



## AUSTRALIA STANDARD TERMS AND CONDITIONS

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## AUSTRALIA STANDARD TERMS AND CONDITIONS

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### STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions are incorporated into the Agreement by and between the Company and the Contractor 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, capitalised terms shall have the meanings specified as follows:

“Accepted Scope of the Contract” has the meaning given in clause 8.1.

“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 per cent (50%) or more of any class of voting shares or other equity interests of such Person; or (c) has fifty per cent (50%) or more of any class of voting shares 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.

“Agreement” 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. The Agreement incorporates these Standard Terms and Conditions by reference, as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof. Any reference to the Agreement shall be deemed to include all the documents as set forth in Clause 2 of the Agreement.

“Applicable Law(s)” 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 Governmental Authority with jurisdiction over Contractor, Company, or the Scope of the Contract to be performed under the Agreement, 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 Governmental Authority that are necessary for the performance of the Scope of the Contract.

“Business Day” or “business day” means any day excluding Saturdays, Sundays and public holidays in Sydney, New South Wales and in the State, as defined below.

“Change Order” means a material change in the Agreement as agreed in writing by the Parties.

“Claim” means any claim, action, demand, prosecution, notice, investigation or suit made, threatened or brought by or against any person, however arising and whether present, unascertained, immediate, future, prospective or contingent.

“Company” means the Party identified as such in the Agreement.

“Coordinator(s)” shall mean the person(s) nominated as such by each Party in the Agreement that will have responsibility for and will act as a single point of contact in all day-to-day matters related to the Agreement as initially set out in the Contract Details.

“Confidential Information” has the meaning set forth in Section 14 of these Standard Terms and Conditions.

“Consequential Loss” means loss of contract, profit, revenue or anticipated savings, loss of, or damage to, reputation, credit rating or goodwill, loss or denial of opportunity, loss of access to markets, wasted overheads, financing costs, special, incidental or punitive damages, loss or damage arising from special circumstances that are outside the ordinary course of things, however arising in respect of any circumstance under or in relation to this Agreement, and regardless of whether a Claim for same is made under this Agreement, tort, negligence, strict liability, under an indemnity or a warranty, in equity or otherwise.



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“Contract Details” means the details set out in Annexure A – Contract Details.

“Contract Price” shall mean the amount payable by the Company to the Contractor for the Scope of the Contract as set out in the Contract Details.

“Contractor’s H S E Plan” means the Contractor’s health, safety and environmental management plan in relation to the Scope of the Contract.

“Dispute” has the meaning set forth in Section 18.1 of these Standard Terms and Conditions.

“Effective Date” means the date, as stipulated in the Contract Details, when the Scope of the Contract are to commence.

“Financially Distressed” means in relation to any entity:

- (a) it appears to be reasonably unlikely to be able to pay all of its debts as they become due and payable within the immediately ensuing six months; or
- (b) it appears to be reasonably likely to become insolvent within the immediately ensuing 6 (six) months;

“Force Majeure Event” shall have the meaning set forth in Section 16.1 of these Standard Terms and Conditions.

“Governmental Authority” means any government or a governmental, quasi-governmental or judicial entity or authority, a stock exchange or any other authority, agency, commission, regulator, ministry, department, instrument, tribunal (including any pricing body), enterprise or similar entity, whether of Australia or elsewhere that has powers or jurisdiction under any Applicable Law over a party or any act relating to this Agreement.

“GST” has the meaning given in the GST Law.

“GST Law” has the same meaning as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

“HSE Terms” means the document entitled “Health, Safety and Environmental Terms” attached to, and forming part of, this Contract as Annexure C.

“Insolvency Event” means in relation to an entity:

- (a) a receiver, liquidator, administrator, controller, trustee or similar official being appointed to the entity or all or substantially all of the assets or undertaking of the entity;
- (b) the entity suspends payment of its debts generally;
- (c) the entity is or becomes Financially Distressed;
- (d) the entity enters into or resolves to enter into any arrangement, scheme or compromise with, or assignment for the benefit of, its creditors generally or any class of them;
- (e) an application or order is made for the winding-up or dissolution of, or the appointment of a provisional liquidator, to the entity or a resolution is passed or steps are taken to pass a resolution for the winding-up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction which has the prior consent of all shareholders;
- (f) the entity is insolvent or under administration as defined in the *Corporations Act 2001*(Cth).



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“Intellectual Property Rights” has the meaning set forth in Section 13.

“Interest Rate” means 2% above the 1M Mid Tenor ASX Benchmark Rate published by ASX Limited.

“Liability” means any loss, damage, cost or expense (including compensation costs, investigation costs, clean-up costs, rehabilitation costs, remediation costs, compliance costs, legal costs on a full indemnity solicitor and own client basis and other consultant’s fees or costs) of any kind and however arising, and any damage, penalties, fines or interest.

“Liquidated Damages Amount” means the amount set out in the Contract Details.

“Party” or “Parties” means, respectively, as the context requires, either of or both parties to this Agreement.

“Permit” means any permission, permit, waiver, exemption, variance, certificate, franchise, approval, authorization, clearance, license, consent, or similar order of or from any Governmental Authority.

“Person” means any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership, Governmental Authority or other entity of whatever nature (whether or not having separate legal personality).

“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.

“Programme” means the agreed schedule of dates and milestones for timely completion of the Scope of the Contract, if applicable, as set out in the Contract Details.

“Prudent Industry Practices” means, in connection with the performance of the Scope of the Contract, those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy internationally recognised by members of the applicable industry 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.

“Scope of the Contract” means the work, activities and/or materials or other goods or services to be provided, or caused to be provided, by or through the Contractor under the Agreement, as set out in further detail in the Contract Details.

