

# Electricity Sales General Conditions

April 2021

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## 1. Sale of Electricity

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### 1.1 Sale of Electricity

During the Contract Period, the Customer must purchase, and Synergy must sell, electricity on the terms and conditions set out in this Agreement.

By entering into this Agreement, and for the purpose of transferring the Premises to Synergy, the Customer gives Synergy its express consent for Synergy to:

- (a) arrange for the transfer of the energy supply from the Customer's existing retailer; and
- (b) as required, provide information relating to the energy history of the sites (including information relating to the Customer's electricity supply, delivery point and consumption information) to the Network Operator.

### 1.2 Point of Supply

Synergy must sell electricity to the Customer under this Agreement at the Point of Supply. The title to and risk in electricity sold by Synergy passes to the Customer at the Point of Supply.

The Customer must do all things necessary to obtain rights to a Covered Service that permit it to transfer electricity into or out of the Network at the Point of Supply in accordance with this Agreement. The Customer must not transfer electricity into or out of the Network at the Point of Supply unless it has obtained such rights.

The Customer must ensure that the rate at which electricity is transferred into or out of the Network by or on behalf of the Customer does not exceed the Contract Maximum Demand for that Covered Service.

### 1.3 Nominal Supply Voltage

All electricity supplied to the Customer by Synergy under this Agreement is at the Nominal Supply Voltage.

## 2. Contract Period

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The Agreement commences on the Commencement Date and ends on the End Date (**Contract Period**).

## 3. Contract Maximum Demand

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### 3.1 Contract Maximum Demand

- (a) Synergy must sell electricity to the Customer at the Point of Supply up to the Contract Maximum Demand.
- (b) The Customer must not permit the Maximum Demand to exceed the Contract Maximum Demand without the prior written consent of Synergy. The Customer acknowledges that Synergy is required under the Electricity Transfer Access Contract to limit the Customer's Maximum Demand to the Contract Maximum Demand.

If the Customer's Maximum Demand exceeds the Contract Maximum Demand at the Point of Supply at any time, then:

- (1) Synergy must, in complying with its obligations under the Electricity Transfer Access Contract, limit the supply of electricity at the Point of Supply to the Contract Maximum Demand at the Customer's expense; and
- (2) if as a result of the Customer's Maximum Demand exceeding Contract Maximum Demand Synergy incurs any losses or suffers any damages that are greater than the Excess Network Usage Charge the Customer must indemnify Synergy for those costs and losses, including for any charges or liabilities of Synergy arising under the Electricity Transfer Access Contract and any costs of procuring and paying the AEMO for additional capacity.

### 3.2 Changes in Contract Maximum Demand

- (a) The Customer may, at any time, by giving at least 45 days' notice in writing to Synergy setting out the amount of the change and the date when it is requested to take effect, request a change in the Contract Maximum Demand.
- (b) In relation to a request by the Customer for a change in Contract Maximum Demand made in accordance with clause 3.2(a), Synergy must:
  - (1) as soon as reasonably practicable after receiving the request, request the relevant change from the Network Operator under the Electricity Transfer Access Contract; and
  - (2) as soon as practicable after receiving a final response from the Network Operator as to whether the requested change in the Contract Maximum Demand can be implemented, advise the Customer, in writing, whether Synergy offers to implement a change in the Contract Maximum Demand and if so, any conditions or additional charges which are applicable to the change including the date on which the change will be effective.
- (c) The Customer must give written notice of acceptance to Synergy within 10 Business Days of receiving Synergy's advice in clause 3.2(b)(2), if it wishes to accept the change in the Contract Maximum Demand as offered in Synergy's advice in clause 3.2(b)(2).
- (d) If the Customer does not give written notice of acceptance to Synergy within the time specified in clause 3.2(c), then the Customer is deemed to have rejected the change and the offer from Synergy is deemed to have lapsed.

### 3.3 Reduction in Contract Maximum Demand

The Customer acknowledges that the Network Operator can require Synergy to reduce the Contract Maximum Demand from time to time if the Customer's Maximum Demand over the previous Contract Year is below the Contract Maximum Demand. If the Network Operator requires Synergy to reduce the Contract Maximum Demand, Synergy must reduce the Contract Maximum Demand to the level required by the Network Operator.

## 4. Charges

### 4.1 Energy Charges

Subject to clause 4.2, during the Contract Period, the Customer must pay the Energy Charges to Synergy for, and in connection with, electricity sold under this Agreement.

### 4.2 Minimum Charge

For each Minimum Charge Period, the Customer must pay to Synergy an amount which is the greater of:

- (a) the Minimum Charge Amount; or
- (b) the total Energy Charges for that Minimum Charge Period.

Synergy can recover the amounts due under this clause 4.2 as a debt owed by the Customer to Synergy under this Agreement. The amount due will be included in the Tax Invoice for the relevant Accounting Period (or, if the amount due is in respect of a Contract Year rather than an Accounting Period, in an Accounting Period after the end of that Contract Year). This clause survives termination of this Agreement.

### 4.3 Other Charges

The Customer must pay to Synergy:

- (a) the Access Charges; and
- (b) all other charges, if any, specified in the Form of Agreement.

### 4.4 Price Adjustment

The Charges specified in Schedule 2 of the Form of Agreement will be adjusted as set out in the Form of Agreement.

### 4.5 Changes to CPI

- (a) If the CPI ceases to be published, then the parties must meet to agree a new index to replace the CPI.
- (b) If the parties cannot agree a replacement index within 14 Business Days of first meeting, then the dispute resolution process in clause 13 will apply.
- (c) If at any time the Australian Bureau of Statistics (**Bureau**) changes the CPI index reference period such that CPI index numbers are reset, then the CPI base figure for any quarter or other period prior to the Bureau's change that is used for the purpose of any calculation under this Agreement, will be adjusted to allow for the calculation of the true differences in the CPI from period to period.

That CPI base figure adjustment will be calculated by applying such conversion factors (including any provided by the Bureau from time to time) as Synergy (acting reasonably) determines appropriate.

