



Standard terms and conditions United States

2nd edition, valid from 25/05/2022

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1 DEFINITIONS

As used in this Contract, capitalized terms have the meanings specified in this Section 1.

“Affiliate” means, in relation to any Person, any other Person, who: (a) directly or indirectly Controls, or is Controlled by, or is under common Control with, such Person; or (b) directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (c) has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (d) either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person.

“Agreement” means this Contract exclusive of the Standard Terms and Conditions, exhibits and any Purchase Order.

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

“Applicable Permits” means any and all waivers, exemptions, variances, certificates, permits, approvals, exemptions, authorizations, clearances, licenses, consents, or similar order of or from, or filing or registration with, or notice to, any Government Authority that are necessary for the performance of the Work.

“Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in the State of New York are authorized or required by law to be closed for business.

“Change Order” has the meaning ascribed to it in Section 16.2 of these Standard Terms and Conditions.

“Change Order Request” is in the form set forth in [Exhibit E5](#).

“Closely Held Entity” means an entity whose equity interests are owned by five or less individuals.

“Company” has the meaning ascribed to it in Article 1 of the Agreement.

“Company HSE Requirements” means, if included in this Contract, the document entitled “Company Health, Safety and Environmental Requirements” attached to, and forming part of, this Contract, as [Exhibit A, Section 1](#).

“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 Contract, 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, 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 Contract 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 Contract; 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 reference to the Confidential Information of the Disclosing Party.

“Contract” has the meaning set forth in the preamble of the Agreement.

“Contract Rates” means the pricing or rates set forth in [Exhibit C](#).

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



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“Controls” means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.

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

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

“Dispute” has the meaning ascribed to it in Section 14.1 of these Standard Terms and Conditions.

“Effective Date” has the meaning ascribed to it in the preamble of the Agreement.

“Equipment” means the equipment specified in Exhibit B.

“Ethics Flow-Down Provisions” means sub-sections 9.6 (b), (d), (g) and (h).

“Final Acceptance Certificate” means a certificate, in the form set forth in Exhibit E3, executed and delivered by Provider to Company attesting that all Work associated with a Purchase Order has been completed in accordance with the terms of this Contract.

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

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

“Governmental Authority” means any and all foreign, national, federal, state, county, city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.

“Governing Body” means, (a) if Provider is a corporation, its board of directors, if the Provider is a limited liability company its managing member(s) or managing manager(s), as the case may be, and if the Provider is a partnership, its general partners, and, (b) only if the Provider is a Closely Held Entity, the Provider's Owners (in addition to each person or entity described in (a)).

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

“HSE Terms” means the document entitled “Health, Safety and Environmental Terms” located at <https://globalprocurement.enel.com/documents/hse-terms>.

“Information” means any and all information of any kind or nature, in written or electronic form, including documents, calculations, maps, drawings, sketches, plans, notes, schedules, reports, presentations, technical documents, computer storage media, the existence or results of technical analyses regarding business activities, models, samples, specifications, results and other work product, together with any and all trade secrets, pricing, commercial strategy, marketing information, inventions, and copyrightable material contained therein, regardless of whether produced by Company or an Affiliate of Company, Provider or a third party.

“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 the lesser of (a) the “prime rate” published from time to time in The Wall Street Journal under “Money Rates” for the United States plus one percent (1%) per annum and (b) the maximum rate permitted by Applicable Law in the context in which the term “Interest Rate” is used herein.

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

“Maximum Commitment” means the amount identified as the Maximum Commitment in Article 3 of the Agreement.

“Owners” means owners, shareholders, members and partners who own an equity interest in Provider.

“Party” means, in the context of the Contract exclusive of a Purchase Order, Provider or Enel as the case may be and, in the context of a Purchase Order or the Contract inclusive of a Purchase Order, Provider or Company as the case may be.

“Parties” means, in the context of the Contract but not a Purchase Order, Provider and Enel and, in the context of a Purchase Order or the Contract inclusive of a Purchase Order, Provider and Company.

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



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“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.

“PO Total Amount” means the amount identified on a Purchase Order as the total amount of such Purchase Order.

“Progress Milestone Certificate” means a certificate, in the form set forth in Exhibit E-3, executed and delivered by Provider to Company attesting that the Work associated with a milestone set forth in the applicable Purchase Order or Exhibit D-1 has been completed in accordance with this Contract.

“Project” has the meaning ascribed to it in Recital A of the Agreement.

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

“Project Site” has the meaning ascribed to it in Recital A of the Agreement.

“Provider” has the meaning ascribed to it in the preamble of the Agreement.

“Provider Representative” means the person identified as the Provider Representative in Exhibit H, or such other person as may be designated by Provider in accordance with Section 2.2 of these Standard Terms and Conditions.

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

“Purchase Order” means an order from Company to Provider made in the form set forth in Exhibit E1, or such other format of purchase order as Company may wish to use from time to time.

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

“Representatives” means, in relation to a Party, its employees, its contractors and subcontractors and the employees of its contractors and subcontractors.

“Retainage” means an amount equal to the lesser of (a) five percent, or in the case that the PO Total Amount exceeds \$250,000, ten percent, and (b) the maximum retainage permitted by Applicable Law.

“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; and (iv) Her Majesty’s Treasury of the United Kingdom.

“Scope of Work” means the scope of work described in Exhibit B.

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

“Subcontractor(s)” means a Person, other than an employee of Provider, having a direct contract with Provider for performing the Work.

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

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

“Technical Specifications” is defined as the specifications and requirements to be used in execution of the Work, as defined in Exhibit B.

“Term” means, with respect to the Contract (but exclusive of any Purchase Orders), the Term specified in Article 4 of the Agreement, if any, and, with respect to each Purchase Order, the period commencing on the date of such Purchase Order and continuing until the Date of Acceptance.

“Transaction Number” the unique number related to the receipt of Services Entry Sheet (SES) or Materials/Goods (MIGO) provided by Company to Provider.

“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



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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.

“**Work**” or “**Works**” means, as applicable to the Scope of Work, the provision of labor, equipment, tools, materials, supplies or other goods relating to the Scope of Work.

