

# Bilateral Trade Agreement for Electricity (Standard Products)

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BETWEEN

**ELECTRICITY GENERATION AND RETAIL  
CORPORATION**

AND

**[APPROVED COUNTERPARTY]**

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# Bilateral Trade Agreement for Electricity (Standard Products)

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Date ►

Between the parties

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**Electricity Generation and Retail Corporation** trading as **Synergy**

ABN 58 673 830 106

a body established under the *Electricity Corporations Act 2005* (WA)  
of Forrest Centre, 219 St Georges Terrace, Western Australia

**(Synergy)**

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**[Approved Counterparty]**

ABN [*insert*]

of [*insert address*]

**(Trader)**

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Background

- 1 The parties are Market Participants in the Wholesale Electricity Market in Western Australia.
  - 2 The Trader is an Approved Counterparty as defined in and for the purposes of the SP Arrangements.
  - 3 This Agreement is a SP Agreement as defined in and for the purposes of the SP Arrangements.
  - 4 The parties may enter into Transactions in respect of Standard Products from time to time in accordance with the SP Arrangements and on the terms set out in this Agreement.
  - 5 Subject to the limitations set out in this Agreement, either Synergy or the Trader may act as a Seller or a Buyer of Standard Products under a Transaction from time to time under this Agreement.
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The parties agree

as set out in the Operative part of this Agreement, in consideration of, among other things, the mutual promises contained in this Agreement:

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# Operative part

## 1 Definitions and interpretation

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### 1.1 Definitions

Unless the context requires otherwise, the meanings of the terms used in this document are set out below.

<b>Term</b>	<b>Meaning</b>
<b>AEMO</b>	has the meaning given in the Market Rules.
<b>Agreed Interest Rate</b>	the 30 day Bank Bill Swap Reference Rate as published in the Australian Financial Review plus 3 full percentage points, or if that rate ceases to be published, such alternative rate as the parties may agree in good faith to be an equivalent rate. If the rate ceases to be published and the parties cannot agree an equivalent rate within 10 Business Days of first meeting, the rate that will apply is the Reserve Bank of Australia Cash Rate.
<b>Agreement</b>	the General Terms and, in respect of any Transaction, the Transaction Terms and the applicable Confirmation.
<b>Agreement Period</b>	has the meaning given in clause 2.1.
<b>Authorisation</b>	any clearance, consent, registration, filing, agreement, notarisation, certificate, licence, approval, permit, accreditation, authority or exemption from a Governmental Agency.
<b>Authorised Officers</b>	has the meaning given in clause 13.
<b>Balancing Price</b>	has the meaning given in the Market Rules.
<b>Billing Period</b>	a Trading Month.
<b>Business Day</b>	a day that is not a Saturday, Sunday or a public holiday in Perth, Western Australia.
<b>Buyer</b>	in respect of a Transaction, either Synergy or the Trader acting in its capacity as the purchaser of electricity under a Standard Product for that Transaction.
<b>Calendar Year</b>	means a period of 12 months commencing at the beginning of the Trading Interval that starts at 0800 hours on 1 January and ending at the end of the Trading Interval that starts at 0730 hours on 1 January of the following year.

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**Carbon Emissions Factor** in relation to a Standard Product, is an amount of Greenhouse Gas emissions per unit of electricity (expressed in terms of carbon dioxide equivalent gas per MWh sent out) and which, for a particular Transaction, shall be determined in accordance with clause 4.2(b) of Schedule 3 and specified in the Confirmation for such Transaction and as may be adjusted from time to time in accordance with clause 7 of Schedule 3.

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**Carbon Price** the price (in \$ per MWh) determined in accordance with clause 6.5 of Schedule 3.

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**Carbon Reference Price** the price (in \$ per tonne of carbon dioxide equivalent Greenhouse Gas) determined in accordance with clause 6.5(b)(b) of Schedule 3.

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**Change in Law**

- (a) a change in an existing Law, or the imposition of a new Law;
- (b) the imposition of a new Authorisation not required as at the Commencement Date;
- (c) a change in the terms of any Authorisation required at the Commencement Date; or
- (d) any change in the interpretation of any Law or Authorisation resulting from a decision of a Governmental Agency,

which occurs on or after the Commencement Date, but excludes:

- (e) a Change in Tax;
- (f) a change in a Law affecting income tax or capital gains tax;
- (g) a change in the SP Arrangements; or
- (h) the introduction of a GHG Scheme or a GHG Scheme variation.

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**Change in Tax** a change in an existing Tax, or the imposition of a new Tax which occurs on or after the Commencement Date, but excludes the introduction of a GHG Scheme or GHG Scheme variation to which clause 7.3 of Schedule 3 applies.

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**Commencement Date** the date set out in Schedule 2.

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**Confidential Information** the terms of this Agreement and all information that is disclosed by a party (**Disclosing Party**) to the other party (**Receiving Party**) under this Agreement, but excludes information which:

- (a) is or becomes part of the public domain; or
- (b) is already known to the other party through some independent means,

other than as a result of the Receiving Party's breach of its obligations under this Agreement or a breach of confidentiality by any person to whom the Receiving Party has disclosed the information.

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**Confirmation** a document exchanged between the parties confirming and evidencing the entry into a Transaction between the parties for a Standard Product for the bilateral trading of electricity, substantially in the form of the document set out in the Annexure to this Agreement.

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**Corporations Law** the *Corporations Act 2001* (Cth).

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**CRP Methodology** has the meaning given in the SP Arrangements.

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**Dispute** has the meaning given in clause 16.1(a).

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**Electronic Funds Transfer** the transfer of immediately available funds into a bank account by electronic means.

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**End Date** the date set out in Schedule 2.

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**Energy Charge** has the meaning given in clause 6.2 of Schedule 3.

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**Excluded Loss** any of the following categories of loss or damage:

- (a) loss of profit, loss or deferment of revenue, loss of opportunity, business interruption and loss of use;
- (b) loss of goodwill, loss of business reputation, future reputation or publicity;
- (c) damage to credit rating;
- (d) punitive or special damages; or
- (e) without limiting the above, indirect or consequential loss or indirect or consequential damage of any kind whatsoever.

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**Expert** a person appointed as an expert in accordance with clause 16.3.

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**Expert Determination Rules** has the meaning given in clause 16.7(a).

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**Financial Cure Period** has the meaning given in clause 7.1(a).

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**Financial Default**

- (a) a failure of one party to pay the other party in accordance with this Agreement an amount not in Dispute under clause 6.6;
- (b) a failure of one party to pay the other party in accordance with this Agreement the Standard Products Prepayment Amount in accordance with clause 6.3 in Schedule 3.
- (c) the occurrence of an Insolvency Event in respect of a party; or
- (d) a failure of one party to lodge Security (if required) with the other party within the time period specified in the Confirmation or in clause 8.5 (as applicable) or to re-instate the Security in accordance with clause 8.4.

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**Financial Default Notice** has the meaning given in clause 7.1(a).

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**Financial Year** a period of 12 months commencing at the beginning of the Trading Interval that starts at 0800 hours on 1 July and ending at the end of the Trading Interval that starts at 0730 hours on 1 July of the following year.

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**Force Majeure Event** any event or circumstance or combination of events and circumstances the cause of which is beyond the reasonable control of a party and which by the exercise of due diligence the party is not reasonably able to prevent or overcome, including without limiting the generality of the nature of those events or circumstances, any of the following events or circumstances (provided that it satisfies the foregoing criteria):

- (a) acts of God, including storms or cyclones, action of the elements, epidemics, landslides, earthquakes, floods, road closures due to washouts or impassability and natural disaster;
- (b) strikes, stoppages, restraints of labour, or other industrial disturbances on a State or nationwide basis;
- (c) acts of public enemy, including wars which are either declared or undeclared, blockades and insurrections;
- (d) riots, malicious damage, sabotage, terrorism and civil disturbance;
- (e) accident, breakage, fire, explosion, radioactive contamination and toxic or dangerous chemical contamination;
- (f) the act of any Governmental Agency (including refusal or delay in the grant, or revocation, of an Authorisation, provided that the party has acted in a timely manner and fulfilled the Governmental Agency's reasonable requirements in endeavouring to secure or retain it);
- (g) a curtailment in the rate of, or interruption to, the transmission of electricity into, through or out of the SWIS not resulting from the party's breach of any Law, Authorisation or agreement with respect to connection to the SWIS or the transmission of electricity through the SWIS; or
- (h) a failure by a supplier of the Seller to supply fuel, materials, equipment, or services required for the operation or maintenance of, or for consumption in, the Seller's Facilities as a result of a force majeure event (howsoever described or defined in the Seller's contract with the relevant supplier) preventing or delaying that supply by the supplier,

but a party's lack of, or inability or unwillingness to reasonably use, funds for any purpose is not a Force Majeure Event.

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**Fuel Tax Credit** has meaning given in the *Fuel Tax Act 2006* (Cth).

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**General Terms** means clauses 1 to 17 of this Agreement and excludes the Schedules and Annexure.

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

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**GHG Scheme Cost** any direct and indirect costs, expenses or liabilities arising from a GHG Scheme and includes costs, expenses or liabilities arising from:

- (a) the Seller obtaining and surrendering Permits or paying a charge or penalty under the GHG Scheme in respect of GHG emissions or potential GHG emissions;
- (b) a requirement to pay a tax, duty, charge, levy, impost, or any reduction in Fuel Tax Credits or other financial requirement under the GHG Scheme in respect of GHG emissions or potential GHG emissions;
- (c) capital expenditure made for the purpose of: (i) undertaking activities to reduce, abate or sequester GHG emissions; or (ii) reducing the number of Permits to be obtained under the GHG Scheme in respect of the GHG emissions; or (iii) avoiding a requirement to pay as described in paragraph (b) of this definition;
- (d) the GHG Scheme increasing the costs of goods and services provided to the Seller which are required by the Seller in connection with its obligations in respect of a Transaction under this Agreement; and
- (e) monitoring, gathering information and preparing reports to comply with any Law relating to GHG emissions.

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**Governmental Agency** any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, government Minister, agency or entity and includes the IMO and AEMO, but does not include Synergy.

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**Greenhouse Gas or GHG** has the meaning given in the NGERs.

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**GST Exclusive Consideration** has the meaning given in clause 6.7(c).

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**Holding Party** has the meaning given in clause 8.1.

