

A1 ABOUT THIS AGREEMENT

A1.1 Formation of this agreement

- (a) This agreement is comprised of these Access Terms, including any linked or referenced materials, and applies to any use of the Tool by:
 - (1) the individual who agreed to these Access Terms by using the Tool; and
 - (2) any company, partnership or other entity that such individual is employed, contracted or otherwise engaged by, in respect of the individual's use the Tool,

all such persons being referred to throughout as the **Customer**.
- (b) If the individual accepting this agreement:
 - (1) is accepting on behalf of a company, partnership or other entity, such individual represents that they have the authority to bind such entity and its affiliates to these Access Terms; and
 - (2) does not have such authority, or does not agree with these Access Terms, such individual must not accept this agreement and may not use the Tool.
- (c) By accessing or using the Tool, or providing the Tool to any other person, the Customer agrees that it will be bound by these Access Terms and access or use of the Tool must only be in accordance with these Access Terms.
- (d) These Access Terms:
 - (1) commence upon the first use of the Tool by any person forming part of the Customer; and
 - (2) continue to apply to each and every use of the Tool by any person forming part of the Customer.

A1.2 Changes to Access Terms

- (a) These Access Terms are current from 26 June 2025.
- (b) Synergy may change these Access Terms from time to time by publishing updated terms on its website not less than 5 days prior to the updated terms taking effect.
- (c) By continuing to use the Tool after the updated terms take effect under clause A1.2(b), the Customer agrees that it will be bound by the updated Access Terms.

A2 USE OF THE TOOL

A2.1 Intended use

- (a) The Tool is intended to be used by installers of DER Systems to assist in testing that a DER System has been installed and commissioned in accordance with Synergy's applicable requirements (**Purpose**).
- (b) The Tool is provided "as-is" without any warranty. Without limiting the foregoing, Synergy does not represent or warrant to the Customer that:
 - (1) the Customer's use of the Tool will meet the Customer requirements;
 - (2) the Customer's use of the Tool will be uninterrupted, timely, secure or free from error; or
 - (3) any data or other outputs will be accurate, free from errors or complete.
- (c) The Tool:
 - (1) is provided solely for the Purpose;

- (2) cannot, and is not intended to, replace the professional skill, duty of care, judgement or decision making of the Customer including any installer of a DER System; and
- (3) does not guarantee, and cannot be relied upon to ensure, compliance with any legislation or other legal requirements.
- (d) The Customer must only use the Tool and use and disclose the Tool Information:
 - (1) in accordance with the User Manual and all applicable Laws;
 - (2) solely for the Purpose; and
 - (3) in conjunction with the independent judgement and professional skill of appropriately qualified individuals using the Tool.
- (e) The Customer must not use the Tool, and must ensure that each Authorised User does not use the Tool:
 - (1) for any unlawful purpose, or in breach of any applicable laws or regulations;
 - (2) to harm another person in any way; or
 - (3) to engage in any conduct that is, or is likely to be, misleading or deceptive.
- (f) The Customer is responsible for all of the Customer's and each Authorised User's activity on and in connection with the Tool (including all Customer Data) and all activity that occurs in the Tool through the Customer's and each Authorised User's login details.
- (g) The Customer is responsible for how the Customer and each Authorised User uses the Tool and any Customer Data, and any actions the Customer and any Authorised User may take as a result of such use of the Tool.
- (h) The Customer remains responsible for any breach of contract or infringement of any intellectual property, privacy, confidentiality or other rights of any third party in connection with Customer Data or that is caused or contributed to by the Customer's or any Authorised User's use of the Tool.
- (1)

A2.2 Availability and provision of the Tool

- (a) Synergy may, in its absolute discretion, make the Tool available to the Customer and may make changes to the Tool, including changes to, or removal of, any functionality, at any time.
- (b) The Customer agrees that Synergy, in its absolute discretion, and for any or no reason, may terminate the Customer's access to any part, or all, of the Tool, either permanently or temporarily.
- (c) The Customer agrees that any termination of the Customer's access to the Tool may be without prior notice and that Synergy will have no liability to the Customer or any third party for such termination.
- (d) Synergy does not warrant that any access it provides to the Tool will be uninterrupted or error free.
- (e) Synergy may provide the Tool itself or through any subcontractor.

