

RELEASED
10 DEC 2019
C101219/1703

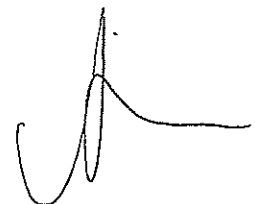
17.2 LED Conversion – Implementation (Report No: 241/18)

Motion

C240718/1235

Recommendation – Exclusion of the Public – Section 90(3)(b and d) Order

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting

A handwritten signature in black ink, consisting of a large, stylized initial 'M' followed by a horizontal line extending to the right.

with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 241/18 LED Conversion Implementation in confidence.

2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 241/18 LED Conversion Implementation on the following grounds:

- b. pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:
- conducting business; or
 - proposing to conduct business; or
 - would prejudice the commercial position of the Council

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

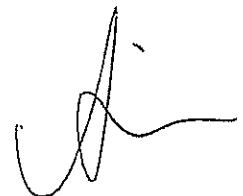
- d. pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected:
- to prejudice the commercial position of the person who supplied the information, or
 - to confer a commercial advantage on a third party.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.

Moved Councillor Clancy, Seconded Councillor Smedley

Carried



LED Conversion – Implementation (Report No: 241/18)

City of Holdfast Bay has been working with Local Government Association (LGA) and South Australian Power Network (SAPN) since 2016 to develop the LED Project to change over the existing streetlights to Light Emitting Diode (LED) luminaries to save costs and reduce emissions.

The City of Holdfast Bay has allocated \$400k in the 2018/19 budget and has included \$400k over the next two financial years (for a total project cost of \$1.2m) to undertake the LED Conversion Project and change over 2558 luminaries. The City of Holdfast Bay has now received an offer from SAPN to undertake the project.

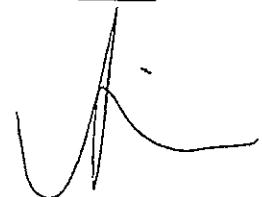
This paper seeks approval to implement the project based on SAPN's offer under the PLC LED tariff arrangement and to enter into a 10 year contract with SAPN. The report further recommends that the project be implemented over 1 year (2018/19) which will require a capital budget variation of \$800k to fund the LED conversion works. This approach improves the forecast savings by \$120,000 over two years and generates additional carbon emissions savings of 745 tonnes CO₂e over the 2 years. The 2018/19 budget impact will be \$40,000 savings on the budgeted street lighting electricity budget.

Motion

C240718/1236

1. That Council approve implementation of the LED Project under the SAPN PLC LED tariff arrangement based on one (1) year implementation rather than three (3) year implementation program to further improve the savings and reduce carbon emissions.
2. That Council note the following benefits if the LED Conversion Project is implemented in one (1) year (2018/19) rather than the three (3) year implementation program as originally proposed:
 - (a) Additional operating budget saving of \$47,600 (based on 6 months forecast savings) in electricity and tariff costs in the 2018/19 Financial Year and \$119,000 over 3 years.
 - (b) Additional greenhouse gas savings of 221.1 tonnes CO₂e in 2018/19 and 442.2 tonnes CO₂e over 3 years.
3. That Council approves bringing forward the proposed LED Project allocations from 2019/20 and 2020/21 into the 2018/19 Financial Year by way of a capital budget variation of \$800,000 included in the 2018/19 budget.
4. That Council approve entering into contract with SAPN, with CEO and Acting Mayor authorised to sign the contract subject to minor amendments.

Moved Councillor Bouchee, Seconded Councillor Smedley

Carried

Division called:

A division was called and the previous decision was set aside:

Those voting for: Councillors Bouchee, Clancy, Aust, Bradshaw, Charlick, Patton, Yates and Smedley (8)

Those voting against: Nil (0).

Her Worship the Acting Mayor declared the motion

Carried

RETAIN IN CONFIDENCE - Section 91(7) Order

C240718/1237

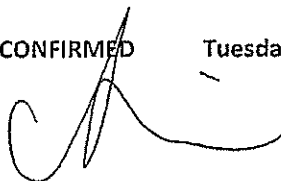
That having considered Agenda Item 17.2 Report No: 241/18 LED Conversion Implementation in confidence under section 90(2) and (3)(b and d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments and discussion be retained in confidence for a period until all contracts are signed, excluding any commercial confidentiality and the Chief Executive Officer is authorised to release the documents when the contract has been completed and that this order be reviewed every 12 months.

Moved Councillor Clancy, Seconded Councillor Smedley

Carried

CONFIRMED

Tuesday 14 August 2018



ACTING MAYOR

RELEASED

10 DEC 2019

C101219/1703

City of Holdfast Bay

Council Report No: 241/18

ITEM NUMBER: 17.2

CONFIDENTIAL REPORT

LED CONVERSION - IMPLEMENTATION

Pursuant to Section 83(5) of the Local Government Act 1999 the Report attached to this agenda and the accompanying documentation is delivered to the Council Members upon the basis that the Council consider the Report and the documents in confidence under Part 3 of the Act, specifically on the basis that Council will receive, discuss or consider:

- b. Information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the council is conducting, or proposing to conduct, business, or to prejudice the commercial position of the council; and would, on balance, be contrary to the public interest.

- d. commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party; and would, on balance, be contrary to the public interest.

Recommendation – Exclusion of the Public – Section 90(3)(b and d) Order

1. That pursuant to Section 90(2) of the *Local Government Act 1999* Council hereby orders that the public be excluded from attendance at this meeting with the exception of the Chief Executive Officer and Staff in attendance at the meeting in order to consider Report No: 241/18 LED Conversion Implementation in confidence.

2. That in accordance with Section 90(3) of the *Local Government Act 1999* Council is satisfied that it is necessary that the public be excluded to consider the information contained in Report No: 241/18 LED Conversion Implementation on the following grounds:

b. pursuant to section 90(3)(b) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is information the disclosure of which could reasonably be expected to confer a commercial advantage on a person with whom the Council is:

conducting business; or
proposing to conduct business; or
would prejudice the commercial position of the Council

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

d. pursuant to section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected:

to prejudice the commercial position of the person who supplied the information, or
to confer a commercial advantage on a third party.

In addition, the disclosure of this information would, on balance, be contrary to the public interest. The public interest in public access to the meeting has been balanced against the public interest in the continued non-disclosure of the information. The benefit to the public at large resulting from withholding the information outweighs the benefit to it of disclosure of the information.

3. The Council is satisfied, the principle that the meeting be conducted in a place open to the public, has been outweighed by the need to keep the information or discussion confidential.

Item No: 17.2
Subject: LED CONVERSION - IMPLEMENTATION
Date: 24 July 2018
Written By: Manager Assets and Facilities
General Manager: City Assets and Services, Mr H Lacy

SUMMARY

City of Holdfast Bay has been working with Local Government Association (LGA) and South Australian Power Network (SAPN) since 2016 to develop the LED Project to change over the existing streetlights to Light Emitting Diode (LED) luminaries to save costs and reduce emissions.

The City of Holdfast Bay has allocated \$400k in the 2018/19 budget and has included \$400k over the next two financial years (for a total project cost of \$1.2m) to undertake the LED Conversion Project and change over 2558 luminaries. The City of Holdfast Bay has now received an offer from SAPN to undertake the project.

This paper seeks approval to implement the project based on SAPN's offer under the PLC LED tariff arrangement and to enter into a 10 year contract with SAPN. The report further recommends that the project be implemented over 1 year (2018/19) which will require a capital budget variation of \$800k to fund the LED conversion works. This approach improves the forecast savings by \$120,000 over two years and generates additional carbon emissions savings of 745 tonnes CO₂e over the 2 years. The 2018/19 budget impact will be \$40,000 savings on the budgeted street lighting electricity budget.

RECOMMENDATION

1. That Council approve implementation of the LED Project under the SAPN PLC LED tariff arrangement based on one (1) year implementation rather than three (3) year implementation program to further improve the savings and reduce carbon emissions.
2. That Council note the following benefits if the LED Conversion Project is implemented in one (1) year (2018/19) rather than the three (3) year implementation program as originally proposed:
 - a) Additional operating budget saving of \$47,600 (based on 6 months forecast savings) in electricity and tariff costs in the 2018/19 Financial Year and \$119,000 over 3 years.
 - b) Additional greenhouse gas savings of 221.1 tonnes CO₂e in 2018/19 and 442.2 tonnes CO₂e over 3 years.

3. That Council approves bringing forward the proposed LED Project allocations from 2019/20 and 2020/21 into the 2018/19 Financial Year by way of a capital budget variation of \$800,000 included in the 2018/19 budget.
4. That Council approve entering into contract with SAPN, with CEO and Acting Mayor authorised to sign the contract subject to minor amendments.
5. **RETAIN IN CONFIDENCE - Section 91(7) Order**

That having considered Agenda Item 17.2 Report No: 241/18 LED Conversion Implementation in confidence under section 90(2) and (3)(b and d) of the *Local Government Act 1999*, the Council, pursuant to section 91(7) of that Act orders that the report, attachments and discussion be retained in confidence for a period of the contract and the Chief Executive Officer is authorised to release the documents when the contract has been completed and that this order be reviewed every 12 months.

COMMUNITY PLAN

Place making: Creating lively and safe places

COUNCIL POLICY

Climate Change Policy

STATUTORY PROVISIONS

Local Government Act 1999 [s 202 and 221].

BACKGROUND

Local Councils are responsible for providing street lights in South Australia. South Australian Power Network (SAPN) provides this service on behalf of the local Councils. The City of Holdfast Bay pays approximately \$245,000 per annum to SAPN for provision and maintenance of street lights and access to supply infrastructure. The cost of electricity used by the street lights is paid separately to a retail energy supplier and is approximately \$192,000 per year in energy costs. The service emits approximately 1,086 tonnes of CO₂ equivalents per year.

The City of Holdfast Bay LED Conversion Project seeks to change 2,558 luminaries in mainly residential streets ('P' class lights) to Light Emitting Diode (LED) luminaries. These lights provide the greatest energy (therefore cost) and emission savings.

At this point in time, despite efforts by LGA and Councils, there are no other organisations in South Australian who can provide this service or who are in competition to SAPN.

REPORT

Business Case

In October 2016, SAPN provided an audit report to the City of Holdfast Bay detailing our overall street lighting fleet, which comprised a total of 2985 'P' and 'V' category lights. A subsequent proposal was received recommending that Council convert 2558 existing 'P' street light luminaires to LED luminaires as part of a major LED conversion program across SA. This LED conversion project was similar to other such projects being recommended to other councils.

The proposal to convert 2558 'P' category street lights to LED's offered the best return on investment as the replacement LED lights were cost competitive, and the energy savings were higher than other larger 'V' class lights. In summary, the benefits of the conversion project are:

Based on converting 2558 'P' Category Lights	Existing (SULOS tariff)	Proposed (PLC LED tariff)	Saving/Benefit
Load (KWh/Yr)	988,011	188,693	799,318
Energy Cost	\$126,127	\$24,088	\$102,039
CO ₂ Emission (t/yr)	820.1	156.6	663.5
Tariff reduction	\$154,062	\$113,319	\$40,743

In December 2016, the City of Holdfast Bay engaged an independent consultant, Ironbark Sustainability, to develop an LED street lighting business case. This business case demonstrated that there was a clear financial business case for an LED street lighting changeover. (Attachment 1 – Ironbark report).

Refer Attachment 1

Options

The SAPN has provided an offer to undertake the LED Project. The offer package includes an offer letter, explanation of tariffs, and a construction contract. (Attachment 2 – SAPN Offer)

Refer Attachment 2

The offer letter and associated documents have been assessed by LGA representatives, LGRS representatives and an independent consultant (Mr Adam Gray) who specialises in this area and who has assisted a further 4 councils to assess their business case, commercial offer and contract documents. They confirmed that the offer is similar to the ones that SAPN has negotiated with other Councils recently.

SAPN offers two project options:

1. Option 1 - SAPN LED TARIFF: SAPN will pay for the upfront cost of the changeover (including the cost of the supplying luminaires) and they will recover the cost from the Council over a 10 year period (includes financial charges).

2. Option 2 - PLC LED TARIFF: Council will pay for the upfront cost of providing and installing the LED luminaires, with SAPN costs for ongoing maintenance and operation paid under the annual PLC LED tariff following the changeover.

The preferred choice for the City of Holdfast Bay is the PLC LED Tariff. This option offers better long term financial savings and provides the opportunity for City of Holdfast Bay to move to another provider should that opportunity arise and it is commercial advantageous to do so.

Contract Commercial Terms Summary

The contract comprises:

- Offer Letter
- General Conditions of Contract
- Construction Agreement
- Tariff agreement
- Relevant Schedules.

The offer letter and draft contract (Confidential) is included in Attachment 2. The proposed initial term of the tariff agreement is 10 years under the PLC tariff.

The contract documents set out a range of normal commercial terms including obligations, roles and responsibilities; service definitions; warranties; indemnity; liability & insurances; force majeure events; confidentiality; dispute resolution; contract termination; assignment and intellectual property.

The contract also documents price review mechanism and a methodology for determination of contract break costs, should council elect to terminate the contract prior to the 10 year term.

A separate construction contract covers the actual physical changeover from existing street lights to LEDs.

Council does have an option to exit the contract during the initial period for a "transition costs" which includes an administration cost and other charges (estimated to be approximately \$15,000).

Under the proposed PLC tariff contract, SAPN retains ownership of all supply and elevation hardware, whilst Council will retain ownership of the luminaire. Therefore, the Council need to account for depreciation of the luminaire. The Council will have the responsibility to replace any failures and damages although they are subject to a 10 year manufacturer's warranty. Luminaires to be installed are fitted with the 7 pin design which allows for easy retrofit of 'Smart City' interface controllers should this be desired (although at additional/future cost).

Project Cost

PLC Tariff

Under the proposed PLC contract, the project costs are broken into 2 parts, an initial one off cost to cover the supply and installation of the LED luminaires (estimated at \$898,727 based on SAPN's contract offer) and an annual tariff (known as the PLC LED tariff) which covers the cost of ongoing use of the supply infrastructure and hardware as well as luminaire maintenance and operation.

Once the project is completed, the new LED luminaires will be owned by the Council and as such Council is responsible to fund any luminaire replacements throughout the life of the contract. However, the luminaire manufacturer provides a 10 year warranty for all luminaires. The estimated service life of the luminaires is 20 years.

Project Benefits

The benefits from converting existing streetlight to LED's comes from 2 areas:

- energy cost savings – LED luminaires use approximately 80% less energy than existing lights resulting in significantly lower energy cost for similar light output. For the proposed City of Holdfast Bay project, full year energy cost savings of around \$102,039 per year will be achieved (based on 2016 rates).
- greenhouse gas emission reduction – existing energy use from 'P' class street lighting generates around 820.1 tonnes CO₂E. Following conversion of 2558 'P' Category lights to LEDs, greenhouse gas produced will reduce to around 156.6 tonnes CO₂E per annum – a saving of around 663.5 tonnes CO₂E per annum.

These savings occur irrespective of whether council adopts the PLC or SAPN LED tariff proposal.

The PLC LED tariff is recommended for the City of Holdfast Bay project because the cash flow savings are higher for the PLC LED tariff over 20 years because the cost of buying the lights and having them installed is funded by Council rather than SAPN, who charge higher financing costs than are available to Council.

Implementation Schedule

Current budget allocations are based on a three year implementation schedule commencing 2018/19. A budget of \$400,000 has been allocated 2018/19, with a further \$400,000 proposed to be allocated in each of the subsequent two financial years being 2019/20 and 2020/21.

It is recommended that LED conversion is completed in 2018/19 rather than over an extended three year program as currently proposed because the accelerated program:

- Advances cost savings and results in improved financial outcome for Council
- Advances carbon emission reductions, benefiting the environment
- Simplifies installation program
- Improves customer service

If the project implementation is implemented within a single 2018/19 financial year, the cost savings achieved increase as follows:

	Energy and tariff cost savings if project implemented over 3 financial years from 2018/19	Energy and tariff cost savings if project fully implemented in 2018/19
Year 1 – 2018/19	\$23,800 (2)	\$71,400 (2)
Year 2 – 2019/20	\$71,400	\$142,800
Year 3 – 2020/21	\$142,800	\$142,800
Total	\$238,000	\$357,000

Notes: (1) Values in 2016 dollars

(2) Year 1 (2018/19) savings assumed for 6 months only

BUDGET

Currently, the 2018/19 budget has allocated \$400,000 to undertake the first tranche of LED conversions, with further funding of \$800,000 proposed to be allocated over the next two financial years giving a total project budget of \$1.2m.

The tendered upfront cost to convert 2558 'P' Category street lights to LED luminaires under the SAPN proposal has been negotiated at \$898,727 (excl GST) subject to the work being undertaken in one tranche. This quote is considerably cheaper than previous estimates and further improves the overall life cycle cost savings and payback period.

SAPN estimate that all conversions could be completed within one (1) month once mobilized (which would be SAPN's recommendation and is supported in this report).

If the consolidated implementation program is approved, it will be necessary to bring forward the proposed 2019/20 and 2020/21 allocations into the 2018/19 financial year by way of a \$800k capital budget variation and an operating budget variation of \$119,000 in additional savings on electricity and tariff charges over 3 years with the accelerated LED project.

LIFE CYCLE COSTS

The economic and environmental justification for the project is well documented and is attached in Attachment 1. In cash flow terms, the savings compared to current tariff and energy use charges over 10 and 20 years for the SAPN LED and the PLC LED (recommended) tariffs are as follows:

Tariff Option	10 Year Cash flow Savings Forecast (#)	20 year Cash flow Savings Forecast (#)
Option 1 - SAPN LED Tariff (SAPN funds LED lights)	\$510,700	\$1,048,300
Option 2 - PLC LED Tariff (*) (Council funds LED lights)	\$277,900	\$1,630,700

Constant 2017/18 dollars

(*). Incl's interest at 5%; capital repaid over 8 years; allowance for future LED replacements

Whilst the SAPN tariff provides a larger cash flow saving over 10 years, this tariff prevents Council from shifting to an alternative supplier if one were to enter the market, and is essentially a 'set and forget' tariff.

The PLC LED tariff offers greater cash flow savings over 20 years (the estimated life of the luminaires) and provides Council with future commercial flexibility (subject to exit costs) should a new entrant establish in the street lighting market and offer lower tariffs. The PLC LED tariff option is recommended.

