



## SYNERGY'S GENERAL CONDITIONS OF 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

(**Contractor**)

The parties agree:

### A1 DEFINITIONS AND INTERPRETATION

#### A1.1 Definitions

The following definitions apply:

**Annual Report:** as defined in clause A30.3(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:** includes to sell, transfer, assign or novate.

**Assignee:** the party to which an assignment is made.

**Assignor:** the party to the Contract making an assignment.

**Bank Guarantee:** means, if applicable under the Contract, a bank guarantee provided as security in accordance with clause A32.

**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 A31.1(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 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.

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

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

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

**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 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 specified or calculated in accordance with Schedule B -.

**Contract Particulars:** means the information set out in Schedule A -.

**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 clauses A20.1(d), A20.2, A26.3 and A27.3.

**Date for Delivery:** if the Scope of Work or Order provides a date for Delivery, that date, or if the Scope of Work or 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 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:

- 1 after a period of twelve (12) months from the Date of Delivery; or
  - 2 the period specified in Schedule A -,
- whichever period is the longer.

**Delay Liquidated Damages Rate:** means the liquidated damages rate specified in Schedule A -.

**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 in accordance with the Incoterm specified in Schedule A -;
- 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 or destinations specified in Schedule A - 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.

**Electronic Signature:** means an electronic method of signing that identifies the person and indicates their intention to sign the agreement which may include software programs such as DocuSign.

**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 A30.3(a)(2).

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

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

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

**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 <https://www.synergy.net.au/suppliers>.

**Incoterm:** means the term of trade specified in Schedule A - and as defined in the Incoterms or International Commercial Terms published by the International Chamber of Commerce.

**Information Provider:** as defined in clause A23.2.

**Information Recipient:** as defined in clause A23.2.

**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 trademarks, 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 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.

**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).

**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.

**Order:** means a purchase order issued to the Contractor by Synergy for the purposes of payment pursuant to clause A15.1(b).

**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 - if applicable under the Contract.

**Participation Plan Obligations:** means the Contractor's obligations under clause A30.1(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: <https://www.synergy.net.au/suppliers>.

**Quality Assurance Certification:** has the meaning given to it in clause A29.1(a).

**Quality Plan:** has the meaning given to it in clause A29.1(a).

**Quality Assurance Certification Plan:** has the meaning given to it in clause A29.1(b).

**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.

**Retention Moneys:** means, if applicable under the Contract, moneys deducted by Synergy under clause A32.1.

**Scope of Work:** the scope of work provided in Schedule C - describing the Goods or Services.

**Security:** has the meaning defined in clause A32.

**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 or sites specified in Schedule A - on which the Services are being undertaken.

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

**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.

**State:** means State of Western Australia.

**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 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 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 Contractor.

**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 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.

**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 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) 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 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.
- (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 Contractor for the performance of the Contract.
- (f) 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) that 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.

## **A4 DOCUMENTS AND DRAWINGS**

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### **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 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 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 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.

### **A4.3 Drawings**

- (a) If the Contract requires the Contractor to supply drawings, the following provisions apply:
  - (1) All drawings provided to Synergy under the Contract must follow Synergy's Computer Aided Design (CAD) Standards and Practices available at <https://www.synergy.net.au/suppliers>
  - (2) New CAD drawings shall be prepared using standard Synergy template drawing files. Synergy's Representative will provide templates/seed files models and sheets.
  - (3) The Contractor must provide final as built drawings as electronic files saved in native CAD file format.
  - (4) The required native CAD file format is Bentley Systems MicroStation (.dgn) version 8 Select Series 3 file format or later.
  - (5) All native MicroStation CAD files must be saved using a file extension of .dgn.
  - (6) Other file formats may be accepted in writing by Synergy's Representative at Synergy's absolute discretion. In this instance, the minimum delivery is DXF or DWG format.
  - (7) CAD files shall be created on the basis that one drawing sheet equals one CAD file. Multiple drawings sheets stored in a single CAD file are not acceptable.
  - (8) All Synergy CAD supplied files are to be regarded as confidential.

## **A5 DELIVERY AND PERFORMANCE REQUIREMENTS**

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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 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 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;
- (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; and
- (k) present themselves to work in a suitable fit mental and physical state to perform activities required of them.

## **A6 NON-COMPLIANCE**

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- (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 Synergy's Representative.
- (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 performance of the Services in order for the Services to proceed safely.

## **A7 INCIDENT NOTIFICATION AND PROVISION OF DOCUMENTS**

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- (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 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 Contractor's Personnel and Subcontractors 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.