2 SCOPE OF WORK AND PROVIDER OBLIGATIONS

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

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

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

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

2.5 Subcontractors.

(a) Notwithstanding that anticipated Subcontractors may be designated or anything else in this Contract to the contrary, Provider may not enter into any subcontract with any Person (including, without limitation, the Subcontractors identified on Exhibit E7) unless such subcontracting is approved by Company in writing at its sole discretion, which approval shall not be unreasonably conditioned, withheld or delayed. Except as otherwise expressly provided in this Contract, Provider shall be solely responsible for engaging, managing, supervising and paying all Subcontractors and Persons directly or indirectly employed by it. Provider shall require that all Works performed be received, inspected and otherwise furnished in accordance with this Contract and Provider 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 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 Company has the right of inspection as provided hereunder, (iii) require such Subcontractors to be subject to the labor, safety, security, confidentiality, and Ethics-Flow Down Provisions of the Contract, (iv) provide guarantees and warranties with respect to its portion of the Scope of Work; (v) not aggregate to more than 49% of the PO Total Amount (unless otherwise provided elsewhere in this Contract or approved by Company in advance and in writing), provided that subcontracts between Provider and Affiliates of Provider shall not count towards such limit; and (vi) restrict the Subcontractor from subcontracting its portion of the Scope of Work (unless otherwise provided elsewhere in this Contract or unless approved by Company in advance and in writing). Except as set forth in Section 2.5(b), no contractual relationship shall exist between Company and any Subcontractor with respect to the Work. Provider shall require and shall cause all Subcontractors to perform their portions of the Scope of Work in accordance with the requirements of this Contract. A minimum of two weeks prior to any Subcontractor mobilizing to a Project Site, Provider shall provide notice to Company of such pending Subcontract mobilization. Such notice shall be provided in the form set forth in Exhibit E8. Exhibit E7 sets forth a list of Subcontractors to which Provider anticipates it may subcontract portions of the Scope of Work.

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

(c) Without in any way derogating Provider's representations and warranties and other testing requirements and guarantees set forth herein with respect to all of the Work, Provider shall use reasonable efforts to obtain from all Subcontractors any representations, warranties, guarantees, and obligations offered by such Subcontractors and to negotiate the longest reasonably practicable warranty periods at no additional cost with respect to design, materials, workmanship, equipment, tools, supplies, and other items furnished by such Subcontractors. To the extent assignable, Provider shall assign, 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 Provider, to Company upon default by Provider or termination or expiration of this Contract; provided, however, that, notwithstanding



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such assignment, Company shall be entitled to enforce each such representation, warranty, guaranty, and obligation so long as Provider has any liability under this Contract.

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

2.7 FCPA. Without limiting the generality of Section 9.1 below, Provider shall comply with the Foreign Corrupt Practices Act (15 U.S.C. Sections 78a and 78m et. seq.).

2.8 Health and Safety.

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 behavior requires the suspension of work and the restoration of health, safety and/or environmental conditions.

b) 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 "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" and

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

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

c) Provider 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 the Company HSE Requirements are attached to this Contract, then Provider shall comply with the Company HSE Requirements and ensure that its Subcontractors and Sub-Tier Suppliers comply with the same.

2.9 Value Engineering and Gainsharing. Company and Provider may submit Value Engineering proposals to the other Party. If the Provider submits Value Engineering proposals, these shall be aimed at reducing the price through direct and quantifiable adjustments to the Scope of Work. Proposals from the Provider to Company shall be reviewed and may be approved by Company, in its discretion. Proposals from Company to the Provider shall be reviewed and approved by the Provider, in its discretion (provided, however, that Provider's right to review and approve a Value Engineering proposal does not limit Company's right to direct a Change Order pursuant to Section 16 below).

Value Engineering proposals shall include:

- a) proposed changes to the Scope of Work;
- b) the anticipated savings and/or improvements in the Scope of Work (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 Provider (as applicable); and
- e) any other impact on the provisions of the Contract.

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, Provider shall submit a draft Change Order to Company pursuant to the process described in Section 16.6 below. No Value Engineering proposal may be implemented unless a Change Order is issued pursuant to Section 16 below.



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2.10 Clean-Up. At all times, Provider shall maintain the areas where it is performing the Work in a neat and orderly condition and keep the Project Site reasonably free from waste materials and rubbish Provider or its Subcontractors produces. Without limiting the foregoing, Provider shall arrange, at its sole expense, for proper disposal of all waste materials and rubbish it produces, and as soon as practicable after the Date of Acceptance or any earlier termination of a Purchase Order: (a) remove all Provider's and Subcontractors' equipment, (b) tear down and remove all temporary structures erected by or for Provider or Subcontractors during the performance of the Work, and (c) with respect to any power generation Project Sites and if instructed by Company, re-seed and reclaim areas disturbed by Provider or its Subcontractors. If requested by Company, Provider shall provide Company waste disposal manifests evidencing proper disposal of waste disposed of by Provider.

3 TERMS AND CONDITION OF PAYMENT

3.1 Payment Schedule. Invoices shall be prepared by Provider and submitted in accordance with the instructions provided in the Purchase Order and in this Article 3. Invoices are due and payable in accordance with Exhibits C and D.

3.2 Delivery of Invoices. Provider shall provide Company with invoices consistent with the payment schedule and invoicing instructions set forth in Exhibit D, and each such invoice shall reference the applicable Contract Number, Purchase Order Number and Transaction Number. Supportive documentation demonstrating the completion of each milestone or completion of the Work to Company's satisfaction shall be included with each invoice submission if applicable (e.g. Final Acceptance Certificate). Provider shall not send more than two invoices per month. Provider shall not invoice for amounts that are less than \$500 except Provider may invoice for items purchased within a period of two months that do not amount to the minimum of \$500. Payment of undisputed invoices shall be made by Company to Provider through electronic funds transfer or check payable to Provider on or before the 60th day after Company's receipt of the documentation required hereunder; provided, however, that if such 60th day is not a Business Day, payment is due on the following Business Day. Should Company fail to make undisputed payments when due, then interest shall accrue on such invoices at the Interest Rate from the date that the invoice becomes past due until such time as the invoice is paid.

