![Ausgrid logo]

Revised Proposal

Attachment 5.13.N.7

ADMS Master Agreement

Legal Sign-off

PUBLIC

January 2019

2 October 2018

By email

██████████
Group Counsel – Finance
Ausgrid
Level 20, 570 George Street
Sydney   NSW   2000

Dear ██████

ADMS Contract
Our ref: AUS096-1559

We have reviewed the enclosed version of the Master Agreement – Services, Software Licence and Support Services that Ausgrid Operator Partnership trading as Ausgrid (**Ausgrid**) proposes to enter into with Schneider Electric (Australia) Pty Ltd (**Supplier**) (**Agreement**).

We note that during the course of this matter, we have taken instructions from Ausgrid through Ausgrid Legal, the project and ICT procurement team and KPMG.

Capitalised terms used but not defined in this letter are defined in the Agreement.

Background

Ausgrid proposes to engage the Supplier to supply the Advanced Distribution Management System (**ADMS**) solution that is capable of providing Operational Technology services throughout the contract term, and services including implementation and support Services to Ausgrid under the Agreement. We understand that the ADMS will replace Ausgrid's existing DNMS/SCADA system.

As part of the Initial Solution, Plan and Offer (**ISPO**) process, Ausgrid provided to potential suppliers the ISPO documents including a form of the Agreement which we prepared using Ausgrid's standard LAT 20 (Master Agreement – Services, Software Licence and Support Services), LAT 14 (System Integration and Implementation Agreement RFP) and LAT 15 (Master Services Agreement), based on the structural form and requirements provided to us by KPMG on Ausgrid's instructions (**Base Agreement**).

As part of the Supplier's response to the ISPO and engagement with the ISPO process, the Base Agreement was subsequently negotiated by Ausgrid with the Supplier. In addition, Ausgrid raised several other concerns (for example, in relation to personnel checks as a result of the Supplier's employees and personnel being located in Novi Sad, Serbia).

Key terms – Agreement

Schedule 1 of this letter sets out the key terms of the Agreement, including key deviations from the Base Agreement agreed to by the parties and additional constructs that were included to cover specific concerns from Ausgrid, such as Ausgrid's right to test the Supplier's infrastructure that remotely accesses Ausgrid's systems and a warranty in relation to security checks being undertaken by the Supplier for its relevant personnel.

Sydney
Level 29, MLC Centre, 19 Martin Place, Sydney NSW 2000
PO Box Q1164, QVB Post Office, Sydney NSW 1230
t: +61 2 9373 3555 | f: +61 2 9373 3599 | DX 282 Sydney | www.sparke.com.au
adelaide | brisbane | canberra | melbourne | newcastle | perth | sydney | upper hunter   JJZ\JJZ\66167007\1

Confirmations

We confirm that the **enclosed** Agreement is in accordance with Ausgrid's instructions and is in order for execution by Ausgrid.

Subject to the proper execution of the Agreement by Ausgrid and the Supplier in accordance with section 127(1) of the *Corporations Act* 2001 (Cth), the Agreement constitutes legal, valid and binding obligations of each relevant party and is enforceable in accordance with its terms in a competent court of New South Wales.

Thank you.

Yours sincerely

Partner responsible:

Schedule 1 – Key terms table

We note the following key terms of the Agreement:

No	Clause	Description of construct
Structure and overview		
1.	Structure (clauses 1.3 and 1.4)	The "**Agreement**" comprises the **Master Agreement**, **Ordering Documents** and **Project Schedules**. The Agreement only commences when the following conditions precedent are met or otherwise satisfied: (i) Ausgrid has obtained all internal approvals necessary in respect of this Agreement; (ii) the board of directors of Ausgrid has approved this Agreement, including the entry into and commencement of this Agreement; and (iii) Ausgrid has notified the Supplier in writing that the conditions in paragraphs (i) and (ii) above have been met. The conditions precedent set out above were included to account for the timing difference between the proposed execution date and the internal approvals required by Ausgrid.
2.	General supply obligations (clause 5)	To ensure the timetable is met and the Software and Services meet Ausgrid's requirements: • Software (clause 5.1): the Software must be supplied by the Due Dates and must conform to the Specifications and Acceptance Criteria; • Services (clause 5.2): the Services must be provided in a timely and efficient manner by all Due Dates and to achieve all Milestones and Service Levels; and • Knowledge transfer (clause 5.7): the Supplier must do all things necessary to enable Ausgrid to operate, access, use and maintain the Solution.
3.	Critical Infrastructure Information (clause 32.16)	Ausgrid's standard provision in relation to the handling of Critical Infrastructure Information is included (e.g. such information must be held solely in Australia and there are restrictions on access to the information).
4.	Licence conditions and ring-fencing (clauses 5.3 and 5.4)	The ADMS platform is operational technology – accordingly, the Supplier must comply with Ausgrid's Critical Licence Conditions, and must not do anything that would cause Ausgrid to breach a Critical Licence Condition. Ausgrid's standard ring-fencing provision is included.
Solution, Software and Interfaces		
5.	Solution and Interfaces (clauses 6 and 7)	To ensure Ausgrid receives Deliverables that meet its requirements, the Supplier must ensure that each Deliverable forming part of the Solution integrates and operates with all other parts of the Solution and Ausgrid's Environment, and meet the Specifications.
6.	Software licence (clause 9) / Escrow (clause 12)	██ ██████████████████ ■ ██████████████████████████████████ • The Supplier is obliged to place the source code to the Software in escrow (see item 16 below for the release events).

