



## **Contract for Design Related Services**



## SCOPE

This is a contract between *Ausgrid* and a *Customer* who retains an *ASP/3* to design electricity assets that will form part of the *distribution network*. The contract sets out the terms and conditions on which *Ausgrid* will provide *design related services* to the *Customer* and their *ASP/3* and will *certify* the *ASP/3*'s design as suitable for use in the construction and installation to expand or alter the *distribution network*.

## WARNING

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

## DOCUMENT AND AMENDMENT HISTORY

Issue No.	Date	Approved By	Summary of Changes
1	June 2013	Chief Engineer	Initial issue
2	October 2013	Mgr Connection Policy	Formatting Changes
3	June 2015	Mgr Connection Policy	Updated to incorporate 2015 AER determination
4	August 2016	Chief Engineer	Redraft to reflect current process. Added Intellectual Property clause Designer warranty is now executed as a Deed Poll (Appendix 1)
5	1 December 2016	Manager - Network Risk and Planning	Updates to reflect Ausgrid lease transaction
6	14 December 2016	Manager/ Network Risk and Planning	Minor typographical corrections
7	Apr 2017	Manager/ Network Risk and Planning	Clauses 2.2, 3, 6.4 and 11.3. Appendix 1 clause 15.
8	May 2017	Head of Asset Investment	<ul style="list-style-type: none"><li>- Addition of witness signing box in the Deed Poll,</li><li>- Formatting changes</li><li>- Rewording relating to date reference in Agreed Terms - Deed of Novation</li><li>- Updated execution block on Signing Page – Deed of Novation</li><li>- Addition of Annexure 3: Acceptance of Offer</li></ul>

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## CONTRACT FOR DESIGN RELATED SERVICES

This contract is made on the date of *Ausgrid's* date stamp on the *Acceptance Form*

Between:

AUSGRID OPERATOR PARTNERSHIP (ABN 78 508 211 731), trading as AUSGRID, of 570 George Street, Sydney AND

The "Customer" named in section 3 of the *application* annexed to this contract as Annexure 1

## Background

- A The *Customer* has sought advice and assistance from *Ausgrid* in relation to the preparation and design of *distribution system* assets in relation to the *development*.
- B *Ausgrid* has agreed to provide the *design related services* in accordance with the terms and conditions of this Contract.
- C The purpose of the *design related services* is to assist the *Customer* to prepare a *design*.
- D The *Customer* acknowledges that if it prepares a *design* in accordance with the *design information* under this Contract, the *design* must be *certified* by *Ausgrid* before the *Customer* can enter into any appropriate *Ausgrid* contract that authorises construction of the *certified design*.

## Operative provisions:

# 1 Contract documents and definitions

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## 1.1 Documents constituting this Contract

The following documents constitute this Contract:

- (a) the conditions of Contract set out in clauses 1 - 15;
- (b) further information provided in response to a request by *Ausgrid* in accordance with clause 5.3;
- (c) all appendices and annexures to this Contract; and
- (d) the *application* form and *acceptance form* provided in relation to the *development* if not annexed to this Contract.

## 1.2 Defined terms

All terms in italics are defined in the Dictionary at clause 15.2.

# 2 Contract term and termination

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## 2.1 Commencement date

This Contract commences on the date *Ausgrid* receives the *acceptance form* signed by or on behalf of the *Customer* provided that *Ausgrid* will not be obliged to perform any of the *design related services* until the *acceptance fee* relevant to those *design related services* has been paid in full.

## 2.2 Grounds for termination

*Ausgrid* has the option to terminate the *Contract*, at any time, by written notice to the *Customer*, in the event that the:

- (a) *design information* expires in accordance with clause 5.5 and the parties have not agreed any extension under clause 5.5(b);
- (b) *design information* expires in accordance with clause 5.6;
- (c) *certified design* expires in accordance with clause 10.4 and the parties have not agreed any extension under clause 10.4(b);
- (d) *Customer* ceases to be involved in the *development*, or
- (e) notwithstanding any other provision of this Contract and notwithstanding that the *design information* or *certified design* has not expired, *Ausgrid*, acting reasonably, considers the *design information* or the *certified design* to be no longer suitable to the requirements of the *development* or *Ausgrid's supply policies* and *Network Standards* even though the *design information* or *certified design* met those requirements at the time the *design information* was prepared or the *certified design* was *certified*, and
- (f) *Customer* breaches a term of this *Contract* and fails to remedy that breach within a reasonable period of time once notified of the breach by *Ausgrid*.

## 2.3 Consequences of termination

If *Ausgrid* terminates the *Contract* in accordance with clause 2.2 then:

- (a) the *Customer*, or any other person, may not rely on the *design information* or the *certified design* or use either of them for any purpose;
- (b) if the *Customer* requires *Ausgrid* to provide *design related services* in respect of the *development* it will need to provide a new *Application* to *Ausgrid* in accordance with *Ausgrid's* procedures then in place including paying a new *acceptance fee* determined in accordance with those procedures;
- (c) the *acceptance fee* will not be refunded;
- (d) clause 12 will survive the termination of this Contract.

## 3 Proposed design scope

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- (a) If required by *Ausgrid*, the *Customer* must develop and submit to *Ausgrid*, a *proposed design scope*.
- (b) The *proposed design scope* must:
  - (1) be consistent with the information provided in the *Application*;
  - (2) meet the requirements of *Ausgrid's* publication 'Design Information – General Terms and Conditions';
  - (3) meet the requirements of *Ausgrid's supply policies* and *Network Standards*; and
  - (4) meet any other requirements as advised by *Ausgrid* in writing in relation to the *design*, and
  - (5) be submitted to *Ausgrid* by the date specified by *Ausgrid* unless a later date is agreed between *Ausgrid* and the *Customer*
- (c) *Ausgrid* must assess the *proposed design scope* and identify any modifications to the *proposed design scope* at the time *Ausgrid* issues the *design information* under this *Contract*.

## 4 Design related services

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### 4.1 Scope of design related services

*Ausgrid* may provide some or all of the following services as requested by the *Customer*:

- (a) providing *design information* to the *Customer* to enable the *ASP/3* to prepare the *design*;

- (b) conducting planning studies and analysis;
- (c) conducting a *design certification* check in the form of a desktop audit;
- (d) rechecking the *design*;
- (e) certifying the *design* once the *design* check or recheck does not indicate any non compliance with *Ausgrid's* requirements as set out in this *Contract*, and
- (f) related administration and facilitation services, (known as '*design related services*').

