

THIS DEED is made the

day of

2009

B E T W E E N:

CITY OF GOSNELLS of 2120 Albany Highway, Gosnells in the State of Western Australia (**Licensor**).

- AND -

The party or parties described in Item 1 of Schedule 1 (**Licensee**).

W H E R E A S:

- A. Armadale, Gosnells and Serpentine-Jarrahdale collectively carry on a partnership known as the South East Regional Energy Group for the purposes of developing, implementing and distributing programmes related to the Objectives.
- B. The said partnership has developed the Intellectual Property, which is jointly owned by Armadale, Gosnells and Serpentine-Jarrahdale. Armadale and Serpentine-Jarrahdale have each duly authorised Gosnells to act on their behalf as Licensor to grant licenses in relation to the use and exploitation of the Intellectual Property.
- C. The Licensee has requested the Licensor to permit the Licensee to use and exploit the Intellectual Property and the Licensor has agreed to grant the Licensee an exclusive licence to use and exploit the Intellectual Property in the Territory subject to the terms and conditions set out in this Agreement.

NOW THIS DEED WITNESSES:**1. DEFINITIONS AND INTERPRETATIONS**

- 1.1 **“Agreement”** means this document, duly executed by the Licensor and the Licensee.
- 1.2 **“Armadale”** means the City of Armadale of 7 Orchard Avenue, Armadale in the State of Western Australia.
- 1.3 **“Commencement Date”** means the date specified in Item 2 of Schedule 1.
- 1.4 **“Brand Names”** means any name, word or phrase associated, created, or used by the Licensor in connection with or to identify the Intellectual Property and includes:
- (a) “Switch your thinking!”;
 - (b) “A small change can make a big difference”; and
 - (c) “syt!”.
- 1.5 **“Confidential Information”** means all information passing from the Licensor to the Licensee relating to the use, reproduction, implementation, marketing and distribution of the Programme from the Commencement Date including but not limited to trade secrets, drawings, know-how, techniques, instructions, business and marketing plans, software, arrangements, customer information and lists, concepts, designs, plans, models and formulae.
- 1.6 **“Get-Up”** means the get-up used in relation to the Trade Marks.
- 1.7 **“Gosnells”** means the Licensor.

- 1.8 **“Intellectual Property”** includes but is not limited to:
- (a) the Brand Names;
 - (b) the Programme;
 - (c) the Projects;
 - (d) the Trade Marks; and
 - (e) all patents, copyrights, processes, confidential know-how, registered designs, operation manuals, equipment, advertising and promotional materials of which the Licensor is the author, proprietor, owner or licensee.
- 1.9 **“Licence Fee”** means the amount agreed to be paid by the Licensee to the Licensor as and in the manner specified in Item 3 of Schedule 1.
- 1.10 **“Schedule”** means the Schedule annexed to this document and incorporated into this Agreement.
- 1.11 **“Objectives”** includes the following objectives of the Licensor, to:
- (a) encourage efficient energy and water use behaviour;
 - (b) encourage waste minimisation and recycling behaviour;
 - (c) implement measures that reduce greenhouse gas emissions;
 - (d) promote and demonstrate sustainable technologies;
- 1.12 **“Party”** means either the Licensor or the Licensee.
- 1.13 **“Programme”** means the programme created, developed and owned by the Licensor for the purposes of achieving, implementing, encouraging, facilitating or performing the Objectives and includes:
- (a) the Projects;
 - (b) the Brand Name; and
 - (c) the Trade Marks.
- 1.14 **“Programme Materials”** means the materials provided by the Licensor to the Licensee to use, reproduce, implement, market and distribute for the purposes of this Agreement.

