



Standard terms and conditions

Australia

2nd edition, valid from 08/11/2022

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1 SCOPE

1.1 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. In addition to the provisions set forth in the Agreement, the following conditions shall apply.

2 DEFINITIONS

As used herein, capitalised terms shall have the meanings specified as follows:

“Acceptance” has the meaning provided in Section 7 “ACCEPTANCE” of these Standard Terms and Conditions.

“Accepted Scope of the Contract” has the meaning given in Section 7.1 of these Standard Terms and Conditions.

“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.

“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 Contract Documents.

“Applicable Law” means any act, statute, law, regulation, 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.

“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 ENEL Group company being a party of the Agreement.

“Representative(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 25.1 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.

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

“Contract Documents” shall mean the documents identified as such in the Agreement.

“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.

“Control” 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.

“Dispute” has the meaning set forth in Section 16.1 of these Standard Terms and Conditions.

“Disclosing Party” means the Party which furnishes Confidential Information to the Receiving Party.

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

“ENEL Group” means Enel S.p.A. and its Affiliates.

“Financially Distressed” means in relation to any entity:



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- (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;

“**Final Acceptance Certificate**” document (e.g. a report) confirming the final receipt and acceptance of purchased materials or equipment, the works or services and the expiration of the Warranty Period.

“**Force Majeure Event**” shall have the meaning set forth in Section 14.1 of these Standard Terms and Conditions.

“**Gain Sharing**” means the monetary value of a Value Engineering Proposal.

“**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” located at <https://globalprocurement.enel.com/documents/hse-terms>.

“**HSE Requirements**” mean any other HSE requirements other than the HSE Terms that may apply to the Scope of Contract.

“**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).

“**Intellectual Property Rights**” means trade secrets, patents, patentable inventions, copyrights, trademarks, service marks, trade names, utility models, industrial designs, proprietary rights or information, licenses or other intellectual property rights.

“**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, variance, certificate, franchise, approval, authorization, clearance, license, consent, or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that are necessary for the performance of the Scope of Contract.

“**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.

“**Purchase Order**” means an order from Company to Contractor made in the format of purchase order as Company may wish to use from time to time.

“**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.



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“Provisional Acceptance Certificate”: document (e.g. a report) which records:

- (a) the successful outcome of inspection and testing activities with regard to particular equipment or material received by Company; this document also records any necessary modifications or corrections of deficiencies that are found during the inspection and testing; or
- (b) the successful outcome of a work progress examination, the exact performance or completed correction of the service, and compliance with technical standards and contractual clauses relating to the various phases of activities under the Contract.

“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.

“Receiving Party” means the Party which is furnished Confidential Information by the Disclosing Party.

“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.

“Standard Terms and Conditions” means this document, as amended from time to time.

“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.

“Sub-Tier Supplier” means any supplier that indirectly provides any goods, materials or services to Contractor in connection with Contractor’s performance of this Agreement.

“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.

“Value Engineering” means the systematic application of recognized techniques to identify functions, products, services, designs, techniques, alternatives, or performance improvements that have the effect of maintaining or improving the quality and/or value of the work or the project’s overall life-cycle cost and other applicable factors while reducing the price without sacrificing safety, quality, and environmental compliance of the Scope of Work. Value Engineering is a result of such practices or designs being or not a deviation from the Technical Specifications, thus resulting in a deviation and/or modification to the Contract. Value Engineering does not include standard optimization taken during the design process that Company and Provider would normally perform under Prudent Industry Practices.

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

3 SCOPE OF THE CONTRACT AND CONTRACTOR’S OBLIGATIONS

3.1 Standards. Contractor shall perform the Scope of Contract in accordance with 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 Contract.

3.2 The Contractor commits to perform the Scope of the Contract from Effective Date through the date specified in Contract Details. The Agreement 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 Agreement, specifying the duration of the renewal, unless the other Party decides to terminate the Agreement.

3.3 Contractor’s Representative. The Contractor’s Representative has responsibility for and acts as a single point of contact in all day-to-day matters related to the Scope of Contract. The Contractor shall not change the Contractor’s Representative or any other key member of the Contractor’s staff providing the Scope of Contract without the prior written consent of Company.

3.4 Cooperation. Contractor must cooperate with the Company and Company’s other third-party service providers, 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.

3.5 Registered Professional. If applicable to the Scope of Contract, 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



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a registered professional engineer licensed to practice within the State in which the deliverables of the Scope of Contract are intended to be used.

3.6 Subcontract.

(a) Notwithstanding that anticipated Subcontractors may be designated or anything else in this Agreement to the contrary, the Contractor may not enter into any subcontract with any Person unless such subcontracting is approved by the Company in writing at its sole discretion, which approval shall not be unreasonably conditioned, withheld or delayed. Except as otherwise expressly provided in this Agreement, the Contractor shall be solely responsible for engaging, managing, supervising and paying all Subcontractors and Persons directly or indirectly employed by it. The Contractor shall require that all Scope of Contract performed be received, inspected and otherwise furnished in accordance with this Agreement and the Contractor shall be solely liable for all acts, omissions, liabilities and works (including defects therein) of its Subcontractors. All contracts with Subcontractors shall be consistent with the terms and provisions of the Contract. Without limiting the Company's right to condition its approval of a subcontract on additional conditions, all subcontracts shall: (i) require the Subcontractors to comply with Applicable Law, (ii) provide that the Company has the right of inspection as provided hereunder, (iii) require such Subcontractors to be subject to the labour, health and safety, security, confidentiality, and ethics and anticorruption provisions of the Agreement, (iv) provide guarantees and warranties with respect to its portion of the Scope of Contract; (v) not aggregate to more than 49% of the Contract Price (unless otherwise provided elsewhere in this Agreement or approved by the Company in advance and in writing), provided that subcontracts between the Contractor and Contractor's Affiliates shall not count towards such limit; and (vi) only one tier of subcontracting is permitted, therefore subcontracted activities may not be executed or performed using any further tier of subcontracting (unless required by Applicable Law or unless otherwise provided elsewhere in this Agreement and with the Company's prior written approval). Except as set forth in Section 3.6 (b), no contractual relationship shall exist between Company and any Subcontractor with respect to the Scope of Contract. The Contractor shall require and shall cause all Subcontractors to perform their portions of the Scope of Contract in accordance with the requirements of this Agreement. Where a Subcontractor is required to mobilise a Project Site, the Contractor shall provide a minimum of two week's prior notice to the Company of such pending Subcontract mobilisation.