CONFIDENTIAL

Attachment 1

CITY OF
HOLDFAST BAY



Prepared for
City of Holdfast Bay

Prepared by
Ironbark Sustainability
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Collingwood 3066
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Version	Date	Author/Reviewer
V0a	December 2016	Jenny Frieden
V0b	December 2016	Ronald Lee
VIa	December 2016	Alexi Lynch
VIb	December 2016	Jenny Frieden
VIc	March 2017	Alexi Lynch
VIId	May 2017	Alexi Lynch

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About Ironbark Sustainability

Ironbark Sustainability is a specialist local government consultancy that works with councils around Australia by assisting them to reduce energy and water usage through sustainable asset and data management and on-the-ground implementation. Ironbark has been operating since 2004 and brings together decades of technical and financial analysis, maintenance and implementation experience in the areas of energy & water auditing, and public lighting technologies and management.

Ironbark provides public lighting support nationally including technology advice, technology approvals, business cases and project management. Ironbark delivers strategic and specific advice and support for the establishment of effective environmental management systems for government and business clients. We pride ourselves on supporting our clients to manage their operations more sustainably.

Our Mission

Ironbark's mission is to facilitate progressive sustainability outcomes through practical and realistic support for councils and their communities.

Table of Contents

1	Summary	4
2	SAPN LED Tariffs	4
3	Additional Transition Analysis	5
3.1	Changeover to LED through PLC tariff over 3-year period.....	6
3.2	No changeover or “business as usual” scenario.....	6
3.3	Changeover to LED through PLC tariff then transition to “LGA Model”	7
3.4	No changeover or “business as usual” then transition to “LGA model”	8
3.5	Comparison of Scenarios	9
4	Summary of Analysis	11

I Summary

In December 2016, the City of Holdfast Bay (herewith Council) engaged Ironbark Sustainability to develop a street lighting bulk change business case for all its residential street lighting. This business case considers a replacement of existing lights with new LED technology and demonstrated that there is clear financial business case for an LED street lighting changeover.

The project would have a positive Net Present Value under a range of scenarios and be cash-flow positive within 6 to 11 years, even under “worst case” forecasts. Under all models the “SLUoS to PLC” tariff scenario offers the best value to Council from a financial point of view¹. In total, the project is expected to cost up to \$1.2 million. Net lifetime cost savings (after project costs are removed) are projected to be up to \$4.6 million².

The report recommends that Council:

- Seek internal funding or external financing to change all residential (P category) street lights to LED under the PLC tariff arrange
- Engage with SAPN to ensure that any contractual agreement in moving from SLUoS to PLC LED includes clauses that clearly allow for Council to transition from PLC to a “council-owned and operated” tariff arrangement if there is a negotiated outcome between SAPN and the LGA or if the State Government legislates to force SAPN to sell the assets to councils.
- Engage with SAPN to confirm a Service Level Agreement with councils
- Ensure that all approved LEDs are fitted with smart lighting ready “7-Pin NEMA bases”.

2 SAPN LED Tariffs

There are 5 new LED tariffs that were released by SAPN in July 2016 – the **SAPN LED, PLC** and **TFI** tariffs (for SAPN-owned infrastructure) and the **CLER LED** and **EO LED** (for Council-owned infrastructure).

As of May 2017, Council can only transition SLUOS lights to either SAPN LED, PLC or TFI. For Council to be able to transfer from SLUoS to EO LED or CLER LED, SAPN would have to agree to sell the non-luminaire components of the existing street lighting assets (the parts **other than** the luminaire including items such as the mounting brackets, poles, supply cables and control equipment) to Council. SAPN have indicated that do not wish to sell these assets so existing SLUoS lights can only be transferred to PLC, TFI or SAPN LED under current available options. This situation could change pending future negotiation between SAPN and councils (or the LGA) or legislative amendments

If Council (or multiple councils or the LGA SA) were to negotiate a transfer of these assets from SAPN to Council(s) or a Facilities Access Agreement (FAA) this would allow Council (or a third party) to own, operate and maintain the luminaire with SAPN to continue to own, operate and maintain the non-luminaire street lighting assets (bracket, wires, poles). Alternatively, the State Government could legislate to force SAPN to sell the assets to Council. Unless one of

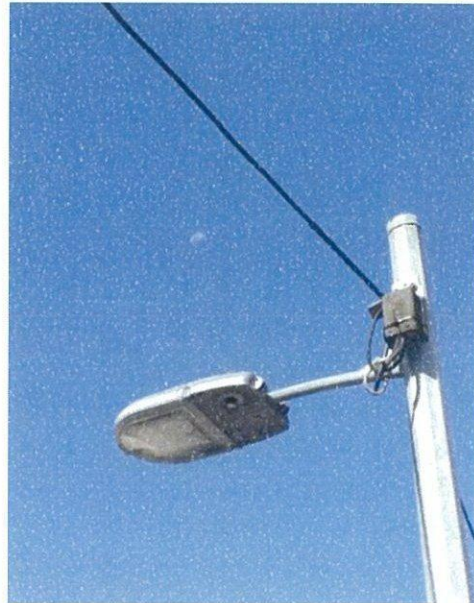
¹ Please see final Business Case Report for comprehensive business case; glossary; results; comparative analysis and assumptions for modelling

² Depending on preferred tariff.

these scenarios occurs, Council's only option for SLUoS lights is to move to PLC, TFI or SAPN LED.

SAPN have indicated to Ironbark since late July 2016 that any councils moving from SLUoS to PLC, TFI or SAPN LED in the short-term they **would** be able to transfer to any new council-owned (or "LGA model") in future if there are successful negotiations and/or legislative changes regarding asset ownership.

In practice this includes a clause in the contract to the effect that "if the situation changes in the future and councils are able retain ownership of former-SLUoS lights, then any councils paying PLC, TFI or SAPN LED tariffs will be able to exit from these tariffs and move to an 'LGA model' such as an FAA model". Such "exit" or "transition" clauses are currently being negotiated between SAPN and multiple councils and look very likely to be included as per council requests. SAPN will charge an administrative charge of \$10 per light for the transition.



If the exit or transition clauses are confirmed, then Council can essentially hedge its bets by changing to LEDs in the short term via PLC (or the SAPN LED tariff if funding is not available) and reaping the immediate energy savings (and maintenance savings in the case of PLC). Then if there is a successful negotiation and/or legislation in the future, Council can transition to the "LGA model" with the full information and certainty that does not exist today.

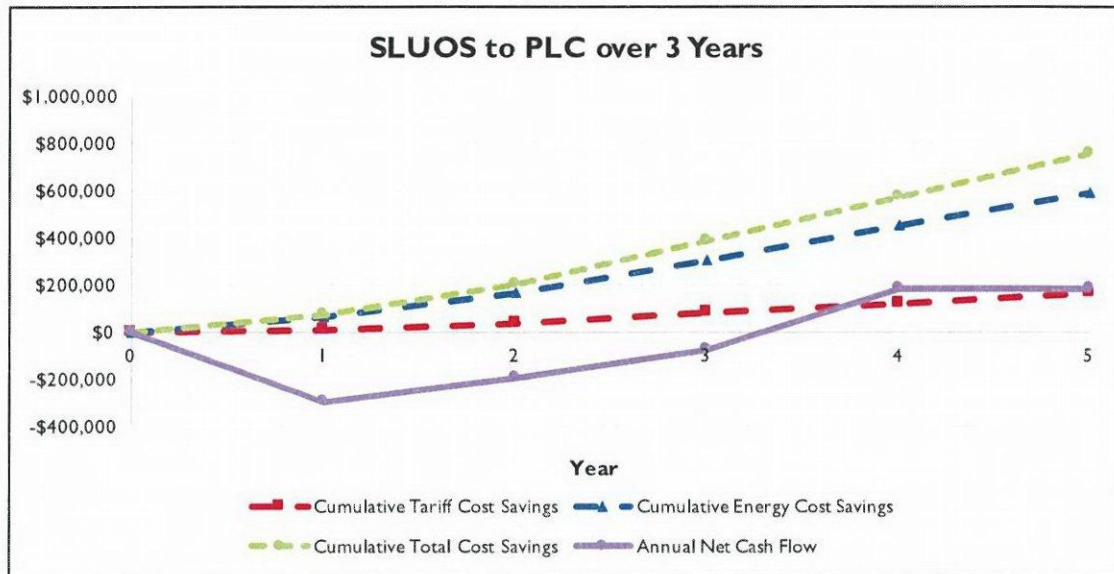
3 Additional Transition Analysis

Council has requested that Ironbark undertake extra modelling to compare transition scenarios and "business as usual" or "do nothing" scenarios over the initial 5 years³. Specifically, this involves comparison of the following scenarios over a 5-year period:

- Changeover to LED through PLC tariff over 3-year implementation period.
- No changeover or "business as usual" scenario.
- Changeover to LED through PLC tariff over 3-year implementation period and transitioning to "LGA model" tariff arrangement after 2 years.
- No changeover or "business as usual" for the first 2 years and then transition to "LGA model".

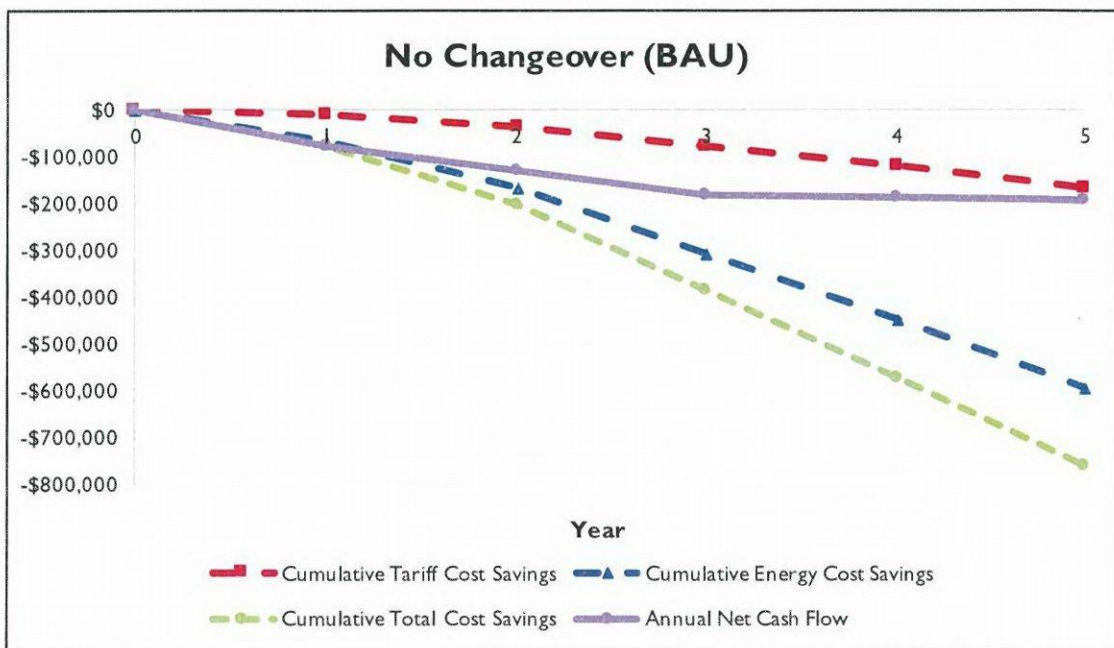
³ As opposed to analysis of mercury vapour lights only and "best-case" and "worse case" scenarios that are detailed in the main business case report. Also assumed is a 3-year implementation period. Other models, such as 1-year implementation periods, are also detailed in the main business case report.

3.1 Changeover to LED through PLC tariff over 3-year period



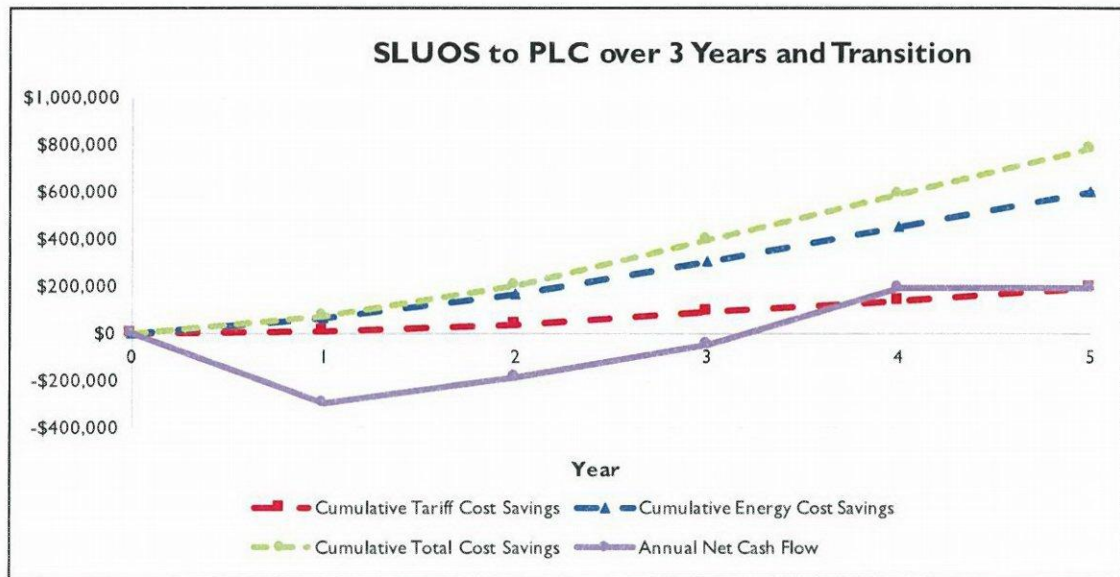
By changing to LED through the PLC tariff over a 3-year implementation period, energy cost savings (blue dotted line) and tariff cost savings (red dotted line) are apparent immediately. The total cumulative energy and tariff cost savings are represented by the green dotted line. Overall net cash flow (total savings minus cost) is represented by the purple solid line.

3.2 No changeover or "business as usual" scenario



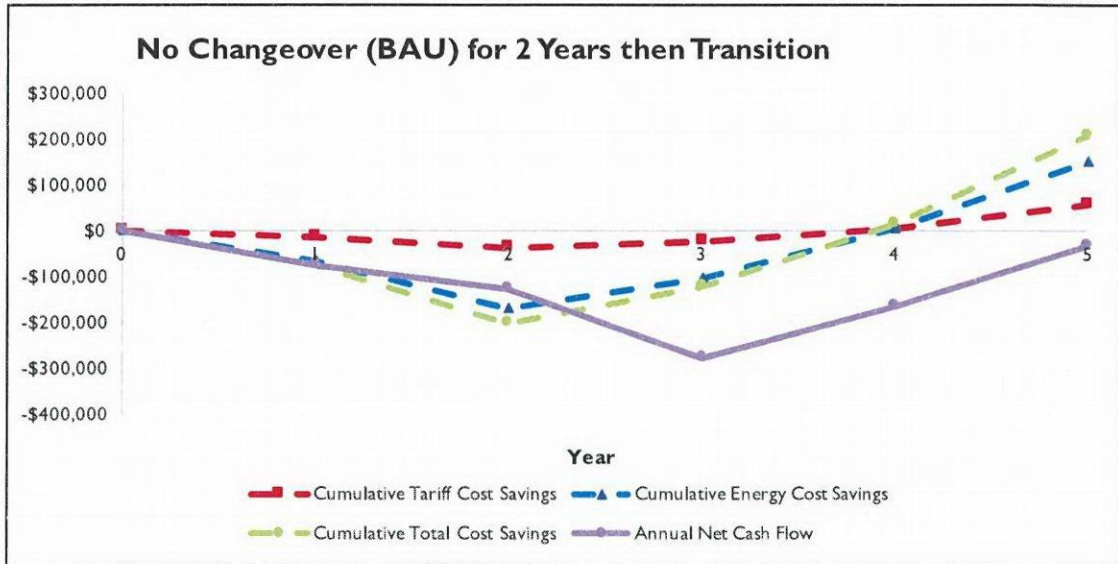
If Council decides to keep the existing inefficient lights this would add an extra \$760,289 in energy and tariff costs in the first 5 years alone.

3.3 Changeover to LED through PLC tariff over 3-year period and then transition to “LGA Model”



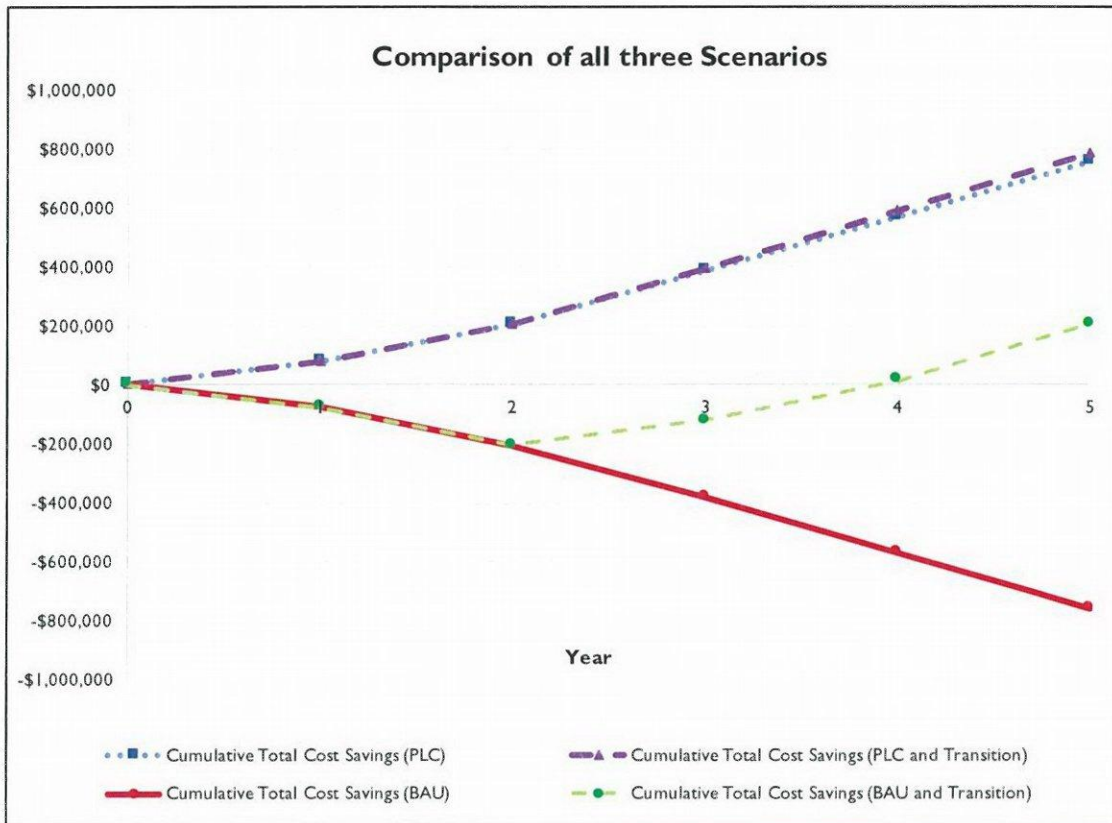
By changing to LED through the PLC tariff over a 3-year implementation period and then transitioning to a potential “LGA Model” after 2 years, the costs and saving are almost identical to the first scenario above, changing to LED through the PLC tariff over a 3-year implementation period. This is because the cost of transitioning is relatively minor in the scheme of such a large project. The graphs below illustrate the differences.