“Site” means the actual location(s) at which the Scope of the Contract is to be executed, where applicable, as set out in the Contract Details.

“State” means the Australian state or territory set out in the Contract Details.

“Subcontractor(s)” means a corporation, partnership, or individual having a direct contract with the Contractor for performing any part of the Scope of the Contract, and its employees and representatives.

“Taxes” means a tax (including corporate tax, resource rent tax, income tax, fringe benefit tax, payroll tax, PAYG and subcontractor’s taxes), levy, duty (including customs duty and stamp duty), excise, charge, royalty (whether based on value, profit or otherwise), fee, surcharge, contribution, impost, deduction or withholding, however described and whether direct or indirect, that is imposed by an Applicable Law in any jurisdiction together with an interest, penalty, fine or other related charge.

“Term” means the term of this Agreement commencing on the date of signature of this Agreement and the earlier of the End Date and the date on which this Agreement is terminated in accordance with its terms.

“Warranty Period” means, where applicable, the period set out in the Contract Details.

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### 2 SCOPE OF THE CONTRACT AND CONTRACTOR'S OBLIGATIONS

- 2.1 Contractor agrees to perform the Scope of the Contract in accordance with this Agreement, Prudent Industry Practices, Applicable Law and Applicable Permits. Contractor shall enforce strict quality control and order among its Personnel, and shall not permit any unskilled Personnel to perform the Scope of the Contract.  
Contractor commits to perform the Scope of the Contract from Effective Date through the date specified in Contract Details. 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 Contractor shall not change its Coordinator or any other key member of the Contractor's staff engaged in this Agreement without the prior written notice to Company and must replace him/her with an equally qualified person.
- 2.3 Contractor must cooperate with the Company and schedule, coordinate and perform the Scope of the Contract so as not to delay or adversely impact the Company or any Personnel of the Company, when performing the Scope of the Contract in accordance with this Agreement and, as applicable, the Programme.
- 2.4 If applicable, 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 jurisdiction in which the deliverables of the Agreement are intended to be used.
- 2.5 Subcontracting the Scope of the Contract.
- (a) With the prior written approval of the Company, the Contractor may subcontract part, but not all, of the Scope of the Contract to suitably qualified and experienced subcontractors on terms that require the relevant subcontractor to comply with all Applicable Laws, and all labour, health, safety and security obligations, ethical duties and anticorruption provisions and responsibilities contained in this Agreement, and otherwise on terms consistent with the terms of this Agreement.
  - (b) Any approval given by the Company under clause 2.5(a) to allow the Contractor to subcontract part of the Scope of the Contract will be at the discretion of the Company and will not relieve the Contractor from any of its obligations under this Agreement and will not result in any contractual relationship between the Company and the relevant Subcontractor.
  - (c) The Contractor will remain fully liable in respect of any amounts payable or claimed by a Subcontractor in relation to this Agreement and the Scope of the Contract, and the Contractor indemnifies and agrees to keep indemnified, the Company and its Affiliates from and against all Claims and from any Liability arising out or in connection with the Subcontractor's activities in connection with the Scope of the Contract and this Agreement.
  - (d) The Contractor must ensure that it procures the benefit of any and all warranties and guarantees (for the longest available warranty/guarantee periods) in respect of any part of the Scope of the Contract it has subcontracted to a Subcontractor, for and in favour of the Company.

### 3 HEALTH, SAFETY AND ENVIRONMENTAL REQUIREMENTS

- 3.1 Contractor must implement and maintain health, safety and environmental procedures, precautions and programs in order to ensure that its Personnel and any other persons under its care and or control, comply with Applicable Laws and the requirements set out in the HSE Terms, in order to prevent injury to all persons at or near the project Site and all public and private property that is located within or near the project Site that may, in any manner, be affected by the performance of the Scope of the Contract.

### 4 COMPANY OBLIGATIONS

- 4.1 Unless otherwise expressly specified in this Agreement, the sole obligation of the Company is to pay Contractor the Contract Price pursuant to the terms hereof.

### 5 TERMS AND CONDITIONS OF PAYMENT AND FINANCIAL GUARANTEE

- 5.1 The Contract Price is due and payable in accordance with this Agreement upon completion of any applicable invoicing milestones (as may be set out in the Contract Details) and any other payment terms set out in the Contract Details
- 5.2 For the avoidance of any doubt, the Contract Price is inclusive of all Contractor costs and expenses to perform the Scope of the Contract in accordance with this Agreement, Applicable Laws, Applicable Permits and any health and safety requirements



