



SYNERGY'S GENERAL CONDITIONS OF CONTRACT FOR AN ORDER

These are the General Conditions of Contract governing and incorporated into an Order. No other terms and conditions will apply unless otherwise expressly agreed to in writing by Synergy and referenced in the Order.

A1 DEFINITIONS AND INTERPRETATION

A1.1 Definitions

The following definitions apply:

Approvals: any certificates, licences, consents, permits, approvals, authority or requirements of Law or requirements of any Government Agency.

Ariba: the online platform at <http://synergy.supplier.ariba.com> owned by Ariba Inc.

Business Day: a day on which banks are open for general banking business in Western Australia excluding a Saturday, Sunday or public holiday.

Claim: includes any claim for payment of money (including damages) or for an increase in the Contract Sum:

- 1 under, arising out of, or in any way in connection with the Contract, including any direction of Synergy's Representative;
- 2 under, arising out of, or in any way in connection with, the Contractor's Obligations or the Goods or Services; or
- 3 otherwise at law or in equity including:
 - (a) by statute;
 - (b) in tort for negligence or otherwise, including negligent misrepresentation; or
 - (c) for restitution.

Completion: completion of all of the Contractor's Obligations, including any specific requirements for Completion stated in the Scope of Work.

Consequential Loss: means direct expenditure of time by managers and employees consequential upon any Loss, loss of opportunity, loss of revenue, loss of profit or anticipated profit or anticipated savings, loss of business reputation, business interruptions of any nature (other than loss of production) and wasted overheads, but does not include loss arising from:

- 1 Third Party Claims; or
- 2 Claims by Synergy's Personnel or the Contractor's Personnel in respect of property damage, personal injury, sickness or death.

Contract: means the contract comprising the Order and the General Conditions of Contract.

Contract IP: Intellectual Property that is created as a result of the performance of the obligations under the Contract.

Contract Sum: the sum payable to the Contractor for the supply and delivery of the Goods or Services as described in the Order.

Contractor: the party named as the Contractor in the Order.

Contractor's Obligations: all of the obligations the Contractor is or may be required to perform under the Contract.

Contractor's Personnel: the Contractor's officers, employees, agents and Subcontractors and their respective employees and agents.

Critical Default: has the meaning given to it in clause A20(d).

Date for Delivery: if the Order provides a date for Delivery, that date; or if the Order provides a period of time for Delivery, the last day of that period, but if an extension of time for Delivery is granted by

Synergy's Representative, it means the date resulting from the extension of time.

Date of Order: the date of the Order.

Date of Delivery: the date that the Contractor achieves Delivery.

Defect: a defect, error or omission in the Goods or Services or other non-compliance with the Contract that relates to the Goods or Services.

Defects Liability Period: the period commencing from the Date of Delivery and expiring after a period of twelve (12) months from the Date of Delivery.

Delivery: is that stage in the execution of the Contractor's Obligations when:

- 1 the Services have been performed in accordance with the Contract;
- 2 the Goods have been delivered to the Destination;
- 3 the Goods meet the requirements of the Contract except for minor Defects:
 - (a) which do not prevent the Goods from being reasonably capable of being used for its intended purpose;
 - (b) in relation to which Synergy's Representative determines that the Contractor has reasonable grounds for not properly rectifying them; and
 - (c) rectification of which will not prejudice the convenient use of the Goods;
- 4 those tests which are required by the Contract to be carried out and passed before the Goods have achieved Delivery have been carried out and completed to the satisfaction of Synergy's Representative; and
- 5 documents and other information required under the Contract which, in the opinion of Synergy's Representative, are essential for the use, operation and maintenance of the Goods have been supplied and are, in the opinion of Synergy's Representative, satisfactory.

Destination: the destination specified in the Order where the Goods are to be Delivered.

direction: includes agreement, approval, authorisation, certificate, decision, demand, determination, explanation, instruction, notice, order, permission, rejection, request and requirement.

document: includes:

- 1 any notice, drawing or publication and any matter written, expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, which is intended to be used or may be used for the purpose of recording that matter; and
- 2 information recorded electronically and in hardcopy as the case requires.

Goods: the goods or equipment or materials to be supplied by the Contractor (if any) including any variations provided for by the Contract.

Existing IP: The Intellectual Property of a party that:

- (a) Is in existence at the date of formation of the Contract; or
- (b) comes into existence after the date of the formation of the Contract otherwise than in connection with the Contract.

