



**SUPPLY PROCUREMENT 2008**

**RFT AGREEMENT**

**TABLE OF CONTENTS**

**PARTIES:..... 2**

**INTERPRETATION ..... 2**

**1 RFT AGREEMENT ..... 5**

**2 PURPOSE OF TENDER PHASE..... 5**

**3 SYNERGY’S RIGHTS, OBLIGATIONS AND INTENTIONS ..... 5**

**4 INFORMATION ..... 6**

**5 CONTACT WITH SYNERGY AND OTHER PARTIES..... 7**

**6 REQUESTS FOR INFORMATION OR CLARIFICATION ..... 7**

**7 CONFIDENTIALITY, OWNERSHIP OF INFORMATION & PUBLICITY ..... 8**

**8 LODGEMENT OF BINDING PROPOSALS ..... 9**

**9 CONSIDERATION OF BINDING PROPOSALS AND FURTHER  
CLARIFICATION ..... 9**

**10 CONDUCT OF THE TENDERER ..... 10**

**11 CHANGES IN TENDERER’S CIRCUMSTANCES..... 11**

**12 NO REFUND OF COSTS ..... 12**

**13 PROBITY AUDITOR ..... 12**

**14 NO TRUSTEE OR AGENCY ..... 12**

**15 GOVERNING LAW..... 12**

**ANNEXURE A - DISCLAIMER ..... 14**

## TERMS AND CONDITIONS

### PARTIES:

**Electricity Retail Corporation** trading as **Synergy** (ABN 71 743 446 839), a body corporate established under the *Electricity Corporations Act 2005* (WA) of 363 Wellington Street, Perth, Western Australia, 6000 ("**Synergy**"); and

[insert Respondent details] ("**Tenderer**").

### INTERPRETATION

Annual Displacement Statement of Opportunities (or ADSOO)	means the annual statement (containing information on the current vesting arrangements, Displacement obligations and forecast vesting revenues and costs) which is required to be published by Synergy under the Ministerial Direction.
Benchmark ESC	means the ESC issued by Synergy in the Tender Phase.
Binding Proposal	means the proposal submitted by a tenderer which will be binding on the Tenderer in accordance with the RFT Agreement and includes: <ul style="list-style-type: none"> <li>▪ the completed ESC, including the tendered prices for Capacity Credits, associated electricity, RECs, Green Power Rights and/or other environmental rights, executed by the Tenderer and in a form ready for execution by Synergy; and</li> <li>▪ the tenderer's responses to each of the questions posed in the RFT.</li> </ul>
Capacity Credits	has the meaning given to that term in the Market Rules.
Capacity Year	has the meaning given to that term in the Market Rules.
Disclaimer	means the disclaimer set out in Annexure A to this RFT Agreement.
Displacement	means the reduction in the number of Capacity Credits to be made available by Verve Energy and provided to Synergy under the terms of the Vesting Contract.
Electricity Supplier	means a Preferred Tenderer that enters into an ESC with Synergy.
Electricity Supply Contract (or ESC)	means the contract for the procurement of Capacity Credits, associated electricity, Green Power Rights, RECs and/or other environmental rights, intended to be or actually entered into between Synergy and a Preferred Tenderer as a result of the Process.

