



## General Contract Conditions Costa Rica

E-8<sup>th</sup> edition, valid as of 18/05/2022

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### 1 SCOPE.

- 1.1 These General Contract Conditions for Costa Rica (hereinafter, the "General Conditions") regulate the contractual relationship between the companies belonging to the ENEL Group (hereinafter "ENEL") and its Contractors (hereinafter the "Parties") regarding the acquisition of materials, equipment, works and services.
- 1.2 ENEL pursues a sustainable business model and places environmental, social and economic sustainability, together with innovation, at the center of its corporate culture, by implementing a development system based on the creation of value that is shared with all its internal and external stakeholders. ENEL pursues the achievement of the UN Sustainable Development Goals (SDGs), it has been a "Participant" member of the UN Global Compact since 2004 and, in 2020, it was confirmed as one of its LEAD companies, thanks to its adherence to the 10 founding principles on human rights, labor standards, environmental protection, and the fight against corruption.

ENEL is committed to boost social, economic and environmental sustainability, also through the contractual relationships with its Contractors.

The Contractor declares to know ENEL's principles on sustainable development, available at the following link <https://www.enel.com/company/our-commitment/sdg-onu>, and confirms to share the same purposes.

- 1.3 These General Conditions shall apply, without prejudice to any other agreement to the contrary, taking into account the order of precedence set out in clause "INTERPRETATION AND HIERARCHY".
- 1.4 The Contract (as defined below) shall specify the Website where these General Conditions may be consulted and ENEL shall send, upon request, an electronic/paper copy to those Contractors which cannot access the Website.
- 1.5 Any exception to these General Conditions proposed by the Contractor shall only be valid if made in writing and accepted by ENEL, and shall only apply to the relevant Contract, excluding any application thereof to any existing contract nor to any other future contract executed with the same Contractor.

### 2 DEFINITIONS.

The following definitions, among others, shall apply to this document:

- **Affiliate:** 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 holds fifty percent (50%) or more of any class of voting shares or other interests in the share capital of such person; or (c) holds fifty percent (50%) or more of any class of voting shares or other interests in the capital directly or indirectly beneficially owned or held by such person, or (d) either holds a general partnership interest in such person or such person holds a general partnership interest in the other person. For the purposes of this definition, the word "controls" means the possession, either direct or indirect, 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.
- **Completion Term:** period by which the Contractor undertakes to complete the Scope of Contract, as set forth therein.
- **Duration:** period of validity of the Contract set forth in the Agreement.
- **ENEL Group:** ENEL S.p.A. and its Affiliates.
- **Execution Date:** date on which the Contract enters in full force. Unless otherwise provided for in the Contract, such date corresponds to the date of signature by both Parties.
- **Final Acceptance:** acceptance by ENEL of the completion of the Scope of Contract, which takes place after any defects or deficiencies identified during commercial operations have been remedied.
- **Final Acceptance Date:** date when the Warranty Period ends upon Final Acceptance.
- **Governmental Authority:** any and all supranational, 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 tax authorities or any department, municipality or other political subdivision thereof.
- **Law:** all legislation, statutes, ordinances, codes, rules, orders, decrees, regulations, judgments, injunctions, permits, licenses, authorizations of any legally established Governmental Authority, as the same may be amended, modified or repealed, applicable to the Contract and in force in Costa Rica.
- **Provisional Acceptance:** conditional acceptance by ENEL of the delivery of the Scope of Contract, which shall be verified or confirmed under operational conditions within an agreed period. Such acceptance shall be given upon occurrence, or declaration by ENEL, of the last of the following conditions: (a) completion of the Scope of Contract, (b) no defects exist, (c) all defects have been remedied; (d) the activities under the Scope of Contract have been completed and accepted for commercial purposes, if applicable, and (e) the Contractor has delivered all required documents to ENEL.
- **Provisional Acceptance Date:** date when the Warranty Period starts based on the Provisional Acceptance.
- **Scope of Contract:** all materials, equipment, works and/or services defined in the Contract and/or in the Technical Specifications, which ENEL shall purchase from the Contractor under the Contract.
- **Subcontractor:** Person - including the relevant employees and representatives - who has executed a direct contract with the Contractor for the performance of part of the Scope of Contract relating to the provision of works and services.



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- **Subsupplier:** Person - including the relevant employees and representatives - who supplies to the Contractor, either directly or indirectly, in full or in part, the materials and/or equipment required for the performance of the Scope of Contract.
- **Third Party:** any Person other than a Party.
- **Shipping authorization:** document issued by ENEL, which entitles the Contractor to ship, in full or in part, the equipment or material covered by the Contract.
- **Dispatch Note:** document issued by the Contractor after completion of all the agreed procedures, informing ENEL that the equipment or material covered by the Contract has been shipped, in full or in part.
  
- **Agreed Quality:** agreement established between ENEL and the Contractor according to which the Contractor undertakes a certain liability on the acquisition and guarantees a quality level previously agreed between the Parties.
- **Contract:** set of contractual documents, as specified below, regulating, in writing, the rights and obligations of the Parties and the acquisition of materials or equipment and the performance of specific works or services.
  1. **Agreement (“Acuerdo Comercial”):** the document that includes the name and identification data of the Parties, specifies the scope and duration of the Contract and provides other specific economic, administrative and regulatory terms. Furthermore, this document lists and refers to all of documents that form the Contract.
  2. **Particular conditions:** document providing the specific terms regulating a Contract.
  3. **Technical-Economic documents:**
    - Technical Specifications:** document providing the technical requirements of the Contract.
    - Compensation or Price List:** document that provides the consideration to be paid for the specific services performed by the Contractor, which may be grouped by category.
    - Other additional documents:** other additional documents related to a specific Contract (e.g., description of the works and interventions; graphic and descriptive design print-outs; time schedule, etc.).
  4. **Health, Safety and Environment Terms, and Health, Safety and Environment Essential Terms** (hereinafter, “HSE Terms”): document governing the health, safety and environmental obligations of the Parties under the Contract. The HSE Terms are available on ENEL Global Procurement website.
  5. **General Conditions:** this document.
- **Final Acceptance Document:** document (such as a report) confirming final receipt and acceptance of the materials and equipment purchased, the works and services performed and the end of the Warranty Period.
- **Provisional Acceptance Document:** document (such as a report) which records:
  - 1) the successful outcome of the inspection and the activities related to a specific equipment or material received from ENEL; this document also records any necessary modifications or corrections of deficiencies detected during the inspection and/or testing, or
  - 2) the successful outcome of a works progress examination, the accurate performance or complete correction of the contractual service, as well as the compliance with technical standards and contractual clauses relating to the different phases of the activities under the Contract.
- **Electronic signature:** digital signature system which, where applicable and in accordance with the relevant laws of each country, allows the verification of the identity of the Parties to the same extent of a handwritten signature, and which certifies any communication sent by the signatory and the source and integrity of an electronic document or a set of electronic documents.
- **Economic guarantee:** a first demand financial guarantee that the Contractor provides to ENEL to guarantee the accurate fulfillment of all the contractual obligations and the payment of the damages suffered as a result of a breach by the Contractor of its obligations in accordance with the amounts and the terms set out in clause 19.
- **Taxes:** any taxes or in general any other charge determined and levied by the competent Authority or the laws regulating a specific Contract, in accordance with the applicable regulations.
- **Inspector:** person or entity appointed by ENEL who carries out the inspection functions at any stage of performance of the Contract.
- **Quality Control Plan:** document issued by the Contractor specifying the procedures, processes and resources that shall be used for the fulfillment of the contractual requirements.
- **Inspection Program:** document issued by the Contractor and approved by ENEL, specifying the different inspections, tests, trials or examinations to be performed.
- **Contractor:** natural or legal person (including groups) that executes with ENEL a contract for works, services and/or supplies.
- **ENEL Global Procurement Portal:** ENEL Portal accessible by the Contractors to operate with ENEL on-line.



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- **Preliminary Acceptance:** procedures providing for the performance of the required tests or trials of the material, in the presence of ENEL's technicians or of the relevant authorized person or entity, as well as of the facilities of the Contractor, of its subcontractors or of any other entity agreed between the Parties.
- **Acceptance by Protocol:** review of the required test protocols, previously carried out by the Contractor, by means of which ENEL's technicians or the relevant authorized person or entity, approve the shipment of materials, or otherwise evaluate the results of such protocols by the Preliminary Acceptance.
- **Quality Assurance System:** system establishing the requirements to be met by the Contractor for the effective and proper performance of the Contract.
- **Subcontract:** contract by which the Contractor entrusts the performance of part of the Scope of Contract to Subcontractors.
- **Warranty Period:** period of time during which the Contractor has to ensure the proper functioning of the goods or works, or that they are flawless and fit for their use.

### 3 LANGUAGE.

3.1 The language of these General Conditions is English.

3.2 Notwithstanding the foregoing, any amendment or complement to the Contract shall be made in writing.

### 4 EXECUTION.

4.1 The Contract shall be executed after its signature. By signing the Contract, including by electronic signature, the Contractor declares its full and unconditional acceptance of the same.

4.2 The Contract shall not be renewed automatically nor shall be subject to tacit extensions. Any additions and/or subsequent additional contractual terms, or deletions of contractual clauses provided in a given Contract, shall not amend the General Conditions and shall be limited to the Contract concerned.