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<b>Insolvency Event</b>	<p>in relation to a party means:</p> <ul style="list-style-type: none"><li>(a) a receiver, receiver and manager, official manager, trustee, administrator, other controller (as defined in the Corporations Law) or similar official is appointed, or steps are taken for such appointment over any of the assets or undertakings of the party;</li><li>(b) the party is or becomes unable to pay its debts when they are due or is or becomes unable to pay its debts within the meaning of the Corporations Law or is presumed to be insolvent under the Corporations Law;</li><li>(c) the party ceases or threatens to cease to carry on business;</li><li>(d) an application or order is made for the liquidation of the party or a resolution is passed or any steps are taken to liquidate or pass a resolution for the liquidation of the party otherwise than for the purpose of an amalgamation or reconstruction; or</li><li>(e) any act is done or event occurs which under the laws from time to time of a jurisdiction other than Australia has an analogous or similar effect to any of the events described in paragraphs (a) to (d) above (inclusive).</li></ul>
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<b>Law</b>	<p>all of the following sources of legal rights and obligations, whether now in existence or coming into existence in the future:</p> <ul style="list-style-type: none"><li>(a) Acts of the Parliament of the Commonwealth and of the State of Western Australia;</li><li>(b) ordinances, rules, regulations, by-laws, proclamations and orders made or issued under any such Act and includes the Market Rules and the SP Arrangements;</li><li>(c) codes of practice, guidelines, directions, orders and requirements of any Governmental Agencies empowered to issue the same under any such Act; and</li><li>(d) the requirements imposed under any Authorisation issued under such Act.</li></ul>
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<b>Lodging Party</b>	has the meaning given in clause 8.1.
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<b>Market Rules</b>	the Wholesale Electricity Market Rules published under the <i>Electricity Industry (Wholesale Electricity Market) Regulations 2004 (WA)</i> .
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<b>NGERS</b>	the <i>National Greenhouse and Energy Reporting Act 2007 (Cth)</i> and any associated regulations and determinations under that Act.
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<b>Other Default</b>	a failure of a party to perform an obligation when due or in accordance with the terms of this Agreement (including adherence to the Market Rules), but excludes a Financial Default.
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<b>Other Default Cure Period</b>	has the meaning given in clause 7.2(a).
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<b>Other Default Notice</b>	has the meaning given in clause 7.2(a).
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**Peak Period** a period of time starting at 0800 hours and ending at 2200 hours on a Business Day.

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**Permit** any unit, certificate, licence, authorisation or other permit (however named and however acquired) that is capable of being acquired, held, transferred, surrendered or acquitted to the satisfaction of an obligation or liability (or potential liability) under the GHG Scheme.

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**Regulations** the *Electricity Corporations (Electricity Generation and Retail Corporation) Regulations 2013* (WA).

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**Related Body Corporate** has the meaning given to the term "related body corporate" under the Corporations Law.

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**Security** has the meaning given in clause 8.1 and includes any additional security required by the Holding Party under clause 8.5.

---

**Seller** in respect of a Transaction, either Synergy or the Trader acting in its capacity as the seller of electricity under a Standard Product for that Transaction.

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**Seller's Facilities** the Trader's Facilities or Synergy's Facilities, as the context requires.

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**South West Interconnected System or SWIS** has the meaning given in the *Electricity Industry Act 2004* (WA).

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**SP Arrangements** the *Electricity (Standard Products) Wholesale Arrangements 2014* (WA) established under section 38(1) of the *Electricity Corporations Act 2005* (WA).

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**SP Price** in relation to a Standard Product, the price or prices (in \$ per MWh) of electricity which, for a particular Transaction, shall be determined in accordance with clause 4.2(a) of Schedule 3 and specified in the Confirmation for such Transaction and as may be adjusted from time to time in accordance with clause 7 of Schedule 3.

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**SP Transaction Counter-Offer** means a counter-offer made by Synergy in response to a SP Transaction Offer.

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**SP Transaction Offer** means an offer made by the Trader to Synergy to enter into one or more Transactions in Standard Products.

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**Specified Plant** for the purposes of clause 10.1(c)(2) means the following Registered Facilities (as described in the list of Registered Facilities maintained and published by the AEMO):

- (a) MUJA\_G5;
- (b) MUJA\_G6;
- (c) MUJA\_G7;
- (d) MUJA\_G8;
- (e) COLLIE\_G1;
- (f) COCKBURN\_CCG1;
- (g) BW1\_BLUEWATERS\_G2;
- (h) BW2\_BLUEWATERS\_G1; and
- (i) NEWGEN\_KWINANA\_CCG.

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**Standard Flat Quantity** in each Trading Interval occurring during the Supply Term of a Transaction, the quantity of electricity (in MWh) specified in column 3 of the table in Schedule 4, and includes any other Standard Flat Quantity permitted or required under the SP Arrangements from time to time.

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**Standard Peak Quantity** is:

- (a) in each Trading Interval occurring in a Peak Period during the Supply Term of a Transaction, the quantity of electricity (in MWh) specified in column 4 of the table in Schedule 4 for such Trading Interval; and
- (b) in all other Trading Intervals during the Supply Term of a Transaction, the figure of 0 (zero) MWh,

and includes any other Standard Peak Quantity permitted or required under the SP Arrangements from time to time.

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**Standard Product** the wholesale acquisition or supply by Synergy of a Standard Supply Quantity of electricity in each Trading Interval occurring during a Supply Term as described in Schedule 4, at the applicable SP Price, and any Carbon Emissions Factor and Carbon Price determined in accordance with the SP Arrangements and Transaction Terms, and includes any other Standard Product permitted or required under the SP Arrangements from time to time.

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**Standard Supply Period** in relation to a Standard Product, the period specified for that product in column 2 of the table in Schedule 4, and includes any other Standard Supply Period permitted or required under the SP Arrangements from time to time.

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**Standard Supply Quantity** a Standard Flat Quantity or a Standard Peak Quantity.

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**Supply Term** in relation to a Transaction, the period in and for which the Seller is to supply electricity to the Buyer pursuant to that Transaction, as specified in the Confirmation, and which must be consistent with the Standard Supply Period for the Standard Product which is the subject of the Transaction.

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**Synergy's Facilities** is:

- (a) each Facility that is owned by Synergy or in relation to which Synergy is registered as the Market Generator under the Market Rules; and
- (b) each of the following Registered Facilities (as described in the list of Registered Facilities maintained and published by the AEMO):
  - (1) BW1\_BLUEWATERS\_G2;
  - (2) BW2\_BLUEWATERS\_G1; and
  - (3) NEWGEN\_KWINANA\_CCG.

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**Synergy Receipts** has the meaning given in clause 6.1(a).

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**Synergy SP Website** the website established and maintained by Synergy for the purposes of the SP Arrangements and available at <http://wholesale.synergy.net.au/SitePages/Home.aspx> or such other website that Synergy notifies the Trader shall be used for the purposes of this Agreement from time to time.

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**Tax** any present or future tax, levy, impost, deduction, charge, duty, compulsory loan or withholding of whatever kind (other than income tax and capital gains tax) and whether direct or indirect:

- (a) relating to the production, acquisition (including deemed acquisition), conveyance, supply or sale of electricity (including any tax on, or which affects directly or indirectly the cost of, goods, services or materials used by Synergy or the Trader to produce, acquire, convey, supply or sell electricity);
- (b) relating to any renewable energy scheme implemented or administered by any Governmental Agency, but does not include the cost of purchasing any renewable energy certificates; or
- (c) imposed upon the Trader or Synergy which is specific to the electricity industry,

and notwithstanding the foregoing includes:

- (d) a carbon tax or tax on, or in respect of, Greenhouse Gas emissions; and
- (e) the Minerals Resource Rent Tax proposed by the Commonwealth Government or any similar tax on, or in respect of, the profits of some or all entities exploiting non-renewable natural resources in Australia.

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**Trader Receipts** has the meaning given in clause 6.1(b).

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**Trader's Facilities** each Facility that is owned by the Trader or in relation to which the Trader is registered as the Market Generator under the Market Rules.

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**Transaction** has the meaning given in clause 3(a).

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**Transaction Terms** the terms set out in Schedule 3.

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## 1.2 Rules for interpreting this Agreement

The following rules apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

- (a) Headings are for convenience only, and do not affect interpretation.
- (b) A reference to:
  - (1) legislation (including subordinate legislation, the Market Rules and the SP Arrangements) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
  - (2) a document or agreement, or a provision of a document or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated; and
  - (3) a person includes a body corporate.
- (c) A singular word includes the plural, and vice versa.
- (d) If a word is defined, another part of speech has a corresponding meaning.
- (e) Monetary amounts are expressed in Australian currency.
- (f) A reference to the word “including” or “includes” means “including without limitation”.
- (g) A reference to a Schedule or Annexure in this Agreement means a reference to a Schedule of this Agreement and an Annexure to this Agreement.
- (h) A reference to a clause in this Agreement means a reference to a clause of these General Terms.
- (i) All amounts which are required to be calculated or determined in accordance with this Agreement must be calculated or determined and rounded to 3 decimal places, unless this Agreement otherwise provides.
- (j) All monetary amounts which are required to be calculated or determined in accordance with this Agreement must be calculated or determined and rounded to the nearest cent.
- (k) A capitalised term that is not defined in clause 1.1, the Transaction Terms or the applicable Confirmation has the meaning given to it in the Market Rules.

## 2 Agreement Period

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- (a) The Agreement Period commences on the Commencement Date and ends on the End Date.
- (b) On and from the End Date, each party will be released and discharged from all further obligations and liabilities under this Agreement but without prejudice to any rights,

remedies, powers, obligations or liabilities arising in respect of this Agreement prior to that date.

### 3 Transactions

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- (a) During the Agreement Period, Synergy and the Trader may enter into one or more transactions for a Standard Product in accordance with the terms of this Agreement (**Transaction**).
- (b) A Transaction must be entered into in accordance with the procedures set out in the Transaction Terms.
- (c) Upon a binding Transaction being entered into between Synergy and the Trader, the parties must perform and implement the Transaction in accordance with the Transaction Terms.

### 4 Transaction Terms

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- (a) The terms and conditions applicable to each binding Transaction entered into between the Trader and Synergy pursuant to this Agreement will comprise:
  - (1) these General Terms;
  - (2) the terms set out in the Confirmation applicable to that Transaction; and
  - (3) the Transaction Terms set out in Schedule 3.
- (b) If there is any inconsistency between the General Terms, the Transaction Terms and the terms of any Confirmation in respect of a particular Transaction, the terms shall apply in the following order of priority:
  - (1) the applicable Confirmation;
  - (2) the Transaction Terms; and
  - (3) the General Terms.

