

Application for interim and final authorisation under s88(1) of the Competition and Consumer Act 2010 (Cth)

Information

Parties to the proposed conduct

1. Provide details of the applicants for authorisation, including:

1.1 name, address (registered office), telephone number and ACN

1.2 contact person's name, position, telephone number and email address

1.3 a description of business activities

1.4 email address for service of documents in Australia.

Applicants include named and unnamed organisations.

Named organisations include:

- MERCY HEALTH
 - Mercy Health provide hospital care, aged care, mental health programs, specialist women's healthcare, early parenting services, palliative care and home and community care in Victoria and New South Wales.
 - MERCY HEALTH AUSTRALIA LTD, ABN 89 614 115 856 and the contracting entities:
 - MERCY AGED AND COMMUNITY CARE LTD, ABN 77 191 901 062
 - MERCY HOSPITALS VICTORIA LTD, ABN 74 762 230 429
 - MERCY PALLIATIVE CARE LTD, ABN 77 896 699 763
 - RICE VILLAGE LTD, ABN 58 089 460 935
 - Chris Bourke, Project Manager – Emissions Reduction,
[REDACTED]

Unnamed organisations include:

- Unrelated entities from a variety of industries including but not limited to:
 - Pharmaceuticals, healthcare services, manufacturing, education, property services, transport, agriculture, food processing/production, waste management, not-for-profit and others
- Related entities who may be in the same industry, have similar operations or adjacency in the supply chain may also join the group
- Organisations that have at least one medium or large point of electricity use in Victoria
- Intend to switch to or continue use of renewable electricity

While we do not place a limit to the number of organisations which may join the group, total consumption of applicants shall not exceed the consumption thresholds defined in section 8.0 of this document. Recruitment of businesses into the buying group is underway and expected to close by May 2024.

2. If applicable, provide details of the other persons and/or classes of persons who also propose to engage, or become engaged, in the proposed conduct and on whose behalf authorisation is sought. Where relevant provide:

2.1 name, address (registered office), telephone number and ACN

2.2 contact person's name, telephone number and email address

2.3 a description of business activities.

[Not applicable]

3. Provide details of the proposed conduct, including:

3.1 a description of the proposed conduct and any documents that detail the terms of the proposed conduct:

The applicants propose to establish a renewable energy purchasing group to achieve the Business Renewables Buying Group objectives of more quickly and cost effectively assisting businesses transition to and/or repeat procurement of renewable electricity (the **Project**).

The Project has been established following the success of the first Business Renewables Buying Group (the **Pilot**) which collectively purchased renewable energy in July 2023 (Authorisation number: AA1000634).

The Project involves the establishment of a joint renewable energy buying group, whereby the Applicants pool their electricity demand and place a single tender into the market calling for proposals for an electricity supply arrangement and an equivalent quantity of large-scale generation certificates (LGC's) from a specific renewable energy project or projects connected to the National Electricity Market (NEM). The electricity supply and the LGC's may be provided by a single electricity Retailer (if the Retailer is vertically integrated) or by a consortium including a Retailer and developer.

The Project has over 30 Victorian Councils leading in the recruitment of businesses into the buying group and funding the Project Facilitator. This involves participating Councils marketing the buying group opportunity to businesses, generate leads and supporting businesses completing an expression of interest to join the buying group. Yarra City Council is the nominated Council lead to co-ordinate Council participation and work with and oversee the operation of the Project Facilitator.

Businesses that elect to join the buying group (Participants) do so by executing the Memorandum of Understanding that provides the rules of participation in the procurement process, appointment of Legal and Energy advisors and for selection of preferred electricity Retailer.

Each Retail Supply Agreement and each LGC Supply Agreement between the Applicants and successful retailer would be on the same (or substantially similar) terms and conditions. From a contracting perspective the organisations are acting individually, that is, there is no plan for overarching commercial agreement between group members that impacts Retail Supply Agreements.

3.2 the relevant provisions of the Competition and Consumer Act 2010 (Cth) (the Act) which might apply to the proposed conduct are:

Sections 45, 45AF, 45AG, 45AJ and 45AK.

3.3 the rationale for the proposed conduct:

The primary purpose for the Project is to pool participant demand for renewable electricity to create a combined volume that attracts more offers and enables negotiation as a group to contract materially cheaper electricity from existing or new utility scale renewable energy generation systems than would otherwise be achieved by participants individually engaging the market.

An important, though secondary purpose, is the provision of support to increase the likelihood of Participants switching to renewable energy. Support in this instance comprises technical, legal and commercial advice to navigate the volatility and complexity of Australian energy markets.

3.4 the term of authorisation sought and reasons for seeking this period. By default, the ACCC will assume you are seeking authorisation for five years. If a different period is being sought, please specify and explain why.

The Applicants seeks both interim and final authorisation for the Project.

The Project intends to request indicative pricing from the proposed retailers (refer to retailer list in section 5.0) upon receiving interim authorisation. Activities conducted during interim authorisation period will include pricing requests, electricity load forecasting, cost evaluation, market testing and legal review of terms & conditions. Interim authorisation contributes greatly to the Project's success (evidenced by the Pilot program); namely by encouraging retailer confidence, ensuring an equitable process and providing further credibility to our conduct.