EOI Phase	means the phase of the Process during which people are invited to submit an Expression of Interest from which Synergy will select the tenderers.
Expression of Interest (or EOI)	means a submission made by a respondent to Synergy as part of the Process in response to Synergy's Invitation.
Further Terms	has the meaning given in the Disclaimer.
Green Power Rights	has the meaning given to that term in the National Green Power Accreditation Program.
Information	has the meaning given in the Disclaimer.
Invitation	means the document titled "Supply Procurement 2008 - Invitation for expressions of interest" published by Synergy in respect of the Process on 19 February 2008.
Market Rules	means the Wholesale Electricity Market Rules (as amended from time to time) made under the <i>Electricity Industry (Wholesale Electricity Market) Regulations 2004</i> (WA).
Preferred Tenderer	means a tenderer or tenderers selected as the preferred tenderer(s) at the completion of the Tender Phase (if any).
Project	means the construction of relevant generating plant and the generation of electricity by the Electricity Supplier to satisfy the requirements of the ESC and arising as a result of the Process.
respondents	means all persons that have submitted an Expression of Interest in the Process.
Related Body Corporate	has the meaning given in the <i>Corporations Act 2001</i> (Cth).
Relevant Third Parties	has the meaning given in paragraph 7.1.
Renewable Energy Certificates (or RECs)	Means a certificate granted under the <i>Renewable Energy (Electricity) Act 2000</i> (Cth).
Request for Tender (or RFT)	means the request issued by Synergy as part of the Supply Procurement 2008 Process.
RFT Agreement	means this agreement.
Supply Procurement 2008 Process (or Process)	means the process being adopted by Synergy for the competitive procurement of at least 200 MW of Capacity Credits, associated electricity and/or Green Power Rights and RECs commencing from either the 2010/11 Capacity Year (if renewable) or the 2011/12 Capacity Year <sup>1</sup> .

■

<sup>1</sup> This requirement is subject to variation during the Process.

SWIS	means the South West Interconnected System.
Synergy	means the Electricity Retail Corporation.
Tenderer	means the person identified on Page 2 of this RFT Agreement.
tenderers	means the respondents that are short-listed to proceed to the Tender Phase and enter into an agreement on the same terms as the RFT Agreement.
Tender Phase	means the phase of the Process during which tenderers will be invited to submit a Binding Proposal from which Synergy may (at its discretion) select a Preferred Tenderer or Preferred Tenderers.
Verve Energy	means the Electricity Generation Corporation.
Vesting Contract	means the prescribed contract dated 1 April 2006 between Synergy and Verve Energy establishing the terms and conditions of the initial contractual arrangements between Synergy and Verve Energy relating to the supply of Capacity Credits and electricity to Synergy in the South West Interconnected System.

## **1 RFT AGREEMENT**

- 1.1 This RFT Agreement sets out the terms and conditions of a process contract between Synergy and the Tenderer.
- 1.2 Upon signing the RFT Agreement the Tenderer agrees to be bound by the RFT Agreement.
- 1.3 The Tenderer agrees that Synergy may notify the Tenderer of Further Terms. The Tenderer agrees that if it continues in the Process that it will be bound by any such Further Terms.
- 1.4 The Tenderer must comply with the RFT Agreement and Further Terms and must procure that its Related Bodies Corporate comply with it.
- 1.5 The Tenderer agrees that any Binding Proposal must be submitted in accordance with the Request for Tender, RFT Agreement and Further Terms.
- 1.6 The Tenderer acknowledges that:
  - it has read and understood the terms of the Disclaimer and agrees to its terms; and
  - it may not draw any inference from Synergy's silence on any part or parts of the Tenderer's Expression of Interest.
- 1.7 The Tenderer also agrees that there will be additional terms and conditions governing the Tender Phase, including any terms and conditions contained in the RFT and any Further Terms. The Tenderer agrees that any Binding Proposal must be submitted in accordance with the RFT and any Further Terms notified in advance by Synergy to the Tenderer.

## **2 PURPOSE OF TENDER PHASE**

- 2.1 The Tenderer acknowledges that the Tender Phase exists only for the purposes of Synergy choosing a Preferred Tenderer.
- 2.2 The Tenderer acknowledges that any Binding Proposal submitted by the Tenderer or any Related Body Corporate constitutes an offer to Synergy which will be binding on the Tenderer or its relevant Related Body Corporate (as applicable) and may not be revoked or terminated except with the consent of Synergy and such offer is to remain fully capable of acceptance by Synergy in accordance with the terms of, and for the period specified in, the RFT.
- 2.3 The Tenderer acknowledges that the fact that it has been selected by Synergy to participate in the Tender Phase is not an indication that any statements made before the execution of this RFT Agreement by the Tenderer, regarding the unacceptability of any element of the Process or any documentation provided by Synergy, have been accepted by Synergy.