General Conditions of Contract: these General Conditions of Contract for an Order.

Government Agency: Any government or governmental, administrative, monetary, fiscal or judicial body, department, commission, authority, tribunal, agency, Minister or entity in Western Australia or the Commonwealth of Australia.

Incident Notification Form: means the Incident Notification Form as set out at <http://www.synergy.net.au/suppliers>

Insolvency Event: Insolvency Event means the happening of any of the following:

- 1 a party informs the other party in writing or its creditors generally that it is insolvent or is financially unable to proceed with the Contract;
- 2 execution is levied against a party by a creditor and is not stayed or discharged within 20 Business Days;
- 3 if a party is an individual person or a partnership including an individual person and that person:
 - (a) commits an act of bankruptcy or presents or has a bankruptcy petition presented against him or her or is made bankrupt;
 - (b) makes a proposal for an arrangement or a composition with his or her creditors or enters a debt agreement under Part IX or a personal insolvency agreement under Part X of the Bankruptcy Act 1966 (Ch) or like provision under the law governing the Contract; or
- 4 if a party is a corporation and:
 - (a) it fails to comply with, or have set aside, a statutory demand within 10 Business Days of the time for compliance;
 - (b) a meeting of creditors is called with a view to the corporation entering a compromise or arrangement with its creditors or it enters a deed of company arrangement with its creditors;
 - (c) a controller or administrator is appointed to it;
 - (d) an application is made to a court for its winding up and not stayed or discontinued within 10 Business Days or a winding up order is made in respect of it or a resolution is made that it be wound up.

Intellectual Property (IP): all intellectual and industrial property rights, including trade marks, copyright (including future copyright), inventions, patents, designs, circuits and other eligible layouts, database rights, and other intellectual property rights as defined in Article 2 of the *Convention establishing the World Intellectual Property Organisation* dated 14 July 1967 (as amended from time to time), including any application or right to apply for registration of any of these rights.

Laws: means any act, ordinance, regulation, subordinate legislation, by-law, award or proclamation of Synergy or the State or Territory from time to time in which the Contractor's Obligations or any part of the Contract is being carried out.

Legislative Requirement: includes Laws, Approvals, and fees and charges payable with respect to these.

Loss: any loss, liability, damage, expense or cost of any nature or kind.

Modern Slavery has the meaning given in the *Modern Slavery Act 2018* (Cth) and includes, without limitation, trafficking in persons, slavery, servitude, forced marriage, forced labour, debt bondage, deceptive recruiting for labour or services and the worst forms of child labour.

Modern Slavery Laws means the *Modern Slavery Act 2018* (Cth), the *Modern Slavery Act 2018* (NSW), Divisions 270 and 271 of the *Criminal Code 1995* (Cth), and any other laws or regulations relating to Modern Slavery in force in Australia, and, where relevant, in other jurisdictions including international anti-slavery and human trafficking laws.

Month: calendar month

Moral Rights: has the meaning given to that term in Part IX of the *Copyright Act 1968* (Cth).

Order: Means a purchase order issued to the Contractor by Synergy requesting the supply and delivery of Goods or the provision of Services (or both).

Personal Information means information or an opinion however stored, whether recorded in a material form or not, whether true or not true, about an identified individual or an individual who is reasonably identifiable from the information or opinion.

Policies and Protocols means Synergy's policies and Protocols (including but not limited to all health, safety and environment policies and protocols) specified at <http://www.synergy.net.au/suppliers> as at the date of the Contract.

Regulated Substances means any substance that may present harm to Synergy's people or operations or the environment generally including, but not limited to, asbestos, perfluoroalkyl and polyfluoroalkyl substances (PFAS), ceramic fibre, radioactive materials, mercury, cadmium, lead, arsenic, polychlorobiphenyls and their isomers, organochlorine pesticides, ozone depleting substances and synthetic greenhouse gases, explosives, and other controlled chemicals and any related equipment on the Defence and Strategic Goods List maintained by the Commonwealth Department of Defence.

Scope of Work: the scope of work as specified or referenced in the Order describing the Goods or Services.

Services: the whole of the services (if any) (including incidental services or work) to be executed in accordance with the Contract, including the Scope of Work and variations provided for by the Contract.

Site: the site on which the Services are being undertaken.

