



**ES 9**

**Agreement for Small Asset Relocation Projects**

December 2008



## SCOPE

This publication contains the Agreement between Ausgrid and the Proponent for the carrying out of small asset relocation projects.

## WARNING

It is illegal for persons other than licensed electricians, or persons authorised by legislation, to work on the fixed wiring of any electrical installation.

Penalties for conviction are severe.

It is the responsibility of the user of this document to ensure that only the current version is being used.

Ausgrid may amend this document at any time.

## DOCUMENT AND AMENDMENT HISTORY

Issue No.	Date	Approved by	Summary of Changes
1	December 2008	M - CPC	Initial issue

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# **ES 9B**

## **AGREEMENT FOR SMALL ASSET RELOCATION PROJECTS**

December 2008

### **Contents**

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AGREEMENT & EXECUTION .....	1
SCHEDULE 1 - REFERENCE SCHEDULE .....	2
SCHEDULE 2 - GENERAL CONDITIONS OF CONTRACT.....	4
APPENDIX A - ASP/1'S CERTIFICATE.....	11



# Schedule 1 - Reference Schedule

PROJECT NUMBER:		
<b>1. Proponent Details</b>		
	Name	
	ABN	
	Street Address	
	Postal Address	
	Proponent's Representative/Project Manager	
	Name	
	ABN	
	Street Address	
	Postal Address	
	Telephone number	
	Facsimile number	
Email address		
<b>2. Insurance to be Obtained by the Proponent</b>		
	Public Liability	\$20 million
	Works Insurance	
<b>3. Ausgrid Details</b>		
	Customer Operations Planning and Supply Negotiations	
	Planning Officer Name	
	Street Address	
	Telephone number Facsimile number Email address	
<b>4. Ausgrid Fees for Contract Services and Monopoly Services provided by Ausgrid</b>		
	Design @ \$130.00 per hour	
	Other Contract Services @ \$90.00 per hour	
	Monopoly Services as defined in ES 5 and includes general Administrative Costs	

<b>5. Details of ASP/1's (Level 1 ASP's) - if known at this stage</b>		
	<b>Name</b>	
	<b>ABN</b>	
	<b>Street Address</b>	
	<b>Postal Address</b>	
<b>6. Contestable Relocation of Ausgrid Infrastructure (undertaken by ASP/1 for the Proponent)</b>		
	<b>6.1 Site location</b>	
	<b>6.2 Description of Works (list main items)</b>	
	<b>6.3 Items to be returned to Ausgrid (list all relevant items)</b>	
	<b>6.4 Ausgrid depot address for return of infrastructure items</b>	
<b>7. Is other utilities' infrastructure affected (list all relevant items and their locations - Ausgrid cannot guarantee identification of all affected assets)</b>		
	<b>Telecommunications or other utilities infrastructure affected or relocations required</b>	
<b>8. Warranty Bond (see definition "Warranty Bond" and clause 5.9)</b>		
	<b>Approx. 10% of total value of the Works or a minimum value as determined by Ausgrid at its sole discretion.</b>	
	<b>Value of the Works</b>	\$
	<b>Warranty Bond</b>	\$ 500 / \$1000 / \$1500 / \$2000 / \$3000 (All but one amount to be struck out)
<b>9. Date for Completion of Works</b>		
	<b>The Proponent undertakes that the Works will be completed by .....</b>	

## Schedule 2 - General Conditions of Contract

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### **1. Ausgrid to design Works at Proponent's cost**

- 1.1 The Proponent must pay Ausgrid the Design Fee set out in Schedule 1, item 4 prior to Ausgrid commencing work on the Design.
- 1.2 Ausgrid will endeavour to deliver the Design to the Proponent within 10 business days of the Design Fee being paid, or within such other period as is agreed in writing with the Proponent.
- 1.3 If Ausgrid is unable to deliver the Design within the time stipulated in the previous sub-clause it must serve a written notice on the Proponent at least one business day before the date for delivery, setting out the revised date for delivery.
- 1.4 Provided Ausgrid serves the written notice referred to in the previous sub-clause, it will not be liable for any delay in delivering the Design.
- 1.5 Ausgrid may amend the Design at the Proponent's cost at any time during the course of the Works in the event that the Proponent's requirements change or Ausgrid becomes aware of facts or circumstances that in its reasonable opinion necessitate a Design change.

