



SYNERGY'S GENERAL CONDITIONS OF CONSULTANCY CONTRACT (SHORT FORM)

Between:

Electricity Generation and Retail Corporation trading as Synergy (ABN 58 673 830 106) of 219 St Georges Terrace PERTH WA 6000 (**Synergy**)

and

(Consultant)

The parties agree:

A1 DEFINITIONS AND INTERPRETATION

A1.1 Definitions

The following definitions apply:

Annual Report: as defined in clause A29.3(a)(1).

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.

Assign: to sell, transfer, assign or novate.

Assignee: the party to which an assignment is made.

Assignor: the party to the Contract making an assignment.

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

Business Management System: has the meaning given to it in clause A30.1(a).

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 Consultant's Obligations or the Consultancy 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.

Commencement Date: means the commencement date specified in Schedule A.

Completion: completion of the Consultant'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 Consultant's Personnel in respect of property damage, personal injury, sickness or death.

Consultancy Services: means the whole of the consultancy services (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.

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

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

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 Consultant for the supply and delivery of the Consultancy Services specified or calculated in accordance with Schedule B.

Critical Default: has the meaning given to it in clauses A20.1(d) A20.2, A26.3 and A27.3.

Date for Completion: if the Scope of Work or Order provides a date for completion, that date; or if the Scope of Work or Order provides a period of time for Completion, the last day of that period, but if an extension of time for Completion is granted by Synergy's Representative, it means the date resulting from the extension of time.

Date of Completion: the date that the Consultant achieves Completion.

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.

Environmental Management Plan: means, if applicable under the Contract, the environmental safety procedures and management plan to be implemented under the operation of clause A27.

Existing IP: the Intellectual Property of a party that:

- 1 is in existence at the date of formation of the Contract; or
- 2 comes into existence after the date of the formation of the Contract otherwise than in connection with the Contract.

Expiry Date: means the expiry date specified in Schedule A.

Final Report: as defined in clause A29.3(a)(2).

Force Majeure: has the meaning as defined under clause A25.

General Conditions of Contract: these General Conditions of Consultancy Contract (Short Form).

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/about_us/supplier_forms_and_policies.xhtml.

Information Provider: as defined in clause A23.2.

Information Recipient: as defined in clause A23.2.

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* (Cth) 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.

Law(s): 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 Consultant'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.

Minister: the Minister responsible for administering the *Electricity Corporations Act 2005* (WA).

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 Consultant by Synergy for the purposes of payment pursuant to clause A14.1.

OSH Management Plan: means, if applicable under the Contract, the occupational safety and health management plan to be implemented under the operation of clause A26.2.

Participation Commitments: means the statements of intention, proposals, undertakings and commitments which are given or

made by the Contractor in Section B of the Participation Plan, if applicable under the Contract.

Participation Plan: means the Western Australian Industry Participation Strategy – participation plan document as set out in Schedule E -.

Participation Plan Obligations: means the Contractor's obligations under clause A29.1(a).

Participation Plan Report Template: means the reporting template as set out in Schedule F -.

Payment Term: means the number of days specified in Schedule A, calculated from the last day of the Month of issue of the Tax Invoice.

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/about_us/supplier_forms_and_policies.xhtml.

Quality Assurance Certification: has the meaning given to it in clause A28.1(a).

Quality Plan: has the meaning given to it in clause A28.1(a).

Quality Assurance Certification Plan: has the meaning given to it in clause A28.1(b).

Scope of Work: the scope of work provided in Schedule C describing the Consultancy Services.

Site: the site or sites specified in Schedule A on which the Consultancy Services are being undertaken.

Special Conditions: means the additional terms and conditions to the General Conditions of Contract specified in Schedule D.

State: means State of Western Australia.

Subcontractor: any person engaged by the Consultant under clause A16 to perform any part of the Consultant'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 Consultant'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 Consultant) and their subcontractors, officers, employees, agents and consultants.

Synergy's Representative: the person named in Schedule A 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 (excluding GST) 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.

Term: has the meaning as defined under clause A2(b).

Third Party Claim: means a demand, action or proceeding of any nature whether actual or threatened, initiated by a person other than Synergy or the Consultant.

Third Party Recipient: as defined in clause A23.2.

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 Consultancy 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 Consultant under clause A8.1.

