



## **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	Formatting changes and minor edits to Deed Poll and Deed of Novation Addition of Annexure 3: Acceptance of Offer
9	August 2019	Head of Asset Investment	Minor edits to clarify that the applicant is the customer and update Ausgrid contact information
10	June 2020	Head of Asset Investment	Minor edits clarifying that where the applicant is not the <i>connection customer</i> , the person applying does so as the customer's agent
11	September 2024	Head of Network Strategy & Future Grid	In addition to minor changes including formatting, legislation references and clarifying customers are billed by Ausgrid and not their not ASPs, introduction of design certification for tender, as well as construction, pre-certification, ASP1 appointment and pre-construction meeting during design phase.

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All correspondence should be directed to:

Head of Network Strategy & Future Grid  
Ausgrid  
GPO Box 4009  
SYDNEY NSW 2001

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## CONTRACT FOR DESIGN RELATED SERVICES

This contract is made the                    day of                    20

Between:

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

The customer identified in the *application* that is annexed to this contract as Annexure 1 (the **Customer** and also referred to in this contract as 'you').

### 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 as ready for construction* by *Ausgrid* in accordance with this Contract 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 – 16;
- (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 16.2.

### 1.3 The connection applicant and the *Customer*

If the person identified as the customer in the *application* is not the “relocation customer”, “public lighting customer”, “retail customer” or “real estate developer” identified in the *application*, and that person accepts this Contract and/or performs the *Customer's* obligations under the Contract, it does so as the *Customer's* agent.

## 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:

- (a) the *design information* expires in accordance with clause 5.5 and the parties have not agreed any extension under clause 5.5(b);
- (b) the *design information* expires in accordance with clause 5.6;
- (c) the *design certified as ready for tender* expires in accordance with clause 10.4(a);
- (d) the *design certified as ready for construction* expires in accordance with clause 10.4(b) and the parties have not agreed any extension under clause 10.4(c)(2);
- (e) the *Customer* ceases to be involved in the *development*;
- (f) notwithstanding any other provision of this Contract and that the *design information* or the *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 *design* was *certified*; or
- (g) the *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; and
- (d) clause 13 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 a *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 a *design*;
- (b) conducting planning studies and analysis;
- (c) conducting a *design certification* check in the form of a desktop audit;
- (d) rechecking a *design*;
- (e) *certifying a design as ready for tender* once the desktop audit design check or recheck does not indicate any non compliance with *Ausgrid's* requirements as set out in this Contract;
- (f) *certifying a design as ready for construction* following the pre-construction meeting held under clause 11.1, provided no *design* changes are required by *Ausgrid* as a result of the pre-construction meeting as set out in this Contract; and
- (g) 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 *application* and *proposed design scope*. Where it has done so, a *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 as *ready for tender* or *ready for construction*.

#### **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*, *Ausgrid* will not *certify* a *design* as *ready for tender* or *ready for construction*; and
  - (3) *Ausgrid* may exercise its option to terminate this Contract under clause 2.2.
- (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*:
  - a. it must notify *Ausgrid* in writing that it requires such *design related services*;
  - b. *Ausgrid* will provide a new *estimate* for the *design related services* to be provided pursuant to the request;
  - c. the *Customer* will provide a new signed form confirming acceptance of the new *estimate* in the form required by *Ausgrid*; and
  - d. the terms and conditions of this Contract will otherwise apply to the parties.

## 6 Customer to engage an Accredited Designer (ASP/3) and Accredited Constructor (ASP/1)

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### 6.1 Engaging an ASP/3

- (a) The *Customer* must engage an ASP/3 to prepare a *design*.
- (b) The *Customer* must ensure that:
  - (1) the ASP/3's accreditation will remain current for the period in which it provides a *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 Engaging an ASP/1

- (a) The *Customer* must retain an ASP/1 to arrange and attend the pre-construction meeting held with *Ausgrid* at the *premises* pursuant to clause 11.1 and, if required or as appropriate or necessary, provide input to the pre-construction meeting.
- (b) The ASP/1 must hold current *Ausgrid* *authorisation to work on or near the distribution system*.
- (c) The *Customer* must notify *Ausgrid* of the identity of its ASP/1 and ensure that its ASP/1 notifies *Ausgrid's* Project Officer as soon as reasonably practicable after the *Customer* has selected its ASP/1.

