



DATED

2008

**ELECTRICITY RETAIL CORPORATION
(TRADING AS SYNERGY)**

AND

CONFIDENTIALITY AGREEMENT

Synergy
228 Adelaide Terrace
Perth WA 6000

THIS CONFIDENTIALITY AGREEMENT is made on the _____ day of _____ 2008.

BETWEEN:

ELECTRICITY RETAIL CORPORATION trading as Synergy **ABN 71 743 446 839** of
228 Adelaide Terrace, Perth, Western Australia 6000 (**Discloser**)

AND

_____ **ABN** _____ of
_____ (**Recipient**).

RECITALS:

- A. The Discloser proposes to disclose Confidential Information to the Recipient for the Express Purpose.
- B. The Recipient wishes to disclose the Confidential Information to the Recipient Staff.
- C. On the basis that Discloser's Confidential Information is kept confidential in accordance with the terms and conditions of this agreement Discloser agrees to that disclosure.

IT IS AGREED:

1. INTERPRETATION

1.01 In this agreement and in the Recitals unless the context or subject matter otherwise require:

Confidential Information

means all information in oral, written, printed, electronic or other tangible form concerning the Discloser or the Express Purpose which has already been disclosed or which may hereafter be disclosed, including, without limitation:

- (a) The Benchmark Electricity Supply Contract relating to the Supply Procurement 2009 Expression of Interest – Invitation to potential suppliers;
- (b) reports, analyses, compilations, comparisons, accounts, data, records, statements, projections, forecasts, materials, techniques, prototypes, samples, and models;
- (c) know how; and
- (d) details provided in connection with the Express Purpose.

Express Purpose

means the purpose for which the Discloser has agreed to provide the Confidential Information to the Recipient, as set out in the schedule.

Recipient Staff

means the officers and employees of the Recipient who have a strict need to receive the Confidential Information for the Express Purpose.

Advisers

means any adviser of the Recipient or any other third party who has a strict need to receive the Confidential Information for the Express Purpose.

2. CONFIDENTIALITY

2.01 Non-Disclosure

The Recipient agrees as follows:

- (a) that it must retain the Confidential Information in strict confidence in accordance with this agreement and must not use the Confidential Information for any reason or purpose other than for the Express Purpose;
- (b) that it must not make use of the Confidential Information to the commercial, financial or competitive disadvantage of the Discloser;
- (c) that it may disclose Confidential Information only to Recipient Staff and, subject to Clause 2.01(d), Advisers;
- (d) that it must not disclose the Confidential Information to Advisers unless:
 - (i) the Discloser has given its consent in writing to that disclosure; and
 - (ii) the Adviser has, prior to disclosure, signed a confidentiality agreement in favour of the Discloser on terms and form identical to this agreement (save only for such formal amendments as may be necessary and required by the context).

2.02 Exclusions

- (a) The restrictions mentioned in this Clause 2 do not apply to information which:
 - (i) is in the public domain at the time it is disclosed; or
 - (ii) is brought into the public domain after disclosure to the Recipient, and in such case, through no wrongful act of the Recipient;
- (b) is independently developed in good faith by the Recipient;
- (c) is known or becomes known to the Recipient from a source other than the Discloser through no wrongful act of the Recipient or the party from whom Recipient receives such disclosure;
- (d) is required to be disclosed by an order of any court of competent jurisdiction, tribunal or regulatory body;
- (e) is required to be disclosed in pursuance of any procedure for discovery of documents or any proceedings before any such court, tribunal or regulatory body; or
- (f) is required to be disclosed pursuant to any law or regulation having the force of the law.

2.03 Notice to be given of certain permitted Disclosures

In the event that the Recipient is required to make disclosure under Clause 2.02 (d), (e) or (f) above, it must first notify the Discloser before making any disclosure and the Discloser, at its cost and expense, is entitled to make representation to the court, tribunal or other body seeking or ordering disclosure as to whether the Confidential Information should be disclosed.

2.04 Precautions against Disclosures and Records

The Recipient must take all reasonable precautions to prevent the unauthorised disclosure of the Confidential Information.

2.05 Notice of Breach of Confidence

The Recipient must promptly notify the Discloser if it becomes aware of any breach of confidence by any person, firm or corporation to whom it has divulged all or any part of the Confidential Information or who becomes aware of it in an

unauthorised way and must give the Discloser all reasonable assistance in connection with any proceedings which the Discloser may institute against such person, firm or corporation for breach of confidence or otherwise.

2.06 Return Confidential Information or Request

The Recipient must on request from the Discloser, return to the Discloser all Confidential Information provided to the Recipient in written, printed, electronic or tangible form together with all copies, summaries and notes of the contents taken thereof and all summaries and notes of the contents of any Confidential Information provided to the Recipient in oral form.