## **3 SYNERGY'S RIGHTS, OBLIGATIONS AND INTENTIONS**

- 3.1 The Vesting Contract contains a Displacement mechanism which requires Synergy to expose the Vesting Contract volumes to competitive sourcing outside of the Vesting Contract. This Displacement is to occur through:
  - "negotiated" arrangements, which Synergy may enter into at any time, up to specified limits; and
  - "tendered" arrangements, which occur in a scheduled, orderly process.

This Process forms part of the "tendered" form of Displacement, however negotiated Displacement may also be included at Synergy's sole discretion.

3.2 Insofar as is permissible by law, Synergy:

- reserves the right from time to time, to cancel, vary, supplement, supersede or replace all or any phase of the Process (including, but not limited to, the selection criteria) by written notice to tenderers;
- reserves the right, without prejudice to any other right or remedy Synergy may have, to terminate, at any time, further participation in the Tender Phase by the Tenderer if it breaches any provision of the RFT Agreement;
- may terminate further participation in the Tender Phase by the Tenderer if the Tenderer, in the opinion of Synergy, is participating in the Tender Phase on any basis which is different from that identified in its Expression of Interest which was evaluated by Synergy in the EOI assessment as meeting Synergy's requirements for selection, and which is materially adverse to the objectives of Synergy in conducting the Process (including, without limitation, a basis which in the opinion of Synergy is materially adverse to the maintenance of competitive tension between tenderers throughout the Tender Phase);
- may determine at any stage, and for any reason, not to proceed with the Process; and
- is under no obligation to proceed to select a Preferred Tenderer.

3.3 The Tenderer agrees that (other than the RFT Agreement) no binding agreement will come into existence unless the Tenderer is selected as the Preferred Tenderer and an Electricity Supply Contract is executed by the Preferred Tenderer and Synergy.

3.4 Without limiting the terms of the Disclaimer, insofar as is permissible by law, neither Synergy nor its employees, officers, advisers or their respective representatives:

- are, or will be, responsible in any way for or in relation to; or
- are, or will be, liable to compensate any person in any way for or in relation to,

any claims, losses, costs and expenses incurred by the Tenderer (or a Related Body Corporate of the Tenderer) or any other person in relation to preparing and submitting a Binding Proposal, providing further information, participating in any meetings or other contact or otherwise arising out of or in connection with the Tender Phase.

3.5 The Tenderer waives any claims it may have against Synergy in respect of any conduct by Synergy in relation to the conduct of the Process up to the time of execution of this RFT Agreement.

## **4 INFORMATION**

4.1 The RFT and associated documents will be issued to the Tenderer and each other tenderer in due course, following its signing of this RFT Agreement.

4.2 Some other information which may be relevant to the Tender Phase is available to be downloaded from Synergy's internet site.

4.3 The Tenderer is taken:

- to have satisfied itself as to the completeness and correctness of the Information, including any information downloaded from Synergy's internet site or otherwise provided to it by Synergy; and
- to have satisfied itself, if it submits a Binding Proposal, that the Tenderer has taken into account the most recent version at that time of any information

placed on Synergy's internet site and any other information from time to time provided or made available by or on behalf of Synergy to the Tenderer.

- 4.4 The Tenderer must become familiar with all aspects of the Information and the Process requirements, and take into account all other matters that may be encountered, including but not limited to, costs associated with providing the proposed Project, should the Tenderer be selected as Preferred Tenderer in the Tender Phase.
- 4.5 By submitting a Binding Proposal, the Tenderer will be taken to:
- have examined all relevant information and carried out appropriate and sufficient enquiries and taken appropriate and sufficient independent professional and technical advice to satisfy itself as to the completeness, correctness, currency and accuracy of the Information before submitting a Binding Proposal;
  - have examined all information which is relevant to the risks, contingencies and other circumstances having an effect on its Binding Proposal;
  - be satisfied as to the correctness of its Binding Proposal and satisfied that it complies with all requirements of the RFT Agreement and the RFT; and
  - warrant and represent to Synergy that the information in the Binding Proposal and any other information provided or made available by or on behalf of the Tenderer to Synergy or its representatives is true and accurate and not misleading within the intent of section 52 of the Trade Practices Act.

