approved Persons to whom Confidential Information is disclosed under this clause strictly observes all of the Recipient Party's obligations under this Agreement as if the obligations were imposed on that Approved Person.

4.3 **Required disclosure**

Nothing in this Agreement prevents the Recipient Party or its Approved Persons from disclosing Confidential Information if:

- (a) disclosure of that Confidential Information is required to be made by law or the rules of any Regulatory Authority and that requirement has not arisen as a result of any act or omission by the Recipient Party; and
- (b) the Recipient Party complies with clause 4.4.

4.4 **Limiting disclosure**

Before the Recipient Party or any of its Approved Persons disclose Confidential Information under clause 4.3:

- (a) the Recipient Party must notify the Disclosing Party as soon as reasonably practicable after it becomes aware that disclosure is required; and
- (b) unless immediate disclosure is required, the Recipient Party must:
 - (a) give the Disclosing Party a reasonable opportunity to comment on the requirement for, and proposed form of, the disclosure;
 - (b) amend any factual inaccuracy, and consider in good faith any other comments of the Disclosing Party on the form of the disclosure; and
 - (c) take all steps reasonably required by the Disclosing Party to prevent or restrict the disclosure of the Confidential Information.

4.5 **Liability of Recipient Party**

The Recipient Party will be liable to the other parties for any action or omission of any Approved Person in relation to the Confidential Information as if they were the actions or omissions of the Recipient Party.

4.6 **Other obligations of confidence**

The Recipient acknowledges that its obligations under this clause are in addition to, and nothing in this Agreement limits, any common law or equitable obligations of confidence owed.

5. **Key Documents**

5.1 **Use of Key Documents**

The Key Documents may be used by the Recipient Party within the Area, provided that the Recipient Party:

- (a) uses the Confidential Information only for a specific purpose as agreed between the parties;
- (b) agrees and acknowledges that BSG and Beck Legal make no representation or warranty as to the suitability of any Confidential Information and Key Documents and that all such information and documents are supplied are general in nature only;
- (c) agrees and acknowledges that it must not rely or accept any Confidential Information provided as a representation or an inducement in the execution and entering into any arrangement or agreement;
- (d) obtains independent legal advice as to the terms of the relevant Key Documents and as to its obligations, rights and liabilities under such documents;
- (e) acknowledges and agrees that it is not entitled to sublicense any Key Documents;
- (f) releases and indemnifies BSG and Beck Legal, their servants and agents from and against all Claims, liability and expenses whatsoever which may be brought or made against it or them by any person in respect of or by reason of or arising out of use of the Confidential Information and Key Documents.

5.2 **Non-permitted use.**

The Key Documents may not be used or shared in any way outside the Area.

5.3 **Return or destruction**

Within fifteen (15) Business Days after a written request from a Disclosing Party, the Recipient Party must at its own expense:

- (a) return to the Disclosing Party or destroy, or procure the destruction of, all documents and other materials containing Confidential Information in the possession, power or control of the Recipient Party or its Representatives (whether or not created by the Recipient or its Representatives);

- (b) to the extent technically practicable, delete or procure the deletion of, any Confidential Information that has been entered into a computer, database or other electronic means of data or any other information storage medium by or on behalf of the Recipient Party or its Representatives (whether or not created by the Recipient Party or its Representatives); and
- (c) confirm in writing to the Disclosing Party that all of the Confidential Information required to be returned, destroyed or deleted pursuant to this clause 5.3 has been so returned, destroyed or deleted.

5.4 **Effect of return or destruction**

The return, destruction or deletion of any Confidential Information in accordance with clause 5.3 does not release the Recipient Party from its obligations under this Agreement.

5.5 **Non Return**

Nothing in clause 5.3 shall require the Recipient Party to return or destroy any documents and materials containing or based on the Confidential Information that the Recipient Party is required to retain by any applicable law, or to satisfy the requirements of a regulatory authority or body of competent jurisdiction or the rules of any listing authority or stock exchange, to which it or any of its Related Bodies Corporate is subject. The provisions of this Agreement shall continue to apply to any documents and materials retained by the Recipient Party pursuant to this clause 5.5.