### 4.6 Adjustment for Access Charges

- (a) If there are any changes to the Access Charges or new Access Charges are imposed, or an event occurs which results in the Network Operator being entitled to charge an additional Access Charge to Synergy (**Change in Access Charges**), then Synergy may adjust the Charges to pass through the net effect of the Change in Access Charges on and from the date that Change in Access Charge takes effect.
- (b) Synergy shall provide reasonable information to the Customer of any Change in Access Charges.

### 4.7 Adjustment for Change in Law and Regulations

- (a) If after the date Synergy signs this Agreement a Change in Law and Regulations occurs and clause 4.8 does not apply, then Synergy may give the Customer a written notice of the adjustment to the Charges necessary to reflect the Change in Law and Regulations Impact.
- (b) If the Customer disagrees with the application of any adjusted Charges, the Customer must give written notice to Synergy within 10 Business Days of receiving Synergy's notice in clause 4.7(a).
- (c) Within 20 Business Days of Synergy receiving such notice from the Customer, the parties must meet to negotiate in good faith an adjustment to the Charges which fairly reflects the Change in Law and Regulations Impact.
- (d) If the parties are unable to agree on an adjustment to the Charges, the dispute will be resolved in accordance with clause 13.
- (e) The Customer must pay all adjusted Charges invoiced by Synergy, notwithstanding that the adjusted Charges may be undergoing review under this clause 4.7.
- (f) Any adjustment payment required by a party as a result of adjusted Charges being agreed or determined under this clause 4.7 must be made by that party within 20 Business Days of the parties agreeing the adjusted Charges or the Expert making a determination on the adjusted Charges.

### 4.8 Carbon Cost Event

- (a) If a Carbon Cost Event occurs Synergy must pass through related adjustments to the Customer, including any increased costs, or any reasonable estimate of any increased costs, incurred by Synergy as a result of the Carbon Cost Event, as determined by Synergy acting reasonably (**Adjustment for Carbon Costs**).

- (b) Synergy must provide reasonable information to the Customer of any Adjustment for Carbon Costs.

## 5. Metering

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- (a) The charges for electricity supplied under this Agreement will be calculated by reference to the amount of electricity registered on the Meter.
- (b) Synergy will arrange for the Network Operator to read the Meter at approximately monthly intervals.
- (c) If the metering information required to calculate the charges payable under this Agreement is not available at any time, then Synergy may make reasonable estimates of the consumption of electricity by the Customer in accordance with the estimation methods specified under the Metering Code, and the Customer must pay the charges based on those estimates. If the metering information subsequently becomes available then Synergy will adjust the accounts for any over or under estimation, based on that information.
- (d) Synergy may charge the Customer for all fees and charges payable by Synergy to the Network Operator in respect of:
  - (1) any special Meter reading, test or adjustment of the Meter requested by the Customer where the Meter reading or test shows that the accuracy of the Meter complies with relevant Laws and Regulations, including the requirements under the Metering Code; or
  - (2) any special Meter reading, test or adjustment or replacement of the Meter, whether requested by the Customer or otherwise, arising out of damage to or failure of or a malfunction of the Meter, which is attributable to any act or omission of the Customer.

## 6. Invoices and payment

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### 6.1 Invoices

Subject to availability to Synergy of relevant billing data and otherwise as soon as reasonably practicable after the end of an Accounting Period, Synergy must issue to the Customer a Tax Invoice for the Accounting Period showing, to the extent then known by Synergy:

- (a) all amounts payable by the Customer to Synergy under this Agreement for the Accounting Period;
- (b) all outstanding amounts as at the end of the Accounting Period and interest payable on those amounts (including any amounts in respect of any previous Accounting Period arising in relation to any adjustments to any Charges in

accordance with any of clauses 4.6 and 4.7, corrections of errors or omissions in previous Tax Invoices or because better quality billing data has become available); and

- (c) GST payable on those amounts calculated in accordance with clause 16.

### 6.2 Payment of invoices

Subject to clause 6.3, the Customer must pay to Synergy all amounts shown on the Tax Invoice on or before the Due Date. Subject to clause 6.3, if the Customer does not pay Synergy all amounts shown on the Tax Invoice on or before the Due Date, then Customer must pay Synergy interest calculated daily at the Interest Rate from the Due Date of the Tax Invoice until the date that payment is made.

### 6.3 Disputed invoices

- (a) If the Customer disputes any amount set out in a Tax Invoice issued under clause 6.1, the Customer must:
  - (1) give notice to Synergy that it disputes the amount and provide in that notice full details of the dispute within 60 Days after the Due Date of the Tax Invoice; and
  - (2) pay on the Due Date of the Tax Invoice the undisputed portion of that amount (if any) at that date.
- (b) A dispute under this clause will be resolved in accordance with the dispute resolution procedures set out in clause 13.
- (c) For any amount withheld by the Customer under clause 6.3(a) but subsequently found to have been payable the Customer must pay interest calculated daily at the Interest Rate from the Due Date of the Tax Invoice until the date that payment is made.
- (d) For any amount paid by the Customer under clause 6.3(a) but subsequently found not to have been payable Synergy must pay interest calculated daily at the Interest Rate from the date the Customer paid the amount to the date Synergy repays the amount.

### 6.4 Under and over payments

- (a) If a party detects a Payment Error by a party of any amount:
  - (1) the party must give notice to the other party of the Payment Error; and
  - (2) an adjusting payment must be made by the appropriate party within 20 Business Days of the date the parties agree on the amount of the Payment Error or the matter is otherwise determined under the terms of this Agreement.
- (b) Subject to clause 6.4(c), the adjusting payment must, without prejudice to the party's other rights, include interest calculated daily at the Interest Rate from the date of the Payment Error until the date of the adjusting payment.

- (c) An adjusting payment by a party will not attract interest under clause 6.4(b) if the underpayment or overpayment was the result of an error by the other party.
- (d) Any claim for a Payment Error associated with Access Charges must be made within 18 calendar months of the date that the Payment Error occurred.