Workplace Environmental Incident: means an incident that has caused or has the potential to cause a significant environmental impact to air, water, and/or land and includes those matters which may result in a breach of relevant environmental Laws or licence.

A2 OVERVIEW OF THE CONTRACT

- (a) In consideration of the payment by Synergy to the Consultant of the Contract Sum, the Consultant must perform the Consultancy Services in accordance with the Contract.
- (b) The Contract commences on the Commencement Date and terminates on the Expiry Date unless extended by mutual agreement or terminated earlier in accordance with the Contract ("**Term**").
- (c) Subject to the Consultant properly performing the Consultancy Services, Synergy must pay the Consultant the Contract Sum in accordance with the Contract.
- (d) The Contract Sum is not subject to adjustment for rise and fall, or for any other reason except as expressly provided in the Contract.
- (e) The Contract Sum will be the sole consideration payable to the Consultant for the performance of the Contract.
- (f) Except as otherwise provided in the Contract, the Consultant will be responsible for all costs, expenses and liabilities incurred by the Consultant in connection with the performance of the Consultancy Services.

A3 WARRANTIES

The Consultant warrants to Synergy that:

- (a) the Consultant is and at all times will be suitably qualified and experienced, and will perform the Consultant's Obligations with a degree of professional skill, care and diligence expected of a Consultant that is an expert in carrying out work of a nature similar to the Consultant's Obligations;
- (b) subject to clause A16, the Consultant will engage and retain the Subcontractors who are suitably qualified and experienced and will coordinate the activities of the Subcontractors so that the Consultant's Obligations are executed in a proper manner; and
- (c) the Consultant will execute and complete the Consultant's Obligations so that the performance of the Consultancy Services, when performed, will comply with all the requirements of the Contract and all Legislative Requirements and the Scope of Work.

A4 DOCUMENTS AND REPORTING

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 Special Conditions;
- (b) these General Conditions of Contract;
- (c) any other document the parties expressly agree forms part of the Contract;
- (d) the Order; and
- (e) any other document or parts of documents referred to in the Order.

A4.2 Supply of documents by the Consultant

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

A4.3 Reporting

The Consultant must provide progress reports to Synergy at the time and in the manner specified in the Scope of Work. If the Scope of Work does not specify these matters, the Consultant must provide progress reports at the times and in the manner reasonably required by Synergy's Representative.

A5 CONSULTANCY SERVICES PERFORMANCE REQUIREMENTS

The Consultant must and must procure that the Consultant's Personnel, in performing the Consultancy 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 Consultant must comply with the more stringent standard or quality;
- (c) comply with all lawful directions (written or verbal) given by Synergy's Representative;
- (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 any other contractors on Site to ensure coordination of work and execution of the Consultancy Services;
- (g) supply everything necessary for the execution and completion of the Consultant's Obligations; and
- (h) exercise the skill, care and diligence expected of a professional Consultant performing services of a similar nature to the Consultancy Services.

A6 NON-COMPLIANCE

- (a) If the Consultant's Personnel do not comply with clause A5 then upon a direction issued by Synergy, the Consultant 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 Consultant's Personnel responsible for the non-compliance from the Site or any other premises of Synergy until further direction from Synergy.
- (b) The Consultant must not cause, permit or tolerate an Unsafe Condition over which the Consultant has control on the Site or any other premises of Synergy;
- (c) If the Consultant becomes aware of any Unsafe Condition, the Consultant 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 Consultant to stop or not proceed with such performance. The Consultant must, at the

Consultant's cost and risk, modify the Consultant's method of performing the Consultancy Services in order for the Consultancy Services to proceed safely.

A7 INCIDENT NOTIFICATION AND PROVISION OF DOCUMENTS

- (a) If the Consultant is required under any applicable Laws to notify any relevant Government Agency concerning any aspect of the Consultancy Services provided under the Contract, the Consultant 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 Consultant must promptly:
 - (1) provide any documents relevant to the incident the subject of the notice referred to in clause A7(a); and
 - (2) authorise Synergy and its representatives or agents to conduct interviews with the Consultant's Personnel 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 Consultant, the Consultant 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 Consultant 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 Consultant 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 Consultant to:
 - (1) suspend the performance of all or part of any activity or activities in relation to the performance of the Consultancy Services; 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 Consultant's failure to perform any of the Consultant's Obligations, the Consultant 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 Consultant'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 Consultant as a direct result of the suspension.

