



SUMMARY

| | |
|---|----|
| 1. DEFINITIONS | 2 |
| 2. SCOPE OF THE CONTRACT AND PROVIDER'S OBLIGATIONS | 4 |
| 3. TERMS AND CONDITIONS OF PAYMENT | 5 |
| 4. TAXES | 6 |
| 5. INSPECTION AND DELIVERY | 6 |
| 6. ACCEPTANCE | 7 |
| 7. WARRANTY | 7 |
| 8. INSURANCE AND RISK OF LOSS | 7 |
| 9. REPRESENTATIONS | 7 |
| 10. INTELLECTUAL PROPERTY | 8 |
| 11. TRANSFER TO THIRD PARTIES | 9 |
| 12. FORCE MAJEURE | 9 |
| 13. INDEMNITY | 9 |
| 14. DISPUTE RESOLUTION | 10 |
| 15. TERMINATION AND SUSPENSION | 10 |
| 16. CHANGE ORDERS | 11 |
| 17. RECORDS, DOCUMENTS AND AUDIT | 12 |
| 18. INTERPRETATION | 12 |
| 19. CURRENCY | 12 |
| 20. INDEPENDENT CONTRACTOR | 12 |
| 21. SCHEDULES AND DELAYS | 12 |
| 22. CONFIDENTIALITY | 13 |
| 23. MISCELLANEOUS | 13 |



These Standard Terms and Conditions are incorporated into the Contract by and between Company and Provider as of the Effective Date with the same force and effect as if they were set forth in full text therein

1. DEFINITIONS

As used herein, capitalized terms shall have the meanings specified in this Section 1 and shall apply to the entire Contract.

“Acceptance” has the meaning provided in Section 6 of these Standard Terms and Conditions.

“Acceptance Certificate” means the form set forth at Exhibit E3.

“Affiliate” means, in relation to any Person, any other Person, who: (a) directly or indirectly controls, or is controlled by, or is under common control with, such Person; or (b) directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (c) has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (d) either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person. For purposes of this definition, the word “controls” means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.

“Applicable Law” means any act, statute, law, regulation, Permit (including Applicable Permits), ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Government Authority with jurisdiction over Provider, Company, or the Services to be performed under the Contract, and includes any of the same as they may be amended or imposed from time-to-time.

“Applicable Permits” means any and all Permits from or required by any Government Authority that are necessary for the performance of the Services.

“Change Order” has the meaning provided in Section 16.1 of these Standard Terms and Conditions.

“Change Order Request” is in the form set forth in Exhibit E5.

“Company” is defined in the preamble of the Contract.

“Company HSE Requirements” means the document entitled “Company Health, Safety and Environmental Requirements” attached to, and forming part of, this Contract, as Exhibit A, Section 1.

“Contract” has the meaning set forth in the preamble hereto, as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof.

“Contract Number” means the numeric code identified by Company and located in the footer of the Contract.

“Contract Price” means the price for the Services as set forth in Exhibit C.

“Day” or “day” means a period of twenty-four (24) consecutive hours from 12:00 midnight, and shall include Saturdays, Sundays and all holidays central prevailing time.

“DDP” means Delivery Duty Paid as provided in Incoterms 2010.

“Dispute” has the meaning set forth in Section 14.1 of these Standard Terms and Conditions.

“Dollar” or “\$” means a dollar of the currency of the United States of America.

“Effective Date” has the meaning set forth in the preamble to this Contract.

“Financing Parties” means the lenders, security holders, investors, institutions, equity providers and other Persons providing debt, equity, or tax equity financing or refinancing to or on behalf of Company for the development, construction, ownership, operation or maintenance of the Project or any portion thereof, or any trustee or agent acting on behalf of any of the foregoing.

“Governmental Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial



NORTH AMERICA STANDARD TERMS AND CONDITIONS

authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

“Hazardous Materials” means any and all chemicals, constituents, contaminants, pollutants, materials, and wastes and any other carcinogenic, corrosive, ignitable, radioactive, reactive, toxic or otherwise hazardous substances or mixtures (whether solids, liquids, gases), or any similar substances now or at any time subject to regulation, control, remediation or otherwise addressed under Applicable Laws, including those laws, regulations and policies relating to the discharge, emission, spill, release, or threatened release into the environment or relating to the disposal (or arranging for the disposal), distribution, manufacture, processing, storage, treatment, transport, or other use of such substances.

“HSE Terms” means the document entitled “Health, Safety and Environmental Terms” attached to and made a part of the Contract.

“Intellectual Property Rights” has the meaning set forth in Section 10 of these Standard Terms and Conditions.

“Interest Rate” means the lesser of (a) eight percent (8%) and (b) the maximum rate permitted by Applicable Law.

“Liquidated Damages” has the meaning set forth in Exhibit D, and unless otherwise indicated, shall accrue daily.

“Party” or “Parties” means, respectively, a party or both parties to this Contract.

“Permit” means any waiver, exemption, variance, certificate, franchise, permit, approval, exemption, authorization, clearance, license, consent, or similar order of or from, or filing or registration with, or notice to, any Government Authority.

“Person” means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, or Government Authority or other entity of whatever nature.

“Personnel” means, with respect to a Party or entity, such Party’s or entity’s employees, agents, personnel, representatives, invitees, subcontractors, vendors and any other third party independent contractors with whom such Party or entity has contracted, and its agents’, personnel’s, representatives’, invitees’, subcontractors’, vendors’ or third party independent contractors’ respective employees, agents, personnel, representatives, invitees, subcontractors, vendors or third party independent contractors.

“Project” is defined in Recital A of the Contract.

“Project Schedule” means the schedule of dates and milestones for timely completion of the Services as set forth in Exhibit D.

“Project Site” is defined in Recital A of the Contract.

“Provider” has the meaning set forth in the preamble of the Contract hereto and includes its legal successors and permitted assignees as may be approved by Company, in writing, pursuant to the terms of the Contract.

“Provider Representative” means the person identified by Provider in writing in accordance with Section 2.2 of the Standard Terms and Conditions that has responsibility for and acts as a single point of contact in all day-to-day matters related to the Services.

“Prudent Industry Practices” means, in connection with the performance of the Services, those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy generally recognized by members of the applicable industry in the United States as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the applicable industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with Applicable Laws, reliability, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.

“Purchase Order” means Company’s document issued to Provider authorizing Provider to initiate performance of the Services, the form of which is set forth at Exhibit E1.

“Scope of Work” has the meaning set forth in Article 1.1 of the Contract, including the supplies, services and work to be provided, or caused to be provided, by or through Provider under the Contract, as more particularly described in Exhibit B.

“Services” is defined in Article 1 of the Contract.