### 6.3 ASP/3's obligations in relation to a 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 a *design* includes performing or obtaining the additional services required under clause 9.

### 6.4 The Customer's acknowledgements with regard to certification of a design as ready for tender or ready for construction

- (a) The *Customer* acknowledges that:
  - (1) *Ausgrid* will not accept for *certification* a *design as ready for tender or ready for construction* that does not:
    - a. fully comply with the requirements of this Contract and the *design information*; or
    - b. include the documents that are required to be submitted with a *design*, including a *Deed Poll* executed by the ASP/3;
  - (2) if a *design* is *defective*, or found to be *defective* for any reason at any stage prior to or following *Ausgrid* *certifying* the *design as ready for tender or ready for construction*,

- 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:
    - a. 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
    - b. invoice the *Customer*, or 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 a *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* a *design* as *ready for tender* or *ready for construction*, requiring the re-design work to be carried out or requiring a *design* to be re-*certified*.
- (b) *Ausgrid* will notify the *Customer* if a *design* is not accepted for *certification*. At the *Customer's* request, *Ausgrid* will give the *Customer* a written or oral explanation of why *Ausgrid* will not *certify* a *design* as *ready for tender* or *ready for construction*.

## 6.5 Changing your *ASP/3* or *ASP/1*

### 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.

### Changing your *ASP/1*

- (e) If the *Customer* engages another *ASP/1* or changes its *ASP/1*, then as soon as reasonably practicable after the *ASP/1* has been retained the *Customer* must:
  - (1) notify *Ausgrid* of the identity of the new *ASP/1* and state whether that *ASP/1* is an additional *ASP/1* or replacement *ASP/1*; and
  - (2) ensure that the new *ASP/1* notifies *Ausgrid's* Project Officer.
- (f) The *Customer* acknowledges and agrees that until it has fulfilled its notification obligations under clause 6.5(e), *Ausgrid* cannot verify that an *ASP/1* is the *Customer's* *ASP/1* and may withhold further *design related services*.

## 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 2017* (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*;
- (b) a *design* includes 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 6.4(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 a *design* under this Contract 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 a *design* is submitted for *certification as ready for tender* or *ready for construction*.
- (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 a design as ready for tender* or *ready for construction* until all documents referred to in this clause 9 have been received and are reasonably satisfactory to *Ausgrid*.
- (c) If any of these documents are not available at the time a *design* is submitted for *certification as ready for tender* or *ready for construction* 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 a *design* is submitted for *certification as ready for tender* or *ready for construction*.

### 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 a *design* is submitted for *certification as ready for tender* or *ready for construction*.

### 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* or 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 a *design* is submitted for *certification as ready for tender* or *ready for construction*.

### 9.5 Public lighting

If a *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 a *design* is submitted for *certification as ready for tender* or *ready for construction*.

## 9.6 Further documents

When a *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 a *design*:
  - (1) is accredited under the *accreditation scheme* at the time a *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; and
  - (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 a *design* is submitted for *certification*;
- (c) the *ASP/3* will fully consider all assessable site conditions affecting a *design*;
- (d) a *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) a *design* will accurately reflect and comply with the *design information*;
- (g) a *design* will meet all *Ausgrid Network Standards*, *Ausgrid supply policies*, *Legislative Requirements* and Australian Standards relevant to the *design*;
- (h) a *design* will be buildable and free of *defects*;
- (i) a *design* will in all respects be fit for its intended purpose; and
- (j) a *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* or *ASP/1*

If the *Customer* terminates its contract with the *ASP/3* or *ASP/1* 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* as *ready for tender* or *ready for construction* 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* as *ready for construction*, *Ausgrid* consents, subject to clauses 2.3, 5.5, 5.6, 10.4 and 10.5, to the use of the *ready for construction 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 issuing a *certified 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 a *design* complies with the requirements of this Contract including the design warranties in clause 9.7.