### **A10.4 Liquidated damages for delay**

- (a) If the Contractor fails to achieve Delivery by the Date for Delivery, the Contractor must pay to Synergy liquidated damages at the Delay Liquidated Damages Rate for every day by which the relevant Date for Delivery is delayed. The Contractor's liability for liquidated damages pursuant to this clause:
- (1) is calculated from 8am on the first day following the relevant Date for Delivery; and
- (2) is in respect of each day including the actual Date of Delivery.
- (b) The Contractor acknowledges that the liquidated damages payable under this clause are an accurate and genuine pre-estimate of the damages likely to be suffered by Synergy if the Contractor fails to achieve Delivery by the Date for Delivery.

## **A11 PERFORMANCE**

- (a) The Contractor must, prior to commencing the Services or entering the Site:
- (1) inform Synergy's 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.

### **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**

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### **A13.1 Insurances to be effected**

The Contractor 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 Contractor or the Contractor'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 Contractor'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 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; and
- (f) Any additional insurances required by an applicable Law or required by Synergy (acting reasonably),

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**

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### **A14.1 General indemnity**

The Contractor must indemnify Synergy against Loss suffered or incurred, arising out of or in connection with, any wrongful act or omission by the Contractor or the Contractor'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.

### **A14.2 Indemnity against Third Party Claims**

The Contractor 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 Goods or the Services by or on behalf of Synergy in the manner contemplated by the Contract or any Loss in connection with this.

### **A14.3 Exclusion**

The indemnities in clauses A14.1 and A14.2 do not apply to any Loss to the extent that the Loss is caused by Synergy's breach of the Contract or negligence.

### **A14.4 Benefit of indemnities**

In clauses A14.1 and A14.2, a reference to "Synergy" includes a reference to Synergy's officers, employees, agents and contractors.

### **A14.5 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 Consequential Loss.

## A15 PAYMENTS

### A15.1 Claims for payment

- (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:
  - (1) include the unique purchase order number specified on the Order;
  - (2) include the amount of the Contract Sum being claimed by the Contractor; and
  - (3) 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](mailto:accounts.payable@synergy.net.au).
- (d) If the time for submitting a Tax Invoice does not fall on a Business Day, the Contractor must submit the claim either on the Business Day before that date or the next Business Day following that date.

### A15.2 Payment by Synergy

- (a) On receipt of a Tax Invoice (which is compliant with clause A15.1), Synergy must pay to the Contractor the amount due to the Contractor within the Payment Term.
- (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 Contract, 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

- (a) The Contractor must not Assign or otherwise deal with any of its rights, interests, benefits and obligations 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 Contractor or any other party.
- (c) Any assignment permitted or approved under paragraph A18(a) or A18(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.

## 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 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 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

### A20.1 Contractor's default

- (a) If, at any time during the Contract, the Contractor breaches the Contract, Synergy may issue a notice to the Contractor (**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 Contractor 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 Contractor 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 Contractor a sum due and payable under the Contract (excluding disputed payments); and
- (b) after receiving notice from the Contractor 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 Contractor may exercise its rights in accordance with clause A21.1.

## **A21 TERMINATION**

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### **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 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); A28 (Modern Slavery) and clause A30 (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 Contractor the whole or part of the Services remaining to be completed;
- (b) take possession of the Goods or any part of the Goods (including that which) is in the course of manufacture or to be imported) paid for by Synergy, notwithstanding that they have not yet been delivered; and
- (c) require the Contractor to assign to Synergy or its nominee within 10 Business Days of termination, the benefit of any agreement for the supply of Goods or for the execution of the Services.

## **A22 DISPUTES**

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- (a) If a dispute between the Contractor 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**

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### **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 Contractor in the course of or in connection with the provision of the Goods or 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 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 Contractor 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 Contractor 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 Contractor whatsoever for giving access to a document in accordance with the *Freedom of Information Act 1992* (WA).

## A24 PRIVACY

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:

- (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 Contractor must, and the Contractor must ensure the Contractor'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 Contractor shall carry out a risk assessment on the 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 Contractor to reduce risks associated with or related to the 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 Contractor to implement additional controls and procedures and amend the OSH Management Plan.
- (c) The Contractor must comply with the OSH Management Plan (as may be amended under the Contract) and Synergy may regularly audit the Contractor's compliance with the OSH Management Plan.
- (d) Upon any significant change in the existing Scope of Work, the Contractor must undertake a review of the OSH Management Plan and submit a revised OSH Management Plan to Synergy for review. The Contractor 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 Contractor of its obligations in respect of the OSH Management Plan.