4.3 As regards Contracts executed by ENEL with the Contractor for the benefit of two or more companies of the ENEL Group, the Contract shall be executed between the companies of the ENEL Group which actually receive the relevant service, work or supply and the Contractor or its Affiliates or associated companies or permanent establishments located in the same country of the relevant ENEL Group company.

### 5 INTERPRETATION AND HIERARCHY.

5.1 In the case of conflicts or incompatibilities among the contractual documents, priority and prevalence shall be determined according to the following order:

1. **Agreement;**
2. **Particular Conditions** (if any);
3. **Technical-economic documents** (Technical specifications, Compensation list or Price list, any additional documents);
4. **HSE Terms**
5. **General Conditions.**

5.2 In any case, should a conflict arise between the contractual documents and the mandatory provisions of Law regulating the Contract, the latter shall prevail.

5.3 Without prejudice to clause "GOVERNING LAW", should any doubts or conflicts arise on the interpretation of a Contract, they shall be amicably settled by the Parties, in accordance with the scope and purpose of the Contract and in compliance therewith.

5.4 A Party shall not be considered as waiving any right, power or claim arising from the Contract, unless such waiver is explicitly declared in writing to the other Party. The waiver of a right, power or claim shall not imply a waiver of any future right, power and claim, including if they are of the same nature.

5.5 Nothing in this Contract shall be construed as establishing a joint venture, a partnership or any other type of *de jure* or *de facto* business association or partnership between the Parties, nor any other type of joint venture or joint organization.

5.6 The Contract includes all the covenants and agreements agreed between the Parties. If any provision of the Contract becomes invalid, such invalidity shall not affect the remaining provisions, which may be applied without taking into account the invalid provision. The Parties, taking into account the scope of the Contract and by mutual agreement, shall seek to amend the invalid provision in such a way that it complies as much as possible with its original purpose. Caption and headings shall not limit, amend or modify the meaning of the Contract.

### 6 COMMUNICATIONS.

6.1 Any communications between the Parties shall be made in writing, at the addresses specified and according to the terms set forth in the Contract. The Parties undertake to promptly notify each other of any change of address and e-mail. In the case of a change of the addresses for notifications, the interested Party shall inform the other Party and such change shall be effective



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after forty-eight (48) hours from such notification. In the case of any failure to send such notification, communications shall be deemed effective if sent in the agreed manner to the addresses or e-mails referred to in the Contract.

6.2 The Parties may use electronic means to exchange documents relating to the Contract. Unless otherwise expressly specified in the Contract, electronic means may be used, provided that they allow the proper tracking of any communication.

6.3 The Contractor undertakes to comply with and promptly give effect to all the communications received from ENEL, without any further formalities.

## 7 ECONOMIC CONDITIONS.

### 7.1 Price.

7.1.1 The price of the Contract is the consideration agreed for the acquisition of materials and/or equipment and/or for the performance of works or services, that takes into account the total value of the Contract. The price of the Contract includes all the items required for the proper performance of the agreed contractual services and everything that has to be provided or performed by the Contractor, including all the required costs or expenses, except for the services and items that have been explicitly excluded and the taxes imposed by Law ("Contract Price").

7.1.2 Notwithstanding the changes of the Contract Price expressly provided for by the Contract, the Contractor represents that duly investigations were carried out and acknowledges each and all the conditions and circumstances that affect, or may affect, the Contract Price (including, without limitation, the nature and characteristics of the work to be performed; the location and the prevailing environmental, seismic and weather conditions of the site where the services and/or works shall be carried out; the presence of other contractors and subcontractors or other installations in such site; the soil and subsoil conditions; the topographic conditions; the local practices, the codes, and the existing locations and installations, where applicable; the general working conditions of the site where the services and/or works shall be carried out, as well as of other places and access routes; the surface conditions; rights and permits, etc.) and the Contractor acknowledges that the Contract Price has been deemed sufficient in accordance with such conditions and circumstances and hereby waives any right to claims for an increase in the Contract Price due to these conditions and circumstances.

7.1.3 All the prices shall be detailed in the Contract and, however, the Parties agree that:

- The Price includes all the services and/or works required for their performance, as well as the applicable taxes, the costs of economic guarantees, insurances and other guarantees.
- ENEL shall not pay for any material, equipment, work or service not included in the Contract if their execution has not been previously offered by the Contractor, in writing and expressly specifying the relevant price, and accepted, in writing, by a duly authorized ENEL's representative.
- The Contractor shall bear any additional freight, packing and delivery cost and other expenses due to a failure to comply with the delivery and shipping terms set out in the Contract, unless otherwise set out in the Contract.

### 7.2 Modification of prices.

7.2.1 Prices are fixed and firm. Any modification of the price may only be made if provided for by the Contract or required by the Law.

7.2.2 In the latter case, it shall be proven: (i) that the modification is due to a change in the legal system or a material change in the working conditions, occurred after the signature of the Contract, causing an unfair enrichment of one of the Parties, (ii) that the change is due to extraordinary and unpredictable events, not attributable to the Parties, which create a hardship in relation to the agreed service and makes its performance unduly burdensome or disastrous, (iii) that this situation was not foreseeable upon execution of the Contract, also for an experienced Contractor. The changes in the tax or social security legislation shall not constitute grounds for the application of this clause and, thus, no price change shall be allowed.

7.2.3 The Party invoking the modification may request to the other Party a review of the contractual terms, within fifteen (15) working days from receipt of the relevant notification, and for this purpose one of the events specified above shall be proven in writing. If the other Party deems that no Price adjustment is required, it shall inform the Party invoking the modification and the Contract shall keep its normal course of action, but the Party invoking the modification may activate the dispute settlement procedure in accordance with the contractual provisions.

### 7.3 Invoicing.

7.3.1 Before issuing an invoice, the Contractor shall require ENEL's express written authorization, which shall not be unreasonably withheld or delayed.

7.3.2 Invoices shall be valid and accepted by ENEL if they include all the information specified in the Contract and by the Law, and provided that the contractual activities have been properly performed. Invoices shall not contain any erasure or amendment. Any invoice not specifying the relevant Contract number shall not be accepted nor taken into account for the determination of the date of receipt.

7.3.3 With reference to clause 4.3, in the event that the Scope of Contract is performed by an Affiliate or an associated company or a permanent establishment of the Contractor in the country where the ENEL Group companies are established, invoices shall be issued by such Affiliate, associated company or permanent establishment.

7.3.4 Unless otherwise set out in the Contract, invoices shall be issued in the currency specified in the Contract. If the Contract allows for invoices in multiple currencies, each invoice shall be issued in just one currency. In the event that the Contract allows for invoices in a currency different from the Contract currency, to convert the amount of the invoice from the Contract currency to the different currency the exchange rate applicable as at the Execution Date shall apply.



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7.3.5 ENEL reserves the right to reject any invoices which do not comply with the provisions of this section. In the case of rejection, ENEL shall specify the reasons thereof. The original date of receipt of a rejected invoice shall not be considered valid for payment purposes.

7.3.6 ENEL may challenge any item of the Contractor's invoice and/or statement of account, for causes other than those specified above, and in this regard ENEL may request clarifications on the invoice and/or statement of account and the following shall apply:

- a) ENEL shall send a written clarification notice to the Contractor within ten (10) working days after invoice submission, specifying in such document the disputed amount and the relevant grounds for denying the payment.
- b) The Contractor shall reply to ENEL within ten (10) working days after the clarification notice referred to above and, where required, the Contractor undertakes to take all appropriate measures and make any reasonable efforts to collect the information required to provide the clarification requested by ENEL.
- c) If according to the Contractor the grounds specified by ENEL for denying the payment are justified, the Contractor, within five (5) working days from the receipt of the clarification notice, shall re-issue the invoice and/or statement of account with the relevant adjustments, and the payment period shall restart from the date of receipt of the new invoice.
- d) If according to the Contractor the grounds specified by ENEL for denying payment are not justified, the Contractor shall inform ENEL in writing thereof within five (5) working days after receipt of the clarification notice, specifying the reasons for rejecting ENEL's request.
- e) If ENEL agrees with the rejection specified in paragraph d) above, ENEL shall make the payment in accordance with the terms of this clause. Otherwise, ENEL shall inform the Contractor, so that such request may be submitted immediately on the next working day and settled by the representatives of the Parties, or their designees.
- f) The representatives of the Parties, or their designees, shall be informed within ten (10) working days following its submission, of the grounds for the clarification request and they shall make their best effort to reach an agreement upon the terms for the settlement of this clarification, and where no agreement may be reached, the discrepancies shall be settled in accordance with the terms set out in the Contract, and the Parties shall be entitled to require their fulfillment.

7.3.7 All invoices shall be submitted to ENEL through ENEL's systems, that ensure data integrity as well as the unambiguous attribution of the document to the issuer.

7.3.8 In the event that ENEL Global Procurement Portal is not available or the Law does not allow electronic invoicing, invoices shall be delivered to ENEL in hard copy (original) at the address specified in the Agreement.

7.3.9 ENEL may dispute, in good faith, the accuracy of any invoice or adjustment to an invoice, issued under the Contract for any arithmetic or computational error within twelve (12) days from the date from the issue of such invoice, or adjustment to an invoice. If ENEL challenges an invoice, in full or in part, or in the case of other claims or adjustments arising under the Contract, the payment of the undisputed part of the invoice shall be made on its due date, and the Contractor shall be notified of the objection. Any invoice dispute or invoice adjustment shall be made in writing and shall specify the reason for the dispute or adjustment. In this case, the Contractor shall re-issue the invoices and submit the additional documents with the relevant adjustments.