## **5 CONTACT WITH SYNERGY AND OTHER PARTIES**

- 5.1 All contact with Synergy in relation to the Process (including but not limited to requests for information or clarification of matters associated with the Process) must be directed to the Manager, Power Procurement. The Manager, Power Procurement is responsible to a Steering Group for the conduct of the Process. No one is authorised by Synergy to provide information or to clarify matters in relation to the Process, without the consent and attendance of the Manager, Power Procurement.
- 5.2 Where the Manager, Power Procurement considers it necessary, he will arrange contact with Synergy, its officers, employees or consultants. The Tenderer must not at any time, without the prior consent of the Manager, Power Procurement, discuss with officers, employees or consultants of Synergy any matter in connection with the Process.
- 5.3 To the extent that anyone provides any information, or purports to clarify matters, in relation to the Process without being so authorised, Synergy accepts no responsibility for, and makes no representation as to, the accuracy, reliability or completeness of such information or purported clarification. Accordingly, any such information or purported clarification should not be relied upon by the Tenderer.

## **6 REQUESTS FOR INFORMATION OR CLARIFICATION**

- 6.1 If the Tenderer has any doubt as to the meaning of any portion of the RFT Agreement or the RFT it may seek clarification from Synergy.
- 6.2 The Tenderer may request information or clarification of matters associated with the Process provided that any request must be made to the Manager, Power Procurement, who may require such requests to be submitted in writing.

- 6.3 Requests for information or clarification, together with Synergy's responses, will generally be made available to other tenderers. In doing so, Synergy may take reasonable efforts to protect the identity of the Tenderer, but will be under no obligation to do so.
- 6.4 Without limiting paragraph 6.3, requests for information or clarification by the Tenderer, together with Synergy's responses, may be made available by Synergy to other tenderers if the information or clarification relates to:
- inaccuracies or errors in the RFT or associated documents;
  - factual matters referred to in the RFT or other factual material provided by Synergy to all tenderers; or
  - other matters which, in the opinion of Synergy acting reasonably, are relevant to other tenderers and do not disclose commercial in confidence material developed and provided by the Tenderer to Synergy.

## **7 CONFIDENTIALITY, OWNERSHIP OF INFORMATION & PUBLICITY**

- 7.1 The discussions and communications between the Tenderer and Synergy in the Tender Phase are confidential and may not be disclosed to any other person without the prior written consent of the other party other than:
- to officers, employees and advisors of that party or a Related Body Corporate of that party who need to know the information and who are made aware of the confidentiality of those discussions and communications;
  - as required by law or a recognised stock exchange;
  - as provided for in paragraphs 6.3 and 6.4; or
  - to existing or prospective financiers or contractors of the Tenderer in connection with the Process ("**Relevant Third Parties**") provided that the Relevant Third Parties have first entered into a confidentiality undertaking in favour of Synergy in equivalent terms to the confidentiality obligations of this RFT Agreement.
- 7.2 A Tenderer may make a statement required by law or a recognised stock exchange provided that before making such a statement it provides sufficient notice of the proposed disclosure to the Manager, Power Procurement to enable the Manager, Power Procurement, if he considers it appropriate, to seek an order to prevent disclosure, or to make a statement relating to the Tenderer's statement at the same time.
- 7.3 The RFT Agreement, Benchmark ESC and the RFT are confidential and may not be disclosed by the Tenderer without the consent of Synergy except as contemplated in this paragraph.
- 7.4 Once submitted, all Binding Proposals and supporting information (but not any copyright or intellectual property right which may subsist in those documents) are the property of Synergy. Synergy is authorised to copy, disclose and use the whole or any part of a Binding Proposal and any supporting information solely for the purposes of the Process.
- 7.5 All minutes and other records taken during meetings and other contacts, all questions received and all responses given by or on behalf of Synergy are the property of Synergy.
- 7.6 The Tenderer must not make or authorise and must procure that its Related Bodies Corporate do not make or authorise a press release or other public statement relating to:
- the contents of its Binding Proposal;

- any information provided or made available by or on behalf of Synergy;
- whether or not the Tenderer has ceased to participate in the Tender Phase;
- any decision of Synergy or any other communication between the Tenderer and Synergy relating to the Process,

without the prior written approval of the Manager, Power Procurement.