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

3.3 Offsets. Company may deduct and set-off (including, if applicable, by way of a draw on a performance bond) against any amounts that are to be paid to Provider under this Contract, including amounts due by Company or an Affiliate of Company which issued a Purchase Order pursuant to this Contract, all amounts which are due to Company or its Affiliate by Provider, including any Liquidated Damages, if set forth on Exhibit D, and all amounts which are reasonably necessary to protect Company or its Affiliate from a loss because of: (a) defects in the Work not timely remedied; (b) third-party claims filed against Company or its Affiliate because of the acts or omissions of Provider, (c) liens filed or any other amounts that Provider is required to discharge (that have not been bonded off or are not covered by insurance maintained hereunder); (d) failure of Provider to make undisputed payments when such are due to Subcontractors; or (e) damages which may be incurred by Company or its Affiliate, the property of Company, or any of its Affiliates, as a result of breach of this Contract by Provider and to the extent the costs of such damages are not covered by the insurance Provider is required to maintain hereunder.

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

3.5 Retainage. If the Agreement indicates that Retainage is applicable, Company may withhold Retainage from each payment due under each Purchase Order. Company shall hold such Retainage as security for the performance of Provider's obligations hereunder and any interest thereon shall accrue, for the account of Company and not Provider. Company may use the Retainage to cure a Provider event of default, for Liquidated Damages (if applicable), for payment of unpaid Subcontractors and payments made to remove liens filed by Subcontractors, and any and all other amounts payable to Company hereunder. Company shall release and return to Provider the Retainage held by Company (less any amount utilized by Company to satisfy obligations of Provider related to this Contract) within thirty (30) days after Company's receipt of an invoice, a Final Acceptance Certificate, and such other documentation as is otherwise required hereunder.

4 TAXES



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

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

4.3 Employment Taxes. Provider shall 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, including federal and state income taxes, social security and medicare taxes, and unemployment, disability and workers' compensation insurance premiums.

5 INSPECTION AND DELIVERY

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

5.2 Delivery. Provider shall deliver any Equipment and other material and equipment furnished pursuant to the Scope of Work to the Project (or such other location as provided in Exhibit B) in compliance with all obligations applicable to Provider as set forth in Exhibit B and Exhibit D and Section 8.2. Provider shall inspect all Equipment and other material and equipment delivered to ensure it conforms to all obligations applicable to Provider.

6 ACCEPTANCE

6.1 Progress Milestones. If the applicable Purchase Order or Exhibit D-2, reflects that payment will be due to Provider upon completion of milestones then as the Work associated with each milestone reflected in Exhibit D-1 is completed in accordance with the terms of this Contract, Provider shall submit a Progress Milestone Certificate to Company. Within five (5) Business Days of receipt, Company shall indicate to Provider that such Progress Milestone Certificate is approved or rejected and, if rejected, the reason(s) for such rejection. Upon Company's acceptance of a Progress Milestone Certificate, Provider may submit an invoice in accordance with Section 3 above.

6.2 Final Acceptance. When all Work associated with a Purchase Order is completed in accordance with the terms of this Contract and the conditions described in the following sentence have been satisfied or waived by Company, Provider shall submit a Final Acceptance Certificate to Company. Without limiting the foregoing, Provider may not submit a Final Acceptance Certificate until the following conditions have been satisfied or waived: (a) completion of the Work, (b) the delivery of Progress Milestone Certificates, if applicable, (c) no defects exist, (d) all defects remedies have been completed; (e) the Scope of Work has been commissioned and passed testing and is ready for commercial use, if applicable, and (f) Provider has delivered all required documents to Company. Within five (5) Business Days of receipt, Company shall execute the Final Acceptance Certificate and deliver it to Provider (such date being the "Date of Acceptance") or indicate to Provider that the Final Acceptance Certificate is rejected and, if rejected, the reason(s) for such rejection. Upon Company's execution and delivery of the Final Acceptance Certificate, Provider may submit its final invoice in accordance with Section 3 above.

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

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

7 WARRANTY



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7.1 Provider warrants that all services shall be performed: (a) in a good and workmanlike manner, (b) in accordance with Prudent Industry Practices, (c) in accordance with the terms of the applicable Purchase Order and this Contract, (d) with due diligence and without undue delays or interruptions, and (e) that Provider's Personnel and its Subcontractors' Personnel are properly trained to perform the services safely and efficiently. Provider shall, without any additional compensation, re-perform and correct any defective services as Company may require at any time within two (2) years following the Date of Acceptance. Such re-performance or correction shall be performed within thirty (30) days following written notification of such requirement from Company to Provider. If Provider fails, or within a reasonable amount of time is unable to complete such re-performance or correction, Company has the right to complete such re-performance or correction or hire a third party to complete such re-performance or correction, and in such event all reasonable expenses incurred by Company thereby shall be recoverable from Provider.

7.2 Provider warrants that any equipment, materials or goods delivered by Provider are new and unused. Provider further warrants that from the Date of Acceptance and for a period of two (2) years thereafter any Equipment or other materials and equipment furnished by Provider (and any Subcontractor) pursuant to the Work shall: (a) be free and clear of any and all defects in manufacture, material and workmanship, and (b) meet or exceed all specifications contained in the Purchase Order and Contract. At the conclusion of the two (2) year warranty period, Provider shall take commercially reasonable efforts to assign to Company any remaining manufacturer's warranties on any materials and equipment.

7.3 Notwithstanding the contrary indication in Article 7 of the Agreement, any additional warranty obligations are set forth in Exhibit E. To the extent that any conflict exists between the provisions of this Section 7 and the provisions of Exhibit F, the provisions that are more favorable to Company shall control.

8 INSURANCE AND RISK OF LOSS

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

8.2 Transfer of Title and Risk of Loss. Title to all work in progress shall be and remain with Company and title to all materials to be consumed or incorporated in the Work shall vest in Company upon receipt of such materials by Provider or its Subcontractors, provided, however, such title being with Company does not impose any obligation on Company or relieve Provider of any of its obligations under this Contract. Provider shall be responsible for risk of loss to all or any portion of the Work until the Date of Acceptance. If any portion of the Work is damaged before the Date of Acceptance, Provider shall promptly notify Company and proceed to either repair or replace any affected Work in such a manner so as to minimize any delay to the schedule. Provider warrants and guarantees that legal title to the Work shall be free and clear of any and all liens, claims, security interests or other encumbrances when title thereto passes to Company, except for those liens Provider holds as a result of non-payment by Company and liens arising by Applicable Law that are not otherwise prohibited hereunder.