The earliest contract start date is expected to be 1 July 2024 – the Project is seeking interim authorisation by April 2024 to provide sufficient time to conduct a competitive multi-round procurement process.

Final authorisation is requested not later than the beginning of June 2024 to enable execution of Retail Supply Agreements in time for supply commencement of 1 July 2024.

Final authorisation is requested for a period of 11 years, being the expected term of the tender process and the maximum term of each Agreement between the successful tenderer and each Applicant (which represents the Applicants' best estimate of the minimum period of purchasing commitment by each Applicant that would be required to secure pricing from the Project). It is more common for agreements to be for 5 to 7 years, however 10-year offers are not uncommon and can provide attractive conditions.

4. Provide documents submitted to the applicant's board or prepared by or for the applicant's senior management for purposes of assessing or making a decision in relation to the proposed conduct and any minutes or record of the decision made¹

¹ Applicants are encouraged to consult with the ACCC prior to lodgement to discuss the scope and range of documents needed in the context of the proposed conduct for which authorisation is sought.

Enclosed with this application is a copy of the Memorandum of Understanding proposed to be entered into by the Applicants and other unknown entities. This document governs the framework for cooperation and management of this project and appoints 1Circle as the Facilitator of the Group and leader of relevant interactions. The Memorandum of Understanding submitted with this application is a template and does not contain any confidential or commercially sensitive information about the applicants.

5. Provide the names of persons, or classes of persons, who may be directly impacted by the proposed conduct (e.g. targets of a proposed collective bargaining arrangement; suppliers or acquirers of the relevant products or services) and detail how or why they might be impacted.

The class of persons who may be directly impacted by the proposed conduct include electricity suppliers. Following is a list of likely electricity Retailers that will be invited for tender as part of the Business Renewable Buying Group. This is not an exhaustive but indicative list, furthermore it is likely we may publish the tender on a public tender portal that will ensure openness in the tender process.

Retailers that have been contacted (during December 2023) as part of early market engagement are noted accordingly (see column titled “Engaged”). All retailers are to be Engaged by the end of January 2024.

RETAILER	ENGAGED	CONTACT DETAILS
AGL Retail Energy		Fiona Thompson [REDACTED]
Alinta Energy Retail Sales Pty Ltd		Andrew Barnes [REDACTED]
Diamond Energy		Lachlan Richards [REDACTED]
Energy Australia Pty Ltd		
Shell Energy	Y	Jeremy Halstead [REDACTED]
Flow Power (Progressive Green Pty Ltd)	Y	Steven Grant [REDACTED]
Iberdrola Australia (formerly Infigen)		James McKell [REDACTED]
Momentum Energy Pty Ltd		Nigel Brimble [REDACTED]
Origin Energy Electricity Limited		Domenic Piccolo [REDACTED]
Red Energy Pty Ltd		
Engie Energy	Y	Chris Cornish [REDACTED]
Tango Energy		Francesco Presacco [REDACTED]
Smartest Energy	Y	Matthew Koopman [REDACTED]

6. Describe the products and/or services, and the geographic areas, supplied by the applicants. Identify all products and services in which two or more parties to the proposed conduct overlap (compete with each other) or have a vertical relationship (e.g. supplier-customer).

The proposed conduct concerns an arrangement to collectively arrange electricity supply and acquire an equivalent quantity of large-scale generation certificates (LGC's).

The proposed conduct involves Applicants purchasing grid electricity within the NEM, particularly in Victoria and NSW.

7. Describe the relevant industry or industries. Where relevant, describe the sales process, the supply chains of any products or services involved, and the manufacturing process.

The following markets are relevant to the assessment of the Project's effect on competition

- a) A market for the generation and wholesale supply of electricity in the NEM or, in the alternative, in one or more regions of the NEM, including Victoria
- b) A market of the retail supply of electricity to commercial and industrial end customers in Victoria

8. In respect of the overlapping products and/or services identified, provide estimated market shares for each of the parties where readily available.

	Applicants in Victoria	Victoria	NEM
Annual electricity consumption FY2023, TWh	0.200	43.7	188.4
Annual LGC requirement FY2023	200k	NA	33,000k

	Applicants in NSW	NSW	NEM
Annual electricity consumption FY2023, TWh	0.150	68	188.4
Annual LGC requirement FY2023	150k	NA	33,000k

	Applicants in QLD	QLD	NEM
Annual electricity consumption FY2023, TWh	0.05	54.1	188.4
Annual LGC requirement FY2023	50k	NA	33,000k

	Applicants in SA	SA	NEM
Annual electricity consumption FY2023, TWh	0.05	11.7	188.4
Annual LGC requirement FY2023	50k	NA	33,000k

	Applicants in TAS	TAS	NEM
Annual electricity consumption FY2023, TWh	0.05	11	188.4
Annual LGC requirement FY2023	50k	NA	33,000k

9. In assessing an application for authorisation, the ACCC takes into account competition faced by the parties to the proposed conduct. Describe the factors that would limit or prevent any ability for the parties involved to raise prices, reduce quality or choice, reduce innovation, or coordinate rather than compete vigorously. For example, describe:

9.1 existing competitors

9.2 likely entry by new competitors

9.3 any countervailing power of customers and/or suppliers

9.4 any other relevant factors.