## 7. Access to Premises

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- (a) The Customer acknowledges that the Network Operator is entitled under Law and Regulations to enter and remain on the Premises for various reasons including to:
  - (1) access, install, inspect, adjust, repair, replace or remove all or any of the Electricity Supply Equipment; and
  - (2) otherwise fulfill its obligations under Law and Regulations.
- (b) The Customer acknowledges that Synergy is not responsible for any act or omission of the Network Operator that occurs whilst the Network Operator is on the Premises in accordance with clause 7(a).
- (c) The Customer must allow Synergy and any other persons nominated by Synergy to:
  - (1) enter and remain on the Premises at all reasonable times during the Contract Period to access, install, inspect, adjust, repair, replace or remove all or any of the Electricity Supply Equipment;
  - (2) enter and remain on the Premises to provide products and services requested by the Customer; and
  - (3) otherwise fulfil its obligations under Law and Regulations and its obligations under the Electricity Transfer Access Contract.
- (d) While at the Premises Synergy must comply with any reasonable health and safety policies of the Customer made known to Synergy from time to time.
- (e) Synergy is only liable to pay compensation for, or make good any damage done to the land or Premises that has been caused by the negligence of Synergy and any of the persons nominated by Synergy in performing the works referred to in clause 7(c) at the Premises.

## 8. Customer's Equipment

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### 8.1 Customer's Equipment

- (a) The Customer must install, operate, maintain, and repair all equipment (other than the Electricity Supply Equipment) on the load side of the Point of Supply as is necessary for the Customer to take the supply of electricity under this Agreement.

- (b) The Customer must install appropriate protection devices to protect its equipment from problems on the Network.

### 8.2 Customer's Technical Covenants

- (a) At all times the Customer must:
  - (1) comply with the Technical Code as if the Customer was a "user" or "load" (as referred to in the Technical Code);
  - (2) comply with all of Synergy's reasonable requirements for the avoidance of electrical interference as required by the Technical Code, which will include electromagnetic interference with communication systems; and
  - (3) at its own risk and expense carry out from time to time such modifications to electrical equipment on or associated with the Premises as Synergy may reasonably require to ensure the Customer's compliance with this Agreement and the Technical Code.
- (b) At all times during the Contract Period the actual Power Factor at the Point of Supply must be within the acceptable Power Factor range as stipulated in the Technical Code. If the Customer's power factor is outside that range the Customer must take all necessary actions required by the Network Operator and must pay all additional costs and charges that the Network Operator imposes on Synergy as a result of the Customer failing to be within the acceptable power factor range.

### 8.3 Electricity Supply Equipment

The Customer must keep the Electricity Supply Equipment located on the Premises safe and secure and free from unauthorised interference or damage.

### 8.4 Nominating Controller

- (a) The Customer acknowledges that the Network Operator can require a person to be nominated as the Controller for each Point of Supply at the Premises.
- (b) If the Form of Agreement provides for nomination of a Controller or if subsequently the Network Operator requires a person to be nominated as the Controller, then the Customer must nominate a person who is acceptable to the Network Operator as the Controller for each Point of Supply.
- (c) If the Network Operator at any time reasonably objects to the person nominated by the Customer as the Controller then the Customer must nominate a different person as the Controller.
- (d) The Customer may, from time to time, by notice to Synergy, change the person the Customer nominates as the Controller for a Point of Supply.

For that change to be effective, the new Controller must be reasonably acceptable to the Network Operator.

- (e) The Customer must ensure the information in the Form of Agreement for the Controller is correct and must notify Synergy of any change or inaccuracy in the information for the Controller.
- (f) The Customer is liable for any acts or omissions of the Controller as if they were acts or omissions by the Customer.

## 9. Force Majeure

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- (a) To the extent that:
  - (1) a party is unable to perform its obligations as a result of a Force Majeure event occurring; or
  - (2) in the case of Synergy, the electricity capable of being generated or supplied in the Wholesale Electricity Market is reduced as a result of the occurrence of a Force Majeure event and this reduction has in Synergy's opinion (acting reasonably) a material adverse impact on Synergy.

the affected party will be excused from performance of its obligations under this Agreement and is not liable to the other party in respect of that liability.

- (b) For the purposes of clause 9(a)(2) a reduction and material adverse impact on Synergy is deemed to occur where the generation or supply of electricity by or from Specified Plant ceases or is completely curtailed or interrupted as a result of the occurrence of a Force Majeure event.
- (c) The occurrence of a Force Majeure event does not relieve a party from any obligation to pay any money under this Agreement.
- (d) Force Majeure does not include a lack of, or inability of a party to use, money or available funds for any reason.
- (e) A party claiming the benefit or protection of clause 9(a) must:
  - (1) give notice to the other party of the occurrence and circumstances in respect of which the claim arises as soon as it becomes aware of the Force Majeure event occurring;
  - (2) use all reasonable endeavours to overcome the event of Force Majeure; and
  - (3) resume performance in full of its obligations under this Agreement as soon as reasonably practicable.
- (e) The settlement of strikes, lockouts or other industrial disputes, or disturbances is entirely at the discretion of the affected party and that party is entitled to refrain from settling the strike, lockout, or dispute or may settle it at such time and on such terms as it considers to be in its best interests.

- (f) Subject to clause 10, if Synergy claims that it is affected by a Force Majeure event Synergy agrees to negotiate in good faith the terms under which the Customer may temporarily transfer its electricity supply to a third party supplier but only during the period that Synergy claims Force Majeure. The terms to be agreed must require that the Customer comply with all Law and Regulations in respect of such temporary transfer and the Customer indemnify Synergy for any third party fees, costs or expenses for which Synergy is liable resulting from such temporary transfer.

## 10. Interruptions to electricity supply

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- (a) The Customer acknowledges that the Network Operator or System Management may arrange to interrupt or disconnect the Customer's electricity supply at any time without notice in an Emergency or as otherwise required by Law and Regulations (including for the purposes of the Network Operator carrying out maintenance to the Network), and that such interruption is not an interruption by Synergy.
- (b) The Customer also acknowledges that Synergy must arrange to interrupt or disconnect the Customer's electricity supply, and may do so at any time without notice, if required to do so by the Network Operator or otherwise as required by Law and Regulations. If this occurs, Synergy will use all reasonable endeavours to recommence the electricity supply to the Customer as soon as possible.
- (c) The Customer acknowledges and agrees that Synergy is not liable to the Customer for an interruption referred to in clause 10(a) or 10(b).
- (d) To the extent the Network Operator informs Synergy in advance of a plant interruption or disconnection, Synergy will use reasonable endeavours to assist the Customer in liaising with the Network Operator to minimise the impact to the Customer of that interruption or disconnection.