9 REPRESENTATIONS

9.1 Compliance with Applicable Laws. Provider represents and warrants that it and its Subcontractors and Sub-Tier Suppliers shall comply with all Applicable Laws, applicable codes, and safety standards regarding performance of the Work.

9.2 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.

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.

Provider moreover represents that, to the best of its knowledge, after due inquiry, its Subcontractors and Sub-Tier Suppliers 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 or Sub-Tier Suppliers.

Company may terminate the Contract, upon a prior written notice of seven (7) days, in case Contractor or any of its Subcontractors or Sub-Tier Suppliers are subject to a Sanction or if Company discovers that any representations made by Provider in this Section 9.2 was inaccurate.

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

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

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

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

(a) When conducting its business and managing its relationships, Company refers to the principles contained in the Enel North America Anti-Bribery Policy (available at <https://www.enelgreenpower.com/countries/north-america/united-states/anti-bribery-policy>), in its Code of Ethics, in the Zero Tolerance Plan against corruption and in its Human Rights Policy (each available at <https://www.enel.com/investors/sustainability/daily-commitment/sound-governance-ethical-conduct/principles-underpinning-our-work>) (collectively, the "Code of Ethics").

(b) Each Party acknowledges the content of the principles of United Nations Global Compact set forth below, and declares to manage its business activities and operations in order to meet such fundamental responsibilities in the areas of human rights, environment and anti-corruption. In particular, Provider shall comply with the principles of the Global Compact and with Applicable Law and ensure that its Subcontractors and Sub-Tier Suppliers comply with the following principles of the Global Compact:

A. HUMAN RIGHTS.

Any business must support and respect the protection of internationally recognised human rights in conducting their business activities.

Any business must ensure that they do not take part in human rights violations.

B. ENVIRONMENT.

Any business must conduct their affairs in a preventive manner to avoid potential damage to the environment.

Any business must support initiatives to promote greater environmental responsibility.

Any business must encourage the development and dissemination of technologies that respect the environment.

C. CORRUPTION.

Any business must work against corruption in all its forms, including extortion and bribery.

Provider shall provide notice to Company if it becomes aware of any circumstance in which it or its Subcontractors or Sub-Tier Suppliers have or may fail to comply with the UN Global Compact Principles set forth above. Such notice shall include relevant details of the circumstance being disclosed and the plan to remedy the non-compliance.

(c) Provider acknowledges the Code of Ethics' commitments. Provider shall refer to such principles when conducting its business and managing its relationships with third parties.

(d) Provider shall, and shall ensure its Subcontractors and Sub-Tier Suppliers do, comply with 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.

(e) Provider shall ensure its Subcontractors and Sub-Tier Suppliers refer to the principles referenced in Section 9.6(c) above ((i) or (ii), as the case may be) in the conduct of such Subcontractors' and Sub-Tier Suppliers' business and management of its relationships.

(f) In its performance of this Contract, Provider shall not, and shall ensure that its Subcontractors and Sub-Tier Suppliers 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) Provider 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) Provider 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 Provider hereunder the Provider will immediately advise Company's General Counsel of such knowledge or suspicion and the entire basis known to the Provider therefore.



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(i) Provider shall have exclusive regard for the interests of 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 Provider becomes aware of any situation which presents a conflict of interest between Provider's interests and Company's, Provider shall promptly give written notice to Company and shall comply with any reasonable instructions which Company provides to Company with respect to such identified conflict of interest, provided that Company shall consult with Provider with respect to such conflict of interest.

(j) Without limiting the requirements of Section 2.5 above, Provider shall use commercially reasonable efforts to enter into contracts with its Subcontractors that contain terms which are substantially similar to the Ethics-Flow Down Provisions, 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 9.6(b), (ii) does not give the appearance that Company is attempting to improperly influence any Governmental Authority in the manners described in 9.6(c), and (iii) provides Company with the transparency regarding potential conflicts of interest and Enel Code of Ethics violations in the manner described in 9.6(d). In addition, Provider shall include in its contracts with its Subcontractors a provision that is substantially similar to the foregoing sentence.

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

10 INTELLECTUAL PROPERTY

10.1 Grant of License. Provider represents and warrants that it owns or has the right to use and maintain all Intellectual Property Rights necessary for performance of the Contract and to enable Company and its Affiliates to use the Scope of Work as contemplated herein. Further, Provider represents and warrants that there are no contracts, agreements, licenses, permits, restrictions, requirements, patents, certificates, Provider'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 Contract as well as product, service, supply, license, document, object, item to which it is embedded or into which it is included. In case Provider needs to use any Intellectual Property Rights covered by a third-party license for performing the obligations arising out of the Contract, upon request by Company, but without any obligation of Company to do so, Provider shall provide evidence to Company that it has obtained such third-party license. Upon Company's request, Provider 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 Contract. 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 Contract infringe upon such third party's Intellectual Property Rights, Contractor shall promptly provide written notice to Company.

10.2 IP Indemnity. Provider 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 Provider or any Subcontractor or Sub-Tier Supplier of any Intellectual Property Rights in connection with the Contract, including without limitation, any deliverable, (ii) Provider's or any Subcontractor's violation of any third-party license to use intellectual property in connection with the Contract, including, without limitation, any deliverable.

10.3 Remedy. In the event that any infringement of Intellectual Property Rights occurs or may occur in relation to or while performing the Contract, the Provider shall take some or all of the following actions at the option of Company and the sole cost of Provider: (a) use reasonable efforts to procure for Company the right to continue using the relevant aspect of the infringing part thereof; or (b) modify or amend the relevant infringing part or aspect thereof so that the same becomes non-infringing without deterioration of the quality or characteristics of the Work; or (c) replace the relevant infringing part or aspect with non-infringing design, equipment or material consistent with the Scope of Work; or (d) repay to the Company the price paid in respect of the relevant aspect of the Scope of Work relating to the whole or the infringing part thereof.