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- 5.3 The Contractor must provide a valid tax invoice to the Company in respect of any Accepted Scope of the Contract for the Contract Price (or part thereof as applicable in the case of agreed milestone payments), complying with the requirements of the GST Law, as well as any relevant supporting documentation to substantiate the amount of the invoice and the completion of the relevant Scope of the Contract.
- 5.4 Upon receipt of a valid tax invoice, the Company will pay any undisputed portion of such tax invoice within forty-five (45) days after receipt, by electronic funds transfer to the Contractor's nominated bank account.
- 5.5 If the Company disputes the correctness of any invoice or any adjustment to an invoice rendered under the Agreement the Company must pay any undisputed portion of the relevant invoice when due, and notify the Contractor of the disputed amount of the invoice, setting out the basis for such disputed amount. Within 5 Business Days of being notified of a disputed amount under this clause 5.5, the Contractor must:
- (a) issue an adjustment note in respect of the disputed portion of the original tax invoice; or
  - (b) notify the Company that it does not agree with the Company's dispute, in which case the matter must be resolved in accordance with clause 18.
- 5.6 Payment of any tax invoice, whether in part or in full, or any failure to dispute a tax invoice under this clause 5 will not waive any rights the Company has under this Agreement or at law and will not prevent the Company subsequently disputing its liability to pay any amount under this Agreement, nor is it evidence that the Contractor has complied with the terms of this Agreement.
- 5.7 The Company may deduct and set-off against any amounts that are to be paid to the Contractor under this Agreement, as the case may be, amounts payable by the Contractor to the Company, including the Liquidated Damages Amount (if applicable) or any refunds due or to become due from the Contractor to the Company caused by the Contractor's failure to perform the Scope of the Contract according to the terms of this Agreement.
- 5.8 If requested by the Company, Contractor shall be obliged to provide a financial guarantee in favour of the Company as indicated in the Contract Details, or as otherwise required by the Company, as a guarantee of the Contractor's obligations under the Agreement. The existence of a guarantee does not mean that the Contractor's liability under this Agreement is limited to the amount or period of validity of the guarantee. If the total Contract Price increases during the performance of the Scope of the Contract, the Company may request that the Contractor provide a supplementary or replacement financial guarantee to cover the increased Contract Price. The costs of any financial guarantee required shall be borne by the Contractor.

### 6 GST AND TAXES

- 6.1 In this clause 6 terms that are also defined in the GST Law have the same meaning as in the GST Law.
- 6.2 Any amount referred to in this Agreement which is relevant in determining a payment to be made by one Party to another is exclusive of GST unless expressly indicated otherwise.
- 6.3 If GST is imposed on a supply made under or in connection with this Agreement then the consideration provided for that supply must be increased by the rate at which GST is imposed. The additional consideration is, subject to the supplier providing a receipt with a tax invoice, payable at the same time and in the same manner as the consideration to which it relates.
- 6.4 If a Party refunds to another Party any amount on which GST has been paid, that Party must also refund an amount in respect of the GST paid in respect of the amount.
- 6.5 If one Party is entitled to be reimbursed for an expense or outgoing incurred in connection with this Agreement, then the amount of the reimbursement will be net of any input tax credits which may be claimed by the Party being reimbursed in relation to that expense or outgoing.
- 6.6 Each Party must have an ABN and be registered for GST.
- 6.7 Subject to clauses 6.2 to 6.5, the Contractor is solely liable for the payment of all Taxes, the costs of complying with all Applicable Laws relating to tax and any penalties or interest in respect of such Taxes or compliance, which arise in connection with, or apply to, the Scope of the Contract or any part of the Scope of the Contract or any payments made under this Agreement.

### 7 INSPECTION AND DELIVERY

- 7.1 During the Term, unless otherwise agreed or not applicable given the nature of the Scope of the Contract, the Contractor must update the Company Coordinator on the progress of the performance of the Scope of the Contract in the form of a bi-weekly report.
- 7.2 If requested by the Company, the Contractor must allow the Company Coordinator or other nominated Personnel to test and inspect the Scope of the Contract to ensure that it complies with the requirements of this Agreement, including any technical specifications that apply to the Scope of the Contract.
- 7.3 Contractor must deliver the Scope of the Contract as well as any goods, materials and equipment related to and necessary for,



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the Scope of the Contract, to the Site on a Delivered Duty Paid basis (as defined in accordance with Incoterms 2018) and in compliance with all other obligations applicable to the Contractor as set forth in or annexed or attached to this Agreement.

- 7.4 All goods, materials and equipment furnished by Contractor that are part of or comprise the Scope of the Contract must be in new condition free of all defects, unless otherwise expressly agreed in writing by the Company.

### 8 ACCEPTANCE

- 8.1 The Scope of the Contract, or any part thereof, including receipt of any goods comprising or forming part of the Scope of the Contract, will be deemed to have been successfully completed if signed off as accepted by the Company Coordinator (**Accepted Scope of the Contract**).
- 8.2 If provided for in the Contract Details, the Company shall issue to the Contractor an acceptance certificate within ten (10) days after determining that the last of the following conditions occurred or have been waived by the Company: (a) completion of the Scope of the Contract; (b) the delivery of a completion certificate, if applicable; (c) no defects exist; (d) all defects remedies have been completed; (e) Contractor has delivered all required documents to Company.
- 8.3 Company may reject any Scope of the Contract that fails to meet the requirements of this Agreement and require the Contractor to repeat, correct or replace such failure (at the Company's nomination), at no charge to Company and the Contractor expressly agrees to do so.

### 9 TRANSFER OF TITLE AND RISK OF LOSS

- 9.1 Title to and risk of loss to all or any portion of any goods comprised in or forming part of the Scope of the Contract shall pass to Company upon the date such goods have been accepted by Company, as provided in clause 8.1.
- 9.2 If any goods are damaged before acceptance by the Company, the Contractor must promptly notify Company and proceed to either repair or replace the goods in such a manner so as to minimize any delay to the Programme.
- 9.3 The Contractor warrants and guarantees that legal title to any goods comprised in or forming part of the Scope of the Contract shall be free and clear of any and all liens, claims, security interests or other encumbrances when title passes to Company in accordance with this clause 9.