### **2. Commencement and Construction of Works**

- 2.1 The Proponent must engage an ASP/1 to construct the Works.
- 2.2 The Proponent warrants that the ASP/1 will construct the Works strictly in accordance with the Design as amended in accordance with clause 1.5 (if applicable).
- 2.3 If it is necessary to provide the local council with 40 days prior notice of any works in this regard, this period must elapse before the Works may commence, unless the local council's submission in relation to the Works is received and considered by Ausgrid within a shorter time.
- 2.4 The Works must not commence until the written notice required under clause 6A.3 has been provided to Ausgrid.
- 2.5 The Works must be completed within the time stipulated in Schedule 1, item 9.

### **3. Proponent must ensure ASP buys stipulated Materials from Ausgrid**

- 3.1 The Proponent must ensure that the ASP/1 purchases from Ausgrid all Materials stipulated in the Design as Ausgrid-sourced Materials.

### **4. Ownership and disposal of Surplus Materials**

- 4.1 The Proponent must ensure that as soon as all the items listed in Schedule 1, item 6.3 are removed from their present location, the ASP/1 will tag them with the identity of the ASP/1 and the name of the project and deliver them to the Ausgrid depot nominated in Schedule 1, item 6.4 during normal working hours.
- 4.2 In respect of any item not referred to in Schedule 1, item 6.3, property and risk in that item passes from Ausgrid to the Proponent at the time the item is dismantled and if the item is to be reinstalled until such time as the item is installed and commissioned in the new location.
- 4.3 The Proponent warrants that all items referred to in clause 4.2 that are not required to be reinstalled will be disposed of by the ASP/1 in accordance with the Law.

## **5. Insurance**

- 5.1 The Proponent must effect and maintain or cause the ASP/1 to effect and maintain the insurances referred to in Schedule 1 item 2, all on terms acceptable to Ausgrid, acting reasonably.
- 5.2 The Proponent must provide evidence of currency of the insurances required under this Agreement upon demand by Ausgrid and the Proponent warrants that Ausgrid is also an insured party under those insurances (where Ausgrid has an insurable interest).
- 5.3 Upon request by Ausgrid, the Proponent must produce evidence of any insurance policy required under this Agreement (including but not limited to the policy document and any renewal of the policy).

## **6. Inspection of Works**

- 6.1 Ausgrid has the right to inspect all Works.
- 6.2 The Proponent must ensure that the ASP/1 gives Ausgrid at least ten (10) working days notice (by Fax) prior to the commencement of the project and gives Ausgrid at least four (4) clear Business Day's notice (by Fax and phone) of the following (if applicable to the Works) so as to enable Ausgrid's compliance officer to inspect:
  - (a) erection of any pole
  - (b) removal of any pole
  - (c) commencement of cable laying
  - (d) commencement of cable jointing
  - (e) proving of ducts;
  - (f) backfilling any trench;
  - (g) pouring of any concrete;
  - (h) installing any earthing system;
  - (i) site acceptance;
  - (j) testing of Works;
  - (k) any other aspects of construction as considered necessary by Ausgrid from time to time.

**Note:** At the initial site meeting, prior to construction, the ASP1 and the Compliance Officer will set out the required milestone inspections for the particular project.

- 6.3 All inspections conducted by Ausgrid under this Agreement will be charged to the Proponent at the rate set out in Schedule 1, item 4.