10.4 Company Rights. Provider: (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 Provider in furtherance of Provider's performance of this Contract; (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 Contract; (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 Contract. Company shall own all reports, original and final reproducible drawings, plans, designs, specifications, calculations, studies, software program tapes, models, notes, and memoranda, provided by Company to Provider and otherwise prepared by Provider and Provider's Subcontractors in providing the Scope of Work pursuant to this Contract. Provider agrees to give Company thirty (30) days' notice prior to Provider destroying or otherwise disposing of any duplicate documentation or drawings relating to the Work. If Company



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desires, Provider shall 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 Contract. Provider may retain one archival copy of all produced data, drawings, plats, surveys and legal descriptions, provided that such archival copy is protected by appropriate measures capable of ensuring security, non-disclosure and strict confidence of the related documents, data and information, without prejudice to Company's right to take legal action and to seek compensation for any damages suffered in case of Provider's breach of such obligation.

10.5 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 Provider may conceive, make, develop, create, reduce to practice, or work on, in whole or in part, in the course of performing the Contract 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 Work ("Foreground IPRs"). Provider hereby assigns to Company, without royalty or any further consideration, all Provider'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 Contract or successively acquired in parallel projects outside of the scope of this Contract ("Background IPRs") remain exclusive property of such Party and the other Party shall have no claim in relation to any such right. If the Provider uses its Background IPRs for the performance of this Contract, any Foreground IPRs belonging to Company shall be limited to the additional parts (generated by the Provider in performing the Contract on the basis of its Background IPRs) that do not, in any way, include or contain any of its Background IPRs.

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

11 TRANSFER TO THIRD PARTIES

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

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

11.3 Change of Control. Provider 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 Provider, 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.

12 FORCE MAJEURE

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

12.2 Excuse from Performance; Notice. If either Party is rendered wholly or partially unable to perform its obligations under this Contract because of a Force Majeure Event, that Party shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected. The Party impacted by the Force Majeure Event shall promptly give the other Party notice describing the particulars of the occurrence. In no event shall the notice be more than seven (7) days after the affected Party becomes aware of such occurrence. Within twenty (20) days after such occurrence, the non-performing Party shall give the other Party written notice estimating the expected duration and probable impact on the performance of such Party's obligations hereunder. The non-performing Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event. The non-performing Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party. As soon as the non-performing Party can resume performance of its obligations hereunder, that Party shall give the other Party written notice to that effect and shall promptly resume performance. If a Force Majeure Event exceeds sixty (60) days, or is reasonably anticipated by agreement of the Parties to exceed sixty (60) days, Company shall have the right to terminate this Contract upon giving Provider five (5) days written notice, and shall pay Provider in accordance with Section 15.3.



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

13 INDEMNITY

13.1 Provider's Indemnity. Provider 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 Contract, (b) damage to, loss, and/or destruction of property, including, without limitation, to property of Company or Provider arising out of or connected with the performance of the Contract, (c) Provider's or any of its Subcontractors' or Sub-Tier Suppliers' acts or omissions in breach of this Contract, or (d) Provider'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 willful misconduct of Company or its employees.

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

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

14 DISPUTE RESOLUTION

14.1 Dispute Process. Any dispute, controversy or claim arising out of or in connection with this Contract or any Purchase Order (a "Dispute"), including any question regarding its existence, validity or termination, which cannot be resolved by negotiation between the Parties within sixty (60) days of either Party giving notice to the other Party that a Dispute has arisen, shall be finally settled under the American Arbitration Association's Commercial Arbitration Rules 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 forty-five (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 American Arbitration Association.

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

Nothing in this clause shall be construed as preventing either Party from seeking temporary injunctive 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 exclusive jurisdiction of the State and Federal courts located in Boston, Massachusetts, and hereby waive any objection to such jurisdiction including without limitation objections by reason of lack of personal jurisdiction, improper venue, or inconvenient forum.

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

15 TERMINATION AND SUSPENSION

15.1 Termination for Convenience. Company may terminate or suspend any Purchase Order, in whole or in part, for its convenience upon notice to Provider. Enel may terminate the Agreement (together with its exhibits and Standard Terms and Conditions) for its convenience upon notice to Provider. If requested in writing within twenty (20) days after such notice of termination for convenience, Company shall pay Provider as full compensation for such termination any amounts identified on Exhibit D Section 4, less any amounts owed by Provider to Company as of such termination date. In the event a Purchase Order is terminated by Company for convenience pursuant to this Section 15.1, neither Party shall have any further obligations or liability with respect to such terminated Purchase Order except for performance of their obligations which are either expressly stated in this Contract to survive the termination. In the event the Agreement (together with its exhibits and Standard Terms and Conditions) is terminated by Company pursuant to this Section 15.1, unless Enel provides otherwise in its notice of termination, the terms of the Agreement (together with its exhibits and Standard Terms and Conditions) shall continue to control with respect to any Purchase Orders outstanding until such Purchase Orders are terminated or the Date of Acceptance occurs, which for the avoidance of doubt, is the date by which Company shall have executed the Final Acceptance Certificate and delivered it to Provider.



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

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

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

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

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

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

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

15.2.7 a Party fails to comply with its health, safety or environmental obligations under Section 2.8;

15.2.8 a Party fails to perform or observe in any material respect any provision of this Contract not otherwise addressed in sub-clauses 15.2.1 through 15.2.7, and such failure remains uncured for ten (10) days; *provided* that no such cure period shall apply to failures for which no cure or remedy is possible; or

15.2.9 if the applicable Purchase Order is made subject to a "Framework," or "Open" Agreement, a failure by a Party or an Affiliate of such Party to perform or observe in any material respect any provision of a Purchase Order entered into by Company or an Affiliate of Company, on the one hand, and Provider or an Affiliate of Provider, on the other hand, and made subject to the same Agreement.