Subcontractor: any person engaged by the Contractor under clause A17 to perform any part of the Contractor's Obligations and includes, where it is not inconsistent with the context, that person's employees, agents, consultants and invitees.

Synergy: the Electricity Generation and Retail Corporation ABN 58 673 830 106 and includes its successors and assigns.

Synergy Ariba Profile: the Contractor's profile information set out in Ariba, including but not limited to contact, insurance, financial, health and safety and environmental information.

Synergy's Personnel: Synergy's contractors (other than the Contractor) and their subcontractors, officers, employees, agents and consultants.

Synergy's Representative: the person named in the Order as Synergy's Representative or other person from time to time appointed by Synergy to be Synergy's Representative.

Taxes: taxes (including all sales, excise and storage taxes and licence and permit fees), levies, imposts, charges and duties (including stamp duty, transaction duties and import duties) levied or imposed by Law or by any Government Agency together with any related interest, penalties, fines and expenses in connection with them.

Tax Invoice: as defined in the GST Act.

Unsafe Conditions: means unacceptable actual or potential hazards and incidents relating to safety, health or environment.

Variation: an increase, decrease, omission or any other change to any part of the Goods or Services or Scope of Work.

Variation Order: a written direction by Synergy's Representative under clause A8.1.

Variation Quotation: the quotation provided by the Contractor under clause A8.1.

A2

OVERVIEW OF THE CONTRACT

- (a) In consideration of the payment by Synergy to the Contractor of the Contract Sum, the Contractor must supply and deliver the Goods or perform the Services (or both) in accordance with the Contract.

- (b) Subject to the Contractor properly supplying and delivering the Goods or performing the Services (or both), Synergy must pay the Contractor the Contract Sum in accordance with the Contract.
- (c) The Contract Sum is not subject to adjustment for rise and fall, or for any other reason except as expressly provided in the Contract.
- (d) The Contract Sum will be the sole consideration payable to the Contractor for the performance of the Contract.
- (e) Except as otherwise provided in the Contract, the contractor will be responsible for all costs, expenses and liabilities incurred by the Contractor in connection with the supply of the Goods and /or performance of the Services.

A3 WARRANTIES

The Contractor warrants to Synergy that:

- (a) the Contractor is and at all times will be suitably qualified and experienced, and will perform the Contractor's Obligations with a degree of professional skill, care and diligence expected of a contractor that is an expert in carrying out work of a nature similar to the Contractor's Obligations;
- (b) subject to clause A17, the Contractor will engage and retain the Subcontractors who are suitably qualified and experienced and will coordinate the activities of the Subcontractors so that the Contractor's Obligations are executed in a proper and workmanlike manner;
- (c) the Contractor will execute and complete the Contractor's Obligations so that the Goods and Services, when delivered or performed, will comply with all the requirements of the Contract and all Legislative Requirements and the Scope of Work; and
- (d) the Goods will not, when delivered, contain any Regulated Substances and that no Regulated Substances will be used in the performance of the Contractor's Obligations under this Contract unless the use or inclusion (as the case may be) has been approved by Synergy in writing, which approval Synergy may withhold in its discretion acting reasonably.

A4 DOCUMENTS

A4.1 Contract Documents

The parties acknowledge and agree that the following are incorporated into, and form part of, the Contract and to the extent there is any inconsistency between any provisions forming part of the Contract, the descending order of precedence is:

- (a) The Order;
- (b) These General Conditions of Contract;
- (c) Any other document or parts of documents referred to in the Order; and
- (d) Any other document the parties expressly agree forms part of the Contract.

A4.2 Supply of documents by the Contractor

- (a) If Synergy's Representative requests the Contractor to supply document(s), the Contractor must supply such documents in the form (such as electronic or hard copy) and times specified in the Contract or reasonably specified in Synergy's Representative's request.
- (b) Synergy or Synergy's Representative's receipt of, or review or approval of, or comment on any documents supplied by the Contractor under this Contract does not affect the Contractor's Obligations or relieve the Contractor from responsibility for the Contractor's errors or omissions or compliance with the requirements of the Contract.