3.4 No changeover or “business as usual” for the first 2 years and then transition to “LGA model”.



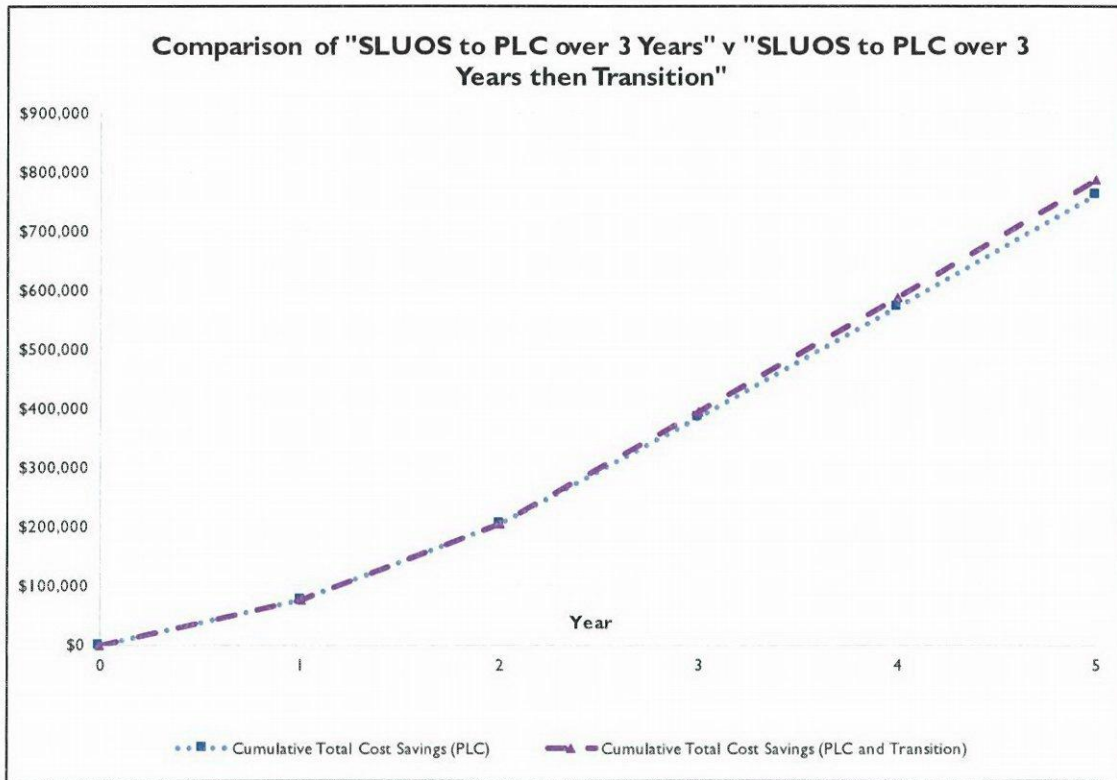
If Council decides to wait for 2 years in anticipation of a successful “LGA model” then it will add an extra \$204,446 in energy costs (blue dotted line) and tariff costs (red dotted line) in these first 2 years of “BAU” or “no changeover”. After that, from year 3, energy and tariff savings will begin to flow and the total cost savings (green dotted line) will begin to improve.

3.5 Comparison of Scenarios



This graph compares all four scenarios. It is clear that the “business case usual” scenario demonstrates the worst outcome (red solid line). Under the BAU scenario, Council continues to pay 5.6 times the electricity cost compared to the costs of the new LEDs. The second “worst” outcome is “business as usual and then transition to the LGA model” because for 2 years council is still paying the higher energy and tariff costs and the benefits only start to flow from year 3. Quite simply, any model that involves “doing nothing” or “BAU” will result in significant missed-savings in the order of hundreds of thousands of dollars (up to \$760,289 after 5 years).

The “PLC” and “PLC and transition” scenarios clearly offer the best value from a financial point of view. On the graph above these two dotted lines are very difficult to tell apart, so the graph on the following page compares these two in more detail.



This graph compares changing over to LEDs under PLC (the blue dotted line) and changing to PLC over the 3 years under PLC but transitioning to a proposed "LGA Model" after 2 years. It assumes that the cost of transitioning will be a \$10 per light administration fee to SAPN, which has been negotiated between SAPN and multiple councils with a final agreement to be confirmed.

The table below provides the data from the graph above.

Year	Cumulative Total Cost Savings (PLC)	Cumulative Total Cost Savings (PLC and Transition)
0	\$0	\$0
1	\$76,385	\$76,385
2	\$204,366	\$204,366
3	\$384,730	\$393,151
4	\$569,993	\$587,088
5	\$760,289	\$786,319

This scenario also assumes that the proposed "LGA Model" will result additional tariff cost savings of around 20% each year. It is impossible to calculate the exact amount of tariff savings through the proposed "LGA Model" will provide because the data inputs and assumptions underpinning the LGA's business case is not available for analysis. However high-level figures presented by representatives of the LGA on multiple occasions⁴ has confirmed that the headline LGA savings are based on a comparison of the **SAPN LED** tariff and the proposed "LGA

⁴ Most recently at a councillor's forum at City of Charles Sturt on Tuesday 14th March 2017.

Model” – as opposed to a comparison of the **PLC LED** tariff and the proposed “LGA Model”. This is an important distinction because the Ironbark business case is recommending Council changeover to LED under the PLC tariff, not the SAPN LED tariff.

The assumed 20% tariff cost savings in the analysis above is on the more optimistic side of what could be achieved through the “LGA Model” in comparison to PLC. Even then, it is clear that the extra benefits of the “LGA Model” even taking into account the transition costs – on the contrary, the energy cost savings and tariff cost savings are significant regardless of whether the lights are owned by SAPN or transitioned to an alternative “LGA Model”.

4 Summary of Analysis

This analysis has determined that there are significant financial benefits in moving to LEDs now under existing available tariff arrangements (the PLC tariff) while leaving the option open for a future transition to the “LGA model” if the opportunity arises.

By transitioning to LED via the PLC tariff, Council guarantees the financial savings due to the significant electricity cost savings.

Regardless of the tariff arrangements, the new LED streetlights will reduce energy usage by up to 82%, compared to the existing 80 Watt Mercury Vapour streetlights which make up 63% of Council’s residential street light stock. Put another way, the 80W mercury vapour street lights use 5.6 times the electricity of LED alternatives and these financial savings can be realised immediately.

Given the low cost of transitioning to a proposed “LGA model” and the significant energy cost savings to be made immediately, any scenario that involves “doing nothing” or “BAU” will result in Council paying significantly more in energy costs. The longer Council waits – and continues to pay 5.6 times the electricity usage costs – the larger these costs will be.

Attachment 2

Our Reference: tba

18 May 2018

The City of Holdfast Bay
PO Box 19,
Brighton SA 5048

Attention: Mr Rajiv Mouveri

Dear Sir

Public Lighting Letter of Offer - City of Holdfast Bay LED Upgrade ("Project")

I refer to the correspondence between SA Power Networks and the City of Holdfast Bay ("Council") regarding the above-mentioned lighting upgrade Project.

SA Power Networks is pleased to make this offer to Council for the supply of public lighting services for the Project. This offer comprises this letter ("Letter of Offer") and the Attachments thereto (including the Annexures to the Attachments) ("Offer").

All dollar values expressed in this Offer exclude GST. Any capitalised terms or expressions used in this Letter of Offer have the meaning given to those terms or expressions in the Tariff Agreement.

The contact person assigned to this Project is Mr Mark Vinall, whose contact details are provided below.

SUMMARY OF PROJECT

Lighting Upgrade

New Luminaire Type (as specified in Annexure B.1 of the Tariff Agreement)	Tariff Type	Starting Period Tariff Amount	Number of Luminaires	Council Upfront Contribution (Fee)
Sylvania Street LED MKII 14W LED	PLC LED	\$44.30 ¹	2558	\$898,727.72
Total Estimated Council Upfront Contribution (ex. GST)				\$898,727.72

Tariffs

The terms and conditions applicable to each Tariff are set out in the Tariff Agreement. The documents comprising the Tariff Agreement are listed in order of precedence in clause 1 of "Attachment A - General Conditions".

Any modifications to the standard service levels set out in the Tariff Agreement, and the pricing impact thereof, are set out in Annexure A.2 and Annexure A.3 (respectively).

Term of Tariff Agreement

The Initial Term of the Tariff Agreement is 10 years.

¹ \$2017/18, subject to amendment as at 1 July 2018.

Project Description

Please refer to “Attachment B – Project Description” for a description of the Project.

Specific Project Arrangements

SA Power Networks commits to the following in respect of this Project:

- To ensure the prompt updating of records during the changeover process, including quickly passing information on to Council’s energy retailer;
- To work with Council to develop effective strategies for community engagement during the roll out;
- To work with Council to develop clear roles and responsibilities for the handling of enquiries and ongoing customer management of public lighting; and
- To inform Council in writing of the precise number of Luminaires installed within 30 days of completion of the Project.
- The Construction Methodology annexed to this Letter of Offer shall apply to the upgrade process.

Construction Agreement

Where the Tariff selected by Council involves SA Power Networks funding the installation of the Luminaires in accordance with the provisions of the SAPN LED Tariff, no Construction Agreement is required.

If the Construction Agreement applies

Where the Tariff selected by Council involves Council funding the installation of the Luminaires by SA Power Networks in accordance with the provisions of either the PLC LED Tariff or the TFI LED Tariff, the terms and conditions applicable to the supply and installation of the Luminaires are contained in the Construction Agreement, which is provided in “Attachment C – Construction Agreement.”

Any modifications to the Construction Agreement are set out in Annexure C.1. The total Fee payable by Council for the installation of the Luminaires under the Construction Agreement is particularised in Annexure C.2.

In accordance with clause 1.3 of the General Conditions, upon completion of the installation and energisation of the Luminaires, the terms of the Tariff Agreement will apply to the Services (other than the Construction Agreement, save from those terms that are intended to survive expiration or termination of the Construction Agreement (including but not limited to the payment of the Fee under Annexure C.2)).

Despite clause 5.2 of the General Conditions, ownership and title in each Luminaire will vest with Council on payment of that part of the Council Upfront Contribution relevant to that Luminaire, provided however that this amendment does not otherwise vary or limit the effect of any of the other provisions in clauses 5.1, 5.2, 5.2.1, 5.2.2 and 5.2.3 of the General Conditions.

If the Construction Agreement is terminated prior to completion of the installation of all Luminaires, then the Tariff Agreement will apply (other than Attachment C – Construction Agreement, Annexure C.1. and Annexure C.2.) to the Luminaires that have been installed and for which SA Power Networks has been paid the Fee under Annexure C.2.

ACCEPTANCE OF THIS OFFER

To accept this Offer, please have a duly authorised Officer sign two copies of the Letter of Offer. At that time, the Tariff Agreement will become effective.



We would ask that you retain one copy of the Letter of Offer for your own records, and return the other to SA Power Networks by:

1. Scanning a copy and emailing it to: roadlighting@sapowernetworks.com.au; and
2. Posting the second original to: Lighting Solutions, SA Power Networks
41-55 Barnes Avenue
Marleston SA 5033

Please note that this Offer only remains open for twenty-eight (28) days from the date of this Letter of Offer, after which time it will lapse unless otherwise agreed in writing.

Should you have any queries, or if we can assist in any way, please do not hesitate to contact Mr Mark Vinall, Lighting Solutions Manager, whose contact details are as follows:

Phone: 0407 940 254 or 08 8292 0433
Email: mark.vinall@sapowernetworks.com.au
Post: GPO Box 77, Adelaide SA 5001

Yours faithfully

Robert Stobbe
Chief Executive Officer
SA Power Networks

*Enclosed: Attachment A: General Conditions
Attachment B: Project
Attachment C: Construction Agreement
Construction Methodology*

Acceptance of Offer

The City of Holdfast Bay, ABN 62 551 270 492, accepts this Offer and acknowledges and agrees that, on and from the date of signing, it is bound by the terms and conditions of this Offer.

**Signed for and on behalf of
the CITY OF HOLDFAST BAY**
by its duly authorised signatory

Witnessed by:

Signature of duly authorised signatory

Signature of Witness

Name (please print)

Name (please print)

Title (please print)

Title (please print)



Date

Date



**ATTACHMENT A
GENERAL CONDITIONS**

Council and SAPN (together “the Parties”) agree as follows:

OPERATIVE PROVISIONS

1 THE AGREEMENT

- 1.1 The Tariff Agreement comprises the following contract documents:
- 1.1.1 Letter of Offer;
 - 1.1.2 the General Conditions and the Annexures to the General Conditions;
 - 1.1.3 the Other Attachments and the Annexures to the Other Attachments; and
 - 1.1.4 Such other terms and conditions as agreed between in writing by the Parties.
- 1.2 Except where otherwise indicated, in the event of any inconsistency between the documents which comprise the Tariff Agreement, the order of precedence is as set out in clause 1.1 of the General Conditions.
- 1.3 Where the PLC LED Tariff applies, or SAPN is to supply and install the Luminaries under the TFI LED Tariff, the Parties acknowledge and agree that:
- 1.3.1 the terms and conditions of the Construction Agreement will apply the supply and installation of the Luminaires until energisation, after which the Construction Agreement will cease to apply; and
 - 1.3.2 the Services will be provided to Council by SA Power Networks in accordance with the Tariff Agreement (other than Attachment C – Construction Agreement and Annexure C.1.),

except for those clauses of the Construction Agreement, which are intended to survive expiration or termination of the Construction Agreement (including but not limited to the payment of the Fee by Council under Annexure C.2).

2 PARTY OBLIGATIONS

- 2.1 In relation to this Tariff Agreement, each Party agrees and is responsible for (at its sole cost):
- 2.1.1 conducting such asset, legal, financial and tax due diligence investigations which it may reasonably consider necessary or desirable; and

- 2.1.2 obtaining all necessary internal approvals; and
- 2.1.3 compliance with all applicable Laws in relation to this Tariff Agreement.

2.2 Council acknowledges and agrees that:

- 2.2.1 SAPN is not responsible or liable for the design of the Relevant Lighting nor does it give any warranty or undertaking whatsoever to Council as to the adequacy or otherwise of any lighting design, including the location of the Relevant Lighting and whether the lighting design complies with the Relevant Standard or the Law;
- 2.2.2 For the purposes of the *Work Health and Safety Act, 2012 (SA)*, SAPN is the person conducting a business or undertaking under this Tariff Agreement including (for the avoidance of doubt and where relevant), the Construction Agreement in Attachment C.
- 2.2.3 Council is responsible for:
 - 2.2.3.1 vegetation management, in and around the Relevant Lighting (other than as required by Law);
 - 2.2.3.2 providing access to the Site in accordance with this Tariff Agreement;
 - 2.2.3.3 payment of the agreed Tariff;
 - 2.2.3.4 maintenance of the Site in accordance with Law;
 - 2.2.3.5 community relations;
 - 2.2.3.6 obtaining all Approvals (where applicable and required);
 - 2.2.3.7 promptly providing any additional information as requested by SAPN to fulfil its obligations in relation to the Services and this Tariff Agreement;
 - 2.2.3.8 any alteration, amendment or variation of the design, the Site, location of the Relevant Lighting at the Site or other infrastructure, including by way of example only, roads and pathways that may affect, among other things, the fitness for purpose of those Goods and/or compliance with the Law; and
 - 2.2.3.9 promptly notifying SAPN in writing as soon as it becomes aware of any change that may adversely affect the Services.

3 THE SERVICES

- 3.1 The Services to be provided by SAPN for each Tariff are as described in Annexure A.1.

3.2 The Services will be based on and charged at the agreed amount for that Tariff, as set out in the Letter of Offer and as amended from time to time under this Tariff Agreement.

3.3 SAPN's obligations include:

3.3.1 providing the Services in accordance with this Tariff Agreement;

3.3.2 planning, coordinating and managing its personnel and all other relevant resources as required to deliver the Services;

3.3.3 providing all of the Goods (except where otherwise required or agreed);

3.3.4 providing all necessary information that may reasonably be required by Council by way of regular maintenance performance and asset information reporting.

3.4 Spares

3.4.1 The Parties acknowledge and agree that SAPN is not required to hold spare Luminaires or spare parts for Luminaires other than for those Luminaires listed in Annexure B.1.

3.4.2 SAPN will supply all other Goods in the performance of the Services.

3.4.3 Under the PLC LED Tariff, where the Luminaire fails and is replaced by SAPN, Council will pay SAPN the reasonable cost to replace the Luminaire which in the case of a Standard SAPN Luminaire will not include labour costs under normal circumstances (for example, systemic Luminaire defects would not constitute a normal circumstance).

3.5 Changes to or associated with the Services

Without limiting any other clauses in this Tariff Agreement, if any of the following events occur:

3.5.1 Council, directs a change in the Services, the Goods (excluding the Luminaires) or design;
or

3.5.2 a change in a relevant Law or Approval;

3.5.3 a change to the location, the Site, access, or other infrastructure; or

3.5.4 SAPN has notified Council of a Latent Condition in relation to the performance of the Services,

and that event necessitates a change:

3.5.5 to the Services;

3.5.6 in the Goods (excluding the Luminaires); or

3.5.7 in the Tariff,

which causes SAPN to incur reasonable cost or expense which is more than 10% than otherwise would have been incurred or reasonably anticipated at the commencement of this Tariff Agreement, those costs and expenses (whether directly attributed or allocated in accordance with the AER's Cost Allocation Guidelines) incurred by SAPN shall be payable by Council, or alternatively if the change results in SAPN having the benefit of a 10% reduction in cost or expense, then that benefit shall be passed onto Council. If requested by Council, SAPN must provide reasonable documentary evidence of cost or expenses incurred.

3.6 If Council wishes SAPN to, at Council's cost, make an alteration or improvement to the Luminaires, then Council must seek SAPN's consent to the proposed alteration or improvement, which consent shall not be unreasonably withheld, provided that the alteration or improvement does not adversely affect SAPN's ability to deliver the Services in accordance with terms of this Tariff Agreement or any other services provided by SAPN or any Related Body Corporate, including (without limitation):

3.6.1 the safety of people, property and the environment;

3.6.2 the performance of the Luminaires;

3.6.3 the structural integrity of the infrastructure supporting the Luminaires; or

3.6.4 the efficiency, reliability, and ability to maintain of the Luminaires or SAPN's electricity distribution network.