The applicants do not have the ability to change prices by the electricity market as the combined scale of the group buying project is too small and the electricity market chooses not to sell power to customers if it is not at a price of their satisfaction.

New suppliers are entering the electricity market and is being further fostered by Federal and State government encouragement of the renewable sector. Official AEMO forecasts are for 20% further new generation that is mostly renewable to enter the market.

10. Describe the benefits to the public that are likely to result from the proposed conduct. Provide information, data, documents or other evidence relevant to the ACCC's assessment of the public benefits.

The Project will provide significant public benefits which include:

1. Increasing demand for renewable energy generation
2. Promoting new investment in renewable energy. This will promote economic, environmental and social benefits.
3. Transaction Cost Savings arising from the collective negotiation process, reducing the transaction costs incurred by the Participants and potential suppliers. If each Participating Member were to individually tender and contract their electricity supply it would take greater time to negotiate each contract and greater cost to obtain technical, legal or other advice. The joint tender process to collectively negotiate with and identify a successful electricity supplier is likely to result in public benefits in the form of transaction cost savings through the sharing of costs between Participants.
4. Increased Competition for the supply of electricity. The combined electricity demands of Participants and the length of the electricity supply contracts proposed to be negotiated are likely to encourage strong competition between electricity suppliers to respond to the invitation to tender, enabling Participants to obtain more competitive pricing and terms than if negotiating renewable electricity supply contracts individually. This increase in competition may also assist in ensuring reliability of supply and greater price certainty for Participants, including due to the longer term nature of the proposed agreements sought.
5. Increased incentives for investment in renewable generating capacity. Participants combined load is estimated to be 500 GWh per annum across all NEM states, which may also contribute to incentivising new generation. Further, authorisation is sought to enable future Participants to join the Buyers Group, provided that the combined electricity consumption of the Buyers Group does not exceed 1% of electricity consumption in each State or Territory. If the combined electricity demand of the Buyers Group does increase, this further increases the likelihood of reaching a scale sufficient to incentivise new investment.

The ACCC has previously considered a number of applications for authorisation of a similar nature:

In March 2023, the ACCC granted authorisation to the first round of the Business Renewables Buying Group, allowing six organisations to collectively procure renewable energy. The ACCC found that the proposed conduct was likely to result in public benefits transaction cost savings, greater competition and investment in the supply of electricity, environmental benefits through a reduction in greenhouse gas emissions.

Business Renewables Buying Group Pilot program conducted a project review that included surveys of participants and other organisations that expressed interest but did not join. Benefits included:

- Lower cost of power than would have occurred by participants independent buying
- Lower transaction cost for procurement
- Increased decision confidence and likelihood of completion (in buying renewable energy)

In January 2020 the ACCC granted the Municipal Association of Victoria and 45 Councils to conduct a collective tender process for a period of 11 years. The ACCC found that the proposed conduct was likely to result in public benefits including transaction cost savings, greater competition and investment in the supply of electricity, environmental benefits through a reduction in greenhouse gas emissions.

In October 2019 the ACCC granted authorisation to Royal Melbourne Institute of Technology and seven other diverse entities to conduct a collective tender process (Melbourne Renewable Energy Project 2) for a term of 15 years. The ACCC found that the proposed conduct was likely to result in public benefits transaction cost savings, greater competition and investment in the supply of electricity, environmental benefits through a reduction in greenhouse gas emissions.

In July 2016 the ACCC granted authorisation to Melbourne City Council along with 13 other entities to jointly negotiate the terms and conditions of certain electricity sale agreements and to conduct a collective tender process for a period of 15 years. The ACCC found that the proposed conduct was likely to result in public benefits including transaction cost savings, greater economies of scale and efficiency, the potential for increased competition for the retail supply of renewable Electricity and environmental benefits from any resulting additional reduction in greenhouse gas emissions.

11. Describe any detriments to the public likely to result from the proposed conduct, including those likely to result from any lessening of competition. Provide information, data, documents, or other evidence relevant to the ACCC's assessment of the detriments.

The Applicants do not believe there to be any potential detriments to the public likely to result from the conduct and note:

- i. The tender process would be open and transparent and will ensure there will be competition between electricity suppliers to win the contracts;
- ii. The proposed conduct involves relatively small proportions of electricity demand for the NEM, Victoria and NSW, and accordingly would not have any material impact on competition in any relevant market relating to electricity supply. As noted above, Participants combined electricity demand in Financial Year 2023 is expected to be less than 0.265% of total electricity consumption in the NEM, 0.46% of total

consumption in Victoria, 0.22% of total consumption in New South Wales, 0.092% of total consumption in Queensland, 0.43% of total consumption in South Australia and 0.45% of total consumption in Tasmania (based on the total consumption of electricity in each market during Financial Year 2022-23);

	Applicants in Victoria	Victoria	NEM
Annual electricity consumption FY2023, TWh	0.200	43.7	188.4

	Applicants in NSW	NSW	NEM
Annual electricity consumption FY2023, TWh	0.150	68	188.4

	Applicants in QLD	QLD	NEM
Annual electricity consumption FY2023, TWh	0.05	54.1	188.4

	Applicants in SA	SA	NEM
Annual electricity consumption FY2023, TWh	0.05	11.7	188.4

	Applicants in TAS	TAS	NEM
Annual electricity consumption FY2023, TWh	0.05	11	188.4

- iii. Any information sharing between Participants will be limited to the acquisition of electricity and the subject of the Proposed Conduct. Participants are not competitors and their alignment is centred on the purchase of renewable energy, the likelihood of public detriment from an increased risk of coordination between the members is considered negligible.