- 1.15 “**Projects**” means the projects that form a part of the Programme that are specified in Item 5 of Schedule 1.
- 1.16 “**Serpentine-Jarrahdale**” means the Serpentine Jarrahdale Shire of 6 Paterson Street, Mundijong in the State of Western Australia.
- 1.17 “**Term**” means the term of this Agreement specified in Clause 2 of this Agreement.
- 1.18 “**Territory**” means the geographical locations described in Item 6 of Schedule 1.
- 1.19 “**Trade Marks**” means the Trade Marks specified in Item 7 of Schedule 1.
- 1.20 In this Agreement unless the context otherwise requires:
- (a) every covenant or agreement express or implied in which more than one person covenants or agrees shall bind, be observed or performed by such persons jointly and each of them severally;
 - (b) reference to any Party shall mean and include a reference to that Party his or its successors or personal representatives (as the case may be) and transferees;
 - (c) the word "Person" shall include a corporation;
 - (d) words importing the masculine gender shall include the feminine and neuter genders;
 - (e) the singular shall include the plural and vice versa;
 - (f) reference to any statute shall include all statutes referred to;
 - (g) a reference to a recital clause or schedule is a reference to a recital clause or schedule to this Agreement; and
 - (h) except in the Schedule headings shall not effect the interpretation of this Agreement.

2. **COMMENCEMENT AND TERM**

This Agreement commences on the Commencement Date and continues in effect from year to year unless or until terminated by either of the parties giving THIRTY (30) days notice in writing to the other party.

3. **LICENCE**

The Licensor grants to the Licensee an exclusive licence, with no right to grant sub-licences, for the Term to reproduce, use and exploit the Intellectual Property, the Trade Marks and the Confidential Information in the Territory.

4. **LICENCE FEE**

4.1 In consideration of the Licence granted the Licensee must pay the Licence Fee.

4.2 All payments referred to in Clause 4.1 are GST exclusive.

5. **REGISTRATION OF LICENSEE**

The Licensor may join with the Licensee in applying promptly after the execution of this Agreement to the Registrar of Trade Marks in Australia to record the Licensee's interest as an authorised user of the Trade Marks in relation to the Programme.

6. **COVENANTS OF THE LICENSEE**

6.1 The Licensee acknowledges that ownership of the Intellectual Property or any part thereof is and remains the property of the Licensor and that the Intellectual Property must only be used or dealt with by the Licensee as provided in this Agreement.

6.2 The Licensee agrees that it must:

- (a) give prominence to the Trade Marks and Brand Names used by the Licensor in connection with the Programme in all displays and catalogues and other promotional material referring to the Programme undertaken or published by the Licensee;

- (b) not disclose any of the Confidential Information to any third parties except employees of the Licensee who require the Confidential Information to use, reproduce, implement, market or distribute the Programme. In that event, the Confidential Information is disclosed on the basis that the employees agree to preserve the confidentiality of the Confidential Information;
- (c) comply with all reasonable directions of the Licensor as to quality control of the Programme including each direction set out in Schedule 2;
- (d) not hold itself out or engage in any conduct or make any representation which may suggest to any person that the Licensee is for any purposes the agent of the Licensor.
- (e) not submit the Intellectual Property, or any part thereof, to a third party for the dominant purpose of receiving an accreditation, award, prize or recognition without the prior written consent of the Licensor.

7. COVENANTS OF THE LICENSOR

7.1 The Licensor, during the Term, must not grant any other licence for the use, reproduction, implementation, marketing or distribution of the Intellectual Property in the Territory without the prior written consent of the Licensee.

7.2 Nothing in this Agreement is deemed to restrict or prevent the right of the Licensor to grant licenses to use, reproduce, implement, market or distribute the Intellectual Property outside the Territory to any other party.