7.3.10 The Parties shall keep full and accurate copies of the billing records, including data collected, documents and presentations, as well as all the invoices and the statements of account.

7.3.11 In the case of rejection of invoices, ENEL shall specify the reasons thereof. The rejection of an invoice shall not affect the original date of receipt. Except as otherwise set out in the Contract, all invoices and, where applicable, the supporting documentation, shall be sent to the addresses specified in the Contract.

### 7.4 Payment conditions.

7.4.1 ENEL shall pay the invoices by bank transfer on the account specified by the Contractor in the Contract, within thirty (30) working days from the receipt by ENEL of: i) the invoice, ii) the supporting documents of the invoice, where required, and iii) provided that the invoices are not subject to clarification notices and/or iv) that any dispute in relation thereto has been settled. In the case of foreign payments, the charges for the bank transfer shall be borne by the Contractor.

7.4.2 All payments made before the Provisional Acceptance, in accordance with the provisions of the Contract, shall be construed as advance payments on the final price. If no performance guarantee has been provided, the Contractor, simultaneously with each of the possible payments, shall deliver to ENEL an economic guarantee, complying with the requirements of the Contract, guaranteeing such payments.

7.4.3 To this end, the Contractor undertakes to notify its full bank details to ENEL. The Contractor shall promptly inform ENEL of any change to its fiscal or general details (such as: VAT Number/Tax ID, address, business name, etc.) and any change to its ownership/corporate structure. Failure to communicate the information referred to above may result in the suspension of payments of the invoices containing outdated data.

7.4.4 Exceptionally, ENEL may accept other legitimate and valid means of payment, in accordance with the Law.

7.4.5 The payment of the invoiced price shall not imply that ENEL has acknowledged the proper performance of the Contract by the Contractor or that ENEL has waived its rights and claims against the Contractor, expressly reserving the right to enforce them, without prejudice to any payment made.

7.4.6 ENEL may, in compliance with the Law and with the terms and conditions set out in the Contract, withhold and suspend payments due to the Contractor, even if they are due and payable.





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7.4.7 In the event of a delayed payment by ENEL, if such delay is imputable to ENEL, default interests shall be payable to the Contractor in accordance with the contractual and legal provisions.

### 7.5 Payments Deferment.

7.5.1 Without prejudice to the provisions of clause 7.4, "PAYMENT CONDITIONS", ENEL reserves the right to propose a deferment of the payment terms to the Contractor. The Contractor shall have the right to accept or refuse the abovementioned deferment proposal.

7.5.2 If the Parties agree to defer the payment terms:

- Unless otherwise provided for by the General Conditions, the new payment terms and conditions agreed between the Parties and specified in the Contract shall apply;
- ENEL shall pay to the Contractor a deferral charge, calculated on the basis of the reference market interest rate (e.g. US Libor, Euribor) recorded on the day of issue of the relevant invoice, plus a spread for the period between the original due date set out in the General Conditions and the agreed deferred due date.

7.5.3 Deferral charges, determined as above, shall be paid by ENEL together with the amount of the relevant deferred invoice. It is understood that in the event of a delayed payment in respect of the agreed deferred due date, ENEL shall pay the default interests set out in the General Conditions.

## 8 TAXES.

8.1 While paying Contractors for the goods, works, services received, ENEL shall apply a withholding in accordance with tax and social security contributions legislation (with fiscal effect) applicable in the Contractor's country of residence and/or pursuant to any other law applicable to the Contract.

8.2 The Parties mutually undertake to fulfill all the obligations, deal with all the formalities and provide all the documents required for the correct settlement of taxes, including withholdings and other obligations applicable to the Contractor, in compliance with the procedures set out by the Law. Likewise, the Parties undertake to cooperate in order to obtain any exemptions or other tax benefits applicable to the Contract. If, due to a lack of diligence or any other cause imputable to the Contractor, ENEL loses its entitlement to a tax benefit, ENEL may deduct the amount of such tax benefit from the amount due to the Contractor.

8.3 Should any treaty between the Contractor's country of residence and the country of residence of the ENEL Group companies be in force for the avoidance of double taxation, and the Contractor claims the application of the provisions of such treaty, the Contractor shall provide its certificate of tax residence (or any other declaration, statement or certificate required for the application of the treaty against double taxation) to ENEL, in order to assess the nature of the income according to the treaty against double taxation. The Contractor shall consider the current interpretation of the country where the ENEL Group companies are located. This certificate is originally valid for one year, unless the laws of the country where the ENEL Group companies are located establishes a shorter period. In any case, upon expiry of each certificate, the Contractor shall provide another valid certificate.

8.4 If ENEL applies any deduction to the payments due to the Contractor, and upon the Contractor's request, ENEL shall issue a document certifying the deductions applied, as well as the amounts paid and the amounts withheld.

8.5 If materials or equipment are sent from abroad, taxes shall be paid as follows:

- a) The Contractor shall pay all taxes and charges applicable to goods in the country of origin, as well as those applicable in the countries through which said goods have transited until final delivery, plus all the taxes charged in the country of destination which are payable as a consequence of the economic benefits resulting from their sale.
- b) The Contractor shall also pay import duties and taxes, or their equivalent in the country of destination, as well as other official customs charges on the imported materials and/or equipment, unless otherwise agreed with ENEL.

8.6 Taxes on national materials or equipment shall be paid either by ENEL or the Contractor, according to the provisions of the applicable law.

## 9 PERFORMANCE.

### 9.1 Introduction.

9.1.1 ENEL reserves the right to verify and monitor the Contractor's proper performance of all obligations under the Contract and of all the instructions given by ENEL, as well as the Contractor's proper and correct performance of all the activities required for the proper execution of the Contract in accordance with the terms and conditions set forth by the Contract.

9.1.2 ENEL undertakes to provide, upon the Contractor's request, all necessary information for the performance of the contractual activities. If ENEL provides inadequate or incomplete data, the Contractor undertakes to point out any missing information to be integrated by ENEL.

9.1.3 Where required by the Contract, the Contractor shall appoint and maintain throughout the performance of the contractual activities one or more representatives fully empowered to discuss technical and economic matters, with particular reference to occupational health and safety, work-related social obligations and respect for the environment.

9.1.4 ENEL reserves the right, during the performance of the Contract, to refuse such representative(s) with just cause. In such a case, the Contractor shall replace the representatives within ten (10) working days, except as otherwise provided for by the Contract.

9.1.5 Without prejudice to ENEL's right to terminate the Contract, if as a result of the tests and inspections carried out, ENEL assesses, by any means and at its own discretion, that the Contractor failed to perform to any extent the subject of the Contract (including errors or

inaccuracies), the Contractor shall remedy at its own expenses such breach, without affecting the dates established in the Contract in any way whatsoever.

#### **9.2 Inspection, tests and /or verification (checks)**

9.2.1 The Contractor shall, at any time throughout the Duration of the Contract and subject to reasonable advance notice, grant access to ENEL's personnel and/or the personnel of other Third Parties appointed by ENEL for this purpose (excluding the Contractor's competitors) to its premises and warehouses, and shall ensure that its Subcontractors and Subsuppliers do the same, in order to verify the performance of the Scope of Contract, including the manufacturing and test phases, as well as the progress of the activities.

9.2.2 In carrying out the aforesaid inspections/tests, ENEL and/or Third Parties' personnel shall comply with the relevant facility policies and the Contractor shall be authorized to restrict ENEL's access to its intellectual property and/or confidential information, expressly classified as such in the Contract, provided that the Contractor shall always grant ENEL access to all the information required to properly perform the inspections/checks/controls.

9.2.3 At its own discretion, ENEL shall have the right to carry out any additional inspections/tests to those agreed in the Contract. If the results of inspections/tests are successful, the relevant costs shall be borne by ENEL; if the results are unsuccessful, the costs of these inspections/tests shall be borne by the Contractor.

9.2.4 As an alternative to the physical access to premises and warehouses, upon ENEL's request, the Contractor and its Subcontractors shall enable and facilitate the performance of remote inspections/tests. The Contractor, or its Subcontractors, shall make available the connection system (e.g., video conference, smart glasses, web cam, etc.) and enable the video streaming of the inspections/tests, as well as the documents review and the interaction among local and remote attendees.

9.2.5 Without prejudice to ENEL's right to inspection, the Contractor shall carry out, on its own, all the inspections/tests required by the Contract and/or by the Law and the technical standards. The Contractor shall notify in writing to ENEL the date of such inspections/tests, at least fifteen (15) working days in advance, to allow ENEL and/or Third Parties to attend them. Regardless of the attendance by ENEL's personnel and/or Third Parties, the Contractor shall notify to ENEL the results of the inspections/tests and shall record these results in the relevant certificates or protocols.

9.2.6 ENEL shall receive the component type certificates before the start of manufacturing. If the type certificates are not available before the start of manufacturing, the Contractor shall submit to ENEL a detailed schedule of activities aimed to obtain the relevant certificate, provided that in any case, the final document shall be submitted to ENEL no later than the component delivery. ENEL reserves the right to attend any step of the certification process.

9.2.7 The component type certificate shall comply with technical specifications; in the case of any deviation, the type certificate shall be updated accordingly.

