

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Department of the Navy (DON), Department of Homeland Security (DHS), General Services Administration (GSA), Department of Agriculture (USDA), and Department of Veterans Affairs (VA) (collectively the “United States”) and Schneider Electric Buildings Americas, Inc. (Schneider Electric) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Schneider Electric is a Delaware corporation with its principal place of business in Carrollton, Texas. Schneider Electric offers a wide range of electricity solutions for buildings and data centers, including energy performance contracting. Energy performance contracting is a funding method in which an energy service company partners with its clients in long-term projects that address maintenance backlogs and facility improvements with energy efficient solutions, using the energy savings generated to pay for the larger project scope. Schneider Electric provides energy savings performance contracting services to the federal government.

B. The United States Department of Justice conducted an investigation related to certain aspects of the following eight Energy Savings Performance Contracts (ESPCs) issued by the DON, U.S. Coast Guard (USCG), GSA, USDA, and VA: DON Task Order (T.O.) N39430-16-F-1804; USCG T.O. HSCG83-11-J-PMV073; GSA T.O. GS-P-02-13PW-0011; GSA T.O. GS-P-02-14-PI-0005; USDA T.O. AG-32SD-D-13-0064; VA T.O. VA701-17-F-0003 (VISN 8 Florida); VA T.O. VA701-15-F-0173 (VISN

1 Phase 3); and VA T.O. VA701-16-F-0033 (VISN 8 Puerto Rico).

C. The United States contends that it has certain civil claims against Schneider Electric arising from kickbacks solicited and received by former Senior Project Manager Baskar Patel between June 2011 and August 2016, in connection with the following six ESPCs: DON T.O. N39430-16-F-1804; USCG T.O. HSCG83-11-J-PMV073; GSA T.O. GS-P-02-13PW-0011; GSA T.O. GS-P-02-14-PI-0005; USDA T.O. AG-32SD-D-13-0064; and VA T.O. VA701-17-F-0003 (VISN 8).

Additionally, the United States contends that it has certain civil claims against Schneider Electric because Schneider Electric made and submitted false claims and false statements material to false claims to the DON, GSA, USDA, and VA, between December 2013 and December 2019, in connection with certain ESPCs. Specifically:

1. On the following three projects, the United States contends that Schneider Electric wrongly charged the government for costs incurred by Schneider Electric while developing the Investment Grade Audit (IGA) for the relevant projects by “hiding” or “burying” such costs in separate construction estimates required by the government, thereby misleading the government and inducing the government to agree to higher contract prices than it would have had Schneider Electric properly disclosed its costs: DON T.O. N39430-16-F-1804; GSA T.O. GS-P-02-13PW-0011; and USDA T.O. AG-32SD-D-13-0064.

2. On the following three VA projects, the United States contends that Schneider Electric wrongly submitted inflated line item construction cost estimates and improperly allocated risk in an attempt to drive up the overall contract value and thereby realized a profit margins that were between three and five percent above the margins that were

negotiated with and agreed upon by the government: VA T.O. VA701-17-F-0003 (VISN 8 Florida); VA T.O. VA701-15-F-0173 (VISN 1 Phase 3); and VA T.O. VA701-16-F-0033 (VISN 8 Puerto Rico).

That conduct described in Recital C is referred to below as the Covered Conduct.

Except as expressly acknowledged in the Statement of Facts set forth in the Non-Prosecution Agreement between Schneider and the United States Attorney for the District of Vermont, Schneider denies and does not admit the United States' contentions herein.

This Settlement Agreement is not an acknowledgement by the United States that its contentions are not well-founded.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Schneider Electric shall pay to the United States \$9.369 million (Settlement Amount), of which \$4,625,546.44 is restitution and interest on the Settlement Amount at a rate of 2.5 percent per annum from October 30, 2020, by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice no later than thirty days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and conditioned upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, the United States releases Schneider Electric, together

with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and assigns of any of them, from: (1) any civil claim the United States has for the Covered Conduct under the Anti-Kickback Act (AKA), 41 U.S.C. §§ 8701-8706; and (2) any civil or administrative monetary claim the United States has for the conduct described in subparagraphs C.1 and C.2 of Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Contract Disputes Act, 41 U.S.C. §§ 7101 – 7109, or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, including the suspension and debarment rights of any federal agency;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;

- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due; and
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

4. Schneider Electric waives and shall not assert any defenses Schneider Electric may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

5. Schneider Electric fully and finally releases the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Schneider Electric has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' investigation and prosecution thereof.

6. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Schneider Electric and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement and any related criminal agreement;
- (2) the United States' audits and civil and any criminal investigations of the matters covered by this Agreement;
- (3) Schneider Electric's investigation, defense, and corrective actions undertaken in response to the United States' audits and civil and any criminal investigations in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement and any related criminal agreement; and
- (5) the payment Schneider Electric makes to the United States pursuant to this Agreement,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Schneider Electric, and Schneider Electric shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Schneider Electric shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Schneider Electric or any

of its subsidiaries or affiliates from the United States. Schneider Electric agrees that the United States, at a minimum, shall be entitled to recoup from Schneider Electric any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Schneider Electric's books and records and to disagree with any calculations submitted by Schneider Electric or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Schneider Electric, or the effect of any such Unallowable Costs on the amount of such payments.

7. Schneider Electric agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Schneider Electric shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall use its best efforts to make available, and encourage, the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals. Schneider Electric further agrees to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

8. This Agreement is intended to be for the benefit of the Parties only.

9. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

10. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

11. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the District of Vermont. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

12. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

13. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

14. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

15. This Agreement is binding on Schneider Electric's successors, transferees, heirs, and assigns.

16. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

17. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 12/17/20

BY: Kelley C. Hauser
Kelley C. Hauser
Alexandra Wilson
Trial Attorneys
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 12/17/20

BY: Owen C.J. Foster / TCB
Owen C.J. Foster
Assistant United States Attorney
United States Attorney's Office
District of Vermont

SCHNEIDER ELECTRIC - DEFENDANT

DATED: 12/17/20

BY: _____

Name: Peter Warner

Title: SVP & Chief Legal Officer

DATED: 12/17/20

BY: Michael J. Connolly (md)

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James J. Barriere
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