### **6A Relocation of or impact on infrastructure belonging to others**

- 6A.1 The Proponent must ensure that the ASP makes suitable arrangements with the owners of assets that may need to be relocated or are otherwise affected in any way by the Works.
- 6A.2 Any arrangements made in accordance with clause 6A.1 must be in writing.
- 6A.3 Ausgrid must be provided with a copy of the written arrangement prior to the Works being undertaken.

## **7. Interruptions to electricity supply**

- 7.1 The Proponent must ensure that the ASP/1:
- (a) does not interrupt the supply of electricity to Customers except with the prior written consent of Ausgrid;
  - (b) gives at least two (2) clear Business Days prior written notice of the proposed interruption (on behalf of Ausgrid) to any Customer whose supply may be interrupted during the Works;
  - (c) ensures that no interruption occurs at a different time or lasts longer than the period stipulated in the notice to the relevant Customer;
  - (d) pays to Ausgrid any moneys that Ausgrid, acting reasonably, pays to a Customer in respect of an interruption occurring in connection with or as a result of the Works.
- 7.2 The Proponent must ensure that the ASP/1 provides a report to Ausgrid after each interruption (whether planned or unplanned) detailing:
- (a) the number of Customers affected by the interruption;
  - (b) the length of the interruption;
  - (c) whether the interruption was planned or unplanned;
  - (d) whether notice of the interruption was given under clause 7.1(b);
  - (e) whether the interruption:
    - (i) exceeded the period referred to in the notice; and/or
    - (ii) occurred at a time other than that referred to in the notice; and
    - (f) any other information reasonably required by Ausgrid.

## **8. Electrification of Works**

- 8.1 Property in the Works passes to Ausgrid when the Works are Electrified.
- 8.2 Subject to clause 8.3, Ausgrid will Electrify the Works when it has conducted a final inspection and is satisfied that:
- (a) Practical Completion has occurred;
  - (b) if an access permit is required to enable Electrification, Ausgrid has been given at least four weeks' prior notice (by fax); and
  - (c) the Proponent has paid to Ausgrid all sums payable under this Agreement;
- Note:** Practical Completion will not be given until the ASP/1 has provided Ausgrid with the items referred to in clause 13A.
- 8.3 Ausgrid is not required to Electrify the Works until it has obtained a suitable Cut-Out Period.

## **9. Rectification of defects**

- 9.1 If during the conduct of the Works or before the Warranty period expires, the Proponent becomes aware, or Ausgrid notifies the Proponent, that there is a defect in any of the Works; the Proponent must procure the immediate rectification of the defect.
- 9.2 The rectification work must be completed to Ausgrid's satisfaction.
- 9.3 If the rectification work is not completed within one week of notification to the Proponent, or where urgent rectification is required, Ausgrid may carry out the rectification work at the Proponent's expense.
- 9.4 The Proponent must promptly pay any amount invoiced by Ausgrid to the Proponent under this clause.

## **10. Payments to Ausgrid**

- 10.1 Ausgrid may invoice the Proponent monthly for all sums due and payable under this Agreement, including but not limited to:
- (a) fees for Contract Services and Monopoly Services;
  - (b) the cost of rectification work performed by Ausgrid pursuant to clause 9;
  - (c) sums payable by Ausgrid to customers as a result of a breach of the obligations set out in clause 7.1; and
  - (d) additional fees for amendment of the Design in accordance with clause 1.5.
- 10.2 Invoiced costs must be paid within 30 days of the date of the invoice.
- 10.3 Ausgrid will not Electrify any Works unless and until all outstanding invoices have been paid.