## 11. Quality and reliability of supply

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The parties acknowledge that the quality, frequency and continuity of supply of electricity is subject to factors outside of Synergy's control, including the operations of the Network Operator, and that Synergy as a result does not guarantee or warrant that the electricity supplied to the Customer will be of any particular quality or that it will be free from variation or disturbance or that the Customer will obtain a continuous supply of electricity without interruptions.

## 12. Limitation of liability for failure to maintain supply

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### 12.1 Limitation of liability

The Customer agrees that Synergy will not be liable for any claims, costs, expenses, loss or damage suffered or sustained by the Customer arising from the failure by Synergy to supply electricity in accordance with this Agreement or an interruption of or disturbance or fluctuation in that supply of electricity if that failure, interruption, disturbance or fluctuation is due to the act or omission of a third party (including the Network Operator and System Management) or other circumstances beyond the reasonable control of Synergy.

### 12.2 Consequential loss

Except to the extent that liability cannot lawfully be excluded, Synergy is not liable to the Customer for:

- (a) any consequential or indirect loss;
- (b) any loss or damage associated with any surge in the electricity supply or Synergy failing to supply electricity meeting any particular quality;
- (c) business interruption loss;
- (d) lost profits;
- (e) loss of an opportunity; or
- (f) the Customer's liability to other people under contracts or otherwise and any costs and expenses connected with the claim,

whether foreseeable or not and whether arising from or in connection with Synergy's breach of contract, breach of statutory duty, tort (including negligence), in equity or otherwise, but excluding any damage caused by, consequent upon or arising out of fraud

Except to the extent that liability cannot lawfully be excluded, neither Synergy nor the Network Operator is liable to the Controller for Consequential Loss suffered by the Controller, whether foreseeable or not and whether arising from or in connection with breach of contract, breach of statutory duty, tort (including negligence), in equity or otherwise, but excluding any damage caused by, consequent upon or arising out of fraud.

### 12.3 Liability Cap

The maximum limit on Synergy's liability under this Agreement is the Synergy Liability Cap.

## 13. Dispute Resolution

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### 13.1 Negotiation

If a dispute of any kind arises in connection with this Agreement, the parties must meet within 20 Business Days at a mutually

agreed location (or failing agreement, at Synergy's offices in Perth) to endeavour to solve the dispute by negotiation and must convene and attend at least one meeting for that purpose.

### 13.2 Dispute notice

If a dispute cannot be resolved within 14 days of the first meeting convened by either party under clause 13.1, either party may serve a notice on the other party (**Dispute Notice**).

### 13.3 Method of Dispute Resolution

Where any dispute or difference under this Agreement is to be referred to an Expert for determination, the provisions of clause 13.4 will apply. Otherwise, either party may commence legal proceedings in respect of that dispute.

### 13.4 Expert Procedure

- (a) The parties must endeavour to agree on the person to be appointed as the Expert. If the parties are unable to agree on the person to be appointed as Expert within 28 days from the date of the Dispute Notice, either party may request that the President of the Law Society of Western Australia, having regard to the nature of the dispute, appoint an Expert who is independent of the parties to resolve the dispute.
- (b) An Expert appointed under this clause must act as an expert and not as an arbitrator.
- (c) In relation to the resolution of a dispute by an Expert under this clause:
  - (1) the Expert must determine the procedure for resolving the dispute, having regard to the nature of the dispute;
  - (2) both parties to the dispute may make written submissions to the Expert in relation to the subject matter of the dispute;
  - (3) the parties must use their best endeavours to make available to the Expert all information relevant to the dispute and which the Expert reasonably requires in order to resolve the dispute; and
  - (4) the Expert will have the power to inform itself independently as to the facts, and if necessary technical matters, to which the dispute relates, including consulting with other professionally qualified persons on matters outside the Expert's area of expertise.
- (d) The Expert must give a determination together with written reasons within 28 days of being provided with the information referred to in clause 13.4(c)(3).
- (e) The determination by an Expert of a dispute under this clause will be final and binding on the parties except in the case of manifest error or fraud.



- (f) Costs associated with the provision of services by the Expert under this clause must be borne equally by the parties unless otherwise determined by the Expert. Each party must pay its own costs and disbursements in relation to the resolution of the dispute.

### 13.5 Obligation to continue performance

The parties to a dispute must continue performing their obligations under this Agreement while the dispute is being resolved.

## 14. Termination and Default

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### 14.1 Default

- (a) On or at any time after the occurrence of an Event of Default other than an Insolvency Default or Change in Control Default, the non-defaulting party may serve a notice on the defaulting party specifying the nature of the breach or default and requiring the defaulting party to remedy the breach or default within the following periods:
- (1) in the case of a Financial Default, not less than seven (7) days from the date of service of the notice; and
  - (2) in the case of a Non-Financial Default, such period as is reasonable in the circumstances but, in any event, not less than twenty-one (21) days from the date of service of the notice.
- (b) In the case of a Financial Default, the defaulting party must pay interest on any unpaid amount, calculated daily at the Interest Rate from the date that the amount is due until the date that payment is made.
- (c) If the defaulting party fails to remedy the breach or default within the time specified in the notice, then the non-defaulting party may, by further notice, terminate this Agreement.
- (d) In the case of an Insolvency Default or Change in Control Default the non-defaulting party, may by notice immediately terminate this Agreement.

### 14.2 Supply and financial responsibility following termination

- (a) Following termination of this Agreement, Synergy is entitled to cease supplying electricity to the Customer and arrange for the Network Operator to de-energise the Premises from the source of supply and refuse to recommence supply.
- (b) Without limiting Synergy's rights under clause 14.2(a), if following termination of this Agreement, the Meter is not de-energised and the Customer continues to consume electricity from Synergy, then the Customer must pay to Synergy for such supply at the rates and charges reasonably determined by Synergy.