9.2.8 The Contractor may not start or stop any manufacturing, construction or assembly stage, nor ship materials, before the inspections and tests have been successfully completed, if preventive inspections and tests are required, or before ENEL provides its express consent in writing, or in the event that ENEL does not provide any indications to the contrary within ten (10) days after the Contractor has notified the performance of the inspections and tests. Notwithstanding the foregoing, where set out by the relevant Contracts, the inspections or tests shall be carried out in line with the Inspection Point Program prepared by the Contractor and accepted by ENEL.

9.2.9 Successful results of any of any inspection, test or check, does not automatically imply the Contractor's proper fulfillment of the requirements, nor its approval by ENEL, and does not relieve the Contractor from any liability.

9.2.10 Failure by ENEL to file a claim in relation to the performance of the contractual services, including after completion of the aforementioned inspection and control activities, shall not be construed as a limitation of the Contractor's liability in the case of any breach of the contractual obligations, including if such breach is assessed at a later stage.

9.2.11 If the results of the inspections, tests or checks carried out show any breach of the provisions of the Contract, ENEL may request the replacement or restoration of the defective equipment or works, at the Contractor's expenses and no cost arising therefrom shall be borne by ENEL. If ENEL requires the replacement of materials, these shall be properly identified and the Contractor may not use them for the performance of the contractual activities.

9.2.12 The duration and the conditions under which the inspections, tests and trials shall be carried out may not be invoked by the Contractor as a reason or justification for deferring the delivery date set forth in the Contract, except if the delay in their performance is solely due to ENEL and such delay is not covered by the provisions of the Contract.

#### **9.2.13 Quality Control.**

9.2.13.1 In the performance of the Contract, the Contractor guarantees that the quality of the goods, services and works covered by the Contract is fully consistent with the purpose pursued by the Parties upon the signing of the Contract. The Contractor guarantees in the performance of the Contract the fulfillment of the quality requirements specified in the technical documents forming an integral part of the Contract and the Contractor shall be liable for maintaining commercially acceptable quality control standards in the manufacturing of a product or in the performance of the service or work, including the production standards required by any local government agency and good manufacturing practices.

9.2.13.2 Quality control includes all the actions, activities and procedures required to provide a reasonable confidence that the contractual material, equipment, work or service shall properly comply with the terms required by ENEL and, where applicable, with the relevant technical standards.

9.2.13.3 The Contractor shall be solely responsible for quality control, regardless of the controls and inspections directly or indirectly performed or required by ENEL. These tests shall not relieve the Contractor from its full liability.



9.2.13.4 Before starting the manufacturing process, or the performance of the contractual work or service, the Contractor, upon ENEL's request, shall submit a Quality Control Plan to ENEL for approval.

9.2.13.5 After receipt of such Quality Control Plan, ENEL may raise objections, on justified grounds, in relation thereto within fifteen (15) working days from its date of submission to ENEL, and the Contractor shall duly modify the plan, making the required amendments in accordance with the objections raised by ENEL.

9.2.13.6 During the performance of the Contract, the Contractor shall strictly comply with the provisions of its Quality Assurance System and Quality Control Plan approved by ENEL, which reserves the right to carry out the required audits to verify their fulfillment.

9.2.13.7 Upon completion of the performance of the Contract, the Contractor shall submit for approval to ENEL a Quality Control final report, whose contents shall comply with the provisions of the Contract and of the Quality Control Plan approved.

9.2.13.8 The fulfillment of these quality control standards shall not relieve the Contractor, under any circumstances, from its liability for improper performance of the Contract.

### 9.3 **Delivery and acceptance.**

#### 9.3.1 **Introduction.**

9.3.1.1 Deliveries, including partial deliveries, shall be made in accordance with the dates or deadlines set out in the Contract.

9.3.1.2 If the Contract does not specify a completion date and only the period of performance or delivery are set out, such period shall be effective from one of the following dates, whichever comes first: (i) date of the Order to Proceed, (ii) starting date of the performance of the Contract or (iii) execution date of the Contract.

9.3.1.3 The delivery date or the Completion Term may not be deferred or extended, except for reasons attributable to ENEL or as a result of a Force Majeure Event, in accordance with clause 17 (Force Majeure).

9.3.1.4 The advance of the Completion Term or a reduction of the period of performance or delivery shall only be allowed with ENEL's express consent. ENEL's consent shall not imply the payment in advance, in full or in part, of the price.

9.3.1.5 Without prejudice to clause 9.3.2, the Contractor shall timely communicate to ENEL the actual, partial or full, delivery date of the Scope of Contract and request the Provisional Acceptance. Alternatively, the Contractor shall notify any situation which caused, or may cause, a delay in the delivery dates or terms set out in the Contract. If a delay is expected, the Contractor shall specify the new expected delivery date, which shall be subsequently confirmed by specific notice to ENEL.

9.3.1.6 Upon the Contractor's request, ENEL shall inform the Contractor of the Provisional Acceptance Date, which shall take place within thirty (30) calendar days from the request. On the Provisional Acceptance Date, ENEL shall meet the Contractor's Representative in order to verify the compliance of the delivery with the contractual requirements ("Provisional Acceptance Meeting").

9.3.1.7 The Contractor undertakes to implement, at its own expenses, any reasonable means to recover, to the extent possible, any delay on the agreed dates or deadlines, including if the delay is justified, if and to the extent that such delay is not attributable to ENEL.

9.3.1.8 Under no circumstances, including in the case of pending dispute resolution, the Contractor may suspend or willingly delay the delivery of the services under the Scope of Contract. In the event of any breach of such obligation, ENEL reserves the right to terminate the Contract, without prejudice to its full right to compensation for any damages suffered.

#### 9.3.2 **Materials and/or equipment.**

9.3.2.1 Unless otherwise set out in the following clauses, the delivery of materials and equipment shall be made in accordance with the Incoterms. The delivery of materials and equipment shall be made at the location specified in the Contract and in accordance with the Incoterms established by the Contract.

9.3.2.2 The Contractor shall handle the customs procedure or, if agreed under the Contract, provide ENEL with the documentation required for the customs clearance of the materials and equipment in accordance with the Contract.

Transport to destination and unloading shall take place under the Contractor's full responsibility and in compliance with the clause "INSURANCE". If required by the type of material, the Contractor shall obtain from the competent authorities any transit permits, licenses, authorizations or police protection in order to transport the materials and the Contractor shall bear all costs related to any work this may entail, such as: transit deviations, bridge buttresses, signs, etc.

9.3.2.3 ENEL reserves the right to postpone any shipment or dispatch of materials or equipment, without prejudice to the fact that the delivery date shall be considered as fulfilled, and the Contractor shall bear all the storage and insurance costs arising therefrom for the month after the agreed delivery date. If the deferment of the shipment is extended for a longer period, the Parties shall mutually agree the compensation due to the Contractor for the additional storage and insurance costs incurred.

9.3.2.4 All materials and equipment delivered shall be properly identified and accompanied by suitable information and labels in order to facilitate their acceptance at destination, as well as accompanied by a delivery note specifying the information set out in the Contract.

9.3.2.5 The receipt document shall specify the successful results of the inspections and tests or, alternatively, the corrective measures adopted to remedy any defects identified.

9.3.2.6 With each delivery, the Contractor shall send all the final technical documentation and the test protocols certifying that the services, works, equipment or materials comply with the provisions set out in the Specifications, the Contract and, where applicable, the relevant technical standards.



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9.3.2.7 The Contractor, in addition to the aforesaid documents, shall certify, if required by ENEL, that the design, the raw materials and the make and type of the components are the same as those used in the approval stage.

9.3.2.8 To perform the delivery, the Contractor shall send to ENEL, to the attention of the contact person or of the acceptance manager specified in the Contract, within twenty-four (24) hours after the shipment, the Dispatch Note, indicating at least the following information therein:

- a. Contract reference number.
- b. Number of packages shipped, specifying their content. If this is the last delivery of the packages contracted, this shall be clearly specified.
- c. Information on the means of transport and/or transport company used, including the phone number of the contact person.
- d. Date and place of making the equipment or materials available to ENEL.

9.3.2.9 Furthermore, the Contractor undertakes to promptly inform ENEL of any situation which may modify the agreed delivery terms.

9.3.2.10 In the case of materials or equipment subject to quality control, and unless otherwise agreed, the Contractor shall not dispatch them until ENEL issues the mandatory Shipping Authorization after the Acceptance by Protocol or the Preliminary Acceptance. These requirements shall not apply to those supplies subject to an Agreed Quality scheme. If the Contractor dispatches the materials or equipment before receiving the relevant Shipping Authorization, all the expenses arising therefrom shall be borne by the Contractor.

9.3.2.11 When tests or trials and final examinations are not required, the delivery by the Contractor of the materials and equipment shall be formalized with ENEL's approval upon their receipt.

9.3.2.12 Upon completion of the performance of the Contract, the Contractor shall submit for approval to ENEL a quality control final report, whose contents shall comply with the provisions of the Contract and of the Quality Control Plan approved.

9.3.2.13 The signature of receipt documents, transport documents or shipping receipts shall not affect the acceptance of the amounts or quality specified for the materials received.

### 9.3.3 Works and/or services

9.3.3.1 During the Provisional Acceptance Meeting, ENEL shall start drafting a Provisional Acceptance Document, reporting the information on the delivery and any intention to carry out specific tests to assess the good conditions of the delivery.

9.3.3.2 The absence of the Contractor's Representatives shall be considered equivalent to the full acceptance of the contents of the Provisional Acceptance Document.