## **11. Warranty**

- 11.1 The Proponent warrants that it will comply strictly with all its obligations under this Agreement.
- 11.2 The Proponent warrants to Ausgrid that:
- (a) the Works will be carried out in accordance with
    - (i) the Applicable Specification;
    - (ii) applicable Laws;
    - (iii) the Design;
    - (iv) Ausgrid's Environmental Requirements;
    - (v) Ausgrid's quality, traffic and safety requirements; and
    - (vi) any other requirements of this Agreement; and
  - (b) once the Works have reached Practical Completion they will in all respects be fit for their intended purpose.
- 11.3 For the purposes of clause 11.2(b), the parties acknowledge and agree that the Works will not be taken to be not fit for their intended purpose if the sole reason for such failure is due to design faults in the Design.

## **12. Proponent indemnifies Ausgrid**

- 12.1 The Proponent must indemnify Ausgrid against any claim, damage, expense (including fee, charge or cost), loss or liability resulting from any breach or negligent act or omission on the part of the Proponent, ASP/1, or their respective employees, contractors or agents, including:
- (a) breach of warranty by the Proponent;
  - (b) damage or loss or destruction to real or personal property, including existing property;
  - (c) injury to or disease or illness or death of persons;
  - (d) claims by, or statutory or contractual rights of any:
    - (i) Ausgrid customers;
    - (ii) owners of telecommunications infrastructure referred to in Schedule 1 item 7; or
    - (iii) any other person, arising out of or in connection with the carrying out of the Agreement or the Works.
- 12.2 The indemnity in clause 12.1 is to be reduced proportionately to the extent that the damage, loss, injury, disease, illness, death or claim is due to a breach or fraudulent or wrongful (including negligent) act or omission of Ausgrid.

### **13. Warranty Bond**

- 13.1 Prior to the commencement of the Works, the Proponent must arrange for the provision of a Warranty Bond to Ausgrid to apply against:
- (a) any monies claimed under any indemnity under this Agreement;
  - (b) any loss or damage suffered by Ausgrid during the Warranty Period as a result of the Proponent's or ASP/1's failure to:
    - (i) observe any obligation under this Agreement;
    - (ii) complete the Works;
    - (iii) pay monies due and payable under this Agreement;
    - (iv) rectify any defects in the Works; or
  - (c) any loss or damage suffered by Ausgrid during the Warranty Period arising in connection with any breach of warranty given by the Proponent; or
- 13.2 Ausgrid will have recourse to the Warranty Bond without notice to the Proponent.
- 13.3 The Warranty Bond must be returned to the Proponent when the Warranty Period has expired.

### **13A. Final inspection and final as built drawings**

- 13A.1 For Practical Completion to occur, the Proponent must ensure that the ASP/1 provides Ausgrid with:
- (i) a certificate to Ausgrid in the form of Appendix A;
  - (ii) all test certificates reasonably required by Ausgrid; and
  - (iii) all as-built drawings of the Works reasonably required by Ausgrid.

**Note:** These must be provided prior to Electrification or at the final inspection as agreed with the Compliance Officer at the commencement of the project.

### **14. GST**

- 14.1 In addition to paying all sums payable under this Agreement (which are exclusive of GST) the Proponent must:
- (a) pay to Ausgrid an amount equal to any GST for which Ausgrid is liable on any supply by Ausgrid under or in connection with this Agreement, without deduction or set-off of any other amount; and
  - (b) make that payment as and when the consideration or part of it must be paid, except that the Proponent need not pay until it has received a tax invoice or adjustment note for the supply.

### **15. Civil Liability Act 2002 (NSW)**

- 15.1 To the extent permitted by law, the operation of part 4 of the *Civil Liability Act 2002 (NSW)* is excluded in relation to any and all rights, obligations and liabilities arising under or in relation to this Agreement, howsoever such rights, obligations or liabilities are sought to be enforced.
- 15.2 The Proponent further agrees that:
- (a) in each subcontract into which it enters for the carrying out of the Works under this Agreement, it will include provisions that, to the extent permitted by law, effectively exclude the operation of part 4 of the *Civil Liability Act 2002 (NSW)* in relation to all rights, obligations, or liabilities arising under or in relation to each subcontract howsoever such rights, obligations or liabilities are sought to be enforced; and
  - (b) it will require and ensure that each subcontractor will include in any further contract that it enters into with others for the carrying out of the Works under this Agreement, provision that, to the extent permitted by law, each such further contract will include provisions that effectively exclude the operation of part 4 of the *Civil Liability Act 2002 (NSW)* in relation to all rights, obligations or liabilities arising under or in relation to such further contract howsoever such rights, obligations or liabilities are sought to be enforced.