A2.3 Operating environment

- (a) The Customer is solely responsible for supplying and maintaining the software, hardware, operating system, network connections and other operational requirements required in order to access the Tool.

- (b) The Customer acknowledges and agrees that its failure to comply with clause A2.3(a) may affect its ability to successfully use the Tool.

A2.4 Restrictions on use

The Customer must not:

- (a) insert or activate, or permit a third party to insert or activate any Disabling Code into the Customer's systems used for accessing the Tool, or into Synergy's systems;
- (b) use the Tool in any way other than specifically allowed in the User Manual;
- (c) bypass any measure Synergy uses to prevent or restrict access to the Tool, any part of the Tool, or any other software, systems or networks connected to the Tool;
- (d) copy, modify or create derivative works of any part of the Tool; or
- (e) do anything that could disable, overburden or impair the proper working of the Tool, such as a denial of service attack.

A2.5 Security

- (a) Without limiting the Customer's obligations in clause A2.4, the Customer must comply with:
 - (1) all the obligations in Schedule B; and
 - (2) Synergy's reasonable directions relating to the security and integrity of Synergy or the Customer's information systems.
- (b) The Customer must:
 - (1) take reasonable commercial measures to protect the Customer's systems against any Disabling Code; and
 - (2) maintain the security and confidentiality of the passwords and other information used by the Customer to access the Tool.

A2.6 Personal information

Before using the Tool to enter, upload or transmit any personal information relating to any individual, the Customer must ensure that:

- (a) the individual consented to the collection of their personal information by the Customer;
- (b) the purposes for which the Customer is using the individual's information with the Tool are within the purposes for which that information was originally collected by the Customer; and
- (c) the individual would reasonably expect the Customer to use their information in the way the Customer intends to use it with the Tool.

A2.7 Customer Data

- (a) The Customer is solely responsible for Customer Data, which includes any information that the Customer enters, or uploads, into the Tool.
- (b) The Customer represents and warrants that Customer Data will not include any material that:
 - (1) infringes the rights of any person;
 - (2) is obscene, intended to humiliate or insult, or likely to cause offence; or
 - (3) is otherwise unlawful, encourages unlawful conduct, or is otherwise inappropriate having regard to the purpose of the Tool.

A3 INDEMNITY

A3.1 General indemnity

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

- (a) breach of contract;
- (b) tort, including negligence or breach of statutory duty;
- (c) breach of confidentiality or privacy;
- (d) act or conduct that leads to death, personal injury or property damage; or
- (e) act or conduct not authorised by this agreement.

A3.2 Indemnity against Third Party Claims

The Customer 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 and breach of statutory duty;
- (c) breach of confidentiality or privacy;
- (d) death, personal injury or damage to any property; or
- (e) infringement of any person's Intellectual Property Rights or other rights.

A3.3 Exclusion

The indemnities in clauses A3.1 and A3.2 do not apply to any loss or damage to the extent that the loss or damage is caused by Synergy's breach of this agreement.

A3.4 Benefit of indemnities

In clauses A3.1 and A3.2, a reference to "Synergy" includes a reference to Synergy's officers, employees, agents and contractors.

A4 LIABILITY

A4.1 Consumer Laws

- (a) Synergy acknowledges that, in some circumstances, the Customer may have rights under the Australian Consumer Law or other Laws which cannot be excluded, modified or restricted (**Consumer Rights**). The Consumer Rights may relate to conditions, warranties, undertakings and guarantees (including the Consumer Guarantees) which apply in relation to the Tool.
- (b) Nothing in this agreement (including this clause A4) excludes, modifies or restricts the rights referred to under clause A4.1(a).

A4.2 Limit of liability for Consumer Rights

- (a) Subject to clause A4.1 and any Consumer Rights that the Customer may have, except as expressly set out in this agreement, and to the fullest extent permitted at Law, Synergy disclaims all express, implied and statutory warranties with regard to the Tool.
- (b) Synergy's liability to the Customer in respect of any Consumer Rights is limited, at Synergy's option, to:
 - (1) resupplying the Tool to the Customer; or
 - (2) paying the cost of having the Tool resupplied to the Customer.