9.3.3.3 The tests may be carried out on the same date of the Provisional Acceptance Meeting or thereafter; in this last case a new Provisional Acceptance Meeting shall be called by ENEL. After completion, the outcomes of such tests shall be included in the Provisional Acceptance Document.

9.3.3.4 Provisional Acceptance is intended to be completed when the outcomes of the tests are satisfactory to ENEL.

9.3.3.5 If the outcomes of the tests are not satisfactory, ENEL may point out in the Provisional Acceptance Document the defects identified and establish a mandatory term for the Contractor to remedy such defects. Once this period has expired, additional checks shall be carried out, and their results shall be reported in the Provisional Acceptance Document. In the case of satisfactory outcomes, the Provisional Acceptance is intended to be completed, otherwise ENEL has the right to terminate the Contract in accordance with clause 16.

9.3.3.6 The term granted to the Contractor to remedy the faults detected shall not be construed as an extension of the contractual terms and, therefore, the Contractor shall be liable pay the penalties and/or compensations arising from any damage or loss.

9.3.3.7 The Contractor shall inform ENEL well in advance of the completion date of the works, in order to determine the date and time for the formalization of the completion of the work. ENEL shall reply as soon as possible, and in any case within 30 days from the receipt of such notification. On the date mutually agreed by the Parties for the formalization of the completion of the works, the conditions of the works or services shall be examined in the Provisional Acceptance Document, in the presence of the Contractor's representative to assess their compliance with the contractual requirements.

9.3.3.8 If the Contractor disagrees on certain technical or financial aspects, these shall be specified in the Provisional Acceptance Document drawn up by ENEL, detailing the reasons for this disagreement. Any disagreements shall be settled according to the terms of the Contract.

9.3.3.9 During the Final Acceptance Meeting, ENEL shall draft a Final Acceptance Document certifying the full compliance of the delivery with the Contractor's requirements, after the relevant check during commercial operations. The absence of the Contractor's Representatives shall be considered equivalent to the acceptance of the contents of the Final Acceptance Document.

9.3.3.10 If the Contractor disagrees on certain technical or financial aspects pointed out by ENEL during the Final Acceptance Meeting, they shall be reported in the Final Acceptance Document, specifying the reasons for this disagreement. Any disagreements shall be settled in accordance with clause 31 (JURISDICTION). If the Contractor intends to express its disagreement on some technical or economic issues, these shall be reported in the document drafted by ENEL, including the reasons for such disagreement.

9.3.3.11 The Contractor may request an extension of the cure period agreed by ENEL, notwithstanding that ENEL shall be entitled to deny such extension.

9.3.3.12 After the expiry of the Warranty Period, the Contractor shall notify to ENEL the expiry of such period, requesting the issue of the Final Acceptance Document. Upon receipt of the request, ENEL shall notify to the Contractor the date established for the final acceptance, which shall occur within thirty (30) calendar days from the receipt of the notification by ENEL.

9.3.3.13 The works or services contracted shall be entirely managed by the Contractor.

9.3.3.14 The Contractor shall obtain and deliver to ENEL the documents certifying the satisfactory completion of the works before the Governmental Authorities, according to the nature of the Contract.

#### **9.4 Changes of the contractual terms.**

The activities under the Contract shall be carried out in accordance with the terms set out by the Contract. Any change to the contractual terms shall be agreed in writing by ENEL and the Contractor. Any modification of the contractual terms shall be made by attaching an annex to the Contract. The annexes shall be numbered consecutively. Each annex shall expressly specify the clause(s) modified and the new wording agreed by the Parties.

#### **9.5 Transfer of Ownership and Risk.**

##### **9.5.1 Materials and/or equipment.**

9.5.1.1 Unless otherwise agreed in the Contract the materials, properly packed in accordance with the Contract, shall be deemed to all intents and purposes to be the property of ENEL upon receipt by ENEL at the location and under the agreed conditions and/or at ENEL's warehouses, offices and/or plants. The Parties agree that, except in the cases referred to above, the unloading shall be carried out under the Contractor's responsibility and at its expenses.

9.5.1.2 Notwithstanding the foregoing, the Contractor authorizes ENEL to take possession of the materials and equipment, in full or in part, as soon as they become part of a work or are placed an installation owned by ENEL, and to use them in ENEL'S works, installations or other works and to incorporate them into ENEL's works or installations, except if such authorization is limited to ENEL for justified reasons. Where such authorization is given, ENEL may use or include the materials and equipment in its development processes and may make use of the results of these processes. In any case the Contractor, until the transfer of the risks to ENEL, shall maintain an insurance in place with adequate coverage for the materials and equipment, even if they are already in the possession of and used by ENEL.

9.5.1.3 The Contractor shall be liable for any hidden or manufacturing defect, including during the Warranty Period and until the term set out by the applicable legislation, if longer, in addition to any other legal liabilities or liabilities of other nature which may arise therefrom.

##### **9.5.2 Works.**

9.5.2.1 The outcome of the contractual works shall be the property of ENEL upon execution of the Provisional Acceptance Document.

9.5.2.2 Without prejudice to the rights of the State or third parties, ENEL reserves the possession and ownership of all discoveries made during excavations and demolitions carried out on its own land, as well as of all usable mineral substances. In such a case, the Contractor shall take all necessary measures or those specified by ENEL. ENEL shall pay the Contractor for any additional activities and/or special costs arising from these works, granting an extension of the period of performance, if required.

9.5.2.3 Without prejudice the provisions of the clauses above, ENEL reserves the right, at any time, to require the Contractor, who shall be bound to comply with such request, unless there is a justified reason to the contrary, to transfer the ownership of the works, installations, materials and equipment existing on the worksite.

9.5.2.4 The Contractor shall be liable for any hidden or manufacturing defect, including during the Warranty Period and until the term set out by the applicable legislation, if longer, in addition to any other legal liabilities or liabilities of other nature which may arise therefrom.

9.5.2.5 In this case, the Contractor may continue to carry out its activities and shall maintain its liability for installation risks until the Final Acceptance Document is completed.

9.5.2.6 In any case, until the transfer of ownership to ENEL is formalized, the Contractor shall maintain an insurance with adequate coverage, even if the materials, as well as any other results of the contractual works, are already in the possession of and used by ENEL.

#### **9.6 Bonus**

9.6.1 ENEL reserves the right to request, at any time, the Contractor to anticipate the delivery of whole or part of the Scope of Contract, by sending a specific written request. In exchange of such anticipation ENEL may be ready to recognize to the Contractor an economic bonus ("Bonus"). The Contractor will communicate in writing its eventual acceptance of the new deadline requested by ENEL.

9.6.2 It is understood that ENEL's request to anticipate does not produce an automatic recognition of the economic bonus, including if specifically accepted by the Contractor. The recognition of the economic bonus, to the extent specified in the Contract, shall be subject to the Contractor's fulfillment of the new delivery date/Completion Term and to the full performance of its legal and contractual obligations, in particular those relating to occupational health and safety. No economic bonus shall be recognized to the Contractor if ENEL has applied penalties for any failure to comply with its contractual obligations by the Contractor.

#### **9.7 Records and Audits.**

9.7.1 The Contractor shall keep the books and accounts relating to the Scope of Contract in accordance with the generally accepted accounting principles applied consistently. Furthermore, the Contractor shall keep an internal auditing control system suitable for its operations. During the normal working hours and with a forty-eight (48) hours' notice, the Contractor shall grant ENEL the access to the

records, books, instructions, drawings, receipts, Subcontracts, purchase orders, vouchers and any other information connected with the Scope of Contract.

9.7.2 The Contractor shall make available to ENEL for inspection, audit or reproduction purposes, the outcome of the work in progress as soon as reasonably possible after receiving a written request.

9.7.3 The Contractor shall keep the records, including the books and accounts, related to the Scope of Contract for five (5) years after the Final Acceptance, to make them available if ENEL requires them for its purposes.

9.7.4 Until the Final Acceptance or early termination of the Contract, the Contractor shall provide all the documents, reports and information in relation to this Contract reasonably requested by ENEL from time to time, provided that such additional information shall not imply substantial additional costs for the Contractor.

## **10 SUBCONTRACTING.**

10.1 Subcontracting is only allowed upon ENEL's explicit authorization and in compliance with the Law. The Agreement shall set out the activities which may be subcontracted. For works, services and supplies, the Contractor may subcontract them up to the percentage of the total amount of the Contract specified therein. If no percentage is specified, the Contractor may subcontract up to 49 % of the total amount of the Contract.

10.2 The Contractor shall duly provide ENEL with a list of the potential Subcontractors, as well as a schedule for their activation; the list and the relevant schedule may be updated from time to time. The Contractor may not execute subcontracts with Persons not included in such list or not approved in writing by ENEL. The request for approval shall be submitted to ENEL at least thirty (30) calendar days before the date on which the Subcontractor is expected to start its performance of the Scope of Contract. The request for approval shall include the following details: (i) information on the Subcontractor, (ii) starting/completion date of the Subcontractor's activities and (iii) part of the Scope of Contract subcontracted (type, volume, countries). To receive ENEL's approval, the Contractor shall ensure that any Subcontractor regularly registers with ENEL's Global Procurement Portal.