## 4.2 Timing of design related services

- (a) Subject to clauses 4.2(b) and 4.2(c), *Ausgrid* will use reasonable endeavours to provide the relevant *design related service* within 30 *business days* of the *Customer* requesting the relevant service, unless *Ausgrid* advises the *Customer* of an alternative timeframe in the *estimate*.
- (b) The *Customer* acknowledges that the requirement for *Ausgrid* to provide the *design related services* within 30 *business days* will not apply to *complex projects* which will be provided at times that are relevant to the complexity of the project and the *design related services* as notified to the *Customer*.
- (c) *Ausgrid* will use reasonable endeavours to provide the related administration and facilitation services to the *design related services* promptly as the need for the administration or facilitation service arises.
- (d) *Ausgrid* may extend the period for providing the *design related services*, or any part of the *design related services*, with the agreement of the *Customer*.

# 5 Design Information

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## 5.1 Time for issuing the design information

- (a) Unless clause 5.2 applies, *Ausgrid* will use reasonable endeavours to issue the *design information* to the *Customer* within 30 *business days* after:
  - (1) this *Contract* commences; or
  - (2) after the *Customer* submits the *proposed design scope* to *Ausgrid*,whichever is later.
- (b) If the *design information* is not issued within that period, *Ausgrid* will notify the *Customer* in writing with a revised estimate of dates.

## 5.2 Later date for issuing the design information

- (a) The *Customer* acknowledges that *Ausgrid* may need to conduct technical evaluations for *complex projects* before it can issue *design information*.
- (b) If the *design related services* require such technical evaluations, *Ausgrid* must notify the *Customer* and, if requested by the *Customer*, estimate an indicative date by which the *design information* will not be available and must provide the *design information* as soon as is reasonably practicable after that date.

## 5.3 Further information

- (a) If *Ausgrid* considers that further information is required before it can issue the *design information*, *Ausgrid* may make a request to the *Customer* for further information in writing.
- (b) *Ausgrid's* request for further information under this clause 5.3, must describe the information required.
- (c) The *Customer* must promptly provide the required information after receipt of *Ausgrid's* request;

- (d) The time for issuing the *design information* will be 30 *business days* from the date the *Customer* provides the required information to *Ausgrid*, unless clause 5.2 applies.
- (e) Any further information provided by the *Customer* under this clause 5.3 forms part of the Contract and is a *contract document*.

#### **5.4 Design information may alter aspects of the *application* or *proposed design scope***

- (a) *Ausgrid* may include in the *design information* requirements that differ from those in the *ASP/3application* and *proposed design scope*. Where it has done so, the *design* must comply with the requirements of the *design information*.
- (b) A *design* that fails to comply with all the requirements of the *design information* will not be *certified*.

#### **5.5 Expiry of the design information**

- (a) Subject to clause 5.5(b), the period for use of the *design information* issued by *Ausgrid* will expire 12 months after the date *Ausgrid* provides the *design information*.
- (b) Notwithstanding clause 5.5(a), the *Customer* will be able to use the *design information* if prior to the date of expiry of the *design information*:
  - (1) the *Customer* has been issued a *certified design* by *Ausgrid*; or
  - (2) *Ausgrid*, at the *Customer's* prior written request, has notified the *Customer* in writing that the period for use of the *design information* is extended and the period which it is extended for. If no period is stated in the notice the period will be six months.
- (c) The *Customer* acknowledges that *Ausgrid* will not extend the period for use of the *design information* under clause 5.5 (b)(2) unless, acting reasonably, it is satisfied that:
  - (1) the *design information* originally issued complies with the requirements of *Ausgrid's* *supply policies* and *Network Standards*;
  - (2) the *proposed design scope* is still relevant and the purpose of the *proposed design scope* has not materially changed; and
  - (3) the *development* requirements have not materially changed.

#### **5.6 Design information no longer appropriate**

Notwithstanding clause 5.5(a), the *Customer* acknowledges and agrees that the period for use of the *design information* will expire automatically if:

- (a) in *Ausgrid's* reasonable opinion, the purpose of the *proposed design scope* materially changes such that the *design information* issued by *Ausgrid* is materially inappropriate; or
- (b) the *Customer* enters into another contract for *design related services* for the *development*, and in these cases, clause 5.7 will apply.

#### **5.7 Consequences of Expiry of the design information**

- (a) Where clauses 5.5 or 5.6 apply:
  - (1) the *Customer*, or any other person, may not rely on the *design information* or use it for any purpose;
  - (2) if any *design* based on that *design information* has been submitted to *Ausgrid* for *certification*, it will not be *certified*; and
  - (3) *Ausgrid* may exercise its option to terminate this Contract under clause 2.3.
- (b) In the event that *Ausgrid* does not exercise its option to terminate this Contract under clause 5.7(a)(3), the *Customer* agrees and acknowledges that:
  - (1) the expiry of the *design information* will not automatically terminate this Contract;
  - (2) if the *Customer* requires *Ausgrid* to provide *design related services* after the expiry of the *design information*:

- (i) it must notify *Ausgrid* in writing that it requires such *design related services*;
- (ii) *Ausgrid* will provide a new *estimate* for the *design related services* to be provided pursuant to the request;
- (iii) the *Customer* will provide a new signed form confirming acceptance of the new *estimate* in the form required by *Ausgrid*; and
- (iv) the terms and conditions of this Contract will otherwise apply to the parties.

## 6 Customer to engage an Accredited Designer (ASP/3)

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### 6.1 Engaging an ASP/3

- (a) The *Customer* must engage an *ASP/3* to prepare the *design*.
- (b) The *Customer* must ensure that:
  - (1) the *ASP/3*'s accreditation will remain current for the period in which it provides the *design* work for the Project; and
  - (2) the *ASP/3* employs an *Authorised designer* or *Authorised designers* to enable the *ASP/3* to perform its obligations under this Contract.

### 6.2 ASP/3's obligations in relation to the design

- (a) The *Customer* must ensure that any *design* submitted by the *ASP/3* to *Ausgrid* on its behalf for *certification* must:
  - (1) comply with the conditions of this Contract and the *design information*; and
  - (2) be accompanied by the documents stipulated in clause 9.
- (b) The *Customer* must ensure that any *proposed design scope* submitted by the *ASP/3* to *Ausgrid* on its behalf complies with this Contract.
- (c) To avoid doubt, the *Customer* acknowledges that the *ASP/3*'s obligations in relation to the *design* include performing or obtaining the additional services required under clause 9.

