Submission: Public Consultation on the Synergy Third Party Aggregator Model Contract

To: TPA Consultation Team, Synergy

Submitted by: The Smart Energy Council

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Executive Summary

This submission identifies significant deficiencies in the draft Third Party Aggregator (TPA) Model Contract that, if unaddressed, may prevent the Western Australian Government from achieving its stated policy objectives in relation to TPAs.

We believe that the draft contract creates significant barriers to market entry, including:

1. **Operational and Commercial Isolation** - TPAs are strictly prohibited from direct communication with AEMO or Western Power. Synergy holds an absolute monopoly over upstream market data, creating severe information asymmetries that prevent TPAs from discovering or forecasting commercial opportunities.
2. **Uncapped Financial Exposure** - Indemnity provisions expose TPAs to unlimited liability for upstream market events completely beyond their control.
3. **Unilateral Gatekeeper Control** - Synergy retains absolute discretion over onboarding, technical approvals, and fee-setting, with no independent oversight or enforceable timelines.

These provisions shift risk entirely onto TPAs while preserving Synergy's administrative control and limiting its own liability. We are concerned that the resulting risk profile will not satisfy the investment thresholds of technology providers or infrastructure financiers. Private capital will not then enter this market under these terms, directly undermining the State Government's broader energy transition strategy.

We urge Synergy to pause finalisation of this contract and undertake further consultation with industry to resolve these structural issues.

1. Operational Communication Restrictions and Commercial Blind Spots

Virtual Power Plant (VPP) aggregation requires real-time coordination with grid operators and active participation in evolving market frameworks. The draft contract completely prohibits this interaction.

The problem:

- **Clauses 3.8 and 3.13** preclude TPAs from contacting AEMO or Western Power directly regarding market opportunities, technical integration, or operational issues.
- **Clause 3.8(d)** classifies any such contact as a *Critical Default*, giving Synergy immediate grounds to terminate the agreement, withhold payments, and pursue indemnity claims.

Why this matters:

- **Operational Inefficiency:** Given the real-time, technically complex nature of Distributed Energy Resources (DER) aggregation, routing all operational queries through Synergy introduces unnecessary administrative delays that could increase grid risk. Treating a routine technical inquiry to a network operator as grounds for contract termination is unreasonable.
- **Inability to Forecast Future Market Opportunities:** Because the Wholesale Electricity Market (WEM) and broader DER frameworks are constantly evolving, TPAs must be able to horizon-scan for future revenue streams. Denying direct access to AEMO and Western Power leaves TPAs entirely blind to upcoming trials or emerging ancillary service markets. Without this foresight, TPAs cannot build viable long-term business cases or justify initial capital investments.
- **Asymmetric Control and Presentation of Market Info:** Under this framework, only Synergy has direct access to raw market opportunity data. This creates a severe structural imbalance where a direct retail competitor acts as the exclusive lens through which market data is viewed. Synergy entirely controls *how* an opportunity is presented, *what* context is provided, and *how* technical requirements are framed to TPAs. This lack of data transparency leaves TPAs unable to independently verify if opportunities are being filtered, delayed, or packaged in a way that inherently favors Synergy's own commercial aggregation business.

2. Asymmetric and Uncapped Liability

The contract imposes a liability framework that far exceeds reasonable commercial standards.

The problem:

Party	Liability Cap
Synergy	\$5 million (Clause 11.8(a))
TPA	\$10 million (Clause 11.8(b))

- **Clause 11.9** removes the TPA's cap entirely for the most common operational risks - including any amounts Synergy must pay to AEMO or Western Power due to a TPA's alleged act or omission, and costs arising from regulatory investigations.

Why this matters:

TPAs face significant exposure to volatile wholesale market events and network dynamics they cannot control, while Synergy's liability remains capped and protected. This risk profile will not pass due diligence for tier-1 technology providers or infrastructure investors.

3. Unquantifiable Costs

Commercial participation requires predictable cost structures. The draft contract introduces several open-ended financial obligations that cannot be modelled.

The problems:

- **Clause 3.11(e)** TPAs must pay Synergy fees for Parent Aggregator services, calculated as an "equitable share" of costs across all TPA subcontracts. A single TPA's fees depend on Synergy's system-wide overheads and efficiencies — variables outside the TPA's knowledge or control.
- **Clauses 3.6 and 16.4** If a TPA proposes a technical solution to work around a Contracting Limit, or if Synergy exercises Step-In Rights, the TPA must indemnify Synergy for all management, operational, and legal costs on a full indemnity basis, determined at Synergy's discretion.

Why this matters:

These provisions make it impossible for a TPA to forecast its cost of service or baseline margins, which is fundamental to any commercial investment decision.

4. Conflicted Gatekeeper Role and Lack of Independent Oversight

Synergy simultaneously acts as a competing retailer in the DER market, the sole Parent Aggregator, the setter of Contracting Limits, the assessor of Conditions Precedent, and the sole author of TPA Subcontract terms. This concentration of functions creates inherent conflicts of interest with no independent accountability.

Specific concerns:

Issue	Contract Reference	Impact
No objective approval criteria	Clauses 2.4, 3.11(d), 24.12(a)	Synergy has "sole discretion" over Conditions Precedent, technical baselines, and consents - standard dispute mechanisms offer no practical recourse.
No processing timelines	Throughout	TPAs face strict operational deadlines and severe default penalties, but Synergy has no enforceable SLAs for evaluating applications or processing onboarding.

Summary of Key Imbalances

Area	TPA Position	Synergy Position
Market Intelligence & Comms	Isolated & Dependent. Blind to raw upstream market data; entirely dependent on how a direct competitor chooses to filter, frame, and present opportunities.	Monopolistic. Retains exclusive, unfiltered access to AEMO/WP data and completely controls the narrative and availability of market opportunities.
Liability Cap	$10 million, completely disapplied for key market risks.	$5 million, robustly protected.
Upstream Market Risk	Uncapped indemnities for external network events.	Shielded by cap and carve-outs.
Performance Timelines	Strict deadlines, severe default penalties.	No enforceable SLAs or processing timelines.
Dispute Resolution	Subject to a lengthy 30-day escalation process.	Protected by sweeping "sole discretion" clauses.

Conclusion: Impact on State Policy

The structural imbalances and severe operational barriers within this draft contract make it commercially unviable for participants. If enacted under these terms, these difficulties may lead to the withdrawal of potential TPAs from the Western Australian market. If this occurred it would serve the sector of private capital and undermine the State Government's chosen policy position of a competitive, multi-provider DER ecosystem.

We would welcome the opportunity to engage further with Synergy to realign this contract with the State’s strategic policy objectives.

Recommendations

1. Initiate further dialogue with industry stakeholders to resolve these structural issues collaboratively.