

Confidentiality Agreement (Two Way) for Interconnection

<Insert name of Party2>

(ABN <insert ABN>)

<Insert name of SGSPAA entity>

(ABN <insert ABN>)

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CONFIDENTIALITY AGREEMENT

This **Agreement** is made this <insert day> day of <insert month> 20<insert year>

PARTIES

<Insert name of SGSPAA Entity> (ABN <insert ABN>) of <insert address>

AND

<Insert name of Party2> (ABN <insert ABN>) of <insert address>

RECITALS

- A. The Discloser may provide to the Recipient or the Recipient may otherwise have access to, or become aware of, Confidential Information belonging to, or in the possession of the Discloser in the conjunction with the Project.
- B. The Discloser requires, and the Recipient agrees, to use the Confidential Information only for the Permitted Purpose and to keep it confidential on the terms of this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement, unless the context otherwise requires:

Associated Entities has the meaning set out for that term in the *Corporations Act 2001* (Cth).

Agreement means this document as amended from time to time and each schedule or annexure to it.

Authorised Person means any officer, employee, agent or legal, financial or other professional adviser of the Recipient and where relevant includes the shareholders of SGSP (Australia) Assets Pty Ltd (ABN 60 126 327 624).

Business Day means any day other than a Saturday, Sunday or public holiday in <Melbourne, Victoria/Sydney, New South Wales>.

Confidential Information means information of any kind in any form or medium, whether formal or informal, written or unwritten, such as computer software or programs, concepts, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology, trade secrets, financial and business affairs, existing or potential customers, strategies, practices, procedures or similar information, Sensitive Operational Information and all other commercially sensitive or valuable information of the Discloser which is:

- (a) by its nature confidential;
- (b) is communicated by the Discloser as confidential; or
- (c) the Recipient knows or ought to know is confidential,

whether given by the Discloser or a Related Body Corporate of the Discloser to the Recipient, obtained by the Recipient from the Discloser or a Related Body Corporate of the Discloser or the Recipient has access to, or becomes aware of, the information belonging to, or in the possession of, the Discloser or a Related Body Corporate of the Discloser in conjunction with the Project, directly or indirectly, before or after the date of this Agreement, but excludes information which the Recipient can establish was:

- (d) in or enters the public domain other than through a breach of any obligation of confidence owed by the Recipient to the Discloser;
- (e) made available to the Recipient by a third party who has no obligation of confidence to the Discloser in relation to the information; or
- (f) independently developed by the Recipient without the Recipient relying on, referring to or incorporating any of the Confidential Information.

Discloser means the Party (and any of its Related Bodies Corporate), which discloses information to a Recipient including, but not limited to, Confidential Information.

Permitted Purpose means discussions and exchange of information relating to the interconnection of infrastructure for the Project.

Personal Information has the meaning given in the *Privacy Act 1988* (Cth).

Privacy Laws means the *Privacy Act 1988* (Cth) and any other legally binding requirement under Australian law, industry code, policy or statement relating to the handling of Personal Information.

Project means <insert>.

Recipient means the party that receives information from the Discloser, or a representative of the Discloser including, but not limited to, Confidential Information.

Records means records (including all copies) in any form or media (whether or not visible) that contain, refer to, or are based on any Confidential Information or any analysis of it.

Related Body Corporate has the meaning set out in section 50 of the *Corporations Act 2001* (Cth).

Sensitive Operational Information means the following information relating to the electricity or gas business of SGSP (Australia) Assets Pty Ltd or its Associated Entities:

- (a) electricity or gas network layout diagrams;
- (b) electricity or gas network schematics;
- (c) geospatial information that records the location of parts of electricity or gas networks or assets;
- (d) electricity or gas network or asset configuration information;
- (e) electricity or gas load data; and
- (f) electricity or gas asset, or network operational constraints or tolerances information.

1.2 Interpretation

- (a) In this Agreement, unless the context otherwise requires:

- (i) headings are for convenience only and do not affect interpretation;
 - (ii) reference to legislation (including any subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (iii) reference to a document, deed or agreement, or a provision of a document or agreement is to that document, deed, agreement or provision as amended, supplemented, replaced or novated;
 - (iv) reference to a party to this Agreement or to any other document or agreement includes that party's personal representatives, successors or permitted assigns;
 - (v) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law to that person;
 - (vi) a singular word includes the plural and vice versa;
 - (vii) to one gender includes every other gender;
 - (viii) where a word or phrase is defined, each reference or any other grammatical form in this Agreement has the corresponding meaning;
 - (ix) where an example is given (including, but not limited to, a right, obligation or concept), such as the use of the word including, the example does not limit the scope;
 - (x) a reference to the word agreement includes an undertaking or other binding arrangement or understanding, whether or not in writing; and
 - (xi) an agreement, representation or warranty on the part of, or in favour of, two or more persons binds, or is for the benefit of them jointly and severally.
- (b) No rule of construction applies to the disadvantage of a party on the basis that that party put forward the Agreement or any part of it.