		• Ausgrid can permit a Supplier Competitor to assist Ausgrid to exercise its rights under the licence, subject to some restrictions (eg., Ausgrid must use reasonable endeavours to ensure that the Supplier Competitor is bound to confidentiality obligations no less onerous than Ausgrid's obligations under clause 30).
Services, Service Levels and Service Credits		
7.	Personnel (clause 8)	A Key Person and Key Personnel concept have been included to ensure that the Supplier allocates the appropriate resources to deliver the Services. ████████████ ██ ██ ██ ██ ██ ██ ██ The warranty is given in addition to the standard warranties that Ausgrid requires in respect of Personnel checks.
8.	Delay (clause 11)	The Supplier must use its best endeavours to anticipate potential failures and delays, and take steps necessary to avoid failures (including expediting and adjusting its activities). To ensure compliance, Ausgrid may terminate the Agreement in whole or in part for a Delay, subject to extensions granted because of Ausgrid's failure.
9.	Service Levels / Service Credits (clause 20), BCP (clause 26)	The Agreement includes a framework for Service Levels and Service Credits and a Business Continuity Plan.
10.	Step in rights (clause 27)	As a critical system, Ausgrid has a right to step-in to perform the Services if there is a Significant Failure or if the Supplier does not comply with an Ausgrid Direction to resolve a Failure.
Ownership of IP		
11.	New IPR (clause 17.1)	██ ██ ████████████████████
12.	Software modifications (clause 17.1(c))	██ ██ ██ ██ ██ ██ ██████████████████████████████
13.	Licence to software Deliverables	To ensure that there are no impediments to Ausgrid's right to use licensed software Deliverables, ██ ██. There are similar

	(clause 17.3)	restrictions on permitting the assistance of, and sub-licensing to, a Supplier Competitor as indicated in item 6 above. The source code version of software Deliverables licensed to Ausgrid will also be placed into escrow.
14.	Other IP (clause 17.2)	███████████████████████████████████ ███████████████████████████████████ ███████ There are similar restrictions on permitting the assistance of, and sub-licensing to, a Supplier Competitor as indicated in item 6 above.
15.	Transfer of licence (clause 17.4)	For business efficacy purposes, Ausgrid may transfer the licences as part of internal restructure or reorganisation, sale or divestment or any acquisition of Ausgrid. Otherwise, Ausgrid will need to seek the Supplier's consent to a transfer (consent not to be unreasonably withheld).
16.	Escrow (clause 12)	The Supplier is required to deliver the Source Code Materials for the Software in escrow. Under the draft Escrow Agreement (which will be executed when the Agreement is executed by the parties), a release event arises if: (a) the Owner (which is the Supplier) has failed to provide the services in accordance with the terms of the Agreement; (b) the Owner is insolvent; (c) there has been a material breach of the Agreement; (d) the Owner ceases or threatens to cease providing software support to the Licensee; (e) there has been a lawful request to do so by a regulatory authority; and (f) on termination by Ausgrid of the Agreement for cause.
17.	Third party IP claims (clauses 9.7 and 46)	The Supplier indemnifies Ausgrid from any third party IP infringement claims. The Supplier's liabilities under these clauses are not capped.
Prices / fees and charges		
18.	Best pricing (clause 21)	The Supplier is required to provide Ausgrid with a Price that does not exceed the fees paid by any other customer in a "Comparable Market" (ie., open markets with similar levels of industrial, political and economic development, such as Australia, the United States of America, the United Kingdom and Canada).
19.	Benchmarking (clause 25)	As a further commercial lever and in addition to the best pricing provision, Ausgrid may conduct a benchmarking exercise no more than twice a calendar year.
Confidentiality, privacy and security and subcontracting		
20.	Confidentiality, Privacy, Security (clauses 30, 31 and 32)	Ausgrid's usual provisions apply in relation to confidentiality, privacy and security (including data security and Ausgrid Data). In addition to these usual Ausgrid provisions, Ausgrid has a right, on 10 Business Days' notice, to carry out external and internal testing of the Supplier's infrastructure that enables the Supplier to remotely access Ausgrid's systems and infrastructure (or any other system that the Supplier uses to host, store or access Ausgrid Data), in order to determine any security issues with that infrastructure.
21.	Subcontracting (clause 42)	The Supplier may not sub-contract without Ausgrid's permission.
Warranties		