3.7 If SAPN elects, at its cost, to make a material alteration or improvement to the Luminaires, then SAPN will notify Council within 60 days of making the alteration or improvement. SAPN will not make alterations that adversely affect the safety of people, property and the environment, or the performance of the Luminaire.

3.8 Subject to their obligations at Law, neither Party will preclude the other Party from obtaining the benefits of any alterations or improvements made to the Luminaires under clauses 3.6 and 3.7 and will use their best endeavours (where reasonably practicable) to share any such benefits with the other Party.

4 WARRANTIES

4.1 SAPN warrants that:

4.1.1 unless agreed otherwise, it will supply the Goods for the performance of the Services;

4.1.2 the Services will be performed at good industry standard.

5 RISK AND INDEMNITY

- 5.1 Subject to clause 5.2 below, ownership and title in the Goods and associated assets remains with SAPN or will be vested in SAPN.
- 5.2 Unless otherwise agreed in writing, where the PLC LED Tariff applies, ownership and title in the Luminaires will vest with Council on payment in full of the Council Upfront Contribution as set out Annexure C.2. or the replacement cost where the Council pays the costs of a replacement Luminaire under clause 3.4.3, and following installation of the Luminaires, PROVIDED HOWEVER, that Council acknowledges and agrees that:
- 5.2.1 despite having ownership and title to the Luminaires it shall have no other rights whatsoever to or in respect of the Luminaires, including no right to use, modify, possess, access, maintain or repair the Luminaires other than as set out in this Tariff Agreement and that SAPN shall retain all such rights in accordance with the terms of this Tariff Agreement;
 - 5.2.2 SAPN may at its sole discretion make any additions or improvements to the Luminaires as it sees fit (at no cost to Council) and in such case, SAPN shall retain ownership and title in the additions or improvements, other than where the additions or improvements are affixed to the Luminaire in such a manner that to remove them would cause irreparable damage to the Luminaire; and
 - 5.2.3 if Council wishes to sell or transfer its ownership and title in the Luminaires, it must obtain the prior written consent of SAPN to the sale or transfer, which consent may be given on such terms and conditions as SAPN deems fit. The terms and conditions of consent may include (among other things) the requirement that Council and the incoming purchaser execute a novation agreement with SAPN, whereby the incoming purchaser, acknowledges and agrees (among other things) that it will comply with Council's obligations under this Tariff Agreement.
- 5.3 Other than as expressly contemplated in this Tariff Agreement, all risk and cost in and associated with the Site location; lighting design; and choice of Luminaire (where the Luminaire is not a Standard SAPN Luminaire) is to be borne solely by Council.
- 5.4 The following risks are excluded by SAPN:
- 5.4.1 design of the lighting;
 - 5.4.2 defects in any goods and services supplied by Council or any third party not engaged or contracted by SAPN;
 - 5.4.3 unsafe Site;
 - 5.4.4 Latent Conditions.

- 5.5 SAPN indemnifies Council and its officers, employees, contractors, consultants and subcontractors (**Council indemnified party**), to the fullest extent permitted under Law, for any liability, cost and expense (including legal fees and expenses), loss and damage suffered or incurred by a Council indemnified party, as a result of a negligent act or omission of SAPN or its officers, employees, contractors, consultants or subcontractors, arising as a result of the Services, but this indemnity shall be reduced proportionally to the extent that any negligent act or omission of a Council indemnified party directly caused the injury, death, loss or damage to arise.
- 5.6 Council indemnifies SAPN and its officers, employees, contractors, consultants and subcontractors (**SAPN indemnified party**), to the fullest extent permitted under Law, for any liability, cost and expense (including legal fees and expenses), loss and damage suffered or incurred by a SAPN indemnified party, as a result of a negligent act or omission of Council or its officers, employees, contractors, consultants or subcontractors, arising as a result of the Services, but this indemnity shall be reduced proportionally to the extent that any negligent act or omission of a SAPN indemnified party directly caused the injury, death, loss or damage to arise.
- 5.7 A party indemnified under this Tariff Agreement must take all reasonable steps to mitigate its loss, and not settle any claim the subject of an indemnity without the consent of the indemnifier (which consent shall not be unreasonably withheld).

6 LIABILITY AND INSURANCE

- 6.1 Except where otherwise intended or apparent in the Tariff Agreement in clauses 10 and 11, SAPN will not be liable to Council in respect of any Consequential Loss which may be suffered or incurred by Council in connection with the Services or this Tariff Agreement, and this exclusion of liability shall apply whether the liability or claim is based on breach of contract, repudiation, tort (including negligence), under an indemnity, under statute, in equity or otherwise.
- 6.2 Except where apparent in the Tariff Agreement in clauses 10 and 11, Council will not be liable to the SAPN in respect of any Consequential Loss which may be suffered or incurred by SAPN in connection with the Services or this Tariff Agreement, and this exclusion of liability shall apply whether the liability or claim is based on breach of contract, repudiation, tort (including negligence), under an indemnity, under statute, in equity or otherwise.
- 6.3 Subject to clause 6.5 and 6.6 of the General Conditions and to the extent permitted by Law, the liability of a Party to the other Party for any claims, causes of action, occurrences or other matters arising out of or in connection with this Tariff Agreement (whether in contract, tort, under indemnity or otherwise) is limited to a maximum aggregate amount of \$20 million. For the avoidance of doubt, this limitation applies to any liability in respect of the matters the subject of any indemnities provided in this Tariff Agreement.
- 6.4 Notwithstanding any other provision of this Tariff Agreement, to the extent permitted by Law, the liability of SAPN for failure to comply with a statutory requirement, guarantee or warranty (including a guarantee under the *Australian Consumer Law of the Competition and Consumer Act 2010* (Cth), if applicable) is limited to:

- 6.4.1 in the case of Goods, to one of the following as determined by SAPN: 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
- 6.4.2 in the case of Services, to one of the following as determined by SAPN: the supplying of the Services again or the payment of the cost of having the Services supplied again.
- 6.5 Notwithstanding clause 6.4 of the General Conditions, SAPN's limit of liability under clause 4.3 of Construction Agreement shall apply with respect to the Services provided by SAPN under the Construction Agreement.
- 6.6 SAPN acknowledges and agrees that it will cause to be effected and maintained the insurance policies as contained in Annexure A.1.1 for the amounts as contained therein.
- 6.7 For the purposes of clause 6.1 and 6.2 above, "Consequential Loss" means any liability or claim suffered or incurred by any person (including under an indemnity) whether arising in contract, tort, under statute or on any other basis in law or equity for:
- (a) loss of profit;
 - (b) loss of revenue;
 - (c) loss of production;
 - (d) loss of goodwill;
 - (e) loss of business opportunity; or
 - (f) without limiting (a) - (e), losses other than those losses that may fairly and reasonably be considered as naturally flowing from the breach of the Tariff Agreement, as the probable result of the breach of the Tariff Agreement.

7 FORCE MAJEURE EVENT

- 7.1 Neither Party will be liable for any failure of performance or delay caused by any Force Majeure Event (FME).
- 7.2 If an FME occurs:
- 7.2.1 A Party affected by the FME shall notify the other Party as soon as practical of the FME and the extent to which that Party is unable to comply with its obligations.
 - 7.2.2 The performance of non-financial obligations of a Party under the Tariff Agreement which are affected by an FME shall be suspended to the extent and for the time that it is wholly or partially precluded from complying with its obligations under this Tariff Agreement by the FME.
 - 7.2.3 The affected Party shall, using all reasonable diligence and endeavours, seek to remedy, avoid or overcome the FME as quickly as practicable and otherwise seek to minimise any delays which may result from the FME.

- 7.2.4 The affected Party shall promptly on the cessation of the FME notify the other Party of the cessation and recommence performance of its obligations under the Tariff Agreement.
- 7.2.5 A Party is not relieved of an obligation to pay an amount due and payable under the Tariff Agreement by an FME.
- 7.3 SAPN will be entitled to an extension of time to perform its obligations under the Tariff Agreement, the length of which shall be determined having regard to the existence and duration of any FME.
- 7.4 If any FME endures for more than 180 days such that it prevents SAPN providing the Services to more than 75% of the Luminaires installed under the terms of this Tariff Agreement, either Party may terminate this Tariff Agreement (by giving written notice to the other Party), in which case the Party's respective rights and obligations will be determined in accordance with clause 10 of this Tariff Agreement.

8 CONFIDENTIALITY

8.1 Each Party acknowledges and agrees that, in entering into this Tariff Agreement, it is to keep confidential:

8.1.1 all pricing and rates and liability in connection with this Tariff Agreement;

8.1.2 any documentation specifically marked confidential by a Party;

8.1.3 any discussions or negotiations between the Parties,

provided such information is not already in the public domain, except by reason of a breach of this Tariff Agreement;

("Confidential Information")

8.1.4 and each Party also acknowledges and agrees to:

8.1.4.1 only use Confidential Information solely for the purposes of performing the rights and obligations of that Party under this Tariff Agreement; and

8.1.4.2 not disclose Confidential Information, unless otherwise agreed in writing by the Party disclosing that Confidential Information or required by Law, or for the purposes of defending any legal proceedings, or in the case of Council, if Council discloses Confidential Information to the Parliament of South Australia, Cabinet or a Parliamentary or Cabinet Committee, or to Council's Minister, the Treasurer or Premier of South Australia (in respect of which Council is entitled to disclose Confidential Information).

8.2 Notwithstanding the above Council may disclose Confidential Information to its professional advisers (including industry representatives or industry advisors) (collectively, the **Professional Advisers**), provided that the Professional Adviser:

8.2.1 does not provide public lighting services and has no intention of providing public lighting services in the future; or

8.2.2 where it does provide public lighting services or intends providing public lighting services in the future, establishes sufficient information barriers so that the employees and/or part of the Professional Adviser's business that provides (or will provide) public lighting services cannot access and are not privy to the Confidential Information. Before disclosing any Confidential Information to such a Professional Adviser, Council must:

8.2.2.1 have the Professional Adviser acknowledge in writing that it is aware that the Confidential Information is confidential and confirm that the necessary information barriers have been established; and

8.2.2.2 notify SAPN in writing of the fact that the Professional Adviser provides public lighting services or intends providing public lighting services in the future, confirm that the necessary information barriers have been put in place and provide SAPN with a copy of the Professional Adviser's written acknowledgement referred to in paragraph 8.2.2.1 above; and

8.2.2.3 obtain SAPN's written consent to disclosure of the Confidential Information to the Professional Adviser, which consent SAPN must not unreasonably withhold.

8.3 The provisions of this Clause 8 of the General Conditions are binding and shall survive any expiry or termination of this Tariff Agreement for a period of five (5) years to the maximum extent permitted by Law.

9 DISPUTE AND MEDIATION

9.1 Where a dispute arises under this Tariff Agreement, the dispute must be dealt with in accordance with this clause 9.

9.2 Where a dispute arises, either Party may give a notice to the other Party specifying:

9.2.1 the dispute;

9.2.2 the particulars of the Party's reason for being dissatisfied; and

9.2.3 the position that the Party believes is correct,

("Dispute Notice")

- 9.3 Subject to clause 9.7 of the General Conditions, unless a Party has complied with the procedure to resolve the dispute under this clause 9, that Party may not commence litigation or any other form of dispute resolution procedure.
- 9.4 If a Dispute Notice is issued under clause 9.2 of the General Conditions, then each Party will appoint a senior representative with authority to resolve the dispute. The respective senior representatives will meet within twenty-eight (28) days from the date of service of the Dispute Notice and use their best endeavours to negotiate in good faith a resolution of the dispute.
- 9.5 If, despite using their best endeavours, the senior representatives of the Parties are unable to resolve the dispute within twenty-eight (28) days of the date of service of the Dispute Notice, the dispute shall be referred to mediation. If the Parties are unable to agree on a mediator within seven (7) days of the dispute being referred to mediation, the Parties shall refer the dispute to the President of the Law Society of South Australia, to appoint a mediator on the Parties' behalf.
- 9.6 In the event that the dispute does not resolve at mediation within ninety (90) days of the date of service of the Dispute Notice (or such longer period as may be agreed between the Parties), then either Party may refer the dispute to arbitration in Adelaide, Australia.
- 9.7 The arbitration will:
- 9.7.1 be administered by the Australian Disputes Centre (ADC);
 - 9.7.2 be conducted in accordance with the ADC Rules for Domestic Arbitration operating at the time the dispute is referred to arbitration (the Rules) with the terms of the Rules deemed incorporated into this Tariff Agreement;
 - 9.7.3 not be conducted by an arbitrator who is the same person as the mediator, unless the parties each consent in writing to the arbitrator so acting.
- 9.8 Nothing in this clause 9 will preclude a Party from seeking an urgent interim or interlocutory injunction or other form of equitable relief in cases of genuine urgency.

10 TERM AND TERMINATION

- 10.1 This Tariff Agreement shall become effective upon the date on which the Letter of Offer has been signed by all Parties and shall continue in full force and effect for the Initial Term unless terminated earlier pursuant to this clause 10.
- 10.2 At any time during the Initial Term, Council may at its convenience on no less than 30 days' written notice to SAPN, elect to transition all or some of the Luminaires the subject of this Tariff Agreement from the SAPN LED Tariff to a PLC LED Tariff or from a PLC LED Tariff to a SAPN LED Tariff, in which case the following shall apply:

10.2.1 in the case of a transition from the SAPN LED Tariff to the PLC LED Tariff, Council shall pay to SAPN the Transition Costs (with respect to each Luminaire the subject of the transition) as follows:

10.2.1.1 the Written Down Value of the Luminaire; and

10.2.1.2 the Administration Fee;

provided however, that apart from the matters set out in clauses 10.2.1.1 and 10.2.1.2 of the General Conditions, the Tariff Agreement, shall remain the same and enforceable for the remainder of the Initial Term.

10.2.2 in the case of a transition from the PLC LED Tariff to the SAPN LED Tariff, the Initial Term shall be extended for a further period of twenty (20) years from the date Council gives notice to SAPN under clause 10.2 of the General Conditions.

10.3 If, during the Term, there is a change in the economic environment and/or a change in Law directly relating to the delivery of public lighting services in South Australia, which has a material cost impact on SAPN such as to make it uneconomic for SAPN to continue to provide the Services, SAPN and Council agree to work together in good faith to terminate this Tariff Agreement on mutually acceptable terms, which are fair and equitable to both parties. If agreement on terms cannot be reached within 120 days (or such longer period as may be agreed) of SAPN notifying Council that it wishes to invoke this clause, then either party may refer the matter to dispute resolution under clause 9 of this Tariff Agreement.

10.4 SAPN may terminate this Tariff Agreement at any time, if required to do so by Law, in which case Council shall pay the Break Costs set out in Clause 10.5.1.1 or 10.5.1.3 and any Make Good Costs as set out in Clause 10.5.2, as applicable.

10.5 At any time during the Term, Council may at its convenience on no less than ninety (90) days' written notice to SAPN elect to terminate the Tariff Agreement in which case Council will be liable to SAPN for:

10.5.1 the following Break Costs per Luminaire:

10.5.1.1 if the SAPN LED Tariff applies and Council does not enter into an alternative arrangement with SAPN or a Related Body Corporate under which SAPN recovers the per light share of actual infrastructure capital costs as described in Annexure A.2 (clause B.ii.2.b), Council shall pay to SAPN:

10.5.1.1.1 the Written Down Value of the Luminaire;

10.5.1.1.2 the Relevant Infrastructure Capital Value; and

10.5.1.1.3 the Administration Fee;

10.5.1.2 if the SAPN LED Tariff applies and Council does enter into an alternative arrangement with SAPN or a Related Body Corporate under which SAPN

recovers the per light share of actual infrastructure capital costs as described in Annexure A.2 (clause B.ii.2.b), Council shall pay to SAPN:

10.5.1.2.1 the Written Down Value of the Luminaire; and

10.5.1.2.2 the Administration Fee;

10.5.1.3 if the PLC LED Tariff or TFI LED Tariff applies and Council does not enter into an alternative arrangement with SAPN or a Related Body Corporate under which SAPN recovers the per light share of actual infrastructure capital costs as described in Annexure A.2 (clause B.ii.2.b), Council shall pay to SAPN:

10.5.1.3.1 the Relevant Infrastructure Capital Value; and

10.5.1.3.2 the Administration Fee;

10.5.1.4 if the PLC LED Tariff or TFI LED Tariff applies and Council does enter into an alternative arrangement with SAPN or a Related Body Corporate under which SAPN recovers the per light share of actual infrastructure capital costs as described in Annexure A.2 (clause B.ii.2.b), Council shall pay to SAPN the Administration Fee; and

10.5.2 all reasonable Make-Good Costs; and

upon payment in full of the Break Costs and Make Good Costs, title to the Luminaires shall pass to Council and Council may direct SAPN at Council's cost to deliver the Luminaires to a nominated location, unless title to the Luminaire is already vested in Council under clause 5.2, in which case any restriction of Council's rights under clause 5.2.3 will cease upon payment in full of the Break Costs and Make Good Costs as well as the cost to deliver the Luminaires to a nominated location.

10.6 Despite anything else to the contrary, Council cannot elect under clause 10.5 or otherwise to terminate this Tariff Agreement and seek to enter into a CLER Tariff or EO Tariff with SAPN with respect to those Luminaires the subject of the termination.