10.3 Self-employed workers shall be considered as Subcontractors.

10.4 Taking into account the Law, the Subcontract shall comply with the following requirements:

- while bidding for the Contract, the bidders specified, also in the case of variations, the works/part of works or the services or supplies/part of services or supplies to be subcontracted;
- the Subcontract shall be submitted to ENEL before the actual start of the activities;
- upon submitting the Subcontract to ENEL, the Contractor shall provide a certification proving that the Subcontractors meet all the requirements for the performance of the subcontracted services, as well as the statement on the fulfillment of the general requirements set out by the Law;
- only one level of subcontracting is permitted. Therefore subcontracted activities may not be executed or performed using any further level of subcontracting, except in the cases allowed by the Law.

10.5 The Contractor shall pay the safety costs related to the subcontracted activities, to the Subcontractor without any reduction. ENEL shall verify the application of these provisions by means of its representatives in charge of the management and supervision of the Contractor.

10.6 The Contractor shall comply with the laws and regulations on salary set out in the applicable "collective labor agreements" of the specific country; if provided for by the local regulations, the Contractor shall be jointly and severally liable towards the Subcontractors for the compliance with these laws and regulations, including, without limitation, all the safety, salary, contributions and insurance obligations provided to the employees involved in the performance of the subcontracted activities.

10.7 However, the Contractor is fully and exclusively liable before ENEL for the performance of the Contract. The use of subcontractors for the performance of the activities shall not exclude or limit the contractual obligations undertaken by the Contractor, which shall be liable before ENEL for the performance of the Contract, as well as for any indemnification due to third parties for damages suffered during its performance. If the Contract is terminated for reasons attributable to the Contractor, the Contractor shall assign the Subcontracts specified by ENEL.

10.8 ENEL reserves the right to reasonably reject any Subcontractor or assignee deemed unsuitable during the progress of works.

10.9 The Subcontracts shall include, as a minimum requirement, the following provisions:

- a) Ensure the performance of the work, for the portion assigned in accordance with the contractual specifications and standards;
- b) Allow ENEL to inspect the work of the Subcontractors to check their compliance with the Contract provisions;
- c) Ensure the fulfillment of the labor and safety obligations set forth in the Contract;
- d) Provide the applicable guarantees in relation to the relevant portion of service, work or equipment;
- e) Require insurance policies in proportion to the risk entailed in the portion of service or work assigned;
- f) Ensure the prior consent of the Subcontractor to an assignment of the Subcontract to ENEL under the Contract;
- g) Prevent the total or partial subcontracting, except with the approval of the Contractor and ENEL;



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- h) Ensure that the contractual relationship with the Subcontractor is established only with the Contractor, and obtain the waiver by the subcontractor of the right to claim any service or payment directly from ENEL;
- i) Be bound by the restrictions on the use of confidential information provided for by this Contract.

10.10 The Contractor shall cooperate in good faith to meet ENEL's requests to include other clauses in the Subcontracts, and adjust them according to the substantiated risks perceived by ENEL.

10.11 For each Subcontract, the Contractor shall send a notice to ENEL, confirming the inclusions of the provisions specified in this document.

10.12 Under no circumstances may a contractual relationship be inferred between the Subcontractors or assignees and ENEL, and the Contractor shall always be liable for all the activities of the employees of such Subcontractors or assignees, and for the fulfillment of the contractual, legal and tax obligations arising from the performance of the Contract, as well as for any damage caused to ENEL by any of the employees of its Subcontractors or assignees.

10.13 ENEL shall not be liable before any Subcontractor or assignee, nor before their personnel, for any claim directly or indirectly arising in relation to the Contract; therefore, the Contractor undertakes before ENEL to make all possible efforts to avoid the submission and/or processing of these claims. Accordingly, the Contractor shall be liable before ENEL and shall indemnify ENEL from and against any judicial or extra-judicial action or proceedings initiated against ENEL by any employee of the Subcontractors or assignees. Such indemnification shall cover both the amount payable by ENEL and the expenses or costs of any nature incurred by ENEL in connection to such claim. Any failure by the Contractor to comply with the provisions of this section shall be considered as a material breach, and shall entitle ENEL to terminate the Contract due to the Contractor's default, without any need for a judicial resolution and without prejudice to any other legal remedy available to ENEL.

### 11 ASSIGNMENT OF THE CONTRACT AND ASSIGNMENT OF RIGHTS AND CREDITS.

11.1 The Contractor shall perform the contractual activities with its own means and resources. The assignment of the Contract to a third party is only allowed upon ENEL's explicit authorization and in compliance with the Law.

11.2 Unless otherwise set out in the Contract, the Contractor shall not assign or transfer, in full or in part, the rights or credits arising from the Contract to third parties, nor the Contractor may carry out other activities entailing any full or partial change of such rights, for any reason whatsoever. ENEL may, with the sole requirement of notifying the Contractor, assign the Contract and/or its collection rights and payment obligations arising therefrom to a third party.

11.3 The Contractor undertakes to properly notify to ENEL the commencement of any procedure for its dissolution, transformation, merger, demerger, capital increase or reduction, or any other extraordinary operations, including the sale and/or purchase of majority interests and/or business units, as well as any material changes in its administrative bodies. Notwithstanding the fulfillment of the confidentiality obligations by the Contractor, the notification specified above shall be made with a reasonable advance or, in any case, within five (5) working days from the occurrence of the events referred to above.

### 12 THE CONTRACTOR'S OBLIGATIONS.

12.1 The Contractor shall perform the Scope of Contract in accordance with the Contract, Prudent Industry Practices and the Law. The Contractor shall carry out strict quality controls and only appoint qualified personnel to perform the Scope of Contract.

12.2 The Contractor shall cooperate with ENEL and use all commercially reasonable efforts to schedule, coordinate and perform the Scope of Contract so as not to delay or adversely affect its timely performance and completion. The Contractor shall cooperate with such third parties to the same extent as the Contractor has to cooperate with ENEL under the Contract.

12.3 The Contractor shall be fully liable for all the requirements for the performance of the Contract and, in any case, for all the matters falling within its responsibility in accordance with the Contract, and in particular, for the following:

- o carrying out the inspections, tests and checks required by the Contract and/or the regulations applicable to the Contract, as well as for all costs arising therefrom;
- o managing and obtaining the required visas, authorizations and licenses for the performance of the Contract, except for those that are under the responsibility of ENEL by provision of law;
- o organizing its personnel, employed in the performance of the contractual activities, provided that at all times the Contractor's responsibility shall be clearly identified and separated from that of ENEL;
- o appointing a person in the Contractor's own organization to act as a contact person to ENEL during the performance of the Contract;
- o the labor required to perform the Contract with all its associated costs;

12.4 In the case of foreign Contractors, and before the start of the works, the Contractor shall ensure that "key personnel" (such as the foreman, supervisor or site manager) is able to understand and communicate in the official national language or in the language specified in the Contract (both orally and in writing).

### 13 THE CONTRACTOR'S RESPONSIBILITIES

13.1 The Contractor, under its sole responsibility, shall comply with all the Laws and regulations required by the competent authorities in relation to the Contract.

13.2 The Contractor shall be liable for the proper fulfillment of its legal and tax obligations, as well as for its contractual responsibilities towards its contractors and Subcontractors.

13.3 If the Contractor is formed by two or more entities, each of them shall be jointly and severally bound to fulfill all the requirements of the Contract and the conditions for the performance of the Contract, in accordance with the Law.





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- 13.4 The Contractor shall prevent any situation that may give rise to conflicts of interest and therefore the Contractor shall take all necessary measures for their prevention and identification, and shall immediately inform ENEL of any conduct that may give rise to a conflict of interest.
- 13.5 The Contractor agrees to indemnify and hold ENEL harmless from any liability and damage arising from any claim or legal proceedings of any kind which are directly related to the Contract, either judicial and extra-judicial, due to acts or omissions by the Contractor or its employees, representatives or Subcontractors.
- 13.6 The aforementioned indemnification includes any amount that ENEL should have to pay, either for expenses or costs of any kind arising from claims or judicial acts, in any case, without prejudice to its right of defense. Failure by the Contractor to comply with this clause shall be regarded as a material breach and shall entitle ENEL to terminate the Contract due to the Contractor's default.

