

Proposal

for Licence for the Use of Seprol Protocol for
the FoNT System

Environment Agency

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1. Introduction

This proposal has been prepared at the request of ██████████ of the Environment Agency ("EA") following discussions with ██████████
██████████

The request is to provide documentation and licences to allow the use of the ██████████ Seprol RTU protocol on the future EA FoNT System.

Ovarro's interpretation of the requirements and full details of the included design, configuration and testing is shown in Sections 2 and 3 of this proposal.

2. Extent of Supply

██████████ proposal includes for the following extent of supply. Only the items specifically referenced in this section are included in the proposal and all other items are deemed to be excluded.

2.1 Licences and Documentation

Ovarro's proposal includes the following licences and documentation

- Grant of a licence to run ██████████ Seprol RTU protocol on ██████████
██████████ software solution for the EA FoNT system for such period that ██████████ S250 and S500 RTUs are in use. Grant of such licence includes the right to sub-licence the Seprol RTU protocol (and associated documentation as described below) to ██████████ only. For the avoidance of doubt the right to sub- licence is granted solely in respect of the EA Font system and does not permit use of the Seprol RTU Protocol by EA or Schneider in respect of any other system and/or for any other customer.
- Documentation reasonably required to enable ██████████ to implement the Seprol RTU protocol for and on behalf of EA. Documentation will cover the requirements stated in 'Documents checklist' emailed by ██████████ on 08/06/20.

3. Exclusions and Assumptions

3.1 Exclusions

Only the equipment and services specifically detailed in this proposal will be included in [REDACTED] supply. Any item not specifically included, or defined as an extra, will be deemed to be excluded, particularly the following items:

- Any technical support from [REDACTED] to implement the Seprol RTU protocol.

3.2 Assumptions

During the preparation of this proposal, [REDACTED] has made the following assumptions:

- Any technical support required from [REDACTED] to implement the Seprol RTU protocol will be additional, charged at the rates detailed in Section 4.7 and provided strictly in accordance with the Conditions of Contract referred to within Section 4.5.

4. Commercial

Ovarro's proposal is governed by the commercial terms detailed in Section 4.5 of this proposal.

4.1 Prices

[REDACTED] fixed price for the works as detailed within this proposal is as follows.

[REDACTED] (excluding VAT)

[REDACTED]).

Any UK Value Added Tax (VAT) chargeable in accordance with UK legislation shall be invoiced at prevailing rate.

4.2 Price Basis

The price is based on the conditions of contract stated in Section 4.5. and is exclusive of VAT.

To the extent that Ovarro supplies any qualifying hardware, [REDACTED] confirms that the financial impact arising from the EC Directive on Waste Electrical and Electronic Equipment (WEEE) is Ovarro's responsibility.

4.3 Payment Milestones

Payment for the above work would be invoiced in line with the following milestones.

Stage	Milestone Activity after which Application for Payment may be made	Percentage to be Paid of the Contract Value
1	Delivery of documentation and licence	100%

Payment of all invoices shall be made in within 30 days of submission of the invoice.

4.4 Delivery

Delivery will be confirmed at the time of order based on [REDACTED] resource availability at that time.

4.5 Conditions of Contract

The delivery of any of the goods and the performance of any of the services described herein are subject to [REDACTED] Terms and Conditions of Contract for Engineering Services and [REDACTED] Licence Agreement (copies of which are available upon request), subject to the following clarifications/provisions:

[REDACTED] liability shall be limited to the value of the works detailed herein.

The licence and sub-licence will be provided strictly in accordance with [REDACTED] Licence Agreement (Schedule 1 to this proposal) and the additional conditions stated within Section 2 of this proposal.

The EA is responsible for ensuring that [REDACTED] complies fully with the provisions of [REDACTED] Licence Agreement and the additional conditions states within Section 2 of this proposal. EA will be responsible for and shall fully indemnify [REDACTED] in respect of any breach of such conditions by EA and/or [REDACTED]. Any use by EA or Schneider of the Seprol RTU protocol and documentation in breach of [REDACTED] Conditions of Contract including the terms of licence, will represent a material breach of the obligations of the EA.