### 5 No exclusivity or usage commitment

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- (a) Unless a binding Transaction has been entered into, this Agreement does not:
  - (1) require either party to acquire any or all of its electricity requirements from the other party; or
  - (2) commit a party to sell any electricity to the other party.
- (b) Neither party makes any representations or warranties that it will purchase or sell any electricity, or any particular quantity of electricity, from or to the other party under this Agreement.

### 6 Invoicing and payment

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#### 6.1 Payments

- (a) The Trader must pay to Synergy, in respect of a Billing Period, all amounts for which Synergy is entitled to receive payment under this Agreement (including any charges payable by the Trader under any Transaction entered into under this Agreement) for that Billing Period (**Synergy Receipts**) by the due date specified in clause 6.4.
- (b) Synergy must pay to the Trader, in respect of a Billing Period, all amounts for which the Trader is entitled to receive payment under this Agreement (including any charges payable by Synergy under any Transaction entered into under this Agreement) for that Billing Period

(Trader Receipts) by the due date specified in clause 6.4.

## **6.2 Tax invoices**

Within 10 Business Days of the end of each Billing Period:

- (a) Synergy must issue to the Trader a tax invoice for the Synergy Receipts for that Billing Period; and
- (b) the Trader must issue to Synergy a tax invoice for the Trader Receipts for that Billing Period.

## **6.3 Set off**

- (a) If the Synergy Receipts for a Billing Period are greater than the Trader Receipts for that Billing Period, the Trader must pay to Synergy the difference between the amount of the Synergy Receipts and the Trader Receipts.
- (b) If the Synergy Receipts for a Billing Period are less than the Trader Receipts for that Billing Period, Synergy must pay to the Trader the difference between the amount of the Trader Receipts and the Synergy Receipts.

## **6.4 Due date for payment**

Synergy or the Trader, as the case requires, must pay the amount payable under clause 6.1:

- (a) on or before the later of 20 Business Days after the end of the Billing Period and the date which is 10 Business Days after the receipt of a tax invoice from the other party for the relevant Billing Period;
- (b) by not later than 3:00pm on the due date for payment; and
- (c) by Electronic Funds Transfer to the bank account nominated from time to time by the party entitled to payment. Any such account must be an Australian dollar account with an Australian branch of an Australian bank, as defined by the Corporations Law.

## **6.5 Interest on late payment**

- (a) If a party fails to pay any amount under this Agreement when due, it must pay interest on that amount to the other party.
- (b) Interest referred to in clause 6.5(a) accrues daily at the Agreed Interest Rate from (and including) the date that payment was due up to (but excluding) the date of payment.

## **6.6 Disputed amounts**

- (c) If a party Disputes the amount payable under this clause 6, then that party must pay the amount which is not in Dispute in the manner and by the time provided in clause 6.4 and at the same time, give notice to the other party that it Disputes the amount payable and full details of the matters in Dispute.
- (a) Any Dispute under this clause 6 will be resolved by an Expert in accordance with the dispute resolution procedure set out in clause 16.
- (b) If the parties subsequently agree or it is determined following dispute resolution under clause 16 that a party has overpaid an amount to the other, the other party must refund the overpayment together with interest at the Agreed Interest Rate, which interest accrues daily from (and including) the day the overpayment was made until (but excluding) the day the overpayment is refunded.
- (c) If the parties subsequently agree or it is determined following dispute resolution under clause 16 that a party has underpaid an amount to the other, the party must make the underpayment together with interest at the Agreed Interest Rate, which interest accrues daily from (and including) the day the underpayment was due until (but excluding) the day



the underpayment is paid.

## 6.7 GST

- (a) In this clause 6.7:
- (1) **GST** has the same meaning as in the GST Law.
  - (2) **GST Law** has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).
- (b) Any reference in this clause 6.7 to a term defined or used in the GST Law is, unless the context indicates otherwise, a reference to that term as defined or used in the GST Law.
- (c) Unless expressly included, the consideration for any supply made under or in connection with this Agreement does not include an amount on account of GST in respect of the supply (**GST Exclusive Consideration**) except as provided under this clause 6.7.
- (d) Any amount referred to in this Agreement (other than an amount referred to in clause 6.7(h)) which is relevant in determining a payment to be made by one party to the other is, unless indicated otherwise, a reference to that amount expressed on a GST exclusive basis.
- (e) To the extent that GST is payable in respect of any supply made by a party (**Supplier**) under or in connection with this Agreement, the consideration to be provided under this Agreement for that supply (unless it is expressly stated to include GST) is increased by an amount equal to the GST Exclusive Consideration (or its GST exclusive market value if applicable) multiplied by the rate at which GST is imposed in respect of the supply.
- (f) The recipient must pay the additional amount payable under clause 6.7(e) to the Supplier at the same time as the GST Exclusive Consideration is otherwise required to be provided.
- (g) The Supplier must issue a tax invoice to the recipient of the taxable supply at or before the time of payment of the consideration for the supply as increased on account of GST under clause 6.7(e) or at such other time as the parties agree.
- (h) Whenever an adjustment event occurs in relation to any taxable supply made under or in connection with this Agreement, the Supplier must determine the net GST in relation to the supply (taking into account any adjustment) and if the net GST differs from the amount previously paid under clause 6.7(e), the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
- (i) If one of the parties is entitled to be reimbursed or indemnified for a loss, cost, expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement or indemnity payment must first be reduced by an amount equal to any input tax credit to which the party being reimbursed or indemnified (or its representative member) is entitled in relation to that loss, cost, expense or outgoing and then, if the amount of the payment is consideration or part consideration for a taxable supply, it must be increased on account of GST in accordance with clause 6.7(e).

## 6.8 Use of interim information

If a calculation of, or an adjustment to, the charges payable under any Transaction entered into under this Agreement cannot be accurately calculated in respect of a Billing Period by the time Synergy or the Trader (as the case may be) issues a tax invoice in respect of that Billing Period under clause 6.2, then Synergy or the Trader (as the case may be) may calculate or adjust the relevant charges based on provisional values as determined by Synergy or the Trader (as the case may be) acting reasonably. In that event, when the calculation of, or adjustment to, the relevant charges in respect of that Billing Period can be finally calculated, the calculation of, or adjustment to, the relevant charges must be recalculated using the final values, and following such recalculation the amount of any adjusting payment due from a party must be invoiced to the other party as soon as reasonably practicable.

## 7 Default

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### 7.1 Financial Default

- (a) If a Financial Default occurs, the non-defaulting party may, without prejudice to any other right, suspend its obligations under any or all of the Transactions entered into under this Agreement and give a notice (**Financial Default Notice**) to the defaulting party specifying the Financial Default and giving the defaulting party 10 Business Days (**Financial Cure Period**) from the date of the Financial Default Notice to remedy the Financial Default.
- (b) On receipt of the Financial Default Notice, the defaulting party must remedy the Financial Default within the Financial Cure Period.
- (c) The non-defaulting party may set off any unpaid amount against any payments that the non-defaulting party is required to make to the defaulting party under this Agreement.
- (d) If the Financial Default is not remedied within the Financial Cure Period then the non-defaulting party may, without prejudice to any other right, do any one or more of the following:
  - (1) sue for breach of contract;
  - (2) suspend its obligations under any or all of the Transactions entered into under this Agreement (to the extent it has not already done so pursuant to clause 7.1(a)); and
  - (3) terminate this Agreement with immediate effect by giving a notice to the defaulting party.
- (e) Notwithstanding the other provisions of this clause 7.1, if the Financial Default is an Insolvency Event, the non-defaulting party shall have no obligation to provide a Financial Default Notice, the defaulting party shall have no right to remedy the Insolvency Event within the Financial Cure Period and the non-defaulting party may immediately exercise any or all of the rights described in clause 7.1(d).

### 7.2 Other Defaults

- (a) If an Other Default occurs, the non-defaulting party may, without prejudice to any other right, give a notice (**Other Default Notice**) to the defaulting party specifying the Other Default and giving the defaulting party 30 Business Days from the date of the Other Default Notice (**Other Default Cure Period**) to remedy the Other Default.
- (b) On receipt of the Other Default Notice, the defaulting party must remedy the Other Default within the Other Default Cure Period.
- (c) If the Other Default:
  - (1) is not remedied within the Other Default Cure Period; or
  - (2) is not able to be remedied,the defaulting party must:
  - (3) subject to any limitations on liability under this Agreement (including, under clause 9(a)), pay adequate compensation to the non-defaulting party to compensate the non-defaulting party for any loss, cost, charge, expense or payment which the non-defaulting party suffers, incurs or is liable for as a result of the defaulting party's Other Default;
  - (4) provide a statement to the non-defaulting party explaining the reasons for the Other Default;
  - (5) develop a compliance program to prevent a repeat of the Other Default; and
  - (6) implement that compliance program.
- (d) If the Other Default has an ongoing and material adverse effect on the enjoyment by the non-defaulting party of its rights under this Agreement, and:

- (1) the defaulting party has not complied with its obligations in clauses 7.2(c)(3) to 7.2(c)(5); or
- (2) the defaulting party does not diligently implement the compliance program as required under clause 7.2(c)(6) to the reasonable satisfaction of the non-defaulting party,

the non-defaulting party may, without prejudice to any other right, do any one or more of the following:

- (3) sue for breach of contract;
- (4) suspend its obligations under any or all of the Transactions entered into under this Agreement; and
- (5) terminate this Agreement with immediate effect by giving a notice in writing to the defaulting party.

### 7.3 Effect of termination

If a non-defaulting party gives a termination notice under clause 7.1 or 7.2:

- (a) on and from the date of the termination notice, each party will be released and discharged from all further obligations and liabilities under this Agreement but without prejudice to any rights, remedies, powers, obligations or liabilities arising in respect of this Agreement prior to that date; and
- (b) if, as at the date of termination of this Agreement, there are any Transactions which remain unperformed, then the parties must perform the rights, obligations and liabilities arising in respect of that Transaction, up to the end of the Trading Day which falls on the termination date, subject to any suspension of obligations under clause 7.1 or 7.2.

## 8 Security

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### 8.1 Security

Unless clause 6.3 of Schedule 3 applies, a party who is required to do so under a Confirmation (**Lodging Party**) must lodge with the other party (**Holding Party**) security for the due and faithful performance of this Agreement an amount equal to the security amount specified in the Confirmation within the time period specified in that Confirmation (**Security**). A failure by the Lodging Party to lodge the Security with the Holding Party within the time period specified in the Confirmation constitutes a Financial Default.