2.07 Recipient's Own Analysis

The Recipient must not disclose and must continue to keep confidential in accordance with this agreement the portions of any analyses, compilations, studies or other documents prepared by or on behalf of the Recipient that include, utilise or reflect the Confidential Information. This provision does not prevent the publication of reports or the making of presentations prepared by the Recipient within the scope of and pursuant to its duties as part of the Express Purpose.

2.08 Term

The obligations in this agreement continue for a period of five (5) years from the date of this agreement.

3. ACKNOWLEDGEMENT

The Recipient acknowledges that:

- (a) disclosure of Confidential Information in breach of this agreement could cause considerable commercial and financial detriment to Discloser;
- (b) damages would not be a sufficient remedy for breach of this agreement; and in addition to any other remedy that may available in law or equity, Discloser may restrain by an injunction or similar remedy, any conduct or threatened conduct that is or will be a breach of this agreement.

4. RECIPIENT TO ENSURE OTHERS COMPLY

The Recipient must:

- (a) inform the Recipient Staff and any Advisers of the Recipient's obligations under this agreement;
- (b) ensure that each such person strictly observes all of the Recipient's obligations under this agreement as if those obligations were imposed on that person;
- (c) if requested by the Discloser at any time, procure written undertakings of confidentiality in favour of the Recipient (in a form considered suitable by the Discloser) by such persons on terms no less protective of Discloser's Confidential Information than are set out in this agreement.

5. INDEMNITY

The Recipient is liable for and indemnifies and holds harmless the Discloser in respect of any claim, action, damage, loss, cost, charge, expense, outgoing or payment which the Discloser suffers, incurs or is liable for in respect of:

- (a) any breach of this agreement by the Recipient;
- (b) any failure by the Recipient to ensure compliance by any of the Recipient Staff or any Advisers with the terms of this agreement; or

- (c) any act or omission by the Recipient Staff or any Advisers which if done or omitted to be done by the Recipient would be a breach by the Recipient of this agreement.

6. GENERAL

6.01 Successors

In this agreement, unless the context otherwise requires, words importing the singular include the plural and vice versa, a reference to a person includes that person's successors and legal personal representatives, and headings are for convenience and do not affect interpretation.

6.02 Governing Law

This agreement is governed by the laws of the State of Western Australia and the parties agree to submit to the exclusive jurisdiction of the courts of that State.

6.03 No Waiver

A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy created or arising on default under this agreement does not result in a waiver of that right, power, authority, discretion or remedy.

6.04 No Contractual Relationship

Nothing in this agreement is to be construed as compelling the Discloser to disclose any Confidential Information to the Recipient or to enter into any further contractual relationships.

6.05 No Licence

It is expressly understood and agreed by the Recipient that the disclosure of Confidential Information under this agreement is not to be construed as granting to the Recipient any rights whether express or implied by licence or otherwise over the matters to which the Confidential Information pertains.

6.06 No Ownership

The property in all Confidential Information disclosed by the Discloser, subject to any right of any other owner, remain with the Discloser.

6.07 Disclaimer

Any reliance by the Recipient, or other person, on any Confidential Information is solely at its own risk. Neither the Discloser nor any of its officers, employees or advisers:

- (a) makes any representation or warranty as to the accuracy or completeness of the Confidential Information, that the Confidential Information has been audited, verified or prepared with reasonable care, or that the Confidential Information is the totality of the information that a person in the Recipient's position may require, or expect to find, to satisfy the Recipient's requirements;
- (b) accepts any responsibility to inform the Recipient of any matter arising or coming to the Recipient's notice which may accept or qualify any Confidential Information which the Discloser provides to the Recipient; and
- (c) is liable for any loss of any kind (including, without limitation, damages, costs, interest, loss of profits, or special loss or damage) arising from an error, inaccuracy, incompleteness or similar defect in the Confidential Information, or any default, negligence or lack of care in relation to the preparation or provision of Confidential Information.

6.08 Prior Disclosures

Any Confidential Information supplied to the Recipient or any Advisers by the Discloser prior to the execution of this agreement is deemed to be governed by the terms of this agreement.

6.09 Variation

Any variation of this agreement must be in writing and signed by both parties.

6.10 Entire Agreement

This agreement constitutes the entire agreement between the parties and supersedes all prior arrangements or understandings between them with respect to the matters referred to herein.

SCHEDULE

EXPRESS PURPOSE

The Discloser is providing Confidential Information to assist the Recipient to consider and decide on its response to the Supply Procurement 2009 Expression of Interest – Invitation to potential suppliers, issued by the Discloser on 6 November 2008.

IN WITNESS the parties have executed this agreement on the day and year stated at the commencement.

SIGNED for and on behalf of)
ELECTRICITY RETAIL CORPORATION)
ABN: 71 743 446 839)
a duly authorised person in)
the presence of:)

W Signature _____
I Date _____
T Address _____
N _____
E _____
S _____
S Occupation _____

SIGNED for and on behalf of)
_____)
ABN:)
_____)
a duly authorised person in)
the presence of:)

W Signature _____
I Date _____
T Address _____
N _____
E _____
S _____
S Occupation _____