A10 COMPLETION AND ACCEPTANCE

A10.1 Acceptance of the Consultancy Services

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

A10.2 Effect of certificates

The issue of a notice of acceptance does not:

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

A11 PERFORMANCE

- (a) The Consultant must, prior to entering the Site:
 - (1) inform the Synergy Representative of the Consultant's entry into the Site; and
 - (2) not interfere with Synergy's activities or the activities of any other person on the Site.
 - (3) Present themselves to work in a suitable fit mental and physical state to perform activities required of them.

A12 INSURANCE

A12.1 Insurances to be effected

The Consultant must effect and maintain on terms 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 and must be extended to indemnify Synergy to the extent of its vicarious liability arising out of the acts or omissions of the Consultant or the Consultant's Personnel;
- (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 or owner or occupier against any liability it may incur to the Consultant's Personnel both statutory and at common law;
- (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 Consultant's own property, Goods, materials owned, hired, leased or used by the Consultant;
- (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; and
- (f) Any additional insurances required by an applicable Law or required by Synergy (acting reasonably),

Together (the "Insurances").

A12.2 Confirmation of Insurance

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

A12.3 Subcontractor insurance

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

A12.4 Common terms

The Insurances with the exception of A12.1(c) and A12.1(e) must:

- (a) contain a waiver of subrogation clause to ensure the Consultant'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.

A12.5 Primary

The insurance contemplated by clause A12 are primary and not secondary to the indemnities referred to in the Contract.

A13 INDEMNITY

A13.1 General indemnity

The Consultant must indemnify Synergy against Loss suffered or incurred, arising out of or in connection with, any wrongful act or omission by the Consultant or the Consultant's Personnel, including any:

- (a) breach of contract;
- (b) tort, including negligence or breach of statutory duty;
- (c) breach of confidentiality; or
- (d) act or conduct not authorised by the Contract.

A13.2 Indemnity against Third Party Claims

The Consultant must also indemnify Synergy against any Loss suffered or incurred, arising out of or in connection with any Third Party Claim against Synergy arising in connection with:

- (a) breach of contract;
- (b) tort, including negligence or breach of statutory duty;
- (c) breach of confidentiality; or
- (d) any infringement or alleged infringement of that party's Intellectual Property, Moral Rights or rights in respect of that party's confidential information, where the infringement or alleged infringement arises out of the receipt, use, reproduction or exploitation of the Consultancy Services by or on behalf of Synergy in the manner contemplated by the Contract or any Loss in connection with this.

A13.3 Exclusion

The indemnities in clauses A13.1 and A13.2 do not apply to any Loss to the extent that the Loss is caused by Synergy's breach of the Contract or negligence.

A13.4 Benefit of indemnities

In clauses A13.1 and A13.2, a reference to "Synergy" includes a reference to Synergy's officers, employees, agents and contractors.

A13.5 Parties not liable for certain loss

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

A14 PAYMENTS

A14.1 Claims for payment

- (a) At the times stated in Schedule B - Contract Sum, the Consultant must submit to Synergy a Tax Invoice, supported by evidence of the amount due to the Consultant and any information that Synergy may reasonably require to support that claim.
- (b) A Tax Invoice must:
 - (1) include the unique purchase order number specified on the Order.
 - (2) include the amount of the Contract Sum being claimed by the Consultant; and
 - (3) separately identify Consultancy Services attracting GST and Consultancy Services which do not attract GST.
- (c) Tax Invoices must be submitted electronically to accounts.payable@synergy.net.au
- (d) If the time for submitting a Tax Invoice does not fall on a Business Day, the Consultant must submit the claim either on the Business Day before that date or the next Business Day following that date.

A14.2 Payment by Synergy

- (a) On receipt of a Tax Invoice (which is compliant with A14.1), Synergy must pay to the Consultant the amount due to the Consultant within the Payment Term.
- (b) Synergy will pay the Contract Sum in Australian Dollars, unless otherwise agreed between Synergy and the Consultant, by electronic funds transfer to the Consultant'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 the Consultancy Services, or an admission of liability or an admission that Consultant's Obligations have been executed satisfactorily but is a payment on account only.