### 8.2 Form of Security

The Lodging Party may provide the Security in cash, in the form of an unconditional irrevocable enforceable banker's undertaking payable on demand in the form as the Holding Party may reasonably require or, if the Holding Party is satisfied (acting reasonably) of the financial position of the parent company of the Lodging Party, a parent company guarantee in the form as the Holding Party may reasonably require, upon which any applicable Western Australian duty has been paid (if any) and which is given by a bank licensed to carry on business in Australia or in any other form that the Holding Party and Lodging Party agree to.

### 8.3 Recourse to Security

- (a) The Holding Party may from time to time have immediate recourse to the Security, and for that purpose may convert into money any Security that does not consist of money, to recover:
  - (1) any moneys which remain unpaid by the Lodging Party under this Agreement when due;
  - (2) any moneys or any claim to moneys that the Holding Party may have against the

Lodging Party, whether for damages (including liquidated damages and the Holding Party's estimate of its entitlement to damages for breach of contract) or otherwise;

- (3) any costs incurred by the Holding Party in having recourse to the Security; and
  - (4) any moneys, costs or other amounts specified as being secured by the Security in the relevant Confirmation.
- (b) Without limiting clause 8.3(a), the Holding Party may have immediate recourse to the Security:
- (1) if an Insolvency Event occurs in respect of the Lodging Party; or
  - (2) in any other circumstances specified in the relevant Confirmation.

## **8.4 Top-up of Security**

If at any time the Holding Party draws upon the Security pursuant to its rights under this Agreement, then the Lodging Party must within 10 Business Days of the Lodging Party being notified that the Security has been drawn upon, re-instate the amount of the Security to its full amount. A failure by the Lodging Party to re-instate the Security constitutes a Financial Default.

## **8.5 Additional Security**

- (a) The Holding Party may require additional security to be lodged by the Lodging Party where:
- (1) the Lodging Party's aggregate payments under a Transaction in respect of which Security is given over any two consecutive Billing Periods is greater than the amount of the Security provided by 15% or more;
  - (2) the Lodging Party's credit rating has been downgraded;
  - (3) the credit rating of the person providing the Lodging Party's Security has been downgraded;
  - (4) the Holding Party reasonably determines that the amount of Security specified in the Confirmation is insufficient for the due and faithful performance of this Agreement; or
  - (5) in any other circumstances specified in the relevant Confirmation.
- (b) If the Holding Party so requires additional security, the Lodging Party must, within 5 Business Days of the Holding Party requesting additional security, provide or procure the provision of the additional security to the Holding Party in cash, in the form of an unconditional irrevocable enforceable banker's undertaking payable on demand in the form as the Holding Party may reasonably require or, if the Holding Party is satisfied (acting reasonably) of the financial position of the parent company of the Lodging Party, a parent company guarantee in the form as the Holding Party may reasonably require, upon which any applicable Western Australian duty has been paid (if any) and which is given by a bank licensed to carry on business in Australia or in any other form that the Holding Party and Lodging Party agree to. A failure by the Lodging Party to lodge the additional security with the Holding Party within 5 Business Days of the Holding Party's request constitutes a Financial Default.

## **8.6 No interference**

The Lodging Party must not take any steps (including commencing or continuing any proceedings) whatsoever to enjoin or otherwise restrain:

- (a) the Holding Party from exercising its rights under the Security;
- (b) the Holding Party from using any moneys received from the conversion of, or recourse to, the Security; or

- (c) the issuer of the Security from performing its obligations under the Security.

## 9 Exclusion of Excluded Loss

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- (a) Subject to clause 9(b), neither party is in any circumstances to be liable to the other party for any Excluded Loss.
- (b) Clause 9(a) does not exclude or limit the liability of either party to pay the amounts specified in clause 6 or 8 of Schedule 3, or any other amount expressly payable under this Agreement.

## 10 Force majeure

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### 10.1 Consequences of Force Majeure Event

- (a) Subject to clause 10.4, if a party (the **affected party**) is hindered, prevented or delayed from carrying out, or affected in the performance of, the whole or part of its obligations under this Agreement as a result of the occurrence of a Force Majeure Event then, except as provided in clause 10.1(d), the affected party is not liable to the other party for any failure to perform those obligations to the extent and for the period it is hindered, prevented or delayed as a result of the occurrence of the relevant Force Majeure Event.
- (b) The affected party must, as soon as reasonably practicable after being affected by a Force Majeure Event for which it claims relief under clause 10.1(a), give the other party notice of that fact including:
  - (1) full particulars of the Force Majeure Event;
  - (2) the date and time of commencement of the Force Majeure Event and its reasonable estimate of the Force Majeure Event's likely duration;
  - (3) the obligations of the affected party which are affected by the Force Majeure Event and the extent to which the Force Majeure Event affects performance of those obligations; and
  - (4) the steps it is taking to overcome or mitigate the effects of the Force Majeure Event.
- (c) Subject to clause 10.1(d), for the purposes of this clause 10, the Seller is deemed to be hindered, prevented or delayed from carrying out, or affected in the performance of, as the case may be, its obligations under this Agreement (including its obligations to make Bilateral Submissions in accordance with this Agreement) if either of the following occur:
  - (1) the electricity that can be generated or supplied by the Seller's Facilities is reduced by at least 20% in aggregate as a result of the occurrence of a Force Majeure Event; or
  - (2) if Synergy is the Seller, the generation or supply of electricity from a generating unit of a Specified Plant ceases or is completely curtailed or completely interrupted as a result of the occurrence of a Force Majeure Event.
- (d) Nothing in clause 10.1(c) relieves the Seller from liability for making Bilateral Submissions in accordance with this Agreement in respect of a Trading Day, unless the Seller has notified the Buyer of the occurrence of the relevant Force Majeure Event prior to 6.00am on the Scheduling Day for that Trading Day.

### 10.2 Mitigation

- (a) The affected party must use its reasonable endeavours to promptly remove, overcome or minimise the effects of the relevant Force Majeure Event and resume performance of its obligations under this Agreement as soon as practicable.
- (b) The obligation specified in clause 10.2(a) does not require the affected party to settle any industrial dispute in any way that it considers inappropriate, or to expend more than

reasonable sums of money, or to remove, overcome or minimise the effects of the relevant Force Majeure Event if it would be uneconomic to do so.

### **10.3 End of Force Majeure Event**

The affected party must:

- (a) recommence performance of all of its obligations under this Agreement promptly upon the cessation of the Force Majeure Event; and
- (b) promptly notify the other party of the cessation of the Force Majeure Event.

### **10.4 Payment of money during Force Majeure Event**

No Force Majeure Event however occurring will affect the obligations of any party to make a money payment under this Agreement when such payment falls due, provided that the Buyer's liability to pay the Energy Charge is reduced to the extent that the Seller fails or is unable to make Bilateral Submissions as a result of the occurrence of a Force Majeure Event. To avoid doubt, the Seller will not be liable to make any payment to the Buyer in respect of an error or failure to make Bilateral Submissions where it is relieved from its obligation to make those submissions or otherwise as a result of the occurrence of a Force Majeure Event.

### **10.5 Prolonged Force Majeure Event**

- (a) If:
  - (1) as a consequence of a Force Majeure Event, performance of one or more material obligations of the affected party under this Agreement has been prevented or delayed for more than 180 days; and
  - (2) at the end of that 180 day period the affected party reasonably considers that it will be unable to resume performance of all of its material obligations under this Agreement within a further period of 30 days by reason of that Force Majeure Event,

then the affected party may terminate this Agreement without liability upon that termination by giving not less than 30 days written notice to the other party unless the balance of the Agreement Period is less than this notice period, in which case the notice period will be the balance of the Agreement Period.

- (b) If the affected party terminates this Agreement under clause 10.5(a):
  - (1) on and from the date of termination, each party will be released and discharged from all further obligations and liabilities under this Agreement but without prejudice to any rights, remedies, powers, obligations or liabilities arising in respect of this Agreement prior to that date; and
  - (2) the parties must perform the rights, obligations and liabilities arising in respect of this Agreement up to the end of the Trading Day which falls on the termination date, subject to any legitimate suspension of those obligations under this Agreement.

## **11 Nature of relationship**

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This Agreement does not give rise to any partnership, agency or joint venture between the Trader and Synergy.

## **12 Assignment**

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A party may not assign, subcontract or transfer the benefit or burden of, or grant any security interest over, this Agreement or any part thereof without the prior written consent

of the other party, such consent not to be unreasonably withheld or delayed.

## 13 Authorised Officers

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- (a) Each party's **Authorised Officers** who are authorised to enter into Transactions and sign Confirmations and other communications under this Agreement on its behalf are those persons specified as such in Schedule 2.
- (b) Each party must promptly notify the other party in writing of any change to its Authorised Officers. Such a notice must be signed by a director or company secretary of the party giving the notice.

## 14 Confidentiality

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Except as otherwise permitted under this Agreement:

- (a) Each party will treat as confidential all Confidential Information in its possession and a party will not disclose Confidential Information to any third party without the prior written consent of the other party and it will take all reasonable precautions to ensure that its employees will maintain the confidentiality of that Confidential Information on the terms required by this Agreement.
- (b) Each party will be entitled to disclose Confidential Information to its employees and officers and the employees and officers of any of its Related Bodies Corporate, provided that the disclosing party informs the recipient of the confidentiality of the Confidential Information and of the disclosing party's obligations under this clause 14 and ensures that the recipient also complies with those obligations.
- (c) Each party will be entitled to make such disclosures as are required by Law or by the rules of any stock exchange or regulatory agency having jurisdiction over such party or its ultimate holding company.
- (d) Without limiting this clause 14, Synergy will be entitled to make such disclosures as are required to comply with its statutory obligations, including any obligation under the SP Arrangements.
- (e) Each party will be entitled to disclose such of the Confidential Information as is reasonably necessary to any of the following persons whose legitimate interests reasonably require disclosure and who have first agreed in writing with the party disclosing the Confidential Information to be bound by the confidentiality obligations of that party under this clause 14:
  - (1) any financier or prospective financier;
  - (2) any professional adviser; or
  - (3) any assignee or prospective assignee of its interest in this Agreement.
- (f) A party will not make any public announcement concerning this Agreement or any aspect of it without first having consulted with the other party in good faith as to, among other things, the content and timing of the announcement.