## 10.3 Certification procedures

- (a) When *Ausgrid* accepts a *design* for *certification as ready to tender* in accordance with clause 10.1, *Ausgrid* will carry out a *certification* check on the *design*.
- (b) Within a reasonable time after accepting the *design* submitted for *certification as ready for tender*, *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 as ready for tender*, or in the case of a submission to amend a *design* already *certified as ready for tender*, written confirmation that the *design* has been re-*certified*; or
  - (2) a list of *defects* in the *design* that the *ASP/3* must rectify before *Ausgrid* will *certify* the *design as ready for tender*.
- (c) *Ausgrid* will only *certify* a *design as ready for tender* once *Ausgrid* has completed a desktop audit of the *design* to *Ausgrid's* reasonable satisfaction.
- (d) When *Ausgrid* has *certified* the *design as ready for tender*, 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 *certification as ready for tender* to the *ASP/3* and notify the *Customer* that the *design certified as ready for tender* has been issued.
- (e) The *design certified as ready for tender* must only be used for the following purposes:
  - (1) procurement of an *ASP/1* by the *Customer*; and
  - (2) as the basis for review at the pre-construction meeting to be held pursuant to clause 11.1.
- (f) The *design certified as ready for tender* must not be used as the basis or component of a construction contract.
- (g) Once the pre-construction meeting has taken place in accordance with clause 11.1, *Ausgrid* must, within a reasonable time following the pre-construction meeting, provide to the *ASP/3*, (and notify the *Customer* that it has done so), either:
  - (1) written confirmation that the *design* has been *certified as ready for construction*, together with a *ready for construction* number; or
  - (2) a list of *defects* in the *ready for tender design* that the *ASP/3* must rectify before *Ausgrid* will *certify* the *design as ready for construction*.
- (h) If *Ausgrid* has provided written confirmation that the *design* has been *certified as ready for construction* in accordance with clause 10.3(g) and the *Customer* makes a submission to amend this *design* that is already *certified*, *Ausgrid* must, within a reasonable time, provide to the *ASP/3* (and notify the *Customer* it has done so) either:
  - (1) written confirmation that the *design* has been re-*certified*, together with a *ready for construction* number; or
  - (2) a list of *defects* in the resubmitted *ready for construction design* that the *ASP/3* must rectify before *Ausgrid* will re-*certify* the *design as ready for construction*.

- (i) *Ausgrid* will only *certify a design as ready for construction* once:
  - (1) the *design* has been validated pursuant to physical inspection at the *premises* by all relevant stakeholders, including the *ASP/1* the *ASP/3* and *Ausgrid* or its representatives and contractors; and
  - (2) all necessary approvals and permits in respect of the *design* have been obtained.
- (j) When *Ausgrid* has *certified the design as ready for construction*, whether in accordance with clause 10.3(g)(1) or 10.3(h)(1) or after the *ASP/3* has rectified the *defects* in the relevant *design* notified by *Ausgrid* in accordance with clause 10.3(g)(2) or 10.3(h)(2), *Ausgrid* will issue the *certified design* to the *ASP/3* and notify the *Customer* that the *certified design* has been issued.
- (k) The *design certified as ready for construction* may be used for construction of the *designed assets* identified in the *design*, once the *Customer* enters the appropriate *Ausgrid* contract authorising such construction.
- (l) 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), 10.3(g) or 10.3(h).