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

(c) Without in any way derogating the Contractor's representations and warranties and other testing requirements and guarantees set forth herein with respect to all of the Scope of Contract, the Contractor 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, the Contractor shall assign, or shall assist Company in obtaining directly, all representations, warranties, guarantees, and obligations of all Subcontractors at the request and direction of Company, and without recourse to the Contractor, to the Company upon default by the Contractor or termination or expiration of this Agreement; provided, however, that, notwithstanding such assignment, the Company shall be entitled to enforce each such representation, warranty, guaranty, and obligation so long as the Contractor has any liability under this Agreement.

3.7 Health, Safety and Environment.

a) At Enel, no work can be done compromising health, safety or the environment. For this reason, as established in the "Stop Work Policy", any risk situation or unsafe behaviour requires the suspension of activities and the restoration of health, safety and/or environmental conditions.

b) The Company is strongly and constantly engaged in promoting and consolidating a culture of health, safety and environmental protection. Such commitment is further detailed in the documents "Declaration of Commitment to Health and Safety", "Stop Work Policy" and "Environmental Policy" that can be found at the following addresses:

<http://globalprocurement.enel.com>, in the section "Other Useful Documents";

<https://globalprocurement.enel.com/documents/hse-terms>;

<https://corporate.enel.it/en/company/policy-environmental-enel>.

c) The Contractor shall comply with the same principles, including those set forth in the HSE Terms, when applicable, and ensure that its Subcontractors and Sub-Tier Suppliers comply with the same. Further, if other HSE Requirements are attached to this Agreement, then the Contractor shall comply with the HSE Requirements and ensure that its Subcontractors and Sub-Tier Suppliers comply with the same.

3.8 Value Engineering and Gainsharing. The Company and the Contractor may submit Value Engineering proposals to the other Party. If the Contractor submits Value Engineering proposals, these shall be aimed at reducing the price through direct and quantifiable adjustments to the Scope of Contract. Proposals from the Contractor to the Company shall be reviewed and may be approved by the Company, in its discretion. Proposals from the Company to the Contractor shall be reviewed and approved by the Contractor, in its discretion (provided, however, that the Contractor's right to review and approve a Value Engineering proposal does not limit the Company's right to direct a Change Order pursuant to Section 18 "CHANGE ORDERS" below).



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Value Engineering proposals shall include:

- a) proposed changes to the Scope of Contract;
- b) the anticipated savings and/or improvements in the Scope of Contract (financial or otherwise) that will be achieved by either Party;
- c) estimated costs to be incurred by either Party;
- d) Proposed Gain Sharing distribution between Company and Contractor (as applicable); and
- e) any other impact on the provisions of the Agreement.

3.9 The Company shall make commercially and technically reasonable efforts to review and respond to any such Value Engineering proposals within fifteen (15) days of receipt. If a Value Engineering proposal is approved, the proposing Party shall timely elaborate an ad hoc implementation plan. Upon approval of a Value Engineering proposal, the Contractor shall submit a draft Change Order to the Company pursuant to the process described in Section 18 below. No Value Engineering proposal may be implemented unless a Change Order is issued pursuant to Section 18 below.

4 TERMS AND CONDITIONS OF PAYMENT AND FINANCIAL GUARANTEE

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

4.2 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.

4.3 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, Permits and any health and safety requirements.

4.4 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.

4.5 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.

4.6 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 Section 4.6, 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 Section 16 "DISPUTE RESOLUTION AND GOVERNING LAW".

4.7 Payment of any tax invoice, whether in part or in full, or any failure to dispute a tax invoice under this Section 4 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.

4.8 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.

4.9 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.

5 TAXES

5.1 In this Section 5 terms that are also defined in the GST Law have the same meaning as in the GST Law.

5.2 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.

5.3 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.



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5.4 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.

5.5 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.

5.6 Each Party must have an ABN and be registered for GST.

5.7 Subject to Sections 5.2 to 5.5, 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.

5.8 Employment Taxes. Contractor shall ensure that its employees and also its Subcontractors' and Sub-Tier Suppliers' employees are paid in accordance with Applicable Law including that any and all payroll taxes and deductions required by Applicable Law are properly withheld and remitted. The Contractor shall also provide documents evidencing payment of the aforesaid amounts under Applicable Law upon the Company's request.

6 INSPECTION AND DELIVERY

6.1 Inspection. During the Term, unless otherwise agreed or not applicable given the nature of the Scope of the Contract, the Contractor must update the Company on the progress of the performance of the Scope of the Contract in the form of a bi-weekly report. If requested by the Company, during the Term, the Contractor shall comply with the test and inspection requirements at its own costs and expenses. Anytime throughout the Term of the Agreement and subject to reasonable advance notice, the Contractor shall give access to personnel of the Company and/or third parties discretionally designated by the Company for that purpose (with the exception of Contractor's competitors), to its workshops and warehouses and shall cause its Subcontractors and Sub-Tier Suppliers to do the same, in order to verify the performance of the Scope of Contract, including manufacturing and testing phases as well as progress of process cycle. If as a result of tests/inspections, the Company requires the replacement or restoration of certain defective equipment, works or services, such replacement or restoration shall be at the Contractor's sole expense and no cost arising therefrom shall be borne by the Company. The defective equipment, work or service shall be clearly identified and the Contractor shall not be allowed to use or deliver them in the following performance of the contractual activities, unless the ascertained defects have been properly settled and such use or delivery has been authorised by the Company.

6.2 Delivery. The Contractor shall deliver any material and equipment to the Site in compliance with all obligations applicable to Contractor as set forth in the Contract Documents attached to the Agreement. 6.3 All 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.

7 ACCEPTANCE

7.1 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 Representative ("**Accepted Scope of the Contract**").

7.2 Provisional Acceptance. If the Agreement reflects that payment will be due to the Contractor upon completion of milestones, then as the Scope of Contract associated with each milestone is completed in accordance with the terms of this Agreement, the Contractor shall submit a Provisional Acceptance Certificate to the Company. Within five (5) Business Days of receipt, Company shall indicate to Contractor that such Provisional Acceptance Certificate is approved or rejected and, if rejected, the reason(s) for such rejection. Upon the Company's acceptance of a Provisional Acceptance Certificate, the Contractor may submit an invoice in accordance with Section 4 "TERMS AND CONDITIONS OF PAYMENT AND FINANCIAL GUARANTEES" above.