22.	Warranty – Final Solution Plan and Offer (clause 2.5)	Ausgrid has warranty that the Supplier will comply with all promises and representations made by the Supplier in the Final Solution Plan and Offer and all documents provided by the Supplier.
23.	Warranties (clauses 43 and 44)	There are broad contractual warranties to cover the quality of the Services, Software, and Deliverables. If the Supplier breaches a Service or Deliverable warranty, then Ausgrid may require the Supplier to re-perform the services and the Supplier must rectify the Deliverable failure at its own cost.
24.	Harmful Code (clause 45)	Ausgrid's usual provision in relation to harmful code and disabling code is included.
Liability, financial guarantee		
25.	Liability (clause 49)	Neither party has liability for consequential loss, including for loss of profit, loss of revenue, loss of overhead and loss of data.
		Liability for each party ███████████████████████ and two times the paid and payable amounts.
		There are claims that fall outside the exclusions and liability cap – eg: fraud, breach of confidentiality or privacy or IP, and under many indemnities (eg third party IP claims, confidentiality, breach of law and privacy).
		Further, the liability cap does not apply to the Supplier's liability for tangible property damage (including third party property damage claims). Instead, the Supplier's liability for such tangible property damage is limited to the maximum aggregate of ████ over the Term.
26.	Guarantee (clause 52)	The Supplier is required to provide a financial guarantee.
Termination and refund		
27.	Convenience (clause 55.1)	Ausgrid has a right to terminate for convenience, subject to Ausgrid paying the Supplier for any Contracted Items (being any Services, Software or other deliverables specified in an Ordering Document) delivered and Accepted up to the date of termination.
28.	Cause (clause 55.2)	Ausgrid has a right to terminate for cause for a broad range of events (in addition to the rights usually requested under its standard template agreement), including if the Supplier or its personnel is guilty of misconduct, if Ausgrid thinks that there is likely to be a substantial failure by the Supplier and/or if the Supplier habitually commits breaches of the same provision or breaches the Service Levels in any three consecutive month period.
29.	Change of Control (clause 55.7)	Ausgrid may terminate for a Change of Control of the Supplier. The Supplier is required to notify Ausgrid if it receives or considers any sale or changes to its business that may impact on its ability to provide the Services and Software. Ausgrid may terminate if it thinks that the event is likely to or will adversely impact on the Supplier's ability to provide the Software or Services.
30.	Supplier termination (clause 55.5)	The Supplier may only terminate for (1) Ausgrid's insolvency or (2) failure to pay (over a specified threshold amount). The Supplier has no other rights to terminate.

31.	Refund (clause 18.2)	If Ausgrid rejects a Contracted Item two or more times, it can terminate and get a refund.
32.	Disengagement (clause 56)	There is a disengagement framework for the provision of disengagement assistance to Ausgrid on termination or expiry.
33.	Consequences of Termination (clause 57)	If the Agreement or a part of the Agreement is terminated or expires: • each party must keep the other party's Confidential Information confidential; • the Supplier must provide the assistance required by Ausgrid to transfer responsibility for the provision of a Service and associated Deliverables from the Supplier to Ausgrid, including the provision of training required by Ausgrid; and • the Supplier must cease using, and deliver to Ausgrid, all Ausgrid Data. The Supplier must also destroy any copies of Ausgrid Data it may hold as requested by Ausgrid. The Supplier will give Ausgrid written confirmation that no Ausgrid Data was retained or destroyed without Ausgrid's written consent. On Ausgrid's request, the Supplier will give Ausgrid proof that Ausgrid's Data was securely destroyed. As the ADMS is a critical system, Ausgrid's perpetual licence to the Software and Deliverables (see items 6, 13 and 14 above) continues to apply after termination.