### 10 WARRANTY

- 10.1 Contractor shall perform the Scope of the Contract in accordance with Prudent Industry Practices.
- 10.2 If, during the performance of the Scope of the Contract and, if applicable, during any applicable Warranty Period the Scope of the Contract or any goods comprised in or that form part of the Scope of the Contract fail to meet Prudent Industry Practices or are otherwise defective, the Contractor must without additional compensation re-perform, repair or replace such Scope of the Contract and/or goods as the case maybe.
- 10.3 The Contractor warrants that any goods, materials and equipment furnished by the Contractor (or any Subcontractor) as part of or in connection with the Scope of the Contract shall be free and clear of any and all defects in manufacture and workmanship, and shall remain so for the Warranty Period (if applicable).
- 10.4 At the conclusion of the Warranty Period, if not already done so, the Contractor must take commercially reasonable efforts to assign to the Company the benefit of any remaining manufacturer's warranties on any goods, materials and equipment provided as part of the Scope of the Contract.
- 10.5 The delivery or availability of a warranty or guarantee from any third-party vendor, manufacturer or supplier is in addition to the warranties given by the Contractor under this Agreement and does not relieve the Contractor from responsibility for its warranties under this Agreement.

### 11 INSURANCE

- 11.1 During the Term the Contractor must maintain with a major insurance company carrying on general insurance business in Australia, the insurance policies required in the Contract Details and as otherwise required by Applicable Law.
- 11.2 Contractor shall, whenever requested to do so by Company, provide certificates of currency as evidence that the insurance coverage required under this Agreement is current.
- 11.3 If Contractor is in breach of any of its obligations under clause 11.1 or clause 11.2, the Company may procure similar cover on the Contractor's behalf and the Contractor shall indemnify the Company against the costs incurred in so doing.
- 11.4 The Contractor must ensure any Subcontractor maintains (in respect of that Subcontractor's employees, motor vehicles, equipment, acts and omissions) insurance of the type, and for the minimum amounts specified in the Contract Details or, where no amounts are stated, in this clause 11, that are prudent to cover the risks inherent in the work of that Subcontractor and as otherwise required by Applicable Law.
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**12 REPRESENTATIONS AND WARRANTIES**

- 12.1 The Contractor represents and warrants that it and its Subcontractors shall comply with all Applicable Laws, Applicable Permits, the Contractor's Safety Plan and all Site access and induction requirements, regarding, and in performing, the Scope of the Contract.
- 12.2 The Contractor represents and warrants that it and its Subcontractors have, and will maintain for the duration of the performance of the Scope of the Contract, all the required authority, ability, skills, expertise, experience and capacity necessary to perform the Scope of the Contract in a timely and professional manner in accordance with the Prudent Industry Practices.
- 12.3 The Contractor represents and warrants that it is validly established and existent in accordance with Applicable Laws.
- 12.4 The Contractor represents and warrants that the signatory to this Agreement has the authority and power to bind Contractor to the terms of this Agreement.
- 12.5 The Contractor acknowledges that the Company and its Affiliates rely on the principles set out in Section 28 and the Company's compliance with these standards shall not, to the extent they conflict with the terms of this Agreement, be or be deemed to be a breach of this Agreement.
- 12.6 The Contractor represents and warrants that as of the date of this Agreement and to its knowledge during the past 24 months: (i) 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 (ii) 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.
- 12.7 The Contractor agrees that if it learns or has reason to know of: (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 the Company; or (ii) any other development during the term of this Agreement that in any way makes inaccurate or incomplete the representations, warranties and certifications of the Contractor hereunder, the Contractor will immediately advise the Company's General Counsel of such knowledge or suspicion and the entire basis known to the Contractor therefore.
- 12.8 The Contractor 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, 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 the Contractor or in any impairment of its ability to perform its obligations under this Agreement. Contractor 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.

**13 INTELLECTUAL PROPERTY**

- 13.1 Contractor 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 Scope of the Contract and to enable Company and its Affiliates to use and have the benefit of the Scope of the Contract as contemplated herein. Upon payment of the amount(s) owed in accordance with this Contract, Contractor 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 the Contract provided hereunder and any other documents, drawings and information supplied by Contractor in the performance of the Scope of the Contract. Company retains ownership of its Intellectual Property Rights in the contents of and ideas and inventions embodied in the technical documents provided to Contractor and any ideas or inventions developed or created by Company that are included by Contractor in the Scope of the Contract.
- 13.2 Contractor 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 Contractor or any Subcontractor of any patent, copyright, trade secret, trademark, service mark, trade name, or other Intellectual Property Rights in connection with the Scope of the Contract, including without limitation, any deliverable, (ii) Contractor's violation of any third-party license to use Intellectual Property Rights in connection with the Scope of the Contract, including, without limitation, any deliverable.
- 13.3 In the event that any infringement of Intellectual Property Rights occurs or may occur in relation to or while performing the Scope of the Contract, the Contractor shall take some or all of the following actions at the option of Company and the sole cost of the Contractor: (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 the Contract; or (d) repay to the Company the price paid in respect of the relevant aspect of the Scope of the Contract relating to the whole or the infringing part thereof.





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- 13.4 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 Contractor and otherwise prepared by Contractor and Contractor's Subcontractors in providing Scope of the Contract 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 Contractor may conceive, make, develop, create, reduce to practice, or work on, in whole or in part, in the course of performing the Scope of the Contract shall constitute a "work made for hire," shall be owned by Company, and shall be delivered to Company upon completion of the Scope of the Contract. Contractor hereby assigns to Company, without royalty or any further consideration, all Contractor's rights, title, and interests in and to any such inventions. Contractor agrees to give Company 30 days' notice prior to Contractor destroying or otherwise disposing of any duplicate documentation or drawings relating to Company work. If Company desires, Contractor shall forward such documentation to Company. Contractor may retain one archival copy of all produced data, drawings, plats, surveys and legal descriptions. Contractor will keep these documents in strict confidence in accordance with this Contract.
- 13.5 If requested by Company, Contractor 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 Contractor agrees that its obligations under this Article shall continue beyond the termination or completion of this Contract.