A4.3 No Liability

Notwithstanding any other clause of this agreement, Synergy has no liability to the Customer in respect of:

- (a) any loss or damage caused by:
 - (1) a breach of this agreement by the Customer or the Customer's Personnel;
 - (2) negligent or intentional acts or omissions by the Customer, its Personnel or any third party; or
- (b) any Consequential Loss, including where Synergy had notice of the possibility of such Consequential Loss; or
- (c) any loss or damage the Customer suffers or incurs due to factors outside Synergy's reasonable control.

A4.4 Limit of liability

- (a) In accordance with clause A2.1(b), the Customer agrees the Tool is provided "as-is", without any warranty.
- (b) Other than liability dealt with under clauses A4.2 and A4.3, Synergy expressly excludes any liability in relation to the Tool, unless such exclusion is not permitted by Law, in which case (other than liability for a failure to comply with any Consumer Rights) any such liability is limited to a maximum of \$1,000.

A5 INTELLECTUAL PROPERTY RIGHTS

A5.1 Synergy Intellectual Property Rights

- (a) The Customer acknowledges and agrees that all Intellectual Property Rights in the Tool and the content on the Tool (excluding Customer Data) are owned and licensed by Synergy, including all rights to Synergy's trademarks and the copyright in the software and data comprising the Tool.
- (b) The Customer acknowledges and agrees that nothing in this agreement transfers to the Customer, or gives the Customer any right or interest in, any Intellectual Property Rights relating to the Tool.
- (c) The Customer must notify Synergy of any actual, threatened or suspected infringement of any of Synergy's Intellectual Property Rights.

A6 CUSTOMER DATA

A6.1 Ownership of Customer Data

- (a) The Customer owns all Intellectual Property Rights in the Customer Data.
- (b) The Customer consents to Synergy's use of the Customer Data for the purpose of providing access to the Tool to the Customer and for Synergy's internal reporting.
- (c) The Customer grants Synergy a perpetual, worldwide, non-exclusive, royalty-free, transferable and irrevocable licence to use for any purpose any anonymised or aggregated Customer Data.

A6.2 Access to Customer Data in Tool

- (a) Synergy is not obliged to retain any Customer Data relating to the Customer's use of the Tool.
- (b) Synergy may continue to retain Customer Data, notwithstanding it has no obligation to do so pursuant to clause A6.2, to comply with any applicable Laws relating to archiving or recordkeeping.

A7 CONFIDENTIALITY

The Customer agrees to keep confidential, and not to use or disclose, other than as permitted by this agreement, any

Confidential Information of Synergy disclosed in connection with this agreement.

A8 PRIVACY

- (a) Each party agrees to comply with all applicable Laws, including the Privacy Laws, relating to privacy and data protection with respect to any act done, or practice engaged in, by that party in the course of this agreement.
- (b) The Customer agrees:
 - (1) to comply with all applicable Laws, including the Privacy Laws, relating to privacy and data protection in its use of the Tool, whether it is otherwise bound by those requirements or not;
 - (2) not do, or omit to do, any thing in relation to any Personal Information that is likely to result in Synergy being in breach of any Privacy Laws;
 - (3) to comply with any direction, policy or guidelines of Synergy which concern the security, use and disclosure of Personal Information; and
 - (4) to 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 A8.
- (c) The Customer acknowledges and agrees that Synergy:
 - (1) may collect, hold and process the Customer's personal information for the purposes of providing the Tool; and
 - (2) will collect, hold and process each Authorised User's personal information, and the personal information of any other person where included in the Customer Data, in accordance with the Synergy Privacy Policy.