- (c) Without limiting Synergy's rights under clauses 14.2(a) or 14.2(b), if following termination of this Agreement, the Meter is de-energised, or the Meter is not de-energised and the quantity of electricity consumed by the Customer in any Accounting Period is zero, then the Customer must pay to Synergy the Capacity Charge for each Accounting Period or on a monthly basis, as applicable, until the earlier of:
- (1) the Network Operator abolishing the Meter, at the Customer's cost;
  - (2) Synergy ceasing to incur any capacity related liability under the Market Rules; or
  - (3) another electricity retailer becoming financially responsible in respect of the Meter and any Point of Supply pursuant to the *Electricity Industry (Customer Transfer) Code 2004 (WA)* and the *Electricity Industry (Metering) Code 2012 (WA)*.
- (d) This clause 14.2 survives the termination of this Agreement.

## 15. Confidentiality

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The parties agree that:

- (a) This Agreement and any data and information exchanged between them during the negotiations for this Agreement or subsequently produced in the performance and administration of this Agreement (**Confidential Information**) includes:
- (1) trade secrets of the parties; and
  - (2) information that has a commercial value or information about the business, professional, commercial or financial affairs of the parties that will be destroyed or diminished by publication.
- (b) Confidential Information is confidential at all times. A party must not disclose Confidential Information to any other person, except:
- (1) with the prior written consent of the other party;
  - (2) to its legal and other professional advisers, officers and employees and any related corporation, to the extent reasonably necessary for it to evaluate, negotiate or perform this Agreement;
  - (3) to the extent that disclosure is reasonably necessary to a proposed transferee (and the transferee's financiers) of its rights and interests under this Agreement;
  - (4) to the extent required by Law and Regulations or by requirement of a government, government department, agency or authority having jurisdiction over either party;

- (5) to the extent of a lawful requirement of a stock exchange having jurisdiction over either party;
  - (6) to the extent required in or in connection with legal proceedings or dispute resolution of any kind between the parties under this Agreement or to which either party is joined; or
  - (7) to the extent that the party possesses the Confidential Information lawfully through sources other than the party that supplied the information; or
  - (8) to the extent that the Confidential Information is otherwise generally and publicly available.
- (c) A party may only make disclosures under clauses 15(b)(2), 15(b)(3) and 15(b)(4) after it:
- (1) has notified the third party that it has a duty of confidence in respect of the Confidential Information, and take the similar precautions to ensure that confidentiality is kept, that it would take for its own Confidential Information; and
  - (2) has procured a written confidentiality undertaking from the third party in substantially the same form as this clause, except to the extent that such third party is already legally bound to by similar confidentiality obligations.
- (d) This clause survives the termination of this Agreement.

## 16. GST

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- (a) In this clause 16:
  - (1) **GST** has the meaning given to that term in the GST Law.
  - (2) **GST Law** has the meaning given to that term in the GST Act).
  - (3) Words and phrases used in this clause 16 that are defined or used in the GST Law have the meaning given in that legislation, unless the context indicates otherwise.
- (b) All prices stated in this Agreement are exclusive of GST. To the extent there is a taxable supply under or in connection with this Agreement, then the recipient of the taxable supply (**Recipient**) will pay to the party providing the taxable supply (**Supplier**) any GST payable by the supplier in respect of the taxable supply.
- (c) The Supplier must provide a Tax Invoice (or an adjustment note) to the Recipient in respect of the taxable supply as a condition to the obligation of the Recipient to pay GST on a taxable supply.
- (d) Where an adjustment event occurs in relation to a taxable supply made under this Agreement, the Supplier must provide an adjustment note to the Recipient indicating any adjustment to the GST on that supply.

- (e) The amount of a party's entitlement under this Agreement to reimbursement or indemnification for any costs or expenses is reduced by the input tax credits to which that party is entitled with respect to those costs and expenses. Any portion of a reimbursement or indemnification that is a taxable supply must be increased on account of GST, as described in clause (b) above.

## 17. General

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### 17.1 Notices

- (a) Except in the case of Emergency, all notices, accounts and other documents to be served under this Agreement must be in writing and may only be served by ordinary mail or by facsimile transmission (confirmed by ordinary mail) or by being delivered by hand or courier, addressed, transmitted or delivered to the addresses specified in item 3 of Schedule 1 of the Form of Agreement (as varied from time to time by notice to the other party).
- (b) Any notice, or other document other than accounts served under this Agreement is deemed to have been duly served:
  - (1) 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 office; and
  - (2) if sent by ordinary mail, on the 3rd Business Day following posting.
- (c) Either party may by notice to the other party change its address and email details contained in item 3 of Schedule 1 of the Form of Agreement.

### 17.2 Assignment

- (a) Except as provided in clause 17.2(b) neither party may assign, transfer or otherwise dispose of the whole or any part of its rights or obligations under this Agreement without the prior written consent of the other party, which consent must not unreasonably be withheld. A party requesting assignment agrees that it is not unreasonable for the other party to withhold its consent to an assignment under this clause 17.2(a) where that other party considers, on reasonable grounds that:
  - (1) the proposed assignee will not have the technical and financial capability to perform the relevant obligations under this Agreement; or
  - (2) if the Customer is the party requesting an assignment the proposed assignee will not have an electricity usage pattern comparable to the electricity usage pattern of the Customer.

- (b) While Synergy is a wholly state-owned business, it may assign any of its rights and obligations under this Agreement without obtaining the consent of the Customer.

### 17.3 Change in Control

- (a) A **Change in Control Default** occurs if, without the prior written consent of Synergy, such consent not to be unreasonably withheld, there is a Change in Control of the Customer.
- (b) The Customer agrees that it is not unreasonable for Synergy to withhold its consent to a Change in Control if Synergy considers, on reasonable grounds, that following the Change in Control:
- (1) the Customer will not have the technical and financial capability to perform its obligations under this Agreement; or
  - (2) the Customer will not have an electricity usage pattern comparable to the electricity usage pattern prior to the Change in Control.

### 17.4 Entire agreement

This Agreement constitutes the entire agreement between the parties and supersedes all prior negotiations, representations, proposals, understandings and agreements, whether written or oral, relating to the subject matter of this Agreement.

### 17.5 Modifications and approvals

A purported modification, variation or amendment of this Agreement has no effect unless and until the same is in writing and executed by the parties. Any waiver of rights or any approval or consent has no effect unless and until the same is in writing and executed by the waiving, approving or consenting party.