“Standard Terms and Conditions” means these Standard Terms and Conditions attached to and incorporated into the Contract.



"Subcontractor(s)" means a corporation, partnership, or individual having a direct contract with Provider for performing Services, and its employees and representatives.

"Supplementary Conditions" means any condition which modifies the Standard Terms and Conditions, and contained in a document called Supplementary Conditions.

"Technical Specifications" is defined as the specifications and requirements to be used in execution of the Services, as defined in Exhibit B.

2. SCOPE OF WORK and PROVIDER OBLIGATIONS.

In addition to the Scope of Work and Technical Specifications set forth in Exhibit B and elsewhere in the Contract, the following conditions shall apply:

2.1 Standards. Provider shall provide the Services authorized in this Contract in accordance with Prudent Industry Practices, Applicable Law and Applicable Permits. Provider shall enforce strict quality control and order among its Personnel, and shall not permit any unskilled Personnel to perform the Services.

2.2 Duration. Provider commits to perform the Services from Effective Date through the date specified in the Contract. The Contract may be renewed only upon written notice sent by either Party to the other at least forty-five (45) days prior to the expiry of the Contract, specifying the duration of the renewal, unless the other Party decides to terminate the Contract.

2.2 Provider Representative. Provider shall designate a Provider Representative in Exhibit H – Notices Addresses. Provider shall not change the Provider Representative or any other key member of the Provider's staff providing Services without the prior written consent of Company.

2.3 Non-Exclusivity and Cooperation. Provider acknowledges that (a) Company may use third parties through outsourcing or otherwise to provide various types of goods and services including, without limitation, the types of services provided by Provider, and (b) nothing in this Contract shall be deemed to grant Provider the exclusive right to provide any of the Services. Provider shall cooperate with Company and Company's other third party service providers, and use commercially reasonable efforts to schedule, coordinate, and perform the Services under this Contract so as not to delay or adversely impact its timely performance and completion of the applicable Scope of Contract all in accordance with the Project Schedule set forth in Exhibit D. Provider shall cooperate with any such third party service providers to the same extent as Provider is obligated to cooperate with Company hereunder.

2.4 Registered Professional. If applicable to the Services, all designs and construction drawings, specifications, reports and related design or construction documents or any other documents shall, if required by Applicable Law, be signed by a registered professional engineer licensed to practice within the State in which the deliverables of the Services are intended to be used.

2.5 Subcontractors.

(a) Company acknowledges that Provider may have portions of the Scope of Work accomplished by Subcontractors qualified to perform such Scope of Work pursuant to written subcontracts between Provider and such Subcontractors. Provider may not enter into any Subcontract with any Person not approved by Company in writing (which approval shall not be unreasonably conditioned, withheld or delayed). Except as otherwise expressly provided in this Contract, Provider shall be solely responsible for engaging, managing, supervising and paying all Subcontractors and Persons directly or indirectly employed by it. Provider shall require that all Scope of Work performed be received, inspected and otherwise furnished in accordance with this Contract and Provider shall be solely liable for all acts, omissions, liabilities and Scope of Work (including defects therein) of its Subcontractors. All contracts with Subcontractors shall be consistent with the terms and provisions of the Contract. At a minimum, all subcontracts shall: (i) require the Subcontractors to comply with Applicable Law, (ii) provide that Company has the right of inspection as provided hereunder, (iii) require such Subcontractors to be subject to the labor obligations hereunder as well as the safety, security, confidentiality, and ethics and anti-corruption provisions of the Contract, and (iv) provide guarantees and warranties with respect to its portion of the Scope of Work. Except as set forth in Section 2.5(b), no contractual relationship shall exist between Company and any Subcontractor with respect to the Services. Provider shall require and shall cause all Subcontractors to perform their portions of the Scope of Work in accordance with the requirements of this Contract.

(b) No Subcontractor is intended to be nor shall it be deemed a third-party beneficiary of this Contract. Nothing contained herein shall obligate Company to pay any Subcontractor and Provider shall be solely responsible for paying each Subcontractor in accordance with the applicable Subcontract or Purchase Order between Provider and the Subcontractor; provided, however, each agreement between Provider and a Subcontractor with respect to the Scope of Work shall name Company as an intended third-party beneficiary and shall include a provision to allow the assignment of that agreement to Company, following a default by Provider or termination or expiration of this Contract.

(c) Without in any way derogating Provider's representations and warranties and other testing requirements and guarantees set forth herein with respect to all of the Services, Provider shall use reasonable efforts to obtain from all Subcontractors any representations, warranties, guarantees, and obligations offered by such Subcontractors and to negotiate the longest reasonably practicable warranty periods at no additional cost with respect to design, materials, workmanship, equipment, tools, supplies, and



other items furnished by such Subcontractors. To the extent assignable, Provider shall assign all representations, warranties, guarantees, and obligations of all Subcontractors at the request and direction of Company, and without recourse to Provider, to Company upon default by Provider or termination or expiration of this Contract; provided, however, that, notwithstanding such assignment, Company shall be entitled to enforce each such representation, warranty, guaranty, and obligation so long as Provider has any liability under this Contract.

2.6 Lien Removal. If Company has paid Provider in accordance with the requirements of this Contract, Provider shall discharge and cause to be released, at Provider's sole expense, whether by payment or posting of an appropriate surety bond in accordance with Applicable Law, within ten (10) days after receipt of a written demand from Company, any lien in respect to the Services (whether or not any such lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Provider or any Subcontractor, or other person providing labor or materials within the Scope of Work. Upon the failure of Provider to promptly discharge or cause to be released any lien as required by this Section 2.6, within ten (10) days after notice to Provider, Company may, but shall not be obligated to, pay, discharge or obtain a surety bond for such lien and, upon such payment, discharge or posting of surety bond therefor, shall be entitled to immediately recover from Provider the amount thereof together with all expenses incurred by Company in connection with such payment, discharge or posting, or set off all such amounts against any sums owed by Company to Provider. Provider shall notify Company of the filing of any lien against the Project or Scope of Work promptly upon learning of the existence or filing of such lien. Acceptance by Provider of the final payment shall constitute a release by Provider of Company, Affiliates, Financing Parties and every officer and agent thereof from all liens (whether statutory or otherwise and including mechanics' or similar liens), claims and liability hereunder with respect to any Services performed or furnished in connection with this Contract, or for any act or omission of Company or of any Personnel relating to or affecting this Contract, except claims for which Provider has delivered a Dispute notice to Company. No payment by Company shall be deemed a waiver by Company of any obligation of Provider under this Contract.

2.7 FCPA. Provider shall comply with all Applicable Law, including but not limited to the Foreign Corrupt Practices Act (15 U.S.C. Sections 78a and 78m et. seq.).