### A26.3 Breach of Health and Safety Obligations

- (a) If the Contractor 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 Contractor must provide to Synergy written environmental procedures and management plans for Synergy's approval (**Environmental Management Plan**). The Contractor must revise the environmental safety procedures expeditiously and as reasonably required by Synergy until the environmental safety procedures are approved by Synergy.
- (b) The Contractor and the Contractor's Personnel must comply with the Environmental Management Plan (as may be amended under the Contract) and Synergy may regularly audit the Contractor's compliance with the Environmental Management Plan.

- (c) Upon any change in the Scope of Work or upon Synergy's reasonable request, the Contractor shall undertake a review of the Environmental Management Plan and submit amendments to the Environmental Management Plan to Synergy for review. The Contractor must make any reasonable further amendments to the Environmental Management Plan as requested by Synergy.

### **A27.2 Incident Investigation**

- (a) The Contractor must not, and the Contractor must ensure the Contractor's Personnel do not cause or contribute to a Workplace Environmental Incident.
- (b) If the Contractor or the Contractor's Personnel indirectly or directly cause or contribute to a Workplace Environmental Incident, the Contractor 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 Contractor causes or contributes to a Workplace Environmental Incident or if the Contractor breaches this clause A27 such event will be deemed to be a Critical Default.

## **A28 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 A28.
- (d) In addition to Synergy's other rights under the Contract, the Contractor acknowledges and agrees that failure to comply with this clause A28 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 A28.

## **A29 QUALITY ASSURANCE**

### **A29.1 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 Contractor 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 Contractor does not have the Quality Assurance Certification specified in Schedule A then the Contractor 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 Contractor (**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 Contractor to implement additional controls and procedures and amend the Quality Plan.
- (d) The Contractor 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 Contractor's compliance with the Quality Plan (or the Quality Assurance Certification Plan).
- (e) Upon any significant change in the existing Scope of Work, the Contractor must undertake a review of the Quality Plan and submit a revised Quality Plan to Synergy for review. The Contractor 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 Contractor of its obligations in respect of the Quality Plan.

## **A30 PARTICIPATION PLAN**

### **A30.1 The Participation Plan**

- (a) If required under the Contract as specified in Schedule A -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 A30.3 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 A30.1(a) and A30.1(b).

### **A30.2 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.

### **A30.3 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 A30.3(a) must use the form of, and must address the matters outlined in, the Participation Plan Report Template.
- (c) Subject to clause A30.3(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 A30.3(a) report must be accurate, up-to-date, comprehensive, sufficiently detailed, and in no way misleading or deceptive.

#### **A30.4 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 A30.3, 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 A30.4 are in addition to and do not derogate from any other obligation under this Contract.

#### **A30.5 Verification of Participation Plan**

The Contractor must ensure that both the Participation Plan and each report referred to in clause A30.3 is endorsed and verified as being true and correct by the Contractor's Chief Executive Officer, Managing Director or equivalent.

#### **A30.6 Use of Information**

Both Synergy and the State may use or disclose the Participation Plan, any report provided under clause A30.3, or any information or documentation referred to in clause A30.4 for the legitimate purposes of or relating to a Government Agency or the business of government.

#### **A30.7 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.

### **A31 BUSINESS MANAGEMENT SYSTEMS**

#### **A31.1 Compliance**

- (a) If required under the Contract as specified in Schedule A, at least 20 Business Days prior to the Commencement Date, the Contractor must provide to Synergy:
  - (1) if the Contractor 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 Contractor's Business Management System and may, at its discretion:
  - (1) accept or reject the Business Management System; or
  - (2) require the Contractor to implement additional controls and procedures and amend its Business Management System procedures.

### **A32 SECURITY**

#### **A32.1 Providing Security**

- (a) If required under the Contract as specified in Schedule A -, the Contractor must, at its cost, provide security in the form of Retention Moneys, or a Bank Guarantee, or both (**Security**) for the purpose of securing the Contractor's performance of the Contractor's Obligations.
- (b) Synergy may withhold as Retention Moneys, the percentage of each progress payment as specified in the Contract Particulars.
- (c) Any Bank Guarantee required under the Contract provided must be:
  - (1) an unconditional and irrevocable undertaking given by a bank approved by Synergy; and
  - (2) in the amount stated in Schedule A -.
- (d) The Bank Guarantee must be provided in the form as agreed by Synergy and delivered to Synergy within 5 Business Days of the Commencement Date.
- (e) The Contractor must ensure that the Bank Guarantee remains valid and enforceable until the date of its return and the Bank Guarantee must not contain any provisions inconsistent with the rights of Synergy under the Contract.