Contact details of relevant market participants

12. Identify and/or provide names and, where possible, contact details (phone number and email address) for likely interested parties such as actual or potential competitors, key customers and suppliers, trade or industry associations and regulators.

1Circle Pty Ltd
 Project facilitator.
 1Circle's Principal contact details
 Dr Iain C. Jennings
 E: [REDACTED]
 M: +61 [REDACTED]

Additional information

13. Provide any other information or documents you consider relevant to the ACCC's assessment of the application.

Refer attached documents:

- Memorandum of Understanding (for Public reference)

Declaration by Applicant(s) Authorised persons of the applicant(s) must complete the following declaration. Where there are multiple applicants, a separate declaration should be completed by each applicant. The undersigned declare that, to the best of their knowledge and belief, the information given in response to questions in this form is true, correct and complete, that complete copies of documents required by this form have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere. The undersigned undertake(s) to advise the ACCC immediately of any material change in circumstances relating to the application. The undersigned are aware that giving false or misleading information is a serious offence and are aware of the provisions of sections 137.1 and 149.1 of the Criminal Code (Cth).



Managing Director

Dr. Iain C. Jennings

This 18th day of January 2024

Note: If the Applicant is a corporation, state the position occupied in the corporation by the person signing. If signed by a solicitor on behalf of the Applicant, this fact must be stated.

Business Renewables Buying Group

Memorandum of Understanding

(1)

(2)

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(5)

(6)

(7)

(8)

(9)

(10)

The parties

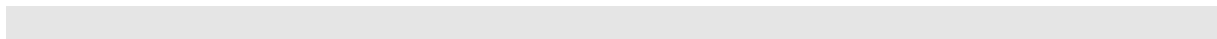
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Facilitator

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BETWEEN:



- (1)
- (2)
- (3)
- (4)
- (5)
- (6)
- (7)
- (8)
- (9)
- (10)

Each a "Party" and together "the Parties".

In addition to the Facilitator as defined in this agreement

- (11)

RECITALS

- (A) The Parties wish to form the Business Renewables Buying Group that will enable the aggregation of a load of electricity large enough to attract competitive bids from retail renewable energy providers to enable the Parties to procure affordable renewable electricity.
- (B) The Parties intend to purchase renewable electricity from a retailer who will source the corresponding electricity load from new or existing utility scale renewable energy projects.
- (C) The Parties are still developing the commercial arrangements to deliver the Proposal and may choose to enter into a further agreement, which will create a more detailed and binding legal framework for the delivery of the Proposal.
- (D) The Parties intend to conduct a tender process and negotiate collectively to appoint an electricity retailer to supply electricity to the purchasing group. It is anticipated that each Party will sign a separate electricity supply agreement with the retailer as part of the Business Renewables Buying Group.
- (E) In consideration of the Parties participating in the Business Renewables Buying Group and exchanging information as contemplated by this document:
 - (1) the Parties agree to enter into this MOU to reflect the common understanding of the Parties in relation to the process to develop the Proposal
 - (2) The Facilitator agrees to enter into this MOU with the Parties to carry out the role as identified in clause 5.

THE PARTIES AND THE FACILITATOR AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document:

Business Renewables Buying Group: means the Parties to this MOU.

Concept Plan: means the plan to deliver the Proposal that includes the identification of key issues and their proposed means of resolution and sets out any particular electricity supply requirements of the Parties.

Electricity Supply Agreement: means an electricity supply agreement between the Retailer and a Party.

Energy Advisor: means the Energy Advisor agreed on by the group and appointed by the Facilitator on behalf of the group.

Facilitator: means an organisation assisting the process, in this instance 1Circle Pty Ltd. The Facilitator:

- (a) will not be party to the resulting PPA
- (b) has no decision making or voting rights.

Further Agreement: means a binding agreement between the Parties executed upon the successful award of a PPA by the Parties such as to document any ongoing rights and obligations of the Parties as they relate to each other for the duration of the PPA.

Intellectual Property Rights or IPR: means all intellectual property rights in Australia and throughout the world, including:

- (a) patents, copyright, registered designs, trade or service marks, trade, business or company names, and any right to have confidential information kept confidential;
- (b) any application or right to apply for registration of, or assert or waive, any of the rights referred to in paragraph (a); and
- (c) moral rights, trade secrets, ideas, concepts, materials, know-how and techniques.

Legal Advisor: means the Legal Advisor agreed on by the group and appointed by the Facilitator on behalf of the group

Long-Term: means a Retail electricity agreement of 5 years or greater.

MOU: means this Memorandum of Understanding.

Party: means a party to this MOU.

Project: means the renewable energy project or projects that may be developed by the Project Proponent and can include utility scale wind farms, solar farms, batteries and pumped hydro.

Project Proponent: means the entity or entities that may develop the Project and will enter into a power purchase agreement with the Retailer.