### 14 CONFIDENTIALITY

- 14.1 Subject to clause 14.2, the Contractor shall not, at any time after the date of this Agreement, notwithstanding any termination or cancellation of this Agreement, 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 the Contract and / or the contents of this Agreement; 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, 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**).
- 14.2 Notwithstanding clause 14.1, 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 Contractor 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 Contractor 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 Contractor 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 Contractor prior to its disclosure by the Company other than as a result of breach of this Agreement, or is otherwise independently developed by the Contractor without prior reference to the Confidential Information.
- 14.3 Notwithstanding clause 14.1, Confidential Records may be disclosed by the Contractor to directors, responsible Personnel and professional advisors of the Contractor who require such disclosure for the purpose of the Contractor implementing or enforcing this Agreement 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 14, be a breach of this clause 14 will be a breach of this clause 14 by the Contractor.

### 15 ASSIGNMENT

- 15.1 The Company may at any time assign its rights and obligations under this Agreement to its Affiliate or to a future owner of the Site without the Contractor's consent.
- 15.2 This Contract and the performance of the Scope of the Contract contemplated hereunder are personal to Contractor, and therefore Contractor may not assign its rights and obligations under this Agreement without the Company's prior written consent

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and such consent may be withheld in Company's sole discretion.

## 16 FORCE MAJEURE

16.1 In this Agreement "Force Majeure Event" shall mean:

- (a) riot, war, invasion, act of foreign enemies, hostilities (whether war be declared or not), acts of terrorism, civil war, rebellion, revolution, military invasion, insurrection of military or usurped power; or
- (b) earthquake, flood, or any other natural disaster, but excluding weather/sea conditions as such, regardless of severity; or
- (c) strikes at an industrial level or industrial disputes at a national level, or strikes or industrial disputes by labour not employed by the affected Party or its Subcontractor(s) and which affect a substantial or essential portion of Scope of the Contract; or
- (d) fire or explosion (being fire or explosion not caused by the negligence of the affected Party or its Subcontractor(s); or
- (e) acts of any Government Authority which could not have been reasonably anticipated or controlled which make performance impossible or impracticable,

provided that such events: (i) prevents one Party from performing its obligations under this Agreement; (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.

16.2 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 Agreement;
- (b) any labour disturbance, strike or dispute of the Contractor's workers or Personnel or any Subcontractor's workers or personnel or any independent contractor engaged by the Contractor or any of its Subcontractors that is not part of an industrial-scale labour dispute or strike and that is particular to the Contractor or its Subcontractor(s);
- (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 usual climatic or weather conditions; and
- (e) the unavailability or shortages of labour or equipment and materials unless itself caused by an event that would qualify as a Force Majeure Event under this definition.

16.3 If either Party is rendered wholly or partially unable to perform its obligations under this Agreement as a result of a Force Majeure Event (**Affected Party**), the Affected Party shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected. The Affected Party impacted by the Force Majeure Event must, within three (3) days after becoming aware of the Force Majeure Event, give the other Party (**Non-affected Party**) notice describing the particulars of the Force Majeure Event. Within ten (10) days after becoming aware of the Force Majeure Event, the Affected Party shall give the Non-Affected Party further written notice estimating the likely duration and probable impact on the performance of the Affected Party's obligations under this Agreement. The Affected Party must continue to furnish timely regular reports with respect to 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 Affected Party shall exercise all reasonable efforts to mitigate and limit the effects of the Force Majeure Event and potential damages to the Non-Affected Party. As soon as the Affected Party can resume performance of its obligations under this Agreement, it must give the Non-Affected Party written notice to that effect and shall promptly resume performance. If a Force Majeure Event exceeds thirty (30) days, or is reasonably anticipated by agreement of the Parties to exceed thirty (30) days, the Company shall have the right to terminate this Agreement upon giving Contractor five (5) days written notice.

16.4 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 of its obligations under this Agreement is excused, such Dispute shall be resolved in accordance with the procedures set forth in clause 18. 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.

## 17 INDEMNITY

17.1 Contractor and Contractor's Affiliates shall be liable for, and shall defend, indemnify, and hold Company, its Affiliates, and all of their respective directors, officers, employees, agents, and independent contractors (all of the foregoing entities and individuals being collectively referred to herein as the "Indemnitees") harmless from and against any and all damages, liabilities, injuries, losses, and costs (including reasonable attorneys and experts fees at trial and on appeal), and expenses which may be incurred by, asserted against, or recoverable from any Indemnitee as a result of any actual or threatened Claim or proceeding arising out

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of or relating to any of the following: ( a) actions or omissions of Contractor or Contractor's Affiliates under this Contract resulting from negligence or willful misconduct of Contractor or Contractor's Affiliates; (b) a breach of the terms and conditions of this Contract by Contractor or Contractor's Affiliates; (c) a violation by Contractor or Contractor's Affiliates of any Applicable Law to be complied with in connection to the Contract; (d) a bodily injury or death.

**18 DISPUTE RESOLUTION AND GOVERNING LAW**

- 18.1 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.
- 18.2 The seat of arbitration shall Sydney, New South Wales and the language of the arbitration shall be English.
- 18.3 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.
- 18.4 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 Sydney, New South Wales, and hereby waive any objection to such jurisdiction including without limitation objections by reason of lack of personal jurisdiction, improper venue, or inconvenient forum.
- 18.5 Despite the existence of a Dispute and pending any determination or award by under any arbitration proceedings, the Contractor must continue to perform its obligations under this Agreement as directed by the Company in accordance with the terms of the Agreement.
- 18.6 This Agreement shall be governed by the laws of the State.