#### **A32.2 Release of Security**

- (a) Upon issue of a notice of acceptance under clause A10, Synergy must return:
  - (1) the Bank Guarantee to the Contractor; and
  - (2) the percentage of the Retention Moneys specified in the Contract Particulars.

#### **A32.3 Synergy's Rights**

- (a) Synergy may have recourse to the Security, in whole or part, on demand:
  - (1) as compensation for the Contractor's failure to perform any of the Contractor's Obligations, in which case

Synergy may have recourse to an amount determined by Synergy acting reasonably, to compensate Synergy for any losses suffered by Synergy by reason of that failure; and

- (2) to recover any amount owed by the Contractor under the Contract, including a bona fide claim by Synergy against the Contractor under the Contract, whether or not that claim has been finally proven or is the subject of a dispute.

#### **A32.4 No action to restrain**

- (a) The Contractor acknowledges that Synergy may call on the Security at any time.
- (b) The Contractor covenants with Synergy that it will not institute any proceedings, or exercise any right or take steps to restrain the financial institution that issued the Security or Synergy from exercising its rights under the Security even where the Contractor disputes Synergy's claim, including where the dispute resolution procedures have been commenced under clause A22.

### **A33 CONFLICT OF INTEREST**

During the Term, the Contractor must act in the best interests of Synergy and must use the Contractor's best skill and judgment to assist Synergy to achieve its commercial objectives. The Contractor must ensure that no conflicts of interest arise in the course of performing the Contract. The Contractor must ensure that neither the Contractor nor the Contractor'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 Contractor 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.

### **A34 MISCELLANEOUS PROVISIONS**

#### **A34.1 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.

#### **A34.2 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.

#### **A34.3 Civil Liability Act**

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

#### **A34.4 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.

#### **A34.5 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.

#### **A34.6 Notices**

- (a) Other than for changes to the Synergy Ariba Profile dealt with by clause A34.7(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 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.

#### **A34.7 Ariba**

- (a) Synergy uses Ariba to maintain certain organisational information of all of its contractors.
- (b) Prior to the commencement of the Contract, the 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.

#### **A34.8 Electronic execution**

- (a) The parties agree that this agreement may be executed using an Electronic Signature.
- (b) The parties acknowledge and agree that if a party executes this agreement using an Electronic Signature, then:
  - (1) the party is taken to have entered into this agreement in electronic form;
  - (2) the Electronic Signature is deemed to be an original execution of the agreement by the party for the purposes of this agreement; and
  - (3) the party must promptly provide to the other party such evidence of the Electronic Signature as the other party, acting reasonably, may require.

**EXECUTED** by the parties as an agreement

**EXECUTED** on behalf of )  
**ELECTRICITY GENERATION AND** )  
**RETAIL CORPORATION** )  
**(ABN 58 673 830 106)** by persons )  
authorised by its Board in accordance )  
with Section 135(4) of the *Electricity* )  
*Corporations Act 2005* (WA): )

\_\_\_\_\_  
Signature of Authorised Person

\_\_\_\_\_  
Name of Authorised Person

\_\_\_\_\_  
Date

**EXECUTED** in accordance with section 126  
of the *Corporations Act 2001* (Cth) by  
Authorised Representatives of:

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name of Authorised Representative

\_\_\_\_\_  
Role of Authorised Representative

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Authorised Representative

\_\_\_\_\_  
Name of Authorised Representative

\_\_\_\_\_  
Role of Authorised Representative

\_\_\_\_\_  
Date

**Schedule A - Contract Particulars**

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

Contract Number	
Commencement Date	
Expiry Date	
Site(s)	
Destination(s)	
Incoterm for Delivery	
Payment Terms	
Documents to be supplied by Contractor	
<b>Synergy's Representative</b>	
Position	
Synergy's address	Perth Office - GPO Box F366, Perth WA 6841
Phone	
Fax	
e-mail	
<b>Contractor's Representative</b>	
Position	
Contractor's address	
Phone	
Fax	
e-mail	
Participation Plan required?	
Participation Plan Report required?	

OSH Management Plan required?	
Environmental Management Plan required?	
Quality Assurance Certification and Quality Plan required?	
Business Management System required?	
Security	
- Bank Guarantee	
- Retention Moneys	
- Reduction of Retention Moneys	
Defects Liability Period	
Delay Liquidated Damages Rate	