### 6.3 The Customer's acknowledgements with regard to certification of a design

- (a) The *Customer* acknowledges that:
  - (1) *Ausgrid* will not accept for *certification* or *certify* any *design* that does not:
    - (i) fully comply with the requirements of this Contract and the *design information*; or
    - (ii) include the documents that are required to be submitted with the *design*, including a *Deed Poll* executed by the *ASP/3*;
  - (2) if the *design* is *defective*, or found to be *defective* for any reason at any stage prior to or following *Ausgrid* issuing a *certified design*, the *Customer* will be responsible for any re-design work required to make good the *defective design*;
  - (3) in the event that any re-design work is required to make good the *defective design*, *Ausgrid* will:
    - (i) notify the *ASP/3* directly on behalf of the *Customer* of the nature of the *defects* (and notify the *Customer* that such notice has been given to the *ASP/3*); and
    - (ii) invoice the *ASP/3* on behalf of the *Customer* for additional *charges* in connection with *certification* of the re-submitted *design* and those costs will be a debt due and payable to *Ausgrid*;
  - (4) the re-design and re-certification of the *design* will occur under this Contract and the provisions of this Contract (including the warranties set out in clause 9.7) will apply to that re-certified *design*;

- (5) in the event that any re-design work to make good the *defective design* is required as a matter of urgency, for instance but not limited to reasons of network safety or electrical security, *Ausgrid* may perform any re-design work itself (or procure a third party to do such re-design work) and invoice the *Customer* for its reasonable costs of doing so and those costs will be a debt due and payable to *Ausgrid*; and
  - (6) depending on the *Customer's* contract with the *ASP/3*, the *Customer* may incur additional *ASP/3* fees as a result of *Ausgrid* declining to *certify* the *design*, requiring the re-design work to be carried out or requiring the *design* to be re-certified.
- (b) *Ausgrid* will notify the *Customer* if a *design* is not accepted for *certification* or is not *certified*. At the *Customer's* request, *Ausgrid* will give the *Customer* a written or oral explanation of why *Ausgrid* will not *certify* the *design*.

## 6.4 Changing your ASP/3

- (a) The *Customer* may change the *ASP/3* at any time during the term of this Contract.
- (b) If any *ASP/3* retained by the *Customer* fails to perform any obligation under this Contract that requires *ASP/3* involvement, the *Customer* must ensure that the *Customer* is entitled to terminate its engagement with the *ASP/3* in relation to this Contract.
- (c) If the *ASP/3* fails to perform the required obligation under this Contract within 10 business days of *Ausgrid* requesting the obligation to be performed, it will be a breach of this Contract and *Ausgrid* will be entitled to terminate this *Contract* in accordance with clause 2.2 unless:
  - (1) the *Customer* terminates its engagement with the *ASP/3* in relation to this Contract and engages another *ASP/3* for the purposes of this *Contract*; and
  - (2) the *Customer* arranges for the new *ASP/3* to perform the requested obligation as soon as practicable after being engaged and in any event, no later than 5 business days after being engaged.
- (d) If the *Customer* changes the *ASP/3*, the *Customer* must notify *Ausgrid* in writing in accordance with clause 9.8 and provide *Ausgrid* with a *Deed Poll*, in the form included in Appendix 1, executed by the new *ASP/3* covering the entire scope of the *design* work within 5 *business days* of providing that notice.

# 7 Ausgrid's Charges

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## 7.1 Ausgrid's Charges

- (a) *Ausgrid's* estimated *charges* for the requested *design related services* are set out in any *estimate* issued in respect of the *development*.
- (b) The *Customer* acknowledges that in circumstances where *Ausgrid's* actual costs incurred exceed the *estimate*, the *Customer* or, if applicable, the *ASP/3* will be billed for, *Ausgrid's* actual costs incurred.

## 7.2 Billing arrangements

- (a) *charges* payable under this Contract are billed to the *Customer* or if applicable, to the *ASP/3* on the *Customer's* behalf, and must be paid within 10 *business days* of issue of the tax invoice issued in respect of the *estimate*.
- (b) If the *ASP/3* fails to pay any invoice issued by *Ausgrid*, the *Customer* is ultimately responsible for payment of that invoice.

# 8 Work health and safety obligations

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## 8.1 Work Health and Safety legislation

The *Customer* acknowledges that the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2011* (NSW) (together, the **WH&S laws**) impose significant duties in relation to designs, designers and persons who commission designs and that the *Customer* will comply with the relevant WH&S Laws.

## 8.2 Acknowledgement by the Customer

The *Customer* acknowledges and agrees that:

- (a) the *Customer* is the person who has commissioned or will commission the *ASP/3* to produce a *design* or *designs*;
- (b) those *designs* include plant or structures or both;
- (c) the *Customer* must ensure, so far as is reasonably practicable, that the *ASP/3* produces a *design* that is without risk to the health and safety of any person; and
- (d) subject to clause 6.3(a)(5), *Ausgrid* does not and will not under this Contract do design work itself or commission any *design*.

## 8.3 Obligations to consult with ASP/3

The *Customer* must so far as reasonably practicable:

- (a) consult with the *ASP/3* about how to ensure that risks to health and safety arising from the *design* are eliminated, or if it is not reasonably practicable to eliminate the risks, that those risks are minimised; and
- (b) give the *ASP/3* any information available to the *Customer* in relation to hazards and risks that are relevant to the *design*.

## 8.4 Agreement by both parties

- (a) Both parties acknowledge that the *Customer* and *Ausgrid* depend on the *ASP/3* complying with its duties as a designer under the WH&S Laws and the *Customer* agrees to do all things necessary and reasonably practicable to ensure that the *ASP/3* does so comply.
- (b) If *Ausgrid* notifies the *Customer* that it reasonably believes the *ASP/3* has not complied or is likely not to comply with:
  - (1) its duties as a designer under the WH&S Law;
  - (2) *Ausgrid's* Electrical Safety Rules;
  - (3) the Service and Installation Rules of New South Wales; or
  - (4) any of *Ausgrid's* *supply policies* or *Network Standards*,the *Customer* agrees that it must:
  - (5) issue a show cause notice to the *ASP/3* and provide a copy to *Ausgrid*; and/or
  - (6) terminate its contract with the *ASP/3*.
- (c) If the *Customer* on its own initiative issues a show cause notice to the *ASP/3*, it will provide a copy to *Ausgrid*.
- (d) The parties also agree to work cooperatively to assist each other to comply with their respective Work Health and Safety obligations in this clause 8 in relation to the *design*.

# 9 The Customer's obligations

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## 9.1 The Customer is responsible for ASP/3's performance

- (a) The *Customer* is responsible for ensuring that the *ASP/3* performs the obligations set out in this clause 9 and submits the documents stipulated in this clause 9 at the time the *design* is submitted for *certification*.
- (b) The *Customer* acknowledges and agrees that *Ausgrid*:
  - (1) may reject any document if, acting reasonably, it considers the document unsatisfactory; and

- (2) will not *certify* the *design* until all documents referred to in this clause have been received and are reasonably satisfactory to *Ausgrid*.
- (c) If any of these documents are not available at the time the *design* is submitted for *certification* and in its reasonable opinion *Ausgrid* considers such document is necessary to its *certification* work, *Ausgrid* may suspend its work until the document is provided.
- (d) If *Ausgrid* suspends its work in accordance with this clause, it will notify the *Customer* in writing.