8. **MARKETING AND STANDARDS**

- 8.1 The Licensee acknowledges that it will endeavour to create, promote and retain goodwill in the business of, reproduction, implementation, marketing or distribution of the Intellectual Property.
- 8.2 The Licensor must provide the Licensee with such marketing and sales materials as are in its possession when reasonably requested by the Licensee, and will otherwise assist the Licensee to use, reproduce, market, implement and promote the Intellectual Property, the Programme or the Projects in the Territory.
- 8.3 The Licensee must ensure that the Intellectual Property and the Programme is used, reproduced, marketed, implemented and distributed by the Licensee in accordance with the Licensor's directions and that they comply with the standards of quality, production and processing set by the Licensor from time to time, including each direction set out in Schedule 2.
- 8.4 The Licensee is only entitled to exercise the rights licensed under this Agreement given in respect of the Intellectual Property and the Trade Marks unless the Licensee obtains the prior written consent of the Licensor.
- 8.5 The Licensee must give prominence to the Brand Names and the Trade Marks in all advertising and displays and literature undertaken or published by or on behalf of the Licensee upon or in relation to the Intellectual Property, or any part thereof including the Programme, or any matter or issue in connection with the Objectives.
- 8.6 The Licensee must provide the Licensor with a summary report on or before each annual anniversary after the Commencement Date, specifying:

- (a) its use, or the extent of its use of the Intellectual Property, including the Programme and each and every Project used, reproduced, marketed, implemented or distributed;
- (b) the results, impact and general community and industry response to the details required above in (a); and
- (c) its proposed use of the Intellectual Property in the immediate future annual period.

8.7 Nothing in this clause is deemed to require either party to furnish information or technical data which is not suitable for commercial use or for which it does not have the right (but only to the extent that it does not have the right) to disclose for use within the Territory.

9. **INFRINGEMENT PROCEEDINGS**

9.1 The Licensee undertakes to the Licensor that it must do all things reasonably necessary for the protection of the Intellectual Property against infringement or threatened infringement or the Trade Marks against deregistration.

9.2 In the event that:

- (a) the Licensee receives notice of:
 - (i) any infringement or threatened infringement of any of the Intellectual Property or the Trade Marks; or
 - (ii) any common law passing off by reason of imitations of get up or otherwise;
- (b) any third party alleges or claims that any of the Trade Marks are liable to cause deception or confusion to the public,

the Licensee must notify the Licensor giving particulars and provide all information and assistance to the Licensor in the event that the Licensor commences or defends proceedings in relation to the above claims or infringements. Any such proceedings will be under the control and at the expense of the Licensor.

- 9.3 The proceeds from any judgment or settlement made by the Licensor in any action brought by it under Clause 9.2 must reimburse the Licensee of all expenses incurred by it or them in assisting the Licensor in prosecuting the action and to pay the Licensor's costs and expenses. The remainder of the proceeds are to be shared by the Licensor and the Licensee equally.
- 9.4 In the event that the Licensor does not commence or defend proceedings in relation to claims or infringements of the Intellectual Property or Trade Marks within TWO (2) months of receiving notification of them from the Licensee, the Licensee may institute proceedings in its own name as if it were the Licensor (joining the Licensor as a defendant) and the Licensor is not liable for any cost unless it takes part in the proceedings.

10. **LIABILITY AND INDEMNITY**

- 10.1 The Licensee acknowledges that it uses the Intellectual Property at its own risk and acts on the basis of any advice given by the Licensor at its own risk.
- 10.2 The Licensee agrees that any employee or agent of the Licensor providing advice on behalf of the Licensor is not liable for any loss, damage or injury occasioned to the Licensee arising from or caused by the use, implementation or provision of the Intellectual Property, advice or support under this Agreement or the use made of them by the Licensee or from any other reason whatsoever.
- 10.3 The Licensee indemnifies and agrees to keep the Licensor indemnified against any actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs (including solicitor and client costs), charges and expenses arising out of the use, reproduction, marketing or implementation of the Programme by the Licensee, its servants or agents. The defence of any litigation to which

this clause applies is under the control of the Licensee, its solicitors and counsel and all legal costs and expenses of any such litigation are borne by the Licensee. The Licensor, its solicitors and counsel may participate in such litigation at the expense of the Licensor.

10.4 The Licensor warrants that the use of any or all of the Intellectual Property according to the Terms and conditions of this Agreement will not result in the infringements of proprietary rights of Armadale, Serpentine-Jarrahdale or third parties.