### 17.6 Severance of terms

If the whole or any part of a provision of this Agreement is or becomes for any reason invalid or unenforceable at Law and Regulations, the remainder of this Agreement continues to be valid and enforceable and the relevant provisions or part of that provision will be severed. This clause has no effect if the severance alters the basic nature of this Agreement.

### 17.7 Waiver

A waiver by any party of any power, right or remedy under or in relation to this Agreement does not operate and is not to be construed as a waiver of any other preceding or succeeding power, right or remedy whether of a similar or different character. A failure or delay by a party in the exercise of any power, right or remedy which may become exercisable under or in relation to this Agreement does not constitute a waiver by that party of that power, right or remedy.

### 17.8 Application of the EOP Act and By-laws

Nothing contained in this Agreement in any way limits the operation or effect of, or deprive Synergy of its rights under, the EOP Act, EI Act or EC Act or By-laws.

### 17.9 Governing law and courts

This Agreement is governed by and is to be construed in accordance with the laws of Western Australia and the parties irrevocably submit to the jurisdiction of the courts in Western Australia.

## 18. Security

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- (a) Prior to the Commencement Date, the Customer must provide a security deposit in accordance with the provisions of section 62 of the EOP Act either by:
- (1) providing a cash deposit to Synergy; or
  - (2) providing a bank guarantee to Synergy on terms and by a financial institution acceptable to Synergy, guaranteeing the performance by the Customer of its obligations under this Agreement, in the amount specified in item 2.2 of Schedule 1 of the Form of Agreement.
- (b) If requested by Synergy from time to time including as a result of an increase in Contract Maximum Demand, the Customer must provide additional security deposits in accordance with the EOP Act.
- (c) If an Event of Default has occurred in respect of the Customer, Synergy may (without prejudice to its other rights) recover from any security provided in accordance with this clause 18 the amount (as reasonably determined by Synergy and as subsequently notified to the Customer by the provision of copies of invoices, calculations and other relevant documentation) of all claims, costs, losses and expenses which may be sustained or incurred by Synergy as a direct or indirect result of such Event of Default and any action taken as a result of it.

## 19. Definitions and Interpretation

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### 19.1 Definitions

In this Agreement (unless the context otherwise requires):

**Access Charges** means all charges and fees payable by Synergy to the Network Operator from time to time for the supply of electricity to the Premises and otherwise in respect of the Premises which are, as of the date of the Form of Agreement, set out in Schedule 2 of the Form of Agreement.

**Accounting Period** means the period between any two consecutive readings of the Meter made under clause 5(b) other than the first accounting period which is the period between the Commencement Date and the first reading of the Meter.

**Adjustment for Carbon Costs** has the meaning given in clause 4.8.

**AEMO** means the Australian Energy Market Operator.

**Agreement** means the agreement between Synergy and the Customer for the sale of electricity, comprising the Form of Agreement and these General Conditions.

**Business Day** means a day other than a Saturday, Sunday or public holiday in Western Australia.

**By-laws** means the tariff by-laws relevant to Synergy made under the EOP Act, which at the date of entering into this Agreement are the *Energy Operators (Electricity Generation and Retail Corporation) (Charges) By-laws 2006 (WA)*.

**Capacity Charge** is specified in item 5 of Schedule 2 of the Form of Agreement.

**Carbon Cost Event** means an adjustment in costs payable by Synergy in relation to the electricity sold under this Agreement to the Customer arising due to a Carbon Scheme or change to a Carbon Scheme, including Synergy or its suppliers acquiring permits or carbon offsets or paying any government charges or penalties, whenever occurring and whether or not known to any party at or before the date of this Agreement.

**Carbon Scheme** means a requirement imposed by Law and Regulations or any Government Authority, which has as one of its objectives a reduction in, or the modification or control of behaviour in respect of, greenhouse gas or greenhouse gas equivalent emissions or any other scheme to require energy or fuel efficient activities or initiatives.

**Change in Access Charges** has the meaning given in clause 4.6.

**Change in Control** occurs if, in relation to any person (the first mentioned person):

- (a) there is a change in the person that Controls the first mentioned person (other than if the Ultimate Holding Company of the first mentioned person remains the same following the change);
- (b) a person that Controls the first mentioned person ceases to Control that person (other than if the Ultimate Holding Company of the first mentioned person remains the same following the change); or
- (c) if the first mentioned person is not Controlled, another person acquires Control of the first mentioned person.

**Change in Control Default** has the meaning given in clause 17.3.

**Change in Law and Regulations** means any new Law and Regulations, or any repeal of, or change to, any existing Law and Regulations or applicable judgement of a relevant court of law which changes binding precedent. For the purposes of a

Change in Law and Regulations a new Law and Regulations or a change to any existing Law and Regulations are deemed to be a change from the date the Law and Regulations commences. If the new or changed Law and Regulations are a Tax, that new or changed Tax is deemed to a change from the date the new or changed Tax increases the cost on Synergy to perform this Agreement.

**Change in Law and Regulations Impact** means the effect of a Change in Law and Regulations on the cost of Synergy performing this Agreement, including:

- (a) the costs incurred by Synergy in order to comply with, or otherwise as a result of, the Change in Law and Regulations;
- (b) the costs incurred by Synergy in order to ensure that it does not become liable to pay, or in order to minimise its liability to pay, an amount in order to comply with a Change in Law and Regulations; and
- (c) the costs of the Change in Law and Regulations incurred by any supplier to Synergy that the supplier passes through to Synergy.

**Charges** means until the End Date or the date of termination (whichever is earlier) all charges specified in Schedule 2 of the Form of Agreement as adjusted in accordance with the Agreement from time to time and after that date means the Access Charges and the amounts that Synergy charges similarly situated customers for the supply of electricity On-Peak and for the supply of electricity Off-Peak. To the extent that a Meter is installed pursuant to this Agreement, then the Charges include the cost of that Meter which will be amortised over a 24-month period.

**Commencement Date** is specified in item 2.3 of Schedule 1 of the Form of Agreement.

**Confidential Information** has the meaning given in clause 15(a).

**Contract Maximum Demand** means the number specified in item 6 of Schedule 2 of the Form of Agreement, as adjusted pursuant to clauses 3.2 and 3.3.