Proposal: means the proposal by the Parties to form the Business Renewables Buying Group to purchase renewable energy via a Tender Process from a Retailer

Retailer: means the entity selected by the Parties following the Tender Process to sell electricity to the Parties.

Tender Process: a tender process through which the Project Proponent and Retailer will be selected by the Parties.

2. **OBJECTIVES OF THE PARTIES**

The purpose of this MOU is to provide a general framework for ongoing cooperation between the Parties in the planning, development and delivery of the Proposal.

The Parties have the following common objectives in relation to the Proposal:

- (a) directly support a new or existing utility scale renewable energy project and drive investment in large scale renewable energy projects;
- (b) use the renewable energy they purchase to contribute to voluntary emission reduction targets;
- (c) to secure long term competitive pricing for electricity by entering into a Long-Term Electricity Supply Agreement;
- (d) demonstrate public and corporate leadership and a positive example that other large energy users can follow.

3. **SUPPORT OF PARTIES**

- (a) The Parties will support each other with respect to the Proposal and acknowledge that:
 - (i) they have a mutual interest in the successful planning, development and delivery of the Proposal;
 - (ii) they will work in a co-operative manner with the common intention of achieving the delivery of the Proposal in accordance with the objectives set out in clause 2; and
 - (iii) where the Parties' views differ, they will work openly and constructively to resolve them in a manner consistent with the achievement of the objectives of the Parties set out in clause 2.
- (b) The Parties will aim, where reasonably possible and in accordance with their confidentiality obligations and reasonable commercial interests, to share information relevant to the Proposal with each other. In the normal course of events, the Parties will work on the assumption that information should be freely exchanged.

4. **THE PROJECT**

4.1 **Project principles**

The Parties will continue working together to develop Project criteria. At a minimum, it is agreed that the Project shall meet the following criteria. It shall:

- (a) work together to complete the procurement process by Friday 28th June 2024 or another date as agreed by the Parties;

- (b) have an electricity generating capacity sufficient to supply the Parties' nominated requirements for renewable energy, which is anticipated to be approximately 34 GWh per annum for large market and 6.6GWh for small market supply;
- (c) generate electricity from an eligible renewable energy source within the meaning of the *Renewable Energy (Electricity) Act 2000* (Cth), subject to the following energy sources being excluded from selection:
 - (i) biomass projects with native timber as the energy source; and
 - (ii) any others agreed to by the Parties.

4.2 **The Project Proponent**

The Parties agree that the Project Proponent:

- (a) will have demonstrated competence and experience in developing utility scale renewable energy projects;
- (b) will be in a position to deliver and/or source Projects to meet the electricity supply timing requirements of the Parties; and
- (c) may consist of one entity or a group of entities.

5. **ROLE OF THE FACILITATOR**

- (a) The Facilitator will:
 - (i) bring together the Parties to assist them to form the Business Renewables Buying Group;
 - (ii) organise meetings, facilitate workshops, coordinate enquiries and set out a broad process that Parties may choose to follow to form a successful Business Renewables Buying Group;
 - (iii) contract Energy Advisor and Legal Advisor to assist the Parties in defining the commercial parameters of the Proposal, provide business case modelling, develop a request for tender and assist with technical and commercial evaluation of offers;
 - (iv) share insights and experience as appropriate;
 - (v) ensure the procurement and probity standards, as set out in Appendix 3 and agreed by the group are met at all times.
 - (vi) ensure the requirements for Energy and Legal Advice set out in Appendix 4 & 5 and agreed by the group are met.
 - (vii) act as an observer to the tender evaluation and negotiation process and assist the Business Renewables Buying Group to identify issues and solutions.
- (b) The Facilitator may be appointed as the Energy Advisor at the discretion of the Parties.

6. **RESPONSIBILITIES OF THE PARTIES**

6.1 **At all times**

- (a) Each Party agrees to:
 - (i) attend meetings arranged by the Facilitator;
 - (ii) co-operate and work in good faith with the other Parties in order to finalise the Proposal;
 - (iii) advise the other Parties immediately if it no longer desires to be a Party to the Proposal; and
 - (iv) contribute to costs associated with the Proposal as set out in Section 6.3.

6.2 **Tender Process**

- (a) Following the execution of this MOU, the Parties will work together to:
 - (i) further refine the Project criteria;
 - (ii) negotiate and finalise the appointment of the Energy Advisor to act on behalf of the Parties;
 - (iii) negotiate and finalise the appointment of a Legal Advisor to act on behalf of the Parties;
 - (iv) determine the structure and timing of the Tender Process;
 - (v) together with the relevant advisors, draft the documents for the Tender Process, which is to be based on the agreed Concept Plan, noting the Concept Plan needs to allow for business as usual operations, including flexibility in load and the rolling in of new meters and rolling out of meters no longer used by the Parties;
 - (vi) work with the relevant advisors to deliver the Tender Process.
- (b) The Parties shall have equal voting rights and shall make decisions by unanimous agreement.
- (c) The Parties shall apply a framework for passive and active decision-making:
 - (i) Active decisions need to be made unanimously and will require formal response from all Parties.
 - (ii) Passive decisions will provide the opportunity for input from all Parties within the required timeframes. If Parties have not responded before deadline, no response will be considered as acceptance of the proposal.
 - (iii) Active decision points include: Approval of the Tender Process including, tender documentation, time to market, tender review, request for best and final offers and contract award.
 - (iv) Passive decision points include: Appointment of Energy and Legal advisors, and minor issues associated with day to day management of the project.