A5 DELIVERY AND PERFORMANCE REQUIREMENTS

The Contractor must and must procure that the Contractor's Personnel, in supplying the Goods or performing the Services:

- (a) be aware of and comply with all applicable Legislative Requirements and requirements of Government Agencies;
- (b) comply with the Policies and Protocols. If any applicable Law provides for a different standard or quality to the Policies and Protocols the Contractor must comply with the more stringent standard or quality;
- (c) comply with all directions (written or verbal) given by Synergy's Representative that are both lawful and reasonable;
- (d) ensure that all tasks the subject of the Contract are performed in a safe manner, with all relevant personnel having the necessary qualifications, skill and experience;
- (e) provide all such information and assistance as Synergy reasonably requires;
- (f) cooperate with Synergy and other contractors on Site to ensure coordination of work and execution of the Services of the Contractor;
- (g) supply everything necessary for the execution and completion of the Contractor's Obligations;
- (h) exercise the skill, care and diligence expected of a professional contractor supplying goods or performing services of a similar nature to the Goods and Services;
- (i) supply Goods that are properly, safely and securely packaged and labelled for identification and safety; and
- (j) comply with the standards of workmanship or specifications required by the Contract and in the absence of any other requirement, supply new goods and material, of a kind suitable for its purpose and consistent with the nature and character of the Goods in accordance with the relevant standard of the Standards Association of Australia or equivalent association approved by Synergy.

A6 NON-COMPLIANCE

- (a) If the Contractor's Personnel do not comply with clause A5 then upon a direction issued by Synergy, the Contractor must
 - (1) promptly correct the non-compliance if ongoing;
 - (2) take any necessary steps to avoid it happening again; and
 - (3) if requested by Synergy, immediately remove the Contractor's Personnel responsible for the non-compliance from the Site or any other premises of Synergy until further direction from Synergy.
- (b) the Contractor must not cause, permit or tolerate an Unsafe Condition over which the Contractor has control on the site or any other premises of Synergy;
- (c) if the Contractor becomes aware of any Unsafe Condition, the Contractor must take any steps as are necessary to fix the problem and immediately inform the Synergy Representative; and
- (d) if Synergy observes what it deems to be an unsafe act or becomes aware of a planned or anticipated unsafe act. Synergy may direct the Contractor to stop or not proceed with such performance. The Contractor must, at the Contractor's cost and risk, modify the Contractor's method of Services in order for the Services to proceed in a manner that Synergy (acting reasonably) considers to be safe.

A7 INCIDENT NOTIFICATION AND PROVISION OF DOCUMENTS

- (a) If the Contractor is required under any applicable Laws to notify any relevant Government Agency concerning any aspect of the Services provided under the Contract, the Contractor must also

notify Synergy as soon as possible and provide Synergy with a copy of the Incident Notification Form.

- (b) When requested to do so by Synergy, the Contractor must promptly:
- (1) provide any relevant documents to the incident subject of the notice referred to in Clause A7(a); and
 - (2) authorise Synergy and its representatives or agents to conduct interviews with the Contractor's Employees and Sub-contractors in relation to all matters relevant to the incident.
- (c) In addition to Clause A7(b), within 24 hours of the occurrence of an incident caused or contributed by the Contractor, the Contractor must notify Synergy in writing of any accident, injury, loss or damage of any kind which arose out of the incident.

A8 VARIATIONS

A8.1 Variation quotations

- (a) If at any time Synergy requires a Variation to the Contract, Synergy may request the Contractor to provide a quotation for the proposed Variation (**Variation Quotation**).
- (b) If accepted by Synergy, the Contract Sum will be adjusted to the amount set out in the Variation Quotation which is the subject of a Variation Order.

A8.2 Variation Order requirement

The Contractor acknowledges that it will not be entitled to:

- (a) an adjustment to the Contract Sum;
- (b) any payment;
- (c) any extension of time; or
- (d) make any Claim,

for any Variation except where it is expressly directed under a Variation Order issued in writing by Synergy's Representative under clause A8.1.

A9 SUSPENSION

- (a) Synergy may at any time and from time to time, in its discretion, direct the Contractor to:
- (1) suspend the performance of all or part of any activity or activities in relation to the supply and delivery of the Goods or performance of the Services (or both); or
 - (2) recommence the performance of any activity suspended under clause A9(a)(1).
- (b) If the suspension under clause A9(a) was due to the Contractor's failure to perform any of the Contractor's Obligations, the Contractor will not be entitled to make any Claim on Synergy arising out of or in connection with the suspension.
- (c) If the suspension under clause A9(a) was not due to the matters referred to in A9(b), the Contractor's only entitlements are:
- (1) to claim an extension of time as agreed between the parties; and
 - (2) to receive payment of the reasonable costs actually and reasonably incurred and duly substantiated by the Contractor as a direct result of the suspension.