A9 GENERAL

- (a) **Interpretation:** In this agreement, unless the context requires otherwise:
 - (1) the word 'including' means 'including without limitation';
 - (2) headings are for convenience only and do not affect the interpretation of this agreement;
 - (3) words importing the singular include the plural and vice versa;
 - (4) a reference to a person includes any company, partnership, joint venture, association, corporation or other body corporate and any government agency;
 - (5) a reference to a statute, regulation includes all statutes or regulations, amending, consolidating or replacing it and a reference to a statute includes all regulations issued under that statute;
 - (6) no rule of construction applies to the disadvantage of a party solely because that party was responsible for the preparation of this agreement or any part of it; and
 - (7) a promise or agreement by two or more persons binds them jointly and severally.
- (b) **Notices:** Any notice or other communication to or by a party to this agreement must comply with the requirements of this clause (b), be legible, in English and, in the case of a notice to Synergy, addressed to an address provided by Synergy or published on Synergy's website from time to time.
- (c) **Governing law and jurisdiction:** This agreement is governed by the laws of Western Australia. Each party irrevocably submits to the exclusive jurisdiction of the courts of Western Australia.

- (d) **Entire agreement:** This agreement replaces all previous agreements in respect of its subject matter and contains the entire agreement between the parties.
- (e) **Variation:** A variation of any term of this agreement must be in writing and executed by the parties.
- (f) **Assignment:** Synergy may assign, transfer, novate, mortgage, encumber, charge, grant a security over or otherwise dispose of its rights and obligations under or in connection with this agreement without the Customer's consent. The Customer must not do any of these things without Synergy's consent.

A9.2 Survival of obligations

Clauses A3, A4, A7 and A10 and any other obligations which are expressed to or, by their nature, survive expiry or termination of this agreement, will survive expiry or termination of this agreement and are enforceable at any time at law or in equity.

A10 DEFINITIONS

In this document:

- (a) **Access Terms** means the terms and conditions set out in this document;
- (b) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth) and the corresponding provisions of the *Fair Trading Act 2010* (WA);
- (c) **Authorised User** means any person using the Tool on the Customer's behalf or to whom the Customer has provided access to the Tool;
- (d) **Business Day** means a day on which banks are open for business in Perth excluding a Saturday, Sunday or public holiday in that city;
- (e) **Confidential Information** means any information:
 - (1) regarding the business or affairs of Synergy or its Related Companies;
 - (2) regarding the customers, employees or contractors of, or other persons doing business with, Synergy or its Related Companies;
 - (3) regarding the terms of this agreement, or the commercial arrangements between the parties;
 - (4) which is by its nature confidential or which is designated as confidential by that party; or
 - (5) which the other party knows, or ought to know, is confidential,
 and includes all information about the Tool, including the User Manual and any other documentation;
- (f) **Consequential Loss** means any loss of data, business, profits, opportunity, reputation or goodwill, or any other indirect or consequential loss, which is suffered by the Customer in connection with this agreement;
- (g) **Consumer Guarantee** means a consumer guarantee applicable to this agreement under the Australian Consumer Law, including any express warranty (as defined in section 2(1) of the Australian Consumer Law);
- (h) **Consumer Rights** has the meaning given to it in clause A4.1(a);
- (i) **Customer** has the meaning given in clause A1.1(a);
- (j) **Customer Data** means all information, documents or other materials or data entered into the Tool by the Customer or any Authorised User;
- (k) **DER System** means a system installed at a Synergy customer's premises comprising one or more DER devices (such as PV/solar panels, storage batteries, inverters, electric vehicle charges etc) and other components that can be managed remotely by Synergy;