10.5 The Licensor indemnifies the Licensee against any losses, costs, actions, claims, demands, expenses, judgments, court orders or other liabilities arising directly or indirectly out of or in connection with any claim made or threatened, whether by legal proceedings or otherwise, against the Licensee by Armadale, Serpentine-Jarrahdale or a third party on the grounds that by virtue of rights to which such third party lays claim, under letters patent or copyright (whether registered as a design or not) or any other similar right or claim including (but without limitation) rights arising from the disclosure under cover of confidence, such third party is entitled to prevent or interfere with the free use of any or all of the Intellectual Property by the Licensee pursuant to this Agreement.

11. **TRADE MARKS**

11.1 The Licensee acknowledges the Licensor's title to the Trade Marks and each of them in Australia and elsewhere and the validity of the Licensor as proprietor and undertakes not to do any act which would or might:

- (a) invalidate or dispute the said title;
- (b) invalidate registration of any of the Trade Marks subject to Trade Mark application by the Licensor;

- (c) support an application to remove the Trade Marks or any of them as Trade Mark applications or registered Trade Marks;
- (d) cause any Registrar of Trade Marks to require a disclaimer of a monopoly in the Trade Marks or any of them or assist any other corporation or any persons directly or indirectly in any such act.

11.2 The Licensee will not use in its business any other Trade Mark or logo which is similar to or substantially similar to or so nearly resembles any of the Trade Marks as to be likely to cause deception or confusion.

11.3 The Licensee will use its best endeavours to preserve the value and validity of the Trade Marks and in particular will:

- (a) use each of the Trade Marks in the manner appearing in Schedule 2 and as provided in this Agreement;
- (b) not use the Trade Marks accompanied by words describing the Programme unless the Trade Marks are capitalised or otherwise distinguished from surrounding and adjacent text.

12. **TERMINATION**

12.1 This Agreement may be terminated by the Licensor upon the happening of any of the following events:

- (a) the Licensee refuses or neglects to pay promptly any sum payable under this Agreement, including the Licence Fee and any moneys payable for the Programme pursuant to the Licensor's invoices on their due dates;
- (b) the Licensee fails to use, reproduce, market, implement or distribute the Intellectual Property, Programme, or Trade Marks in accordance with this Agreement or fails to maintain quality

control in respect of the same in accordance with Clause 8 or in accordance with the directions of the Licensor from time to time;

- (c) the Licensee fails to observe and perform any other provisions of this Agreement; and
- (d) the Licensee fails to rectify and make good such refusal, neglect, failure or default within TWENTY-ONE (21) days after the Licensor has given to the Licensee written notice requiring same to be rectified and made good.

12.2 This Agreement may be terminated by the Licensee if the Licensor fails to observe and perform any provision of this Agreement and fails to rectify and make good such failure within TWENTY-ONE (21) days after receiving written notice requiring the same to be rectified and made good.

12.3 Waiver by either party of a breach of any provision of this Agreement does not constitute the waiver of any subsequent breach of the provision or waiver of the provision itself.

13. **CONSEQUENCES OF TERMINATION**

13.1 In the event of termination the Licensee must:

- (a) cease to use the Trade Marks and Get-Up in relation to the Premises, hold out that the Licensee or the Premises has any connection, association or affiliation with the Licensor or the Programme and immediately on termination cease;
- (b) deliver up to the Licensor the Intellectual Property and other and all copies of in the possession, custody or control of the Licensee;

- (c) deliver up to the Licensor all Confidential Information and copies within the possession, custody or control of the Licensee;
- (d) cease to use all Confidential information provided by the Licensor during the Term of this Agreement or at any time whether Confidential Information or otherwise, it being acknowledged by the Licensee that such Confidential information is part of the goodwill and reputation of the Licensor. Neither the Licensee, nor any company or organisation associated with or controlled by the Licensee can thereafter use the Trade Marks, Get-Up or Confidential Information.

13.2 The Licensor must repay the Licensee within THIRTY (30) days of termination, the portion of the Licence Fee that corresponds to the unexpired time in the relevant annual period.