## 9.2 Design Safety Report

The *ASP/3* must prepare a Design Safety Report that complies with the requirements of clause 295 of the *Work Health and Safety Regulation 2011* (NSW) and submit it to *Ausgrid* when the *design* is submitted for *certification*.

## 9.3 Environmental Assessment

- (a) The *Customer* must ensure that the *ASP/3* or any other person retained by the *Customer* carries out any Environmental Assessment required by, and in compliance with, *Ausgrid's* *supply policies* and *Network Standards, Legislative Requirements* or otherwise notified to the *Customer* by *Ausgrid*.
- (b) The *Customer* must ensure that any documents prepared under clause 9.3(a) are submitted to *Ausgrid* when the *design* is submitted for *certification*.

## 9.4 Community consultation and notification of authorities

- (a) *Ausgrid's* statutory requirements are described in the *design information* and *Ausgrid's* *supply policies* and *Network Standards*. Where *Ausgrid* is required by law to consult the community or any authority concerning the proposal, the *Customer*, their *ASP/3* or their agent must make all necessary arrangements to undertake the required consultation.
- (b) The *Customer* must ensure that copies of all notifications and written responses or submissions made or received in accordance with this clause are submitted to *Ausgrid* when the *design* is submitted for *certification*.

## 9.5 Public lighting

If the *design* includes *public lighting*, the *ASP/3* must obtain from the *public lighting customer* a completed street lighting acceptance form and submit it to *Ausgrid* when the *design* is submitted for *certification*.

## 9.6 Further documents

When the *design* is submitted for *certification* the *ASP/3* must also submit:

- (a) an asset valuation spreadsheet in the form of *Ausgrid's* AVS Capital Contributions template;
- (b) a single design file in dwg or dgn format;
- (c) LV voltage drop calculations (if applicable);
- (d) structure loading reports for overhead line design (if applicable);
- (e) a completed street lighting acceptance form from the *public lighting customer* (if applicable);
- (f) architectural lock-in drawings for chamber design (if applicable); and
- (g) any other document, information, calculation or report as stipulated in the *design information*.

## 9.7 The Customer's warranties

The *Customer* warrants that:

- (a) the *ASP/3* it engages to prepare the *design*:
  - (1) is accredited under the *Accreditation scheme* at the time the *design* for the *development* was commissioned and the accreditation remains current for the period in which it provides *design* work under this Contract;
  - (2) will employ an *Authorised designer* or *Authorised designers* to enable the *ASP/3* to perform its obligations under this Contract;

- (3) is a person conducting a business or undertaking designs of plant or structures within the meaning of the WH&S laws;
  - (4) has been provided with a copy of this Contract and will comply with the continuing obligations of the *Customer* under this Contract to the extent that they concern the *ASP/3*.
- (b) it will provide a *Deed Poll* executed by the *ASP/3* to *Ausgrid* by no later than when the *design* is submitted for *certification*;
  - (c) the *ASP/3* will fully consider all assessable site conditions affecting the *design*;
  - (d) the *design* will clearly show all interests in land that must be granted to *Ausgrid*;
  - (e) the *ASP/3* will comply with all obligations imposed on a designer by the WH&S laws;
  - (f) the *design* will accurately reflect and comply with the *design information*;
  - (g) the *design* will meet all *Ausgrid Network Standards*, *Ausgrid supply policies*, *Legislative Requirements* and Australian Standards relevant to the *design*;
  - (h) the *design* will be buildable and free of *defects*;
  - (i) the *design* will in all respects be fit for its intended purpose; and
  - (j) the *design* and its use does not infringe and will not infringe the *Intellectual Property Rights* of any person.

## 9.8 Termination by the Customer of its contract with the ASP/3

If the *Customer* terminates its contract with the *ASP/3*, or changes the *ASP/3*, for any reason, it will notify *Ausgrid* as soon as is reasonably practicable and in any case by close of business on the next *business day* after the contract was terminated.

# 10 Certification of a design

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## 10.1 Acceptance for certification

*Ausgrid* will only accept a *design* submitted for *certification* that is:

- (a) submitted in the format specified in clause 9; and
- (b) accompanied by the documents specified in clause 9.

## 10.2 What does Ausgrid certify?

- (a) By *certifying* a *design*, *Ausgrid* consents, subject to clauses 2.3, 5.5, 5.6, 10.4 and 10.5, to the use of that *design* in the future for the construction of electricity assets that *Ausgrid* will own when they are electrified. This consent does not extend to commencing construction of those assets.
- (b) The *Customer* acknowledges and agrees that in *certifying* a *design*, *Ausgrid*:
  - (1) is relying on the warranties provided in clause 9.7 and the *Deed Poll* to be executed by the *ASP/3*; and
  - (2) is carrying out a desktop audit only and does not represent or warrant that the *design* complies with the requirements of this Contract including the design warranties in clause 9.7.

## 10.3 Certification procedures

- (a) When it accepts a *design* for *certification* in accordance with clause 10.1, *Ausgrid* will carry out a *design certification check*.
- (b) Within a reasonable time after accepting the *design*, *Ausgrid* must provide to the *ASP/3*, (and notify the *Customer* that it has done so), either:
  - (1) written confirmation that the *design* has been certified, together with a *certification number*; or
  - (2) a list of *defects* in the *design* that the *ASP/3* must rectify before *Ausgrid* will *certify* the *design*.

- (c) When *Ausgrid* has *certified* the *design*, whether in accordance with clause 10.3(b)(1) or after the *ASP/3* has rectified the *defects* in the *design* notified by *Ausgrid* in accordance with clause 10.3(b)(2), *Ausgrid* will issue the *certified design* to the *ASP/3* and notify the *Customer* that the *certified design* has been issued.
- (d) The *Customer* acknowledges that for *complex projects*, *Ausgrid* may need to conduct technical evaluations of a *design* before it can *certify* the *design* and in such cases *Ausgrid* may take further time to provide a response under clause 10.3(b).

#### 10.4 Expiry of the certified design

- (a) Subject to clause 10.4(b), the period for use of the *certified design* will expire:
  - (1) 24 months after the date *Ausgrid* provides the *certified design* in the case of *complex projects*; or
  - (2) 12 months after the date *Ausgrid* provides the *certified design* in all other cases.
- (b) Notwithstanding clause 10.4(a), the *Customer* will be able to use the *certified design* if prior to the date of expiry of the *certified design*:
  - (1) works have commenced pursuant to the appropriate *Ausgrid* contract authorising construction; or
  - (2) *Ausgrid*, at the *Customer's* prior written request, has notified the *Customer* in writing that the period for use of the *certified design* is extended and the period which it is extended for. If no period is stated in the notice the period will be six months.
- (c) The *Customer* acknowledges that *Ausgrid* will not extend the period for use of the *certified design* under clause 10.4(b)(2) unless, acting reasonably, it is satisfied that:
  - (1) the *certified design* originally issued complies with the requirements of *Ausgrid's* *supply policies* and *Network Standards*;
  - (2) the *proposed design information* and *design scope* are still relevant and the purpose of the *proposed design scope* has not materially changed; and
  - (3) the *development* requirements have not materially changed.