6.3 **Cost sharing**

- (a) The Parties and the Facilitator agree that:
- (i) each Party will be invoiced and required to make a financial contribution to cover the cost of energy advice as quoted by the Facilitator or any other Energy Advisor the Business Renewables Buying Group may choose, such amount is to be deposited into a bank account nominated by the Facilitator;
 - (ii) the Facilitator is entitled to draw down on the contributions for payment of the Energy Advice on behalf of the group;
 - (iii) the Parties agree to share the cost of the Legal Advisor on a cost recovery basis that will be invoiced by the Facilitator, based on their Cost Sharing Proportions (Appendix 1) or some other arrangement that everyone agrees to;
 - (iv) the Parties agree to review the legal budget and cost sharing proportions should any customers >1GWh leave the group;
 - (v) should any additional costs be agreed to and incurred by the group, these will be shared on a cost recovery basis, based on their Cost Sharing Proportions (Appendix1) or some other arrangement that everyone agrees to;
 - (vi) additional services (Appendix 1) will be paid directly to the Energy Advisor by the respective parties;
- (b) Quotes for the Energy Advisor and Legal Advisor are shown in Appendix 2. These quotes have been obtained by the Facilitator. Energy Advisor costs are firm fixed prices whereas Legal Advisor costs are quoted time estimates that in combination represent the expected costs to participate in the group. Final group numbers may impact both the legal fees and the cost sharing proportions.

6.4 **Further Agreement**

It is likely the Parties will need to give further consideration to entering into a Further Agreement, to create a more detailed and binding legal framework for the delivery of the Proposal including mechanisms to:

- (a) aggregate the electricity consumption of all Parties in determining whether any relevant minimum load threshold is met;
- (b) allocate any financial liability accruing under any take or pay arrangements to which the Parties and the Retailer are a party;
- (c) enable the novation of an Electricity Supply Agreement to a third party;
- (d) set out any ongoing contract administration tasks, roles and responsibilities that affect to the Business Renewables Buying Group as a whole;
- (e) set out how decisions by the buying group are to be made and other governance processes relevant to delivery and implementation of the Proposal; and
- (f) any other matters agreed by the Parties.

6.5 Electricity Supply Agreements

It is anticipated that each Party will enter into a separate Electricity Supply Agreement. It is anticipated that each Electricity Supply Agreement shall include, subject to each Party's reasonable commercial requirements and internal approvals, the following key terms:

- (a) a term of 5+ years;
- (b) a commitment to a minimum electricity consumption threshold (which may be aggregated amongst the Parties);
- (c) the supply of electricity commencing on expiry of their existing energy contract/s which supports the minimum load being committed to;
- (d) the supply of one Large Generation Certificate (LGC) for every megawatt hour of electricity provided

6.6 Competition Law

The Parties acknowledge that joint purchasing arrangements give rise to a risk of contravening the *Competition and Consumer Act 2010* (Cth) and the Facilitator is/will seek/ing an ACCC authorisation for the group procurement. The ACCC authorisation will be required to name the Parties to the MOU and their combined energy loads.

6.7 Media

- (a) The Parties will be responsible for their own media outreach and communication. They may choose to do this as a collective group or individually.
- (b) Until otherwise agreed, all Business Renewable Buying Group media and public communication enquiries shall be directed to the Facilitator's contact officer and then disseminated to the parties for response.

7. ADDITION OF PARTIES

- (a) The Facilitator or any Party may propose to add a new Party to this MOU.
- (b) Addition of new Parties will be by unanimous agreement of the existing Parties and with any conditions as agreed by the Parties.
- (c) Following a decision of the Parties to add a new Party, the MOU shall be varied by the Parties in accordance with clause 11.3.

8. TERM AND TERMINATION

- (a) The rights and obligations of the Parties under this MOU begin upon its execution.
- (b) A Party may cease to be a Party to this MOU by providing written notice to the Facilitator and the other Parties. Each Party agrees to provide such written notice as soon as possible if it wishes to withdraw from the Proposal. The Party acknowledges that the obligations set out in clause 10 (Confidential Information) will continue to apply to it after it has ceased to be a Party to the MOU.
- (c) If a Party ceases to be a Party to this MOU the Party will only be liable for any proportional costs incurred up until the date of termination under clause 8(b).

9. INTELLECTUAL PROPERTY

- (a) This MOU does not alter the pre-existing IPR of the Parties.

- (b) The Parties acknowledge that, as between the Parties, Facilitator will own any IPR that are created by Facilitator or the Energy Advisor in the course of pursuing the Proposal in accordance with this MOU.
- (c) The Facilitator hereby grants to all other Parties a perpetual, irrevocable and royalty-free licence to use any IPR that vests in Facilitator in the course of pursuing the Proposal in accordance with this MOU.

