



# Construction Terms (Asset Relocation)

## 3803

VERSION AS AT 11 February 2026

This contract is for use where a person has requested SA Power Networks to undertake an asset relocation but that person is not requesting a connection service. If an asset relocation is being undertaken for a person to facilitate a connection service to that person, please use the Construction Terms template.

**SA Power Networks**

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## 1. Overview

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- 1.1 The Customer has requested SA Power Networks to undertake the Asset Relocation.
- 1.2 This Contract sets out the terms upon which SA Power Networks will undertake the Asset Relocation.
- 1.3 This Contract does not apply to the ongoing maintenance by SA Power Networks of the relocated Distribution Network infrastructure, the physical supply of electricity to customers or any other services provided to customers.

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## 2. Preliminary

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### 2.1 Definitions

In this Contract, unless the contrary intention is apparent:

**“Act”** means the *Electricity Act 1996 (SA)*;

**“Additional Site Requirements”** means any of the following requirements the Customer (or any Third Party Occupier) requires SA Power Networks to comply with as a condition of access to a part of the Site:

- (a) obtaining police checks for SA Power Networks’ personnel;
- (b) completing site induction requirements; or
- (c) any health and safety practices which are additional to SA Power Networks’ standard practices;

**“Ancillary Works”** means any part of the Works undertaken by SA Power Networks which do not involve direct work on electricity infrastructure but relate to steps preparatory to or ancillary to that work, including any civil works undertaken by SA Power Networks (including removal or replacement of pavement, concrete gutters, landscaping work, opening up and restoring roads) and anything described in the Offer Letter as Ancillary Works;

**“Applicable Laws”** means the Act and any other legislation, regulations or legally binding instruments (including rules, codes, guidelines, directives, licence conditions or other regulatory instruments) made under legislation or regulations which are directly or indirectly binding on or are expressed to apply to SA Power Networks or the Customer from time to time and relate to the undertaking of the Works, Distribution Network or the supply of electricity;

**“Approvals”** means any licence, permit, consent, certificate, approval or other form of authorisation required to be obtained pursuant to Applicable Law to perform an act or discharge an obligation;

**“Asset Relocation”** means to relocate Distribution Network infrastructure which is owned or leased by SA Power Networks;

**“Asset Relocation Charge”** means the amount (as described in the Offer Letter) payable by the Customer to SA Power Networks for the Works, as that amount may be varied in accordance with this Contract;

**“Assumption”** means an assumption described in the Offer Letter;

**“Authority”** means any government department or any statutory, public, municipal, local or other authority charged with the responsibility for administering any Applicable Laws;

**“Business Day”** means a day other than a Saturday, Sunday or day which is a public holiday in South Australia;

**“Business Hours”** means 7.00am to 5.00pm on Business Days;

**“Civil Works”** means the works described in the Offer Letter as such and which the Offer Letter provides are required to be undertaken by the Customer;

**“Completion”** means that SA Power Networks determines, acting reasonably, that it has completed the Works;

**“Completion Date”** means the date on which Completion is achieved;

**“Construction Works”** means all aspects of the Works other than design and procurement activities and obtaining Approvals, Easements and FIRB Clearance;

**“Construction Works Preconditions”** means the conditions referred to in clause 4.1;

**“Contract”** means the contract between the parties in relation to the undertaking of the Works, consisting of this document and the Offer Letter (referred to in the Offer Letter as the Works Contract);

**“Customer”** means the person that requested the Asset Relocation as set out in the Offer Letter;

**“Customer Representative”** means the person who signs the Offer Letter or such replacement person as is nominated by the current Customer’s Representative to SA Power Networks as the new Customer’s Representative;

**“Distribution Network”** means the distribution network SA Power Networks is licensed to operate under the Act;

**“Easements”** means the easements and other land access rights which SA Power Networks requires to be held by SA Power Networks for the undertaking of, or ongoing location and maintenance of and access to, the Works and the assets installed pursuant to the Works;

**“Event of Force Majeure”** means an event beyond the reasonable control of a party, and which by the exercise of reasonable diligence that party is not able to overcome, including without limitation the following provided they meet the foregoing criteria: acts of God, fire, flood, storm, earthquake, tornado, act or omission of an Authority, epidemic or quarantine, terrorist acts, cyber security incidents, strikes and other industrial disputes, failure or breakdown in machinery or failure or disruption to the transportation of goods or services;

**“FIRB Clearance”** means:

- (a) the Treasurer of the Commonwealth of Australia (or their delegate) provides written notice that there are no objections under the *Foreign Acquisitions and Takeovers Act 1975* (Cth) (**FATA**) to the grant of any FIRB Interest to SA Power Networks, either unconditionally or subject to conditions acceptable to SA Power Networks (acting reasonably); or
- (b) the Treasurer of the Commonwealth of Australia (or their delegate) becomes precluded by passage of time from making any order or decision under Division 2 of Part 3 of the FATA in respect of the grant of a FIRB Interest to SA Power Networks; or
- (c) SA Power Networks notifying the Customer that SA Power Networks is of the view that no FIRB Interest to be acquired in connection with this Contract gives rise to a ‘notifiable action’ or a ‘notifiable national security action’ (as those terms are defined in the FATA);

**“FIRB Interest”** means the grant of any interest in land to SA Power Networks pursuant to any Easement required to be granted to SA Power Networks in accordance with this Contract;

**“GST”** means any goods and services tax or similar value added tax levied or imposed by the Commonwealth of Australia;

**“Initial Customer Payment Amount”** means the amount the Offer Letter provides will be invoiced upon the Customer’s acceptance of the Offer Letter;

**“Insolvency Event”** means, in respect of a person one or more of the following occurs:

- (a) the appointment of a liquidator, provisional liquidator, controller (as defined in the *Corporations Act 2001*), receiver, administrator, trustee in bankruptcy or similar official to the person or any of their assets or an application is made to a court for any such appointment;
- (b) where the person is a natural person, they die, cease to be of full legal capacity or otherwise become incapable of managing their own affairs for any reason;
- (c) any step is taken that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act 2001*);
- (d) the person is unable to pay their debts as and when due;
- (e) the persons suspends or threatens to stop or suspend payment of their debts;

- (f) the person is taken under section 459F(1) of the *Corporations Act 2001* to have failed to comply with a statutory demand;
- (g) the person resolves to wind itself up or gives notice of its intention to do so;
- (h) the person makes or enters into any compromise, scheme of arrangement or assignment for the benefit of creditors; and
- (i) the person is otherwise, pursuant to any law, regarded as insolvent;

**“Intellectual Property Rights”** means all intellectual property rights including, any copyright, trademarks, designs, patents, trade secrets or know how, rights to have information kept confidential, rights in circuit layouts, and any right to apply for, obtain or register any of those things;

**“Latent Conditions”** means any unanticipated physical conditions at the Site (such as rocks, items of heritage value, weather conditions or artificial objects) which mean that:

- (a) SA Power Networks is unable to complete the Works; or
- (b) in order to complete the Works, SA Power Networks will incur additional costs to those it expected to incur when SA Power Networks prepared the Offer Letter,

and including (without limitation):

- (c) the presence of contamination (including circumstances which require an investigation of possible contamination even if there is no contamination);
- (d) asbestos, unstable soil or sand;
- (e) the need for rock breaking, blasting, ground water management, water crossing, de-watering or a vac truck;
- (f) the need to undertake any testing of soil (for asbestos, thermal resistivity or otherwise) which need arises because the quality or condition of the soil varies from (or appears to vary from) that suitable for the undertaking of the Works or the installation of infrastructure; and
- (g) any other matter specified in the Offer Letter;

**“Offer Letter”** means the offer letter titled “Asset Relocation Services Offer” executed by each of SA Power Networks and the Customer in relation to the undertaking and completion of the Works;

**“Preconditions to Contract”** means the conditions referred to in clause 3.1;

**“Preliminary Works”** means the preliminary works set out in the Offer Letter which must be completed by the Customer prior to SA Power Networks commencing the Construction Works;

**“Principal Contractor”** has the meaning given to that term in the *Work Health and Safety Regulations 2012 (SA)*;

**“Program Schedule”** means the program prepared by SA Power Networks in accordance with clause 16 for the performance of the Civil Works and the Works;

**“Related Body Corporate”** has the meaning given to that term in the *Corporations Act 2001 (Cwth)*;

**“SA POWER NETWORKS”** and **“SA Power Networks”** means a partnership of:

Spark Infrastructure SA (No. 1) Pty Ltd	ABN 54 091 142 380
Spark Infrastructure SA (No. 2) Pty Ltd	ABN 19 091 143 038
Spark Infrastructure SA (No. 3) Pty Ltd	ABN 50 091 142 362
each incorporated in Australia	
CKI Utilities Development Limited	ABN 65 090 718 880
PAI Utilities Development Limited	ABN 82 090 718 951
each incorporated in The Bahamas;	

**“SA Power Networks Representative”** means the person identified in the Offer Letter as the SA Power Networks Project Manager, such delegates as that person nominates from time to time and such replacements as SA Power Networks may nominate from time to time;

**“Site”** means the land, buildings and other physical assets to which SA Power Networks requires access to undertake the Works and whether owned or occupied by the Customer or any other person;

**“Technical Regulator”** means the person holding the office of Technical Regulator under Part 2 of the Act;

**“Third Party Occupier”** means an owner or occupier of any part of the Site (other than the Customer);

**“Works”** means the works described as such in the Offer Letter and includes:

- (a) the overall project management and design of those works;
- (b) the removal of existing Distribution Network infrastructure from its current location;
- (c) the installation of Distribution Network infrastructure in the new location specified in the Offer Letter;
- (d) the work required to connect the newly installed Distribution Network infrastructure to the remainder of the Distribution Network; and
- (e) the energisation of the newly installed Distribution Network infrastructure,

but excluding all work which this Contract requires the Customer to undertake such as Preliminary Works and Civil Works;

**“Works Commencement Date”** means the date on which all of the Preconditions to Contract have been satisfied.

## 2.2 Interpretation

In this Contract, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Contract, and a reference to this Contract includes any schedule or annexure;
- (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (e) a reference to a party is to a party to this Contract, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (h) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (i) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (j) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (k) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Contract or any part of it;

- (l) a word or expression used in this Contract which is defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* has the same meaning in this Contract; and
- (m) a reference in this Contract to Works or other electricity infrastructure being owned by SA Power Networks means that the Works or infrastructure are owned by Distribution Lessor Corporation and leased to SA Power Networks or are owned by SA Power Networks.

### 2.3 Headings

Headings are for ease of reference only and do not affect interpretation.

### 2.4 Costs

In this Contract, a reference to SA Power Networks' costs includes, in respect of time spent by:

- (a) SA Power Networks' employees or employees of a Related Body Corporate of one or more of the entities making up SA Power Networks;
- (b) those contractors for whom SA Power Networks charges a standard rate,

that time as charged at SA Power Networks' Standard Rates as in force at the time the employees or contractors undertook the relevant activities.

### 2.5 Standard Rates

A reference in this Contract to SA Power Networks Standard Rates means, for a type of work, activity or service SA Power Networks provides or undertakes, SA Power Networks' standard rate for that work, activity or service as determined by SA Power Networks (which determination must be made in accordance with the terms of any Applicable Laws applicable to that determination).

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## 3. Preconditions to Contract

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### 3.1 SA Power Networks is not required to commence any Works until such time as all of the following have occurred:

- 3.1.1 where the Offer Letter was not signed by the Customer but was signed by someone acting on behalf of the Customer, SA Power Networks has received such evidence as it reasonably requires to substantiate that the person so signing had authority to act on behalf of the Customer; and
- 3.1.2 the Customer has paid to SA Power Networks the Initial Customer Payment Amount in accordance with clause 9.2 and SA Power Networks has received this amount in cleared funds.

### 3.2 If the matters referred to in clause 3.1 have not all occurred within 30 days of the date of acceptance of the Offer Letter (or within such other period as specified in the Offer Letter) then SA Power Networks may terminate this Contract. In that case SA Power Networks will (to the extent received in cleared funds) refund to the Customer any payments received from the Customer less the amount of costs incurred by SA Power Networks in respect of works, events, acts or omissions up to the date of termination and costs incurred by SA Power Networks because of the termination (but excluding any costs not incurred by SA Power Networks on a reasonable basis).

### 3.3 The payments required to be refunded under clause 3.2 do not include any payments received by SA Power Networks from the Customer prior to issue of the Offer Letter (for example payments made in consideration of preparing the Offer Letter).

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## 4. Construction Works Preconditions

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### 4.1 SA Power Networks is not required to commence the Construction Works until such time as each of the following have occurred:

- 4.1.1 the Customer has completed the Preliminary Works to SA Power Networks' reasonable satisfaction;
- 4.1.2 the Approvals relating to the Works and Easements for the Works have been obtained in accordance with clause 5;

- 4.1.3 any consents required under clause 5.4 have been obtained;
  - 4.1.4 FIRB Clearance has occurred;
  - 4.1.5 SA Power Networks is satisfied (acting reasonably) it will have safe and unhindered access to the Site as required to undertake the Construction Works;
  - 4.1.6 the Customer has paid any levy referred to in clause 13; and
  - 4.1.7 any other precondition identified in the Offer Letter has been satisfied.
- 4.2** If the matters referred to in clause 4.1 have not all occurred within 180 days of the date of acceptance of the Offer Letter (or within such other period as specified in the Offer Letter or agreed to by SA Power Networks) then SA Power Networks may terminate this Contract. In that case SA Power Networks will (to the extent received in cleared funds) refund to the Customer any payments received from the Customer less the amount of costs incurred by SA Power Networks in respect of works, events, acts or omissions up to the date of termination and costs incurred by SA Power Networks because of the termination (but excluding any costs not incurred by SA Power Networks on a reasonable basis).
- 4.3** The payments required to be refunded under clause 4.2 do not include any payments received by SA Power Networks from the Customer prior to issue of the Offer Letter (for example payments made in consideration of preparing the Offer Letter).