#### 10.5 Certified design no longer appropriate

Notwithstanding clause 10.4(a), the *Customer* acknowledges and agrees that the period for use of the *certified design* will expire automatically if:

- (a) in *Ausgrid's* reasonable opinion, the purpose of the *proposed design scope* materially changes such that the *design information* issued by *Ausgrid* is materially inappropriate; or
- (b) the *Customer* enters into another contract for *design related services* for the *development*, and in such cases clause 10.6 will apply.

#### 10.6 Consequences of Expiry of the certified design

- (a) Where clauses 10.4(a) or 10.5 apply:
  - (1) the *Customer*, or any other person, may not rely on the *certified design* or use it for any purpose;
  - (2) the *Customer* will not be permitted to enter into any directly associated construction contract; and
  - (3) *Ausgrid* may exercise its option to terminate this Contract under clause 2.3.
- (b) In the event that *Ausgrid* does not exercise its option to terminate this Contract under clause 10.6(a)(3), the *Customer* agrees and acknowledges that:
  - (1) the expiry of the *certified design* will not automatically terminate this Contract;
  - (2) if the *Customer* requires *Ausgrid* to provide *design related services* after the expiry of the *certified design*:
    - (i) it must notify *Ausgrid* in writing that it requires such *design related services*;
    - (ii) *Ausgrid* will provide a new *estimate* for *design related services* to be provided pursuant to the request;
    - (iii) the *Customer* will provide a new signed form confirming acceptance of the new *estimate* in the form required by *Ausgrid*; and
    - (iv) the terms and conditions of this Contract will otherwise apply to the parties.

# 11 ASP/3 to attend meetings

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## 11.1 Design Meetings

- (a) *Ausgrid* may require the *ASP/3* to attend any meeting if *Ausgrid*, acting reasonably:
  - (1) has concerns about any aspect of the *design* (whether *certified* or not); and
  - (2) requires the *ASP/3* to respond to *Ausgrid's* concerns.
- (b) *Ausgrid* may require the *Customer* to attend any such meeting at no cost to *Ausgrid* and the *Customer* agrees to attend any meetings where, by notice in writing delivered at least 5 *business days* before the date of the meeting, *Ausgrid* has notified the *Customer* that its attendance is required.

## 11.2 Dispute resolution meeting

- (a) To avoid doubt, *Ausgrid* may require the *Customer* to procure, at no cost to *Ausgrid*, the *ASP/3's* attendance at a dispute resolution meeting or a mediation held in accordance with clause 13.
- (b) *Ausgrid* may also require the *Customer* to attend any such meeting and the *Customer* agrees to attend at no cost to *Ausgrid* where by notice in writing delivered at least 5 *business days* before the date of the meeting *Ausgrid* has notified the *Customer* that its attendance is required.

## 11.3 The Customer's acknowledgement and indemnity

- (a) The *Customer* acknowledges that it may incur *Ausgrid* charges in relation to the meetings referred to in this clause 11; and
- (b) The *Customer* must indemnify *Ausgrid* against:
  - (1) the costs of any additional time spent by officers of *Ausgrid* as contemplated by clause 11.3(a); and
  - (2) any damages and costs (including legal costs on a solicitor/client basis) incurred by *Ausgrid* in connection with any claim, suit or other proceedings made or brought by any person against *Ausgrid* in relation to the *design*, the *certified design* and/or the *designed asset*.
- (c) The *Customer's* obligation to indemnify *Ausgrid* under this clause will be reduced to the extent that:
  - (1) a failure by *Ausgrid* to perform its obligations in accordance with this agreement; or
  - (2) a negligent act or omission by *Ausgrid*,has contributed to the damage, claim, demand, expense, loss or liability.

## 12 Intellectual Property Rights

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### 12.1 Provision of design information

- (a) The *design information*, issued by *Ausgrid* and any other materials, documents and information made available by or on behalf of *Ausgrid* to the *Customer* or the *ASP/3* (**Network Owner Materials**) remain the property of *the Network Owner*. This Contract does not affect or transfer in any way *the Network Owner's Intellectual Property Rights* in the *Network Owner Materials*.
- (b) The *Customer* must ensure that the *ASP/3*, keeps safe and secure all *Network Owner Materials*.
- (c) *Ausgrid* grants to the *Customer* and the *ASP/3* a royalty-free, non-exclusive, non-transferable licence, to use, reproduce, maintain, enhance, modify, adapt and create derivative works from, the *Ausgrid Materials*, for the sole purpose of providing, and only to the extent necessary to provide, the *proposed design scope* and *design* to *Ausgrid* under this Contract.
- (d) Upon request by *Ausgrid*, the *Customer* or the *ASP/3* must deliver to *Ausgrid* without delay, and in any event within 10 *business days* of *Ausgrid's* request, all *Network Owner Materials*.

### 12.2 Intellectual Property Rights

- (a) The parties agree that other than as provided in this clause 12, nothing in this Contract transfers ownership in, or otherwise grants any rights in relation to, any *Intellectual Property Rights* of a party.
- (b) The *Customer* and the *ASP/3* grant *The Network Owner* a perpetual, unrestricted, non-exclusive, irrevocable, royalty-free, transferable licence to use and exercise in its sole discretion the *design* for any purpose related to the *distribution network*, including but not limited to producing, repairing, rectifying, maintaining, improving, servicing, adding to or altering the *distribution network* or any part of it.
- (c) The *Customer* and the *ASP/3* must not licence any *Intellectual Property* in the *design* to a third party without *Ausgrid's* prior written consent.

## 13 Disputes

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### Resolving disputes under this Contract

- (a) The parties must attempt to resolve any dispute in accordance with this clause 13.
- (b) Written notice of any dispute or difference must be given to the other party. That notice must:
  - (1) set out the legal basis of the claim;
  - (2) set out the facts upon which the claim is based; and
  - (3) have annexed to it copies of correspondence and any relevant background material.
- (c) If the parties' project managers are unable to resolve the dispute or difference the subject of a written notice within 10 *business days* after that notice is given, either party may refer the dispute or difference to mediation.
- (d) Within 10 *business days* of the dispute or difference being referred to mediation, the parties will attempt to agree on a mediator. If they are unable to agree on a mediator within that time, the President of the Resolution Institute will appoint an ACDC accredited mediator.
- (e) Unless otherwise agreed by the parties and the mediator, the mediation must be held within 30 *business days* of the appointment of the mediator.
- (f) Unless otherwise agreed by the parties and the mediator, the mediation process will cease if the dispute has not been resolved within 5 *business days* of the commencement of the mediation.