## 15 Notices

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Except in respect of any SP Transaction Offer, SP Transaction Counter-Offer or Confirmation, any notice or other communication including any request, demand, consent or approval to or by a party under this Agreement:

- (a) must be in writing to the party's representative at the address specified in Schedule 1;
- (b) subject to clause 13(b), must be signed by an Authorised Officer of such party; and
- (c) is deemed to be duly given by the sender and received by or served on the addressee:
  - (1) if by delivery in person, when delivered to the addressee;
  - (2) if sent by ordinary post, on the day which is the third Business Day after the date

of posting to an addressee within Australia, or the day which is the fifth Business Day after the date of posting to an addressee outside Australia;

or

- (3) if sent by email, upon confirmation of receipt being provided by the recipient. A reply that is automatically generated by the recipient's email system does not constitute confirmation of receipt by the recipient.

## 16 Dispute Resolution

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### 16.1 Dispute Resolution Process

- (a) If a dispute arises between the parties under or in connection with this Agreement (**Dispute**), then either party may give to the other written notice:
- (1) setting out the material particulars of the Dispute (including the estimated value of the Dispute); and
  - (2) requiring the representatives of the parties (with authority to resolve the Dispute) to meet within 5 Business Days of receipt of the notice.

The representatives of the parties must attempt by negotiations in good faith and using best endeavours, to resolve the Dispute. If they resolve the Dispute, the parties will adhere to their resolution.

- (b) If the representatives of the parties referred to in clause 16.1(a) are unable to resolve the Dispute within 10 Business Days of their first meeting, the Dispute will be referred to the Chief Executive Officers, or other senior representative (with authority to resolve the Dispute) of each party for resolution. The Chief Executive Officers of each party, or their senior representatives, must attempt by negotiations in good faith, to resolve the Dispute. If they resolve the Dispute, the parties will adhere to their resolution.
- (c) If the Chief Executive Officers or other senior representatives of the parties referred to in clause 16.1(b) are unable to resolve the Dispute within 10 Business Days of their first meeting, then, subject to clause 16.2, either party may commence legal proceedings in relation to the Dispute.
- (d) Any resolution reached under this clause 16.1 must be in writing and signed by the parties' representatives (with authority to resolve the Dispute).
- (e) For the avoidance of doubt, the parties must engage in the process under this clause 16.1 for at least 20 Business Days before commencing legal proceedings or before referring a Dispute to an Expert in accordance with this Agreement.

### 16.2 Referral of Disputes to an Expert

If any provision of this Agreement requires a Dispute to be resolved by an Expert, or the parties otherwise agree to refer a Dispute to an Expert, then the provisions of clauses 16.3 to 16.13 will apply to that Dispute.

### 16.3 Nomination of Expert

The procedure for appointing an expert is as follows:

- (a) The party calling for the appointment of an expert shall provide to the other party a notice specifying:
- (1) the breach, act, omission or other circumstance that is the basis for the Dispute;
  - (2) the provision within this Agreement or other basis for the Dispute;
  - (3) the nature of the Dispute (technical, financial, or legal); and
  - (4) the quantum, or likely quantum, of any amount claimed in connection with the



Dispute.

- (b) If, within 10 Business Days of the notice, the parties fail to agree on a single expert, then the party who has called for the appointment of the expert shall request:
  - (1) in the case of technical engineering or financial matters, the Chair for the time being of the Western Australian Chapter of the Resolution Institute; or
  - (2) in the case of legal matters, the President for the time being of the Law Society of Western Australia,

to, as soon as practicable, appoint the expert.

#### **16.4 Expert to have Appropriate Experience**

- (a) The Expert shall have appropriate commercial (or, if relevant, legal) and practical experience and expertise in the area of the Dispute.
- (b) Any person nominated to act as an expert shall be required to fully disclose any interest or duty prior to that person's appointment. If that person has or may have any interest or duty which conflicts with their appointment as an expert, then that person may not be appointed except with the agreement of the parties.

#### **16.5 Confidentiality**

It shall be a term of the Expert's appointment that the Expert shall be required to undertake to keep confidential matters coming to the Expert's knowledge by reason of the Expert's appointment.

#### **16.6 Powers of Expert**

The Expert shall have the following powers:

- (a) to inform him or her self independently as to the facts and if necessary technical matters to which the Dispute relates;
- (b) to receive written submissions and sworn and unsworn written statements and to photocopy documents and to act upon the same;
- (c) to consult with such other professionally qualified persons as the Expert in his or her absolute discretion thinks fit, subject to such persons agreeing to maintain the confidentiality of any information disclosed by the Expert on terms substantially similar to those contained in clause 14; and
- (d) to take such measures as the Expert thinks fit to expedite the completion of the Dispute resolution.

#### **16.7 Conduct of dispute resolution procedure**

The parties agree that:

- (a) the Dispute is to be resolved according to the Resolution Institute Expert Determination Rules, current as at the date the notice under clause 16.3(a) is given (**Expert Determination Rules**); and
- (b) they must abide by the Expert Determination Rules and must procure the Expert's agreement to resolve the Dispute according to those rules.

#### **16.8 Timing of Dispute Resolution**

Except as provided in clause 7.3(c) of Schedule 3, it shall be a term of the Expert's appointment that he or she shall be required to make a determination of the Dispute within 3 months of the Expert's appointment or such further period as the parties may agree. If

either party considers that the Dispute is of an urgent nature and needs to be resolved within a shorter period, then that party may require the period of 3 months to be reduced to such period as that party may reasonably require, being not less than 15 Business Days.

## **16.9 Written Determination**

The Expert shall be required to deliver a written determination which sets out the reasons for the determination and the findings of fact on which the determination is based.

## **16.10 Dispute Resolution to be held in Perth**

The Dispute resolution shall be held in Perth, Western Australia unless the parties otherwise agree.

## **16.11 Expert's Determination is Final**

The Expert shall act as an expert and not an arbitrator. The determination of the Expert shall be final and binding on the parties except in the case of manifest error or fraud.

## **16.12 Costs of Expert**

The costs of the Expert shall be borne equally by the parties unless the Expert otherwise determines.

## **16.13 Referral to Expert does not Affect the Obligations of the Parties**

The referral of any matter to an Expert does not in any manner relieve either party from performing its obligations under this Agreement pending the determination of the Dispute.

## **16.14 Interlocutory proceedings**

Nothing in this clause 16 prevents a party from commencing proceedings in any court where the proceedings are required to obtain urgent interlocutory relief.

## **17 General**

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### **17.1 Governing law and jurisdiction**

- (a) This document is governed by the law in force in the State of Western Australia.
- (b) Each party submits to the non-exclusive jurisdiction of the courts exercising jurisdiction in the State of Western Australia.

### **17.2 Amendment**

Except as provided in clause 7.5 of Schedule 3, this Agreement can only be amended, supplemented, replaced or novated by another document signed by the parties. Any such amendment, supplement, replacement or novation shall be consistent with the requirements of the SP Arrangements.

### **17.3 Liability for expenses**

Each party must pay its own expenses incurred in negotiating, executing, stamping and registering this Agreement.

### **17.4 Giving effect to this Agreement**

Each party must do anything (including execute any document), and must ensure that its

employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this Agreement.

## 17.5 Waiver of rights

A party will only be held to have made an election not to exercise a right under this Agreement if it has given notice in writing, signed by such party, and:

- (a) no other conduct of a party (including a failure to exercise, delay in exercising, or exercising another right that is inconsistent with, the right) operates as an election not to exercise the right, as an estoppel precluding enforcement of that right or otherwise prevents the exercise of the right;
- (b) an election not to exercise a right on one or more occasions does not operate as an election not to exercise the right in the future or as an estoppel precluding enforcement of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

## 17.6 Recording of Conversations

Each party:

- (a) consents to the recording of telephone conversations between the trading, marketing and other relevant personnel of the parties in connection with this Agreement or any potential Transaction;
- (b) agrees to obtain any necessary consent of, and give any necessary notice of such recording to, its relevant personnel; and
- (c) agrees, to the extent permitted by applicable Law, that recordings may be submitted in evidence in any legal proceedings.

## 17.7 Entire Agreement and Severance

- (a) This Agreement constitutes the entire agreement between the parties and supersedes all previous agreements, arrangements, representations or understandings in respect of its subject matter.
- (b) If any provision (or part of a provision) of this Agreement is or becomes unlawful or void, the legality, validity or enforceability of any other part of that provision or any other provision of this Agreement will not be affected, but will continue in full force and effect. The unlawful or void provision will be deleted from this Agreement by written consent of the parties or final court order, but only to the extent of any invalidity so as to preserve the Agreement to the maximum extent.

## 17.8 Representations and warranties

- (a) Each party represents and warrants that:
  - (1) **(status)** it is a company duly incorporated or established and validly existing under the laws applying in its place of incorporation;
  - (2) **(power)** it has full legal capacity and power to:
    - i. own its property and to carry on its business; and
    - ii. enter into this Agreement and to carry out the transactions that it contemplates;
  - (3) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and to carry out the transactions contemplated;
  - (4) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:

- i. enable it to properly execute this Agreement and to carry out the transactions that it contemplates;
    - ii. ensure that this Agreement is legal, valid, binding and admissible in evidence; or
    - iii. enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
  - (5) **(document effective)** this Agreement constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and Laws affecting creditors' rights generally), subject to any necessary stamping or registration;
  - (6) **(no contravention)** neither its execution of this Agreement nor the carrying out by it of the transactions that this document contemplates, does or will:
    - i. contravene any Law to which it or any of its property is subject or any order of any Governmental Agency that is binding on it or any of its property;
    - ii. contravene any Authorisation;
    - iii. contravene any agreement binding on it or any of its property; or
    - iv. contravene its constitution or the powers or duties of its directors;
  - (7) **(commercial benefit)** the execution by it of this Agreement, and the carrying out by it of the transactions that it contemplates, is for its corporate benefit and in its commercial interests and will not bring Synergy, or the State of Western Australia, into disrepute;
  - (8) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
  - (9) **(no trust)** it is not entering into this Agreement as trustee of any trust or settlement.
- (b) Each party acknowledges that the other party has executed this Agreement and agreed to take part in the transactions that it contemplates in reliance on the representations and warranties that are made or repeated in this clause 17.8.

## 17.9 Counterparts

This Agreement, and any Confirmation given under it, may be executed in counterparts.