A10 DELIVERY AND ACCEPTANCE

A10.1 Delivery and Acceptance of Goods

- (a) The Contractor must perform the Contractor's Obligations to achieve Delivery by the Date for Delivery.

- (b) Risk in, and title to, the Goods shall pass to Synergy when the Goods are delivered to the Destination in accordance with the Contract.
- (c) If Synergy determines that the Goods do not meet the requirements of Delivery Synergy shall issue to the Contractor a notice stating in writing the reasons why the Goods are not substantially in accordance with the requirements of the Contract (**Notice of Non-Acceptance**).
- (d) If the Contractor receives a Notice of Non-Acceptance, the Contractor must rectify the Goods at its own cost until the requirements for Delivery are met.

A10.2 Acceptance of the Services

- (a) When the Contractor is of the opinion that Completion has been reached, the Contractor must, in writing, request Synergy's Representative to accept the Services.
- (b) Within 10 Business Days of the receipt of the request, Synergy's Representative must give to the Contractor and to Synergy a written notice:
- (1) accepting the Services and stating the date of Completion; or
 - (2) written reasons for not accepting the Services, in which case the Contractor must re-perform the Services at its own cost until the requirements for Completion are met.

A10.3 Effect of certificates

The issue of a notice of acceptance does not:

- (a) constitute approval of any of the Goods or Services or other matter; or
- (b) prejudice any Claim by Synergy.

A11 PERFORMANCE

- (a) The Contractor must, prior to commencing the Services or entering the Site:
- (1) inform the Synergy Representative of the Contractor's entry into the site; and
 - (2) not interfere with Synergy's activities or the activities of any other person on the site.

A12 DEFECTS AND DEFECTS LIABILITY PERIOD

A12.1 Defects Generally

- (a) The Contractor must promptly rectify all Defects.
- (b) Nothing in this clause A12.1 prejudices any other right which Synergy may have against the Contractor arising out of the failure of the Contractor to provide the Goods or Services in accordance with the Contract.
- (c) At any time during the Defects Liability Period, Synergy may direct the Contractor to promptly rectify any Defects:
- (1) existing at the commencement of the Defects Liability Period; or
 - (2) which become apparent before the expiration of the Defects Liability Period,
- within a reasonable period of time specified in the direction.

A12.2 Failure to remedy Defects

If the Contractor fails to remedy a Defect which is the subject of a direction under this clause A12 by the time required in that direction:

- (a) Synergy may remedy the Defect at the sole risk and expense of the Contractor, without prejudice to any other rights Synergy may have against the Contractor in respect of the Defects; and

- (b) the costs of the rectification work incurred by Synergy will be a debt due on demand from the Contractor to Synergy.

A12.3 Remedial Work

All remedial work will be subject to the provisions of the Contract. All remedial work will have its own separate Defects Liability Period of 12 months commencing from the completion of the remedial work.

A13 INSURANCE

A13.1 Insurances to be effected

The Contractor must effect and maintain on terms reasonably acceptable to Synergy the following insurance policies:

- (a) Public and Products Liability insurance covering liability for loss of or damage to property and death of or injury to any person (other than liability required to be insured under workers compensation insurance in an amount of not less than \$20,000,000 in respect of each and every claim (except for Products Liability which must be \$20,000,000 in the aggregate). This policy must provide for liability arising out of the use of unregistered vehicles, covering liability for loss of or damage to property and death of or injury to any person (other than liability required to be insured under workers compensation insurance);
- (b) Workers Compensation Insurance (including industrial disease) as required by law with a common law limit of \$50 million in respect of any number of persons and arising out of the one event. This policy must be extended to provide coverage to Synergy as principal;
- (c) Motor Vehicle Insurance covering all vehicles, plant and equipment (whether owned, hired or leased) used in connection with the Contract for loss or damage of not less than the market value and third party liability of not less than \$20,000,000 in respect of each and every claim. All motor vehicles where required by Legislative Requirements must carry compulsory third party insurance;
- (d) Insurance covering the Contractor's own property, Goods, materials owned, hired, leased or used by the Contractor;
- (e) Professional Indemnity insurance covering liability arising from any act, error or omission arising out of or in connection with the professional activities and duties under this Contract, with a limit of liability of not less than \$5,000,000 per claim and in the aggregate. This policy must provide for one full automatic reinstatement of the limit of liability;
- (f) Any additional insurances required by an applicable Law.