7.3 Final Acceptance. When all the Scope of Contract is completed in accordance with the terms of this Agreement and the conditions described in the following sentence have been satisfied or waived by the Company, the Contractor shall submit a Final Acceptance Certificate to the Company. Without limiting the foregoing, the Contractor may not submit a Final Acceptance Certificate until the following conditions have been satisfied or waived: (a) completion of the Scope of Contract, (b) the delivery of Provisional Acceptance Certificates, if applicable, (c) no defects exist, (d) all defects remedies have been completed; € the Scope of Contract has been commissioned and passed testing and is ready for commercial use, if applicable, and (f) the Contractor has delivered all required documents the Company. Within five (5) Business Days of receipt, the Company shall execute the Final Acceptance Certificate and deliver it to the Contractor (such date being the "Date of Acceptance") or indicate to the Contractor that the Final Acceptance Certificate is rejected and, if rejected, the reason(s) for such rejection. Upon the Company's execution and delivery of the Final Acceptance Certificate, the Contractor may submit its final invoice in accordance with Section 4 above.

7.4 Rejection. 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.

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



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8 TRANSFER OF TITLE AND RISK OF LOSS

8.1 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 of Acceptance, as provided in Section 7.3

8.2 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.

8.3 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 Section 8.

9 WARRANTY

9.1 The Contractor shall warrant:

a) the suitability, exclusive ownership and/or legitimate availability of all materials and equipment under the Scope of Contract and that such materials and equipment are all free and clear from any liens, claims, security interests or other encumbrances;

b) that all materials and equipment:

- I. comply with the relevant legal requirements and the Technical Specifications, as well as with other provisions set forth in the Agreement;
- II. are free from visible or hidden defects;
- III. fit for the intended purpose which is specified in the Agreement;
- IV. are new or, only to the extent explicitly provided in the Agreement, refurbished;
- V. that the services and works (if any) comply with all legal requirements and the Technical Specifications, as well as with other provisions set forth in the Agreement and are performed in a competent and diligent manner, suitable for their intended purpose.

9.2 Unless otherwise stated in the Agreement, Warranty Period shall last two (2) years following the Date of Acceptance. If, during the performance of the Scope of Contract and for the Warranty Period, the results of the performance of the Agreement fails to meet Prudent Industry Practices or fails to conform to the requirements of the Agreement, the Contractor shall, without additional compensation from the Company, correct or revise any defects in the Scope of Contract.

9.3 At the conclusion of the Warranty Period, the Contractor shall take commercially reasonable efforts to assign to the Company any remaining manufacturer's warranties on any materials and equipment.

9.4 The warranty shall not cover defects or failures that are caused by (i) misuse or incorrect use by the Company, except in cases where the misuse or incorrect use derives from the application of the incorrect or confusing content of manuals or instructions provided by the Contractor, (ii) normal wear and tear including that due to environment or operation or use or (iii) modification of the equipment not in accordance with the Agreement or the Contractor's instructions or recommendations.

9.5 The warranty applies to defects in design, construction and hidden defects and to anything that is specified in the Agreement. Pursuant to the warranty the Contractor is obliged to carry out, as soon as possible and at its own expense, any repairs or replacements of a defective material or re-performance of a defective service or work that may be necessary, including the removal, deinstallation, mobilization/demobilization and transportation of defective parts. In particular, the Contractor undertakes to:

- a) replace (or, to the extent provided for in the Agreement, repair), as soon as possible in order to minimize the impact on Company business and in any case, within the timeframe set forth in the Agreement (or, in the absence of a specific deadline in the Agreement, correction of the defects shall not exceed the timeframe originally agreed for delivery of the equipment or material or for the performance of the defective service or work resulted as defective), all defective materials and equipment, services or works that do not comply with the warranties established in Section 9.1 hereof. The Contractor shall obtain Company's approval, which cannot be unreasonably withheld or denied, prior to implementing any remedy action. To the extent option to repair is set forth in the Agreement and the material is not reparable, in accordance with Contractor's reasonable opinion, such defective materials and equipment shall remain in storage at Company's facilities until they are replaced, at Company's sole discretion, without prejudice to Company's right to use the rejected materials until they are replaced.
- b) replace all supplied materials and equipment in the event of any serial defects, thereby justifying the solution adopted to prevent those defects being produced in the remaining materials or equipment that need to be supplied. A serial defect is considered to exist when the percentage of defective materials and equipment covered by the Agreement exceeds the percentage established in the Agreement, or if it is not specified, when the percentage exceeds 10% of the total quantity of the same materials or equipment to be supplied under the Agreement;
- c) return the equipment/sites made available by Company in the same condition in which they were made available;
- d) indemnify Company from any claim made by third parties.

9.6 The above-mentioned obligations, and all expenses for various reasons arising from the execution of the warranty (including but not limited to transport, installation, deinstallation, storage), shall be paid exclusively by the Contractor, without



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Company being liable for any charges or costs.

9.7 Without prejudice to clauses 9.5,a) and 9.6, if the Contractor fails to comply with the obligations referred to in this clause, the Company shall be entitled to adopt – upon previous communication to the Contractor – any appropriate measure independently, or by recurring to third parties' assistance, at the Contractor's expense. The Contractor shall also be obliged to compensate the Company for any damages or losses it has suffered, as provided for in the Agreement. In particular, if Contractor fails to implement remedy actions within the aforementioned timeframes, Company may apply a penalty for the delay according to the Agreement.

9.8 In the above cases, the Warranty Period is suspended from the date of Company's communication to the Contractor, and it shall accordingly be extended until completion of all repairs, replacements or new assembly activities, or works that must be carried out under the warranty.

9.9 Spare parts are also subject to the above-mentioned warranty.

9.10 When the Warranty Period has satisfactorily expired and any anomaly, defect or deficiency found or produced during this period has been remedied, the Warranty Guarantee provided by the Contractor may be released.

9.11 The expiration of the Warranty Period does not release the Contractor from liability for defects or for hidden defects or from any other liability pursuant to Applicable Law or under the Agreement.

10 INSURANCE

10.1 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.

10.2 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.