Any reference to (or inclusion of) any alternative terms and conditions (whether with any subsequent purchase order or otherwise) shall not govern the contract and no addition to, variation of, exclusion or attempted exclusion of any term of Ovarro's proposal (including [REDACTED] Terms and Conditions of Contract for Engineering Services and [REDACTED] Licence Agreement) shall be binding unless agreed to in writing by a duly authorised representative of [REDACTED].

4.6 Validity

This proposal is open for acceptance for 60 days from the date of this document.

4.7 UK Day Rates and Conditions

The following day rates are for the service of [REDACTED] Engineers, either on site in the UK or in-house as appropriate. These rates will be charged for any additional work required that is not specifically detailed in this proposal.


Grade	On Site Rates (8 hour working day)		In-house Rates (7.5 hour working day)
	Monday-Friday	Weekend/ Public Holiday	Monday-Friday
Senior Project Manager	[REDACTED]	[REDACTED]	[REDACTED]
Principal Engineer	[REDACTED]	[REDACTED]	[REDACTED]
Senior Design Engineer	[REDACTED]	[REDACTED]	[REDACTED]
Design Engineer	[REDACTED]	[REDACTED]	[REDACTED]

Notes:

1. The above rates are [REDACTED] standard daily rates and are exclusive of VAT.
2. The above rates are valid for work performed up to 31 December 2020.
3. The rate is chargeable for all travelling time, assignment time and standby time (delays on site) incurred.
4. Except in so far as provided by the Purchaser, all travelling, accommodation and subsistence expenses would be chargeable at net cost.
5. Where travelling by car is involved this will be charged at [REDACTED] per mile.

4.8 Acceptance and Signature

In order to proceed with the work detailed within this proposal Ovarro requires signature and return of the proposal document by an authorised signatory of EA. In signing this proposal document EA accepts the conditions contained herein in full:

Signed on behalf of EA:	
Signature:	
Name:	[REDACTED]
Position:	[REDACTED]
Date:	22/09/2020

Schedule 1

██████████ is the owner of a Software Package and under the terms of a Contract with the Customer, Ovarro has agreed to grant to the Customer a Licence to use the Software as described in the Contract subject to the terms of this Licence.

1 DEFINITIONS

- 1.1 "The Software" means ██████████ Seprol RTU protocol and associated documentation and includes any computer software, printed materials, "online" or electronic documentation, as identified by or referred to under this Licence or the Contract including any modification which is acquired by the Licensee during the subsistence of this Licence or the Contract.
- 1.2 "The Contract" means the Proposal for Licence for the Use of Seprol Protocol for the FoNT System duly executed by the Customer for the supply of the Software and/or maintenance of the Software (as appropriate).
- 1.3 "The Specification" means the Functional Design Specification provided by ██████████ under the Contract where applicable
- 1.4 "The Effective Date" means the date of delivery to the Customer's site as defined in the Contract or used by or on behalf of the Customer.
- 1.5 "The Licence Period" means the period from the effective date until termination in accordance with Contract provision, expiry of a maximum period not exceeding 10 years or the cessation of any supporting maintenance agreement entered into in connection with the software usage, whichever is the sooner.
- 1.6 "The Customer's Group" means the Customer and any company which is at the relevant time a holding company of the Customer or a subsidiary of any such holding company (as the terms "Holding Company" and "Subsidiary" are defined in section 736 of the Companies Act 1985).
- 1.7 "Use" means utilisation of the Software on the Customer's System.
- 1.8 "Modification" means any change or amendment to, or upgrade or new version of the Software.

2 CUSTOMER'S RIGHTS IN THE SOFTWARE

- 2.1 Notwithstanding any description of or reference to the Customer's rights as a purchaser of the Software the Customer's rights in the Software shall take effect only as a Licensee on the terms contained in this Licence and (so far as they are not expressly varied by those terms) the Contract.