10.7 At any time during the Initial Term, the Parties may agree in writing that this Tariff Agreement be extended beyond the Initial Term for such period as may be agreed between the Parties, subject to the following conditions:

- 10.7.1 where the Tariff is not a PLC LED Tariff, the Tariff changing from a:
 - 10.7.1.1 SAPN LED Tariff to a PLC LED Tariff; or
 - 10.7.1.2 TFI LED Tariff to a PLC LED Tariff;
 - 10.7.2 SAPN making a “whole of life” assessment on the Relevant Lighting and determining if any of the Luminaires require replacement, in which case the Parties shall negotiate a new Tariff Agreement with respect to the replacement Luminaires;
 - 10.7.3 Neither Party is in breach of a material term of this Tariff Agreement.
- 10.8 Notwithstanding anything else to the contrary, this Tariff Agreement shall terminate on and from the earliest date to occur of the following events:
- 10.8.1 where a Party enters external administration (as defined in the *Corporations Act, 2001* (Cth)) or (in the case of an entity not governed by the *Corporations Act, 2001* (Cth)) a similar event occurs, and the other party serves notice of termination of this Agreement on that ground within ninety (90) days after the occurrence of that event; and
 - 10.8.2 if a Party breaches a material obligation under this Tariff Agreement (“Defaulting Party”) and fails to remedy that breach within thirty (30) days of the other Party serving a written notice on the Defaulting Party specifying the alleged breach and requiring the breach to be remedied, provided however that the Tariff Agreement shall not terminate in circumstances where the breach is not capable of remedy but the defaulting party provides reasonable compensation to the non-defaulting party for the loss and damage arising from the breach.
- 10.9 Termination of this Tariff Agreement in accordance with clauses 10.4, 10.5 or 10.8 of the General Conditions will not affect any other contractual arrangement or existing rights and liabilities between the Parties at the date of such termination, or any other clause said to survive termination.
- 10.10 If this Tariff Agreement is terminated pursuant to clause 10.8 of the General Conditions, the Defaulting Party will be responsible for all reasonable termination costs and expenses (whether directly attributed or, in SAPN’s case, allocated in accordance with the AER’s Cost Allocation Guidelines) incurred by the other party up to the date of termination, including without limitation:
- 10.10.1 the cost of all materials and equipment reasonably ordered;
 - 10.10.2 any Services performed which are due and payable;
 - 10.10.3 any third-party costs and expenses (whether directly attributed or, in SAPN’s case, allocated in accordance with the AER’s Cost Allocation Guidelines) which cannot reasonably be mitigated or avoided; and

10.10.4 in the case of Council, the costs set out in clause 10.4 of the General Conditions (the costs of which shall depend upon which Tariff applies).

10.11 In the event this Tariff Agreement expires at the conclusion of the Term and Council elects not to enter into:

10.11.1 another tariff agreement with SAPN or a Related Body Corporate in respect of some or all of the Luminaires; or

10.11.2 an alternative arrangement or agreement with SAPN or a Related Body Corporate in respect of some or all of the Luminaires (under which arrangement or agreement SAPN would recover for each Luminaire the per light share of actual infrastructure capital costs as described in Annexure A.2 (clause B.ii.2.b)),

then Council shall be liable to pay to SAPN the Relevant Infrastructure Capital Value for each of the Luminaires that are not incorporated in:

10.11.3 another tariff agreement; or

10.11.4 an alternative arrangement or agreement with SAPN or a Related Body Corporate.

10.12 The rights and remedies given by this clause 10 of the General Conditions are additional to any other rights and remedies that a Party may have at Law or in equity.

11 REMOVAL OF SOME LUMINAIRES FROM RELEVANT LIGHTING

11.1 At any time during the Term, Council may at its convenience on no less than ninety (90) days' written notice to SAPN, elect to remove certain Luminaires from the Relevant Lighting, in which case Council will be liable to SAPN for:

11.1.1 the following Break Costs with respect to each of the removed Luminaires:

11.1.1.1 if the SAPN LED Tariff applies and Council does not enter into an alternative arrangement with SAPN or a Related Body Corporate under which SAPN recovers the per light share of actual infrastructure capital costs as described in Annexure A.2 (clause B.ii.2.b), Council shall pay to SAPN:

11.1.1.1.1 the Written Down Value of the Luminaire;

11.1.1.1.2 the Relevant Infrastructure Capital Value; and

11.1.1.1.3 the Administration Fee;

11.1.1.2 if the SAPN LED Tariff applies and Council enters into an alternative arrangement with SAPN or a Related Body Corporate under which SAPN

recovers the per light share of actual infrastructure capital costs as described in Annexure A.2 (clause B.ii.2.b), Council shall pay to SAPN:

11.1.1.2.1 the Written Down Value of the Luminaire; and

11.1.1.2.2 the Administration Fee;

11.1.1.3 if the PLC LED Tariff or TFI LED Tariff applies and Council does not enter into an alternative arrangement with SAPN or a Related Body Corporate under which SAPN recovers the per light share of actual infrastructure capital costs as described in Annexure A.2 (clause B.ii.2.b), Council shall pay to SAPN:

11.1.1.3.1 the Relevant Infrastructure Capital Value; and

11.1.1.3.2 the Administration Fee;

11.1.1.4 if the PLC LED Tariff or TFI LED Tariff applies and Council does enter into an alternative arrangement with SAPN or a Related Body Corporate under which SAPN recovers the per light share of actual infrastructure capital costs as described in Annexure A.2 (clause B.ii.2.b), Council shall pay to SAPN the Administration Fee; and

11.1.2 all reasonable Make Good Costs and all other reasonable additional costs that SAPN incurs in having to provide the Services to the remainder of the Relevant Lighting;

provided however, that apart from the matters set out above in this clause 11 (including all subclauses therein) of the General Conditions, the Tariff Agreement shall remain the same and enforceable for the remainder of the Term with respect to those Luminaires which have not been removed.

12 SUSPENSION

12.1 Subject to clause 12.3, Council acknowledges that SAPN may without liability, cost and expense (including legal fees and expenses), loss or damage to any person howsoever arising, including Council, its officers, employees, contractors, subcontractors, suspend the performance of the Services in whole or in part for a period of up to 5 Business Days (or such greater amount of time as may be agreed between the Parties in writing):

12.1.1 where considered by SAPN (acting objectively and reasonably) to be necessary for the protection or safety of any person or property;

12.1.2 to comply with Law; or

12.1.3 due to physical conditions at the site and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which

should reasonably have been anticipated by SAPN at the time of entering into this Tariff Agreement,

and Council releases SAPN to the fullest extent for any such suspension.

- 12.2 Where either party disputes any aspect of a suspension (including where SAPN has requested a greater period of suspension which has not been agreed by Council), either party may refer the matter to dispute resolution under clause 9 of this Tariff Agreement.
- 12.3 Notwithstanding anything else to the contrary, the suspension of the performance of the Services under clause 12.2 does not limit SAPN's obligations to make GSL payments (where applicable).

13 APPLICABLE LAW

- 13.1 The Tariff Agreement shall be governed by and construed in accordance with the Laws of South Australia, Australia and the Parties submit to the exclusive jurisdiction of the courts of that State and all courts competent to hear appeals from the courts of that State in respect of all proceedings arising in connection with this Tariff Agreement.
- 13.2 Each Party is responsible and shall comply, at its sole cost, with all applicable Laws.

14 RELATIONSHIP OF THE PARTIES

- 14.1 Nothing contained herein is intended to create a partnership, principal and agent, trust, fiduciary or any other special relationship or a separate legal or corporate entity.
- 14.2 A Party does not have the right and must not represent or create the impression that it represents or has any authority to act on behalf of the other Party or that it has entered into any commitment, arrangement, agreement or understanding with the other Party other than to the extent contemplated under this Tariff Agreement, without such Party's prior written consent.

15 ASSIGNMENT OR NOVATION

- 15.1 SAPN may assign or novate this Tariff Agreement at any time without the prior consent of Council to the Distribution Lessor Corporation.
- 15.2 Subject to clause 15.1 above, SAPN must not assign this Tariff Agreement or its rights or obligations under this Tariff Agreement without Council's prior written consent, which consent will not be unreasonably withheld, provided the proposed assignee is able to comply with SAPN's rights or obligations under this Tariff Agreement.
- 15.3 Subject to clause 5.2.3, Council must not assign this Tariff Agreement or its rights or obligations under this Tariff Agreement without SAPN's prior written consent, which consent will not be unreasonably withheld, provided the proposed assignee is able to comply with Council's rights or obligations under this Tariff Agreement (including but not limited to Council's financial obligations).

16 INTELLECTUAL PROPERTY

- 16.1 Any designs, drawings and other technical information or documentation provided by SAPN under this Tariff Agreement, and all copyright and other Intellectual Property therein, will be and will remain the property of SAPN.
- 16.2 Council may use, reproduce and disclose any documentation or other information provided to Council by SAPN in supplying the Services provided always that Council complies with its obligations to SAPN under clause 8 above regarding the protection and non-disclosure of Confidential Information.

17 SURVIVAL

- 17.1 Provisions of this Tariff Agreement survive termination of the Tariff Agreement or expiry of the Term which, by their nature, are intended to survive.
- 17.2 Without limitation to clause 17.1(a) of the General Conditions, the obligations of the parties under clauses 5.4, 6 (including all subclauses therein), 7.4, 9 (including all subclauses therein), 10 (including all subclauses therein), 13 (including all subclauses therein), 16 (including all subclauses therein), 16 (including all subclauses therein), 18 (including all subclauses therein), 19.5, 19.6 of the General Conditions and any obligations which are expressed to survive termination of the Tariff Agreement or expiration of the Term, will survive the frustration, rescission, suspension, termination or expiration of this Tariff Agreement.

18 NOTICES

- 18.1 Any communications or notices given under this Tariff Agreement will be taken to be received by the Party to whom the communication is given in the case of:
 - 18.1.1 delivery by hand, on delivery,
 - 18.1.2 prepaid post:
 - 18.1.2.1 sent to an address within Australia, three (3) Business Days after posting;
 - 18.1.2.2 in any other case, ten (10) Business Days after posting;

- 18.1.3 email, on the first to occur of:
- 18.1.3.1 receipt by the sender of an email acknowledgment of delivery from the intended recipient's information system;
 - 18.1.3.2 the time that communication enters an information system which is under the control of the intended recipient;
 - 18.1.3.3 the time that communication is first opened or read by an employee or officer of the intended recipient.
- 18.1.4 fax, at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent.

18.2 If a communication is given:

18.2.1 after 5.00pm in the place of receipt; or

18.2.2 on a day which is a Saturday, Sunday or bank or public holiday in the place of receipt,

it is taken as having been given at 9:00 am on the next day which is not a Saturday, Sunday or bank or public holiday in that place.

19 MISCELLANEOUS & GST

- 19.1 No modification or amendment to this Tariff Agreement shall be valid unless agreed in writing by the Parties. Where a modification is proposed by one Party, failure to respond within two (2) calendar months will be taken to mean refusal.
- 19.2 This Tariff Agreement constitutes the entire understanding between the Parties in relation to its subject matter and supersedes any previous understandings, representations or communications either orally or in writing.
- 19.3 If any provision of this Tariff Agreement is unenforceable by Law, that provision will be severed and the rest of the Tariff Agreement will remain in full force and effect.
- 19.4 A Party who has an obligation to do anything under this Tariff Agreement must perform that obligation at its own cost, unless a provision of this Tariff Agreement expressly provides otherwise.
- 19.5 Each indemnity in this Tariff Agreement is a continuing obligation separate and independent from the other obligations of the Party and it is not necessary for a Party to incur expense or to make any payment before enforcing a right of indemnity conferred by this Tariff Agreement.
- 19.6 A single or partial exercise or waiver by a party of a right relating to this Tariff Agreement does not prevent any other exercise of that right or the exercise of any other right. A Party is not liable for any

loss, cost or expense of any other Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

- 19.7 In the interpretation of any of the documents listed in clause 1.1 of the General Conditions, no rule of contract interpretation applies to the disadvantage of one Party on the basis that it put forward the relevant document or any part of it.
- 19.8 This Tariff Agreement may be executed in any number of counterparts and all of such counterparts taken together will be deemed to constitute one and the same instrument.
- 19.9 Unless specifically described in this Tariff Agreement as "GST inclusive", the consideration to be paid or provided for a supply made under or in connection with this Tariff Agreement does not include any amount on account of GST.
- 19.10 Where any supply to be made by one party ("Supplier") to the other party ("Recipient") under or in connection with this Tariff Agreement is subject to GST (other than a supply the consideration for which is specifically described in this Tariff Agreement as "GST inclusive"):
- 19.10.1 the consideration payable or to be provided for that supply but for the application of this clause ("GST Exclusive Consideration") shall be increased by, and the Recipient shall pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply; and
- 19.10.2 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.
- 19.11 If any payment to be made to a party under or in connection with this Tariff Agreement 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 19.10.2.
- 19.12 Notwithstanding any other provision of this Tariff Agreement, the Recipient need not make any payment for a taxable supply made under or in connection with this Tariff Agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.
- 19.13 If an adjustment event has occurred in respect of a taxable supply made under or in connection with this Tariff Agreement, 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.
- 19.14 SAPN acknowledges and agrees that during the Term, it will comply with the *Environment Protection (Waste to Resources) Policy 2010 (SA)* and adhere to the FluoroCycle Guidelines 2013 published by

the Lighting Council of Australia ("Guidelines"), to the extent that SAPN remains a Signatory (Commercial User) to the Guidelines (as those terms are defined in the Guidelines).

20 DEFINITIONS & INTERPRETATION

20.1 For the purposes of this Tariff Agreement, the following words mean:

- 20.1.1 "Administration Fee" means the administration fee as described in Annexure A.2 to this Tariff Agreement.
- 20.1.2 "AER" means the Australian Energy Regulator as established under the *Competition and Consumer Act 2010 (Cth)*.
- 20.1.3 "AER's Roll Forward Model" means the AER's distribution roll forward model prepared in accordance with the NER and published on the AER's website.
- 20.1.4 "AER's Post Tax Revenue Model" means the AER's distribution post tax revenue model prepared in accordance with NER and published on the AER's website.
- 20.1.5 "Annexures" means any of the annexures to the Attachments.
- 20.1.6 "Approval" means all approvals, consents, authorisations that are required for access to the Site, performance of the Services, operation and maintenance of the Goods.
- 20.1.7 "Attachments" means the attachments to the Letter of Offer comprising the Tariff Agreement
- 20.1.8 "Break Costs" means the costs referred to in clause 10 of these General Conditions and as described in Annexure A.2 to this Tariff Agreement.
- 20.1.9 "Business Day" means any day other than a Saturday, Sunday or public holiday in the state of South Australia.
- 20.1.10 "CLER Tariff" means Customer Lantern Equipment Rate tariff.
- 20.1.11 "Construction Agreement" means the Construction Agreement contained in Attachment C to this Tariff Agreement.
- 20.1.12 "Council" means the Council described in the Letter of Offer.
- 20.1.13 "Customer" means a public lighting customer including (where applicable in this Tariff Agreement) the Council.
- 20.1.14 "EO Tariff" means Energy Only tariff.

- 20.1.15 “Distribution Lessor Corporation” means the Distribution Lessor Corporation established under the *Public Corporations (Distribution Lessor Corporation) Regulations 1999 (SA)*.
- 20.1.16 “Documentation” means all documentation which a Party provides or makes available to the other Party pursuant to this Tariff Agreement, including reports, programs, plans, drawings, specifications, calculations, models and records, operating and maintenance manuals and instructions, and training materials.
- 20.1.17 “ESCOSA” means the Essential Services Commission of South Australia established under the *Essential Services Commission Act 2002 (SA)*.
- 20.1.18 Not used.
- 20.1.19 Not used.
- 20.1.20 “Force Majeure Event” means any event or circumstance not within the reasonable control of SAPN or its subcontractors or suppliers, including (but not limited to):
- 20.1.20.1 Acts of God, including, without limitation, earthquakes, floods, washouts, landslides, lightning, storms and the elements;
 - 20.1.20.2 Strikes, lockouts, slowdowns or other industrial disturbances, except where they are specific to SAPN and not industry wide;
 - 20.1.20.3 Acts of war, terrorism including malicious damage or revolution, blockades or insurrections, riots and civil disturbances;
 - 20.1.20.4 Fire or explosions;
 - 20.1.20.5 Epidemic or quarantines;
 - 20.1.20.6 Orders of any Courts or the order, act, or omission or failure of any government authority having jurisdiction;
 - 20.1.20.7 Failure to obtain any necessary governmental consent or approval due to such consent or approval not being available;
 - 20.1.20.8 Latent Conditions.
- 20.1.21 “General Conditions” means the terms and conditions set out this Attachment A, including any Annexures thereto.
- 20.1.22 “GSL” means the Guaranteed Service Level which SAPN is required to meet as determined by ESCOSA from time to time and currently referred to as the “Timeliness of street light repairs,” as part of ESCOSA’s GSL Scheme Categories and Payment Amounts.

- 20.1.23 "GSL payments" means the GSL payments that SAPN must make from time to time to its network customers and other third parties in the event it does not meet a GSL.
- 20.1.24 "GST" means any goods and services tax or similar value added tax levied or imposed by the Commonwealth of Australia and a word or expression used in clause 19 of this Tariff Agreement which is defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* has the same meaning in clause 19;
- 20.1.25 "Goods" means all goods and materials to be supplied as part of the Services.
- 20.1.26 "Initial Term" means the period specified as such in the Letter of Offer commencing (in respect of each Luminaire) from the date each Luminaire is first invoiced under the terms of this Tariff Agreement.
- 20.1.27 "Intellectual Property" means any patent, copyright, design or trademark, and any right to registration of any patent, copyright, design or trademark, or any other similar or like right including rights to trade secrets, know how, proprietary or confidential information.
- 20.1.28 "Latent Condition" means conditions are physical conditions on the premises and its near surrounds, including artificial things but excluding weather conditions, which differ materially from the physical conditions which should reasonably have been anticipated by a competent contractor at the time of commencement of the Services.
- 20.1.29 "Law" means all applicable Acts, Ordinances, regulations, by-laws, orders, awards, proclamations, Relevant Standards, certificates, licenses, consents, permits, approvals, requirements of organisations having jurisdiction in connection with the performance of the Services.
- 20.1.30 "LED" means light-emitting diode.
- 20.1.31 "Letter of Offer" means the Public Lighting Letter of Offer executed by Council as contained at the front of this Tariff Agreement.
- 20.1.32 "Luminaire" means the LED electric light unit installed by SAPN in accordance with the terms of this Tariff Agreement as described in Attachment B and Annexure B.1 to this Tariff Agreement.
- 20.1.33 "Make Good Costs" means in relation to the removal of a Luminaire from a pole or column, all reasonable costs and expenses (whether directly attributed or allocated in accordance with the AER's Cost Allocation Guidelines) incurred in the removal of the Luminaire, including the removal and management of brackets, columns, cabling, wiring and other fittings.
- 20.1.34 Manufacturer's Warranty and Manufacturer's Warranty Period have the meanings given to those terms in Annexure B.1.