2.8 Safety. Provider shall implement and maintain health, safety and environmental precautions and programs to conform with Applicable Laws and such other requirements as provided by the HSE Terms and Company HSE Requirements, designed to prevent injury to all persons at or near the project site and all public and private property that are at or near the project site that are in any manner affected by the performance of the Services.

2.9 Gainsharing. If during the term of this Contract, Provider proposes to deviate from or modify any aspect of the Services or Provider's performance thereof in a manner that Provider believes will have an overall benefit for the Company or to the Project, whether in terms of performance, risk mitigation, cost reduction or otherwise, then Provider shall deliver such proposal in writing to Company with all such detail as may be requested by Company. In the event that Company elects to accept Provider's proposal, then the Parties shall thereafter in good faith negotiate an appropriate Change Order or amendment hereto implementing such proposal and providing for a mechanism through which both Provider and Company may share in the resulting benefit.

3. TERMS AND CONDITION OF PAYMENT

3.1 Payment Schedule. The Contract Price is due and payable in accordance with this Contract and specifically set forth in Exhibits C and D.

3.2 Delivery of Invoices. Provider shall invoice Company or its subsidiary identified in the "Ship to" section of the Form of Purchase Order, Exhibit E1. Provider shall provide Company with invoices for each payment set forth in Exhibit D, which shall reference the applicable Contract Number. Supportive documentation demonstrating the completion of each milestone or completion of the Services to Company's satisfaction shall be included with each invoice submission if applicable. Provider shall not send more than 2 invoices per month. Provider shall not invoice for amounts that are less than \$500 except Provider may invoice for items purchased within a period of 2 months that do not amount to the minimum of \$500. Payment of undisputed invoices shall be made by Company's check payable to Provider on or before the thirtieth (30th) day after Company's receipt of the documentation required hereunder. Should Company fail to make undisputed payments when due, then interest shall accrue on such invoices at the Interest Rate until such time as the invoice is paid.

3.2.1 Disputes and Adjustments of Invoices. Company may dispute, in good faith, the correctness of any invoice or any adjustment to an invoice, rendered under this Contract for any arithmetic or computational error within twelve (12) months of the date such invoice, or such adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to Provider. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within ten (10) working Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment.

3.3 Offsets. Company may deduct and set-off (including, if applicable, by way of a draw on a performance bond) against any amounts that are to be paid to Provider under this Contract, including any Liquidated Damages, if set forth on Exhibit D, or refunds due or to become due from Provider to Company hereunder caused by Provider's failure to perform the Services according



to the terms of this Contract, and/or are reasonably necessary to protect Company from a loss because of: (a) defects in the Services not timely remedied; (b) third-party claims filed against Company because of the acts or omissions of Provider, (c) liens filed or any other amounts that Provider is required to discharge (that have not been bonded off or are not covered by insurance maintained hereunder); (d) failure of Provider to make undisputed payments when are due to Subcontractors; or (e) damage to Company, the property of Company, or any of its Affiliates, to the extent the costs of such damages are not covered by the insurance Provider is required to maintain hereunder. Provider shall not have any rights of termination or suspension hereunder as a result of Company's exercise or attempted exercise of its rights under this Contract.

3.4 Lien Waivers. Company requires Provider to submit the following releases and waivers with its invoice or other application for payment: (a) in respect of the Scope of Work for which payment is being requested, if applicable, unconditional waivers and releases of all mechanics liens, stop notices, and bond rights in the form set forth in Exhibit E6 (whether for progress payments or final payment, as applicable) from Provider and each of its subcontractors and suppliers to be paid from such invoice or application of payment, and (b) in respect of Scope of Work for which payment has already been received under a previous invoice or application of payment, unconditional waivers and releases of all mechanics liens, stop notices, and bond rights in the form set forth in Exhibit E6 (whether for progress payment or final payment, as applicable) from Provider and each of its subcontractors and suppliers that has been paid from such previous invoice or application or payment.

3.5 Retainage. There shall be withheld as retainage from each payment due and payable to Provider hereunder, other than from the payment due and payable with respect to achievement of Acceptance, an amount equal to five percent (5%) (the "Retainage"). Company shall hold the Retainage as security for the performance of Provider's obligations hereunder and any interest thereon shall accrue for the account of Company and not Provider. Company may use the Retainage to cure a Provider event of default, for Liquidated Damages (if applicable), for payment of unpaid subcontractors and payments made to remove liens filed by subcontractors, and any and all other amounts payable to Company hereunder. Company shall release and return to Provider the Retainage held by Company (less any amount utilized by Company to satisfy obligations of Provider related to this Contract) within thirty (30) Days after Company's receipt of an invoice, an Acceptance Certificate, and such other documentation as is otherwise required hereunder.

4. TAXES

4.1 Application. Provider and Company shall cooperate with each other to optimize the tax obligations of both Parties to the extent legally permissible and supply resale and exemption certificates, if applicable, and other information as reasonably requested. To the extent state and local sales and use taxes are applicable to Provider's performance of the Services, Provider shall separately state and show applicable state and local sales and use taxes and value added taxes on all invoices. The price for Services shall include all the sums the Provider has allowed for any present sales, use, excise or other similar tax applicable to the furnishing of any Services hereunder.

4.2 Provider's Obligation. Provider assumes exclusive liability for and shall pay before delinquency, all federal, state, regional or local taxes imposed on, or with respect to, or measured by the labor, equipment, materials, or supplies furnished hereunder or the wages, salaries or other remunerations paid to individuals employed in connection with the performance of the Services. Provider shall hold harmless, indemnify and defend Company, together with any and all its officers, directors, agents and employees from and against any claim, liability, penalty, interest and expense by reason of Provider's failure to pay such taxes, charges or contributions.

4.3 Employment Taxes. Provider shall treat all individuals performing Services under the Contract as employees of the Provider for purposes of federal and state income taxes, Social Security and Medicare taxes, and unemployment and disability insurance premiums. No exceptions are permitted under this section without a written amendment to this Contract prior to an individual performing any Services under this Contract.