10.3 If Contractor is in breach of any of its obligations under Sections 10.1 or 10.2, 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.

10.4 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 Section 10, that are prudent to cover the risks inherent in the work of that Subcontractor and as otherwise required by Applicable Law.

11 REPRESENTATIONS

11.1 Compliance with Applicable Laws. The Contractor represents and warrants that it and its Subcontractors and Sub-Tier Suppliers shall comply with all Applicable Laws, applicable codes, and safety standards regarding performance of the Scope of Contract.

11.2 International Sanctions and Export Control Decisions. Each Party represents and warrants to the other Party that as of the Effective Date neither it nor, to the best of its knowledge, after due inquiry, any of its officers, members of its governing body, shareholders owning at least a 5% interest in such Party or in any company that the Party owns on at least a 50% basis or otherwise controls, or is under common control by the ultimate parent company, are (i) subject to Sanctions, or (ii) engaged in any activity or have previously been engaged in any activity that could create exposure to Sanctions. Whereby "Sanctions" means all applicable economic or financial sanctions or trade embargoes imposed or enforced on the basis of law, regulations, executive order, restrictive measures or other related rules imposed or publicly notified by: (i) the United Nations; (ii) the European Union; (iii) the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury; (iv) the UK government, including Her Majesty's Treasury of the United Kingdom.

Each Party shall fully comply with all legal requirements regarding Sanctions in connection with its performance of the Contract.

Each Party shall undertake to maintain in effect and enforce policies and procedures designed to prevent the application of any Sanctions and to promptly communicate in writing to the other Party the opening of any proceeding that may lead to the imposition of a Sanction and, in any case, the application of any Sanctions.

The Contractor moreover represents that, to the best of its knowledge, after due inquiry, its Subcontractors, Sub-Tier Suppliers, third parties engaged by the Contractor and its whole supply chain are not subject to any Sanctions and it shall promptly communicate in writing to Company any circumstance in its knowledge concerning the application of any Sanctions against its Subcontractors, Sub-Tier Suppliers, third parties engaged by the Contractor and its whole supply chain.

Company may terminate the Contract, upon a prior written notice of seven (7) days, where Contractor or any of its Subcontractors, Sub-Tier Suppliers third parties engaged by the Contractor and operators belonging to its supply chain are subject to a Sanction or if Contractor provides unfaithful representations under this Section 11.2. Only in the latter case, the Contractor shall indemnify and hold Enel harmless for any related damage, loss, cost or expense.

In the event of termination pursuant to the foregoing sentence, the Parties may negotiate in good faith in order to mitigate as much as possible any loss or damage in connection with or arising from the Sanctions, within the termination notice period. Failing such agreement, within seven (7) calendar days as from the notice of termination, the Contract shall be automatically terminated, subject to any other remedy the Parties have under the Applicable Law or under the Contract.



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11.3 **Capability & Capacity.** 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.

11.4 **Incorporation.** The Contractor represents and warrants that it is validly established and existent in accordance with Applicable Laws.

11.5 **Binding Agreement.** 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.

11.6 The Contractor acknowledges that the Company and its Affiliates rely on the principles set out in Section 11.7 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.

11.7 Ethics Clauses.

(a) When conducting its business and managing its relationships, the Company refers to the principles contained in the EGP Australia Anti-bribery Policy in its Code of Ethics, in the Enel Global Compliance Program, in the Zero Tolerance Plan against corruption and in its Human Rights Policy, available at the following link: <https://www.enel.com/investors/sustainability/daily-commitment/sound-governance-ethical-conduct/principles-underpinning-our-work>.

(b) The ENEL Group adheres and acts in full compliance with the so-called "Ten Principles" of the UN Global Compact, which concern the protection of human rights, the protection of workers, the protection of the environment and the fight against corruption in any form.

(c) The Contractor acknowledges Company's commitments contained in the abovementioned documents and, when conducting its own business and managing its relationships with third parties, declares to refer to equivalent principles as those set forth under Section 11.7 (a) and (b) above, as well as ensures that its Subcontractors, Sub-Tier Suppliers, third parties engaged by the Contractor and its whole supply chain do the same.

(d) The Contractor shall comply with the principles under the International Labour Organization (ILO) Conventions and with the obligations under the Applicable Law with regard to the prevention of child labor and the protection of women; equal treatment, the prohibition of discrimination, abuse and harassment, freedom to join a union, freedom of association and representation, forced labor, environmental safety and protection, health and hygiene conditions. The Contractor also ensures that its Subcontractors, Sub-Tier Suppliers, third parties engaged by the Contractor and its whole supply chain comply with the same principles and obligations.

(e) The Contractor furthermore shall comply with the Applicable Laws on remuneration, contributions, insurances, taxes with reference to all the workers involved in the performance of the Contract, as well as ensure that its Subcontractors, Sub-Tier Suppliers, third parties engaged by the Contractor and its whole supply chain comply with the same. In case of conflicts among the Applicable Law and the ILO Conventions, the most restrictive rules shall prevail.

(f) Each Party prohibits any forms of corruption. In its performance of this Agreement, the Contractor shall not, and shall ensure that its Subcontractors, Sub-Tier Suppliers, third parties engaged by the Contractor and its whole supply chain do not, whether directly or indirectly, make any promise, offer or request of or for an unlawful payment (regardless of whether promise, offer or request is of or for cash or other consideration).

(g) The Contractor represents and warrants that as of the Effective Date 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; and (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.

(h) 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 Company, or (ii) any other development that in any way makes inaccurate or incomplete the representations, warranties and certifications of the Contractor hereunder the Contractor will immediately advise Company's General Counsel of such knowledge or suspicion and the entire basis known to the Contractor therefore.

(i) The Contractor shall have regard for the interests of the Company and shall ensure that there are no situations that might lead to the occurrence of any conflict of interest in relations to its performance of this Contract. If Contractor becomes aware of any situation which presents a conflict of interest between Contractor's interests and Company's, Contractor shall promptly give written notice to the Company and shall comply with any reasonable instructions which Company provides to the Contractor with respect to such identified conflict of interest, provided that Company shall consult with Contractor with respect to such conflict of interest.

(j) The Contractor undertakes to inform the Company of any situation, to the best of its knowledge, after due inquiry, also referred to its Subcontractors, Sub-Tier Suppliers, third parties engaged by the same and its whole supply chain, which may result in failure to comply with the obligations set forth in this Section 11.7, as well as the plan to remedy said situations.