# Schedules

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# Schedule 1

## Notice details

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**Electricity Generation and Retail Corporation**

Address Forrest Centre, 219 St Georges Terrace, Perth, Western Australia, 6000

Attention General Manager Wholesale  
cc Trading Manager

Phone (08) 6282 7227

Email mark.chambers@synergy.net.au  
cc standard.products@synergy.net.au

**[Trader]**

Address [insert]

Attention [insert]

Phone [insert]

Email [insert]

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# Schedule 2

## Contract information

---

Commencement Date	The date of execution of this Agreement
End Date	Means the earlier of: <ul style="list-style-type: none"><li>(a) the date that a repeal of the SP Arrangements in accordance with regulation 28 of the Regulations takes effect; and</li><li>(b) the date specified by written notice by one party to the other party, provided the date is:<ul style="list-style-type: none"><li>(i) on or after the end of the Supply Term of any Transaction entered into under this Agreement as at the date of the notice; and</li><li>(ii) at least 2 months after the date of the notice.</li></ul></li></ul>
Authorised Officers – Synergy	Any person or persons holding the following positions within Synergy, including any person or persons acting in those positions on a temporary basis: <ul style="list-style-type: none"><li>(a) General Manager Wholesale;</li><li>(b) Trading Manager;</li><li>(c) Trading Contracts Manager;</li><li>(d) Energy Spot Trading Lead; or</li><li>(e) Trading Analyst</li></ul>
Authorised Officers to enter into Transactions – Trader	[insert]
Authorised Officers to counter-sign Confirmations – Trader	[insert]

# Schedule 3

## Transaction Terms

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### 1 Bilateral trading of electricity in the Wholesale Electricity Market

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- (a) The parties agree to enter into Transactions for Standard Products for the bilateral trading of electricity in the Wholesale Electricity Market in accordance with the terms and conditions set out in this Schedule 3.
- (b) The parties acknowledge that the responsibility for ensuring that there is sufficient capacity in the SWIS to meet load demand at any given time rests with the AEMO. Neither party is responsible to the other party for any failure to physically supply or take any electricity in respect of a Transaction except as expressly set out in this Agreement.
- (c) If the Trader is registered solely as a Market Customer and enters into a Transaction with Synergy under which the Trader acts as Seller (**Market Customer Transaction**), the Trader must ensure that it:
  - (1) has entered into one or more Transactions with Synergy under which Synergy acts as Seller (**Synergy Transactions**) and the Transaction Volume that the Trader wishes to sell to Synergy for a Trading Interval under the Market Customer Transaction is less than or equal to the sum of the Transaction Volumes for the corresponding Trading Interval under the Synergy Transactions; or
  - (2) has entered into one or more transactions with a Market Generator (other than Synergy) (**Third Party Market Generator**) under which the Third Party Market Generator acts as seller and agrees to make Bilateral Submissions in favour of Synergy (on behalf of the Trader) for Transaction Volumes in a Trading Interval which in total is equal to the Transaction Volume that the Trader wishes to sell to Synergy for the corresponding Trading Interval under the Market Customer Transaction.
- (d) Nothing in clause 1(c)(2) of this Schedule 3 shall reduce, relieve or otherwise affect the Trader's liability for making Bilateral Submissions under this Agreement, or any of its other obligations under this Agreement.

### 2 Procedure for entering into Transactions

---

#### 2.1 Procedure for entering into Transactions

- (a) The Trader may make a SP Transaction Offer to Synergy and Synergy may accept or reject the Trader's SP Transaction Offer or make a SP Transaction Counter-Offer, in accordance with the Procedure for entering into Transactions.
- (b) Synergy's acceptance of a SP Transaction Offer within the time period specified in the Procedure for entering into Transactions shall constitute an agreement to enter into a Transaction in respect of each Standard Product which is the subject of the SP Transaction Offer and which Synergy has accepted to buy or sell, on the terms set out in such SP Transaction Offer. The Transaction will become a legally binding contract between the parties when Synergy receives confirmation on its server that the email message communicating Synergy's acceptance has been transmitted to the Trader.



- (c) The Trader's acceptance of a SP Transaction Counter-Offer within the time period specified in the Procedure for entering into Transactions shall constitute an agreement to enter into a Transaction in respect of each Standard Product which is the subject of the SP Transaction Counter-Offer on the terms set out in such SP Transaction Counter-Offer. The Transaction will become a legally binding contract between the parties when the Trader receives confirmation on its server that the email message communicating the Trader's acceptance has been transmitted to Synergy. If the Trader rejects the SP Transaction Counter-Offer, the Trader shall be deemed to have withdrawn its SP Transaction Offer to which the SP Transaction Counter-Offer relates and no legally binding Transaction shall arise between the parties.

## 2.2 Validity of Confirmations

- (a) Synergy must, within 7 Business Days of entering into a Transaction in accordance with clause 2.1(b) or 2.1(c) of this Schedule 3, deliver to the Trader at its email or facsimile address specified in Schedule 1 a Confirmation, signed by Synergy, recording the details of that Transaction. The Trader must, within 7 Business Days of receipt of such Confirmation, deliver to Synergy at its email address specified in Schedule 1 a counter-signed Confirmation.
- (b) All Confirmations must be signed by an Authorised Officer of each party who is authorised to sign Confirmations.
- (c) The failure of either party to send or return a signed Confirmation shall not affect the validity or enforceability of a Transaction entered into in accordance with clause 2.1 of this Schedule 3. If either party fails to send or return a signed Confirmation in accordance with this clause 2.2 of Schedule 3, the accepted SP Transaction Offer or SP Transaction Counter-Offer (as applicable) shall be deemed to be the Confirmation for the purposes of this Agreement.

## 3 Effect of entry into a Transaction

---

- (a) Subject to clause 3(b) of this Schedule 3, once a binding Transaction has been entered into, the Seller must make valid Bilateral Submissions to the AEMO for the Transaction Volume for each Trading Interval specified in the Confirmation in accordance with the timeframe and procedures set out in the Market Rules.
- (b) If the Transaction is a Market Customer Transaction:
  - (1) clause 3(a) of this Schedule 3 does not apply to the Trader;
  - (2) if clause 1(c)(1) of this Schedule 3 applies, Synergy must give effect to the Transaction by making valid Bilateral Submissions to the AEMO for an amount equal to the sum of all Transaction Volumes applicable for a Trading Interval under the Synergy Transactions minus the Transaction Volume for the corresponding Trading Interval under the Market Customer Transaction; or
  - (3) if clause 1(c)(2) of this Schedule 3 applies, the Trader must:
    - i. ensure that the Third Party Market Generator makes valid Bilateral Submissions to the AEMO on the Trader's behalf for the Transaction Volume for each Trading Interval specified in the Confirmation in accordance with the timeframe and procedures set out in the Market Rules and so as to ensure that Synergy is identified as the Market Participant purchasing the Transaction Volumes covered by the Bilateral Submissions in accordance with the Market Rules; and
    - ii. no later than 08.50am on the Scheduling Day for the Trading Day in respect of which each Bilateral Submission under this clause 3(b)(3) of Schedule 3 is made, provide Synergy with details of the identity of the Third Party Market Generator that made the Bilateral Submission on the

Trader's behalf and any other details of the Bilateral Submission that Synergy reasonably requires.

## 4 Information to be contained in Confirmation

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### 4.1 Information to be contained in Confirmation

All Confirmations must contain at least the following information:

- (1) name of the Seller and name of the Buyer;
- (2) Standard Product to be traded under the Transaction;
- (3) SP Price applicable to the Standard Product which is the subject of the Transaction, as determined in accordance with clause 4.2(a) of this Schedule 3;
- (4) Carbon Emissions Factor applicable to the Standard Product which is the subject of the Transaction, as determined in accordance with clause 4.2(b) of this Schedule 3;
- (5) Transaction Volume applicable to the Standard Product which is the subject of the Transaction; and
- (6) details of Security (if required); and
- (7) prepayment (if elected).

### 4.2 Determination of SP Price and Carbon Emissions Factor

- (a) Subject to clause 4.2(c) of this Schedule 3, the SP Price to be included in a Confirmation for the Standard Product which is the subject of the Transaction must be the SP Price published by Synergy at the time the SP Transaction Offer is made for the Standard Product specified in such SP Transaction Offer, in accordance with clause 5 of the SP Arrangements and regulation 22 of the Regulations.
- (b) Subject to clause 4.2(c) of this Schedule 3, the Carbon Emissions Factor to be included in a Confirmation for the Standard Product which is the subject of the Transaction must be the Carbon Emissions Factor published by Synergy at the time the SP Transaction Offer is made for the Standard Product specified in such SP Transaction Offer, in accordance with clause 5 of the SP Arrangements.
- (c) If the Transaction arises as a result of a SP Transaction Counter-Offer, the applicable SP Price and Carbon Emissions Factor to be included in the Confirmation for the Standard Product which is the subject of the Transaction must be the SP Price and Carbon Emissions Factor specified in the Trader's original SP Transaction Offer to which the SP Transaction Counter-Offer and resulting Confirmation relates.

## 5 Loss factor adjustment

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All quantities of electricity specified in a Confirmation or otherwise under this Agreement in respect of a Transaction is taken to be a quantity of electricity that has already been "Loss Factor adjusted" in accordance with the Market Rules.

## 6 Charges

---

### 6.1 Charges

The charges payable by the Buyer to the Seller under a Transaction will be:

- (a) the total Energy Charge payable for each Trading Interval within each Billing Period of the Supply Term for the Transaction calculated in accordance with clause 6.2 of this Schedule 3; and
- (b) the Periodic Carbon Charge for each Billing Period within the Supply Term for the Transaction calculated in accordance with clauses 6.3 and 6.4 of this Schedule 3.

### 6.2 Energy Charge

The total **Energy Charge** payable for each Trading Interval within each Billing Period of the Supply Term for the Transaction is the amount calculated in accordance with the following formula:

$$EC = \sum_{n=1}^{n=x} P_n \times Q_n$$

where:

- EC = the Energy Charge (\$) for a Billing Period;
- $P_n$  = the SP Price (in \$ per MWh) for Trading Interval  $n$ ;
- $Q_n$  = the Transaction Volume (in MWh) for Trading Interval  $n$ ;
- $n$  = each Trading Interval in the Billing Period; and
- $x$  = the number of Trading Intervals in the Billing Period.