5. INSPECTION AND DELIVERY

5.1 Inspection. During the term of this Contract, Provider shall update Company on the progress of the Services in the form of a bi-weekly report as set forth in Exhibit E2, Form of Inspection, Test and other Technical Reports. If requested by Company, during the term of this Contract, Provider shall comply with the test and inspection requirements set forth in Exhibit B, Section 3, Certifications, Inspection Protocols and Test Procedures. In particular, when the manufacture of any Equipment is complete, Provider shall notify Company that such Equipment is ready for factory testing and inspection. Company shall be allowed a reasonable time in which to inspect the Equipment at Provider's factory, and participate in the establishment of a punch list of defects in the Equipment and of items requiring remedy or repair (the "Factory Completion Punch List"). Provider shall perform the repairs listed in the Factory Completion Punch List and shall notify Company that inspection may be repeated at Provider's factory and/or the Project Site. Company shall give Provider sufficient opportunity to enable Provider to participate in such repeat factory test and inspection. Company and Provider shall collaborate to determine the final inspection schedule based on the schedule illustrated on the bi-weekly manufacture progress report. The inspection process shall be repeated after Assembly of the Equipment at the Project Site and the Parties will create a "Project Site Punch List."

5.2 Delivery. Provider shall deliver any Equipment and other material and equipment furnished pursuant to the Scope of Work to the Project (or such other location as provided in Exhibit B) on a DDP basis and in compliance with all obligations applicable to Provider as set forth in Exhibit B.



All materials and equipment furnished by Provider pursuant to the Scope of Work shall be in new or like new condition and have been inspected by Provider and free of all defects.

6. ACCEPTANCE

6.1 Acceptance. The Services shall be deemed to have been successfully completed and accepted only upon sign-off of a certificate as set forth on Exhibit E3, Form of Acceptance Certificate by Company or its representative. Company shall provide Provider an Acceptance Certificate within ten (10) days after determining that the last of the following conditions occurred or have been waived by Company ("Acceptance"): (a) completion of the Services, (b) the delivery of a completion certificate, if applicable, (c) no defects exist, (d) all defects remedies have been completed; (e) the Equipment or Scope of Work has/have been commissioned and passed testing and is/are ready for commercial use, if applicable, and (f) Provider has delivered all required documents to Company.

6.2 Rejection. Company may reject any Services furnished hereunder failing to meet the requirements of the Contract including Exhibit B and require Provider to repeat, correct or replace such defect, at no charge to Company.

6.3 Temporary Use of Non-Conforming Scope of Work. Should Company deem it appropriate, and Provider does not object in writing within fifteen (15) days after notification to Provider, Company may temporarily use any such nonconforming Scope of Work or product of the Scope of Work containing a defect or any part thereof, until it can be repaired or replaced. Company shall not be liable for payment of compensation for such temporary use. If Provider does object, the Parties shall meet immediately in good faith to work out a mutually satisfactory resolution.

7. WARRANTY

Provider shall perform the Services in accordance with Prudent Industry Practices and warrants that its performance of the Services shall be free from defects. If, during the performance of the Services and for two (2) years following completion thereof, the Services fail to meet Prudent Industry Practices or the Services fail to conform to the requirement of this Contract, Provider shall without additional compensation correct or revise any defects in the Services provided hereunder.

Provider warrants that any Equipment or other materials and equipment furnished by Provider (and any Subcontractor) pursuant to the Services shall be free and clear of any and all defects in manufacture and workmanship, and shall remain so for a period two (2) years following Acceptance of the Services. At the conclusion of the two (2) year warranty period, Provider shall take commercially reasonable efforts to assign to Company any remaining manufacturer's warranties on any materials and equipment.

Any additional warranty obligations are set forth in Exhibit F. To the extent that any conflict exists between the provisions of this Section 7 and the provisions of Exhibit F, the provisions that are more favorable to Company shall control.

8. INSURANCE AND RISK OF LOSS

8.1 Insurance. Provider shall maintain insurance in accordance with Exhibit G. Provider shall provide a certificate of insurance as evidence that the coverage outlined in Exhibit G is current and maintains the limits as specified in Exhibit G. Upon request, Provider shall provide to Company copies of such insurance policies. If Provider shall fail to effect and keep in force the insurances for which it is responsible, Company may effect and keep in force any such insurance, and pay the premiums therefor, and from time to time deduct such amounts paid by Company from any amounts due or which may become due to Provider under this Contract, or, if no further amounts due, seek reimbursement for such premiums from Provider, which shall pay such amounts promptly upon request.

8.2 Transfer of Title and Risk of Loss. Title and risk of loss to all or any portion of the Scope of Work shall pass to Company upon the date the Services have achieved Acceptance. If any portion of the Scope of Work is damaged before Acceptance, Provider shall promptly notify Company and proceed to either repair or replace any affected Service in such a manner so as to minimize any delay to the schedule. Risk of loss to all or any portion of the Scope of Work shall pass to Company upon Acceptance. Provider warrants and guarantees that legal title to the Scope of Work shall be free and clear of any and all liens, claims, security interests or other encumbrances when title thereto passes to Company, except for those liens Provider holds as a result of non-payment by Company and liens arising by Applicable Law that are not otherwise prohibited hereunder.

9. REPRESENTATIONS

9.1 Compliance with Applicable Laws. Provider represents and warrants that it and its subcontractors shall comply with all Applicable Laws, applicable codes, and safety standards regarding performance of the Services.

9.2 Capability & Capacity. Provider represents and warrants that it and its subcontractors have and will have throughout performance of the Services, all the required authority, ability, skills, experience and capacity necessary to perform and covenants that it shall diligently perform the Services in a timely and professional manner, utilizing sound engineering principles, project management procedures, construction procedures and supervisory procedures, all in accordance with the Prudent Industry Practices.

9.3 Incorporation. Provider represents and warrants that it is validly established and existent in accordance with Applicable Laws.



9.4 Binding Agreement. Provider represents and warrants that the signatory to this Contract has the authority and power to bind Provider to the terms of this Contract.

9.5 CODE OF ETHICS, ZERO CORRUPTION TOLERANCE PLAN, ENEL GLOBAL COMPLIANCE PROGRAM AND GLOBAL COMPACT.

(a) Provider acknowledges that Company and its affiliates rely on the principles outlined in the Enel Code of Ethics (http://www.enel.com/it-IT/doc/governance/code_of_ethics/101223_ENELcodice_english.pdf), Enel Zero Tolerance of Corruption (http://www.enelgreenpower.com/en-GB/doc/company/governance/ENELptz_17x24_EXE.pdf), and Enel Global Compliance Program (<https://www.enel.com/investors/a/2016/08/the-internal-control-and-risk-management-system1>) when conducting business and management of relations. Company's compliance with these standards shall not be a breach of this Contract. Provider refers to similar principles in managing its business activities and relationships.

(b) Each of the Parties acknowledges the content of the Ten Principles of the United Nations Global Compact, and shall undertake to manage its business activities and operations in ways that meet such fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption.