6. **Right, title or interest in Confidential Information**

This Agreement does not give a Recipient Party any right, title or interest in any Confidential Information disclosed to it by a Disclosing Party.

7. **Sublicences**

The Recipient Party agrees and acknowledges that is not entitled to sublicense the Confidential Information, including the Key Documents, or any of the rights and obligations under this Agreement.

8. **Term**

This Agreement is for five (5) years duration. There is an option to extend the term for a further period by mutual agreement.

9. **Due Diligence**

- (a) Each Recipient Party agrees to undertake its own due diligence (including but not limited to legal and financial reviews) on any Confidential Information provided by a Disclosing Party, should it decide to apply it to their own work at any time in the future.
- (b) No Disclosing Party provides any warranties as to the accuracy or completeness of its Confidential Information. Each Recipient Party must rely on its own judgment in assessing the Confidential Information disclosed to it.
- (c) Each Recipient Party will indemnify and hold harmless each Disclosing Party from and against all loss, costs, expenses or damage which the Disclosing Party may incur as a result of any breach or omission by the Recipient Party of its obligations pursuant to this Agreement.

10. Indemnification

- (a) The parties agree to release, indemnify and hold each other party harmless (including its officers, directors and employees) from and against any and all Claims, losses, liabilities, damages, settlements, expenses and costs (including, without limitation solicitors fees and court costs) which arise out of provision of Confidential Information under this Agreement.
- (b) To the maximum extent permitted by law, the parties must indemnify and keep indemnified Beck Legal on a full indemnity basis from and against all Claims and Liabilities suffered or incurred in connection with the provision of Confidential Information under this Agreement or use of the Key Documents.
- (c) To the maximum extent permitted by law, the parties must indemnify and keep indemnified Beck Legal on a full indemnity basis from and against any Liability suffered or incurred by a party in avoiding, defending, disputing, resisting, responding to or appearing in, or preparing to avoid, defend, dispute, resist, respond to or appear in response to any Claim or Liability which relates in any way to the provision of Confidential Information under this Agreement or use of the Key Documents.

11. Governing law and jurisdiction

This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of Victoria, Australia. Each party irrevocably agrees that the courts of Victoria have the non-exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.

12. General

12.1 Acknowledgements

The parties acknowledge:

- (a) that this Agreement is not intended to compel either party to disclose or make available any information (whether confidential or not) to the other;
- (b) that any business opportunity between the parties that may be identified as a result of the information sharing process, and which the parties both want to pursue further, will be the subject of a separate agreement; and
- (c) except as expressly stated in this Agreement, that party has not relied on any representation, warranty or undertaking of any kind made by or on behalf of another party in relation to the subject matter of this Agreement.

12.2 **Time of the Essence**

Time shall be of the essence of the parties and the obligations hereunder.

12.3 **Survival**

- (a) The parties acknowledge and agree that the undertakings given in relation to the Confidential Information shall survive and continue in full force and effect until such time as the Confidential Information becomes public knowledge other than by breach of this Agreement.
- (b) All other provisions of this Agreement which can and are intended to operate after its conclusion will remain in full force and effect.

12.4 **Further Assurance**

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

12.5 **Costs**

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

12.6 **Other Agreements**

Each Recipient Party's obligations in respect of the relevant Disclosing Party's Confidential Information shall be in addition to any other obligation under any other agreement between the parties which involves a Disclosing Party's Confidential Information, unless expressly excluded by reference.

12.7 **Counterparts**

- (a) This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one and the same instrument.
- (b) This Agreement is not binding on any party unless one or more counterparts have been duly executed by, or on behalf of, each person named as a party to this Agreement.

12.8 **Waiver**

- (a) A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.

- (b) A party will not be liable for any loss, cost or expense of any other party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.

12.9 No Amendments without agreement

This Agreement may not be modified, discharged or abandoned unless by a document signed by the parties.