(k) The Company reserves the right to carry out any control and monitoring activity, through inspections, audits and/or requests for documentation, geared to verifying whether the obligations under this Section 11.7 have been fulfilled, both on the part of Contractor and also on that of any of its Subcontractors, Sub-Tier Suppliers, third parties engaged by Contractor and operators belonging to its whole supply chain. In such cases, the Contractor has the obligation to grant access to Company to its premises and to provide promptly the requested documentation, as well employ its best efforts to cause its Subcontractors, Sub-Tier Suppliers, third parties



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engaged by Contractor and its whole supply chain to do the same.

(l) Company may terminate the Agreement for reasons attributable to Contractor and seek compensation for damages, in cases in which it is justifiably and sufficiently aware that Contractor and/or any of its Subcontractors, Sub-Tier Suppliers, third parties engaged by the Contractor and operators belonging to its whole supply chain have violated any of the above-mentioned principles and obligations.

(m) Without limiting the requirements of Section 3.6 "SUBCONTRACT" above, Contractor shall use commercially reasonable efforts to enter into contracts with its Subcontractors that contain terms which are substantially similar to the ethic and anticorruption provisions of the Agreement, so as to carry out the intent and accomplish the purpose of Company that all Subcontractors and Sub-Tier Suppliers conduct business in a way that: (i) meets the fundamental responsibilities regarding human rights described in Section 11.7 (b) and (d), (ii) does not give the appearance that Company is attempting to improperly influence any Governmental Authority in the manners described in 11.7 (f) and (h), and (iii) provides Company with the transparency regarding potential conflicts of interest and Enel Code of Ethics violations in the manner described in 11.7 (i) and (j). In addition, Contractor shall include in its contracts with its Subcontractors a provision that is substantially similar to the foregoing sentence.

11.8 No Suits, Proceedings. 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 (in Australia 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 the Contractor or in any impairment of its ability to perform its obligations under this Agreement. The 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.

12 INTELLECTUAL PROPERTY

12.1 Grant of License. The Contractor represents and warrants that it owns or has the right to use and maintain all Intellectual Property Rights necessary for performance of the Agreement and to enable Company and its Affiliates to use the Scope of Contract as contemplated herein. Further, Contractor represents and warrants that there are no contracts, agreements, licenses, permits, restrictions, requirements, patents, certificates, Contractor's obligations or other circumstances that prevent or may prevent Company from using, utilizing or in any other way enjoying the intellectual property involved by the performance of this Agreement as well as product, service, supply, license, document, object, item to which it is embedded or into which it is included. In case Contractor needs to use any Intellectual Property Rights covered by a third-party license for performing the obligations arising out of the Agreement, upon request by Company, but without any obligation of Company to do so, Contractor shall provide evidence to Company that it has obtained such third-party license. Upon Company's request, Contractor shall provide any additional information, clarification, explanation, confirmation, correspondence, manual and any other documents or data relating to any resources protected by Intellectual Property Rights used for performing the Agreement. In the event that Contractor becomes aware of any claim – whether judicial or extrajudicial – by a third party that the Intellectual Property Rights necessary for the performance of the Agreement infringe upon such third party's Intellectual Property Rights, Contractor shall promptly provide written notice to Company.

12.2 IP Indemnity. Contractor shall indemnify, defend and hold Company, and its present and future Affiliates, and their respective directors, officers, shareholders, members, 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 or Sub-Tier Supplier of any Intellectual Property Rights in connection with the Agreement, including without limitation, any deliverable, (ii) Contractor's or any Subcontractor's violation of any third-party license to use intellectual property in connection with the Agreement, including, without limitation, any deliverable.

12.3 Remedy. In the event that any infringement of Intellectual Property Rights occurs or may occur in relation to or while performing the Agreement, the Contractor shall take some or all of the following actions at the option of Company and the sole cost of 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 without deterioration of the quality or characteristics of the Scope of Contract; or (c) replace the relevant infringing part or aspect with non-infringing design, equipment or material consistent with the Scope of Contract; or (d) repay to the Company the price paid in respect of the relevant aspect of the Scope of Contract relating to the whole or the infringing part thereof.

12.4 Company Rights. Contractor: (i) may not in any way copy, publish, distribute, reproduce, process, translate, modify, adapt, develop, decompile, dismantle, subject to reverse engineering operations (or, in any case, subject to operations intended to extract the source codes) – in full or in part – any Company products, samples or technical specifications that are delivered by Company to Contractor in furtherance of Contractor's performance of this Agreement; (ii) may not make any derivative works, objects, items, products, samples or technical specifications; (iii) shall not use Company's products, samples, technical specifications or intellectual property information for any purpose other than due performance of the Agreement; (iv) shall not disclose, and shall cause its employees not to disclose, Company's products, samples, technical specifications or intellectual property information to any third party without Company's prior written consent, and shall keep these documents in strict confidence in accordance with this Agreement. 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 the Scope of Contract pursuant to this Agreement. Contractor agrees to give Company thirty (30) days' notice prior to Contractor destroying or otherwise disposing of any duplicate documentation or drawings relating to the Scope of Contract. If Company desires, Contractor shall



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forward such documentation to Company, at any time taking appropriate precautions in relation to the processing, use and transfer of data to ensure security, non-disclosure and strict confidence in accordance with this Agreement.

12.5 Background IPRs and Foreground IPRs. 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 Agreement shall constitute a "work made for hire," shall be owned by Company (as of the moment such ownership right is generated), and shall be delivered to Company upon completion of the Scope of Contract ("Foreground IPRs"). Contractor hereby assigns to Company, without royalty or any further consideration, all Contractor's rights, title, and interests in and to any such Foreground IPRs. Each Party recognizes and agrees that each Party's present and future Intellectual Property Rights pertaining to each Party before the signature of this Agreement or successively acquired in parallel projects outside of the scope of this Agreement ("Background IPRs") remain exclusive property of such Party and the other Party shall have no claim in relation to any such right. If the Contractor uses its Background IPRs for the performance of this Agreement, any Foreground IPRs belonging to Company shall be limited to the additional parts (generated by the Contractor in performing the Agreement on the basis of its Background IPRs) that do not, in any way, include or contain any of its Background IPRs.