- 20.1.35 “Negotiating Framework” means the Negotiating Framework approved by the AER and in force as at the date of this Tariff Agreement to be used by SAPN when negotiating with customers.
- 20.1.36 “NER” means the ‘National Electricity Rules’ as defined in the *National Electricity Law*, which is set out in the schedule to the *National Electricity (South Australia) Act 1996 (SA)*.
- 20.1.37 “Other Attachments” means Attachments B and C to this Tariff Agreement, including any Annexures thereto.
- 20.1.38 “Party” means a Party to this Tariff Agreement and “the Parties” means both of them.
- 20.1.39 “Public Lighting Indicative Price List Services” means the services as described in the Negotiating Framework.
- 20.1.40 “PLC LED Tariff” means the Tariff described in clause 4 of Annexure A.1 to this Tariff Agreement.
- 20.1.41 “Price Review” means the Price Review process referred to in in Annexure A.2 to this Tariff Agreement.
- 20.1.42 “Project” means the public lighting project described in Attachment B.
- 20.1.43 “Related Body Corporate” has the meaning given to that term in section 50 of the *Corporations Act, 2001 (Cth)*.
- 20.1.44 “Relevant Infrastructure Capital Value or RICV” means the relevant share of the Written Down Value of the Public Lighting Infrastructure Asset Base as described in Annexure A.2
- 20.1.45 “Relevant Lighting” means the lighting more particularly described in Annexure B.1.
- 20.1.46 “Relevant Standard” means the lighting standard produced by Standards Australia Ltd that was in force at the time that this Tariff Agreement was made.
- 20.1.47 “Remediation Period” means the relevant remediation period for the repair of broken, failed or underperforming street lights as determined by ESCOSA from time to time and currently referred to as “Timeliness of street light repairs” as part of ESCOSA’s GSL Scheme Categories and Payment Amounts.

- 20.1.48 "SAPN" or "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, and | |
| CKI Utilities Development Limited | ABN 65 090 718 880 |
| PAI Utilities Development Limited | ABN 82 090 718 951 |
| each incorporated in The Bahamas | |
- 20.1.49 "SAPN LED Tariff" means the Tariff described in clause 2 of Annexure A.1 to this Tariff Agreement.
- 20.1.50 "Services" means certain LED public lighting services described in Annexure A.1 to this Tariff Agreement and as modified where applicable in Annexure A.3 to this Tariff Agreement.
- 20.1.51 "Site" means the locations at which the Services are to be performed from time to time, referenced in Annexure B.
- 20.1.52 "SLUoS tariff" means the SAPN public lighting SLUoS tariff.
- 20.1.53 "Specification" means the relevant specification for the installation of the Luminaire.
- 20.1.54 "Standard SAPN Luminaire" means an LED light fitting unit referred to in the SAPN LED Tariff, as published from time to time on the Internet or in other publicly available information sources.
- 20.1.55 "Tariff" means any of the following:
- 20.1.55.1 SAPN LED Tariff; or
 - 20.1.55.2 PLC LED Tariff; or
 - 20.1.55.3 TFI LED Tariff,
- and includes the amount charged for the Tariff.
- 20.1.56 "Tariff Agreement" means this agreement between the Parties, for the supply of the Services.
- 20.1.57 "Term" means the Initial Term plus any extension of the Initial Term under clause 10.7.

- 20.1.58 "TFI LED Tariff" means the Tariff described in clause 3 of Annexure A.1 to this Tariff Agreement.
- 20.1.59 "Transition Costs" means the costs referred to in clause 10.2 of these General Conditions and described in Annexure A.2.
- 20.1.60 Written Down Value of the Luminaire or WDVL means the written down value of the Luminaire as described in Annexure A.2.
- 20.1.61 Written Down Value of the Public Lighting Infrastructure Asset Base or WDVPLIAB means the written down value of the public lighting infrastructure asset base as described in Annexure A.2.

20.2 In this Tariff Agreement including the recitals unless the contrary intention appears:

- 20.2.1 headings are for convenience only and do not affect interpretation;
- 20.2.2 a reference to a Party is a reference to a Party to this Tariff Agreement as described in this Tariff Agreement and includes that Party's executors, administrators, successors and permitted assigns;
- 20.2.3 a reference to "\$" or "dollars" is a reference to an amount in Australian currency;
- 20.2.4 monetary amounts and references to expenditure commitments and administration costs referred to in this Tariff Agreement are expressed exclusive of GST;
- 20.2.5 words denoting the singular include the plural and vice versa;
- 20.2.6 words "including" and similar expressions are not words of limitation and shall not be interpreted to be limited to any specific matters described and shall be interpreted as including the words "but without limitation".
- 20.2.7 nothing in this Tariff Agreement is to be interpreted against a Party solely on the ground that the Party put forward this Tariff Agreement or any part of it.

ANNEXURE A.1

THE SERVICES

In respect of the Relevant Lighting, Council and SAPN acknowledge and agree with these terms and conditions and are bound by them:

1. SAPN TO PERFORM THE SERVICES

- 1.1. SAPN shall operate and maintain the Relevant Lighting by performing the Services relevant to the applicable Tariff as described under clauses 2, 3 and 4 (Services) of this Annexure A.1.
- 1.2. Council shall, subject to SAPN's satisfactory performance of the Services, pay to SAPN the Tariff amount described under clause 7 of this Annexure A.1 and all other monies due and payable to SAPN in the manner and within the time contemplated under this Tariff Agreement.

2. SAPN LED TARIFF - SERVICES

- 2.1. The SAPN LED Tariff applies where SAPN funds a Luminaire installation, including an upgrade by replacing an existing light with a new Luminaire or a new 'infill' installation.
- 2.2. Under the SAPN LED Tariff:
 - 2.2.1. SAPN will fund and undertake the supply and installation of the Luminaire upgrade, including removing and disposing of the existing light and replacing it with the new Luminaire in accordance with the Specification. However, additional costs will be payable by Council (and recovered from Council separately to the SAPN LED Tariff), if:
 - 2.2.1.1. the installation of any new infrastructure (e.g. cabling and brackets for infill lighting) is required; or
 - 2.2.1.2. the upgrading of otherwise functional existing infrastructure to accommodate the new Luminaire is required; or
 - 2.2.1.3. the installation, maintaining and/or replacing of any additional Luminaire equipment or features exceeding the Specification (e.g. special visors or screens) is required.
 - 2.2.2. SAPN will operate the Luminaire by the provision of:
 - 2.2.2.1. asset management, outage management and customer management systems and administration;
 - 2.2.2.2. regulatory compliance and reporting (excluding negotiation costs);

- 2.2.2.3. asset information and maintenance performance reporting to Council;
 - 2.2.2.4. full warranty management as required during the manufacturer's warranty period;
and
 - 2.2.2.5. using its reasonable endeavours with respect to seeking recovery for third party property damage (as required).
- 2.2.3. SAPN will maintain the Luminaire by cleaning, testing and inspecting the Luminaire at appropriate intervals.
 - 2.2.4. SAPN will repair and replace the Luminaire at its cost where appropriate, including:
 - 2.2.4.1. replacement of Luminaire components (e.g. visor, fuse, photoelectric cell, driver, ballast, LED panel, bolts and catches) as relevant;
 - 2.2.4.2. replacement of Luminaire by supplying and installing a new Luminaire where in SAPN's view (acting reasonably) the existing Luminaire has comprehensively failed due to reasons including vandalism, third party damage, wear and tear, the cost of replacement parts, or the effluxion of time.
 - 2.2.5. Where an exact replacement of a Luminaire is not possible, SAPN will replace the Luminaire with one of an equivalent or better standard.
 - 2.2.6. Any replacement of a Luminaire under the SAPN LED Tariff will be at SAPN's cost, unless the Luminaire is still covered by the manufacturer's warranty.

3. TFI LED TARIFF – SERVICES

3.1. The TFI LED Tariff applies where lighting infrastructure, including a new Luminaire is transferred (i.e. 'gifted' or 'vested') to SAPN by Council or a developer. The TFI LED Tariff is also available to customers who wish to fund the initial cost of a Luminaire upgrade or new installation, but want SAPN to be responsible and liable for the cost of all Luminaire replacements.

3.2. Under the TFI LED Tariff:

3.2.1. Either Council or its nominee will vest new Luminaires to SAPN in accordance with the relevant SAPN requirements as set out relevant Technical Standards (TS) and Network Information for customers and contractors (NICC) documents available from SAPN;

or

Council will fund the supply and installation of the Luminaire upgrade to be undertaken by SAPN, including the removing and disposing the existing light and replacing it with the new

Luminaire in accordance with the Specification. However, additional reasonable and necessary costs will be payable by Council if:

- 3.2.1.1. the installation of any new infrastructure (e.g. cabling and brackets for infill lighting) is required;
 - 3.2.1.2. the upgrading of otherwise functional existing infrastructure to accommodate the new Luminaire is required;
 - 3.2.1.3. the installation, maintaining and/or replacing any additional Luminaire equipment or features exceeding the Specification (e.g. special visors or screens) is required.
- 3.2.2. SAPN will operate the Luminaire by the provision of:
- 3.2.2.1. asset management, outage management and customer management systems and administration;
 - 3.2.2.2. regulatory compliance and reporting (excluding negotiation costs);
 - 3.2.2.3. asset information and maintenance performance reporting to Council;
 - 3.2.2.4. full warranty management as required during the manufacturer's warranty period in respect of the Luminaire repair; and
 - 3.2.2.5. using its reasonable endeavours with respect to seeking recovery for third party damage recovery (as required).
- 3.2.3. SAPN will maintain the Luminaire by cleaning, testing and inspecting the Luminaire at appropriate intervals.
- 3.2.4. SAPN will repair and replace the Luminaire at its costs where appropriate, including:
- 3.2.4.1. replacement of Luminaire components (e.g. visor, fuse, photoelectric cell, driver, ballast, LED panel, bolts and catches) as relevant;
 - 3.2.4.2. replacement of Luminaire by supplying and installing a new Luminaire where in SAPN's view (acting reasonably) the existing LED luminaire has comprehensively failed due to reasons including vandalism, third party damage, wear and tear, the cost of replacement parts, or the effluxion of time.
- 3.2.5. Where an exact replacement of a Luminaire is not possible, SAPN will replace the Luminaire with one of an equivalent or better standard.
- 3.2.6. Any replacement of a Luminaire under the TFI LED Tariff will be at the SAPN's cost, except where the Luminaire is still covered by the manufacturer's warranty.

4. PLC LED TARIFF – SERVICES

4.1. The PLC LED Tariff applies where Council funds a Luminaire upgrade or the installation of new Luminaire (including (as relevant) a new 'infill' installation). At Council's cost, SAPN will procure and install the new Luminaire or install a new Luminaire supplied by Council. Council is responsible and liable for the cost of all Luminaire replacements, other than those replaced at the manufacturer's cost under warranty.

4.2. Under the PLC LED Tariff:

- 4.2.1. Council will fund the supply and installation of the Luminaire upgrade to be undertaken by SAPN, including the removing and disposing the existing Luminaire and replacing it with the new Luminaire in accordance with the Specification. However, additional costs will be payable by Council if:
 - 4.2.1.1. the installation of any new infrastructure (e.g. cabling and brackets for infill lighting) is required;
 - 4.2.1.2. the upgrading of otherwise functional existing infrastructure to accommodate the new Luminaire is required;
 - 4.2.1.3. the installation, maintaining and/or replacing any additional Luminaire equipment or features exceeding the Specification (e.g. special visors or screens) is required.
- 4.2.2. SAPN will operate the Luminaire by the provision of:
 - 4.2.2.1. asset management, outage management and customer management systems and administration;
 - 4.2.2.2. regulatory compliance and reporting (excluding negotiation costs);
 - 4.2.2.3. asset information and maintenance performance reporting to Council;
 - 4.2.2.4. full warranty management as required during the Manufacturer's Warranty Period in respect of the Luminaire repair, provided however, SAPN will not be responsible or liable for the manufacturer not complying with its warranty obligations, where Council has supplied the Luminaire (except where Council has validly assigned its rights under the warranty to SAPN); and
 - 4.2.2.5. reasonable endeavours with respect to third party damage recovery as required.

- 4.2.3. SAPN will maintain the Luminaire by cleaning, testing and inspecting the Luminaire at appropriate intervals.
- 4.2.4. SAPN will repair and undertake the replacement of the Luminaire where appropriate, including:
 - 4.2.4.1. replacement of Luminaire components (e.g. visor, fuse, photoelectric cell, driver, ballast, LED panel, bolts and catches) as relevant;
 - 4.2.4.2. replacement of the Luminaire means supplying and installing a new Luminaire where in SAPN's view (acting reasonably) the existing Luminaire has comprehensively failed due to reasons including vandalism, third party damage, wear and tear or the cost of replacement parts.
- 4.2.5. Where an exact replacement of a Luminaire is not possible, SAPN will replace the Luminaire with one of an equivalent or better standard.
- 4.2.6. Any replacement of a Luminaire under the PLC LED Tariff will be at Council's cost, unless the Luminaire is still covered by the Manufacturer's Warranty.

5. LUMINAIRE PERFORMANCE

- 5.1. Luminaire performance will be no less than the Relevant Standard. Where SAPN becomes aware that a relevant Luminaire is not performing to the Relevant Standard, either through SAPN testing or inspection or by notification from Council, SAPN will use reasonable endeavours to repair the Luminaire within the Remediation Period.
- 5.2. If SAPN fails to perform the relevant repairs as contemplated under clause 5.1 within the Remediation Period, it will be liable to make a GSL payment to Council.

6. STANDARDS AND COMPETENT PERSONNEL

- 6.1. SAPN will ensure that at all times the Services are performed by appropriately qualified and competent personnel that hold all relevant Approvals necessary to perform the Services.
- 6.2. SAPN will maintain the Relevant Lights in accordance with the Relevant Standard and Law, and SAPN technical standards and requirements, policies and procedures as amended from time to time.

7. TARIFF

- 7.1. The Tariff is as identified in the Letter of Offer and in Annexure B.1 of this Tariff Agreement.
- 7.2. The Tariff amount payable in respect of each Luminaire the subject of this Tariff Agreement:

7.2.1. during the balance of the Starting Period (as defined in Annexure A.2.1), is as prescribed in the Letter of Offer; and

7.2.2. during subsequent periods for the term of the Tariff Agreement, will be calculated in accordance with clause 8 of this Annexure A.1;

all of which will be due and payable by Council within thirty (30) days of receipt of a valid tax invoice from SAPN, without any set-off or retention.

7.3. If any payments to be made by Council under clause 7.2 of this Annexure A.1 or pursuant to any other clause in this Tariff Agreement are outstanding beyond the due date for payment SAPN shall be entitled to claim interest thereon at the Reference Rate published by the Australian & New Zealand Banking Group Ltd (or the rate that SAPN in its reasonable opinion replaces that rate if it is no longer published) from the date of the tax invoice based on the amount unpaid until payment is received in full

8. PRICE REVIEW

The Tariff will be subject to an annual Price Review in accordance with the procedure set out in Annexure A.2.

9. SERVICE STANDARDS AND PAYMENTS

9.1. Service standards and GSL payments will be as determined by ESCOSA (or its successor) from time to time.

9.2. Council will indemnify SAPN for any cost or loss suffered by SAPN due to ESCOSA imposing a GSL payment upon SAPN where Council has caused or contributed to the imposition of such GSL payment.

9.3. Luminaire Service Standard Commitments

9.3.1. Luminaire service and visor cleaning: at least every 3 years

9.3.2. Luminaire luminance testing: at least every 3 years

10. ACCESS TO PERFORM SERVICES

10.1. Council is responsible for providing SAPN with access to the Site and the Relevant Lights in sufficient time in order to perform the Services and will facilitate SAPN access at all reasonable times.

10.2. SAPN acknowledges that Council may deny access to SAPN during periods that significant community events are being held on or near the location of the Relevant Lights.

10.3. Any suspension of access by Council will entitle SAPN to:

10.3.1. an extension of time to the agreed completion date for the Services; and

10.3.2. reimbursement by Council of any additional costs or expenses suffered or incurred.

10.4. Council and SAPN acknowledge that the Site may be subject to Latent Conditions, including without limitation, underground water reticulation.

ANNEXURE A.1.1

INSURANCE

1. Motor Vehicle and Third Party Property Damage
 - Liability Property Damage: \$10 000 000
 - Liability Personal Injury: \$10 000 000

2. Professional Indemnity
 - \$5 000 000 any one claim or series of claims arising out of the one event and in the aggregate any one period of insurance

3. Public and Products Liability
 - Public Liability: \$20 000 000 any one occurrence
 - Products Liability: \$20 000 000 any one occurrence and in the aggregate in any period of insurance

ANNEXURE A.2

THE SERVICES - TRANSITION COSTS, BREAK COSTS AND PRICE REVIEW

A. Description of Transition and Break Costs (clauses 10.2 and 10.4 of the General Conditions)

The Written Down Value of the Luminaire (WDVL) will be the Present Value of the Luminaire (PVL) net of the Cumulative Principal Paid (CPP) in respect of the Luminaire.

The PVL is the capital cost to SAPN to supply and install the Luminaire, which is set out in Annexure A2.1.

The CPP is the amount of the capital cost of the Luminaire that has been paid to SAPN through the SAPN LED Tariff prior to the date of transition. The CPP is calculated on a monthly basis in accordance with the Microsoft Excel CUMPRINC formula (the parameters of which are set out in Annexure A2.1).

The Administration Fee is set out in Annexure A2.1.

The Relevant Infrastructure Capital Value (RICV) will be the per-light share of the Written Down Value of the Public Lighting Infrastructure Asset Base (WDVPLIAB).

The WDVPLIAB is the depreciated value of SAPN's investment in public lighting infrastructure other than its investment in Luminaires the subject of the SAPN LED Tariff or the TFI LED Tariff. SAPN's investment in its Public Lighting Infrastructure Asset Base is accounted for in accordance with regulatory accounting methodologies, including the AER's Roll Forward Model and the AER's Post Tax Revenue Model, and in accordance with the cost allocation method approved for SAPN by the AER.

The RICV will be the WDVPLIAB divided by the number of lights on SA Power Networks' infrastructure, as set out in Annexure A2.1.

Applications for Termination and Transition must be made in a form approved by SA Power Networks.

B. Price Review (clause 8 of Annexure A.1)

Tariffs will be adjusted annually on the basis described below:

i) Price review process

1. SAPN will provide Council with a Tariff Adjustment Report (as defined in paragraph 3 below) no later than 15 April of the year prior to the Relevant Year (as defined in paragraph 2 below).