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## **5. Authorisations and Land Access Rights**

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- 5.1** The Customer is responsible for procuring (at its cost) all Approvals which are required under Applicable Laws to enable the undertaking of the Works other than:
- 5.1.1 any Approvals the Offer Letter expressly provides will be obtained by SA Power Networks;
  - 5.1.2 any accreditations or registrations SA Power Networks personnel require to undertake the Works; and
  - 5.1.3 any Approval SA Power Networks requires under the Act or National Electricity Rules to own or operate the Distribution Network or any modification to it.
- 5.2** The Customer must obtain all Approvals required to undertake any Civil Works and Preliminary Works.
- 5.3** SA Power Networks is responsible for obtaining those Approvals which the Offer Letter expressly provides will be obtained by SA Power Networks.
- 5.4** The Customer is responsible for obtaining the consent of each Third Party Owner to (as applicable):
- 5.4.1 SA Power Networks accessing the land they own or occupy to undertake the Construction Works; and
  - 5.4.2 SA Power Networks relocating the electricity infrastructure located on the land they own or occupy (including undertaking all steps necessary to effect that relocation),
- in a form acceptable to SA Power Networks acting reasonably. SA Power Networks will, having regard to its existing rights to access the third party land, co-operate with the Customer to assist it to obtain any such consents.
- 5.5** Subject to clause 5.6, the Customer must (as applicable) grant, or procure there is granted, to SA Power Networks at no cost, all Easements required by SA Power Networks to undertake the Construction Works and to install and access the assets being installed by SA Power Networks as part of the Construction Works. The Offer Letter may contain more specific details of the Easements required.
- 5.6** SA Power Networks will obtain the Easements (if any) which the Offer Letter expressly states SA Power Networks will obtain.
- 5.7** SA Power Networks is not required to accept grant of an Easement (including an option to take a grant of Easement) until such time as FIRB Clearance has occurred. SA Power Networks will use reasonable endeavours to achieve FIRB Clearance within a reasonable time after satisfaction of the Preconditions to Contract. The Customer must provide SA Power Networks all reasonable co-operation and assistance as SA Power Networks may require to obtain that FIRB Clearance.

- 5.8** All Approvals relating to the Works and Easements (whether obtained by SA Power Networks or the Customer) and any FIRB Clearance must be on terms acceptable to SA Power Networks (acting reasonably) and will not be regarded as having been obtained unless the terms thereof are so acceptable. Without limiting what is relevant to determining what is acceptable to SA Power Networks acting reasonably, an Approval, FIRB Clearance or Easement will not be acceptable to SA Power Networks if it imposes costs (whether upfront or over the term of the Approval or Easement or conditions comprising the FIRB Clearance) upon SA Power Networks greater than those assumed by SA Power Networks (acting reasonably) in formulating the Offer Letter.
- 5.9** An Approval or Easement will not be regarded as having been obtained until all rights for any person to challenge the acquisition, grant or terms of that Approval or Easement (whether by appeal, judicial review, Ministerial review or otherwise, including appeal under Part 2 of the *Land Acquisition Act 1969* (SA)) have expired and been exhausted and including where there has been an appeal or review application on the date on which any review or appeal is dismissed, struck out or withdrawn or all questions raised by any such review or appeal have been finally determined (other than the question of costs).
- 5.10** While SA Power Networks will, subject to this clause 5, use reasonable endeavours to obtain the Approvals and Easements which SA Power Networks is responsible for obtaining and FIRB Clearance, SA Power Networks makes no representation it will be able to obtain these Approvals, Easements or FIRB Clearance.
- 5.11** Unless the Offer Letter provides otherwise, SA Power Networks will be responsible for all surveying and registration of Easements (whether the Customer or SA Power Networks is responsible for their acquisition).

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## **6. Undertaking of the Works**

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- 6.1** As and from the Works Commencement Date, SA Power Networks agrees to use its best endeavours to achieve Completion by the time period specified in the Offer Letter (**Date for Completion**).
- 6.2** Without limiting the events or circumstances which may delay the Works, the undertaking of the Works may be delayed by the following matters and SA Power Networks is not liable for any delay caused by such matters:
- 6.2.1 the Customer's failure to comply with this Contract (whether due to breach of this Contract or an Event of Force Majeure affecting the Customer);
  - 6.2.2 the Customer not progressing the Civil Works with due diligence;
  - 6.2.3 events beyond SA Power Networks' reasonable control (that is, an Event of Force Majeure);
  - 6.2.4 any Latent Conditions are discovered after the date of the Offer Letter;
  - 6.2.5 if an Assumption is incorrect or becomes incorrect;
  - 6.2.6 if emergencies or other events adversely impact the Distribution Network and, as a prudent operator, SA Power Networks diverts resources to address those events;
  - 6.2.7 delays caused by third parties including Authorities, other government agencies, local authorities or operators of other infrastructure (for example roads or telecommunications infrastructure) but excluding any delays caused by SA Power Networks failure to act in accordance with good industry practice;
  - 6.2.8 inability of SA Power Networks to obtain, or delays in SA Power Networks obtaining, (on terms acceptable to SA Power Networks acting reasonably) access to land required to undertake the Works or any disruption to that access;
  - 6.2.9 any health and safety incident, which SA Power Networks considers (having regard to safety laws) requires a suspension to the Works or which otherwise delays the Works, but excluding any health and safety issue caused by SA Power Networks' failure to act in accordance with good industry practice;
  - 6.2.10 the imposition of any Additional Site Requirements;
  - 6.2.11 if any information provided by the Customer to SA Power Networks changes or is affected by an error, omission or inaccuracy; or
  - 6.2.12 where SA Power Networks suspends the Works in the circumstances permitted by this Contract.

- 6.3** In the case of delays referred to in clause 6.2.3 and 6.2.10, SA Power Networks will take reasonable steps to overcome the delay but is not required to apply additional resources to the Works than those which were planned to be applied prior to the delay. Further, unless otherwise agreed in response to a request made by the Customer under clause 15, SA Power Networks has no obligation to undertake work outside Business Hours to overcome or mitigate the extent of any delay which has occurred.
- 6.4** The Date for Completion will be extended to reflect the delay caused to SA Power Networks by the events and circumstances in clause 6.2. SA Power Networks will notify the Customer of any extension to the Date for Completion due to events and circumstances in clause 6.2 once SA Power Networks, acting reasonably, has been able to determine the period of that extension.