### 14 THE CONTRACTOR'S WARRANTIES

- 14.1 The Contractor shall warrant:
- the suitability, exclusive ownership and/or legitimate availability of the materials and/or equipment, and that they are free and clear from any liens and encumbrances;
  - that all materials and equipment:
    - comply with the laws, specifications, regulations and contractual provisions;
    - are free from visible or hidden defects;
    - are suitable for their intended use;
    - meet the required quality level;
    - are not used;
  - that the works fulfill all the contractual requirements and are suitable for their intended use.
- 14.2 The Warranty Period of the materials and equipment, as well as of the works/services and all the rest of the warranties, shall cover the period specified in the Contract, or if no period is specified, for one (1) year from the date of the Provisional Acceptance Document, except if the law establishes a longer period, in which case the latter shall apply. Should the Parties fail to sign the Provisional Acceptance Document, the year shall be considered from ENEL's approval for the delivery of the material and/or equipment, or from the notice of completion of the work or service and delivery of the documentation by the Contractor, so that the administrative authorization for the commissioning of the work, where applicable, may be processed.
- 14.3 The warranty shall not cover defects or faults due to (i) the misuse or incorrect use by ENEL, except in cases where the misuse or incorrect use derives from the application of the incorrect or confusing content of manuals or instructions provided by the Contractor, (ii) the normal wear and tear, including due to environment or operation or use, or (iii) modification of the equipment not in accordance with the Contract or the Contractor's instructions or recommendations.
- 14.4 The warranty shall cover design and construction defects, as well as hidden defects and other defects specified in the Contract. Pursuant to this warranty, the Contractor shall carry out, as soon as possible and at its expense, any repair or replacement required, including the removal and transport of the defective components. In particular, the Contractor undertakes to:
- replace, as soon as possible or according to the schedule of the Contract, the materials and equipment that do not comply with the provisions or the requirements, as well as those unsuitable or of a poor quality. These materials and equipment shall be stored at ENEL's premises until they are replaced, without prejudice to ENEL's right to use the materials refused until their collection;
  - fix, repair or replace all equipment showing design, material manufacturing or operating defects;
  - replace all supplied materials and equipment in the event of any serial defects, thereby justifying the solution adopted to prevent the reoccurrence of such defects in the remaining materials or equipment to be supplied. A serial defect is considered to exist when the percentage of defective materials and equipment covered by the Contract exceeds the percentage established in the Contract, or if no percentage is specified, when the percentage exceeds 10% of the total materials and equipment;
  - return the equipment/sites made available by ENEL in the same conditions as they were received;
  - indemnify ENEL for any claim from third parties.
- 14.5 The obligations set forth above, as well as all the expenses arising for reasons other than the execution of the warranty, shall be entirely borne by the Contractor, and ENEL shall not be liable for any charge or cost.
- 14.6 The decisions on the correction and the repair or repetition of the performance, construction or installation of any defective materials shall always be taken by ENEL, which shall notify such decisions to the Contractor. ENEL may order, on justified grounds, any temporary adjustment, correction, repair or replacement and the relevant costs shall be borne by the Contractor, until the receipt of new parts, constructions or systems, as required.
- 14.7 In any case, the measures referred to in paragraph 14.6 shall be implemented by the Contractor as soon as practicable, so that they affect ENEL as less as possible and in such a way as to avoid any delay in the completion of the works or any stop of the systems or, if it is not possible, to reduce the delay or the time of unavailability, either full or partial, of the systems.
- 14.8 Failure by the Contractor to comply with the obligations set out in this clause, shall entitle ENEL to perform them, directly or by means of third parties, at the Contractor's expense. Furthermore, the Contractor shall indemnify ENEL for any damage or loss



suffered, as set out in the Contract. In particular, if the Contractor fails to apply the remedial actions within the terms specified above, ENEL shall be entitled to apply the penalties for delay set out in the Contract.

- 14.9 The Warranty Period shall be suspended on the date when ENEL duly notifies its decision to the Contractor and an extension equal to the time required for the repairs, replacements or new installations or works to be performed under the warranty shall be granted.
- 14.10. Spare parts shall also be subject to the abovementioned warranty.
- 14.11 When the Warranty Period has satisfactorily expired and any anomaly, defect or deficiency found during this period has been remedied, the Final Acceptance Document shall be signed, subject to prior issue of the Provisional Acceptance Document, and the economic guarantees provided by the Contractor shall be released.
- 14.12 The expiry of the Warranty Period or the Final Acceptance of the materials/works under the Contract shall not relieve the Contractor from its liability for visible or hidden defects, or for any other liability provided for by the applicable Law or the Contract.
- 14.13 If the Warranty Period expires before six (6) months from the commissioning of ENEL's main plant where the subject of the Contract should be used or of which it forms integral part, the Warranty Period shall be automatically extended until the expiry of such period, unless the materials or equipment supplied by the Contractor were repaired or replaced, in which case they shall be covered by a warranty for a period equal to the original warranty period from the date of repair and/or replacement. Under no circumstances this shall imply higher costs for ENEL.
- 14.14 Upon expiry of the Warranty Period and after the Final Acceptance, ENEL may, to its own benefit, directly or through third parties, modify or alter the materials and equipment covered by the Contract or the works made or facilities assembled, including if they are protected by licenses, patents or other forms of industrial property in favor of the Contractor, provided that ENEL maintains at any time due confidentiality.

## **15 PENALTIES**

- 15.1 Without prejudice to the provisions of paragraph 16.3 "TERMINATION", any failure by the Contractor to meet the delivery dates, either partial or final, set forth in the Contract, or any other breach of the Contractor's obligations under the Contract, may result in the application of a penalty by ENEL, in accordance with the agreed terms and conditions. The application of penalties does not exclude nor limit ENEL's right to compensation for any further damages.
- 15.2 If the total amount of the penalties exceeds the limit specified in the Contract, ENEL reserves the right to terminate the Contract at any time. Unless otherwise agreed, the penalty shall be 1.5% of the total amount of the Contract for each calendar week of delay, during the first four weeks, and of 4 % as of the fifth week.
- 15.3 In the event that, in accordance with the national legislation, the penalties should apply as an indemnification, they shall only apply as such in relation to the specific damage set out herein, excluding any other damages caused, and ENEL shall be entitled to claim compensation for the relevant damages or loss suffered.
- 15.4 The amount of the penalties for delay shall not exceed 20 % of the total amount of the Contract. ENEL's right to apply penalties shall not limit its right to terminate the Contract due to the Contractor's default in any way whatsoever.
- 15.5 The receipt of the payment for the penalties shall not prejudice ENEL's right to additionally charge to the Contractor any expense and surcharge that ENEL may pay to third parties as a direct or indirect result of the delay.
- 15.6 Failure to apply one or more penalties does not imply a waiver by ENEL of the application of similar penalties, or of those that subsequently originate from the same cause.
- 15.7 Should ENEL be deprived, during the Warranty Period, of the availability or use of materials or equipment covered by the Contract or of the completed works or assembled installations due to a defect, imperfection or damage not attributable to ENEL, or arising from deficiencies in the performance of the activities carried out to remedy said defects, pursuant to the Contractor's Warranties, the Contractor shall be subject to the relevant penalty set out in the Contract, or if no penalty is specified therein, for 0.1 % of the total amount of the Contract for each calendar day of unavailability.
- 15.8 The application of the penalties shall not relieve the Contractor from fulfilling the Contractor's Warranties to their full extent. Therefore, the Contractor shall remedy any technical deficiency detected, pay any penalty due and replace the material and equipment, or re-perform or repeat, as applicable, the works or services covered by the Contract, upon ENEL's request.
- 15.9 The procedure for the collection of any penalty under the Contract shall be made according to the following provisions:
- ENEL shall notify in writing to the Contractor the penalty due, specifying the relevant amount. The Contractor shall have fifteen (15) calendar days from the notification date to specify any element in its defense.
  - Upon expiry of this period, and if ENEL refuses the Contractor's arguments, ENEL shall issue and deliver to the Contractor a debit note that shall apply to any outstanding invoice due to the Contractor, deducting the relevant amount proportionately to the debit note. If such amount may not be deducted from an invoice, ENEL may enforce, in relation to the relevant amount, the guarantees established, or may arrange the collection through any other means allowed by the Contract, the Law or these General Conditions, without prejudice to any compensation for damage due to ENEL.
  - After the enforcement of the Economic Guarantee, the Contractor shall re-establish the guarantee up to the amount available before the enforcement.
  - If no deduction is applied, ENEL shall retain the remaining amount resulting from the total amount of the guarantee and the amount of the penalty.

- e) If the amount of the original guarantee does not cover the amount of the penalties, ENEL shall compensate the pending payments to the extent required to cover the total amount of the penalties, without prejudice to the Contractor's obligation to re-establish the guarantee, as specified above.

## **16 SUSPENSION, WITHDRAWAL, AND TERMINATION.**

### **16.1 Suspension.**

16.1.1 If, for any reason, ENEL considers necessary or is obliged to temporarily suspend the performance of the Contract, in full or in part, ENEL shall notify the Contractor in writing thereof, stating the relevant reasons and providing an estimate of the duration of the aforesaid suspension.

16.1.2 Pursuant to the provisions of the HSE Terms, any risk situations or unsafe behavior by the Contractor shall result into the suspension of the performance of the Contract until proper Health, Safety and Environment conditions are restored.

16.1.3 The suspension shall be effective as of the date specified in the relevant notice. From such date, the Contractor shall stop the performance of the activities and properly store and maintain the materials, equipment and works, without prejudice to any other obligation arising from the applicable law and/or established in the Contract.

16.1.4 If suspension is due to the Contractor's default, the Contractor shall bear all costs and expenses incurred by ENEL as a result of the suspension.

16.1.5 In all other cases, except for suspension due to Force Majeure Events under clause 17, any documented direct costs incurred by the Contractor as a result of a suspension (including storage costs) shall be payable by ENEL upon submission of the Contractor's invoice.

16.1.6 If suspension lasts for more than one hundred eighty (180) calendar days, the Contractor upon thirty (30) calendar days prior written notice to ENEL, may, at its discretion, terminate the Contract. In this case, paragraph 16.3.2 shall apply to the benefit of the Contractor.

16.1.7 ENEL shall notify in advance to the Contractor, by written notice, the resumption of the activities and such notice shall be made within the date specified therein. The remaining term for the completion of the suspended part of works under the Contract shall run from that date. The Contractor shall be entitled to receive the payment, in accordance with the provisions of the Contract, for the works or deliveries already carried out. The payment of the portion of works or deliveries which, upon notification, are at an advanced stage and not included in the Contract, shall be negotiated between the Parties.