Together (the "Insurances").

A13.2 Confirmation of Insurance

The Contractor must provide to Synergy, within 5 Business Days of a written request, the terms and conditions of each of the Insurances.

A13.3 Subcontractor insurance

If the Contractor subcontracts any part of the Contractor's Obligations, then the Contractor must ensure that every Subcontractor purchases all the Insurances before the Subcontractor commences any of the Contractor's Obligations.

A13.4 Common terms

The Insurances with the exception of A13.1(c) and A13.1(e) must:

- (a) contain a waiver of subrogation clause to ensure the Contractor's insurers waive their rights of subrogation against Synergy and their respective employees and agents; and
- (b) contain a cross liability clause to ensure that each insured party is treated as a separate and distinct insured, and the acts or omissions of one party does not void, invalidate or reduce insurers liability under the policy.

A13.5 Primary

The insurance contemplated by clause A13 are primary and not secondary to the indemnities referred to in the Contract.

A14 INDEMNITY

A14.1 General indemnity

The Contractor must indemnify Synergy against:

- (a) Loss to property of Synergy; and
- (b) claims by any person against Synergy in respect of personal injury or death or Loss of property,

arising out of, or in connection with, any wrongful act or omission by the Contractor, including any negligence, breach or default of the Contractor or the Contractor's Personnel.

A14.2 Exclusion

The indemnities in clauses A14.1 do not apply to any Loss to the extent that the Loss is caused by Synergy's breach of the Contract or negligence.

A14.3 Benefit of indemnities

In clause A14.1, a reference to "Synergy" includes a reference to Synergy's officers, employees, agents and contractors.

A14.4 Parties not liable for certain loss

Except for liquidated damages or other amounts that become payable under the express terms of the Contract, no party will be liable to the other party for any Consequential Loss.

A15 PAYMENTS

A15.1 Payment claims

- (a) After the Date of Delivery, the Contractor must submit to Synergy a Tax Invoice, supported by evidence of the amount due to the Contractor and any information that Synergy may reasonably require to support that claim.

- (b) A Tax Invoice must:

- i. Include the unique purchase order number specified on the Order.
- ii. include the amount of the Contract Sum being claimed by the Contractor; and
- iii. separately identify Goods or Services attracting GST and Goods or Services which do not attract GST.

- (c) Tax Invoices must be submitted electronically to accounts.payable@synergy.net.au; or where the Contractor receives an Order through Synergy's online procure to pay system, Tax Invoices must be submitted through that system.

A15.2 Payment by Synergy

- (a) Synergy must pay the Contractor the amount due to the Contractor within the 30 days of the receipt of the Tax Invoice provided that the Tax Invoice is compliant with clause A15.1.
- (b) Synergy will pay the Contract Sum in Australian Dollars, unless otherwise agreed between Synergy and the Contractor, by electronic funds transfer to the Contractor's nominated bank account.
- (c) Synergy is not responsible for any delays in payment or error due to factors outside its reasonable control, including delays in the banking system.

- (d) Payment of moneys is not evidence of the value of Goods or Services (or both), or an admission of liability or an admission that Contractor's Obligations have been executed satisfactorily but is a payment on account only.

A16 GOODS AND SERVICES TAX (GST)

If GST is imposed on any supply made by the Contractor under or in connection with this Order, the Contractor may recover from Synergy, in addition to the Contract Sum, an amount equal to the GST payable in respect of that supply.

The Contractor must first provide Synergy with a valid tax invoice before Synergy will pay the GST amount to the Contractor.

For the purposes of this Order, GST has the meaning given to it in the "A New Tax System (Goods and Services) Tax Act 1999 (Cth).

A17 SUBCONTRACTING

The Contractor must not, without the prior written approval of Synergy's Representative, which approval must not be unreasonably withheld, subcontract any part of the Contractor's Obligations.

A18 ASSIGNMENT AND NOVATION

Neither party shall assign, novate, encumber or otherwise deal with its rights, obligations, benefits or interests under the Contract, or any part of the Contract or any moneys arising under the Contract, without the prior written consent of the other party.