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## **7. Asset Location**

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- 7.1** If the Offer Letter sets out the location at which the relocated assets will be installed by SA Power Networks then SA Power Networks will install the assets at that location unless in the course of undertaking the Works SA Power Networks identifies conditions which mean it is not safe or technically feasible to do so. If SA Power Networks determines that it needs to move the location of the assets then it will consult with the Customer as to the Customer's preferred location for those assets but the final location will be determined by SA Power Networks, acting reasonably, having regard to safety, technical and practical considerations.
- 7.2** If the Offer Letter does not set out the location at which the relocated assets will be installed by SA Power Networks, then SA Power Networks will consult with the Customer as to the Customer's preferred location for those assets but the final location will be determined by SA Power Networks, acting reasonably, having regard to safety, technical and practical considerations.

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## **8. Information and Co-Operation**

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- 8.1** Each party will:

- 8.1.1 give to the other party all reasonable assistance and information; and
- 8.1.2 co-operate and liaise with the other party,

so as to allow that other party to comply with any obligations imposed upon that other party under an Applicable Law or this Contract or which is otherwise reasonably requested by the other party which relates to the Asset Relocation.

- 8.2** Without limiting clause 8.1, the Customer must:

- 8.2.1 provide to SA Power Networks within 10 Business Days of being requested to do so or such shorter period as SA Power Networks may reasonably request or such longer time as SA Power Networks (if requested by the Customer) may reasonably allow such information requested by SA Power Networks which is reasonably necessary to enable SA Power Networks to undertake the Works;
- 8.2.2 provide to SA Power Networks such assistance and do all things as SA Power Networks may reasonably require from time to time in relation to any activity required to be undertaken by SA Power Networks in order to undertake the Works; and
- 8.2.3 notify SA Power Networks as soon as reasonably possible if any information provided by the Customer to SA Power Networks changes or if the Customer becomes aware of any error or omission in that information or matter which has caused that information to cease to be correct.

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## **9. Charges**

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- 9.1** The amount payable by the Customer for the Works is the Asset Relocation Charge, as set out in the Offer Letter. However the Asset Relocation Charge is subject to change in the circumstances set out in clause 10 (and additional costs may also be payable in the circumstances set out in that clause or the Offer Letter).

- 9.2** SA Power Networks may invoice the Initial Customer Payment upon the Customer's execution of the Offer Letter and the Customer must pay that invoice within the time period specified in the Offer Letter.
- 9.3** The remaining components (if any) of the Asset Relocation Charge may be invoiced at the times specified in the Offer Letter. Any invoice issued by SA Power Networks must be paid by the Customer within the time period specified in the Offer Letter.
- 9.4** If any other payment becomes due by the Customer under this Contract, SA Power Networks may issue an invoice for that payment, which invoice must be paid by the Customer within 14 days of receipt.
- 9.5** If any payments are outstanding beyond the due date for payment SA Power Networks will be entitled to claim interest on the amount outstanding at the rate equal to the cash rate target (published by the Reserve Bank of Australia, applying from time to time) plus 3% for the period from the due date for payment until payment is received in full.

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**10. Variations to Asset Relocation Charge and Additional Costs**

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- 10.1** The amounts payable set out in the Offer Letter have been determined by SA Power Networks based upon the information provided by the Customer to SA Power Networks, both directly and indirectly. If this information is inaccurate then SA Power Networks may:
- 10.1.1 revise the Asset Relocation Charge to reflect the level the Asset Relocation Charge would have been set at had accurate information been provided to SA Power Networks;
  - 10.1.2 charge the Customer additional fees for any service vehicle visits where SA Power Networks was unable to undertake the Works as a result of the provision of inaccurate information;
  - 10.1.3 except to the extent recovered by clause 10.1.1 and 10.1.2, charge the Customer for any costs incurred by SA Power Networks due to the provision of that inaccurate information.
- 10.2** Where SA Power Networks' costs of undertaking the Works are increased by one or more of the events referred to in clause 10.7, SA Power Networks may increase the Asset Relocation Charge and invoice the Customer for the additional amount of that charge at such time as determined by SA Power Networks. To avoid doubt more than one such variation may be made.
- 10.3** Any changes to the amounts payable by the Customer under this Contract will be determined by SA Power Networks in accordance with all Applicable Laws. For the avoidance of doubt, SA Power Networks is not entitled to recover from the Customer any increased costs of undertaking the Works to the extent they arise from a breach of this Contract by SA Power Networks or from any negligent act or omission of SA Power Networks or its officers, employees, agents or contractors.
- 10.4** Where an increase in SA Power Networks' costs is attributable to an amount charged to SA Power Networks by a third party (including any contractor to SA Power Networks) then in determining the revision to the Asset Relocation Charge SA Power Networks may (unless it would contravene an Applicable Law) include a component to recover its overhead costs equal to the Overhead Rate multiplied by the amount charged by the third party. Unless a different rate is required by Applicable Laws from time to time, the Overhead Rate will be 15%.
- 10.5** Without limiting the manner in which SA Power Networks' costs of undertaking the Works may be increased, they may be increased due to changes in Applicable Laws which require the Works to be undertaken to a different standard, by events which require SA Power Networks to apply additional resources to the Works, by events which require SA Power Networks to spend more time undertaking the Works than contemplated when preparing the Offer Letter or by events which increase the payments required to be made by SA Power Networks to third parties in respect of the Works.
- 10.6** The additional costs which SA Power Networks may incur due to the Customer's failure to comply with this Contract include waiting time for idle labour which cannot undertake work at the Site (or reasonably undertake work elsewhere) and costs of having to re-attend at the Site where SA Power Networks was unable to undertake its work the first time it attended.
- 10.7** The events referred to in clause 10.2 are:
- 10.7.1 a change in Applicable Laws occurs after the date of the Offer Letter (or if the Offer Letter states that it is based on Applicable Laws in effect as at a particular date, after that date);

- 10.7.2 a change to any Approval whether held by SA Power Networks or the Customer, including a variation in the terms of an Approval, its cancellation or the substitution of a new Approval but excluding any change to an Approval consequent upon SA Power Networks breach of the Approval;
  - 10.7.3 if an Assumption is incorrect or becomes incorrect;
  - 10.7.4 if portable generation is required to be deployed to maintain supply to any end-user during any period of interruption to the delivery of electricity through the Distribution Network necessitated by the Construction Works;
  - 10.7.5 the imposition of any Additional Site Requirements;
  - 10.7.6 any Latent Conditions are discovered after the date of the Offer Letter;
  - 10.7.7 the occurrence of an Event of Force Majeure (whether affecting SA Power Networks or the Customer);
  - 10.7.8 a failure by the Customer to comply with the Project Schedule once it has been developed under clause 16;
  - 10.7.9 a failure by the Customer to comply with its remaining obligations under this Contract whether due to breach of this Contract or an Event of Force Majeure affecting the Customer (including without limitation failure to give SA Power Networks access to the Customer Site in accordance with clause 11);
  - 10.7.10 SA Power Networks suspends the performance of Works in the circumstances permitted by this Contract; and
  - 10.7.11 a request by the Customer to appoint SA Power Networks as the principal contractor under the Work Health and Safety Regulations 2012 (unless SA Power Networks has agreed in the Offer Letter to act as principal contractor).
- 10.8** If SA Power Networks has to, due to the Customer's failure to comply with this Contract or due to any deficiency or defect in the relevant test, plans, procedure, design or works caused by the Customer, repeat any test, review, works or obligation of SA Power Networks under this Contract then SA Power Networks may charge the Customer for SA Power Networks' costs of repeating the test, review, works or obligation at SA Power Networks' Standard Rates as in force at the relevant time.