14. **GENERAL CONDITIONS**

14.1 Waiver

Any waiver or forbearance in regard to the performance of this Agreement operates only if in writing and applies only to the specified instance, and does not affect the existence and continued applicability of the Terms of it thereafter.

14.2 Entire agreement

This Agreement embodies all the Terms binding between the Parties and replaces all previous representations or proposals not embodied in the Agreement.

14.3 Assignment

- (a) The Licensee must not assign all or any of its rights contained in this Agreement without the prior written consent of the Licensor,

which consent the Licensor may grant or not in its absolute discretion;

- (b) the Licensor may at its discretion assign all or any of its rights contained in this Agreement.

14.4 Applicable Law

This Agreement must be read and construed according to the laws of the State of Western Australia and the parties submit to the jurisdiction of that State.

14.5 Amendment

This Agreement may not be varied except in writing signed by the parties.

14.6 Severability

If any provision of this Agreement is held by a court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, the validity and enforceability of the remaining provisions are not affected.

14.7 Notices

- (a) All notices must be in writing and given by any one of the following means:
 - (i) by sending it to the email address of the party;
 - (ii) by delivering it to the address of the party on a business day during normal business hours;
 - (iii) by sending it to the address of the party by pre-paid airmail post or if airmail post is not available by ordinary post; or
 - (iv) by sending it by facsimile transmission to the facsimile number of the party and on the next business day giving it by either of the means set forth in para (i), (ii) or (iii) above.

- (b) A notice is deemed to be given and received:
 - (i) if given in accordance with Clause 14.7(a)(i) on the next business day after transmission in the place of delivery.
 - (ii) if given in accordance with Clause 14.7(a)(ii) on the next business day after the day of delivery in the place of delivery;
 - (iii) if given in accordance with Clause 14.7(a)(iii) five clear business days after the day of posting in the place of delivery.

- (c) The address and facsimile numbers referred to in item 4 of Schedule 1.

14.8 Further agreements

Each party must execute such agreements, deeds and documents and do or cause to be executed or done all such acts and things as necessary to give effect to this Agreement.

14.9 GST

- (a) GST means a goods and services tax as defined in A New Tax System (Goods and Services) Act 1999.

- (b) In respect of a taxable supply, the Licensee must pay to the Licensor an additional amount equal to the Licence Fee multiplied by one (1) plus the prevailing GST rate. The additional amount referred to in this clause is payable at the same time and in the same manner as the License Fee made under Clause 4.

- (c) All stamp duties and governmental charges arising out of or incidental to this Agreement are the responsibility of and must be paid by the Licensee.

14.10 Time of the Essence

Time shall be of the essence of this Agreement in all respects.

EXECUTED as a Deed.

THE COMMON SEAL of)
THE CITY OF GOSNELLS)
was hereunto affixed by)
authority of a resolution)
of the Council in the)
presence of:)

Mayor

Chief Executive Officer

THE COMMON SEAL of)
THE LICENSEE)
was hereunto affixed by)
authority of a resolution)
of the Council in the)
presence of:)

Mayor

Chief Executive Officer

SCHEDULE 1

1. The Licensee

2. Commencement Date

The Commencement Date of this Agreement is

3. Licence Fee

- (a) The Licensee must:
 - (i) pay the Licensor the sum of FIVE THOUSAND DOLLARS (\$5000.00) on or before the Commencement Date; and
 - (ii) thereafter, during the Term, pay the Licensor the Sum of FIVE THOUSAND DOLLARS (\$5000.00) on or before each yearly anniversary of the Commencement Date (the **Ongoing Fee**).
- (b) The Ongoing Fee is reviewable by the Licensor in its absolute discretion on each and every three year anniversary of the Commencement Date and at this time the Licensee may set an Adjusted Ongoing Fee (the **Adjusted Ongoing Fee**).
- (c) The Licensor must advise the Licensee whether the Adjusted Ongoing Fee is payable within TWO (2) MONTHS of the start of the relevant annual period.
- (d) If the Adjusted Ongoing Fee is payable and is:
 - (i) an increase of more than 11% of the Ongoing Fee, then the Licensee may terminate this Agreement in its absolute discretion.
 - (ii) an increase of less than or equal to 10% of the Ongoing Fee, then the Licensee must pay the Licensor within THIRTY (30) days of notice by the Licensor of the Ongoing Fee, the difference between any monies paid and the Adjusted Ongoing Fee for the relevant annual period;