- (l) **Disabling Code** means any virus, bomb, Trojan horse or other malware or computer programming code, including source and object code, which may impair, deny or otherwise adversely affect the use of software;
- (m) **Government Agency** means 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;
- (n) **Intellectual Property Rights** means any industrial and intellectual property rights throughout the world and for the duration of the rights;
- (o) **Law** means any legislation, including regulations, common law, Government Agency requirement or authorisation, local government legislation including regional plans, district plans, regulations, by laws, declarations, ministerial directions and other subordinate legislation;
- (p) **Loss** means any loss, liability, damage, expense or cost of any nature or kind;
- (q) **Personal Information** means information or an opinion, whether true or not, and whether recorded in a material form or not, that relates to an individual, whether living or dead, whose identity, whose identity is apparent or can reasonably be ascertained from the information or opinion;
- (r) **Personnel** means in relation to a party, that party's employees, agents, consultants and subcontractors;
- (s) **PRIS Act** means the *Privacy and Responsible Information Sharing Act 2024* (WA);
- (t) **Privacy Law** means the PRIS Act, the *Privacy Act 1988* (Cth) and any applicable Laws or guidelines in relation to privacy or the handling of Personal Information;
- (u) **Purpose** has the meaning given in clause A2.1(a);
- (v) **Related Company** means a related body corporate as that expression is defined in the *Corporations Act 2001* (Cth);
- (w) **Synergy** means the Electricity Generation and Retail Corporation trading as Synergy ABN 58 673 830 106 and includes its successors and assigns;
- (x) **Synergy Privacy Policy** means Synergy's privacy policy available at <https://www.synergy.net.au/privacy>;
- (y) **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 Customer;
- (z) **Tool** means the Installer Testing Tool software provided by Synergy and as described in clause A2.1(a);
- (aa) **User Manual** means Synergy's documentation of the Tool's functionality and use available on Synergy's website as updated from time to time.

Schedule B - Data security and SOCI Act obligations

This Schedule sets out additional provisions in relation to data security and obligations arising out of the SOCI Act that relate to critical assets.

B1 DEFINITIONS

- (a) A term used in this schedule and not defined herein has the same meaning as given to that term in this agreement.
- (b) Unless the context otherwise requires, the meanings of the terms used in this schedule are as follows:

Asset Data: any or all data and information used by the Customer or the Customer's Personnel in connection with this agreement.

Customer Systems: any hardware, software or systems accessed, used or operated by the Customer or the Customer's Personnel in accessing the Tool.

Cyber Security Incident: any actual, potential or imminent:

- 1 unauthorised access to, interference with, or modification of, any Asset Data, Customer Systems and Synergy Systems the Customer accesses or controls;
- 2 unauthorised impairment of electronic communications to or from any Customer Systems and Synergy Systems the Customer accesses or controls; or
- 3 unauthorised impairment of the availability, reliability, security, functionality, integrity or operation of any Asset Data, Customer Systems and any Synergy Systems the Customer accesses or controls.

Cyber Security Threat Information: any matters or circumstances related to the Customer or its business that could reasonably increase the risk of Cyber Security Incidents.

Disaster: the occurrence of one or more events, including a Force Majeure event, that:

- 1 significantly disrupts, or is likely to significantly disrupt Synergy's ability to receive, or the Customer's ability to supply, any of the Consultancy Services (including interruption, destruction or other loss of operational capacity); and
- 2 cannot be managed by the Customer within the context of normal operating procedures.

Encrypt or Encrypted: in respect of any data, encrypting that data in accordance with the Advanced Encryption Standard (AES) 256.

Good Industry Practice: at any time, the exercise of that degree of care, skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a skilled and experienced consultant seeking to comply with its contractual obligations and all applicable Laws and as would be ordinarily exercised by similarly skilled and experienced service providers and/or suppliers of goods engaged in the same type of undertaking under the

same or similar circumstances and conditions as the Customer.

ISO 27001: the latest version of ISO/IEC 27001 Information Technology – Security techniques – Information Security Management Systems standard developed by ISO (the International Organization for Standardization) and IEC (the International Electrotechnical Commission) (as updated from time to time).

SOCI Act: means the *Security of Critical Infrastructure Act 2018* (Cth), and any rules or instruments made under it, as amended from time to time, including the *Security of Critical Infrastructure (Critical infrastructure risk management program) Rules (LIN 23/006) 2023* (Cth).

SOCI Requirements: any or all:

- 1 requirements of the SOCI Act that apply to the Customer; and
- 2 policies, directions, instructions, requests or requirements relevant to, associated with, or necessary for compliance by Synergy with the SOCI Act, as set out in this agreement or as notified by Synergy to the Customer from time to time.

Supply Chain Risk: the potential for harm or compromise that arises as a result of security risks from suppliers, their supply chains, and their products or services.