**19 TERMINATION AND SUSPENSION**

- 19.1 The Company shall be entitled, at any time and without any cause, to terminate this Agreement with respect to all or part of the Scope of the Contract by giving the amount of days' notice for termination set out in the Contract Details to the Contractor.
- 19.2 Notwithstanding clause 19.1, the Company may terminate all or part of this Agreement by giving seven (7) days written notice to the Contractor if the Contractor breaches any provision of this Agreement, provided that where remediable, the Company has notified to the Contractor of such breach and the Contractor has upon receipt of such notice, failed to rectify such breach within the notice period indicated in such notice of breach. In the event of any breach of the HSE Terms, the Company may terminate all or part of this Agreement according to the relevant provisions of the HSE Terms.
- 19.3 In the event of termination pursuant to clauses 19.1 and 19.2, the Company's sole liability to the Contractor, and the Contractor's sole remedy for such termination, shall be the payment to the Contractor of the Scope of the Contract performed up to the date of termination.
- 19.4 The Contractor shall be entitled to terminate all or part of this Agreement by giving sixty (60) days prior written notice to the Company, only in the event that Company fails to pay, when due, any undisputed invoices to the Contractor, provided such failure continues for a period of sixty (60) days after the last day when such payment was due.
- 19.5 Either Party shall be entitled to terminate this Agreement upon giving written notice to the other Party if the other Party is the subject of an Insolvency Event.
- 19.6 The termination of this Agreement shall be without prejudice to the rights and obligations of the Parties up to and including the date of such termination and shall not affect or prejudice any term of this Agreement that is expressly or by implication provided to come into effect on, or continue in effect after, such termination.
- 19.7 The Company may at any time by written notice instruct the Contractor to suspend all or part of the Scope of the Contract for a period of time as set out in such notice. The suspension will take effect from the date stated in the notice. The Contractor shall, from that date, cease the Scope of the Contract (or part thereof) and protect, store, secure and maintain any goods, materials, equipment and works against any deterioration, loss or damage, in compliance with all the obligations of this Agreement. The Contractor shall resume the execution of the Scope of the Contract as soon as practicable after receiving a notice from the Company to proceed with the Scope of the Contract. Unless otherwise agreed, any costs of suspension, including standby costs, shall be borne by the Contractor.
- 19.8 If the Scope of the Contract are suspended in accordance with clause 19.7, the Term will be extended for period of the suspension of the Scope of the Contract, unless otherwise agreed by the Parties.



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**20 CHANGE ORDERS**

- 20.1 Except to the extent provided in this clause 20, there shall be no change to the Scope of the Contract, the Contract Price or the Programme except to the extent provided in a written and approved Change Order.
- 20.2 The Company shall have the right by written directive to order changes to the Scope of the Contract, including additions and/or deletions to the Scope of the Contract (each such written directive a **Draft Change Order**).
- 20.3 Should the Contractor claim that the proposed changes in a Draft Change Order are of such a nature as to increase or decrease the Contract Price or otherwise effect the Programme, then unless such Draft Change Order includes an agreed upon adjustment to the Contract Price and/or the Programme, the Contractor must submit to the Company, in writing, within five (5) Business Days of receipt of the Draft Change Order, all claims for an adjustment in the Contract Price (if any), and/or any proposed changes to the Programme. Contractor shall not be entitled to a change in the Contract Price or Programme unless so authorised by an approved Change Order pursuant to this clause 20.
- 20.4 Company shall within seven (7) Business Days from the date of receipt of the information provided by the Contractor pursuant to clause 20.3, either approve or disapprove the Draft Change Order, in writing, or request additional time or information from the Contractor in order to consider the Draft Change Order.
- 20.5 If the Company approves a Draft Change Order, or the Parties otherwise agree on the form of a Change Order, the Company and Contractor shall sign the relevant approved Change Order which shall operate as an amendment to the Agreement and the Contractor must diligently proceed to implement the Change Order in accordance with and subject to the terms of this Agreement.
- 20.6 Contractor must not perform any change to the Scope of the Contract until the Company has approved in writing the proposed changes via an approved Change Order in accordance with this clause 20, or has expressly authorized the Contractor in writing to perform the Change prior to such approval.
- 20.7 If the Company does not approve of any proposed changes and the Contractor and the Company are unable mutually to agree upon alternative changes, the Company may by written notice to Contractor close the Draft Change Order or Change Order request.
- 20.8 The Contractor must not suspend, in whole or in part, performance of the Scope of the Contract during any Dispute over any Draft Change Order or Change Order request unless expressly directed to do so by Company, and if directed to proceed with a Change or disputed item pending review and agreement upon adjustments, Contractor shall (without waiving any rights with respect to such Change or disputed item) do so.
- 20.9 Should the Programme or any other schedule or dates for performance by Contractor be delayed or otherwise affected by a Change Order, Contractor shall, at Company's request, use commercially reasonable efforts to accelerate the Scope of the Contract in order to meet the Programme or any other corresponding schedule or date for performance. Contractor's commercially reasonable efforts shall include overtime and weekend work at a fixed rate agreed to by the Company in writing.
- 20.10 All Change Orders must be priced in accordance with the rates (if any) set out in the Contract Price. If the Rates set out in the Contract Price are not applicable to the Change Order, the Parties must, as part of the Change Order process set out in this clause 20, negotiate a mutually acceptable lump sum increase or decrease to the Contract Price properly itemized and supported by sufficient substantiating data to permit evaluation.
- 20.11 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 the Contract will be the estimated reduction in the cost of Scope of the Contract 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 Contract Price shall be determined on the basis of net increase or decrease.
- 20.12 In the event that Contractor 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 Contractor shall advise Company in writing of the feasibility of the requested change, and shall submit to Company a draft Change Order for approval. The Company must approve or disapprove the Change Order pursuant to the steps set out in this clause 20. Any additional work or Scope of the Contract undertaken by Contractor in the absence of a properly authorised Change Order shall be undertaken at Contractor's sole risk and expense and the Contractor shall not be entitled to any payment for undertaking such change to the Scope of the Contract. Contractor shall not suspend, in whole or in part, performance of the Agreement (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.