## 16. Dictionary and interpretation

### 16.1 Definitions

In this Agreement:

**Accreditation Scheme** means the 'Scheme for the Accreditation of Service Providers to Undertake Contestable Works' and administered by the New South Wales Office of Fair Trading.

**Accredited Service Provider** means a person accredited as an ASP/1 in accordance with the Accreditation Scheme.

**Administrative Costs** means costs incurred by Ausgrid in the course of administering this Agreement and includes

- (a) sale of materials in accordance with clause 3; and
- (b) receiving delivery of surplus Infrastructure in accordance with clause 4;

but does not include the cost of the Design or the cost of Contract Services.

**Agreement** means this agreement including any schedule or appendix.

**Agreement Date** means the date of this Agreement (being the date on which the last party to execute the agreement signed it.).

**Approval** means any approval, authorisation, certificate, consent, exemption, filing, licence, notarisation, permit, registration, ruling, statutory required policy of insurance or waiver (and any renewal or variation of any of them) by or with an Authority, or any other third party (including any telecommunications company).

**Approved Materials** means materials satisfying Ausgrid's specifications which are appropriate for their intended use.

**ASP/1** means a person accredited as a Level 1 Accredited Service Provider in accordance with the Accreditation Scheme to construct the Works.

**Authority** means any Government or regulatory department, body, instrumentality, minister, agency or any other person (whether autonomous or not) who is charged with the administration of a law.

**Business Day** means any day that is not a Saturday, Sunday or a public holiday in New South Wales.

**Contract Services** means all activities performed by Ausgrid pursuant to this Agreement, which are not Monopoly Services and includes but is not limited to Design Services.

**Customer** means the owner or occupier of premises connected to Ausgrid's transmission or distribution system.

**Customer's Installation** means the part of the electrical installation belonging to the Customer and located on the Customer's side of the Point of Supply as defined in the Service and Installation Rules of New South Wales.

**Cut-out Period** means a period reasonably determined by Ausgrid as a suitable period during which electricity will be cut to Customers in connection with the Electrification of the Works.

**Design** means the design of the Works as described in item 4 of Schedule 1 and clause 1 of Schedule 2 and as amended from time to time in accordance with this Agreement.

**Electricity Works** means any electricity power lines or associated equipment or electricity structures that form part of Ausgrid's transmission or distribution system and to avoid doubt, includes Service Relocation Works.

**Electrify** means the application by Ausgrid of electrical current to the Electricity Works forming part of the Works.

**Electrification** has a corresponding meaning.

**Environmental Requirements** means a system of environmental management prepared or otherwise approved by Ausgrid more fully described in ES 10.

**GST** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

**Law** means any legislation, delegated legislation, regulations or any rules, instruments, notices or directions published by an Authority including the National Electricity Law, National Electricity Rules, and any Building Codes, or Australian Standards.

**Major Defect** means a defect in the Works which, in the opinion of Ausgrid, has the consequence that the Works are unsafe or not suitable to Electrify or leave Electrified.

**Minor Defect** means a defect in the Works which, in the opinion of Ausgrid, is not a Major Defect.

**Monopoly Services** bears the meaning it is given in ES 5 *Charges for Network Miscellaneous and Monopoly Services*. All activities performed by Ausgrid pursuant to this Agreement will be charged at the rate set out in ES 5 if they fall within the definition of **Monopoly Services**

**Network Operator** has the meaning given in the Electricity Supply Act 1995.

**Practical Completion** means that the Works have been completed in accordance with this Agreement; the Works are free of major defects; and the ASP/1 has provided to Ausgrid:

- (i) a certificate to Ausgrid in the form of Appendix A;
- (ii) all test certificates reasonably required by Ausgrid; and
- (iii) all as-built drawings of the Works reasonably required by Ausgrid.