- 7.7 Notwithstanding anything to the contrary in this agreement, the Tenderer acknowledges that Synergy may make a press release or other public statement disclosing the identity of tenderers who have qualified for the Tender Phase. If the Tenderer subsequently ceases to participate in the Tender Phase for any reason, Synergy may make a press release or other public statement disclosing the identity of the Tenderer and stating that that party has ceased to participate in the Tender Phase, including explaining the reasons for such cessation.

## **8 LODGEMENT OF BINDING PROPOSALS**

- 8.1 In the event that the Tenderer decides to submit a Binding Proposal, it is the Tenderer's sole responsibility to ensure that its Binding Proposal is completed and lodged in accordance with the RFT.
- 8.2 Synergy reserves the right to extend the closing time for lodgement of Binding Proposals.
- 8.3 Notice of any extension will be sent to the Tenderer and all other tenderers.
- 8.4 Consideration of any request for late lodgement of Binding Proposals will be undertaken in consultation with the Probity Auditor. Acceptance of such a request may only be made on the following basis:
- evidence being submitted by the Tenderer to satisfy the Manager, Power Procurement that the Binding Proposal was in the hands of a reputable delivery agent at a time sufficient for it to be delivered by the closing date and time in the normal course of business; and
  - evidence being submitted by the Tenderer to satisfy the Manager, Power Procurement that some extraordinary disruption to the delivery agent's operation, beyond the control of the Tenderer, had been the cause of the lateness of delivery.
- 8.5 If late lodgement of a Binding Proposal is accepted, the Tenderer and all other tenderers will be advised of the acceptance of the late lodgement and the reasons for it. Other Binding Proposals will be held in secure storage (un-opened) until this late Binding Proposal is received.
- 8.6 In all other circumstances, Binding Proposals that are submitted late or by any method or format not expressly permitted in the RFT will not be accepted by Synergy.

## **9 CONSIDERATION OF BINDING PROPOSALS AND FURTHER CLARIFICATION**

- 9.1 Insofar as is permissible by law, Synergy reserves the right in its absolute discretion to:
- make enquiries of any referee or any other person to assist in establishing the suitability and reliability of the Tenderer, its representatives and any proposed sub-contractor or any goods or services the subject of a Binding Proposal and the accuracy of any information provided; and

- seek clarification of, or further information in relation to, any Binding Proposal received.
- 9.2 By submitting a Binding Proposal the Tenderer irrevocably consents to the disclosure by any person to Synergy or its representatives of information concerning the Tenderer, its representatives, sub-contractors and any goods or services the subject of a Binding Proposal for the purpose of Synergy exercising the above rights.

## **10 CONDUCT OF THE TENDERER**

- 10.1 The Tenderer must observe all relevant statutory and legal requirements in the formulation of its Binding Proposals. In particular, the Tenderer must not, and must procure that its Related Bodies Corporate do not:
- enter into any improper commercial arrangements with any other contractors, subcontractors, consultants or suppliers;
  - seek to influence decisions during the Process, other than by including information in a Binding Proposal submitted in response to and in accordance with the RFT;
  - accept incentives to provide contracts or services to other contractors, subcontractors, consultants or suppliers; or
  - accept or provide secret commissions.

The Tenderer may be deemed to be seeking to influence decisions during the Process notwithstanding that such influence on Synergy might not be direct, or might not be the subject of judicial or statutory procedures.