(c) Provider represents and warrants that as of the Effective Date and to its knowledge during the past 24 months: (a) none of its senior managers, or close relatives of such senior managers have served in a decision making capacity in any Governmental Authority that has jurisdiction over a material proceeding involving Enel S.p.A. or any of its Affiliates; or (b) neither it nor any of its Affiliates have made or supported any unlawful request to any Governmental Authority relating to a business activity of Enel S.p.A. or any of its Affiliates.

(d) Provider agrees that if it learns or has reason to know if (i) any payment, offer or agreement to make a payment to a governmental official or political party for the purposes of securing any improper advantage for Company or (ii) any other development during the term of this Contract that in any way makes inaccurate or incomplete the representations, warranties and certifications of the Provider hereunder the Provider will immediately advise Company's General Counsel of such knowledge or suspicion and the entire basis known to the Provider therefore.

9.6 No Suits, Proceedings. Provider represents and warrants that there are no actions, suits, proceedings, patent or license infringements, or investigations pending or threatened against it at law or in equity before any court (in the United States or otherwise), arbitral panel or similar dispute resolution body, or before any Governmental Authority (whether or not covered by insurance) that individually or in the aggregate could result in any materially adverse effect on the business, properties, or assets or the condition, financial or otherwise, of Provider or in any impairment of its ability to perform its obligations under this Contract. Provider has no knowledge of any violation or default with respect to any order, writ, injunction, or decree of any court or any Governmental Authority that may result in any such materially adverse effect or such impairment.

10. INTELLECTUAL PROPERTY

10.1 Grant of License. Provider shall obtain and warrants that it owns or has the right to use and maintain all trade secrets, patents, copyrights, trademarks, proprietary rights or information, licenses or other intellectual property rights (the "Intellectual Property Rights") necessary for performance of the Services and to enable Company and its Affiliates to use the Scope of Work as contemplated herein. Upon payment of the amount(s) owed in accordance with this Contract, Provider hereby grants to Company an irrevocable, assignable, non-exclusive, perpetual, royalty-free, world-wide license to use, duplicate, modify, make derivative use of, and improve the Scope of Work provided hereunder and any other documents, drawings and information supplied by Provider in the performance of the Services. Company retains ownership of its Intellectual Property Rights in the contents of and ideas and inventions embodied in the technical documents provided to Provider and any ideas or inventions developed or created by Company that are included by Provider in the Scope of Work.

10.2 Indemnity. Provider shall indemnify, defend and hold Company, and its present and future Affiliates, and their respective directors, officers, shareholders, employees, agents and representatives, harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from (i) actual or alleged infringement or misappropriation by Provider or any subcontractor of any patent, copyright, trade secret, trademark, service mark, trade name, or other intellectual property right in connection with the Services, including without limitation, any deliverable, (ii) Provider's violation of any third-party license to use intellectual property in connection with the Services, including, without limitation, any deliverable.

10.3 Remedy. In the event that any infringement of Intellectual Property Rights occurs or may occur in relation to or while performing the Services, the Provider shall take some or all of the following actions at the option of Company and the sole cost of Provider: (a) use reasonable efforts to procure for Company the right to continue using the relevant aspect of the infringing part thereof; or (b) modify or amend the relevant infringing part or aspect thereof so that the same becomes non-infringing; or (c) replace the relevant infringing part or aspect with non-infringing design, equipment or material consistent with the Scope of Work; or (d) repay to the Company the price paid in respect of the relevant aspect of the Services relating to the whole or the infringing part thereof.

10.4 Company Rights. Company shall own all reports, original and final reproducible drawings, plans, designs, specifications, calculations, studies, software program tapes, models, notes, and memoranda, provided by Company to Provider and



otherwise prepared by Provider and Provider's Subcontractors in providing the Services pursuant to this Contract. Any idea, invention, work of authorship, drawing, design, formula, algorithm, utility, tool, pattern, compilation, program, device, method, technique, process, improvement, development or discovery whether or not patentable, or copyrightable, or entitled to legal protection as a trade secret or otherwise, that Provider may conceive, make, develop, create, reduce to practice, or work on, in whole or in part, in the course of performing the Services shall constitute a "work made for hire," shall be owned by Company, and shall be delivered to Company upon completion of the Services. Provider hereby assigns to Company, without royalty or any further consideration, all Provider's rights, title, and interests in and to any such inventions. Provider agrees to give Company 30 days' notice prior to Provider destroying or otherwise disposing of any duplicate documentation or drawings relating to Company work. If Company desires, Provider shall forward such documentation to Company. Provider may retain one archival copy of all produced data, drawings, plats, surveys and legal descriptions. Provider will keep these documents in strict confidence in accordance with this Contract.

10.5 Continued Use. If requested by Company, Provider agrees to take all actions necessary, at Company's sole cost and expense, to obtain, maintain or enforce patents, copyrights, trade secrets and other proprietary rights in connection with any invention, and Provider agrees that its obligations under this Article shall continue beyond the termination or completion of this Contract.

11. TRANSFER TO THIRD PARTIES

11.1 Company Right to Assign. Company may assign its rights and obligations under this Contract to an Affiliate of Company or to a future owner of the assets associated with this Contract, without Provider's consent.

11.2 Provider Right to Assign. This Contract and the performance of the Scope of Contract contemplated hereunder are personal to Provider, and therefore Provider may not assign its rights and obligations under this Contract without Company's prior written consent, and such consent may be withheld in Company's sole discretion.

12. FORCE MAJEURE

12.1 Definition of Force Majeure. "Force Majeure Event" means an event or circumstance, including natural catastrophes, terrorism, war, riots, or acts of God, that (i) prevents one Party from performing its obligations under this Contract; (ii) is not within the reasonable control of, or is not the result of the negligence of, the claiming party; and, (iii) by the exercise of due diligence, the claiming party is unable to overcome or avoid, or cause to be avoided. The following events, matters or things shall not constitute a Force Majeure Event: (a) the absence of sufficient financial means to perform obligations or the failure to make payments in accordance with this Contract; (b) any labor disturbance, strike or dispute of Provider's workers or personnel or any subcontractor's workers or personnel or any independent Provider engaged by Provider or any of its subcontractors; (c) mechanical or equipment failure unless caused by an event that would qualify as a Force Majeure Event under this definition; (d) storms and other climatic or weather conditions (except natural catastrophes or acts of God as described above); and (e) the unavailability or shortages of labor or equipment and materials unless itself caused by an event that would qualify as a Force Majeure Event under this definition.