3 LICENCE

- 3.1 ██████████ grants to the Customer, subject to the payment of the Licence Fee included in the Contract with effect from the Effective Date and the Licensee accept a non-exclusive and non-transferable Licence to use (as herein defined) the Software for the Licence Period and will provide on the Effective Date one copy of the Software together with the necessary documentation to install and use the same, subject to the conditions herein contained.
 - i. The Customer will use the Software only on the system referred to in the Contract.
 - ii. The Customer shall not copy or reproduce in any way the whole or any part of the Software in machine or eye readable form, except that the Customer may maintain not more than two copies of the Software in machine readable form on removable media for normal operational security and back-up purposes and this licence applies to such copies as it applies to ascertain or list the source programs comprising the Software.
 - iii. The Customer shall not share the Software and any copy translation adaptation or modifications thereof or any information relating thereto to any third party except as explicitly stated within the Contract, without ██████████ prior written consent.
 - iv. The Customer will supervise and control the use of Software in accordance with the terms of this Licence.

- v. The Customer recognises that any and all of the trademarks, trade names, copyrights, patents and other intellectual property rights used or embodied in or in connection with the Software shall remain vested solely in [REDACTED] and the Customer shall not during or at any time after the expiry or termination of this Licence in any way question or dispute the ownership by [REDACTED] of any such rights and no attempt shall be made by the Customer to sub-licence, rent, lease, assign, or in any way allow any third party to have access to the Software except where expressly permitted within the Contract.
 - vi. The Customer shall make no attempt to modify, amend, alter or in any way interfere with the Software (except to the extent specified in sub-clause 3 (vii) below).
 - vii. The Customer shall be permitted to configure the Software only to such an extent as is specified in the instruction manuals relating to the Software as being necessary to configure the general purposes nature of the Software to a specific application. Where such configuration is made by or on behalf of the Customer, the warranty relating to the Software contained in this Licence shall not cover such configuration nor any malfunction of the Software arising from said configuration or its cumulative effects.
 - viii. The Customer acknowledges that the Software and the related documentation are provided and disclosed to the Customer in confidence and agrees to hold the same in confidence and not to disclose them or any part of them to any person other than such of its employees as are subject to obligations in favour of the Customer to hold the same in confidence.
- 3.2 The provisions contained in this clause shall also apply to any documentation or associated materials supplied by [REDACTED] pursuant to this Licence.
- 3.3 The Customer shall ensure that its employees, servants, or agents are made aware of and comply with the provisions of this Clause 3.

4 COPYRIGHT INDEMNITY

- 4.1 [REDACTED] shall fully indemnify the Customer against all damages (excluding consequential damages), costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement in the United Kingdom of copyright in consequence of the authorised use or possession of the Software or documentation supplied by [REDACTED] under this Licence subject to the following:
- i. The Customer shall promptly notify [REDACTED] in writing of any alleged infringement of which he has notice.
 - ii. The Customer must make no admissions of liability without [REDACTED] prior written consent.
 - iii. The Customer at [REDACTED] request and expense shall allow [REDACTED] to conduct any negotiations or litigation and/or settle any claim. The Customer shall give [REDACTED] all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for [REDACTED] account.
- 4.2 If at any time an allegation of infringement of copyright is made in respect of the program, or if in [REDACTED] reasonable opinion such an allegation is likely to be made, [REDACTED] may at its sole discretion terminate this Licence forthwith without any liability whatsoever or at its own expense modify or replace the program so as to avoid the infringement, without detracting from overall performance, [REDACTED] making good to the customer any loss of use during modification or replacement.

5 WARRANTIES AND INDEMNITIES

- 5.1 [REDACTED] warrants its right to supply the Software under this Licence, and that there is nothing to prohibit [REDACTED] from granting this Licence to the Customer.
- 5.2 [REDACTED] will correct all errors notified to it in writing during the Warranty Period defined in the Contract which cause the Software not to operate in accordance with the Specification where such errors are due to faulty design or workmanship on the part of [REDACTED]
- 5.3 This warranty shall not apply to errors which are attributable to factors outside [REDACTED] control which affect the performance of the Software. In the event that [REDACTED] is required to rectify such an error, any reasonable costs incurred by Ovarro in so doing will be recharged to the Customer.
- 5.4 Subject to the foregoing all conditions, warranties and representations expressed or implied by statute, common law or otherwise in relation to the Software are hereby excluded and [REDACTED] shall be under no liability to the Customer for any loss, damage or injury, direct to or indirect, resulting from the use of the Software and materials relating thereto, faulty workmanship or otherwise howsoever arising and whether or not caused by [REDACTED] negligence, its employees or agents save that [REDACTED] shall accept liability for death or personal injury caused by its negligence or the negligence of its employees or agents.
- 5.5 [REDACTED] total liability for loss or damage howsoever arising under this Licence shall not exceed the Licence Fee payable hereunder.