6. Territory

The “**Territory**” means the geographical area contained by the municipal boundaries of <Licensee’s Name> as delineated by the Minister for Local Government pursuant to the *Local Government Act 1995*.

7. Trade Marks

Trade Marks means the following trade marks that are owned, registered or a licence held by the Licensor or that have been submitted for registration by the Licensor and which are currently pending registration:

- (a) The ***switch your thinking!*** logo (Registration number:1157574) vertically arranged:



- (b) The ***switch your thinking!*** logo (Registration number:1157574) horizontally arranged:



SCHEDULE 2

THE STYLE GUIDELINES

1. About this guide

This guide identifies the distinctive properties of the Trade Marks and Brand Names and contains directions relating to their correct use and reproduction.

The Trade Marks and Brand Names are the valuable property of Armadale, Gosnells and Serpentine-Jarrahdale and are used to identify the source of the Intellectual Property. Misuse of the Trade Marks or Brand Names will diminish their distinctive nature and may eventually destroy their ability to identify the source of the Intellectual Property. This may lead to confusion and deception in the market place as to who actually stands behind the quality of the products or services that relate to the Trade Marks or Brand Names.

The Style Guidelines are designed to preserve the value of the Trade Marks and Brand Names by their uniform application in the market place. Performance of the Style Guidelines is a mandatory requirement for the Licensee's use of the Intellectual Property pursuant to the Agreement.

Licensees should immediately contact the Licensor if they have any questions in relation to the use of a Trade Mark or Brand Name.

2. The Trade Marks

The ***switch your thinking!*** logo (the **Logo**) consists of two elements: the "image" and the accompanying text, "***switch your thinking!*** a small change can make a big difference."

The image must not be reproduced without the accompanying text, which must not be repositioned, altered or amended.

(a) Qualities

The Logo has been custom typeset and spaced and must never be redrawn.

The Logo must not be modified or distorted by any means, including by dropshadows, bevels, 3-D effects, embosses, glows, or outlines. The Logo must not be placed over a “busy” or patterned background that may interfere with its presentation clarity.

(b) Scaling

The Logo must always be resized proportionally and must not be reduced to a readable width of less than one-inch for the vertical version or one-and-one-half inches for the horizontal version.

(c) Placement

It is important that a minimum clear space be maintained around the Logo to maintain its integrity as a design element. As a general rule, the Logo should be located at least 1/4” from the trim or folds of any publication and should always be clearly distinguishable from any other text or design elements.

(d) Colour

The Logo appears in two colours, PMS 360 Green and Process Black. The yellow is to be matched using the PANTONE® Matching System (PMS) as a colour reference.

The green and black version of the Logo must always be used. If it is not possible or appropriate to use the colour green then, the Logo may appear exclusively in Process Black.

It is recognised that there may be circumstances where design features of practitioners’ stationery, web sites or other publications incorporate a dark

background. If the logo is not legible on the dark background and the colour specifications can not be met, an 'artificial' white background should be employed. The artificial background surrounding the logo should not have a border.

3. **Brand Names**

Subject to the terms of this Agreement, the Brand Names may be used or incorporated into any document, written or electronic communication or publication in connection with the Intellectual Property.

Any use of the Brand Names, "***switch your thinking!***" and "***syt!***" must always appear in lowercase and in bold and italics. The font used should be consistent with the surrounding text.

- 2009 -

switch
your thinking!

a small change can make a big difference.



INTELLECTUAL PROPERTY LICENCE AGREEMENT

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