12.2 Excuse from Performance; Notice. If either Party is rendered wholly or partially unable to perform its obligations under this Contract because of a Force Majeure Event, that Party shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected. The Party impacted by the Force Majeure Event shall promptly give the other Party notice describing the particulars of the occurrence. In no event shall the notice be more than seven (7) days after the affected Party becomes aware of such occurrence. Within twenty (20) days after such occurrence, the non-performing Party shall give the other Party written notice estimating the expected duration and probable impact on the performance of such Party's obligations hereunder. The non-performing Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event. The non-performing Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party. As soon as the non-performing Party can resume performance of its obligations hereunder, that Party shall give the other Party written notice to that effect and shall promptly resume performance. If a Force Majeure Event exceeds sixty (60) days, or is reasonably anticipated by agreement of the Parties to exceed sixty (60) days, Company shall have the right to terminate this Contract upon giving Provider five (5) days written notice, and Provider shall be entitled to recover the documented costs it incurred plus 10% for profit.

12.3 Dispute. In the event that the Parties are unable in good faith to agree that a Force Majeure Event has occurred or whether a Party's performance is excused, such Dispute shall be resolved in accordance with the procedures set forth in Section 14. In any proceeding to resolve the Dispute, the burden of proof as to whether a Force Majeure Event has occurred and whether performance is excused shall be upon the Party claiming a Force Majeure Event.

13. INDEMNITY

13.1 Provider's Indemnity. Provider agrees to indemnify, defend and hold harmless, Company, and its present and future direct or indirect parent company(ies), subsidiaries, affiliates, divisions and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) resulting from (a) injuries to or death of any and all individuals, including, without limitation, members of the general public, or any employee, agent, independent contractor or consultant or affiliate of either Party, arising out of or connected with the performance of Services, (b) damage to, loss, and/or destruction of property, including, without limitation, to property of Company or Provider arising out of or connected with the performance of the Services, (c) third-party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected with Provider's or any of its subcontractor's acts or omissions in breach of this Contract, or (d) Provider's failure to



comply with Applicable Law. The indemnification obligation shall not apply to the extent that injuries, death, loss, damage or destruction is caused by the negligence or willful misconduct of Company or its employees.

13.2 Concurrent Liability. In the event such damage or injury is caused by the joint or concurrent negligence of Company and Provider, the loss shall be borne by each Party in proportion to its degree of fault.

13.3 Third Parties. For purposes of this Section, "third parties" shall not include: (a) Company or Provider; (b) the subsidiaries, parents, affiliates, agents, successors or assigns of Company or Provider; or (c) any Party with a substantial equity interest in the foregoing entities.

14. DISPUTE RESOLUTION

14.1 Any dispute, controversy or claim arising out of or in connection with this Agreement (a "Dispute"), including any question regarding its existence, validity or termination, which cannot be resolved by negotiation between the parties within 60 days of either party giving notice to the other party that a dispute has arisen, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) which are deemed to be incorporated by reference into this clause. The number of arbitrators shall be three. Each Party shall nominate an arbitrator. The third arbitrator, who shall act as chairman of the tribunal, shall be nominated by the two party-nominated arbitrators. If the third arbitrator is not so nominated within 45 days of the date of the confirmation of the appointment of the latter of the two party-nominated arbitrators, the third arbitrator shall be appointed by the ICC Court.

The seat of arbitration shall be Boston, Massachusetts and the language of the arbitration shall be English.

The Expedited Procedure Provisions shall not apply. The resulting award shall be final and binding on the Parties from the day it is made, and judgment on the award may be entered in any court of competent jurisdiction.

Nothing in this clause shall be construed as preventing either party from seeking conservatory or similar interim relief in any court of competent jurisdiction. For the purpose of seeking such interim relief and/or for enforcing this agreement to arbitrate, the Parties hereby unconditionally and irrevocably submit to the non-exclusive jurisdiction of the courts of Boston, Massachusetts, and hereby waive any objection to such jurisdiction including without limitation objections by reason of lack of personal jurisdiction, improper venue, or inconvenient forum.

14.2 Continued Performance During Dispute Resolution. If so ordered by Company in writing, in spite of any claims whether monetary or otherwise, and while waiting for the Dispute resolution procedure to be completed, Provider shall promptly and diligently perform any disputed Scope of Work or conform to any disputed Change Order, direction, instruction, determination or decision of Company. Provider shall not be permitted to slow down, delay Scope of Work under any circumstances. Throughout any such disputed Services, Provider shall keep or cause to be kept complete records of any extra costs or delays incurred for or on account of the disputed Scope of Work or claim, and shall permit Company access to these and any other records needed for evaluating the claim. In spite of any Dispute and while waiting for the Dispute resolution procedure, Company shall continue to pay Provider in accordance with this Contract with respect to any amounts that are not in dispute.

15. TERMINATION AND SUSPENSION

15.1 Termination for Convenience. Company may terminate or suspend this Contract, in whole or in part, for its convenience upon notice to Provider. If requested in writing within twenty (20) days after such notice of termination for convenience, Company shall pay Provider as full compensation for such termination any amounts identified on Exhibit D Section 4, less any amounts owed by Provider to Company as of such termination date. In the event the Contract is terminated by Company for convenience pursuant to this Section 15.1, neither Party shall have any further obligations or liability except for performance of their obligations which are either expressly stated in this Contract to survive the termination.

15.2 Termination for Breach. Upon the occurrence of any of the following events, the non-breaching Party may terminate this Contract upon notice to the breaching Party; provided, however, that any termination of this Contract by Provider shall be subject to any applicable rights of Company's Financing Parties, if any:

15.2.1 a Party becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors, or commences any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar law of the United States or any state thereof for the relief of creditors or affecting the rights or remedies of creditors generally;

15.2.2 insolvency, receivership, reorganization, or bankruptcy or similar proceedings are commenced against such Party and such proceeding is not dismissed or stayed within thirty (30) days;

15.2.3 any representation or warranty made by a Party herein was false or intentionally misleading when made and such Party fails to remedy such false or intentionally misleading representation or warranty within thirty (30) days after the date of the notice from the other Party with respect thereto;

15.2.4 a Party attempts to assign or transfer this Contract or any right or interest herein, except in accordance with the requirements set forth in this Contract;



15.2.5 a Party fails to maintain any insurance coverages required of it in accordance with this Contract;

15.2.6 a Party fails to make any undisputed payment of money when due and fails to cure such nonpayment within thirty (30) days of receipt of written notice from the other Party of such failure to pay;

15.2.7 a Party fails to comply with its health, safety or environmental obligations under Section 2.8 and the HSE Terms or Company HSE Requirements; or

15.2.8 a Party fails to perform or observe in any material respect any provision of this Contract not otherwise addressed in sub-clauses 15.2.1 through 15.2.6, inclusive, of this Section 15.2, and such failure remains uncured for ten (10) days; *provided* that no such cure period shall apply to failures for which no cure or remedy is possible.