15.3 Consequences of Termination. In the event of a termination of a Purchase Order prior to the completion of the Work, Company shall pay Provider for Work satisfactorily performed up to the effective date of the termination (at the Contract Rates); provided, however, that if the Contract Rate is a lump sum, Company shall pay Provider an amount proportionately based upon the price for Work satisfactorily completed, except to the extent any amounts owed are being contested or disputed in good faith by Company or for which Company is not otherwise obligated to pay under the terms hereof, and Company shall be relieved of any liability to Provider for any activity performed after the effective date of such termination. Upon such termination, and if the Work is being physically performed at one or multiple of Company's sites, Provider shall immediately secure the site where the Work is being performed in a safe and proper condition, remove personnel, equipment and property, if the site where the Work is being performed is owned or controlled by Company, and cease all charges to the terminated Purchase Order. To the extent requested, Provider shall assign and transfer to Company, at Provider's sole cost and expense, any Subcontracts or other contracts, agreements, rights, supplies, materials, equipment, records, book, and data of any kind whatsoever relates to the Work and owned or held for the benefit of Company. Notwithstanding termination of any Purchase Order, neither Party shall be relieved of any of its respective obligations and liabilities arising prior to the effective date of such termination.

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

16 CHANGE ORDERS

16.1 Provider Proposal for Change Order. If Provider is entitled to a Change Order pursuant to a Force Majeure Event (for Project Schedule only) Provider shall submit to Company a Change Order Request in accordance with Exhibit E4.

16.2 Company Right to Order a Change. Company shall have the right by written directive to order changes to a Purchase Order (each such written directive a "Change Order"). Change Orders shall be in the form set forth in Exhibit E5. Provider shall comply with all such Change Orders. Should Provider claim that the changes are of such a nature to increase or decrease the PO Total Amount then unless such Change Order includes an agreed upon adjustment to the PO Total Amount Provider shall submit to



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Company, in writing, within five (5) days of receipt of the Change Order, all claims for adjustment in the PO Total Amount. Provider shall not be entitled to a change in the PO Total Amount unless so authorized by Change Order.

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

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

16.5 Change Order Pricing

16.5.1 For all Change Orders that implicate a change to the PO Total Amount, the Parties shall first attempt to negotiate a mutually acceptable change to the PO Total Amount properly itemized and supported by sufficient substantiating data to permit evaluation.

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

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

17 RECORDS, DOCUMENTS AND AUDIT

17.1 Maintenance of Books and Records. Provider shall maintain books and accounts with respect to the Work and charges hereunder in accordance with generally accepted accounting principles and practices consistently applied, and, in any event, for a period of not less than five years after the Date of Acceptance. In addition, Provider shall maintain a system of internal accounting controls appropriate for its operation.

17.2 Audit. During normal business hours and upon 48 hour notice, Provider shall afford Company access to Provider's records, books, instructions, drawings, receipts, subcontracts, purchase orders, vouchers, and any other data relating to the Contract (including Work in-progress), the Ethics Flow-Down Provisions or Provider's security measures relative to Confidential Information.

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

17.4 Sustainability and Supply Chain Records. If Exhibit L is attached to this Contract, Provider shall maintain complete and accurate records of all of the items specified in such Exhibit L. Without limiting the foregoing sentence, Provider shall use commercially reasonable efforts to maintain complete and accurate records related to the source and supply chain of the goods, materials and services procured by Provider in connection with its performance of this Contract. During normal business hours and upon 48 hour notice, Provider shall, at Company's request, grant Company access to, and make available for inspection, audit or reproduction, (i) the records specified in Exhibit L (if applicable) and (ii) Provider's records regarding the source and supply chain of any goods, materials and services procured by Provider in connection with its performance of this Contract, including without limitation information available through its Subcontractors and/or Sub-Tier Suppliers. Provider shall use commercially reasonable efforts to enter into contracts with its Subcontractors and Sub-Tier Suppliers that contain terms which are substantially similar to the terms in this Section 17.4, so as to carry out the intent and accomplish the purpose of affording Company the right and ability to access information regarding the source and supply chain of the goods, materials or services procured, whether directly, or indirectly through any Subcontractors or Sub-Tier Suppliers, by Provider in connection with this Contract. Provider acknowledges and agrees that Company's exercise of its rights, or decision not to exercise any or all of its rights, under this Section 17.4 does not limit any of Provider's obligations or representations under this Contract.

18 INTERPRETATION

Except where otherwise expressly provided or unless the context otherwise necessarily requires: (a) reference to a given Applicable Law shall mean such Applicable Law in effect as amended or modified as of the date on which compliance is required; (b) "includes", "including" or any other variant thereof means "including, without limitation,;"; (c) the phrase "and/or" shall be deemed to mean the



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words both preceding and following such phrase, or either of them; and (d) any pronoun includes the corresponding masculine, feminine or neuter forms. The words “will” and “shall” are used interchangeably throughout this Contract; the use of either connotes a mandatory requirement; and the use of one or the other will not mean a different degree of right or obligation for either Party. The headings for the Articles and Sections contained in this Contract have been inserted for convenience only and form no part of this Contract and shall not be deemed to affect the meaning or construction of any of the covenants, agreements, conditions or terms of this Contract.

19 CURRENCY

All amounts referenced in this Contract are stated in U.S. Dollars. All payments required to be made by Company or Provider with respect to this Contract shall be made in U.S. Dollars.

20 INDEPENDENT CONTRACTOR

Provider shall act as an independent contractor and not as an agent, partner, joint venturer or employee of Company in performing this Contract, maintaining control over its employees and all activities performed and to be performed under the Contract. Except as may be otherwise expressly provided in this Contract, nothing contained in the Contract shall create any contractual relationship between any Provider's Subcontractors or suppliers and Company. Employees and agents of Provider shall in no event be considered employees, agents, partners or representative of Company.

21 SCHEDULES AND DELAYS

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

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

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

22 CONFIDENTIALITY

22.1 Use of Confidential Information, Generally. All Confidential Information can be used only for the purpose of executing the Contract 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 employees, Subcontractors and Sub-Tier Suppliers which must have the Confidential Information for the performance of the Contract and, in any event, may only disclose Confidential Information to Subcontractors and Sub-Tier Suppliers if such Subcontractors and Sub-Tier Suppliers agree to confidentiality obligations no less protective than those in this Contract. Further, Receiving Party is responsible for any act or omission on the part of its employees, Subcontractors or Sub-Tier Suppliers that leads to a disclosure of Confidential Information or use of Confidential Information for a purpose other than performance of this Contract.

22.2 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.