**Contract Period** has the meaning given in clause 2.

**Contract Year** means any period of twelve (12) months during the Contract Period beginning on the Commencement Date of the Contract Period or on any anniversary of that date with the last contract year being the period from the end of the immediately preceding contract year to the End Date.

**Control** has the meaning given in section 50AA of the *Corporations Act 2001* (Cth).

**Controller** means, in respect of a Point of Supply an individual, including a Customer (if the Customer is not a legal entity), who owns, operates, controls or otherwise is responsible for the operation of the facilities and equipment at the Point of Supply.

If a Controller is required with effect from the commencement of the Contract Period its details are set out in the Form of Agreement.

**Covered Service** means a service, under an Electricity Transfer Access Contract, in relation to the transportation of electricity provided by means of the Network.

**CPI** means the Consumer Price Index for Perth published each quarter by the Australian Bureau of Statistics under Catalogue Number 6401.0.

**Dispute Notice** has the meaning given in clause 13.2.

**Due Date** means 14 days from the date of the Tax Invoice.

**EC Act** means the *Electricity Corporations Act 2005 (WA)*.

**EI Act** means the *Electricity Industry Act 2004 (WA)*.

**EOP Act** means the *Energy Operators (Powers) Act 1979 (WA)*.

**Energy Charge** means the charges specified in item 3 of Schedule 2 of the Form of Agreement.

**Electricity Supply Equipment** means the Meter and all works, structures, apparatus, equipment and plant used or required to be used by the Network Operator in connection with the supply of electricity to the Customer.

**Electricity Transfer Access Contract** means the access contract as defined in the *Electricity Networks Access Code 2004 (WA)* between Synergy and the Network Operator for the provision of and access to network services.

**Emergency** means an emergency due to the actual or imminent occurrence of an event which in any way endangers or threatens to endanger the safety or health of any person, or the maintenance of the power system supply in Western Australia or which destroys, damages, or threatens to destroy or damage, any property and includes any event defined to be an emergency under any relevant Law and Regulations.

**End Date** means the date specified in item 2.4 of Schedule 1 of the Form of Agreement.

**Event of Default** means any Financial Default, Non-Financial Default, Insolvency Default or Change in Control Default.

**Excess Network Usage Charge** has the meaning given in item 6 of Schedule 2 of the Form of Agreement.

**Expert** means a person appointed under clause 13, who will act as an expert and not as an arbitrator and who has appropriate commercial and practical expertise in the subject matter of the dispute to be determined by it.

**Financial Default** means any default in the due and punctual payment of any sum due to the non-defaulting party.

**Force Majeure** means any event that is not reasonably within the control of the party thereby affected and could not have been prevented or overcome by exercising a reasonable standard of care and diligence. Force Majeure may include, without

limitation, act of God; strikes, lockouts, stoppages or restraints of labour or other industrial disturbances; war; invasion; acts of public enemies, riot or civil commotion or sabotage; terrorism; fire, explosion, earthquake, landslide, flood, washout, lightning, storm or tempest; breakdown of or accident to plant, machinery, equipment, lines or pipes (including that of the Network Operator); system disturbances in the Network; outages of or constraints on the Network; an event of force majeure declared by the Network Operator; an event of force majeure declared by a generator of electricity; failure of suppliers to supply fuel, equipment or machinery; Change in Law and Regulations; restraints, embargoes or other actions of the States, Territories or the Commonwealth of Australia.

**Form of Agreement** means the form of agreement signed by the Customer and Synergy that forms part of this Agreement.

**General Conditions** mean this document titled Electricity Sale General Conditions.

**Government Authority** means any federal, state, local, regional, territorial or municipal government, minister or any governmental, semi-governmental or other body authorised by Law and Regulations.

**GST** has the meaning given in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Interest Rate** means the Reserve Bank of Australia Cash Rate as published by the Reserve Bank of Australia from time to time plus six percentage points. As an example, if the Cash Rate were 3%, the Interest Rate would be 9%.

**Insolvency Default** means any of the following circumstances:

- (a) a party being subject to:
  - (1) the appointment of a receiver, receiver and manager, judicial manager, liquidator, administrator, an agent for a mortgagee in possession or a like official of any of its assets;
  - (2) the calling of any meeting for the consideration of or the passing of any resolution for the winding up of the company;
  - (3) the filing of any application or the making of any order for the purpose of the winding up of a party or its placement under an official manager or for the appointment of a receiver or receiver and manager of any of its assets; or
  - (4) the entry by a party into a scheme of arrangement otherwise than for the purpose of reconstruction or amalgamation;
- (b) the occurrence of an event whereby a party (being a company) is unable to pay its debts as they fall due;

- (c) where a party is a natural person that party becoming bankrupt, committing an act of bankruptcy, executing an authority pursuant to Part X of the *Bankruptcy Act 1996* (Cth) as amended or in any way taking advantage of or seeking relief under any statute relating to bankruptcy or the relief of debtors; and
- (e) A failure to comply with a demand issued under section 459E of the *Corporations Act 2001* (Cth).

**Law and Regulations** means common law, principles of equity, a Tax, laws made by parliament (which includes laws made by State, Territory and Commonwealth parliament), direction or order given by the Minister, regulation, code and other instruments made under law or regulations (and consolidations, amendments, re-enactments or replacements of any of them) and the term of any binding guideline, licence, approval or authorisation issued by a Government Authority including the rules made under the *Electricity Industry (Wholesale Electricity Market) Regulations 2004* (WA) as contemplated by section 123 of the *Electricity Industry Act 2004* (WA), as amended or replaced from time to time.

**Maximum Demand** means the highest integrated half-hourly maximum demand for electricity supplied under this Agreement as indicated by the Meter at various times.

**Meter** means the equipment installed or to be installed at the Premises for metering the Customer's electricity consumption at the Premises including regulators, telemetry, data logging and other associated equipment and installations.

**Metering Code** means the *Electricity Industry Metering Code 2005* (WA).

**Minimum Charge Amount** means the dollar amount specified in item 8 of Schedule 2 of the Form of Agreement.

**Minimum Charge Period** means the period specified in item 8 of Schedule 2 of the Form of Agreement.

**Minister** means the Minister responsible for administering the *Electricity Corporations Act 2005* (WA) from time to time.