- 10.2 The Tenderer must not, and must procure that its Related Bodies Corporate do not, engage in any anti-competitive behaviour including, but not limited to, the following matters concerning collusive tendering:
- contracts, arrangements or understandings between the Tenderer and any other tenderers as to who should be a Preferred Tenderer;
  - disclosure of information by a tenderer about its actual or proposed Binding Proposal if that information becomes known or is likely to become known by another tenderer wholly or partly because of that disclosure;
  - contracts, arrangements or understandings between the Tenderer and any other person for the payment of money or the securing of reward or benefit for unsuccessful tenderers by a successful tenderer at any stage of the Process (including, but not limited to, by the Preferred Tenderer);
  - contracts, arrangements or understandings between the Tenderer and any other person to fix prices or conditions of contract including, but not limited to, any collaboration between tenderers on prices or conditions to be included in agreements, without the prior written consent of Synergy; and
  - any assistance to any person to submit a "cover proposal" (that is, a proposal submitted as genuine but which has been deliberately framed in order not to win the contract to arise from the Process).
- 10.3 In submitting a Binding Proposal, the Tenderer represents and warrants to Synergy that:
- it has not had access to any confidential information concerning the actual or proposed Binding Proposal of another person;
  - except as disclosed in the Binding Proposal, it has not entered into any contract, arrangement or understanding to pay, give or allow any money,

allowance or financial assistance (or other benefit) directly or indirectly to or on behalf of any other tenderer in relation to an actual or proposed Binding Proposal or any related contract, arrangement or understanding or proposed contract, arrangement or understanding and has not and will not pay, or give or allow any money, allowance or financial assistance (or other benefit) on that account; and

- except as disclosed, it has not entered into any contract, arrangement or understanding to receive any money, allowance or financial assistance (or other benefit) directly or indirectly from or on behalf of any other tenderer and it has not and will not receive any money, allowance or financial assistance (or other benefit) directly or indirectly from or on behalf of any other Tenderer in relation to the Process or any related contract.

## **11 CHANGES IN TENDERER'S CIRCUMSTANCES**

11.1 If at any time during the Process, before the Tenderer has been excluded from further continuation in the Process, there is:

- any actual, proposed or anticipated change in the identity of the Tenderer (including, but not limited to, any change in the identity of any member of any consortium, joint venture or partnership forming the Tenderer) from that stated in this RFT Agreement or the Tenderer's Binding Proposal;
- any actual, proposed or anticipated change in the identity of any person or persons who ultimately own or control the Tenderer (including, but not limited to any member of any consortium, joint venture or partnership forming the Tenderer) from the date of this RFT Agreement or lodgement of the Tenderer's Binding Proposal (where "control" is as defined in section 50AA of the Corporations Act 2001, as amended or replaced from time to time); or
- any actual, proposed or anticipated change in any of the circumstances of, or applying to, or in respect of, the Tenderer (including, but not limited to any member of any consortium, joint venture or partnership forming the Tenderer, and including, but not limited to, any change in the nature, type or other details of any proposal submitted by the Tenderer), that renders (or would if the Tenderer were selected at any further stage of the Process be likely to render) misleading, deceptive, substantially changed, untrue, inaccurate or no longer true or accurate any information previously provided or made available to Synergy or any of its representatives by, on behalf of, or in respect of a Tenderer,

then the Tenderer must notify Synergy in writing of the actual, proposed or anticipated change, immediately upon the Tenderer (or any member of any consortium, joint venture or partnership forming the Tenderer) becoming aware of the actual, proposed or anticipated change, giving Synergy all material details of the actual, proposed or anticipated change (including, but not limited to, an indication of the specific effects which the Tenderer considers the actual, proposed or anticipated change has or will have on any proposal or information previously or proposed to be provided or made available to Synergy or any of its representatives by, on behalf of, or in respect of the Tenderer).

11.2 If at any time during the Process, before the latest time for submission of a Binding Proposal, Synergy becomes aware of any such actual, proposed or anticipated change:

- it will assess or reassess, as the case may be, the Binding Proposals and any other information received from or in respect of each tenderer, taking into account any new information it has relating to that actual, proposed or anticipated change; and

- in light of that assessment or reassessment Synergy reserves the right, insofar as is permissible by law to use that new information:
  - to change or modify any decision it has made or is still to make; and
  - in making any decision,

in respect of the Tenderer (including but not limited to, any decision in respect of the Tenderer's Binding Proposal or continued involvement in the Process and any decision to exclude the Tenderer from, or include or re-include the Tenderer in the Process).

## **12 NO REFUND OF COSTS**

Synergy is not liable to reimburse or compensate the Tenderer or any representative or sub-contractor of the Tenderer for any costs or expenses incurred by such person at any stage during or after the Process (including without limitation costs or expenses incurred in evaluating the Information, preparing a Binding Proposal or other proposal and discussing with Synergy or other persons).