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## **11. Access to Site**

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- 11.1** The Customer must provide SA Power Networks (including to avoid doubt its employees, servants, agents and contractors) with clear, unlimited and safe access to any part of the Site which is owned, occupied or controlled by the Customer (**Customer Site**) for the purpose of undertaking the Works and in accordance with any requirements set out in the Offer Letter:
- 11.1.1 during Business Hours; and
  - 11.1.2 at any other time requested by SA Power Networks unless the Customer has indicated to SA Power Networks that reasonable circumstances exist at a time stated which prevent the Customer from providing SA Power Networks access to the Customer Site.
- 11.2** The Customer must ensure no employee, agent or contractor of the Customer hinders or disrupts SA Power Networks accessing the Customer Site in accordance with the requirements of this Agreement.
- 11.3** It is not reasonable for the Customer to prohibit SA Power Networks from having access to the Customer Site in accordance with clause 11.1.2, due to the existence of adverse weather conditions.
- 11.4** The Customer must ensure that:
- 11.4.1 the Customer Site meets the Customer's safety standards and, provided they have been notified to the Customer, SA Power Networks' safety standards;
  - 11.4.2 all known hazards at the Customer Site have been shown to SA Power Networks prior to commencement of the Construction Works; and

11.4.3 any safety procedures relating to the Customer Site have been provided and demonstrated to SA Power Networks prior to commencement of the Construction Works.

- 11.5** If due to hazards or other matters at the Site SA Power Networks, having regard to occupational health and safety standards which apply to SA Power Networks, considers (acting reasonably) it is unsafe for SA Power Networks to undertake the Works at the Site, then SA Power Networks will suspend the undertaking of the Works and notify the Customer of the unsafe conditions. Where the unsafe conditions relate to the Customer Site, the Customer is responsible for rectifying the unsafe condition and SA Power Networks will not recommence work until the unsafe conditions are rectified. Where the unsafe conditions relate to any other part of the Site, SA Power Networks will (to the extent SA Power Networks has control over the matter) use reasonable endeavours to have them rectified
- 11.6** If the Customer requires SA Power Networks to comply with any Additional Site Requirements these must be notified to SA Power Networks no later than three months prior to the date SA Power Networks will access the Customer Site.
- 11.7** Unless it has specifically agreed in writing to do so, SA Power Networks is not required to undertake Construction Works outside of Business Hours. If the Customer wishes SA Power Networks to do so, the Customer may request a Variation under clause 15.
- 11.8** SA Power Networks will act as Principal Contractor (where a Principal Contractor is required to be appointed by law) for any area of the Site under SA Power Networks exclusive control. The Customer must act as Principal Contractor (where a Principal Contractor is required to be appointed by law) for any other area of the Site or appoint a competent third party to act as Principal Contractor.
- 11.9** On the termination of this Contract for any reason, SA Power Networks may access the Customer Site at any time in order to disconnect, dismantle and remove from the Customer Site any goods and equipment supplied by SA Power Networks for the purposes of undertaking the Works (without prejudice to any other rights of recovery that may be available to SA Power Networks). The Customer must not hinder or disrupt any such access by SA Power Networks to the Customer Site.
- 11.10** The Customer must accommodate at the Customer Site and protect from harm, any items or equipment that SA Power Networks (including to avoid doubt its employees, agents or sub-contractors) bring onto the Customer Site to undertake (including to install as part of) the Works.
- 11.11** The Works will not become affixed to the Site, will not become subject to any security held over the Site by a third party and will at all times remain the property of SA Power Networks.

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## **12. Civil Works**

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- 12.1** The Customer must undertake the Civil Works (other than any civil works the Offer Letter expressly provides SA Power Networks will undertake).
- 12.2** Where the Offer Letter states that the Civil Works to be undertaken by the Customer include a “transformer foundation” then the following procedures in this clause 12.2 apply:
- 12.2.1 as part of the Civil Works the Customer must supply and install a transformer foundation approved by SA Power Networks acting reasonably (including the facility to allow the transformer to be installed/removed by forklift if the transformer location is to be within the structure of a building);
- 12.2.2 if requested by the Customer SA Power Networks will supply to the Customer a transformer vault (but ownership of which will remain with SA Power Networks);
- 12.2.3 if the Customer wishes SA Power Networks to provide any other equipment (for example conduits) the Customer must apply for a variation under clause 15;
- 12.2.4 prior to commencing the Civil Works relating to the transformer foundation the Customer must provide to SA Power Networks the plans for, and procedures pursuant to which, those Civil Works will be undertaken and obtain SA Power Networks approval for those plans and procedures. The Customer must make any changes to the plans and procedures reasonably required by SA Power Networks as a condition of SA Power Networks giving such approval;
- 12.2.5 where due to deficiencies in the plans and procedures for the Civil Works SA Power Networks has to review those plans and/or procedures on more than one occasion then SA Power Networks may charge the Customer

SA Power Networks' reasonable costs of considering each subsequent proposed version of the plans or procedures (after the first review undertaken by SA Power Networks) at SA Power Networks' Standard Rates as in force at the relevant time;

12.2.6 the Customer must undertake the transformer foundation Civil Works within the timeframe specified by SA Power Networks (acting reasonably).

**12.3** In undertaking the Civil Works the Customer must comply with:

12.3.1 "SA Power Networks Trenching & Conduit Standard for Underground Cable Networks TS-085";

12.3.2 all applicable Australian Standards;

12.3.3 any other standards referred to in the Offer Letter;

12.3.4 SA Power Networks' reasonable directions; and

12.3.5 in respect of Civil Works involving trenching, TS-105-C-1 and TS-105-C-2 (available on [www.sapowernetworks.com.au](http://www.sapowernetworks.com.au)).

**12.4** Where the Customer is required to comply with TS-105-C-1 and TS-105-C-2 the Customer must ensure the civil works contractor engaged by it to undertake the trenching provides the relevant forms to SA Power Networks at least 10 Business Days prior to commencing the trenching.

**12.5** The Civil Works will not be regarded as completed until the Customer provides evidence to SA Power Networks (in the form reasonably required by SA Power Networks) that those Civil Works have been completed in accordance with the standards referred to in this clause 12. This evidence must be in the form of appropriate photographs with EXIF data (including date, latitude and longitude). The photographic evidence is to be sent to [CompliantGroup@sapowernetworks.com.au](mailto:CompliantGroup@sapowernetworks.com.au) (or such other email address as advised by SA Power Networks to the Customer) and the email title must have the structure "SA Power Networks Project Reference: Project Name: Project Address: Civil Photos". The photographic evidence must include (where forming part of the Civil Works) conduit cross sections, electrical tape and locations entry to ground level equipment (such as pits, pillars and vaults) and such other matters as SA Power Networks reasonably requests.