## 14 Miscellaneous

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### 14.1 Amendment

This Contract may be amended by agreement in writing between the parties. The written agreement must be signed by representatives of the parties who have authority to bind the party they represent.

### 14.2 Change to Customer

If the *Customer* ceases to be involved in the *development* the subject of this Contract but:

- (a) the *development* continues;
- (b) the *ASP/3* continues to act for a new customer in relation to the *development*; and
- (c) the new customer wishes to use the *certified design* for the purposes of the *development*,

the *Customer* must:

- (d) notify *Ausgrid* in writing prior to it ceasing involvement in the *development* and provide details of any new customer; and
- (e) promptly execute, and procure the new customer to execute, a deed of novation in the form included at Appendix 2 prior to ceasing involvement in the *development*.

### 14.3 Entire understanding

No oral explanation provided by one party to the other or to any person whom a party represents will:

- (a) affect the meaning or interpretation of this Contract; or
- (b) constitute any collateral agreement, warranty or understanding between the parties or with any other person.

### 14.4 Service of notices

Any notice required under this Contract must be served as follows:

- (a) **On the Customer** by email in accordance with the details set out in section 3 of the *application* unless from time to time the *Customer* provides *Ausgrid* in writing with amended contact details and requests that they be used; and
- (b) **On Ausgrid** by service on *Ausgrid's* Representative, whose details will be notified to the *Customer* when *Ausgrid* either:
  - (1) acknowledges that this Contract has commenced; or
  - (2) requires the *Customer* to furnish further information in accordance with clause 5.3.

## 15 Interpretation and Dictionary

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### 15.1 Interpretation

In this Contract (including the *contract documents*) unless there is a provision to the contrary:

- (a) if terms are defined in the *Energy Laws*, they bear the meanings given in the *Energy Laws* as amended from time to time;
- (b) departures in this Contract from terms defined in the *Energy Laws* are for convenience only;
- (c) “includes” or “including” is to be read as importing “without limitation”;
- (d) any gender includes the other genders;

- (e) the singular includes the plural and vice versa;
- (f) all parts of speech are applicable to the words defined in clause 15.2;
- (g) a reference to a person includes a natural person, firm, unincorporated association, corporation, government body, statutory body or authority;
- (h) a reference to a person includes its legal personal representatives, successors and assigns;
- (i) a reference to legislation, a statute, ordinance, code or other law includes regulations, rules and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a reference to the Service and Installation Rules of NSW, *Ausgrid's* Supply Polices and *Network Standards*, Electricity Standards or Electrical Safety Rules is a reference to the version of the document in force when the reference applies;
- (k) a reference to an obligation includes a warranty or representation;
- (l) a reference to a clause is to a clause of this Contract;
- (m) an acknowledgement is the acknowledgement of an obligation or a fact;
- (n) a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (o) **annexures, appendices and attachments to this Contract form part of the Contract;** and
- (p) headings are for convenience only and do not affect interpretation.

## 15.2 Dictionary

In this Contract the following words have the following meanings:

**acceptance fee** means the fee identified as such in the *estimate*.

**acceptance form** means the *Customer's* agreement to enter into this Contract.

**accreditation scheme** means the *Scheme for the Accreditation of Service Providers to Undertake Contestable Services* made in accordance with the Electricity Supply (Safety and Network Management) Regulation 2014 (NSW) administered by the NSW Department of Industry, Resources and Energy.

**application** means the document of that name signed and submitted to *Ausgrid* by the *Customer* and annexed to this Contract at Annexure 1 and includes any new application form submitted in accordance with this Contract.

**Ausgrid** means the Ausgrid Operator Partnership (ABN 78 508 211 731), trading as Ausgrid, a partnership carried on under that name by:

- (a) Blue Op Partner Pty Ltd (ACN 615 217 500) as trustee for the Blue Op Partner Trust;
- (b) ERIC Alpha Operator Corporation 1 Pty Ltd (ACN 612 975 096) as trustee for ERIC Alpha Operator Trust 1;
- (c) ERIC Alpha Operator Corporation 2 Pty Ltd (ACN 612 975 121) as trustee for ERIC Alpha Operator Trust 2;
- (d) ERIC Alpha Operator Corporation 3 Pty Ltd (ACN 612 975 185) as trustee for ERIC Alpha Operator Trust 3; and
- (e) ERIC Alpha Operator Corporation 4 Pty Ltd (ACN 612 975 210) as trustee for ERIC Alpha Operator Trust 4;

being the operator of the *distribution system*.

**authorised designer** means a person employed by an accredited *ASP/3* and authorised by *Ausgrid* to access information and submit designs for electricity reticulation assets in *distribution network area*.

**Ausgrid Materials** has the meaning as defined within clause 12.1(a)

**ASP/3** means a person accredited under the *Accreditation scheme* to design electricity reticulation assets.

**business day** means the hours of 9am to 5pm on any week day that is not a public holiday in New South Wales but does not include 27, 28, 29, 30 or 31 December.

**certify** has the meaning given in clauses 10.2 and 10.3 and *certification* has a corresponding meaning.

**certified design** means the design certification issued by *Ausgrid* under this Contract.

**charges** means all charges payable by the *Customer* for the *design related services* under clause 7.

**complex projects** means sub-transmission projects of greater than 11kV, or any project involving a chamber substation, or any large scale development that will impact multiple points on the *distribution network*.

**contract documents** means the documents referred to in clause 1.1.

**Deed Poll** means the Deed Poll in the form set out in Appendix 1 to be executed by the *ASP/3* in favour of *Ausgrid*.

**defect** means:

- (a) a defect in the *design* that *Ausgrid* in its absolute discretion considers would render or would be likely to render the *designed assets* unsafe or unsuitable if they were to be *electrified*; or
- (b) information that is unclear or missing from a *design* or supporting documentation that is required by *Ausgrid* to determine if a defect as described in (a) is present.

**defective design** means a *design* with one or more *defects*.

**design** means the design, and all documents, material and information that forms the design, of the *distribution system* assets to be designed in accordance with this Contract and includes any *defective design* that is to be re-certified in accordance with this Contract.

**designed assets** means *distribution system* assets (including relocated assets) designed by an *ASP/3* and certified by *Ausgrid* in accordance with this Contract.

**design information** means the information issued by *Ausgrid* to the *customer* in accordance with this Contract. The *design information* may include the scope of any works that would need to be undertaken if the *Customer* subsequently decides to establish a new connection or connection alteration or asset relocation, technical and funding requirements and if applicable, site-specific requirements for the *design*.

**design related services** means the services provided by *Ausgrid* under this Contract as specified in clause 4.

**development** means any development requiring development consent under Part 4 or any proposal that may be determined under Part 5 or 5A of the *Environmental Planning and Assessment Act 1979* (NSW) or some other project where *distribution system* assets may need to be designed as part of the project.