15.3 **No Prejudice.** The exercise by any Party of any rights under this Section 15, shall be without prejudice to any other rights such Party may have at law or in equity, under this Contract or otherwise, and shall not give rise to any rights or claims for compensation or consequential damages. Termination of this Contract shall not relieve the defaulting Party of its obligations, or from any liability, under this Contract and shall not affect the rights of the Parties accrued prior to such termination. If this Contract is terminated by Company pursuant to Section 15.1 hereof, then upon the effective date of any such termination, each Party shall pay to the other Party all undisputed compensation and expenses, if any, owed by such Party under this Contract up to and including the date of termination. If this Contract is terminated or suspended by Company pursuant to Section 15.2 hereof, then upon receipt of any such notice, Provider shall, unless the notice requires otherwise: (a) immediately cease and discontinue Service on the date of such notice and to the extent directed and specified by Company in such notice; (b) plan no further orders for materials or services other than as may be necessarily required for completion of any portion of the Services that is not terminated or suspended; (c) promptly make every reasonable effort to obtain cancellation on terms satisfactory to Company; and (d) take actions necessary, and otherwise assist Company as directed, in the maintenance, protection and disposition of property acquired by Company under the Contract, and assign to Company all rights to use all licensed materials, equipment, subcontracts and design documents for completion of the Services.

16. CHANGE ORDERS

16.1 **Company Right to Order a Change.** Company shall have the right by written directive to order changes to this Contract, including additions and/or deletions to the Contract and/or the Services (each such written directive a "Change Order"). Change Orders shall be in the form set forth in Exhibit E4. Provider shall comply with all such Change Orders. Should Provider claim that the changes are of such a nature to increase or decrease the Contract Price, then unless such Change Order includes an agreed upon adjustment to the Contract Price and/or the Project Schedule, then Provider shall submit to Company, in writing, within five (5) days of receipt of the Change Order, all claims for adjustment in the Contract Price (if any), and/or any proposed changes to the Project Schedule. Provider shall not be entitled to a change in the Contract Price or Project Schedule unless so authorized by Change Order.

16.2 **Provider Proposal for Change Order.** If Provider is entitled to a Change Order pursuant to a Force Majeure Event (for Project Schedule only) Provider shall submit to Company a Change Order Request in accordance with Exhibit E5.

16.3 **Schedule Adjustment for Change Order.** Should the Project Schedule or dates for performance by Provider be delayed or otherwise affected by a Change Order, Provider shall, at Company's request, use commercially reasonable efforts to accelerate the Scope of Work to meet the Project Schedule or any other corresponding schedule or date for performance. Provider's commercially reasonable efforts shall include overtime and weekend work at a fixed rate.

16.4 **Approval of Change Order.** Company shall within seven (7) working Days from the date of receipt of such information either approve or disapprove the draft Change Order, in writing, or request additional time to consider the draft Change Order. If Company approves the Change Order, Company and Provider shall then sign the Change Order which shall operate as an amendment to this Contract.

16.5 Change Order Pricing

16.5.1 For all Change Orders, the Parties shall first attempt to negotiate a mutually acceptable lump sum increase or decrease to the Contract Price properly itemized and supported by sufficient substantiating data to permit evaluation.

16.5.2 In the event of a deductive Change Order, the amount of decrease in the Contract Price to be allowed for any deletion or change which results in a net decrease in the Scope of Work will be the estimated reduction in the cost of Scope of Work occasioned by such change including deduction, if any, in overhead. When both additions and reductions are involved in any one Change Order, the adjustment in the Contact Price shall be determined on the basis of net increase or decrease.

16.6 **Additional Changes.** In the event that Provider believes that Company has requested additional work to be performed that is not included in the Contract Price or in an approved Change Order, then within seven (7) days of receipt of such request Provider shall advise Company of the feasibility of the requested change, and shall submit to Company a draft Change Order for approval. Any such additional work undertaken by Provider in the absence of a properly authorized Change Order shall be made at Provider's sole risk and expense and Provider shall not be entitled to any payment hereunder for undertaking such change to the Work. Provider shall not suspend, in whole or in part, performance of this Contract (other than as it relates to the Change Order) during any good faith dispute over any Change Order or any requested additional work unless directed to do so by Company.



17. RECORDS, DOCUMENTS AND AUDIT

17.1 Maintenance of Books and Records. Provider shall maintain books and accounts with respect to the Services hereunder in accordance with generally accepted accounting principles and practices consistently applied. In addition, Provider shall maintain a system of internal accounting controls appropriate for its operation. During normal business hours and upon forty eight (48) hour notice, Provider shall afford Company access to Provider's records, books, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, and any other data relating to the Services.

17.2 Work Product. Provider shall make available to Company for inspection, audit or reproduction designated in-progress work product as soon as reasonably possible after written request.

17.3 Audit. Provider shall retain records, including books and accounts, relevant to the Services for a period of five (5) years after Acceptance should Company require records for its use.

17.4 Additional Requested Information. Until Acceptance or earlier termination of this Contract, Provider shall provide documents, reports and information in connection with this Contract in addition to that specifically required in this Contract that may be reasonably requested by Company from time to time, provided such additional information involves no material additional cost to Provider.

18. INTERPRETATION

Except where otherwise expressly provided or unless the context otherwise necessarily requires: (a) reference to a given Applicable Law shall mean such Applicable Law in effect as amended or modified as of the date on which compliance is required; (b) "includes", "including" or any other variant thereof means "including, without limitation,;" (c) the phrase "and/or" shall be deemed to mean the words both preceding and following such phrase, or either of them; and (d) any pronoun includes the corresponding masculine, feminine or neuter forms. The words "will" and "shall" are used interchangeably throughout this Contract; the use of either connotes a mandatory requirement; and the use of one or the other will not mean a different degree of right or obligation for either Party. The headings for the Articles and Sections contained in this Contract have been inserted for convenience only and form no part of this Contract and shall not be deemed to affect the meaning or construction of any of the covenants, agreements, conditions or terms of this Contract.

19. CURRENCY

All amounts referenced in this Contract are stated in U.S. Dollars. All payments required to be made, including the Contract Price, any amounts under any Change Order and any other obligation to make payment of funds for whatever reason, by Company or Provider under or with respect to this Contract shall be made in U.S. Dollars.

20. INDEPENDENT CONTRACTOR

Provider shall act as an independent contractor and not as an agent, partner, joint venture or employee of Company in performing this Contract, maintaining control over its employees and all Services performed and to be performed under the Contract. Nothing contained in the Contract shall create any contractual relationship between any Provider's subcontractors or suppliers and Company. Employees and agents of Company shall in no event be considered employees, agents, partners or representative of Provider.