**12.6** If the Customer wishes SA Power Networks to undertake Civil Works which are the responsibility of the Customer under this clause 12, the Customer may request a variation under clause 15. Until such time as that variation takes effect the Customer remains bound to undertake the Civil Works.

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## **13. Construction Industry Training Fund Act**

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**13.1** The Customer must pay (or procure payment of) any levy payable under the *Construction Industry Training Fund Act 1993* in respect of the Works whether the primary liability for the levy under the Act falls on the Customer, SA Power Networks or some other person.

**13.2** The Customer must ensure the levy is paid no later than the time required by the *Construction Industry Training Fund Act 1993* and provide such evidence as SA Power Networks reasonably requires that the levy has been paid.

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## **14. Protection of Works**

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**14.1** The Customer must ensure it does not erect any building or structure in proximity to a powerline in contravention of the Act. In addition to being a breach of this Contract doing so may lead to the imposition of fines and court orders for rectification of the breach. Further information on proximity limits may be obtained from the Office of the Technical Regulator: Phone Number 8226 5500.

**14.2** The Customer must not interfere with any aspect of the Works (either during the period in which SA Power Networks is undertaking the Works and after the Works have been completed) and, to the extent the matter is within the Customer's control, must take all necessary and reasonable steps to protect the assets which comprise the Works from loss or damage.

**14.3** The Customer acknowledges that upon the completion of the Works SA Power Networks will require ongoing clear, unlimited and safe access (24 hours a day/7 days a week) to the assets installed by SA Power Networks on the Customer

Site. The Customer must accommodate and protect from harm any assets installed by SA Power Networks on the Customer Site.

**14.4** This clause 14 continues to operate after Completion and expiry of this Contract.

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## **15. Variation of Works**

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**15.1** The Customer must provide written notice to SA Power Networks as soon as reasonably possible after a decision to request a variation to the Works has been made by the Customer.

**15.2** Where the Customer requests a variation to the Works:

15.2.1 the Customer will provide SA Power Networks with a specification detailing the variation required;

15.2.2 subject to the requirements of all Applicable Laws, it is at SA Power Networks' discretion whether and upon what terms it accepts that variation (provided SA Power Networks will exercise that discretion reasonably);

15.2.3 if SA Power Networks agrees to undertake the variation, SA Power Networks will provide to the Customer a notice in writing (**Variation Offer**) setting out the terms upon which it is prepared to undertake the variation including:

- (a) the additional amounts payable by the Customer for the variation (or if the variation would reduce the cost of the Works, then the amount of the reduction to the cost of the Works);
- (b) any changes to the terms of this Contract required to accommodate the variation (including without limitation any change to the time required to undertake the Works); and
- (c) the time for which SA Power Networks' notice remains open for acceptance which must be reasonable (having regard to the status of the Works and all other relevant factors).

**15.3** The Customer must notify SA Power Networks within the time specified in clause 15.2.3(c) whether the Customer accepts or rejects the Variation Offer. If the Customer fails to provide notice within such period the Variation Offer will be taken to have been rejected.

**15.4** If the Variation Offer is accepted, then this Contract will be varied in accordance with its terms. If the Variation Offer is not accepted there will be no variation to this Contract or the Works.

**15.5** SA Power Networks may, as a pre-condition to providing the Variation Offer to the Customer, require the Customer to pay SA Power Networks' reasonable costs of preparing the Variation Offer. In such case SA Power Networks is not obliged to commence work on preparation of the Variation Offer until such payment has been received by SA Power Networks.

**15.6** Any Variation Offer will be prepared by SA Power Networks in accordance with all Applicable Laws.

**15.7** The Customer may request SA Power Networks to suspend the undertaking of the Works. SA Power Networks will not unreasonably withhold its consent to such a request but the Customer must reimburse SA Power Networks all additional costs it incurs due to such suspension.

**15.8** The Customer may request SA Power Networks to cancel the undertaking of the Works. SA Power Networks will not unreasonably withhold its consent to such a request but SA Power Networks is not obliged to give consent if SA Power Networks, acting in good faith, considers the Works have progressed to a stage where cancellation is not reasonably practicable.

**15.9** If SA Power Networks agrees to a cancellation request then SA Power Networks will cease undertaking the Works as soon as reasonably practicable after SA Power Networks agrees to the cancellation. If SA Power Networks agrees to the cancellation, then, subject to clause 15.10, the Customer must pay SA Power Networks:

15.9.1 all costs incurred by SA Power Networks in undertaking the Works up until the time SA Power Networks ceases the Works;

15.9.2 all costs which SA Power Networks is committed to incur in undertaking the Works at the time SA Power Networks ceases the Works (and which cannot be avoided by cancelling the arrangement under which they are incurred); and

15.9.3 all reasonable costs SA Power Networks incurs due to the cancellation of the Works, including, without limitation, demobilisation and redeployment costs, costs of removing partially completed assets or otherwise making them safe and costs of cancelling subcontracts and any other relevant contracts (or portions thereof),

except to the extent (if any) that such costs are recouped by any payments made by the Customer to SA Power Networks prior to the termination of the Contract or are costs arising due to a breach of this Contract by SA Power Networks or from any negligent act or omission of SA Power Networks or its officers, employees, agents or contractors. SA Power Networks may issue one or more invoices to the Customer for amounts payable under this clause 15.9 and the Customer must pay those invoices within 14 days of their receipt. However where an unfixed item of equipment is reasonably capable of being used by SA Power Networks for another project then the Customer is not required to pay the cost of that item, but is required to pay, to the extent they do not exceed the costs of that item, any costs SA Power Networks reasonably estimates it will incur in transporting and storing the item until such time as it can be used for that other project.

**15.10** Where the Customer cancels the undertaking by SA Power Networks of the Works and the payments (excluding payments made on account of GST) made by the Customer prior to termination of this Contract exceed the amounts referred to in clauses 15.9.1 15.9.2 and 15.9.3, then SA Power Networks will refund the amount of that excess to the Customer. SA Power Networks must determine the refund to which the Customer is entitled within a reasonable time and then provide the refund within a reasonable time.

**15.11** The payments referred to in clause 15.9 do not include any payments received by SA Power Networks from the Customer prior to issue of the Offer Letter (for example payments made in consideration of SA Power Networks progressing the Customer's application for an asset relocation and preparing the Offer Letter).

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## **16. Project Schedule**

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In collaboration with the Customer, SA Power Networks will (acting reasonably) seek to develop a project schedule for performance and completion of the Works and any Preliminary Works and Civil Works being undertaken by the Customer.