**distribution network** means the apparatus, equipment, plant and buildings used to convey, and control the conveyance of, electricity to customers (whether wholesale or retail) excluding connection assets but including sub-transmission assets; ), and for the purpose of this contract means the *distribution network* that is owned by the *Network Owner*, leased to the *Network Lessee*, and operated and maintained by *Ausgrid* under a sub-lease.

**distribution system** means the *distribution network* together with the connection assets.

**electrify** means apply electric current.

**Energy Laws** includes (as amended from time to time) the National Energy Retail Law, the National Electricity Law, the National Electricity Rules, any rules, regulations and instruments made under the National Energy Retail Law or the National Electricity Law, the *Electricity Supply Act 1995* (NSW) and *Electricity (Consumer Safety) Act 2004* (NSW), all rules, regulations, instruments and plans made under or to comply with those Acts, *Ausgrid's Network Standards* and *supply policies*, *Ausgrid's Electrical Safety Rules*, the Service and Installation Rules of New South Wales and AS/NZ 3000 Wiring Rules.

**environmental assessment** means an assessment potential environmental effects of the *designed assets* and their construction, which is to be completed by the *ASP/3* or an appropriately qualified environmental assessor.

**estimate** means *Ausgrid's cost estimate* for the *design related services* either in response to the *customer's application* or as provided in accordance with this Contract and will include *Ausgrid's current charges* applicable at the time the estimate **being the amount set out in Annexure 2**.

**Intellectual Property Rights** means any and all intellectual property rights, whether existing now or in the future, anywhere in the world, and the subject matter of such rights, including the following:

- (a) patents, copyright, rights in circuit layouts (or similar rights), registered designs, registered and unregistered trademarks, and any right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any of the rights referred to in paragraph, whether or not such rights are registered or capable of being registered and whether existing under common law or in equity.

**Legislative Requirements** means acts, regulations, by-laws, ordinance, subordinate legislation, orders, proclamations and applicable industry codes of conduct and Australian Standards in force from time to time in the relevant jurisdiction, and includes the WH&S Law.

**premises** means the land referred to in section 1 of the *application* and includes all lots to which the proposed *development* applies.

**public lighting** means lighting schemes for roads and outdoor public areas (e.g parks, reserves, pedestrian zones, footpaths, cycle paths and other public areas) that are managed by or on behalf of a *public lighting customer*.

**public lighting customer** means a Council (as defined by the Local Government Act 1993), or Local, State or Federal Government agency that has authority over areas with *public lighting*.

**Network Lessee** means Ausgrid Asset Partnership (ABN 48 622 604 040), a partnership carried on under that name by:

- (a) Blue Asset Partner Pty Ltd (ACN 615 217 493) as trustee for the Blue Asset Partner Trust;
- (b) ERIC Alpha Asset Corporation 1 Pty Ltd (ACN 612 974 044) as trustee for ERIC Alpha Asset Trust 1;
- (c) ERIC Alpha Asset Corporation 2 Pty Ltd (ACN 612 975 023) as trustee for ERIC Alpha Asset Trust 2;
- (d) ERIC Alpha Asset Corporation 3 Pty Ltd (ACN 612 975 032) as trustee for ERIC Alpha Asset Trust 3; and
- (e) ERIC Alpha Asset Corporation 4 Pty Ltd (ACN 612 975 078) as trustee for ERIC Alpha Asset Trust 4,

and its successors and assigns, which leases the assets which form part of the *distribution system* from the *Network Owner* and which are in turn operated and maintained by *Ausgrid* under a sub-lease arrangement.

**Network Owner** means Alpha Distribution Ministerial Holding Corporation and its successors and assigns, that owns the assets which form part of the *distribution system* which are leased to *the Network Lessee* and are in turn operated and maintained by *Ausgrid* under a sub-lease arrangement.

**Network Standards** means the standards applicable to design, construction, operation, extension, maintenance and repair of the Network as available on *Ausgrid's* website and as amended from time to time.

**proposed design scope** means a submission of information by the *ASP/3* detailing a proposed scope of works in a format as advised by *Ausgrid*, but which will generally comprise a sketch of the proposal and supporting information.

**Regulator** means the Australian Energy Regulator.

**supply policies** means the policies applicable to design, construction, operation, extension, maintenance and repair of the Network as available on *Ausgrid's* website and as amended from time to time.

# Appendix 1 – Design Deed Poll

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This deed poll is made on the \_\_\_\_\_ day of \_\_\_\_\_ (month) \_\_\_\_\_ (year)

**By:**

Name of Accredited Service Provider: \_\_\_\_\_

ABN: \_\_\_\_\_

of [insert address]: \_\_\_\_\_

ASP/3 Accreditation Number: \_\_\_\_\_

**In favour of:** AUSGRID OPERATOR PARTNERSHIP (ABN 78 508 211 731),  
trading as AUSGRID, of 570 George Street, Sydney (**Ausgrid**)

## RECITALS

A. The ASP/3 named above has been engaged by:

Customer name: \_\_\_\_\_

of [Customer address]: \_\_\_\_\_

to design electricity assets for

Ausgrid Project Number: \_\_\_\_\_

B. The ASP/3 acknowledges that its Design will be prepared in accordance with the requirements set out in the *design related services* contract entered into between *Ausgrid* and the *Customer* (**Contract**).

C. The *Design* prepared by the ASP/3 on behalf of the *Customer* is to be *Certified* by *Ausgrid* in accordance with, and on the basis of, the terms set out in the *Contract*.

## **THIS DEED POLL WITNESSES THAT THE ASP/3 HEREBY COVENANTS, WARRANTS AND AGREES**

with and for the benefit of Ausgrid as follows:

1. the ASP/3 has prepared the *Design* by retaining the following *Authorised Designer*:

Name of Designer: \_\_\_\_\_

Designer's Authorisation Number: \_\_\_\_\_

2. the ASP/3 has prepared the *Design* in a diligent manner and to the standard of skill and care expected of a professional designer qualified, competent and experienced in the preparation of documents of the nature of the *Design*;

3. the ASP/3 was accredited under the *Accreditation Scheme* at the time the *Design* for the Project was commissioned by the *Customer*;

4. the ASP/3's accreditation will remain current for the period in which it provides the *Design* work for the *Project*;

5. the ASP/3 will employ an *Authorised Designer* or *Authorised Designers* to enable the ASP/3 to perform its obligations under this *Contract*;

6. the ASP/3 has retained competent, experienced and qualified individual designer(s) to prepare the *Design* for the *Project*;

7. the ASP/3 is a person conducting a business or undertaking designs of plant or structures within the meaning of the Work Health and Safety Act 2011 (NSW) and the Work Health and Safety Regulation 2011 (NSW) (together, the WH&S laws);