A15 GOODS AND SERVICES TAX (GST) AND TAXES

A15.1 GST

- (a) If GST is imposed on any supply made by the Consultant under or in connection with this Contract, the Consultant may recover from Synergy, in addition to the Contract Sum, an amount equal to the GST payable in respect of that supply.
- (b) The Consultant must first provide Synergy with a valid Tax Invoice before Synergy will pay the GST amount to the Consultant.

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

A15.2 Taxes

The Consultant must be solely responsible for the payment of any Taxes in relation to the provision of the Consultancy Services or in relation to the Contract Sum. If for any reason Synergy incurs any liability in respect of such Taxes, the Consultant must indemnify Synergy against that liability.

A16 SUBCONTRACTING

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

A17 ASSIGNMENT AND NOVATION

- (a) The Consultant must not, Assign or otherwise deal with any of its rights, obligations, benefits or interests under the Contract without the prior written approval of Synergy.
- (b) Synergy may Assign or otherwise deal with its rights, interests, benefits and obligations under this Contract without requiring the consent of the Consultant or any other party.
- (c) Any assignment permitted or approved under paragraph A17(a) or A17(b) shall not be binding unless and until the Assignee has executed a deed of covenant (which may be in the form of a deed poll) covenanting to the non-assigning party to be bound by the terms of this Contract and to assume the obligations of and in place of the Assignor under this Contract with effect from the effective date of the Assignment.

A18 CONFLICT OF INTEREST

During the Term, the Consultant must act in the best interests of Synergy and must use the Consultant's best skill and judgment to assist Synergy to achieve its commercial objectives. The Consultant must ensure that no conflicts of interest arise in the course of performing the Consultancy Services. The Consultant must ensure that neither the Consultant nor the Consultant's Personnel are a party to the doing of any act, matter or thing prejudicial to Synergy's goodwill, commercial reputation or public image. The Consultant must keep Synergy fully informed regarding any potential conflicts of interest. Synergy reserves the right to terminate this Contract if a conflict of interest arises.

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 Consultant agrees that all Contract IP will be vested in Synergy and will be Synergy's property as and when created and the Consultant assigns all rights, title and interest in the Contract IP to Synergy.
- (c) In relation to Intellectual Property owned by the Consultant and embodied in or relating to the Consultancy Services, the Consultant 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 Consultancy Services that is not owned by the Consultant, the Consultant must procure within 10 Business Days of the Commencement Date, 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 Consultancy Services.
- (e) Time is of the essence for the obligation to procure in paragraph (d). If the Consultant fails to comply, Synergy may,

in addition to any other right it has, at the Consultant's cost, procure that or similar Intellectual Property.

- (f) The Consultant 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

A20.1 Consultant's default

- (a) If, at any time during the Contract, the Consultant breaches the Contract, Synergy may issue a notice to the Consultant (**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 the Consultant receives a Breach Notice, it must remedy the breach within 5 Business Days (or other time period specified in the Breach Notice) of receiving the Breach Notice.
- (d) If the Consultant receives a Breach Notice but fails to remedy the breach within the time specified, a **Critical Default** will have occurred and Synergy may exercise its rights in accordance with clause A21.1.

A20.2 Synergy's failure to pay money

If:

- (a) Synergy fails to pay the Consultant a sum due and payable under the Contract (excluding disputed payments); and
- (b) after receiving notice from the Consultant of the failure to pay (**Payment Default Notice**) which provides that the failure to pay must be remedied within 20 Business Days of the date of receipt by Synergy of the Payment Default Notice; and
- (c) Synergy fails to remedy the failure to pay within 20 Business Days of receiving the Payment Default Notice,

a **Critical Default** will have occurred and the Consultant may exercise its rights in accordance with clause A21.1.

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 written notice to the Consultant (**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 Consultant.
- (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 Consultant'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 Consultant, as the Consultant's exclusive remedy for the termination:

- (a) the amount for the Consultant'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 Consultant had made a payment claim in accordance with clause A14.1 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 Consultant in the expectation of completing its obligations.

A21.4 Survival

The following clauses survive the termination of the Contract: clause A12 (Insurance); clause A13 (Indemnity); clause A20 (Default); clause A21 (Termination); clause A22 (Disputes); and clause A23 (Confidentiality) and clause A29 (Participation Plan).