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## **17. Representatives**

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**17.1** SA Power Networks warrants that the SA Power Networks Representative has authority to give and receive all necessary instructions and approvals in and about the performance of this Contract.

**17.2** The Customer warrants that the Customer Representative has authority to give and receive all necessary instructions and approvals in and about the performance of this Contract.

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## **18. Australian Consumer Law**

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**18.1** Nothing in this Contract limits SA Power Networks' liability to the Customer for failure to comply with any Australian Consumer Law guarantees (which by virtue of the Australian Consumer Law exist between SA Power Networks and the Customer) which apply in respect of the goods or services provided by SA Power Networks under this Contract which goods or services are of a type ordinarily acquired for personal, domestic or household use.

**18.2** Pursuant to section 64A of the Australian Consumer Law this clause 18.2 and clause 18.3 apply in respect of the goods or services supplied under this Contract which are not of a kind ordinarily acquired for personal, domestic or household use or consumption, but this clause 18.2 and clause 18.3 will not apply if the Customer establishes that reliance on them would not be fair and reasonable. This clause 18.2 and 18.3 prevail over any inconsistent provisions in this Contract.

**18.3** The liability of SA Power Networks for failure to comply with a guarantee under Division 1 of Part 3-2 of the Australian Consumer Law (other than a guarantee under section 51, 52 or 53) is limited to:

18.3.1 in the case of goods, to one of the following as determined by SA Power Networks: the replacement of the goods or the supply of equivalent goods, the repair of the goods, the payment of the cost of replacing the goods or of acquiring equivalent goods or the payment of the cost of having the goods repaired; and

18.3.2 in the case of services, to one of the following as determined by SA Power Networks: the supplying of the services again or the payment of the cost of having the services supplied again.

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**19. Indemnity and Liability (Other than under the Australian Consumer Law)**

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- 19.1** This clause 19 does not apply to any guarantees which arise under the Australian Consumer Law and this clause 19 is subject to the application of clause 18.
- 19.2** Subject to clause 19.3 and clause 19.5, SA Power Networks' aggregate liability to the Customer for all acts or omissions of SA Power Networks of whatever nature relating to or in connection with this Contract, the Works or any matter relating to the Site is limited to \$ 1,000,000.
- 19.3** Subject to clause 19.5, SA Power Networks' liability to the Customer for causing death, personal injury or property damage due to SA Power Networks' negligence or breach of contract is limited to \$10,000,000.
- 19.4** SA Power Networks is only liable to the Customer for any defect, deficiency or fault in the Ancillary Works if that defect, deficiency or fault is notified by the Customer to SA Power Networks within one year of Completion. The Customer releases SA Power Networks from all claims and liabilities relating to the Ancillary Works other than claims or liabilities which relate to defects, deficiencies or faults notified to SA Power Networks within this one year period.
- 19.5** SA Power Networks is not liable to the Customer for:
- 19.5.1 any loss of profit, loss of production, loss of business, loss of opportunity, business interruption, loss of revenue, loss of contract, loss of anticipated savings, loss or corruption of data or loss of privacy of communications; or
- 19.5.2 consequential, special, indirect, exemplary or punitive losses or damages,
- arising out of or in connection with this Contract, the Works or any matter relating to the Site or any act or omission (including negligent acts or omissions) of SA Power Networks or its officers, employees, agents or contractors in connection with this Contract, the Works or any matter relating to the Site.
- 19.6** Clauses 19.2, 19.3 and 19.5 apply to all causes of action of any nature whether in contract, in tort (including negligence), in equity, under statute, pursuant to an indemnity or on any other basis whatsoever.
- 19.7** This clause 19 is subject to the application of any mandatory provisions of Applicable Laws regulating SA Power Networks' liability.
- 19.8** Nothing in this clause 19 waives any immunity from liability to which SA Power Networks is entitled under Applicable Laws.
- 19.9** Subject to clause 19.10, clause 19.11 and clause 19.12, the Customer's aggregate liability to SA Power Networks for all acts or omissions of the Customer of whatever nature relating to or in connection with this Contract, the Civil Works, the Preliminary Works or any matter relating to the Site is limited to \$ 1,000,000.
- 19.10** Subject to clause 19.11 and clause 19.12, the Customer's liability to SA Power Networks for causing death, personal injury or property damage due to the Customer's negligence or breach of contract is limited to \$10,000,000.
- 19.11** Subject to clause 19.12, the Customer is not liable to SA Power Networks for:
- 19.11.1 any loss of profit, loss of production, loss of business, loss of opportunity, business interruption, loss of revenue, loss of contract, loss of anticipated savings, loss or corruption of data or loss of privacy of communications; or
- 19.11.2 consequential, special, indirect, exemplary or punitive losses or damages,
- arising out of or in connection with this Contract, the Civil Works, the Preliminary Works or any matter relating to the Site or any act or omission (including negligent acts or omissions) of the Customer or its officers, employees, agents or contractors in connection with this Contract, the Civil Works, the Preliminary Works or any matter relating to the Site.
- 19.12** Nothing in this clause 19. limits the Customer's obligation to pay the Asset Relocation Charge or any other amount payable pursuant to an express provision of this Contract.

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**20. Force Majeure**

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A party is not liable for a failure to perform an obligation under this Contract (including without limitation failure to perform an obligation within the time required by this Contract) where that failure is caused by or results from an Event of Force

Majeure. Nothing in this clause requires a party to settle an industrial dispute that constitutes an Event of Force Majeure in any manner other than the manner preferred by that party.