A19 INTELLECTUAL PROPERTY

- (a) The parties acknowledge and agree that each Party remains the owner of its Existing IP, and that nothing in the Contract prevents, limits or restricts each party's subsequent use or exploitation of its own Existing IP.
- (b) The Contractor agrees that all Contract IP will be vested in Synergy and will be Synergy's property as and when created and the Contractor assigns all rights, title and interest in the Contract IP to Synergy.
- (c) In relation to Intellectual Property owned by the Contractor and embodied in or relating to the Goods or Services, the Contractor grants to Synergy a perpetual, irrevocable, world wide licence to use, transfer and sub-license that Intellectual Property.
- (d) In relation to Intellectual Property embodied in or relating to the Goods or Services that is not owned by the Contractor, the Contractor must procure within 10 Business Days of the Date of Order, that the relevant third parties grant to Synergy a perpetual, irrevocable, world wide licence, to use, transfer and sub-license that Intellectual Property for all purposes connected with the Contract and the Goods or Services.
- (e) Time is of the essence for the obligation to procure in paragraph (d). If the Contractor fails to comply, Synergy may, in addition to any other right it has, at the Contractor's cost, procure that or similar Intellectual Property.
- (f) The Contractor must procure from all holders of moral rights (as defined in the *Copyrights Act 1968(Cth)*) in the Intellectual Property an unconditional, irrevocable consent in writing authorising Synergy (and successors in title, licensees and authorised persons) to use it without attribution of the author (or with incorrect attribution) and subject it to derogatory treatment.

A20 DEFAULT

- (a) If, at any time during the Contract, a party breaches the Contract, the other party may issue a notice to the breaching party (**Breach Notice**).
- (b) The Breach Notice must:
- (1) state that the notice is a Breach Notice; and
 - (2) identify and give details of the breach of the Contract on which the Breach Notice is based.

- (c) If a party receives a Breach Notice, that party must remedy the breach within 5 Business Days of receiving the Breach Notice, except in the case of Synergy failing to pay the Contractor a sum due which Synergy must remedy within 20 Business Days.
- (d) If a party receives a Breach Notice but fails to remedy the breach within the time specified, a **Critical Default** will have occurred, and the other party may exercise its rights in accordance with clause A21.

A21 TERMINATION

A21.1 Termination for default or insolvency

Either party may, by written notice to the other party, terminate the Contract with immediate effect if:

- (a) the other party suffers an Insolvency Event; or
- (b) a Critical Default occurs.

A21.2 Termination for Synergy's convenience

- (a) Without prejudice to any of Synergy's other rights under the Contract, Synergy may at any time, for its sole convenience, terminate the Contract by giving not less than 10 Business Days' written notice to the Contractor (**Termination for Convenience Notice**).
- (b) The Contract will terminate on the date and time stated in the Termination for Convenience Notice or, if no such date and time is stated, at the date and time the Termination for Convenience Notice was received by the Contractor.
- (c) After the issue of the Termination for Convenience Notice, Synergy has the unfettered and discretion to decide what action to take in respect of the Contractor's Obligations that have been terminated.

A21.3 Payment for termination at Synergy's convenience

Without limiting Synergy's rights at common law, if the Contract is terminated under clause A21.2 Synergy must pay the Contractor, as the Contractor's exclusive remedy for the termination:

- (a) the amount for the Contractor's Obligations properly carried out prior to the date of termination which would have been payable if the Contract had not been terminated and the Contractor had made a payment claim in accordance with clause A15.1 for work done up to the date of the termination; and
- (b) any cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing its obligations.

A21.4 Survival

The following clauses survive the termination of the Contract: clause A13 (Insurance); clause A14 (Indemnity); clause A20 (Default); clause A21 (Termination); clause A22 (Disputes); clause A23 (Confidentiality) and A26 (Modern Slavery).

A22 DISPUTES

- (a) If a dispute between the Contractor and Synergy arises out of or in connection with the Contract, including a dispute concerning termination of the Contract, a senior representative of each of the Parties will meet in to attempt in good faith to resolve the dispute. If the parties are unable to resolve the dispute within 5 Business Days of meeting, then either party may issue proceedings.
- (b) Nothing in this clause prevents either party from issuing Court proceedings for urgent injunctive relief or to protect a limitation period.

A23 CONFIDENTIALITY

The Contract and any information (including documents) exchanged between the parties or otherwise created for the purposes of the

Contract is confidential and may not be disclosed to a third party without Synergy's prior written consent.