A21.5 Synergy's rights on termination

If Synergy terminates the Contract under clause A21.1, Synergy may, with immediate effect and without payment of compensation:

- (a) take out of the hands of the Consultant the whole or part of the Consultancy Services remaining to be completed; and
- (b) require the Consultant to assign to Synergy or its nominee within 10 Business Days of termination, the benefit of any agreement for the execution of the Consultancy Services.

A22 DISPUTES

- (a) If a dispute between the Consultant and Synergy arises out of or in connection with the Contract, including a dispute concerning a claim for payment or termination of the Contract, then the dissatisfied party may give notice to the other party ("**Dispute Notice**") which:
 - (1) states that it is a Dispute Notice under this clause;
 - (2) identifies the dispute; and
 - (3) states the alleged relevant facts that are relied upon.
- (b) If a Dispute Notice has been given a senior representative of each of the parties will meet as soon as reasonably practicable to attempt in good faith to resolve the dispute. If the parties are unable to resolve the dispute within 10 Business Days of the date of the Dispute Notice, then either party may issue proceedings.
- (c) Nothing in this clause prevents either party from issuing Court proceedings for urgent injunctive relief or to protect a limitation period.

A23 CONFIDENTIALITY

A23.1 Confidential information

- (a) The Contract and the related data and information exchanged between the parties relating to the Contract or subsequently produced in the performance and administration of the Contract (**Confidential Information**) may include:
 - (1) trade secrets of either or both the parties;
 - (2) information that has a commercial value to either or both the parties that will be destroyed or diminished by publication;
 - (3) information about the business, professional, commercial or financial affairs of either or both parties that will be destroyed or diminished by publication; or
 - (4) information Synergy has undertaken to protect that is obtained or generated by the Consultant in the course

of or in connection with the provision of the Consultancy Services

A23.2 Disclosure of Confidential Information

- (a) Confidential Information is confidential to the party who provided it (the **Information Provider**) at all times. The recipient of Confidential Information (the **Information Recipient**) must not disclose Confidential Information to a third party (**Third Party Recipient**), except:
 - (1) with the prior written consent of the Information Provider;
 - (2) to the Information Recipient's legal and other professional advisers, officers and employees and any related corporation, to the extent reasonably necessary for the Information Recipient to perform and exercise any rights under the Contract.
 - (3) to the Information Recipient's insurers, insurance advisers, brokers, adjusters and assessors to the extent reasonably necessary for the Information Recipient to consider or progress any insurance claim.
 - (4) to the extent that disclosure is reasonably necessary to a proposed transferee (and the transferee's financiers) of the whole or part of the Information Recipient's rights and interest in the Contract;
 - (5) to the extent required by a written law or a lawful requirement of a government, government department, agency or authority having jurisdiction over either party;
 - (6) to the extent of a lawful requirement of a stock exchange having jurisdiction over either party;
 - (7) to the extent required in or in connection with legal proceedings or dispute resolution of any kind between the parties under the Contract or to which either party is joined;
 - (8) to the extent that the Confidential Information in the possession of the Information Recipient is lawfully available to it or otherwise is generally and publicly available, without a breach of confidence by the Information Recipient; and
 - (9) where the Information Recipient is Synergy, Synergy may disclose Confidential Information requested by or on behalf of the Minister under the *Electricity Corporations Act 2005 (WA)* to the Minister or to that Minister's department or to such other people as the Minister may direct and for the avoidance of doubt, Synergy has no obligation or liability in respect of any disclosure or such Confidential Information by such Minister, Minister's department or such other people.

A23.3 Third parties

- (a) Except to the extent of disclosure provided by clause A23.2(a)(5) to A23.2(a)(9) inclusive:
 - (1) the Information Recipient must notify the proposed Third Party Recipient that it has a duty of confidence to the Information Provider in respect of the Confidential Information and must take the same precautions to ensure that confidentiality is kept, that it would take for its own Confidential Information; and
 - (2) except to the extent that the Third Party Recipient is already under an existing enforceable legal obligation to maintain the confidence of the Confidential Information, the Information Recipient must first procure a written confidentiality undertaking from the Third Party Recipient in the terms of this clause.