2. A "Relevant Year" is a financial year (1 July to 30 June) in respect of which Tariff adjustments are intended to have effect.
3. The "Tariff Adjustment Report" will set out the calculation and results of the Price Review Mechanism (as set out under the heading "Price Review Mechanism" in this Annexure A.2(b) below), including an explanation of any Material Changes (as defined in paragraph 4 below) in the Infrastructure Capital Cost and Infrastructure Operating Cost Tariff Components.
4. A "Material Change" for the purposes of this Annexure A.2(b) is a rate of change greater than the relevant measure of the rate of change in the CPI as set out in this Annexure A.2(b).
5. Council will, within ten (10) business days of receiving the Tariff Adjustment Report, provide any feedback on it to SAPN.
6. SAPN will, within ten (10) business days of receiving any feedback from Council, provide any response on it to Council.
7. Should either Party remain dissatisfied with the Price Review process, it is entitled to refer the matter to dispute resolution in accordance with clause 9 of this Tariff Agreement.
8. Notwithstanding the commitments set out above as paragraphs 1 to 6 of this Annexure A.2(b), SAPN will provide Council with no less than twenty (20) business days' notice of any Tariff adjustments.
9. A Tariff will remain in place until a new Tariff adjustment is published.

ii) Price Review Mechanism

1. The Tariffs have a modular structure. They comprise four (4) cost components:
 - a) LED Luminaire Annuity Cost (relevant only to the SAPN LED Tariff and the TFI LED Tariff);
 - b) Infrastructure Capital Cost;
 - c) Infrastructure Operating Cost;
 - d) LED Luminaire Operating Pole Use and Asset Management and Administration Cost.
 (individually and collectively known as the "Tariff Components")
2. When the price for a Tariff is adjusted, there is an adjustment with respect to each of the Tariff Components as follows.
 - a) the LED Luminaire Annuity Cost, and the LED Luminaire Operating Pole Use and Asset Management and Administration Cost components are adjusted

annually by the rate of change in the Consumer Price Index (CPI) based on the December to December CPI All Groups, Weighted Average of Eight Capital Cities;

- b) the Infrastructure Capital Cost and Infrastructure Operating Cost components are adjusted in accordance with the annual price review methodology applied in respect of Public Lighting Indicative Price List Services, under which these Tariff Components bear the per light share of actual infrastructure related costs. The actual costs that are reflected in these Tariff Components are “trued up” each year in relation to the previous year. The per-light share of actual costs is the actual costs (noting that infrastructure capital costs and infrastructure operating costs are considered separately) divided by the number of relevant lights on SAPN infrastructure as at the reference date. Relevant lights on SAPN infrastructure are those lights subject to a public lighting tariff that includes as relevant these Tariff Components including without limitation a SLUoS tariff a PLC LED Tariff a TFI LED Tariff or a SAPN LED Tariff, and those service points subject to an agreement under which SAPN recovers the per light share of actual infrastructure related costs. The reference date is 30 December of the year prior to the annual price review.

- 3. Starting Period Tariff Component Values for the purposes of this Tariff Agreement are set out in Annexure A.2.1.

ANNEXURE A.2.1

DEFINITIONS & CALCULATIONS - THE SERVICES - TRANSITION COSTS, BREAK COSTS AND PRICE REVIEW

Cumulative Principal Paid (Excel formula)	=	CUMPRINC(rate, nper, pv, start_period, end_period, type)
Rate $((1+\text{Annual Rate})^{(1/12)}-1)$	=	0.5010%
Nper (number of periods, months)	=	240 (Term * 12)
PVL (Present Value of the Luminaire, or PV)	=	\$410.00 (relevant only to the SAPN LED Tariff)
Start period	=	1
End period	=	The period of the transition, expressed in terms of elapsed months of the Term (e.g. where the transition occurred exactly 1.5 years into the Term, the End period would be 18)
Type (timing)	=	0 (zero)
Annual Rate	=	6.18% as adjusted annually in accordance with AER's distribution determination that applies to SAPN
Term (years)	=	As per Letter of Offer
Administration Fee	=	The actual costs incurred by SAPN per application; or the sum of the Administration Costs, below, per application; whichever is the lesser amount
<u>Administration Costs</u>		
Setup cost	=	\$70.00 fixed fee per application
First 100 Luminaires or part thereof	=	\$10.00 per Luminaire
Balance of Luminaires	=	\$5.00 per Luminaire
All values for Administration Costs are expressed in \$2016 and will be adjusted annually by the rate of change in the Consumer Price Index (CPI) based on the December to December CPI All Groups, Weighted Average of Eight Capital Cities		
Relevant Infrastructure Capital Value	=	WDVPLIAB divided by Light Numbers
Light Numbers	=	Opening Value of SAPN Lights per SAPN Geographic Information System (GIS)
WDVPLIAB	=	Opening Value of the Public Lighting Infrastructure Asset Base (PLIAB) for the Relevant Year
Opening Value	=	Value as at 1 July of the Relevant Year
SAPN Lights	=	Street Lights on SAPN infrastructure that are subject to a public lighting tariff that includes as relevant the Infrastructure Capital Cost Tariff Component including without limitation a SLUoS tariff, PLC LED Tariff, TFI LED Tariff, or SAPN

LED Tariff and service points subject to an agreement under which SAPN recovers the per light share of actual infrastructure capital costs as described in Annexure A.2 (clause B.ii.2.b)

Relevant Year	=	Year of the transition or break
Year	=	Financial Year (1 July to 30 June)
PLIAB	=	The depreciated Current Cost Accounted actual value of the asset base that reflects SAPN's investment in public lighting infrastructure
Current Cost Accounted	=	expressed in constant dollar terms in accordance with the AER's Roll Forward Model and Post Tax Revenue Model by adjusting historical costs annually for inflation using the All Groups CPI, Weighted Average of Eight Capital Cities measure published by the Australian Bureau of Statistics

Tariff Component Values

Starting Period	=	1 July 2017 to 30 June 2018
Luminaire & Tariff Type	=	Sylvania StreetLED 14W, PLC LED Tariff
LED Luminaire Annuity Cost	=	N/A Relevant only to the SAPN LED Tariff
LED Luminaire Annuity Cost	=	N/A Relevant only to the TFI LED Tariff
Infrastructure Capital Cost	=	\$16.98 (2017/18, subject to amendment as at 1 July 2018)
Infrastructure Operating Cost	=	\$8.75 (2017/18, subject to amendment as at 1 July 2018)
LED Luminaire Operating Pole Use and Asset Management and Admin Cost	=	\$18.60 (2017/18, subject to amendment as at 1 July 2018)

ANNEXURE A.3

MODIFICATIONS TO SERVICES

Nil.

ATTACHMENT B

PROJECT

Replacement of existing non-LED side-entry SLUOS pedestrian area (Category P) lighting (luminaires) within the City of Holdfast Bay council area with the Replacement Luminaires as described in Annexure B.1 in accordance with the terms of this Tariff Agreement.

ANNEXURE B.1

RELEVANT LIGHTING

The number of luminaires to be replaced:	2558 (two thousand seven hundred and eighty-six)
The luminaires to be replaced:	non-LED existing side-entry SLUOS pedestrian area (Category P) lighting
The location of the luminaires to be replaced:	within the City of Holdfast Bay council area
The Replacement Luminaires:	Make: Sylvania (by Gerard Lighting Pty Ltd) Model: StreetLED MKII 14W street luminaire Specification: black body, standard visor, NEMA 7pin, CCT 4000K, Gerard Lighting Pty Ltd order code JLB9901L17]
The tariff arrangements:	PLC LED Tariff as set out in this Tariff Agreement
Manufacturer's Warranty:	Luminaires that fail will be replaced free of charge during the Manufacturer's Warranty Period. This warranty provision does not cover Luminaires or Luminaire components where failure is caused by vandalism, electrical storms, or due to the incorrect operation of the Luminaire that is not within the reasonable control of SA Power Networks (including excessive hourly usage or unsuitable duty cycles programmed by Council).
Manufacturer's Warranty Period:	Ten (10) years from the date of delivery to SA Power Networks.

ATTACHMENT C

CONSTRUCTION AGREEMENT

Agreement for Works and / or Design Services by SA Power Networks for Councils (Public Lighting) 11005

ANNEXURE C.1.

MODIFICATIONS TO CONSTRUCTION AGREEMENT

Nil.

ANNEXURE C.2.
FEE PAYABLE BY COUNCIL UNDER THE CONSTRUCTION AGREEMENT

Council Upfront Contribution (Fee):

- Total number of Replacement Luminaires (as described in Annexure B.1.) replaced as part of the Project multiplied by the sum of the relevant Materials Cost and the Installation Cost (as described below)
- Estimated Council Upfront Contribution (Estimated Fee) reflected in the Letter of Offer dated 22 February 2018: \$898,727.72 (eight hundred and ninety-eight thousand seven hundred and twenty-seven dollars and 72 cents (based on 2558 Replacement Luminaires)) to be adjusted to actual Council Upfront Contribution (Fee) based on the actual number of Replacement Luminaires replaced as part of the Project.

Materials Cost:

- Replacement Luminaire – Sylvania StreetLED MKII 14W]:
 - \$252.50

Installation Cost:

- Replacement Luminaire – Sylvania StreetLED MKII 14W]:
 - One-for-one replacement utilising existing brackets and wiring: \$98.84 per replacement

Invoicing and Payment Terms:

- Monthly billing of completed replacements in accordance with Clause 3 of the Construction Agreement.



**AGREEMENT FOR WORKS AND / OR DESIGN
SERVICES BY SA POWER NETWORKS FOR
COUNCILS (PUBLIC LIGHTING) 11005
(CONSTRUCTION AGREEMENT)**

SA Power Networks
www.sapowernetworks.com.au

TERMS AND CONDITIONS

Introduction

(Tick one only)

If the Services comprise the provision of works only (Parts A and B apply)	<input checked="" type="checkbox"/>
If the Services comprise the provision of design services only (Parts A and C apply)	<input type="checkbox"/>
If the Services comprise the provision of works and design services (Parts A, B and C apply)	<input type="checkbox"/>

Public Liability Insurance:

On the request of the Council, SA Power Networks can provide a Public Liability insurance certificate up to the limit of \$20 million

1. Definitions and Interpretations

In this Construction Agreement, unless a contrary intention is apparent:-

"Construction Agreement" means the agreement constituted by the Letter of Offer and these Terms and Conditions;

"Commencement Date" means the date (if any) specified in the Letter of Offer or otherwise agreed between the parties and if no such date is specified or agreed, the date of commencement of the Services;

"Completion Date" means the date specified in the Letter of Offer or otherwise agreed between the parties and if no such date is specified or agreed, the date on which the supply of the Services is completed;

"Confidential Information" means information in any form disclosed by a party to the other party that:

- a) is by nature confidential or by the circumstances in which it is disclosed by the disclosing party to the other party is confidential; or
- b) is designated by the disclosing party as confidential or identified in terms connoting its confidentiality;

but does not include:

- c) information which is or becomes public knowledge in a lawful manner; or
- d) information that a party can prove has been developed or derived by the party without any unauthorised reliance on the other party's confidential information; or
- e) information that a party can prove was received from a third party in a lawful fashion; or
- f) information required to be disclosed by law, in which case the party being placed under the obligation to disclose shall notify the other party prior to making any disclosure and refrain from making any disclosure so that the party which disclosed the information has a reasonable opportunity to take such action as may be advised to protect its interests;

"Distribution Lessor Corporation" means the Distribution Lessor Corporation, established under the Public Corporations (Distribution Lessor Corporation) Regulations 1999 (SA);

"Fee" means the fee specified in the Letter of Offer and as varied by the parties in accordance with this Construction Agreement;

"Force Majeure" means any event or circumstance not within the control of SAPN including (but not limited to):

- a) Acts of God, including, without limitation, earthquakes, floods, washouts, landslides, lightning, storms and the elements;
- b) Strikes, lockouts, slowdowns or other industrial disturbances;
- c) Acts of war, terrorism including malicious damage or revolution, blockades or insurrections, riots and civil disturbances;
- d) Fire or explosions;
- e) Epidemic or quarantines;
- f) Orders of any Courts or the order, act, or omission or failure of any government authority having jurisdiction;
- g) Failure to obtain any necessary governmental consent or approval;
- h) Latent Conditions

"Goods" means any goods that are to be supplied by SAPN under this Construction Agreement;

"Governmental Agency" means any government or governmental, semi-governmental, local government, administrative, fiscal, quasi-judicial or judicial body, department, commission, authority, tribunal, agency or entity;

"GST" means any goods and services tax or similar value added tax levied or imposed by the Commonwealth of Australia and a word or expression used in this Construction Agreement which is defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cth) has the same meaning in this Construction Agreement;

"Hazardous Work" means an activity which is governed or prohibited by Chapter 4 of the WHS Act;

"High Risk Area" means an area which is designated from time to time by SAPN or its Representative as being unsafe for work;

"Intellectual Property Rights" means any patent, copyright, design or trademark, and any right to registration of any patent, copyright, design or trademark, or any other similar or like right including rights to trade secrets, know how, proprietary or confidential information;

"Latent Conditions" means any unanticipated physical conditions (such as rocks, weather conditions or artificial objects) which mean that SAPN is unable to complete the Services in accordance with the Specification or in order to complete the Services, SAPN must incur more cost than anticipated when this Construction Agreement was made by the parties;

"Liability" means all liabilities, damages, remedies, losses, penalties, fines, costs, expenses (including legal fees and expenses on an indemnity basis), demands, claims and proceedings of any nature;

"Letter of Offer" means the letter of offer issued by SAPN (including any schedules, annexures or attachments) to which these Terms and Conditions are attached or accompany.

"Personnel" means any employee, agent or sub contractor of a party;

"PPSA" means the Personal Property Securities Act 2009 (Cth);

"Representative" means a person appointed under Clause 12 of this Construction Agreement;

"Safe Systems of Work" means procedures and processes developed, implemented and maintained to eliminate or minimise the risks to health and safety posed by workplace hazards including, but not limited to, hazard identification and risk management, Safe Work Method Statements, safety management plans, personal protective equipment, plant and equipment training, health monitoring, supervision and injury and emergency management;

"SA Power Networks" and **"SAPN"** 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

"Services" means the whole of the work to be performed and goods and equipment (if any) to be supplied by SAPN as described in Attachment B of this Tariff Agreement and delivered in accordance with this Construction Agreement, and any variations authorised in accordance with this Construction Agreement;

"Site" means the place where the Services are to be supplied and/ or performed (as specified in the Letter of Offer);

"Term" means the period commencing on the Commencement Date and expiring on the Completion Date.

"Terms and Conditions" means this document.

"WHS" means work health and safety;

"WHS Act" means the *Work Health and Safety Act 2012 (SA)*;

"WHS Laws" means all applicable work health and safety legislation including without limitation the WHS Act and all applicable notices and directions issued by any Governmental Agency pursuant to such legislation or any code of practice or compliance code appropriate or relevant to the provision of the Services pursuant to this Agreement; and

"Workers" has the meaning as defined in the WHS Act.

1.1 Interpretation Rules

In this Construction Agreement, unless a contrary intention appears:

- a) a reference to this Construction Agreement is a reference to this Construction Agreement as amended, varied, novated, supplemented or replaced from time to time;
- b) a reference to any legislation or any provision of any legislation includes:
 - (i) all regulations, orders or instruments issued under the legislation or provision; and
 - (ii) any modification, consolidation, amendment, re-enactment, replacement or codification of such legislation or provision;
- c) words or expressions:
 - (i) importing the singular include the plural and vice versa;
 - (ii) importing a gender include the other gender;
 - (iii) denoting individuals include corporations, firms, partnerships, unincorporated bodies, authorities and instrumentalities;
- (d) a reference to a party to this Construction Agreement or any other instrument includes that party's executors, administrators, successors and permitted assigns;
- (e) where a word or phrase is defined or given meaning, any other part of speech or grammatical form has a corresponding meaning;
- (f) a reference to a clause number or schedule is a reference to clause or schedule of these Terms and Conditions.

1.2 Entire Agreement

This Construction Agreement is the entire agreement between the parties as to its subject matter. It supersedes all prior agreements, representations, conduct and understandings. The parties acknowledge that they have not relied on any representation or conduct in deciding whether to enter into this Agreement, other than as expressly set out in this Construction Agreement.

1.3 Amendments

No amendment of, or addition to, this Construction Agreement is binding unless it is in writing and executed by the parties to this Construction Agreement.

2. Performance of the Services

- 2.1 SAPN agrees to perform and complete the Services in accordance with the provisions of this Construction Agreement provided that the Council has complied with all of its obligations under this Construction Agreement.
- 2.2 SAPN will use reasonable endeavours to complete the Services in accordance with the terms of this Construction Agreement.
- 2.3 Subject to otherwise complying with its obligations under this Construction Agreement, SAPN may exercise its independent discretion as to the most appropriate and effective manner of performing and completing the Services.
- 2.4 SAPN may (subject to access restrictions which the parties agree in writing) perform the Services during such hours and on such days as it considers necessary and appropriate to ensure compliance with its obligations under this Construction Agreement.

3. Fee and Payment

3.1 Fee

The Council must pay the Fee (subject to any amendment of the amount in accordance with the terms of this Construction Agreement) on the following basis:

3.1.1 SAPN will provide the Council with a tax invoice monthly in arrears ("Invoice");

3.1.2 The Council must pay the amount specified in the Invoice within 30 days from the date of the Invoice; and

3.1.3 Payment shall be in Australian currency.

3.2 If any payments are outstanding beyond the due date for payment SAPN shall be entitled to claim interest thereon at the Reference Rate published by the Australian & New Zealand Banking Group Ltd (or the rate that SAPN in its reasonable opinion replaces that rate if it is no longer published) from the date of the Invoice based on the amount unpaid until payment is received in full.

3.3 Legal title to the Goods which are part of the Services will not pass to the Council in accordance with Clause 5.2 of the Tariff Agreement until the Council has paid all moneys owed to SAPN under this Construction Agreement. SAPN reserves the right to enter upon any site for the repossession of Goods supplied by SAPN without prejudice to any other rights of recovery available.

3.4 The Fee is not subject to variation other than in accordance with the terms of this Construction Agreement unless the Council or SAPN mutually agree in writing.

4. Indemnity and Limit of Liability

4.1 SAPN indemnifies Council and its officers, employees, contractors, consultants and subcontractors (Council indemnified party), to the fullest extent permitted under law, for any liability, cost and expense (including legal fees and expenses), loss and damage suffered or incurred by a Council indemnified party, as a result of a negligent act or omission of SAPN or its officers, employees, contractors, consultants or subcontractors, arising as a result of the Services, but this indemnity shall be reduced proportionally to the extent that any negligent act or omission of a Council indemnified party directly caused the injury, death, loss or damage to arise.

4.2 Council indemnifies SAPN and its officers, employees, contractors, consultants and subcontractors (SAPN indemnified party), to the fullest extent permitted under law, for any liability, cost and expense (including legal fees and expenses), loss and damage suffered or incurred by a SAPN indemnified party, as a result of a negligent act or omission of Council or its officers, employees, contractors, consultants or subcontractors, arising as a result of the Services, but this indemnity shall be reduced proportionally to the extent that any negligent act or omission of a SAPN indemnified party directly caused the injury, death, loss or damage to arise.