### 6.3 Prepayment

- (a) This clause 6.3 applies if it is specified in the Confirmation that the Buyer has elected to provide prepayment instead of Security. To avoid doubt, where this clause 6.3 applies, clause 8 of the General terms will not apply.
- (b) The Seller must notify the Buyer of the Standard Products Prepayment Amount for each Billing Period during the Supply Term.
- (c) The Buyer must pay the Standard Products Prepayment Amount for each Billing Period during the Supply Term to the Seller no later than the date specified in the Seller's notice issued under clause 6.3(b) (the **Prepayment Due Date**) by Electronic Funds Transfer to the bank account nominated from time to time by the Seller. If the Buyer fails to pay the Standard Products Prepayment Amount by the Prepayment Due Date, this is a Financial Default under this Agreement.
- (d) Without limiting the Seller's rights under clause 7.1 of the General Terms, unless and until the Buyer has paid the Standard Products Prepayment Amount for a Billing Period in accordance with clause 6.3(c), the Seller is relieved of its obligations under clause 3 to make valid Bilateral Submissions to the AEMO for the Transaction Volume for each Trading Interval in the Billing Period, and will not be liable to the Buyer under clause 8 in respect of a failure to do so.
- (e) Subject to clause 6.3(f), the Buyer will not be required to pay the Energy Charge for each Trading Interval within a Billing Period to the extent that the Buyer has already paid the Standard Products Prepayment Amount in respect of the Transaction Volume for each Trading Interval within the Billing Period in accordance with clause 6.3(c). This clause 6.3(e) does not affect the Buyer's obligation to pay any other amounts payable to the Seller

under this Agreement.

- (f) Following the end of each Billing Period in the Supply Term, the Seller must determine the sum of the amounts that would have been payable by the Buyer under clause 6.2 in respect of that Billing Period but for the operation of clause 6.3(e) (the **Actual Energy Charges**). If the Actual Energy Charges for a Billing Period are:
- (1) greater than the Standard Products Prepayment Amount paid by the Buyer in respect of that Billing Period, then the difference will be a debt due by the Buyer to the Seller, and the Seller may include such amount in a tax invoice for the following Billing Period, or if there is no further Billing Period, the Seller may include such amount in a tax invoice for that amount only; or
  - (2) less than the Standard Products Prepayment Amount paid by the Buyer in respect of that Billing Period, then the difference will be a debt due by the Seller to the Buyer, and the Seller will pay this amount to a bank account nominated by the Buyer.

## 6.4 Periodic Carbon Charge

Subject to clause 7.3 of this Schedule 3, the **Periodic Carbon Charge** payable for each Billing Period within the Supply Term for the Transaction is the amount calculated in accordance with the following formula:

$$PCC_p = CP_p \times TQ_p$$

where:

$PCC_p$  = the Periodic Carbon Charge (\$) for a Billing Period;

$CP_p$  = the Carbon Price for the Billing Period (in \$ per MWh); and

$TQ_p$  = the aggregate of the Trading Interval Quantities for all Trading Intervals during the Billing Period (expressed in MWh).

## 6.5 Determination of Carbon Price

- (a) The Carbon Price payable for each Billing Period within the Supply Term for a Transaction is the amount calculated in accordance with the following formula:

$$CP = CRP \times CEF$$

where:

$CP$  = the Carbon Price for the Billing Period (in \$ per MWh);

$CRP$  = the Carbon Reference Price (in \$ per tonne of carbon dioxide equivalent Greenhouse Gas), as determined in accordance with clause 6.4(b) of this Schedule 3; and

$CEF$  = the Carbon Emissions Factor (in tonnes of carbon dioxide equivalent gas per MWh sent out), as specified in the applicable Confirmation.

- (b) The Carbon Reference Price for each Standard Product shall be:
- (1) in relation to electricity supplied under a Transaction during the period commencing on 1 July 2014 and ending on 30 June 2015, the amount of \$25.40 per tonne of carbon dioxide equivalent Greenhouse Gas (or any other value prescribed under a GHG Scheme in respect of such period); and
  - (2) in relation to electricity supplied under a Transaction during the period on and from 1 July 2015:
    - i. a price set in accordance with a CRP Methodology; or
    - ii. if the GHG Scheme set out in the *Clean Energy Act 2011* (Cth) is not in effect, the amount of \$0.

## 7 Adjustment in Charges

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### 7.1 Escalation

The SP Price will be adjusted in accordance with the escalation formula set out in the Confirmation.

### 7.2 Change in Tax or Change in Law

- (a) If:
- (1) the Seller's costs in meeting its obligations under a Transaction (including costs of generating electricity from the Seller's Facilities, purchasing fuel consumed by the Seller's Facilities, purchasing electricity for supply under this Agreement, any GHG Scheme Costs or otherwise) under this Agreement are increased because of a Change in Law; or
  - (2) a Change in Tax occurs,
- the Seller may pass through the effects of the Change in Tax or the Change in Law to the Buyer by giving notice to the Buyer stating the proposed increase in the SP Price, specifying the nature of the relevant Change in Tax or the Change in Law and the date such change will take effect for the purposes of this Agreement (which shall not be earlier than the date the relevant Change in Tax or Change in Law takes effect).
- (b) The Seller must provide to the Buyer all information necessary to enable the Buyer to verify the Change in Tax and the Change in Law and the effect of that change on the Seller as stated in the notice given under clause 7.2(a) of this Schedule 3 (**Price Change Notice**).
- (c) Effective on and from the date specified in the Price Change Notice, the SP Price will be increased as specified in the Price Change Notice.
- (d) If the Buyer disagrees with the increase in the SP Price proposed by the Seller under the Price Change Notice, then the Buyer must notify the Seller within 10 Business Days of receiving the Price Change Notice that it Disputes the increase in the SP Price.
- (e) If the parties cannot resolve the Dispute within 10 Business Days of the Buyer giving a Dispute notice under clause 7.2(d) of this Schedule 3, then either party may refer the matter to an Expert for determination in accordance with the procedures set out in clause 16 of the General Terms and the Expert shall be instructed to determine the adjustment to the SP Price necessary to pass through the effects of the Change in Law or Change in Tax to the Buyer, as applicable.

### 7.3 GHG Schemes

- (a) Without in any way limiting clause 7.5 of this Schedule 3, the parties acknowledge that:
- (1) one or more new GHG Schemes or amendments to GHG Schemes may be introduced after the Commencement Date which will take effect prior to the expiry of the Agreement Period;
  - (2) the nature, scope and impact of any such GHG Scheme is not known;
  - (3) it may be necessary during the Agreement Period to amend this Agreement if a new GHG Scheme or amendments to a GHG Scheme come into force.

- (b) In the circumstances set out in clause 7.3 of this Schedule 3, the parties agree that once details of any new GHG Scheme or amendments to a GHG Scheme are available, the parties agree to consider and negotiate in good faith any amendments to this Agreement (including to clause 6 of this Schedule 3 as are necessary to give effect to the following commercial principles:
- (1) The Buyer to pay the Seller's reasonable estimate (made in good faith) of the average GHG Scheme Costs incurred, or that will be incurred, by the Seller (on a \$ per MWh basis) that are attributable to the electricity generated or purchased by the Seller in the SWIS during the financial year in which the Billing Period occurs; and
  - (2) At such time as the Seller is able to accurately determine the actual average GHG Scheme Costs it incurred (on a \$ per MWh basis) (if any) that are attributable to the electricity generated or purchased by the Seller in the SWIS during the financial year in which the Billing Period within the Supply Term occurs, the parties will perform a wash-up calculation in which any over or underpayments of GHG Scheme Costs are reimbursed or further payments made (as applicable).
- (c) If the parties are unable to agree the necessary amendments to this Agreement under clause 7.3(b) of this Schedule 3 within 65 Business Days after such details are available, either party may refer this matter to an Expert. The following principles apply to the determination of the matter by the Expert:
- (1) each party must propose to the Expert the set of amendments to the provisions of this Agreement it considers reflects the principles described in clause 7.3(b) of this Schedule 3 within 30 days of the date of the Expert's appointment;
  - (2) the Expert must be directed to determine which of the parties' proposed sets of amendments most closely reflects the principles described in clause 7.3(b) of this Schedule 3 and to deliver that determination no later than 30 days after receiving the parties' proposed set of amendments;
  - (3) the Expert must choose one of the proposed sets of amendments in its entirety without amendment; and
  - (4) the set of amendments determined by the Expert in accordance with this clause 7.3(c) is deemed to take effect from the date that the new GHG Schemes or GHG Scheme variation becomes (or became) effective.

## 7.4 Change in Market Rules

In addition to and notwithstanding clauses 7.2, 7.3 and 7.5 of this Schedule 3, if there is any change in the Market Rules, the introduction of a new Market Rule or the Wholesale Electricity Market does not continue (**Change in Market Rules**) which is effective on or after the Commencement Date:

- (a) which is inconsistent with the terms of this Agreement or which materially impacts upon either party's ability to perform its obligations under a Transaction, then the Seller and the Buyer must meet to negotiate in good faith the minimum necessary amendments to the provisions of this Agreement required to enable this Agreement to continue to:
- (1) have the same commercial effect as it was intended to have; and
  - (2) be administered, to the extent practicable, in the same manner as it had been administered,
- prior to the relevant Change in Market Rules; and
- (b) if the parties are unable to agree the required amendments to the provisions of this Agreement in accordance with clause 7.4(a) of this Schedule 3 within 40 Business Days after the Change in Market Rules, either party may:
- (1) if the Wholesale Electricity Market does not continue, terminate this Agreement by not less than 60 Business Days' notice to the other party, in which case from the date of termination of this Agreement each party will be released and discharged from all further obligations and liabilities under this Agreement but

without prejudice to any rights, remedies, powers, obligations or liabilities arising in respect of this Agreement prior to that date; or

- (2) refer the matter to an Expert for determination in accordance with clause 16 of the General Terms, provided that the following additional principles will apply to the determination of the matter by the Expert:
- i. each party must propose to the Expert the set of amendments to the provisions under this Agreement that it considers reflects the principles described in clause 7.4(a) of this Schedule 3 within 30 days of the date of the Expert's appointment;
  - ii. the Expert must be directed to determine which of the parties' proposed set of amendments most closely reflects the principles described in clause 7.4(a) of this Schedule 3 and to deliver that determination no later than 30 days after receiving the parties' proposed sets of amendments;
  - iii. the Expert must choose one of the proposed sets of amendments in its entirety without amendment; and
  - iv. the set of amendments determined by the Expert in accordance with this clause 7.4(b)(2) of this Schedule 3 is deemed to take effect from the date the Change in Market Rules takes effect.