2. RECIPIENT'S CONFIDENTIALITY ACKNOWLEDGEMENTS

2.1 Use and confidentiality

The parties each acknowledge and agree that, in consideration of the mutual promises given in this Agreement:

- (a) the Recipient owes an obligation of confidence to the Discloser concerning the Confidential Information;
- (b) the Confidential Information is secret, confidential and valuable to the Discloser;
- (c) the Recipient must not use any Confidential Information for any purpose other than the Permitted Purpose;
- (d) the Recipient must not disclose any of the Confidential Information to any person other than as permitted under clause 3;
- (e) the Recipient has no right or interest in any of the Confidential Information other than the right to use and disclose it on the terms of this Agreement;

- (f) the Recipient will notify the Discloser immediately upon becoming aware of any breach or threatened breach of this Agreement;
- (g) any Confidential Information is made available to the Recipient “as is” and that no warranties of any kind are granted or implied with respect to the quality of the Confidential Information including, but not limited to, its fitness for any purpose, accuracy, completeness or correctness, or whether it is up-to-date; and
- (h) the Recipient must make its own assessment of the Confidential Information and satisfy itself as to its accuracy and completeness.

2.2 Copies and other Records

Without limiting clause 2.2, the Recipient may make Records, and may allow an Authorised Person to make Records, but only to the extent necessary for the Permitted Purpose.

2.3 Security and Control

The Recipient must, at its cost, keep the Confidential Information and each Record:

- (a) confidential, in a way that makes it clear that it is confidential to the Discloser;
- (b) under its effective control; and
- (c) secure from theft, loss, damage and unauthorised access, use and disclosure.

2.4 No Offshoring

Notwithstanding anything in this Agreement, the Recipient must not transmit, disclose, access or store Confidential Information outside Australia, or allow any person outside Australia to have access to it, without the prior approval of the Recipient and on such additional terms as the Recipient sees fit.

3. DISCLOSURE BY THE RECIPIENT

3.1 No Disclosure

The Recipient must not, without the Discloser’s prior written consent disclose any Confidential Information to any person except:

- (a) to the extent required by law and in accordance with clause 3.2; or
- (b) to an Authorised Person in accordance with clause 3.3, but only to the extent that the Authorised Person has a bona fide need-to-know the Confidential Information.

The obligation not to disclose the Confidential Information is not to be affected by the bankruptcy, insolvency, or receivership of the Recipient.

3.2 Conditions for Disclosures Required by Law

If the Recipient or any Authorised Person becomes legally compelled to disclose any of the Confidential Information, to the extent permitted by law:

- (a) prior to making any disclosure, the Recipient must notify the Discloser so that the Discloser may (in its absolute discretion) seek a protective order, injunction or other appropriate remedy; and

- (b) request that confidentiality in the Confidential Information is maintained on disclosure, except where the Discloser notifies the Recipient in writing that it does not intend to enforce confidentiality in relation to the Confidential Information.

3.3 Conditions for Disclosure to Authorised Persons

- (a) The Recipient must notify the Authorised Person at, or before, disclosure that Confidential Information must be kept confidential in accordance with the terms of this Agreement.
- (b) The Recipient acknowledges and agrees that it will be liable for any breach by an Authorised Person of the obligations contained in this Agreement, and that a breach by an Authorised Person will be deemed to be a breach by the Recipient.

4. PRIVACY

If the Confidential Information contains any Personal Information, the Recipient must, with respect to that Personal Information:

- (a) comply with the Privacy Laws and any other privacy laws by which it is bound;
- (b) comply with any privacy code or policy which has been adopted by the Discloser and notified to the Recipient (copies available on request) as if the Recipient were bound by that code or policy;
- (c) promptly notify the Discloser of any complaint or investigation under, or relating to, any of the laws, codes or policies referred to in paragraph (a) and (b) above; and
- (d) co-operate with the Discloser in the resolution of any such complaint or investigation.

5. RECIPIENT'S RETURN OR DESTRUCTION OF RECORDS

5.1 Return and destruction

The Recipient must at the Discloser's request, or when no longer required for the Permitted Purpose, or on the completion or termination of the Permitted Purpose (whichever occurs first), immediately stop using all Confidential Information and, at its cost, for all Records and Confidential Information in the possession or control of the Recipient or any Authorised Person:

- (a) deliver to the Discloser, or if requested by the Discloser, destroy and provide evidence of destruction reasonably satisfactory to the Discloser, every tangible Record and Confidential Information; and
- (b) permanently delete or destroy every intangible Record and Confidential Information and provide evidence of erasure or destruction reasonably satisfactory to the Discloser.