A23.4 Dealings with media and public

- (a) The Consultant must not advertise, publish or release information or statements to the media or any firm or to the public concerning the Contract, or operations of Synergy without the prior written consent of Synergy.

A23.5 Freedom of Information access

- (a) The Consultant acknowledges that Synergy is subject to the *Freedom of Information Act 1992* (WA) and that this Contract or documents relating to this Contract may become the subject of an application under that Act and access to them may need to be given to a third party in accordance with that Act. Synergy has no liability to the Consultant whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992* (WA).

A24 PRIVACY

To the extent that the Consultant is in possession of Personal Information as a result of the provision of the Consultant's Obligations, the Consultant must:

- (a) use the Personal Information only for the purposes of fulfilling its obligations under this Contract;
- (b) comply with the *Privacy Act 1988* (Cth);
- (c) not use, modify or disclose Personal Information except with the prior written consent of Synergy;
- (d) 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;
- (e) comply with any reasonable direction, policy or guidelines of Synergy which concern the security, use and disclosure of Personal Information; and
- (f) 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.

A25 FORCE MAJEURE

- (a) To the extent that Force Majeure prevents a party from performing its obligations under this Contract, then that obligation is suspended for as long as the Force Majeure subsists.
- (b) For the purposes of clause A25(a), ("**Force Majeure**") means an event or circumstance which is beyond the reasonable control of a party, including any act of God, fire, flood, earthquake, explosion, cyclone, war, terrorism, revolution, third party industrial dispute or governmental restraint.

A26 HEALTH AND SAFETY

A26.1 General

- (a) The Consultant must, and the Consultant must ensure the Consultant's Personnel must comply will all applicable occupational health and safety Laws.

A26.2 OSH Management Plan

- (a) If required under the Contract as specified in Schedule A, the Consultant shall carry out a risk assessment on the Consultancy Services and submit to Synergy a safety management plan (**OSH Management Plan**), such OSH Management Plan shall at a minimum meet the Policies and Protocols and describe the proposed management and work processes to be established by the Consultant to reduce risks associated with or related to the Consultancy Services.
- (b) Synergy will review the OSH Management Plan and may, at its discretion:
- (1) accept or reject the OSH Management Plan; or
- (2) require the Consultant to implement additional controls and procedures and amend the OSH Management Plan.
- (c) The Consultant must comply with the OSH Management Plan (as may be amended under the Contract) and Synergy

may regularly audit the Consultant's compliance with the OSH Management Plan.

- (d) Upon any significant change in the existing Scope of Work, the Consultant must undertake a review of the OSH Management Plan and submit a revised OSH Management Plan to Synergy for review. The Consultant must make any reasonable amendments to the OSH Management Plan requested by Synergy. However, any requested amendments to the OSH Management Plan by Synergy does not relieve the Consultant of its obligations in respect of the OSH Management Plan

A26.3 Breach of Health and Safety Obligations

- (a) If the Consultant breaches clause A26 such breach will be deemed to be a Critical Default of the Contract.

A27 ENVIRONMENTAL MANAGEMENT PLAN

A27.1 Compliance

- (a) If required under the Contract as specified in Schedule A, at least 20 Business Days prior to the Commencement Date, the Consultant must provide to Synergy written environmental protection procedures and management plans for Synergy's approval (**Environmental Management Plan**). The Consultant must revise the environmental protection procedures expeditiously and as reasonably required by Synergy until the environmental safety procedures are approved by Synergy.
- (b) The Consultant and the Consultant's Personnel must comply with the Environmental Management Plan (as may be amended under the Contract) and Synergy may regularly audit the Consultant's compliance with the Environmental Management Plan.
- (c) Upon any change in the Scope of Work or upon Synergy's reasonable request, the Consultant shall undertake a review of the Environmental Management Plan and submit amendments to the Environmental Management Plan to Synergy for review. The Consultant must make any reasonable further amendments to the Environmental Management Plan as requested by Synergy.