## 7.5 Change in SP Arrangements

In addition to and notwithstanding clauses 7.2, 7.3 and 7.4 of this Schedule 3, if there is any change in the SP Arrangements which is effective on or after the Commencement Date:

- (a) Synergy shall as soon as reasonably practicable notify the Trader of any amendments that are required to be made to this Agreement, to ensure that this Agreement continues to comply with the provisions of the SP Arrangements, such notice to include details:
- (1) of the changes to the SP Arrangements and the date such changes are to take effect; and
  - (2) of the necessary changes to this Agreement and the date such changes are to take effect; and
- (b) such changes shall take effect as amendments to this Agreement from the date specified in Synergy's notice under clause 7.5(a) of this Schedule 3, without requiring further action from either party.

## 8 Errors in Bilateral Submissions

---

- (a) If the Seller:
- (1) fails to make a Bilateral Submission required under clause 3 of this Schedule 3; or
  - (2) makes a Bilateral Submission where the Bilateral Submission Quantity for a Trading Interval differs from the Transaction Quantity for that Trading Interval,
- then the Buyer must still pay the Energy Charge in accordance with clause 6 of this Schedule 3 but if the Buyer suffers loss as a result of that failure or error, then the Seller will pay to the Buyer an amount equal to the difference between the Bilateral Submission Quantity and the Transaction Quantity for that Trading Interval multiplied by the Balancing Price for that Trading Interval. The Seller's liability for any loss, cost, charge, expense or payment which the Buyer suffers, incurs or is liable for as a result of that failure or error is limited to an amount equal to the difference between the Bilateral Submission Quantity and the Transaction Quantity for that Trading Interval multiplied by the Balancing Price for that Trading Interval.
- (b) If the Buyer receives any payment from the AEMO as a result of the Seller's failure or error referred to in clause 8(a) of this Schedule 3, then the Buyer must pay to the Seller the

amount that it actually received from the AEMO as a result of the Seller's failure or error. The Buyer's liability to pay any amount under this clause 8(b) of this Schedule 3 is limited to an amount equal to the difference between the Bilateral Submission Quantity and the Transaction Quantity for that Trading Interval multiplied by the Balancing Price for that Trading Interval.

- (c) Notwithstanding any other provision of this Agreement, the remedy set out in clause 8(a) of this Schedule 3 is the Buyer's sole remedy for the Seller's failure to make or error in making a Bilateral Submission in accordance with these Transaction Terms and the Buyer is not entitled to recover any other losses or damages, whether arising under contract, in tort or statute.

## 9 Compliance with Market Rules and SP Arrangements

---

- (a) Each party must comply with their obligations under the SP Arrangements and the Market Rules as required to give effect to the terms of each Transaction entered into under this Agreement.
- (b) If there is any inconsistency between the provisions of this Agreement and the SP Arrangements, the provisions of the SP Arrangements shall prevail to the extent of such inconsistency.
- (c) The parties agree that neither party shall have liability to the other party under or in connection with this Agreement whether in contract, tort (including negligence and breach of duty, statutory or otherwise) or otherwise whatsoever or howsoever arising (but excluding any statutory liability arising under the Regulations or the SP Arrangements or to the extent such liability cannot be limited or excluded at Law) for any loss or damage arising from or in connection with any breach of the provisions of the SP Arrangements, including the Procedure for entering into Transactions and any other procedures made under the SP Arrangements.

## 10 Warranties

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Each party warrants that it is registered as a Market Participant under the Market Rules and has all requisite Authorisations required for it to perform its obligations under this Agreement.

## 11 Definitions

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### 11.1 Terms defined in Market Rules

Unless otherwise expressly provided, a term defined in the Market Rules and used in this Schedule 3, or a Confirmation under this Schedule 3, will have the same meaning in this Agreement, or such Confirmation, as in the Market Rules.

### 11.2 Definitions

Defined terms used in these Transaction Terms which are not otherwise defined in clause 1.1 of the General Terms have the following meanings:

<b>Term</b>	<b>Meaning</b>
<b>Actual Energy Charges</b>	has the meaning given in clause 6.3(f) of this Schedule 3.

---



<b>Bilateral Submission Quantity</b>	the quantity that the Seller has specified in its Bilateral Submission to the AEMO as the quantity of electricity to be sold by it to the Buyer for a Trading Interval.
<b>Change in Market Rules</b>	has the meaning given in clause 7.4 of this Schedule 3.
<b>Energy Charge</b>	has the meaning given in clause 6.2 of this Schedule 3.
<b>Market Customer Transaction</b>	has the meaning given in clause 1(c) of this Schedule 3.
<b>Periodic Carbon Charge</b>	has the meaning given in clause 6.3 of this Schedule 3.
<b>Price Change Notice</b>	has the meaning given in clause 7.2(b) of this Schedule 3.
<b>Prepayment Due Date</b>	has the meaning given in clause 6.3(c) of this Schedule 3.
<b>Procedure for entering into Transactions</b>	the procedure entitled "Procedure for Entering into Transactions / Dealing with Limited Availability to Fulfil SP Transaction Offers" developed by Synergy and published on the Synergy SP Website in accordance with clause 2 of the SP Arrangements as may be amended from time to time.
<b>Standard Products Prepayment Amount</b>	in respect of a Billing Period during the Supply Term, the Energy Charge estimated to be payable by the Buyer to the Seller for that Billing Period, calculated in accordance with clause 6.3 of this Schedule 3.
<b>Synergy Transactions</b>	has the meaning given in clause 1(c)(1) of this Schedule 3.
<b>Third Party Market Generator</b>	has the meaning given in clause 1(c)(2) of this Schedule 3.
<b>Transaction Quantity</b>	the Transaction Volume to be specified in the Seller's Bilateral Submission under clause 3(a) or 3(b)(2) or 3(b)(3) of this Schedule 3.
<b>Transaction Volume</b>	is the Standard Supply Quantity for the Standard Product to which the applicable Confirmation relates, as specified in such Confirmation.

# Schedule 4

## Standard Products

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>	<b>Column 4</b>
<b>Standard Product</b>	<b>Standard Supply Periods</b>	<b>Standard Flat Quantity</b> (MWh per Trading Interval)	<b>Standard Peak Quantity</b> (MWh per Trading Interval in a Peak Period)
<b>Q1</b>	Each Trading Interval in each Trading Day for the period commencing at the beginning of the Trading Day that starts on 1 January and ending at the end of the Trading Day that begins on 31 March in each Calendar Year.	<b>0.5</b>	<b>0.5</b>
<b>Q2</b>	Each Trading Interval in each Trading Day for the period commencing at the beginning of the Trading Day that starts on 1 April and ending at the end of the Trading Day that begins on 30 June in each Calendar Year.	<b>0.5</b>	<b>0.5</b>
<b>Q3</b>	Each Trading Interval in each Trading Day for the period commencing at the beginning of the Trading Day that starts on 1 July and ending at the end of the Trading Day that begins on 30 September in each Calendar Year.	<b>0.5</b>	<b>0.5</b>
<b>Q4</b>	Each Trading Interval in each Trading Day for the period commencing at the beginning of the Trading Day that starts on 1 October and ending at the end of the Trading Day that begins on 31 December in each Calendar Year.	<b>0.5</b>	<b>0.5</b>
<b>Calendar Year</b>	Each Trading Interval in each Trading Day for the period commencing at the beginning of the Trading Day that starts on 1 January and ending at the end of the Trading Day that begins on 31 December in each Calendar Year.	<b>0.5</b>	<b>0.5</b>
<b>Financial Year</b>	Each Trading Interval in each Trading Day for the period commencing at the beginning of the Trading Day that starts on 1 July and ending at the end of the Trading Day that begins on 30 June in each Financial Year.	<b>0.5</b>	<b>0.5</b>

# Signing page

## Executed as an agreement

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**Executed as an agreement** on behalf of **Electricity Generation and Retail Corporation** by persons authorised by its Board in accordance with section 135(4) of the *Electricity Corporations Act 2005* (WA):

*sign here ▶*  
\_\_\_\_\_  
Signature of Chief Executive Officer

*print name*  
\_\_\_\_\_

*sign here ▶*  
\_\_\_\_\_  
Signature of Executive Officer

*print name*  
\_\_\_\_\_

---

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

*sign here ▶*  
\_\_\_\_\_  
Director

*print name*  
\_\_\_\_\_

*sign here ▶*  
\_\_\_\_\_  
Director/Secretary

*print name*  
\_\_\_\_\_

# Annexure

## Pro forma Confirmation – Electricity (Standard Products)

**Confirmation to the Bilateral Trade Agreement for Electricity (Standard Products) between Electricity Generation and Retail Corporation trading as Synergy and [insert Trader] dated [insert date of Trade Agreement]**

The parties confirm the terms of the Transaction for Standard Products for the bilateral trading of electricity as follows in accordance with the terms of the Bilateral Trade Agreement:

1	Transaction Identifier	[insert]
2	Seller	[insert]
3	Buyer	[insert]
4	Standard Product	[insert]
5	Supply Term	From: Trading Day commencing on [insert date] To: Trading Day ending on [insert date]
6	Transaction Volume (MWh/Trading Interval)	[insert]
7	SP Price (\$/MWh) (GST exclusive)	[insert]
8	Carbon Emissions Factor (tonnes of CO <sub>2</sub> equivalent / MWh sent out)	[insert]
9	Security	<p>Is the Seller required to provide Security?</p> <p>Yes <input type="checkbox"/></p> <p>No <input type="checkbox"/></p> <p>If yes:</p> <p>Form of Security: [insert]</p> <p>Security amount: \$[insert] to be lodged no later than 2 Business Days before commencement of the Supply Term.</p>

Is the Buyer required to provide Security?

---

Yes

No

If yes:

Form of Security: **[insert]**

Security amount: **[\$insert]** to be lodged no later than 2 Business Days before commencement of the Supply Term.

*[Note: If prepayment is elected by the Buyer under item 9, then the Buyer should not be required to provide Security.]*

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10            Prepayment

Is prepayment elected by the Trader?

Yes

No

If yes:

Prepayment amount: the Standard Products Prepayment Amount, as notified to the Buyer by the Seller, to be paid by the Buyer on the date specified in the Seller's notice.

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11            SP Price escalation formula

The SP Price is subject to escalation in accordance with the CPI Adjustment Mechanism published on the Synergy SP Website.

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12            **[INSERT OTHER TERMS AS REQUIRED]**

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Signed by Authorised Officer of

**Electricity Generation and Retail Corporation trading as Synergy**

NAME:  
POSITION:  
DATE:

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Signed by Authorised Officer of

**[Insert Trader]**

NAME:  
DATE:

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