#### 10.4 Expiry of the *certified design*

- (a) The period for use of the *design certified as ready for tender* will expire:
  - (1) 24 months after the date *Ausgrid* issues the *design certified as ready for tender* in the case of *complex projects*; or
  - (2) 12 months after the date *Ausgrid* issues the *design certified as ready for tender* in all other cases.
- (b) Subject to clause 10.4(c), the period for use of the *design certified as ready for construction* will expire:
  - (1) 24 months after the date *Ausgrid* issues the *design certified as ready for tender* in the case of *complex projects*; or
  - (2) 12 months after the date *Ausgrid* issues the *design certified as ready for tender* in all other cases.
- (c) Notwithstanding clause 10.4(b), the *Customer* will be able to use the a *design certified as ready for construction* if prior to the date of expiry of the *design certified as ready for construction*:
  - (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 *design certified as ready for construction* is extended and the period which it is extended for. If no period is stated in the notice the period will be six months.
- (d) The *Customer* acknowledges that *Ausgrid* will not extend the period for use of the *design certified as ready for construction* under clause 10.4(c)(2) unless, acting reasonably, it is satisfied that:
  - (1) the *design certified as ready for construction* 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) or 10.4(b), 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 a certified design

- (a) Where clauses 10.4(a), 10.4(b) or 10.5 apply (as applicable):
  - (1) the *Customer*, or any other person, may not rely on a *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 2.2.
- (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* under clause 10.4(a) or 10.4(b) will not automatically terminate this Contract;
  - (2) if the *Customer* requires *Ausgrid* to provide *design related services* after the expiry of the *design* under clause 10.4(a) or 10.4(b):
    - a. it must notify *Ausgrid* in writing that it requires such *design related services*;
    - b. *Ausgrid* will provide a new *estimate* for *design related services* to be provided pursuant to the request;
    - c. the *Customer* will confirm acceptance of the new *estimate* in the form required by *Ausgrid*; and
    - d. the terms and conditions of this Contract will otherwise apply to the parties.

## 11 Pre-construction Meeting

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### 11.1 When a meeting is to be held

- (a) The *Customer* will take reasonable steps to ensure that its *ASP/1* and *ASP/3* attend (at no cost to *Ausgrid*) a pre-construction meeting with *Ausgrid* at the *premises*.
- (b) The *Customer* must arrange for its *ASP/1* to organise the meeting as soon as reasonably practicable after it has been notified by *Ausgrid* that *Ausgrid* has *certified* the *design* as *ready for tender* pursuant to clause 10.3.
- (c) *Ausgrid* and the *ASP/3* must be given no less than 5 business days' notice of the meeting.
- (d) The *Customer* is entitled but not obliged to attend the meeting.

### 11.2 Further requirements resulting from the meeting

- (a) If as a result of the meeting *Ausgrid*, acting reasonably, considers that for technical or safety reasons, modifications have to be made to the *design certified as ready for tender*, *Ausgrid* may impose conditions to the *certification* of a *design as ready for tender* or *ready for construction*.
- (b) If *Ausgrid* does impose such additional conditions, it will notify the *Customer* or its *ASP/3* of them in writing.

## 12 ASP/3 to attend meetings

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### 12.1 Design Meetings

- (a) *Ausgrid* may require the *ASP/3* to attend any meeting if *Ausgrid*, acting reasonably:
  - (1) has concerns about any aspect of a *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.

- (c) Ausgrid will require that your *ASP/3* attends the pre-construction meeting held with the *ASP/1* pursuant to clause 11.1.

## 12.2 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 14.
- (b) *Ausgrid* may also require the *Customer* to attend any such meeting and the *Customer* agrees to attend at no cost to *Ausgrid* if notice in writing is delivered at least 5 *business days* before the date of the meeting *Ausgrid* has notified the *Customer* that its attendance is required.

## 12.3 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 12; and
- (b) The *Customer* must indemnify *Ausgrid* against:
  - (1) the costs of any additional time spent by officers of *Ausgrid* as contemplated by clause 12.3(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 a *design* and/or the *designed assets*.
- (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 Contract; or
  - (2) a negligent act or omission by *Ausgrid*,has contributed to the damage, claim, demand, expense, loss or liability.