## **13 PROBITY AUDITOR**

A Probity Auditor has been appointed to observe and monitor the Process. If a party has concerns relating to a matter of probity, that party is free to raise the matter with the Probity Auditor.

The contact details for the Probity Auditor are set out below:

Mr Mauri Mucciacciaro  
BDO Consultants (WA) Pty Ltd  
PO Box 7426  
Cloisters Square PERTH WA 6850  
Phone: (08) 9360 4200

The Probity Auditor will advise the Steering Group of matters of probity that are raised.

## **14 NO TRUSTEE OR AGENCY**

In submitting a Binding Proposal, the Tenderer warrants and represents that it does so solely on its own behalf and not as trustee or agent for any other person.

## **15 GOVERNING LAW**

The Tender Phase and this RFT Agreement are governed by the laws of Western Australia.

## SIGNING PAGE

Date

Signed for and on behalf of )  
**ELECTRICITY RETAIL** )  
**CORPORATION** by its authorised )  
representative in the presence of: )  
)

.....  
Signature of Witness

.....  
Signature of Authorised Representative

.....  
Office held

.....  
Office held

.....  
Name of Witness (block letters)

.....  
Name of Authorised Representative  
(block letters)

**EXECUTED** by )  
)

in accordance with section 127(1) of )  
the Corporations Act 2001 (Cwlth) by )  
authority of its directors: )  
)

..... )  
Signature of Director )  
)

..... )  
Signature of Director/Company  
Secretary\*

..... )  
Name of Director (block letters) )  
)

.....  
Name of director/company secretary\*  
(block letters) - \*delete whichever is not  
applicable

## **ANNEXURE A - DISCLAIMER**

The terms set out in this Disclaimer apply to all information from time to time provided or made available by or on behalf of Synergy to the Tenderer in relation to the process being adopted by Synergy, in compliance with the Ministerial Direction, for Supply Procurement 2008, all of which information is together called the "**Information**".

All intellectual property in the Information vests in Synergy, unless Synergy expressly states otherwise.

Synergy, its employees, officers and advisers and their respective representatives are not liable in any way (including, but not limited to, by reason of negligence or negligent misstatement) to the Tenderer, or any other person for any claims, losses, costs and expenses incurred by the Tenderer or any other person:

- in relation to any aspect of the Process; or
- in evaluating or acting upon all or any part of the Information, in responding to all or any part of the Information or otherwise acting in reliance on all or any part of the Information; or
- arising out of or in connection with any omission from, or any change, modification, update of, or addition to, all or any part of the Information (including, without limitation, any claim, loss, cost or expense arising from the Tenderer or any other person not being made aware of the change, update, modification or addition); or
- arising out of or in connection with all or any part of the Information or their use of it or a failure to receive it or any changes, modifications, updates or additions to it (including, without limitation, any failure to download or view Information correctly on the Synergy internet site).

Synergy may in its absolute discretion from time to time change, modify, update or add to all or any part of the information in the Information.

Synergy does not make any representation or warranty as to the accuracy, reliability, currency, completeness or suitability for any particular purpose or purposes of all or any part of the Information. If the Tenderer relies on any of the Information, it does so entirely at its own risk.

The Information reflects various assumptions about a number of matters, and refers to estimated information and information sourced from third parties. These assumptions, estimates, forecasts and any third party information may or may not prove to be correct and may change from time to time. The Information does not amount to a recommendation either expressly or by implication with respect to generation capacity and does not purport to contain all information that the Tenderer may require. The Information may not be appropriate for all persons and it is not possible for Synergy and its respective representatives to have regard to the particular needs of each person who reads or uses the Information.

The RFT and any additional information provided by Synergy during the Tender Phase, together with any other further terms and conditions which are consistent with the objectives of the Process and notified by Synergy to the Tenderer ("**Further Terms**") are to be read subject to this Disclaimer. The provisions of this Disclaimer take precedence over any other provision of the RFT or any Further Terms, which is inconsistent with or otherwise conflicts with any provision of this Disclaimer.