10. **CONFIDENTIAL INFORMATION**

- (a) The Parties acknowledge the information exchanged between them in the course of discussions about matters referred to in this MOU may contain confidential information. Accordingly, the Parties will not release or share with any third party (with the exception of the Parties' respective advisors) any confidential information of another Party, without the consent of the relevant Party or Parties, or as required by law or stock exchange.
- (b) The Parties acknowledge that the following information is confidential information with respect to a Party:
 - (i) information relating to existing electricity supply arrangements of a Party, including the electricity price it is charged and the amount of electricity it consumes;
 - (ii) information relating to the business operations of a Party, including revenue, profit or other financial information and other information relating to the Party that a person in the position of the Party may reasonably consider to be confidential information and which is not already in the public domain; and
 - (iii) any other information that a Party may provide for the purposes of achieving the objectives set out in clause 2 of this MOU and which it advises the Parties is confidential.
- (c) A Party must not make press or other public statements (which includes public announcements or press releases) relating to the Proposal without the agreement of the Facilitator (other than as required by law) as to the manner, timing and content of the press or public statement.

11. **GENERAL**

11.1 **Legal Effect**

- (a) This MOU does not have legal effect and is non-binding except for clauses 6.3, 8, 9, 10 and 11. In particular, there is no obligation on any Party to purchase electricity on the terms set out in this MOU or at all.
- (b) Subject to this clause 11.1(a), the Parties acknowledge and agree that no Party will be bound by any contract for the Proposal until it has been executed by the relevant Parties.

11.2 **Entire Agreement**

- (a) This MOU represents the entire agreement between the Parties.
- (b) Provisions in this MOU may be superseded by a Further Agreement as may be necessary to enable the Proposal.

11.3 **Assignment and Variation**

- (a) A Party cannot assign or otherwise transfer any right or obligation arising from this MOU without the written consent of the other Parties.
- (b) The terms of this MOU may be amended or varied by the written agreement of the Parties. The variation will take effect from the date specified in the variation document.

11.4 **Relationship of the Parties**

The Parties enter into this MOU as independent entities and nothing in this document creates a relationship of employer and employee, principal and agent or partnership between the Parties.

11.5 **Counterparts**

This MOU may be executed in counterparts.

11.6 **Governing Law**

This MOU is governed by the law in force in Victoria, Australia.

11.7 **Notices and Contact Officers**

- (a) Notices

A notice or consent under this MOU is only effective if it is in writing and sent by email to the relevant Party's Contact Officers set out below.

- (b) Contact Officers

Kaushal Gadkari
Energy Analyst 1Circle

████████████████████
████████████████

11.8 **Costs and Expenses**

Each Party must pay its own expenses incurred in negotiating and executing this MOU.

11.9 **Dispute Resolution**

The Parties agree that if a dispute or difference arises between one or more Parties in relation to any matter under this MOU, the Parties in dispute will work together in good faith to promptly resolve it. If after having used all reasonable efforts to resolve the dispute or difference at project officer level, the dispute or difference remains unresolved, it shall be elevated to the CEO (or CEO delegate) of the relevant Party or Parties for resolution. The CEOs (or their delegates) will meet within 14 days of referral, in order to resolve the dispute or difference in a manner consistent with the objectives of the Parties as set out in clause 2. This clause does not prohibit a Party from enforcing its rights in another forum (including through the courts).

EXECUTED as an agreement:

Executed by by its Attorney under Power
of Attorney dated, in the presence of:

Signature of Attorney

Signature of witness if required

Name

Name

Date

Date

APPENDIX 1 – COST SHARING PROPORTIONS

The Parties have been asked to nominate an electricity volume they intend to contribute as part of the Business Renewables Buying Group. The nominated electricity volume is the basis for the Cost Sharing Proportions for costs in excess of the Base Contributions.

Parties may amend their nominated electricity volume within 6 weeks of execution of this agreement. Any change to the cost sharing proportions will be done through unanimous agreement by the Business Renewables Buying Group and will not be retrospective.

In the event that a Party terminates their participation in the MOU under clause 8(b) or a new Party added by agreement of the Parties, the Cost Sharing Proportions will be re-cast with the remaining Parties nominated electricity volumes against the new total volume.

The Cost Sharing Proportions are nominated as follows:

Party	Additional Energy Advice services		Nominated Electricity Volume (GWh)	Cost Sharing Proportions
	Non -Victorian Energy market assessment (Yes/No)	Small Market energy meter assessment (Yes/No)		
1				
2				
3				
4				
5				
6				
7				
8				
9				
Total				

The differing base fees have been set based on the forecast complexity and expected requirements of each organisation. The differing base levels reflect the diversity in the group and seek to avoid a cross-subsidy between those with simple forecasting requirements and those with more dynamic energy loads and higher levels of sophistication, both within their financial reporting and energy procurement.

It is anticipated that there will be additional costs associated with the requirements of those who need to purchase electricity in other states and with small market supply points. As such we have nominated the entities who will share the costs of those services based on their individual requirements.

Exact costs and requirements for energy advice may vary from this. The table has been developed for the purposes of agreeing the cost sharing principles in the MOU only. Material variations in the Estimated Proposal Costs (Appendix 2) may need to be discussed and negotiated by the group.