22.3 Management of Confidential Information; Strictly Confidential Information. Without limiting the generality of Sections 22.1 and 22.2 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



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confidential" by Company, such techniques and practices for managing and storing logical and physical data shall be expressly agreed with and authorized by Company. Once the Contract 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 Contract, 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 Contract 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 Contract pursuant to the foregoing sentence continues to be governed by the confidentiality protections of this Article 22 for so long as it is retained by Receiving Party.

22.4 Term of Restriction on Disclosure. The Receiving Party shall not disclose Confidential Information during the Term of this Contract (if the Contract 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 Article 22 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.

22.5 Remedies. Both Parties acknowledge and agree that monetary damages may not represent a sufficient remedy for the breach or threatened breach of this Article 22. 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 Article 22.

22.6 Return or Destruction. At any time, if the Disclosing Party so requires, the Receiving Party shall return or destroy and require that its Subcontractors and Sub-Tier Suppliers return or destroy all copies of the Confidential Information in its possession or that of its Subcontractors or Sub-Tier Suppliers. 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 Article 21 shall continue to apply with respect to such Confidential Information for so long as it is retained by Receiving Party.

22.7 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 Contract 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 Contract.

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

23 Cyber Security

23.1 The Provider can access Company or Enel's IT system only if authorized by Company or Enel. The Provider is responsible for the activities performed on Company or Enel's systems by using its digital identity, which Provider shall ensure is safeguarded. In performing such activities, the Provider 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 the Provider types the credentials to access IT devices or systems, in order to prevent theft of Provider'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;



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- 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.

24 MISCELLANEOUS

24.1 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 center 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, labor 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 24.1 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>.

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

24.3 Press Releases. The Parties (a) shall consult with each other before issuing any press release or otherwise making any public statements with respect to this Contract; and (b) shall not issue any such press release or make any such public statement without the prior written consent of the other Party. Further, Provider may not make use of Company or its Affiliates' trademarks, logo or distinctive signs and may not commercially exploit the fact that Provider is providing services to Company, without the prior written consent of Company.

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

24.5 Multifactor Authentication System. This Section 24.5 is applicable if at any time the performance of the Contract requires or involves the Provider 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 Provider 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. The Provider agrees that for the Provider 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 Provider who will access and/or use the Enel Systems on behalf of the Provider; and (iii) the Provider shall satisfy all of the foregoing requirements at its sole risk, cost and expense. The 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 Provider 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 Provider's employees, agents, Subcontractors, representatives or other Personnel.

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

24.7 Entire Contract. This Contract constitutes the entire agreement of the Parties with respect to the matters set forth herein and supersedes any and all prior and contemporaneous contracts, understanding, and agreements. Any amendments or additions to this Contract must be in writing and signed by the Parties hereto. This shall also apply to a waiver of the requirement for written form.



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

24.9 Notices. All notices made pursuant to this Contract shall be made in writing and shall be deemed to have been given (a) when received by the addressee if sent by nationally recognized overnight courier (receipt requested), (b) on the date which the addressee acknowledges receipt if sent via e-mail, or (c) on the third day after the date mailed if sent by certified or registered mail, return receipt requested postage prepaid. Such communications must be sent to the respective Parties at the addresses set forth in Exhibit H (or to such other address as a Party may specify in a notice given in accordance with this Section 24.8).

24.10 Language and system of measurement. Unless otherwise specified herein or agreed to by the Parties in writing, all communications, documents, technical information and technical data hereunder shall be in English language and in U.S. customary units.

24.11 Counterparts. This Contract may be signed in any number of counterparts and each counterpart shall represent a fully executed original as if signed by both Company and Provider, with all such counterparts together constituting but one and the same instrument. Electronic signatures, whether digital or encrypted, of the Parties included in this Contract are intended to authenticate this writing and to have the same force and effect as manual signatures.

24.12 Survival. The obligations imposed on Provider by the Articles of this Contract and Sections 3-7, 10, 13, 14, 17, 21.1, 24.2-24.3 and 24.5, shall survive cancellation or termination of this Contract and final payment for the Work.



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EXHIBIT E1 FORM OF PURCHASE ORDER



Purchase Order:

Date:

Contract Number

Ship to:

COMPANY NAME

PROVIDER:

Company (PROVIDER NAME)

COMPANY ADDRESS

USA

VAT ID # Tax ID #

Invoice to be sent to:

XXXXXXX

Payment Terms:

XXXXXXX

XXXXXXX

xxxxxxx

XXXXXXXXX

OBJECT:

Item	Code	Description	Un	Quantity	Price	Amount	Curr.
		24.13					

Contract Amount 0,000,000.00 USD:

Company
(Seal & Signature)

Provider Acceptance
(Seal & Signature)



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EXHIBIT E2 FORM OF TEST PROCEDURE AND INSPECTION PROTOCOLS



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EXHIBIT E3 FORM OF ACCEPTANCE CERTIFICATE

Reference is made to the Contract [insert Contract Title] #[insert Contract #] dated as of [insert Effective Date] (the "Effective Date") by and between the Company and the Provider. Capitalized terms used, but not defined, herein shall have the meanings set forth in the Contract.

The undersigned Provider hereby certifies and represents that all of the requirements to achieve Acceptance, as specified in Exhibit B Section 3 and in Section 6 of the Standard Terms and Conditions, have occurred as of the date set forth below.

Item	Description	Quantity	Unitary Measure	Unitary Price	Total Amount
1					
2					
3					
4					
5					
				TOTAL AMOUNT	

The person signing below is authorized to submit this form to Company for and on behalf of Provider.

DELIVERED BY:

By: _____

Date: _____

Name: _____

Title: _____

COMPANY ONLY

Company to check one of the following boxes:

- ☐ A. Company agrees that Acceptance has been achieved.
- ☐ B. Company does not agree that Acceptance has been achieved due to the missions or defects listed below and/ or the incomplete nature of the specified obligations listed below:

The list must provide all identified deficiencies (as of the Date in the RECEIVED BY section below) to be corrected in order to achieve Acceptance. Please attach supporting documentation (communication records, technical reports, drawings, etc.) as needed. All attachments must be listed here with unequivocal traceability – name, date, time, etc.