Synergy Data: any information relating to Synergy's business, including its operations, facilities, customers, employees, assets, products, sales and transactions, in whatever form the information exists, and includes any:

- 1 database in which data or information is contained;
- 2 documentation or records related to data or information;
- 3 products resulting from the use or manipulation of data or information; and
- 4 copies of any of the above.

Synergy Systems: includes any software, hardware or systems that:

- 1 Synergy owns or licenses or leases from a third party; or
- 2 is used by a third party to provide any services to Synergy,

but excludes any Customer Systems.

Synergy's Personnel: Synergy's officers, employees, agents and contractors (other than the Customer) and their respective employees and agents.

B2 SOCI ACT

B2.1 Synergy's SOCI Act requirements

- (a) The Customer acknowledges that Synergy is a responsible entity for a critical infrastructure asset

(as that term is defined in the SOCI Act) and the Customer may be storing or processing business critical data for a critical infrastructure asset on a commercial basis.

- (b) The Customer must, in accessing the Tool, not breach, and not cause Synergy to breach, the SOCI Act.
- (c) Without limiting clause B2.1(b), the Customer must:
 - (1) promptly provide any information and assistance requested by Synergy regarding its access of the Tool in order for Synergy to comply with any requirements under the SOCI Act; and
 - (2) comply with any direction given by Synergy regarding access to the Tool in order for Synergy to comply with any requirements under the SOCI Act,

including by complying with all the Customer's obligations under this Schedule B (**Customer Obligations**).

B2.2 Compliance general

- (a) The Customer must promptly and without delay, notify Synergy of:
 - (1) any breach of the Customer's Obligations under this clause B2; and
 - (2) any request, claim, or requirement of a Government Agency in relation to any SOCI Requirements.
- (b) In the event of any conflict or inconsistency between clauses B2 and B3 and another provision of this agreement, clauses B2 and B3 will prevail, except where the other provision of this agreement prescribes a stricter standard (in which case that stricter standard prevails).

B2.3 Cyber Security Incident

If the Customer becomes aware of a Cyber Security Incident, the Customer must immediately notify Synergy and without delay (and, in any event within 12 hours of becoming aware of the Cyber Security Incident) must:

- (a) conduct its own investigation of the Cyber Security Incident, and confirm without delay to Synergy in writing at cyber@synergy.net.au (or such other email address as notified by Synergy to the Customer in writing) as much information and detail as possible about the Cyber Security Incident, including as required to enable Synergy to make an informed decision on whether it is required to report the incident to the Australian Cyber Security Centre;
- (b) co-operate with Synergy in any investigation or audit (including by providing access to the Customer's premises, Customer's Personnel, processes, systems and any information reasonably requested by Synergy) in respect of the Cyber Security Incident;
- (c) do all within its power to mitigate and remedy the Cyber Security Incident and its consequences or to

ensure that any potential Cyber Security Incident does not become an actual incident;

- (d) co-operate and provide all reasonable assistance to Synergy in respect of the Cyber Security Incident and any Synergy requests relating to compliance with Laws and the requirements of any Government Agency; and
- (e) consult Synergy and obtain Synergy's written consent before making any communication or public disclosure regarding the Cyber Security Incident that may impact Synergy in any way.

B3 SECURITY OF SYSTEMS AND DATA

B3.1 Security acknowledgement

The Customer acknowledges that:

- (a) management of its Supply Chain Risk is fundamental to Synergy's business;
- (b) the security of Synergy Data, Synergy Systems and the Customer Systems are fundamental to Synergy's business; and
- (c) any Cyber Security Incident may expose Synergy to substantial financial, reputational and other loss and damage and may directly affect Synergy's:
 - (1) obligations to and relationship with Government Agencies, end customers and employees; and
 - (2) obligations under privacy legislation and other applicable Laws.

B3.2 Security Policies

- (a) To the extent applicable to the Customer's access to the Tool, the Customer must comply with any standards or frameworks as notified in writing by Synergy to the Customer.
- (b) The Customer must at all times have in place and comply with security arrangements which comply with Good Industry Practice.