A24 PRIVACY

- (a) To the extent that the Contractor is in possession of Personal Information as a result of the provision of the Contractor's Obligations, the Contractor must:
- (1) use the Personal Information only for the purposes of fulfilling its obligations under this Contract;
 - (2) comply with the Privacy Act 1988 (Cth);
 - (3) not use, modify or disclose Personal Information except with the prior written consent of Synergy;
 - (4) take all reasonable measures to ensure that Personal Information in its possession or control or to which it has access in connection with this Contract, is protected against loss and unauthorised access, use, modification or disclosure;
 - (5) comply with any reasonable direction, policy or guidelines of Synergy which concern the security, use and disclosure of Personal Information; and
 - (6) ensure that any person who is authorised to have access to any Personal Information is made aware of and undertakes in writing to observe the obligations under this clause A24.
- (b) Synergy must comply with its privacy policy available at <https://www.synergy.net.au/privacy>.

A25 MISCELLANEOUS PROVISIONS

A25.1 Governing law

- (a) The Contract is governed by and construed with reference to the laws for the time being in force in the State of Western Australia.
- (b) Each party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of that State, and of any courts that have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

A25.2 Relationship of Parties

The Contractor is an independent contractor of Synergy and must exercise independent control, management and supervision in the performance of the Contract. The Contractor is not in any way an agent for Synergy. The employees, agents and Subcontractors of the Contractor will not be deemed to be employees, agents or Subcontractors of Synergy.

A25.3 Synergy's statutory functions

Nothing contained in or implied by the Contract or any document contemplated by the Contract has the effect of constraining Synergy or placing any fetter on its statutory rights, duties, powers and functions, including those contained or referred to in any Law.

A25.4 Cumulative rights

The rights, powers, authorities, discretions and remedies arising out of or under the Contract are cumulative and do not exclude any other right, power, authority, discretion or remedy of any party.

A25.5 Notices

- (a) Other than for changes to the Synergy Ariba Profile dealt with by clause A25.6(c) a notice must be in writing and:
- (1) delivered by hand or sent by post, to the address of the party set out in the Order or as otherwise notified; or
 - (2) sent by email, as an attachment to an email, to the email address of the party as set out in the Order or as otherwise notified.

- (b) A notice is deemed to be given and received:
- (1) if delivered by hand, on the day of delivery;
 - (2) if sent by post, on the third Business Day after posting; or
 - (3) if sent by email, 4 hours after it is sent, unless the sender receives notification from its or the recipient's email server that the email was undeliverable, was not delivered or the recipient is out of the office.

A25.6 Ariba

- (a) Synergy uses Ariba to maintain certain organisational information of all of its contractors.
- (b) Prior to the commencement of the Contract, the Contractor must:
- (1) maintain an Ariba log-in; and
 - (2) create and complete a Synergy Ariba Profile.
- (c) If during the term of the Contract any of the Synergy Ariba Profile data changes, the Contractor must update the Synergy Ariba Profile online [as soon as reasonably practicable and in any event, no later than 7 days after the data change].
- (d) For the avoidance of doubt, Synergy will not accept amendments to the Synergy Ariba Profile information via email.

A26 MODERN SLAVERY

- (a) The Contractor warrants that it does not, and the Contractor's Personnel and the Contractor's suppliers do not, engage in any activity or practice that would constitute Modern Slavery.
- (b) The Contractor must:
- (1) comply, and use reasonable endeavours to ensure the Contractor's Personnel and the Contractor's suppliers comply, with the Modern Slavery Laws; and
 - (2) notify Synergy as soon as reasonably practicable of any instance of Modern Slavery identified in the operations or supply chains of the Contractor or any Subcontractor, and any steps the Contractor or Subcontractor, has taken, or proposes to take, in response to the instance of Modern Slavery.
- (c) The Contractor must provide all reasonable assistance to Synergy to enable it to comply with its obligations under the Modern Slavery Laws and to identify and address the risks of Modern Slavery in its supply chains, including assisting Synergy to conduct an audit of the Contractor and the Contractor's Personnel to assess compliance with this clause A26.
- (d) In addition to Synergy's other rights under the Contract, the Contractor acknowledges and agrees that failure to comply with this clause A26 may result in Synergy not awarding a contract for goods or services to the Contractor in the future.
- (e) The Contractor must include, or procure the inclusion of, rights in contracts with suppliers or Subcontractors to enable the Contractor to comply with its obligations under this clause A26.

END.