**Premises** has the meaning given to that term in the Electricity Supply Act (NSW) 1995 and, to avoid doubt, for the purposes of this Agreement includes any road as defined in the *Roads Act 1993* (NSW).

**Relocation Works** means the work of relocating and/or replacing the Electricity Works including the Service Relocation Works as described in the Design and the Applicable Specification and any other works (other than the Civil Works) necessary to carry out those works whether or not described in the Design or the Applicable Specification (including any necessary underground conduits for telecommunications cables).

**Service Relocation Works** means all work involved in disconnecting all existing service mains and Customer's Installations and reconnecting them to the Electricity Works that are to be relocated pursuant to this Agreement.

**Warranty Bond** means an unconditional undertaking issued by a bank or insurance company in the form of the Appendix to ES 10 in favour of Ausgrid for the amount stated in Item 8 of Schedule 1.

**Warranty Period** means a period of three years commencing on the date of Electrification.

**Works** means all the works required to be undertaken as described in the Design and Applicable Specification as amended from time to time in accordance with this Agreement, together with any other works necessary to carry out those works whether or not described in the Design or the Applicable Specification (including the relocation of existing telecommunications, water, gas or other utility installations).

## 16.2 Interpretation

Unless expressed to the contrary:

- (a) words importing:
  - (i) the singular include the plural and vice versa; and
  - (ii) any gender includes the other genders;
- (b) a reference to:
  - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
  - (ii) a person includes its legal personal representatives, successors and assigns;
  - (iii) legislation, a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
  - (iv) a right includes a benefit, remedy, discretion, authority or power;
  - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation.

## Appendix A - ASP/1's Certificate

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Pursuant to the ES 9B Agreement between Ausgrid and the Proponent dated ..... 20 ....., the ASP/1 hereby warrants the following:

1. Accreditation
  - (a) The ASP/1 was an ASP/1 at the time it was engaged by the Proponent to undertake the Works.
  - (b) The ASP/1's accreditation remains current at the date of this Certificate.
  - (c) The ASP/1 maintains insurances specified by the Code.
  - (d) The ASP/1 has employed only fully trained and competent staff relevant to the Works and has ensured that they have been trained and authorised as required by the Ausgrid in accordance with Ausgrid's Electrical Safety Rules.
2. Works
  - (a) The Works have been completed in accordance with the Agreement and, without limitation, in accordance with:
    - (i) the Applicable Specification;
    - (ii) applicable Laws;
    - (iii) the Design as certified by Ausgrid;
    - (iv) the Code;
    - (v) Ausgrid's Environmental Requirements; and
    - (vi) Ausgrid's quality and safety requirements.
  - (b) Only Approved Materials have been used in respect of the Works.
  - (c) There are no Major Defects in the Works.
  - (d) The Works have been tested in accordance with the Agreement.
  - (e) The Works are suitable for Electrification.
  - (f) The Works are in all respects fit for their intended purpose.
  - (g) All parties have been notified that the Works have been submitted for Electrification and all work has ceased unless covered by an access permit.
3. Payment

Subject to satisfactory completion of the Works, arrangements have been made for the following:

  - (a) Payment of the ASP/1 by the Customer for undertaking the Works; and
  - (b) Payment of any employees, subcontractors, agents or suppliers of the ASP/1 for any work undertaken or for any services performed in relation to the Works.

[Capitalised terms are defined in ES 9B.]

**DATED:**

**Signed:**

**For and with the authority of**

**(the ASP/1)**

**Witness:**