APPENDIX 2 – ENERGY ADVISOR AND LEGAL ADVISOR QUOTES

The Facilitator has arranged the following quotes for Energy Advice for Parties signing up to the Business Renewables Buying Group. The Legal Advisor Estimate isn't a quote, but an estimate of potential legal fees. The information is provided for information purposes to assist with understanding the likely costs of joining the Business Renewables Buying Group. It is the responsibility of the Business Renewables Buying Group to either accept the Energy Advisor quotes and to instruct the Facilitator to engage in the work or to seek further quotes. The Parties will need to confirm their requirement for Legal advice. The scope of work quoted on for the energy advice is set out in Appendix 4 and the scope of work for the legal advice estimate is set out in Appendix 5. Quoted estimates are

Legal quoted estimates:

Note. Once group composition is known estimates will be revised and finalised therefore, the below estimates should be considered as illustrative not final.

	Energy Advice Quotes	Legal Advisor Estimate
Energy Advice <500MWh	\$9,500 per organisation	
Energy Advice >500MWh - <1GWh	\$10,500 per organisation	
Energy Advice >1GWh	\$14,000 per organisation	
Legal Advisor Estimate (based on Legal quotes)		\$35,000 total shared cost

APPENDIX 3 – PROCUREMENT AND PROBITY STANDARDS

The tender process will be run in accordance with the following minimum standards as amended and agreed by The Parties

Conflict of Interest - Tenderers must identify any actual or potential conflict of interest in relation to their Tender in Part E – Returnable Schedules, Schedule 1. If at any time, actual, potential or perceived conflicts of interest arises for a Tenderer, that Tenderer must immediately notify 1Circle in writing. 1Circle may, at its absolute discretion: a) enter into discussions to seek to resolve such conflict of interest; or b) take any other action as it considers appropriate to resolve or mitigate the conflict of interest.

Open and fair competition - All prospective suppliers must be treated fairly, with access to the same information to afford them an equal opportunity to tender, submit a quotation or otherwise participate in a competitive procurement process. Impartiality must be maintained in selecting suppliers to fulfil The Parties needs. The Facilitator will provide open and honest feedback to suppliers who participate in the Tender, subject to confidentiality of Commercial in Confidence information. Any suspected improper conduct, including (without limitation) suspected fraud, corruption, substantial mismanagement, risk to public health and safety, risk to the environment or other detrimental action must be managed The Facilitator

Ethical Sourcing – The Facilitator will ensure that goods and services provided are obtained through responsible and sustainable methods and in line with applicable legislation, including but not limited to:

- **Goods** – ensuring that the workers who make the products are paid a fair wage and all human rights are met, the factories are clean and safe environments to work in, and that all social and environmental aspects of production to the workers and the surrounding communities are considered.
- **Services or works** – ensuring that the workers who provide their services and deliver the works, whether through direct engagement contractors and / or sub-contractors, are paid a fair wage in line with relevant legislation, all human rights are met, and workplaces are clean and safe environments to work in.
- **Charter of Human Rights** – The Facilitator will ensure that all of its procurement operations are consistent with the Victorian Charter of Human Rights and Responsibilities Act 2006, including that Act’s fundamental rights.
- **Child safe standards** – The Parties are committed to promoting child safety and ensuring compliance with the Victorian Child Safe Standards. As a key priority, The Facilitator is actively promoting child safety and reducing the factors that lead to children being harmed. The Facilitator must review all suppliers who undertake work on behalf of The Parties who may have direct or incidental contact with children.
- **Supplier code of conduct** – The Parties are committed to ethical, sustainable and socially responsible procurement, and expect the same high standards from our suppliers. Suppliers undertaking work on behalf of The Facilitator are required to comply with the requirements of The Parties.
- **Probity, accountability and transparency** - Accountability in procurement means being able to justify and provide evidence of the process followed. An independent third party must be able to see clearly that a process has been followed and that the process was fair and reasonable. The Facilitator must be able to account for all procurement decisions and ensure all procurement activities leave an audit trail for monitoring and reporting purposes.

APPENDIX 4 – SCOPE OF ENERGY ADVICE

Historical Analysis

Summary of historic electricity use e.g. review of up to 3 years historical electricity use to inform development of the electricity baseline used in procurement

Summary of present electricity cost e.g. review historical energy cost for present year and previous reporting period (financial or calendar year) to inform development of the energy baseline used in procurement and reconciliation of previous financial reports

Baseline definition

Forecast load requirement for use in procurement, determine required load flexibility to suit operational circumstances and planned projects. Include impact of solar as applicable.

Cost reference for comparison – determine cost breakdown of baseline load profile using present tariffs for comparison of competing Retail offers and development of forecast cost/benefit.

Requirement definition – definition of energy analysis requirements for procurement to suit individual participant and Group requirements

Term sheet – definition of energy requirements for use in procurement

Procedure definition

Competitive procurement process – define detailed energy analysis steps to satisfy Participant requirements

Management of procurement process with regard to energy analysis

Documented analysis of quantitative results for the Group

Provide individual financial assessments & budgets

Implementation

Document implementation checklists

Detail quantitative aspects of the offer for participant reference

Assess accuracy of first bill with new electricity supply agreement

APPENDIX 5 – SCOPE OF LEGAL ADVICE

Contribute to the development of Tender documentation Term Sheet

Review of Tender documentation

Review of short-list of submissions from first round procurement process and propose key points for consideration in the second round of procurement

Review of terms and conditions from the final offers arising from the second round of procurement

Support in final negotiation of the preferred offer

Drafting of any Further Agreement as may be required with the final PPA