**21 CONSEQUENTIAL LOSSES**

- 21.1 Neither Party shall be liable to the other Party for any Consequential Loss suffered by the Party in connection with this Agreement.



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### 22 COST RECORDS AND ACCOUNTING

- 22.1 The Contractor shall keep accounts, books and other records of all its billable charges incurred in performing the Scope of the Contract and shall itemise and submit its billings to the Company in such a manner as Company may reasonably direct. The Contractor shall maintain books and accounts of chargeable costs in accordance with generally accepted accounting principles consistently applied, and in such a manner as to permit verification of all entries made. For three (3) years from final payment under the Agreement, the Contractor shall preserve all such books and records, and shall upon three (3) days' written notice make such records available in the Contractor's office to the Company and/or its designated independent auditors for purposes of verifying the costs charged herein.
- 22.2 The Company reserves the right to designate its own employee representative(s) or its contracted representative with a certified public accounting firm, who shall have the right to audit and to examine any cost, payment, settlement or supporting documentation resulting from any Scope of the Contract performed under this Agreement. Any such audit(s) shall be undertaken by the Company or its contracted representative at reasonable times and in conformance with generally accepted auditing standards. The Contractor agrees to fully cooperate with any such audit(s).
- 22.3 The Contractor shall be notified in writing of any exception taken as a result of an audit of the Contractor. The Contractor shall refund the amount of any exception to the Company within ten (10) Business Days. If the Contractor fails to make such payment, the Contractor agrees to pay such amount, plus interest, accruing at the Interest Rate from the date due until paid. In the event an audit verifies overcharges of five per cent (5%) or more, then Contractor shall reimburse Company for the cost of the audit.

### 23 INTERPRETATION

- 23.1 Unless otherwise required by the context in which any term appears:
- (a) unless otherwise specified, references to "clauses," "sections," or "exhibits" (if any) shall be to clauses, sections, or exhibits (if any) of this Agreement, as the same may be amended, supplemented or replaced from time to time hereunder;
  - (b) all references to a Person shall include a reference to such Person's successors and permitted assigns;
  - (c) references to any agreement, document or instrument shall mean a reference to such agreement, document or instrument as the same may be amended, modified, supplemented or replaced from time to time;
  - (d) the use of the word "including" or "include" in this Agreement to refer to specific examples shall be construed to mean "including, without limitation" and shall not be construed to mean that the examples given are an exclusive list of the topics covered;
  - (e) the headings contained herein are used solely for convenience and should not be used to aid in any manner to construe or interpret the Agreement;
  - (f) 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;
  - (g) the phrase "and/or" shall be deemed to mean the words both preceding and following such phrase, or either of them; and
  - (h) any pronoun includes the corresponding masculine, feminine or neuter forms.
- 23.2 The words "will" and "shall" are used interchangeably throughout this Agreement; 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 Parties collectively have prepared the Agreement, with advice of legal counsel; none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of the Agreement or any part hereof.

### 24 CURRENCY

- 24.1 All amounts referenced herein are stated in the currency or currencies stipulated in the Agreement. 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 Contractor under or with respect to the Agreement shall be made in such currency(ies) unless required to be converted into a certain currency pursuant to Applicable Laws.

### 25 INDEPENDENT CONTRACTOR

- 25.1 The Contractor is an independent Contractor with respect to the Scope of the Contract performed and to be performed under this Agreement. This Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligation or liability. The Contractor shall supervise the performance of the Scope of the Contract and shall have control of the manner and means by which the Scope of the Contract are performed, subject to compliance with the Agreement and any plans, specifications, schedules, or other items approved by Company.
- 25.2 The Contractor, for the purposes of this Agreement, shall have no right, power or authority to bind the Company to the fulfilment



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of any condition, contract or obligation, express or implied, between the Company and any third parties as agent, attorney or representative of the Company. Neither the Contractor nor any of the Contractor's employees or Subcontractors shall be deemed an employee of the Company for any purpose, including for purposes of any of the Company's employee benefit programs, income withholding taxes, social security or similar withholding taxes, or unemployment benefits under the law of any jurisdiction.

**26 PROGRAMME AND DELAYS**

- 26.1 Unless otherwise provided in this Agreement, Contractor shall, by the fifth (5th) Day following the end of each month, furnish to the Company a monthly report, in form and content satisfactory to the Company, showing the actual progress, including that of any Subcontractors, as of the last Day of that month, against the Programme, as well as a 4-week look-ahead, and will include a summary of all outstanding issues that require or warrant the Company's attention or action.
- 26.2 The Contractor acknowledges that time is of the essence in respect of this Agreement and shall abide by the Programme set forth in the Contract Details.
- 26.3 The Company reserves the right to direct the Contractor to reschedule, from time to time, the order and rate of progress of performance of the Scope of the Contract so as not to interfere with the performance of work by the Company. No such direction shall excuse the Contractor from performing its responsibilities in a timely fashion and time shall still be of the essence of the Agreement.
- 26.4 If at any time during the performance of the Scope of the Contract the Contractor's actual progress, as measured by the Programme, does not keep pace with the requirements of the Programme or is insufficient to assure that the completion dates can be met, the Company may order the Contractor in writing to take steps to improve its progress. Such steps may include, without limitation, an increase in the Contractor's labour force, or the number of shifts, or overtime, or additional days of work per week, or similar measures, all without additional cost to the Company. Neither such notice by the Company nor the Company's failure to issue such notice shall relieve the Contractor of its obligation to achieve the quality of the Scope of the Contract, rate of progress or other requirements of the Scope of the Contract as required by this Agreement. Failure of the Contractor to comply with the notice of the Company may be grounds for determination by the Company that the Contractor is not carrying out the Scope of the Contract with such diligence as shall assure completion of the Scope of the Contract within the times specified in this Agreement. Upon such determination, the Company may terminate the Contractor's right to proceed with the performance of the Scope of the Contract, or any separable part thereof, for default.