6 TERMINATION

- 6.1 This Licence shall terminate at close of business on the last day of the Licence Period.
- 6.2 During the Licence Period, either party shall have the right to terminate this Licence for any of the following reasons:
- i. if the Customer fails to make any payment due to [REDACTED] on the specified dates and [REDACTED] has given written notice of the Customer's failure to pay and the Customer has not made payment within 10 days of such written notice subject always to correct submission of invoices;
 - ii. if either party breaches any of the conditions contained in this Licence and fails to remedy the breach to the satisfaction of the other party within 14 days of being requested to do so in writing;
 - iii. if either party becomes bankrupt or makes any arrangement with its creditors or if an order is made or resolution passed for the liquidation, winding-up or dissolution of that party or if a Receiver should be appointed.
- 6.3 Upon and after the termination of this Licence, in terms of sub-clause 6.1 or 6.2 above, the Customer shall:-
- i. forthwith cease to use the Software otherwise than for the purpose of retrieving data stored in the computer at the date of termination under the supervision of [REDACTED] and the Customer shall promptly deliver up to [REDACTED] all of the Software including any copies thereof and information relating thereto, including documentation and listings, then in its possession;
 - ii. allow [REDACTED] to have reasonable access to any of its business premises to enable [REDACTED] to verify that the Customer is complying with its obligations on termination, subject always to existing security arrangements;
 - iii. continue to be bound by the obligation of confidentiality contained in clause 3(viii).

7 FORCE MAJEURE

- 7.1 Neither party shall be liable to the other for any breach of its obligations (other than payment obligations on the part of the Customer) hereunder resulting from any cause beyond its reasonable control including but not limited to (a) acts of God, flood, drought, fire, earthquake or other natural disaster; (b) epidemic or pandemic; (c) terrorist attack, civil war, civil commotion or riots, war, threat of or preparation for war, hostilities, armed conflict, imposition of sanctions, embargo, or breaking off of diplomatic relations; (d) nuclear, chemical or biological contamination or sonic boom; (e) any law or any action taken by a government or public authority, including without limitation imposing an export or import restriction, quota or prohibition, or failing to grant a necessary licence or consent; (f) collapse of buildings, explosion or accident; and (g) any labour or trade dispute, strikes, industrial action or lockouts (other than in each case by the party seeking to rely on this clause, or companies in the same group as that party); (h) non-performance by suppliers or subcontractors, (other than by companies in the same group as the party seeking to rely on this clause), inability to obtain supplies; and] (i) interruption or failure of utility service, delays in transportation. In the event that such event continues for a continuous period of three months either party may terminate the agreement forthwith upon notice in writing to the other.

8 ASSIGNMENT

- 8.1 This Licence shall not be assignable by either party save that the Customer may with the consent of [REDACTED] assigns the whole benefit and burden of this Licence to a member of the Customer's group.

9 WAIVER

- 9.1 The failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of such party's rights hereunder nor in any way effect the validity of the whole or any part of this Licence nor prejudice such party's right to take subsequent action.

10 SEVERABILITY

- 10.1 If any of the terms, conditions or provisions contained in this Licence shall be determined invalid, unlawful or unenforceable to any extent such term or condition or provision shall be severed from the remaining terms, conditions and provisions which shall continue to be valid to the fullest extent permitted by law.

11 LAW

- 11.1 This Licence shall be governed by and interpreted in accordance with the laws of England, and except insofar as already subject thereto the parties hereby prorogate the jurisdictions of the English courts.