8. the *ASP/3* has read and understood the provisions of the Contract that relates to the *Project* and is willing to comply with the continuing obligations of the *Customer* under the Contract to the extent that they concern the *ASP/3*;
9. the *ASP/3* has fully considered all assessable site conditions affecting the Design;
10. the Design clearly shows all interests in land that must be granted to Ausgrid;
11. the *ASP/3* has complied with all obligations imposed on a *Designer* by the WH&S laws;
12. the *Design* accurately reflects, and complies with, the *design information*;
13. the *Design* will meet all *Ausgrid Network Standards, Supply Policies, Legislative Requirements* and Australian Standards relevant to the *Design*;
14. the *Design* will be buildable and free of *defects*;
15. the *Design* is in all respects fit for its intended purpose as provided for in the relevant *Contract for Design Related Services*;
16. the *Design* and its use does not infringe and will not infringe the *Intellectual Property Rights* of any person;
17. the warranties in this *Deed Poll* also apply to any *Design* that is defective and must be re-Certified in accordance with the Contract;
18. *Ausgrid's* acceptance of the *Design* for certification and any certified design issued by *Ausgrid* is in complete reliance on the warranties provided by the *ASP/3* in this *Deed Poll*;
19. the *Design* will be accompanied by all documents required by *Ausgrid's Supply Policies* and *Network Standards*, including but not limited to:
  - a. Designer Safety Report which meets all applicable WH&S laws;
  - b. the *Environmental Assessment* or alternate planning approval document;
  - c. the notification letters and the responses, submissions referred to in clause 9.4 of the Contract or a statement of nil response;
  - d. a completed asset valuation spreadsheet in the form of *Ausgrid's AVS Capital Contributions* template;
  - e. single design file in dwg or dgn format;
  - f. LV voltage drop calculations (if applicable);
  - g. Structure Loading report(s) for overhead line design (if applicable);
  - h. a completed street lighting acceptance form from the *public lighting customer* (if applicable); and
  - i. Architectural Lock-in Drawings for chamber design (if applicable);
20. this *Deed Poll* is governed by the laws of the State of New South Wales;
21. this *Deed Poll* may not be revoked or otherwise modified without the prior written consent of *Ausgrid*; and
22. where terms used in this *Deed Poll* are not defined in this *Deed Poll* but are defined in the Contract, those terms have the meaning given to them in the Contract.

## Signing Page – Deed Poll

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**Executed** as a deed poll.

Accredited Service Provider: \_\_\_\_\_

Accredited Service Provider ABN: \_\_\_\_\_

*sign here* ► \_\_\_\_\_

print name \_\_\_\_\_

in the presence of

*sign here* ► \_\_\_\_\_

Witness

*print name* \_\_\_\_\_

## Appendix 2 – Deed of Novation

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Novation date: \_\_\_\_\_

### Parties

Name: \_\_\_\_\_

ABN: \_\_\_\_\_

Short form name: **Ausgrid**

Notice details: \_\_\_\_\_

Email: \_\_\_\_\_

Attention: \_\_\_\_\_

Name: \_\_\_\_\_

ABN: \_\_\_\_\_

Short form name: **Customer**

Notice details: \_\_\_\_\_

Email: \_\_\_\_\_

Attention: \_\_\_\_\_

Name: \_\_\_\_\_

ABN: \_\_\_\_\_

Short form name: **New Customer**

Notice details: \_\_\_\_\_

Email: \_\_\_\_\_

Attention: \_\_\_\_\_

Background:

- A. *Ausgrid* and the *Customer* are parties to the Contract.
- B. The parties have agreed that, according to the terms of this Deed:
  1. the new *Customer* has agreed to accept all of the *Customer's* liabilities and obligations under the Contract; and
  2. *Ausgrid* has agreed to accept the new *Customer* in place of the *Customer* for the performance of the obligations of the *Customer* and to release completely and discharge the *Customer* from all of its obligations under the Contract.

## Agreed Terms – Deed of Novation

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1. In this Deed:

**Contract** means the contract for *design related services* entered into by *Ausgrid* and the *Customer* on the date of ..... when the Acceptance of Offer was received by *Ausgrid* as annexed to this contract in Annexure 3.

**Novation Date** means the date this Deed of Novation is executed by the parties.

2. With effect from and including the Novation Date:

- (a) the new *Customer* must perform all of the obligations of the *Customer* under the Contract which are not performed at the Novation Date;
- (b) the new *Customer* replaces the *Customer* under the Contract and accepts the *Customer's* liabilities under the Contract;
- (c) *Ausgrid* accepts the new *Customer* in place of the *Customer*;
- (d) *Ausgrid* must perform its obligations under the Contract which have not yet been performed in favour of the new *Customer*; and
- (e) the new *Customer* must perform its obligations under the Contract which have not yet been performed in favour of *Ausgrid*.

3. *Ausgrid* releases and forever discharges the *Customer* from its obligations under the Contract and from all claims and demands in respect of the Contract.

4. The parties agree that there is no unpaid amount payable to the *Customer* or *Ausgrid* under the Contract as at the Novation Date.

5. The *Customer* warrants to *Ausgrid* that before the Novation Date it has complied with its obligations under the Contract.

6. The new *Customer* must, upon request, meet and consult with, and supply any information reasonably requested by, *Ausgrid* or any other person nominated by *Ausgrid*.

7. Each party is to pay its own costs, charges and expenses (including, without limitation, legal expenses) in entering into this Deed except that the *Customer* agrees to pay or reimburse the other parties for all stamp duties or other taxes of a similar nature.

8. Each party to this Deed must, at its own expense and at another party's request execute and cause its successors to execute documents and do everything else necessary or appropriate to bind *Ausgrid* and the new *Customer* in accordance with the intention expressed in clauses 2 and 3.

9. This Deed is governed by the laws in force in New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales and the Commonwealth of Australia and courts of appeal from them.

# Signing Page – Deed of Novation

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**Executed** as a deed.

Signed sealed and delivered  
for each of the partners in the  
**Ausgrid Operator Partnership**  
by their attorney under power of attorney  
registered book number 4723 No 720

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

Executed by:

**New Customer (name):**

\_\_\_\_\_  
in accordance with Section 127 of the  
*Corporations Act 2001*

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

Executed by:

**Customer (name):**

\_\_\_\_\_  
in accordance with Section 127 of the  
*Corporations Act 2001*

\_\_\_\_\_  
Signature of director

\_\_\_\_\_  
Signature of director/company secretary  
(Please delete as applicable)

\_\_\_\_\_  
Name of director (print)

\_\_\_\_\_  
Name of director/company secretary (print)

# Annexure 1 – Application

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# **Annexure 3 – Acceptance of Offer**

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