12.6 Continued Use. 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 Section 12 shall continue beyond the termination or completion of this Agreement.

13 TRANSFER TO THIRD PARTIES

13.1 Company's Right to Assign. Company may at any time assign its rights and obligations under the Agreement to an Affiliate of Company or to lenders of the project or to a future owner of the Site where the services / goods / works constituting the Scope of Contract are being performed, without Contractor's consent.

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

13.3 Change of Control. Contractor undertakes to promptly notify Company of the initiation of procedures for its dissolution, transformation, merger, demerger or, in any case, of other extraordinary transactions, including the sale of a majority of its equity interests, substantially all of its assets, as well as significant changes in its Governing Body. Without prejudice to compliance with confidentiality obligations of the Contractor, the above-mentioned notification shall be made with a reasonable advance notice or, in any case, not later than five (5) Business Days from the events mentioned above.

14 FORCE MAJEURE

14.1 Definition of Force Majeure. "Force Majeure Event" means an event or circumstance 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.

14.2 The following events, matters or things shall not constitute a Force Majeure Event:

- (a) the absence of sufficient and/or technical financial means to perform obligations or the failure to make payments in accordance with this Agreement;
- (b) any labor disturbance, strike or dispute of Contractor's workers or personnel or any Subcontractor's workers or personnel or any independent provider engaged by Contractor 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 that a Contractor with experience in facilities can reasonably predict and whose harmful effects could have been consequently avoided in part or totally by the Contractor;
- (e) the unavailability or shortages of labor or equipment and materials despite being reasonably predictable, or that could have been avoided or remedied in advance;
- (f) delays or contractual breaches of any Contractor's Subcontractor, unless such delays or contractual breaches are in turn a consequence of a force majeure event; and
- (g) the status of the Site or road access to the Site where the contractual activities are carried out, which is known and accepted by the Contractor.

14.3 Excuse from Performance; Notice. If either Party is rendered wholly or partially unable to perform its obligations under this Agreement 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 five (5) calendar days after the affected Party becomes aware of such occurrence. Within twenty (20) calendar 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



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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 one hundred eighty (180) calendar days, each Party shall have the right to terminate this Agreement upon giving the other Party five (5) days written notice, with no compensatory break-fees or penalties due to termination.

15 INDEMNITY

15.1 Contractor's Indemnity. Contractor shall indemnify, defend and hold harmless, Company, and its present and future Affiliates, and their respective directors, officers, shareholders, members, 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 or arising out of (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 the Agreement, (b) damage to, loss, and/or destruction of property, including, without limitation, to property of Company or Contractor arising out of or connected with the performance of the Agreement, (c) Contractor's or any of its Subcontractors' or Sub-Tier Suppliers' acts or omissions in breach of this Agreement, or (d) Contractor's or any of its Subcontractors' or Sub-Tier Suppliers' 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 wilful misconduct of Company or its employees.

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

16 DISPUTE RESOLUTION AND GOVERNING LAW

16.1 Dispute Process. 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.

16.2 The seat of arbitration shall be Sydney, New South Wales and the language of the arbitration shall be English.

16.3 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.

16.4 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.

16.5 Continued Performance during Dispute Resolution. 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.

16.6 Governing Law. This Agreement shall be governed by the laws of the State.

17 TERMINATION AND SUSPENSION

17.1 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.

17.2 Notwithstanding Section 17.1, 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 the Contractor of such breach and the Contractor has upon receipt of such notice, failed to remedy 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.

17.3 In the event of termination pursuant to Sections 17.1 and 17.2, 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.

17.4 Company shall be entitled to terminate this Agreement upon giving written notice to the Contractor if Contractor is the subject of an Insolvency Event.

17.5 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



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provided to come into effect on, or continue in effect after, such termination.

17.6 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.

17.7 If the Scope of the Contract are suspended in accordance with Section 17.6, the Term will be extended for the period of the suspension of the Scope of the Contract, unless otherwise agreed by the Parties.

18 CHANGE ORDERS

18.1 Except to the extent provided in this Section 18 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.

18.2 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").

18.3 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 affect 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 Section 18.

18.4 Company shall within seven (7) Business Days from the date of receipt of the information provided by the Contractor pursuant to Section 18.3, 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.

18.5 If 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.

18.6 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 Section 18, or has expressly authorized the Contractor in writing to perform the Change prior to such approval.

18.7 If Company does not approve of any proposed changes and the Contractor and the Company are unable mutually to agree upon alternative changes, Company may by written notice to Contractor close the Draft Change Order or Change Order request.

18.8 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.

18.9 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.

18.10 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 Section 18, negotiate a mutually acceptable lump sum increase or decrease to the Contract Price properly itemized and supported by sufficient substantiating data to permit evaluation.

18.11 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.

18.12 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. Company must approve or disapprove the Change Order pursuant to the steps set out in this Section 18. 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.



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19 CONSEQUENTIAL LOSSES

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

20 RECORDS AND ACCOUNTING

20.1 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.

20.2 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 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).

20.3 Contractor shall include a similar clause in its agreements with its Subcontractors reserving the right to designate the Contractor's own employee representative(s), its contracted representative from a certified public accounting firm, and representative(s) from Company, who shall have the right to audit and to examine any cost, payment, settlement or other supporting documentation resulting from any item set forth in its agreements.

20.4 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.

21 INTERPRETATION

21.1 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.

21.2 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.

22 CURRENCY

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.

23 INDEPENDENT CONTRACTOR

23.1 The Contractor is an independent Contractor with respect to the Scope of the Contract performed and to be performed



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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.

23.2 The Contractor, for the purposes of this Agreement, shall have no right, power or authority to bind the Company to the fulfilment 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.

24 SCHEDULES AND DELAYS

24.1 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.

24.2 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.

24.3 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.

24.4 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, 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.