A27.2 Incident Investigation

- (a) The Consultant must not, and the Consultant must ensure the Consultant's Personnel do not cause or contribute to a Workplace Environmental Incident.
- (b) If the Consultant or the Consultant's Personnel indirectly or directly cause or contribute to a Workplace Environmental Incident, the Consultant must:
- (1) comply with any applicable Laws with respect to the Workplace Environmental Incident;
- (2) immediately notify Synergy of the Workplace Environmental Incident and such notification shall specify:
- (i) the date of and the location where the Workplace Environmental Incident occurred;
- (ii) if the Workplace Environmental Incident was reported to any external regulator or Government Agency;
- (iii) a detailed summary of the particulars of the Workplace Environmental Incident, including the cause, the resultant environmental impact and the action taken to mitigate any adverse effects of the Workplace Environmental Incident;
- (3) immediately respond (control, contain and clean up) to the Workplace Environmental Incident; and
- (4) conduct an investigation of the Workplace Environmental Incident.

A27.3 Breach of Environmental Obligations

- (a) If the Consultant causes or contributes to a Workplace Environmental Incident or if the Consultant breaches this clause A27 such event will be deemed to be a Critical Default.

A28 QUALITY ASSURANCE

A28.1 Compliance

- (a) Subject to (b), if required under the Contract as specified in Schedule A, at least 20 Business Days prior to the Commencement Date, the Consultant must provide to Synergy evidence of its quality certification to AS/NZS ISO 9001 (**Quality Assurance Certification**) and a copy of its plan for managing quality during the period of the contract (**Quality Plan**).
- (b) In the event that the Consultant does not have the Quality Assurance Certification specified in Schedule A then the Consultant must provide to Synergy a plan to introduce quality assurance certification which plan must include the date by which final certification will be achieved by the Consultant (**Quality Assurance Certification Plan**).
- (c) Synergy will review the Quality Plan (or the Quality Assurance Certification Plan) and may, at its discretion:
- (1) accept or reject the Quality Plan; or
 - (2) require the Consultant to implement additional controls and procedures and amend the Quality Plan.
- (d) The Consultant must comply with the Quality Plan (or the Quality Assurance Certification Plan) (as may be amended under the Contract) and Synergy may regularly audit the Consultant's compliance with the Quality Plan (or the Quality Assurance Certification Plan).
- (e) Upon any significant change in the existing Scope of Work, the Consultant must undertake a review of the Quality Plan and submit a revised Quality Plan to Synergy for review. The Consultant must make any reasonable amendments to the Quality Plan requested by Synergy. However, any requested amendments to the Quality Plan by Synergy does not relieve the Consultant of its obligations in respect of the Quality Plan.

A29 PARTICIPATION PLAN

A29.1 The Participation Plan

- (a) If required under the Contract as specified in Schedule A – Contract Particulars, the Contractor must, in performing its obligations under the Contract, comply with the Participation Commitments.
- (b) The Contractor acknowledges and agrees that its Participation Plan Obligations apply during the Term, any extensions of the Term and until all of its reporting obligations as set out in clause A29.3 are fulfilled.
- (c) The Contractor acknowledges and agrees that the Participation Plan Obligations include the Contractor ensuring its sub-contractors (at any tier) do what is necessary to enable the Contractor to comply with clauses A29.1(a) and A29.1(b).

A29.2 Variation or revision of Participation Plan

If a party wishes to vary or revise the Participation Plan, the parties must liaise in good faith with a view to agreeing and then documenting the proposed variations or revisions. If the parties cannot agree on a variation or revision of the Participation Plan, it will remain unchanged.

A29.3 Participation Plan Reporting

- (a) The Contractor must submit to Synergy a report, in a form acceptable to Synergy, as to the matters covered by the Participation Plan Report Template:

- (1) in every year of the Term, in respect of that year (**Annual Report**); and
 - (2) after the end of the Term, in respect of the whole of the Term (**Final Report**), in accordance with this clause.
- (b) Each report submitted under clause A29.3(a) must use the form of, and must address the matters outlined in, the Participation Plan Report Template.
- (c) Subject to clause A29.3(d), the Contractor must submit:
- (1) an Annual Report to Synergy on each anniversary of the commencement of the Term, or on such other date each year as is notified by Synergy to the Contractor; and
 - (2) a Final Report no later than 2 months after the end of the Term.
- (d) Where the Term is 12 months or less, only one report from the Contractor is required, which the Contractor must lodge within 2 months after the end of the Term.
- (e) Each report required under clause A29.3(a) report must be accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.