5.2 Exceptions

Nothing in clause 5.1 shall require the Recipient to return, destroy or delete any Confidential Information:

- (a) which would cause the Recipient to be in breach of any law or the rules of any stock exchange to which the Recipient is bound to comply;

- (b) embedded or otherwise incorporated in:
 - (i) the Recipient's director's papers, or the minutes of the Recipient's board or any committee of that board to the extent that such papers and minutes contain the level of detail consistent with the normal practices of the Recipient; or
 - (ii) computer backup archives that are impracticable to delete or destroy, provided that the document in which the Confidential Information is embedded or otherwise incorporated is destroyed or deleted in accordance with the Recipient's document retention policy or processes for such documentation; or
- (c) retained by any legal, financial or other professional advisers of the Recipient where those documents are required to be retained by such adviser in accordance with a relevant professional standards, practices, codes or insurance policies applicable to the adviser, provided, that the Confidential Information is destroyed in accordance with such professional standards, practices, codes or insurance policies (as applicable).

6. REMEDIES FOR BREACH

The Recipient acknowledges that:

- (a) any breach or threatened breach of this Agreement may cause the Discloser immediate and irreparable harm for which damages alone may not be an adequate remedy and consequently the Discloser may pursue equitable remedies; and
- (b) the Discloser may commence proceedings to restrain any breach or threatened breach of this Agreement or any other unauthorised access to, or use or disclosure of, any Confidential Information or to compel specific performance of this Agreement.

7. INDEMNITY

The Recipient must indemnify and hold harmless the Discloser for any loss, damage, liability, cost or expense (including legal expenses on a full indemnity basis) suffered by the Discloser as a result of:

- (a) any breach of the terms of this Agreement; and
- (b) the disclosure or use of the Confidential Information by the Recipient or any Authorised Person of the Recipient other than in accordance with this Agreement.

The Recipient's liability to the Discloser will be reduced proportionally to the extent that any act or omission of the Discloser or any Authorised Person of the Discloser contributed to the loss.

8. RESTRICTIONS ON PUBLIC ANNOUNCEMENTS

The Recipient must not, without the Discloser's prior written consent, make any direct or indirect public announcement about, or comment on, the Project or this Agreement.

9. GENERAL

9.1 Notices

- (a) All notices made under this document must be in writing, and signed by a person duly authorised by the sender and hand delivered or sent by registered mail or email to

the recipient's address set out in this Agreement (or an alternative address notified by a party to the other party).

- (b) A notice given in accordance with this clause 9.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:
- (i) if hand delivered, on delivery;
 - (ii) if sent by registered post, on the third Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or
 - (iii) if sent by email, when the sender's email system shows successful delivery of the email and the sender does not receive any delivery failure message,

provided that if the delivery or receipt is not on a Business Day or is after 5.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

9.2 Benefit of Agreement

The parties each acknowledge and agree that a Party holds the benefit of this Agreement on trust for each of its Related Bodies Corporate (including, but not limited to, the indemnity set out in clause 7). Loss may be suffered by a Related Body Corporate of a Party, in addition to loss suffered by that Party, as a result of a breach of this Agreement.

9.3 Additional Rights

Any right that a person may have under this Agreement is in addition to, and does not replace or limit, any other right that the person might have.

9.4 Survival of Obligations

The terms of this Agreement continue to apply to the parties despite the completion or termination of the Permitted Purpose, or despite the Recipient's compliance with clause 5.

9.5 Governing Law

This Agreement is governed by the law in force in <Victoria / New South Wales>. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of <Victoria / New South Wales> and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Agreement.

9.6 Counterparts

This Agreement may be executed in any number of counterparts and by the parties in separate counterparts.

9.7 Electronic Execution

A party may execute this Agreement with an electronic signature generated by DocuSign, or by another generally accepted and lawful form of technology agreed by the parties in writing as satisfactory for execution by electronic signature. A party who receives such an electronic signature may assume that such execution was validly and lawfully permitted by the other party.

EXECUTED as an agreement

EXECUTED for and on behalf of **<Insert name of SGSPAA Entity>** ABN **<insert ABN>** by its authorised representative:

Signature of Authorised Representative

Full name of Authorised Representative

Job title of Authorised Representative

Date

EXECUTED for and on behalf of **<Insert name of Party2>** ABN **<insert ABN>** by its authorised representative:

Signature of Authorised Representative

Full name of Authorised Representative

Job title of Authorised Representative

Date