**27 MISCELLANEOUS**

- 27.1 The Company and the Contractor will each use commercially reasonable efforts to implement the provisions of this Agreement, 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 the Agreement, in form and substance satisfactory to the other, as the other may reasonably deem necessary or desirable to implement any provision of the Agreement.
- 27.2 The Contractor recognises the importance to the Company of timely completion of the Scope of the Contract and accordingly acknowledges and agrees that time is of the essence.
- 27.3 All standard pre-printed terms and conditions contained in a Contractor proposal, invoice, or acknowledgement shall not apply to the performance of the Scope of the Contract by the Contractor.
- 27.4 No provision of this Agreement shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.
- 27.5 The failure of one Party to insist upon or enforce, in any instance, strict performance by the other Party of any of the terms of this Agreement, including those relating to compensation or to the exercise of any right herein conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert, enforce, or rely upon such terms or rights on any future occasion.
- 27.6 This Agreement constitutes the entire agreement of the Parties hereto, and supersedes any previous agreements or understandings. It may not be modified except in writing executed by both Parties.
- 27.7 Termination or expiration of this Agreement: (a) shall not relieve either Party of its obligations with respect to the confidentiality of the other Party's Confidential Information as set forth in the Agreement; and (b) shall not relieve either Party of any obligation hereunder which expressly or by implication survives termination hereof and as per Applicable Law.
- 27.8 The obligations imposed on the Contractor by the clauses of the Agreement and Sections 5, 6, 13, 14, 17, 18, 21, 22, 23, 27, shall survive cancellation or termination of the Agreement and final payment for the Scope of the Contract.
- 27.9 Should the whole or any part of a clause in this Agreement be, become, or is held to be void, invalid or otherwise unenforceable or illegal 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



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the ineffective or void provision being replaced. The same shall apply if a gap should arise in this Agreement. In order to close such a gap, the Parties are obliged to establish appropriate rules in this Agreement which come as close as possible to the original sense, spirit and purpose.

- 27.10 Where provision is made for written notice in this Agreement, 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.
- 27.11 If during the Term, the Contractor proposes to deviate from or modify any aspect of the Scope of the Contract in a manner that Contractor believes will have an overall benefit for the Company, whether in terms of performance, risk mitigation, cost reduction or otherwise, then Contractor 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 Contractor'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 the Contractor and the Company may share in the resulting benefit.

### **28 CODE OF ETHICS, ZERO CORRUPTION TOLERANCE PLAN, ENEL GLOBAL COMPLIANCE PROGRAM AND GLOBAL COMPACT.**

- 28.1 As part of the Enel Group, the Company informs – and the Contractor acknowledges – that in managing its business activities and its relationships, it refers to and applies the principles contained in its Code of Ethics, in the Zero Tolerance Plan against the corruption and in the Enel Global Compliance Program (available at <https://www.enel.com/investors/a/2016/08/the-internal-control-and-risk-management-system1>).
- 28.2 The Contractor refers to similar principles in managing its business activities and relationships.
- 28.3 The Parties hereby acknowledge the content of the Ten Principles of United Nations Global Compact and undertake to manage their business activities operating in ways that meet fundamental responsibilities in the areas of human rights, labour, environment and anti-corruption, in particular for:
- (a) protection of women and children;
  - (b) equal treatment and prohibition on discrimination, abuse and harassment;
  - (c) freedom to form or to join a union, freedom of association and representation;
  - (d) prohibition of hard labour;
  - (e) environmental security and protection;
  - (f) sanitation and hygiene;
  - (g) wages, social security, tax (in particular, employee income withholding tax);
- 28.4 The Parties specifically represent and warrant that, in connection with the Agreement, they have not and the Parties agree that they shall not, make or promise to make payments, loans or gifts of any money or anything of value, directly or indirectly:
- (h) to or for the use or benefit of any official or employee of any government or agency or instrumentality of any government;
  - (i) to any political party or official or candidate thereof;
  - (j) to any other person if the Party knows or had reason to know that any part of such payment, loan or gift will be directly or indirectly given or paid to any such government official or employee or political party or candidate or official thereof; or
  - (k) to any other person or any entity, the payment of which would violate the laws of any relevant jurisdiction.
- 28.5 Moreover, and in compliance with the scope of the 10th Principles of the United Nations Global Compact (Businesses should work against corruption in all its forms, including extortion and bribery), the Parties shall not offer or accept any gift, loan, fee, reward or other advantage to or from any person as an inducement to do something which is dishonest, illegal or a breach of trust, in the performance of the Agreement, including payments to each other's Personnel and facilitating payments.
- 28.6 The provisions of this clause 28 will apply with respect to any persons employed for the purposes of or pursuant to the Agreement.

### **29 PROCESSING OF PERSONAL DATA**

- 29.1 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.