21. SCHEDULES AND DELAYS

21.1 Timing of Performance. The Provider acknowledges that time is of the essence of the Contract and shall abide by the Project Schedule set forth in Exhibit D, Section 1.

21.2 Company Right to Reschedule. Company reserves the right to direct the Provider to reschedule, from time to time, the order and rate of progress of performance of the Provider's Services hereunder so as not to interfere with the performance of work by Company. No such direction shall excuse the Provider from performing its responsibilities in a timely fashion and time shall still be of the essence of the Contract.

21.3 Schedule Assurance. If at any time during the performance of the Services of Provider's actual progress, as measured by the Project Schedule, does not keep pace with the requirements of Exhibit D, Section 1 or is insufficient to assure that the completion dates can be met, Company may order the Provider in writing to take steps to improve its progress. Such steps may include, without limitation, an increase in the Provider's labor force, or the number of shifts, or overtime, or additional days of work per week, or similar measures, all without additional cost to Company. Neither such notice by Company nor Company's failure to issue such notice shall relieve the Provider of its obligation to achieve the quality of Service, rate of progress or other requirements herein. Failure of the Provider to comply with the notice of Company may be grounds for determination by Company that the Provider is not prosecuting its Services with such diligence as shall assure completion within the times specified. Upon such determination, Company may terminate the Provider's right to proceed with the performance of the Services, or any separable part thereof, for default.

22. CONFIDENTIALITY

22.1 Subject to clause 22.2, the Provider shall not, at any time after the date of this Contract, notwithstanding any termination or cancellation of this Contract, directly or indirectly disclose, or directly or indirectly use, whether for its own benefit or that of any other Person, any information:

- (a) regarding the Scope of Work, the Services or any of the contents of this Contract; or
- (b) relating to the Company and its assets and affairs, including all communications (whether written, oral or in any other form) and all reports, statements, schedules and other data concerning any financial, technical, labour, marketing, administrative, accounting or other matter (collectively with subclause (a), the "Confidential Information"); or
- (c) any document or other record (whether in electronic or any other medium whatsoever) containing Confidential Information which is supplied to it by the Company as well as documents, diagrams and records which are produced by it (whether or not by copying, photocopying or otherwise reproducing documents or records supplied to it), and containing any Confidential Information (the "Confidential Records").

22.2 Notwithstanding clause 22.1, Confidential Information may be disclosed by the Contractor:

- (a) if the prior written consent for such disclosure has been obtained in writing from the Company;
- (b) to the extent to which disclosure is required by Applicable Law (excluding contractual obligations) or by the rules of any stock exchange by which it (or any of its affiliates) is bound, in which event the Provider shall, unless prohibited from doing so by any such Applicable Law or stock exchange rule, obtain the Company's prior written consent, not to be withheld unreasonably, for the manner of such disclosure, provided that the Provider shall not be obliged to obtain the prior consent of the Company if such disclosure is required before such approval can reasonably be obtained, but in these circumstances the Provider must promptly notify the Company of the full details of such disclosure, including the reasons why time did not permit such consent to be obtained as soon as is reasonably practicable;
- (c) to the extent such Confidential Information was already known to, or in the possession of, the Provider prior to its disclosure by the Company other than as a result of breach of this Contract, or is otherwise independently developed by the Provider without prior reference to the Confidential Information.

22.3 Notwithstanding clause 22.1, Confidential Records may be disclosed by the Provider to directors, responsible Personnel and professional advisors of the Provider who require such disclosure for the purpose of the Provider implementing or enforcing this Contract or obtaining professional advice or for the purpose of complying with any Applicable Law, however, any breach by any such director, responsible Personnel or professional advisor which would, if that person had been party to this clause 22, be a breach of this clause 22 will be a breach of this clause 22 by the Provider.

23. MISCELLANEOUS

23.1 Cooperation of Parties. Company and Provider will each use commercially reasonable efforts to implement the provisions of this Contract, and for such purpose each, at the reasonable request of the other, will, without further consideration, promptly execute and deliver or cause to be executed and delivered to the other such assistance, or assignments, consents, estoppels or other instruments in addition to those required by this Contract, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of this Contract.

23.2 Press Releases. The Parties (a) shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Contract; and (b) shall not issue any such press release or make any such public statement without the prior consent of the other party.

23.3 Processing of Personal Data. Both Company and Provider shall comply with applicable legislation on the protection and processing of personal data. While processing personal data on behalf of Company, Provider shall adopt adequate technical and organizational security measures to avoid personal data breaches, shall comply with the General Data Protection European Regulation 679/2016, if applicable, and shall inform Enel without undue delay of any personal data breach occurred in the performance of the Contract.

23.4 Applicable Law. This Contract shall in all respects be governed by the laws of the State in which the deliverables of the Services are intended to be used, without giving effect to any choice of law rules thereof that may direct the application of the laws of another jurisdiction. If the Services are to be performed in more than one State, then the laws of the Commonwealth of Massachusetts shall apply.



23.5 Jurisdiction. All Disputes between the Parties shall be filed, heard and decided in the capital city of State in which the deliverables of the Services are intended to be used and the arbitral panel convened therein and the state and federal courts located therein shall have exclusive jurisdiction and venue. If the Services are to be performed in more than one State, then the Commonwealth of Massachusetts shall have jurisdiction over all Disputes.

23.6 Entire Contract. Except for any agreements relating to confidentiality, this Contract constitutes the entire agreement of the Parties and supersedes any and all prior and contemporaneous contracts, understanding, and agreements. Any amendments or additions to this Contract must be in writing and signed by the Parties hereto. This shall also apply to a waiver of the requirement for written form.

23.7 Severability. Should one of the provisions of this Contract be, or become, void, then the validity of the remaining provisions shall not be affected thereby. In such a case, the Parties are obliged to replace any ineffective or void provision with a new one which does justice to the commercial content of the rules contained in the ineffective or void provision being replaced. The same shall apply if a gap should arise in the contract. In order to close such a gap, the Parties are obliged to establish appropriate rules in this Contract which come as close as possible to the original sense, spirit and purpose.

23.8 Notices. Where provision is made for written notice in this Contract, such a requirement shall be deemed to have been fulfilled through transfer by e-mail or fax, provided the sending Party receives confirmation of receipt. All notices shall be mailed or sent in accordance with Exhibit H.

23.9 Counterparts. This Contract may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Company and Provider, with all such counterparts together constituting but one and the same instrument.

23.10 Survival. The obligations imposed on Provider by the Articles of this Contract and Sections 3-7, 9.5, 10, 13, 14, 17, 21.1, 23.1-23.2 and 23.10, shall survive cancellation or termination of this Contract and final payment for the Services.