4.3 SAPN's Limit of Liability

4.3.1 SAPN's sole liability to the Council will be limited to compensating the Council for any direct losses incurred by the Council arising out of any breach of this Construction Agreement or by any negligent act or omission by SAPN in connection with this Construction Agreement, up to an amount not exceeding the Fee other than for personal injury, death or property damage in which case SAPN's liability shall be limited to the amount of twenty million dollars (\$20,000,000) per claim and in the aggregate.

4.3.2 SAPN shall not be liable to the Council under any circumstances for:

(a) 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, financing costs, loss or corruption of data or loss of privacy of communications; or

(b) consequential, special, indirect, exemplary or punitive damages.

4.4 Exclusion of Statutory Warranties

To the extent permitted by law, all conditions or warranties, express or implied, in respect of the provision of the Services are hereby excluded.

5. Variation of Services

- 5.1** The Council may by written notice to SAPN request SAPN to vary the Services.
- 5.2** If the Council requests a variation to the Services:
 - 5.2.1** the Council will provide SAPN with a specification detailing the variation;
 - 5.2.2** SAPN will, within a reasonable time, review and evaluate the estimated cost of the proposed variation;
 - 5.2.3** if SAPN determines, in its sole discretion, that it can undertake the variation, SAPN will provide a quote ("Quote") to the Council in writing stating the adjustment to the Fee and any required extension of the time required to perform the Services as a result of the variation;
 - 5.2.4** the Council will, in writing, within 48 hours, either accept or reject the Quote provided by SAPN and, where accepted by the Council, the terms of this Construction Agreement shall be varied in the manner set out in the Quote.
- 5.3** SAPN may require a variation to the Services:
 - 5.3.1** if the Council unreasonably delays the ability of SAPN to perform the Services;
 - 5.3.2** if SAPN encounters any Latent Condition which requires SAPN to change the Specification to complete the Services or to perform any additional Services, then SAPN will advise the Council of the variation to the Services and the Fee and Completion Date shall be adjusted accordingly; or
 - 5.3.3** a "Force Majeure" event occurs.

6. Termination and Breach

6.1 Default

Either party may terminate this Construction Agreement if the other party is in default of its obligations under this Construction Agreement and neither remedies such default nor commences and continues reasonable diligent action towards remedying that default within 14 days of it receiving written notice from the first mentioned party requiring the breach to be remedied.

6.2 Insolvency

If either party becomes bankrupt or insolvent or makes any agreement with its creditors compounding debts or if, being an incorporated entity, any proceedings are begun in respect of it applying for the appointment of a liquidator, administrator, receiver or similar official for it or all or any substantial part of its assets or seeking an order of relief against it as debtor or under any law relating to insolvency, readjustment of debt, reorganisation, administration or liquidation, the other party may at any time by written notice terminate this Construction Agreement.

6.3 Prior Rights Not Affected

Termination of the Agreement, shall not prejudice any antecedent rights or obligations arising prior to that termination. Clauses 3, 4, 6, 7 and 8 shall survive the termination of this Construction Agreement.

7. Force Majeure

7.1 Effect of Force Majeure

Subject to this clause, no party is required to comply with any term of this Construction Agreement to the extent that it is unable to comply with that term as a result of Force Majeure.

7.2 Obligation to Overcome

If a party is reasonably able to overcome events, circumstances or conditions that constitute Force Majeure, then it will take all reasonable steps it is able to take to enable it to comply with the terms of this Construction Agreement. However, nothing in this clause will oblige any party to incur additional expenses or settle any strike, lock-out, ban, boycott or other industrial disturbance or action or to take or threaten to take any legal action.

7.3 Notice of Force Majeure

If a party is not reasonably able to overcome the events, circumstances or conditions that constitute Force Majeure, then it will notify the other party of those events, circumstances or conditions.

7.4 Information

Each party will provide the other party with any information which that other party might reasonably request about the events, circumstances or conditions that constitute Force Majeure.

7.5 Payment Obligations

Force Majeure will not relieve any party of any obligation to pay an amount to the other party under this Construction Agreement.

7.6 Extension of Time

The Completion Date will be extended by a period equal to the duration of any delay resulting from an event of Force Majeure.

8. Confidentiality

8.1 Confidential Information

All Confidential Information disclosed by a party under this Construction Agreement or during negotiations preceding this Construction Agreement in whatever form that information was provided, will be treated as and kept confidential by the other party.

8.2 Permitted Disclosure

Confidential Information may only be disclosed by a party receiving that information in the following circumstances:

- (a) to the extent necessary to provide the Services and for the performance of any other obligations of a party under this Construction Agreement;
- (b) to those Personnel of the party to whom it is necessary to make disclosure;
- (c) with the consent of the party who provided the information;
- (d) when required by law, subject to the condition that the party being placed under the obligation to disclose shall notify the other party prior to making any disclosure and refrain from making any disclosure until advised by the other party so that it has a reasonable opportunity to take such action as may be advised to protect its interests; or
- (e) to any Related Body Corporate of a party (as defined in the **Corporations Act 2001**) provided that such Related Body Corporate is required to comply with the obligations of confidentiality under this Construction Agreement.

A party disclosing Confidential Information under paragraphs (a), (b), (c), (d) or (e) above must obtain the written consent of the party from whom it received the Confidential Information prior to making such disclosure.

9. Supply of Information

9.1 The Council must provide SAPN with all information in the Council's possession and control which will assist SAPN in the performance of the Services.

9.2 Additional Information

If SAPN, acting reasonably, requires any further information from the Council to carry out the Services it will serve a notice on the Council specifying the information required. The Council must provide the information requested by SAPN as soon as practicable after receipt of the notice.

9.3 Change in Information

If after the Council has provided information to SAPN in accordance with clauses 9.1 or 9.2 and there is any change in that information or the Council becomes aware of any inaccuracy in the information supplied, the Council must as soon as practicable notify SAPN of that fact and correct the information previously provided.

9.4 Indemnity

The Council must indemnify and keep indemnified SAPN against all Liabilities, which SAPN may suffer or incur by reason of, directly or indirectly, reliance on any information supplied by the Council to SAPN under this Construction Agreement.

9.5 General Disclosure Responsibility

The Council must immediately notify SAPN if it becomes aware of any matter or thing which may affect SAPN's capacity to perform the Services in accordance with the terms of this Construction Agreement. This includes, but is not limited to, any matter or thing which may affect the scope of, or time required to, perform the Services.

10. Relationship of the Parties

The relationship of SAPN to the Council is that of supplier of the Services and neither party is an agent, employee, partner or joint venturer of the other party.

11. Assignment & Subcontracting

11.1 Subject to 11.2 either party may assign this Construction Agreement with the other party's prior written consent, which consent shall not be unreasonably withheld.

11.2 SAPN may assign this Construction Agreement to the Distribution Lessor Corporation without the Council's prior written consent.

12. Representatives

12.1 Appointment of Representatives

Each party shall appoint a person to be its Representative. Each party shall advise the other party in writing of their respective Representatives.

12.2 Change in Representative

The parties may change their respective Representative by notice in writing to the other at any time during the Term.

12.3 Authority of Representatives

A party's Representative has the power to bind that party in the exercise of any of its rights, or the carrying out of any of its obligations of a technical or administrative nature arising under, or out of, this Construction Agreement.

12.4 Communications

All communications under this Construction Agreement are, unless otherwise expressly stated, to be made through each party's Representative.

13. Licences

The Parties agree that the Council is responsible for obtaining all third party licences, permits or approvals required for the Services prior to SAPN commencing the Services.

14. Goods and Services Tax

14.1 Consideration is GST Exclusive

Unless specifically described in this Construction Agreement as 'GST inclusive', the consideration to be paid or provided for a supply made under or in connection with this Construction Agreement does not include any amount on account of GST.

14.2 Gross Up of Consideration

Where any supply to be made by one party ('Supplier') to the other party ('Recipient') under or in connection with this Construction Agreement is subject to GST (other than a supply the consideration for which is specifically described in this Construction Agreement as 'GST inclusive'):

- (a) the consideration payable or to be provided for that supply but for the application of this clause ('GST Exclusive Consideration') shall be increased by, and the Recipient shall pay to the Supplier, an amount equal to the GST payable by the Supplier in respect of that supply; and
- (b) 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.

14.3 Reimbursements

If any payment to be made to a party under or in connection with this Construction Agreement 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 14.2(a).

14.4 Tax Invoices

Notwithstanding any other provision of this Construction Agreement, the Recipient need not make any payment for a taxable supply made under or in connection with this Construction Agreement until the Supplier has given the Recipient a tax invoice in respect of that taxable supply.

14.5 Adjustments

If an adjustment event has occurred in respect of a taxable supply made under or in connection with this Construction Agreement, 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.

15. Miscellaneous Provisions

15.1 No Waiver

A party's failure or delay to exercise a power or right is not a waiver of that right, and the exercise of a power or right does not preclude the future exercise of that or any other power or right.

15.2 Law

This Construction Agreement is governed by the laws of South Australia and the parties submit to the non-exclusive jurisdiction of the courts of South Australia.

15.3 Costs

Each party will pay its own costs in connection with the preparation, negotiation, execution, delivery and performance of this Construction Agreement. The Council will pay any stamp duty or other imposts applicable in respect to this Construction Agreement.

15.4 Further Acts

The parties will do all things and execute all documents necessary to give effect to this Construction Agreement.

15.5 Counterparts

This Construction Agreement may be executed in counterparts, which when taken together are one instrument.

15.6 Severability

Any provision in this Construction Agreement which is invalid, void or unenforceable in any jurisdiction is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and if otherwise to be severed to the extent of that invalidity, voidness or unenforceability, without affecting the remaining provisions of this Construction Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

15.7 Time of the Essence

Time is of the essence in respect of an obligation to pay money under this Construction Agreement.

15.8 Special Conditions

15.8.1 The Special Conditions (if any) shall be incorporated into and form part of this Construction Agreement and in the event of any inconsistency between the Special Conditions and any other part of this Construction Agreement, the Special Conditions shall prevail to the extent of such inconsistency.

15.8.2 Any reference to "this Construction Agreement" in any Special Condition shall be deemed to refer to this Construction Agreement.

16. Notices

16.1 Form of Notices

A notice or other communication ("Notice") given under this Construction Agreement must be in writing signed by or on behalf of the sender.

16.2 Method of Service

A Notice may be given to the address by hand delivery, pre-paid mail or facsimile transmission.

16.3 Service of Postal Notices

A Notice sent by pre-paid mail to the address of the addressee provided to the sender in writing will be deemed to have been received by the addressee on the third business day after it is posted (if it was posted within Australia) and on the tenth business day after it was posted (if it was posted outside Australia), unless it is in fact received earlier.

16.4 Service of Facsimile Notices

Subject to this Construction Agreement, a Notice sent by facsimile transmission to the facsimile number provided to the sender in writing will be deemed to have been received by the addressee when transmission of all pages of the Notice has been confirmed by the sender's facsimile machine.

16.5 Service Outside Business Hours

If, in the absence of this sub-clause, the previous sub-clause would deem a Notice to have been received on a day other than a business day or at a time after 4:00pm on a business day, that Notice will be deemed to have been received by the addressee at 10:00am on the next business day after transmission.

16.6 Business Day

For the purposes of this Construction Agreement, a "business day", in relation to a Notice, means a day other than a Saturday, Sunday or public holiday in the place to which that Notice is sent.

16.7 Change of Address

A party may change the address or facsimile number by not less than 5 business days' notice to the other party. This Construction Agreement will then apply to the new address or facsimile number.

17. Dispute Resolution

- 17.1 If a dispute arises between the parties under or in connection with this Construction Agreement, the parties must meet and use their best endeavours to resolve that dispute by negotiation or otherwise before commencing legal proceedings.
- 17.2 The parties will be deemed to have used their best endeavours to resolve a dispute if they have met to discuss the dispute and have failed to resolve it within fourteen (14) days of that meeting.
- 17.3 Nothing in this clause 17 will preclude either party from seeking an urgent interim or interlocutory injunction in cases of genuine urgency unless it has complied with this clause 17.

18. Personal Property Securities Act

- 18.1 The Council consents to SAPN effecting a registration on the PPSA register (in any manner SAPN considers appropriate) in relation to any security interest arising under or in connection with or contemplated by this Construction Agreement. The Council waives the right to receive notice of a verification statement in relation to any registration on the register.
- 18.2 The Council must promptly do any act or thing that SAPN requires to ensure that SAPN's interest is a perfected security interest and has priority over all other security interests in the Goods.
- 18.3 The Council will not register a financing change statement in respect of the security interest without SAPN's prior written consent.
- 18.4 The Council must, upon demand, reimburse SAPN for all expenses incurred by SAPN in registering a financing statement or financing change statement on the PPSA register or releasing any Goods from SAPN's security interest.

- 18.5** The Council agrees that SAPN may at its absolute discretion apply any amounts received from the Council toward amounts owing to SAPN in such order as SAPN may determine.
- 18.6** If Chapter 4 of the PPSA would otherwise apply to the enforcement of a security interest arising in connection with this Construction Agreement, the Council agrees the following provisions of the PPSA will not apply to the enforcement of this Construction Agreement: section 95 (notice of removal of accession), to the extent that it requires SAPN to give a notice to the Council; section 96 (when a person with an interest in the whole may retain an accession); subsection 121(4) (enforcement of liquid assets – notice to grantor); section 125 (obligation to dispose of or retain collateral); section 130 (notice of disposal), to the extent that it requires SAPN to give a notice to the Council; paragraph 132(3)(d) (contents of statement of account after disposal); subsection 132(4) (statement of account if no disposal); subsection 134(1) (retention of collateral); section 135 (notice of retention); section 142 (redemption of collateral); and, section 143 (reinstatement of security agreement).
- 18.7** Notices or documents required or permitted to be given to SAPN for the purposes of the PPSA must be given in accordance with the PPSA.
- 18.8** SAPN agrees with the Council not to disclose information of the kind mentioned in subsection 275(1) of the PPSA except in circumstances required by paragraphs 275(7)(b)-(e).
- 18.9** In this clause 18:
- (a) a reference to Goods means the original Goods supplied and also includes proceeds and commingled property when the context permits and, the Goods will include "other goods" as classified under the PPSA; and
 - (b) the following words have the respective meanings given to them in the PPSA: commingled, financing statement, financing change statement, perfected, proceeds, register, registration, security interest and verification statement.

Part B -Services

B.1. Access to Site

- B1.1** The Council agrees to provide unlimited and unrestricted access to the Site (and any information necessary to undertake the Services at the Site):
 - B1.1.1** on Monday through to Friday from 6:00am to 6:00pm; and
 - B1.1.2** at any other time, unless the Council has indicated to SAPN on not less than 48 hours notice that reasonable circumstances exist at a time stated which prevent the Council from providing SAPN access to the Site.

B.2. Work Health and Safety

- B2.1** The Council must:
 - B2.1.1** prior to SAPN commencing the Services:
 - B2.1.1.1** identify reasonably foreseeable hazards that could give rise to risks to health and safety and develop and maintain Safe Systems of Work;
 - B2.1.1.2** provide to SAPN for approval and obtain approval for a safety management system which demonstrates compliance with the WHS Laws; and
 - B2.1.1.3** identify to SAPN any Hazardous Work that is likely to be involved in the provision of the Services;
- B2.2** Without limitation to clause B2.1, the Council must, in conjunction with SAPN's performance of the Services:
 - B2.2.1** comply with the WHS Laws and, upon reasonable request of SAPN, demonstrate compliance with the WHS Laws including the provision of evidence to demonstrate compliance with the WHS Laws;
 - B2.2.2** provide all such information and assistance as SAPN may reasonably require in connection with any WHS investigation in connection with this Construction Agreement or the Services;
 - B2.2.3** comply with all reasonable directions of SAPN in relation to the application of SAPN's obligations under the WHS Laws;
 - B2.2.4** not, and must ensure that none of its or SAPN's Workers, carry out work in High Risk Areas;
 - B2.2.5** provide SAPN with a copy of any notification (or the details thereof if not in writing) required to be given by the Council under the WHS Laws to any Governmental Agency in relation to the death, serious injury or injury of any person or in respect of a dangerous incident arising pursuant to or in relation to the provision of the Services, promptly after the giving of such notification.

B.3. Goods and Equipment

- B3.1** SAPN is responsible to supply all Goods necessary to undertake the Services unless stated to the contrary in the Letter of Offer.
- B3.2** SAPN warrants that for a period of one year from the date of completion of the Services, it will repair or replace free of charge any Goods provided as part of the Services which may prove defective in materials or workmanship provided that:
 - B3.2.1** SAPN shall not be responsible for the cost of or any damage occasioned by any repairs, disturbance or alterations or attempted alterations made to the Services as where such work was undertaken without SAPN's written consent;

B3.2.2 Goods not manufactured by SAPN and utilised in the Services shall be subject only to such warranty (if any) as provided by the original manufacturer;

B3.2.3 where the Council supplies Goods, SAPN's warranty will only apply to any Services performed by SAPN using such Goods, but not to the Goods themselves.

B3.3 If the Council supplies goods or equipment to be utilised in the Services the parties agree that the Council is responsible to ensure that:

B3.3.1 the goods and equipment supplied are fit for purpose;

B3.3.2 the goods and equipment have been tested and inspected;

B3.3.3 the goods and equipment are free from any charge or encumbrance in the favour of any third party;

B3.3.4 the goods and equipment are in good working order and meeting any safety or other standards which relate to them.

B.4. Minor Practical Construction Adjustments

The Council authorises SAPN to make any necessary minor practical adjustments to facilitate performance of the Services. The Council acknowledges that these minor practical adjustments do not constitute design work by SAPN.

C.1 Copyright

C.1.1 Ownership of Copyright

Any designs, training documentation, drawings and other technical information or documentation provided by SAPN under this Construction Agreement, and all copyright and other intellectual property therein, will be and will remain the property of SAPN.

C.1.2 Licence to Use Data

The Council may use, reproduce and disclose any documentation, data or other information provided to the Council by SAPN in supplying the Services provided always that the Council complies with its obligations to SAPN pursuant to this Construction Agreement regarding protection and non-disclosure of Confidential Information.

C.1.3 Acknowledgment of Ownership

The Council acknowledges that SAPN retains all rights of ownership in respect of the design of the Services including the right to reprocess, integrate and interpret the data and provide products derived therefrom, but without prejudice to the Council's rights under clause C.1.2.

C.2. Patents

If SAPN, in the supply of the Services, discovers or first reduces to practice a concept, product or process which is capable of being patented then the property in that concept, product or process will vest in SAPN.