# 13 Intellectual Property Rights

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## 13.1 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**) (or the *ASP/1*, where any *Network Owner Materials* are disclosed to the *ASP/1* during the pre-construction meeting held under clause 11.1) 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* (or the *ASP/1*, where any *Network Owner Materials* are disclosed to the *ASP/1* during the pre-construction meeting held under clause 11.1), 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 *Network Owner 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* (or the *ASP/1*, where any *Network Owner Materials* are disclosed to the *ASP/1* during the pre-construction meeting held under clause 11.1) must deliver to *Ausgrid* without delay, and in any event within 10 *business days* of *Ausgrid*'s request, all *Network Owner Materials*.

## 13.2 Intellectual Property Rights

- (a) The parties agree that other than as provided in this clause 13, 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 rights* in a *design* to a third party without *Ausgrid's* prior written consent.

## 14 Disputes

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### Resolving disputes under this Contract

- (a) The parties must attempt to resolve any dispute in accordance with this clause 14.
- (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.

## 15 Miscellaneous

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### 15.1 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.

### 15.2 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*.

### 15.3 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.

### 15.4 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 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.

## 16 Interpretation and Dictionary

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### 16.1 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;
- (d) the singular includes the plural and vice versa;
- (e) all parts of speech are applicable to the words defined in clause 16.2;
- (f) a reference to a person includes a natural person, firm, unincorporated association, corporation, government body, statutory body or authority;
- (g) a reference to a person includes its legal personal representatives, successors and assigns;
- (h) 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;
- (i) a reference to the Service and Installation Rules of NSW, *Ausgrid's supply policies* and *Network Standards*, Electricity Standards or Electrical Safety Rules is a reference to the version of the document in force when the reference applies;
- (j) a reference to an obligation includes a warranty or representation;
- (k) a reference to a clause is to a clause of this Contract;
- (l) an acknowledgement is the acknowledgement of an obligation or a fact;
- (m) a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
- (n) annexures, appendices and attachments to this Contract form part of the Contract; and
- (o) headings are for convenience only and do not affect interpretation.

### 16.2 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 Department of Climate Change, Energy, the Environment and Water.

**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.

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

**ASP/1** means a person accredited as a level 1 *accredited service provider* in accordance with the *accreditation scheme* to provide *contestable connection services* that include construction or assets forming part of a *distribution network* and for the purposes of this contract means *your ASP/1*.

**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** means the certification by Ausgrid of a *design* in accordance with clauses 10.3(b) or 10.3(g) (as applicable) and *certification* and *certified* have a corresponding meaning.

**certified design** means a *design* which has been *certified* (or re-certified) as *ready for tender* or *ready for construction*, as the context requires, 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.

**Customer** means the relocation customer, public lighting customer, retail customer or real estate developer (as the case may be) whose details are set out in the connection application.

**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 a *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* that is to be re-certified in accordance with this Contract.

**design** means a design (including all documents, materials and information that forms part of that design) of the *distribution system assets* to be designed 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 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.

**Electrified** means when an electric current has been applied to the electricity assets.

**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 *Gas and Electricity (Consumer Safety) Act 2017* (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 of the 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 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 (NSW)), 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 Owner Materials** has the meaning as defined within clause 13.1(a).

**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.

**ready for construction** means, in respect of a *design*, the status where *Ausgrid* consents to the *design* being used for construction of the *design assets*, subject to the terms of any appropriate *Ausgrid* contract that authorises construction of the *designed assets*.

**ready for tender** means, in respect of a *design*, the status where *Ausgrid* consents to the *design* as being used for the purposes of procurement of an *ASP/1* by the *Customer* and the pre-construction meeting held under clause 11.1 of this Contract.

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

**work on or near the distribution system** includes work on any part of the *distribution system* where there is a reasonable possibility that:

- (a) a part of a person's body; or
- (b) any moveable object (not designed for safe use on live conductors of the same or higher voltage) that the person might be wearing, touching or carrying,

may come close to a live exposed conductor than the minimum safe working distance stipulated in *Ausgrid's* Electrical Safety Rules.

# 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
- (d) 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 2 – ESTIMATE

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# **ANNEXURE 3 – ACCEPTANCE OF OFFER**

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