A29.4 Verification of Contractor's compliance with Participation Plan

- (a) The Contractor must:
- (1) permit Synergy, or Synergy's Representative, from time to time during ordinary business hours and upon notice, to inspect, verify and make copies at Synergy's expense of all records maintained by the Contractor for the purposes of this Contract;
 - (2) permit Synergy, or Synergy's Representative, from time to time to undertake a review of the Contractor's performance of the Participation Plan Obligations; and
 - (3) ensure that its employees, agents and sub-contractors (at all tiers) give all reasonable assistance to any person authorised by Synergy to undertake such audit or inspection.
- (b) If Synergy requests from the Contractor information or access to documentation in connection with the Participation Plan or the Participation Plan Obligations, or information or documentation in connection with any report referred to in clause A29.3, the Contractor must promptly comply with such request, ensuring that the information or documentation provided, or to which access is provided, is accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.
- (c) The Contractor authorises Synergy, and Synergy's Representative, to obtain information from any relevant persons, firms or corporations, including third parties, regarding the Contractor's compliance with the Participation Plan Obligations.
- (d) The obligations set out in this clause A29.4 are in addition to and do not derogate from any other obligation under this Contract.

A29.5 Verification of Participation Plan

The Contractor must ensure that both the Participation Plan and each report referred to in clause A29.3 is endorsed and verified as being true and correct by the Contractor's Chief Executive Officer, Managing Director or equivalent.

A29.6 Use of Information

Both Synergy and the State may use or disclose the Participation Plan, any report provided under clause A29.3, or any information or documentation referred to in clause A29.4 for the legitimate purposes of or relating to a Government Agency or the business of government.

A29.7 Compliance with Participation Plan

The Contractor acknowledges that if the Contractor does not comply with the Participation Plan Obligations, this may result in the State (including any agency, department, authority or instrumentality of the State) not awarding a supply contract, or supply contracts, to the Contractor in the future.

A30 BUSINESS MANAGEMENT SYSTEMS

A30.1 Compliance

(a) If required under the Contract as specified in Schedule A, at least 20 Business Days prior to the Commencement Date, the Consultant must provide to Synergy:

(1) if the Consultant is certified to ISO9001 and OSHAS 18001 (ISO45001), evidence of certification including a description of the ISO certification scope and each element under the respective certifications; or

(2) a detailed description of its business management system complying with the requirements of ISO9001, OSHAS 18001 and ISO45001 (**Business Management System**).

(b) Synergy will review the Consultant's Business Management System and may, at its discretion:

(1) accept or reject the Business Management System; or

(2) require the Consultant to implement additional controls and procedures and amend its Business Management System procedures.

A31 MISCELLANEOUS PROVISIONS

A31.1 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.

A31.2 Relationship of Parties

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

A31.3 Civil Liability Act

Part 1F of the *Civil Liability Act 2002 (WA)* does not apply to this Contract.

A31.4 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.

A31.5 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.

A31.6 Notices

(a) A notice must be in writing and:

(1) delivered by hand or sent by post, to the address of the party set out in Schedule A 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 Schedule A 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.

A31.7 Ariba

(a) Synergy uses Ariba to maintain certain organisational information of all of its contractors.

(b) Prior to the commencement of the Contract, the Consultant 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 Consultant 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.

Executed as an agreement

Executed by **Electricity Generation and Retail Corporation** ABN 58 673 830 106 by its duly authorised representative.

Signature of
representative

Name

Signing Date

Executed by **XX** in accordance with section 127 of the Corporations Act 2001 (Cth):

Director

Director/Secretary

Name (please print)

Name (please print)

Signing Date

Signing Date

Schedule A - Contract Particulars

This Schedule is to be read in conjunction with the Contract.

Contract Number	
Commencement Date	
Expiry Date	
Site(s)	
Payment Terms	
Synergy's Representative	
Position	
Synergy's address	
Phone	
Fax	
e-mail	
Consultant's Representative	
Position	
Consultant's address	
Phone	
Fax	
e-mail	
Participation Plan required?	
Participation Plan Report required?	
OSH Management Plan required?	
Environmental Management Plan required?	
Quality Assurance Plan and ISO Certification required?	

Business Management System required?	
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Schedule C - Scope of Work

Schedule D - Special Conditions

Schedule E - Western Australian Industry Participation Strategy – Participation Plan

Schedule F - Participation Plan Report Template