25 CONFIDENTIALITY

25.1 Definition of Confidential Information. Confidential Information means any Information (in any form, whether oral, written, graphic, electronic or otherwise) disclosed or made available by a Disclosing Party or its Affiliates or any of their Representatives to a Receiving Party, whether or not marked as "confidential", for the purposes of and/or during the performance of the Agreement, together with any and all Information: (i) of which any of the Parties may have knowledge as a result of other contracts signed between the Parties, and/or pre-contractual negotiations thereof, as well as all related documents and specific knowledge (regardless of how they have been compiled, obtained or developed); (ii) generated by a Receiving Party that contains, reflects, or is derived from such Information furnished by the Disclosing Party. Confidential Information includes, without limitation, economic and financial documents, data and information that regards, but is not limited to, business strategies, information about products and/or production processes (design, study and development), means and costs of production, sales information, development strategies and customer management, any kind of data about clients, suppliers and their technical or commercial profile, documentation regarding technical and economic offers in public and private tenders, data about tests and/or the functioning of plants, equipment, machines and products, business analysis, market researches, business and marketing plans other statistical data that are relevant for the business, internal organization procedures, ideas of advertising and new trademarks not yet used in the market, prices, features, concepts, prototypes and layouts of new products or services not yet launched on the market, etc. It also applies to technical documents data and information, referring for instance, but not limited to patentable inventions, patents, patent applications, licenses, source code of any kind of software, its principles and the related algorithms; discoveries, algorithms and formulas; new production processes and methods; new methodologies for testing plants, equipment, machines and products, and results of activities of Research and Development (R&D). Without limiting the foregoing, Confidential Information also includes (a) any information which is expressly qualified as "confidential," "strictly confidential," "secret" (or in any other similar way) by the Disclosing Party, (b) any information which the Receiving Party knew or ought to have known to be confidential by way of its nature or treatment by the Disclosing Party, such as that the information is not publicly known, not easily accessible by third parties and subject to appropriate measures to preserve its non-public nature, and (c) the contents of the Agreement including its exhibits, annexes, Purchase Orders, Change Orders and other attachments. Confidential Information does not include Information that the Receiving Party can prove it already knew, without an obligation of confidentiality, before the beginning of the performance of the Agreement; Information that the Receiving Party can prove it received from third parties not subject to any non-disclosure obligation; Information that, after the communication to the Receiving Party, without any responsibility of said Party, became generally known or readily accessible to persons within the circles that normally deal with the kind of information in question; or Information independently developed by the Receiving Party without



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reference to the Confidential Information of the Disclosing Party.

25.2 Use of Confidential Information (Generally). All Confidential Information can be used only for the purpose of executing the Agreement and the Receiving Party shall treat such Confidential Information as confidential. Without limiting the generality of the foregoing, the Receiving Party shall restrict disclosure of Confidential Information to exclusively its administrators, managers, employees, Subcontractors, Sub-Tier Suppliers, advisors and lenders which must have the Confidential Information for the performance of the Agreement and, in any event, may only disclose Confidential Information to Subcontractors, Sub-Tier Suppliers, advisors and lenders if such Subcontractors, Sub-Tier Suppliers, advisors and lenders agree to confidentiality obligations no less protective than those in this Agreement. Further, Receiving Party is responsible for any act or omission on the part of its administrators, managers, employees, Subcontractors, Sub-Tier Suppliers, advisors and lenders that leads to a disclosure of Confidential Information or use of Confidential Information for a purpose other than performance of this Agreement.

25.3 Permitted Disclosures. Confidential Information may not be disclosed without the prior written and express authorization of the Disclosing Party, except in those cases in which the Receiving Party is legally compelled to disclose such Confidential Information (by deposition, interrogatory, request for documents, subpoena, civil investigative demand and access to information or similar process), provided that immediately upon receiving any such request and to the extent that it may legally do so: (i) the Receiving Party advises the Disclosing Party of the request prior to making such disclosure in order that the Disclosing Party may interpose an objection to such disclosure, take action to assure confidential handling (including seek a protective order), or take such other action as it deems appropriate to protect the Confidential Information and that, without an obligation to incur expense in doing so, Receiving Party cooperates with Disclosing Party in such efforts; and (ii) the Receiving Party discloses only that portion of Confidential Information which is legally required to be disclosed. In any event, the Receiving Party shall not oppose any effort by the Disclosing Party to obtain a protective order or other appropriate remedy limiting disclosure. Without prior written and express authorization from the Disclosing Party, the Receiving Party may not copy, reproduce, translate, modify, adapt, develop, dismantle, separate, perform reverse engineering operations or any operation intended to extract the source codes - wholly or partially - of the Confidential Information provided.

25.4 Management of Confidential Information; Strictly Confidential Information. Without limiting the generality of Sections 25.1 and 25.2 above, the Receiving Party shall create and manage Confidential Information which is in the form of logical and physical data using the best available international techniques and practices, to guarantee the protection of said Confidential Information from unauthorized use, destruction, manipulation, access or reproduction. In case of Confidential Information qualified as "strictly confidential" by Company, such techniques and practices for managing and storing logical and physical data shall be expressively agreed with and authorized by Company. Once the Agreement has expired, the Receiving Party shall return all the Confidential Information provided by the Disclosing Party or in its possession, for the purpose of performing the Agreement, in addition to destroying all copies and files that it may have, unless it has received written permission to the contrary from the Disclosing Party. The Receiving Party shall confirm destruction of such Confidential Information to the Disclosing Party within fifteen (15) days from the expiration of the Agreement and shall declare in writing not to be retaining any documents or other objects containing (or related to) Confidential Information, provided, however, that Receiving Party may retain electronic copies of Confidential Information: (i) that are stored on Receiving Party's and/or its representatives' electronic records storage system as a result of automated back-up systems, and (ii) to the extent required by Receiving Party's data retention or similar policies or by Applicable Law. Any Confidential Information retained by Receiving Party after the expiration of this Agreement pursuant to the foregoing sentence continues to be governed by the confidentiality protections of this Section 25 for so long as it is retained by Receiving Party.

25.5 Term of Restriction on Disclosure. The Receiving Party shall not disclose Confidential Information during the Term of this Agreement (if the Agreement has a term) and for a period of five (5) years after it has expired (or in the event that the Agreement has no term, for a period of five years from the Receiving Party's receipt of such Confidential Information). Notwithstanding the foregoing, in the case of Confidential Information qualified as "strictly confidential" by Company, the obligations of confidentiality and non-use set forth in this Section 25 shall survive the termination of this Agreement for any reason whatsoever, unless otherwise provided by the Disclosing Party, and shall be effective until the Receiving Party is able to demonstrate that said "strictly confidential" Information has become generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question for any cause different from its disclosure by the Receiving Party.