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## **21. Termination**

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- 21.1** Either party may terminate this Contract by 7 days' notice in writing to the other party if the other party breaches this Contract and has failed to remedy that breach within 30 days of written notice from the non defaulting party specifying the alleged breach and requiring its remedy.
- 21.2** In addition to its rights to terminate under clause 21.1, SA Power Networks may terminate this Contract if:
- 21.2.1 the Customer's acts or omissions cause delays of a period of more than 90 days (or such other period specified in the Offer Letter) to the undertaking of the Works;
  - 21.2.2 the Customer has not completed the Civil Works within 6 months (or such other period specified in the Offer Letter) of the Works Commencement Date;
  - 21.2.3 due to Latent Conditions SA Power Networks is unable to complete the Works; or
  - 21.2.4 the Customer is subject to an Insolvency Event (subject to any restrictions pursuant to law on terminating in such circumstance).
- 21.3** Any termination of this Contract is without prejudice to any rights or remedies the terminating party may have against the other party which may have arisen prior to the date of termination.
- 21.4** On termination of this Contract by either party under this clause 21 if the Works have not been completed SA Power Networks may disconnect, dismantle and remove any of the Works from the Site.
- 21.5** If SA Power Networks terminates this Contract under this clause 21 then the Customer must pay SA Power Networks:
- 21.5.1 all costs incurred by SA Power Networks in undertaking the Works up until the time SA Power Networks ceases the Works;
  - 21.5.2 all costs which SA Power Networks is committed to incur in undertaking the Works at the time SA Power Networks ceases the Works (and which cannot be avoided by cancelling the arrangement under which they are incurred); and
  - 21.5.3 all reasonable costs SA Power Networks incurs due to the cancellation of the Works, including, without limitation, demobilisation and redeployment costs, costs of removing partially completed assets or otherwise making them safe and costs of cancelling subcontracts and any other relevant contracts (or portions thereof),
- except to the extent (if any) that such costs are recouped by any payments made by the Customer to SA Power Networks prior to the termination of the Contract or are costs arising due to a breach of this Contract by SA Power Networks or from any negligent act or omission of SA Power Networks or its officers, employees, agents or contractors. SA Power Networks may issue one or more invoices to the Customer for amounts payable under this clause 21 and the Customer must pay those invoices within 7 days of their receipt.
- 21.6** Where the payments (excluding payments made on account of GST) made by the Customer prior to termination of this Contract exceed the amounts referred to in clauses 21.5.1 to 21.5.3, then SA Power Networks will refund the amount of that excess to the Customer. SA Power Networks must determine the refund to which the Customer is entitled within a reasonable time and then provide the refund within a reasonable time.
- .
- 21.7** The payments referred to in clause 21.6 do not include any payments received by SA Power Networks from the Customer prior to issue of the Offer Letter (for example payments made in consideration of SA Power Networks progressing the Customer's application for an asset relocation and preparing the Offer Letter).
- 21.8** Nothing in clauses 21.4, 21.5 or 21.6 will limit either party's right to recover damages from the other party for breach of contract.

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## **22. Notices**

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- 22.1** Notices, consents, requests, invoices or other communication (“**Notice**”) required or permitted to be given by a party to the other party under this Contract must be given as follows:
- 22.1.1 where a Notice is being provided from the Customer to SA Power Networks, the Notice must be in writing, signed (including electronic signature), addressed to SA Power Networks’ Representative and sent by either prepaid post or email to the relevant address details set out in the Offer Letter or such replacement details as the SA Power Networks Representative advises to the Customer from time to time by 5 Business Days’ Notice;
- 22.1.2 where a Notice is being provided from SA Power Networks to the Customer, the Notice must be in writing, signed (including electronic signature), addressed to the Customer's Representative and sent by either prepaid post or email to the relevant address details set out in the Offer Letter or such replacement details as the Customer Representative advises to SA Power Networks from time to time by 5 Business Days’ Notice.
- 22.2** Notices given under this Contract sent by prepaid post will be deemed to be served 5 Business Days after posting. Where a notice would otherwise be taken to be received on a non-Business Day, it will be deemed to have been received on the next following Business Day.

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## **23. Confidentiality**

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- 23.1** Except for disclosure required by law, to its legal advisers and as reasonably required to enable the Customer to perform its obligations and exercise its rights under this Contract the Customer must keep confidential the terms of this Contract and any information disclosed to it by or on behalf of SA Power Networks (but excluding information in the public domain other than due to the Customer’s breach of this clause 23.1).
- 23.2** Except for disclosure required by law, to its legal advisers and as reasonably required to enable SA Power Networks to perform its obligations and exercise its rights under this Contract or to operate and maintain the Distribution Network SA Power Networks must keep confidential any information disclosed to it by or on behalf of the Customer which information of its nature is commercially sensitive.
- 23.3** All Intellectual Property Rights in any work, material, documents, software, process, data, information, matters or things created by SA Power Networks under or in connection with this Contract will remain the property of SA Power Networks.

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## **24. Dispute Resolution**

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- 24.1** If a dispute arises between the parties under or in connection with this Contract or the Works, the parties must meet and use their best endeavours to resolve that dispute by negotiation or otherwise before commencing legal proceedings.
- 24.2** A party may commence legal proceedings if a dispute is not resolved within 14 days of the first meeting of the parties.
- 24.3** Nothing in this clause 24 will preclude either party from seeking an urgent injunctive or declaratory relief.

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## **25. Entire Agreement and Precedence**

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- 25.1** This Contract supersedes all prior agreements, understandings, arrangements and undertakings between the parties and constitutes the entire agreement between the parties relating to the Works.
- 25.2** In the event of an inconsistency between this document and the Offer Letter, the relevant provisions of the Offer Letter will prevail.

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## **26. Amendment**

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This Contract may only be amended by a further written document signed by SA Power Networks and the Customer (or someone validly acting on behalf of the Customer).

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**27. Goods and Services Tax**

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- 27.1** Unless specifically described in this Contract as 'GST inclusive', the consideration to be paid or provided for a supply made under or in connection with this Contract does not include any amount on account of GST.
- 27.2** Where any supply to be made by one party ('Supplier') to the other party ('Recipient') under or in connection with this Contract is subject to GST (other than a supply the consideration for which is specifically described in this Contract as 'GST inclusive'):
- 27.2.1 the consideration payable or to be provided for that supply but for the application of this clause 27 ('GST Exclusive Consideration') will be increased by, and the Recipient must pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply; and
- 27.2.2 provided the Recipient has received a tax invoice for the supply, the Recipient must pay that additional amount at the same time and in the same manner as the GST Exclusive Consideration payable or to be provided for that supply (and where the tax invoice has not been received then the payment on account of GST will not be due until 14 days after the receipt of that tax invoice).
- 27.3** If any payment to be made to a party under or in connection with this Contract is a reimbursement or indemnification of an expense or other liability incurred or to be incurred by that party, then the amount of the payment must be reduced by the amount of any input tax credit to which that party is entitled for that expense or other liability, such reduction to be effected before any increase in accordance with clause 27.2.1.
- 27.4** If an adjustment event has occurred in respect of a taxable supply made under or in connection with this Contract, any party that becomes aware of the occurrence of that adjustment event must notify the other party as soon as practicable, and the parties agree to take whatever steps are necessary (including to issue an adjustment note), and to make whatever adjustments are required, to ensure that any GST or additional GST on that taxable supply, or any refund of GST (or part thereof), is paid no later than 28 days after the Supplier first becomes aware that the adjustment event has occurred.

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**28. Personal Property Securities Act**

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- 28.1** The Customer consents to SA Power Networks effecting registrations on the PPSR in relation to any security interest arising under or in connection with or contemplated by this Contract and the Customer must promptly do any act or thing that SA Power Networks reasonably requires to ensure that SA Power Networks' interest is a perfected security interest and has priority over all other security interests.
- 28.2** SA Power Networks agrees with the Customer not to disclose information in accordance with subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-(e).
- 28.3** In this clause 28:
- 28.3.1 "PPSA" means the *Personal Property Securities Act 2009* (Commonwealth);
- 28.3.2 "PPSR" means the register established under the PPSA; and
- 28.3.3 the following words have the respective meanings given to them in the PPSA: registration, security interest and verification statement.

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**29. Governing Law**

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The law of this Contract is the law applicable in the State of South Australia.