The person signing below is authorized to submit this form to Provider for and on behalf of Company.



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RECEIVED BY:

By: _____

Date: _____

Name: _____

Title: _____

SYSTEM RECEIPT (SAP) Service Entry Sheet (SES)# _____

Good Receipt (MIGO)# _____



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The undersigned agree to the following change to the Contract **[insert Contract Title]** # **[insert Contract #]** dated as of **[insert Effective Date]** (the "**Effective Date**") by and between the Company and the Provider. Terms used and not defined herein shall have the meanings set forth in the Contract. This change of Scope of Work, Contract Price and/or time requirements is considered an amendment to the Contract. Except as specifically described in this Change Order, nothing herein shall modify the obligations of the Parties set forth in the Contract and will constitute a full and complete settlement for the change(s), unless otherwise provided in the detailed description below.

CONTRACT PRICE CHANGE DETERMINATION (if applicable)
<p><i>Please specify whether the price is estimated based on quantities and a Time & Material basis, or fix and firm. Notwithstanding the pricing method, please specify the Not-to-Exceed (NTE) amount. Please attach supporting documentation if required.</i></p>

The original Contract Price is:	\$
Previously Issued Change Orders:	\$
This change in Contract Price is:	\$
The revised Contract Price (including this change) is:	\$

[insert ENEL ENTITY]

[insert PROVIDER "X"]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____



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EXHIBIT E5 FORM OF CHANGE ORDER REQUEST

SUBMITTED BY COMPANY <input type="checkbox"/>	SUBMITTED BY PROVIDER <input type="checkbox"/>
---	--

CHANGE ORDER TYPE	DESIGN REQUIREMENTS <input type="checkbox"/>	QUANTITIES <input type="checkbox"/>	OTHER <input type="checkbox"/>
	SCHEDULE <input type="checkbox"/>	SCOPE <input type="checkbox"/>	

DESCRIPTION AND REASON OF REQUEST
<p><i>Please attach supporting documentation (communication records, technical reports, drawings, etc.) with the reasoning for the request. All attachments must be listed here with unequivocal traceability – name, date, time, etc.</i></p>

REQUESTOR (submitter) NAME	TITLE	REQUEST SUBMITTED DATE

REVIEWER (receiver) NAME	TITLE	REQUEST RECEIVED DATE

REVIEWER RESPONSE AND RECOMMENDATION
<p><i>Please attach supporting documentation (communication records, technical reports, drawings, etc.) with the reasoning for the response and recommendation. All attachments must be listed here with unequivocal traceability – name, date, time, etc.</i></p>

COMPANY ONLY

REVIEWER NAME	TITLE	RECOMMENDS <input type="checkbox"/>	REJECTS <input type="checkbox"/>	DATE
MANAGER NAME	TITLE	RECOMMENDS <input type="checkbox"/>	REJECTS <input type="checkbox"/>	DATE

THIS FORM, ONCE FULLY APPROVED, MUST BE SUBMITTED TO PROCUREMENT FOR FINAL NEGOTIATION (if applicable) AND EXECUTION OF THE FORM OF CHANGE ORDER, EXHIBIT E4.



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EXHIBIT E6 FORM OF LIEN WAIVER

PROVIDER'S LIEN WAIVER AND RELEASE

[PROVIDER LETTERHEAD]

TO: [COMPANY]
[_____]
[_____]
Attention: [_____]

WHEREAS:

A. [Enel Entity] ("Company") and _____ ("Provider") have entered into that certain Agreement dated as of [_____] , 2019 (the "Agreement") pursuant to which Provider shall perform Work as described in the Agreement for Company's Project Site located in the State of _____.

B. Provider hereby delivers this Lien Waiver in order to satisfy Condition 3.4 of the Standard Conditions of the Agreement in relation to the Application for Payment No. _____ in the amount of US \$ _____ dated _____, 20__.

C. Unless otherwise defined herein, initially capitalized terms used in this Lien Waiver shall have meanings specified in the Agreement.

NOW THEREFORE:

1. Upon receipt by Provider of payment from Company in the amount of US\$ _____ or, if the payment is made by check, when the check has been properly endorsed and paid by the bank upon which it is drawn, this Lien Waiver shall become fully effective and Provider hereby irrevocably, waives, releases, discharges and relinquishes any right to any claim against the Company or the Project for labor, materials, equipment and services provided to or for the Project by or through _____, 20__ and any Lien, including, without limitation, any mechanic's lien, or any right against a labor and material bond relating to the Project, Provider has or may have relating to, on or against the Company or the Project or all or any part of the Project or the Project Site with respect to such payment, subject to paragraphs 2 and 3.

2. This Lien Waiver covers the progress payment as described in the Application for Payment referenced above for the performance of the Services under the Agreement. This Lien Waiver shall not otherwise affect the contract rights of the Parties to the Agreement.

3. Except as set forth in the attachment hereto, if any, all amounts due and payable in connection with the Agreement with respect to prior Applications for Payment have been paid in full by Company, except in relation to the amounts of US\$ _____ under Application for Payment No(s). _____, which Provider acknowledges that Company is withholding.

4. All debts or obligations of Provider to any third party relating to the materials, equipment, goods and services covered by this Lien Waiver have been paid or will be timely paid.

5. THIS LIEN WAIVER SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE LAWS OF THE STATE WHERE THE MATERIAL, EQUIPMENT AND/OR LABOR IS DELIVERED (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAWS).

IN WITNESS WHEREOF, Provider has executed and delivered this Lien Waiver this ____ day of _____, 20__.



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[Provider]

By: _____

Name: _____

Title: _____



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EXHIBIT E7 FORM OF SUBCONTRACTOR MOBILIZATION

Notification Date: _____

EGPNA Site Name/Location: _____

Prime Provider Company Name: _____

SUBCONTRACTOR INFO

Subcontractor Mobilization Date: _____

Subcontractor ISN Requirements Status (Select One): Meets / Does Not Meet

Subcontractor Company Name: _____

Contact Name and Title: _____

Phone Number: _____

Email Address: _____

Scope of Work to be completed by Subcontractor:

Number of Subcontractor employee's on-site _____

Subcontractor list of employee names (or attach list):



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[illegible]