25.6 Remedies. Both Parties acknowledge and agree that monetary damages may not represent a sufficient remedy for the breach or threatened breach of this Section 25. Therefore, in addition to all other remedies available at law (which neither Party waives by exercise of any rights hereunder), the non-breaching Party shall have the right to seek specific performance, temporary and permanent injunctive relief and any other equitable relief, with or without proof of actual damages, and without the posting of a performance bond, as a remedy for any such breach or threatened breach of this Section 25.

25.7 Return or Destruction. Notwithstanding the foregoing, neither Company nor Enel is required to destroy electronic copies of Confidential Information (i) that are stored on its and/or its representatives' electronic records storage system as a result of automated back-up systems, or (ii) to the extent required by Enel's data retention or similar policies or by Applicable Law, provided, however, that the confidentiality obligations of this Section 25 shall continue to apply with respect to such Confidential Information for so long as it is retained by Receiving Party.

25.8 Confidential Information Owned by Disclosing Party. Each Party acknowledges and agrees that Confidential Information is and remains the exclusive property of the Disclosing Party. Nothing in the Agreement shall be understood - unless expressly stated in writing - as granting a license or the like in matters of patents, copyrights, inventions, trade secrets, trademarks, discoveries or improvements made, other resources protected by intellectual property rights conceived or acquired, both before and after the performance of the Agreement.



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25.9 Trade Secrets. Each Party represents and warrants to the other Party that in performing the Agreement it does not violate any trade secrets rights of third parties.

25.10 CYBER SECURITY

25.10.1 Contractor can access Company or Enel's IT system only if authorized by Company or Enel. Contractor is responsible for the activities performed on Company or Enel's systems by using its digital identity, which Contractor shall ensure is safeguarded. In performing such activities, Contractor shall comply with following rules of conduct:

- a) never reveal nor provide the authentication credentials to anyone;
- b) not insert passwords into e-mail messages or other forms of electronic communication, nor reveal them over the phone to anyone;
- c) never memorize passwords to access Enel or Company's applications via browser through the "remember password" functionality;
- d) check that no one is watching when Contractor types the credentials to access IT devices or systems, in order to prevent theft of Contractor's credentials;
- e) never use the same password for the authentication to different systems;
- f) access to information systems shall be limited to software / tools provided specifically for the performance of the necessary activities; the use of network services or connections for purposes not related to the activities that shall be carried out is prohibited;
- g) any transaction developed through Enel's or Company's IT systems shall not violate Applicable Law;
- h) the workstation used (permanent or temporary) shall not connect to internet services other than those provided or authorized by Enel or Company and shall have the necessary antivirus installed. All necessary measures shall be taken to prevent the spread of viruses, malicious software or any illicit software that may cause interruptions in the service or loss of data;
- i) all email accounts, file storage or communication platforms (including social networks) shall be explicitly provided or authorized by Enel;
- j) sensitive data shall be stored, transmitted or cancelled by appropriate coding software;
- k) it is forbidden to modify the configuration of the system to avoid security checks; and
- l) in order to prevent the disclosure of information to unauthorized Persons, attention shall be paid to printed documents, removable hard drives, removable storage and video screens.

26 MISCELLANEOUS

26.1 Sustainability. Company, as part of the Enel Group, pursues a sustainable business model and strives to place environmental, social and economic sustainability, together with innovation, at the centre of its corporate culture by implementing a sustainable development system based on the creation of value that may be shared with its internal and external stakeholders. Company is committed to pursuing the achievement of the UN Sustainable Development Goals (SDGs). The Enel Group has been a "Participant" member of the UN Global Compact since 2004 and in 2020, was confirmed as one of its lead companies thanks to the Enel Group's adherence to the 10 founding principles on human rights, labour standards, environmental protection and the fight against corruption. Company is committed to boost social, economic and environmental sustainability also through the contractual relationships with its suppliers. To that end, Company declares for itself the statements set out in this Section 26.1 and encourages its suppliers to adhere to similar principles on sustainable development. The Contractor acknowledges that Company's principles on sustainable development are available at the following link <https://www.enel.com/company/our-commitment/sdg-onu>.

26.2 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.

26.3 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.

26.4 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.

26.5 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.

26.6 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



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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.

26.7 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.

26.8 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.

26.9 The obligations imposed on the Contractor by the clauses of the Agreement and Sections 3, 4, 9, 12, 12, 15, 16, 19, 20, 25, 26.1, 26.8, 26.14, , shall survive cancellation or termination of the Agreement and final payment for the Scope of the Contract.

26.10 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 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.

26.11 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.

26.12 Multifactor Authentication System. This Section 26.12 is applicable if at any time the performance of the Agreement requires or involves the Contractor gaining access to and/or using any application available on the Company's systems and/or the Company's IT infrastructure ("Enel Systems"). Upon the request of the Company at any time and for any reason, the Contractor shall participate in and implement the Company's dual factor authentication system (the "Multifactor Authentication System"), as a mandatory requirement to access and/or use any Enel Systems. Contractor agrees that for the Contractor to participate in and implement the Multifactor Authentication System, (i) a smartphone and a working SIM card are required; (ii) each smartphone used for the purposes of the Multifactor Authentication System must be associated exclusively with the personal identity of the specific employee, agent, Subcontractor, representative or other Personnel of the Contractor who will access and/or use the Enel Systems on behalf of the Contractor; and (iii) Contractor shall satisfy all of the foregoing requirements at its sole risk, cost and expense. Company shall not be responsible for any fee, cost or charge (financial or other) related to the supply of any smartphone and shall not be responsible or liable to the Contractor or any third party for any damages, claims or losses, direct or indirect, arising out of or connected with the failure and/or defective functioning or unlawful use of any smartphone that is used for the Multifactor Authentication System by the Contractor's employees, agents, Subcontractors, representatives or other Personnel.

26.13 Language and system of measurement. The Agreement is made in the English language. Notwithstanding the above, all contractual documentation, such as correspondence, data, calculations, drawings, reports, catalogues, etc., must be submitted in English language, and in the metric measurement system, unless the Agreement or Contractual Documents provide otherwise, or unless otherwise authorised by Company in writing.

26.14 Processing of Personal Data. Both Company and Contractor shall comply with applicable legislation, including all Australian Privacy Laws, on the protection and processing of personal data. While processing personal data on behalf of Company, Contractor 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 Company without undue delay of any personal data breach occurred in the performance of the Agreement.