**Network** means the South West Interconnected System (as defined in the *Electricity Industry Act 2004* (WA)).

**Network Operator** means the owner or operator of the Network.

**Nominal Supply Voltage** is specified in item 1 of Schedule 2 of the Form of Agreement.

**Non-Financial Default** means a default by the Customer (other than a Financial Default or Insolvency Default) or a default by Synergy in duly and punctually performing or observing any of the terms or conditions contained in this Agreement or any other Agreement supplemental to or varying this Agreement.

**Off-Peak** means the hours after 10:00 pm and before 8:00 am Monday to Friday and all hours on Saturday and Sunday.

**On-Peak** means the hours after 8:00 am and before 10:00 pm Monday to Friday inclusive.

**Payment Error** means an error in the calculation of the amounts payable by, and invoiced to, the Customer under clause 6.4.

**Point of Supply** means the electrical interface between the Premises and the Network and will be at the load side of the Meter.

**Power Factor** has the meaning given to it in the Technical Code.

**Premises** means the site where electricity will be supplied in accordance with this Agreement as specified in item 1 of Schedule 2 of the Form of Agreement.

**Recipient** has the meaning given in clause 16(b).

**Supplier** has the meaning given in clause 16(b).

**Synergy Liability Cap** is the amount net of Access Charges paid by the Customer under this Agreement during the 12-month period prior to the date of the event triggering the liability or if twelve months have not elapsed an amount equal to 12 times the average monthly amount net of Access Charges paid by the Customer under this Agreement.

Without limiting the generality of the above, to the extent the Form of Agreement specifies that the Customer must pay both Capacity Charges and Energy Charges, then the Synergy Liability Cap is as follows:

- (a) Synergy's liability for loss or damage for any higher Capacity Charges that the Customer may be required to pay to a third party is equal to the amount paid by the Customer under item 5 of Schedule 2 of the Form of Agreement during the 12 month period prior to the date of the event triggering the liability or if twelve months have not elapsed an amount equal to 12 times the average monthly amount paid by the Customer under item 5 of Schedule 2 of the Form of Agreement prior to the date of the event triggering the liability; and
- (b) Synergy's liability for loss or damage for any higher Energy Charges that the Customer may be required to pay to a third party is equal to the amount paid by the Customer under item 3 of Schedule 2 of the Form of Agreement during the 12 month period prior to the date of the event triggering the liability or if twelve months have not elapsed an amount equal to 12 times the average monthly amount paid by the Customer under item 3 of Schedule 2 of the Form of Agreement prior to the date of the event triggering the liability.

**System Management** has the meaning given in the *Wholesale Electricity Market Rules* (WA).

**Tariff** means the tariff rate for the supply of electricity prescribed under the By-laws for, or in connection with, the supply of electricity.

**Tax** means any tax, trading mechanism or other mechanism, duty, impost, fee, rate, withholding, fine, penalty or levy imposed by any Government Authority or any other person under any Law and Regulations:

- (a) relating to the generation, purchase, transmission, delivery, supply or sale of electricity under this Agreement (including any Tax on, or which affects directly or indirectly the cost of goods, services or materials used in connection with the generation, purchase, transmission, delivery, supply or sale of electricity), but does not include income tax, capital gains tax or fringe benefits tax.
- (b) relating to any renewable energy scheme implemented or administered by any Government Authority;
- (c) that has as one of its objectives a reduction in, or the modification of, behaviour in respect of carbon, carbon equivalent emissions or any substance characterised as a greenhouse gas; or
- (d) imposed on Synergy which is specific to the electricity industry.

**Tax Invoice** has the meaning given in the GST Act.

**Technical Code** means:

- (a) the Distribution Technical Code published under the *Electricity Distribution Regulations 1997 (WA)* and the Technical Code published under the *Electricity Transmission Regulations 1996 (WA)*, as amended or replaced from time to time; and
- (b) the Technical Rules approved by the Economic Regulation Authority under the *Electricity Network Access Code 2004 (WA)*.

**Ultimate Holding Company** has the meaning given in section 9 of the *Corporations Act 2001 (Cth)*.

## 19.2 Interpretation

In this Agreement (including all Schedules) where the context so requires:

- (a) all words denoting the singular include the plural and vice versa;
- (b) all references to any gender include the other genders;
- (c) all references to persons include corporations;
- (d) a reference to an Act, regulation or by-law or to any part thereof includes any amendment, re-enactment or substitution thereof for the time being in force;

- (e) a reference to this Agreement or other instrument includes any variation or replacement of either thing;
- (e) a reference to any thing is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (f) a reference to a clause is a reference to a clause of the General Conditions or a reference to a clause in the Form of Agreement if the reference includes a reference to the Form of Agreement;
- (g) headings are included for convenience and do not affect the interpretation of this Agreement;
- (h) if the word “including” or “includes” is used, the words “without limitation” are taken to immediately follow;
- (i) a reference to a monetary amount means that amount in Australian currency;
- (j) if a word or phrase is defined, other grammatical forms of that word or phrase have a corresponding meaning;
- (k) if a date stipulated for payment is not a Business Day, the payment must be made by the next Business Day;
- (l) a reference to writing includes any means of representing or reproducing words in visible form including by electronic means such as facsimiles transmission;
- (m) a reference to a month is to a calendar month and a reference to a year is to a calendar year; and
- (n) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated inclusive of that day.

## How to contact us

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We would like to assure you that you will receive our highest standard of service when we are responding to your enquiries.

When you call us we seek to answer your questions immediately. If this is not possible (because we need to speak to a distributor, for example) we will get back to you immediately once we have obtained the information you are seeking. There are a number of ways you can contact us:


### By phone

**13 13 54** for business customers

Monday to Friday between 8am and 5pm  
(excluding public holidays)

**(08) 6212 2222** for calls outside Western Australia

**(08) 9221 8608** TTY (if you have hearing or speech difficulties)

Need help with this guide? Call  **13 14 50** to arrange an interpreter or visit their website **tisnational.gov.au**

### By mail

Synergy, GPO Box K851, Perth WA 6842

### By fax

**(08) 9221 4628**

### Internet

synergy.net.au

### Other Useful Numbers

For emergency or supply faults/interruptions call **13 13 51**  
(24-hour number)