### **16.2 Withdrawal.**

16.2.1 ENEL may withdraw from the Contract at any time and regardless of the progress of the works, activities or operations. The withdrawal shall be notified in writing, with acknowledgment of receipt, and shall be effective as of the date of ENEL's notification specifying the activities to be completed and the activities to be stopped immediately. The activities duly carried out by the Contractor prior to the withdrawal date shall be payable by ENEL in accordance with the contractual prices. ENEL shall reimburse the Contractor, after reviewing the relevant satisfactory evidence provided by the Contractor in relation to the activities stopped and the activities not carried out. To this purpose, ENEL shall reimburse the lower amount between (i) the amount equal to the expenses incurred by the Contractor in relation to these activities, for any irrevocable order made and (ii) the amount equal to the actual economic loss suffered by the Contractor.

16.2.2 The Contractor may withdraw from the Contract in accordance with the legal and contractual provisions.

### **16.3 Termination.**

16.3.1 ENEL may terminate the Contract according to the applicable Law and/or in all the circumstances set out in the Contract and/or in the following cases, if there is a cause that impedes or significantly prevents the proper performance of the contractual works:

- a) death of the Contractor, if the Contractor is a natural person, or a change in the Contractor's capacity that prevents or substantially affects the performance of the Contract;
- b) the dissolution, transformation, reduction of capital or any significant changes in the governing bodies of the Contractor, if such changes adversely affect the performance of the Contract or in the event that such changes in the Contractor violate the clauses "GLOBAL COMPACT" and "CODE OF ETHICS";
- c) the deterioration of the financial capacities/solvency, including bankruptcy proceedings or any other type of legal issues, or any other issue preventing or substantially affecting the proper performance of the Contractor's obligations;
- d) unjustified interruption or suspension of the performance of the Contract by the Contractor;
- e) the total amount of the penalties applied for delay during the performance of the activities reached the maximum amount specified in the Contract or the delay of the Contractor is such as not to fully satisfy the Scope of Contract established by ENEL;
- f) failure by the Contractor to timely obtain the certificates and authorizations required for the proper performance of the Contract in relation to its products or activities, or their loss or revocation throughout the term of the Contract;
- g) failure by the Contractor to remedy any breach of the applicable technical specifications and/or repeated errors or defects or breaches of the instructions provided by ENEL;
- h) incapacity or failure by the Contractor and/or the Subcontractors or other third parties appointed by the Contractor, to carry out the contractual activities or to fulfill any of the compliance requirements set forth in the applicable law;
- i) failure to comply with intellectual property, confidentiality and personal data processing obligations, in accordance with the laws applicable to the Contract;
- j) assessment at any time, after the execution of the Contract, of any omission or inaccuracy of any information or statement provided or made by the Contractor in relation to the compliance with the legal, economic, financial, technical or contractual conditions;
- k) incorrect performance of the contractual works for reasons attributable to a Subcontractor or to any person appointed by the Contractor and/or any failure to pay the compensation for damages caused to any person;

- l) any other breach by the Contractor that may prevent or materially and adversely affect the satisfactory performance of the Contract, or any other reason specified in the Contract as a ground for termination;
- m) refusal by the Contractor to commence the performance of any activities under the Contract;
- n) refusal by the Contractor, upon ENEL's resumption order, to resume the performance of the activities under the Contract that ENEL (for any reason) had ordered to suspend;
- o) performance by the Contractor of acts that are detrimental to the image of ENEL;
- p) acts, omissions, behaviors or situations related to the Contractor which may pose a risk to ENEL's reputation and reduce ENEL's confidence in the Contractor's honesty and integrity as well as its reliability with regard to the performance of the activities in compliance with the Contract provisions;
- q) loss of even one of the requirements established for the homologation (where required), in relation to the conclusion of and compliance with the Contract. In the event that the Contractor does not inform ENEL of the situations described above and without prejudice to ENEL's right to terminate the Contract, ENEL may suspend payments due to the Contractor to comply with the contractual obligations towards third parties arising from the non-performance of the Contract by the Contractor.

16.3.2 In the cases listed above, ENEL may immediately terminate the Contract or may grant to the Contractor a cure period to remedy the contractual breach. If the Contractor does not remedy the breach within the specified cure period, the Contract shall be automatically terminated, without prejudice to ENEL's right to claim compensation for any damage or loss suffered.

16.3.3 In the case of termination of the Contract due to the Contractor's default, ENEL shall be entitled to acquire the materials already manufactured, in full or in part, or delivered by the Contractor, paying the relevant prices, if included in the Contract.

16.3.4 In the event of any breach by the Contractor, ENEL may, without prejudice to its right to apply the penalties or to take legal actions in relation to its right of compensation for damages, implement the following measures:

- a) suspend the payments due to the Contractor.
- b) enforce any economic guarantee provided by the Contractor.

## **17 FORCE MAJEURE.**

17.1 Unless otherwise provided for by the Law, a force majeure event shall mean the reasonably demonstrated occurrence of any act or event beyond the reasonable control, and not being the result of the fault or negligence, of the affected Party, preventing such Party from performing its obligations under the Contract, in full or part, and which such Party is unable to predict, prevent, avoid or overcome with the exercise of its best reasonable effort ("Force Majeure Event"). The burden of proving a Force Majeure Event shall be on the Party claiming its occurrence. The Contractor may not invoke force majeure if any of the events listed below should occur:

- a) meteorological conditions or phenomena that an experienced Contractor in facilities may reasonably foresee and whose adverse effects may have been therefore avoided, in full or in part, by the Contractor;
- b) delays or inability to procure materials or human resources that have occurred despite being reasonably foreseeable, or that may have been avoided or remedied in advance;
- c) strikes or labor disputes in relation to the Contractor or its subcontractors, except in the case of a national strike or strikes of the entire sector or industry;
- d) delays or contractual breaches due to the Contractor's Subcontractors, unless such delays or contractual breaches are in turn a consequence of a force majeure event;
- e) the conditions of the site where the contractual activities are carried out, which should be known and accepted by the Contractor;
- f) technical, economic or financial difficulties of the Contractor or of its subcontractors.

17.2 Neither Party shall be liable for the breach of its obligations if the performance is delayed or may not be carried out due to a Force Majeure Event. The Party affected by a force majeure event shall notify in writing to the other Party thereof, as soon as possible, and however within five (5) calendar days from the day when the affected Party becomes aware of the circumstances referred to above. This notice shall:

- 1. identify the events and the circumstances occurred;
- 2. detail the estimated duration of the situation;
- 3. specify the contractual obligations affected and the measures that will be implemented to reduce, if possible, the adverse effects of the events on the performance of the Contract;
- 4. include as an attachment the documents proving that the events preventing the performance of the Contract should be considered as a cause of force majeure.

17.3 The other Party shall reply in writing, either accepting or reasonably refusing the cause, within ten (10) calendar days from the receipt of the aforementioned notification. The absence of a response from the notified Party within such term shall be understood as an acceptance of the force majeure invoked.

17.4 In the case of a force majeure event, the performance of the affected activities shall be suspended throughout its duration, and neither Party shall be entitled to claim for compensation. The contractual obligations not affected by force majeure shall be performed in accordance with the contractual terms and conditions in force before the occurrence of the force majeure event.

17.5 If due to force majeure, the performance of the Contract is substantially affected and suspended for more than one hundred and eighty (180) calendar days, or if its resumption is proven to be impossible, each Party shall be entitled to terminate the Contract, without any compensation applying on the Parties. If the Force Majeure Event affects the agreed delivery date, such delivery



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date shall be extended on a day-by-day basis in accordance with the number of days of delay caused by such force majeure event, except as otherwise agreed between the Parties.

### 18 LABOR LAW OBLIGATIONS.

#### 18.1 Introduction.

18.1.1 The Parties agree that no employment relationship nor a relationship of subordination between ENEL and the Contractor's personnel (and vice versa) exists or shall exist under the Contract. The Contractor, or the employer of the personnel employed by the Contractor for the performance of this Contract, as applicable, shall be liable for all the legal obligations arising on the employer of the personnel members, including, without limitation, the payment of all the salaries and benefits to which the personnel is entitled under the applicable law, as well as the payment of all the social security contributions.

18.1.2 The Contractor shall be the only entity legally liable before ENEL for any labor claim submitted by any member of the Contractor's personnel against ENEL. Each Party, as the employer of its employees, shall be responsible for:

- (i) the payment of salaries;
- (ii) the payment of the contributions to the applicable social security scheme and/or funds of its country of domicile.

Each of the Parties undertakes all the responsibilities and/or obligations set out by the applicable labor law in relation to its employees, administrative personnel and affiliates.

18.1.3 The Contractor agrees to hold ENEL harmless from any action or claim, either individual or collective, filed by its employees against ENEL, as well as to refund and indemnify ENEL for any amount that ENEL should pay due to these labor claims, including legal fees.

18.1.4 If ENEL receives a labor notification or claim from any employee of the Contractor, ENEL shall notify the Contractor in writing thereof within two (2) working days from the acknowledgment of receipt of the relevant notification or claim, attaching a copy thereof. ENEL may employ all the legal counsels deemed appropriate for the defense against any claim received and ENEL may recover from the Contractor the legal fees incurred for such defense. The Contractor undertakes to provide all the support required and to deliver to ENEL any information and documents required for the defense.

18.1.5 The Contractor shall not be liable before ENEL in the following cases: (i) ENEL does not act in accordance with the provisions of the previous paragraphs, or (ii) ENEL employs legal counsels for the defense of any claim filed against ENEL, in which case the defense, including the legal fees, shall be the exclusive responsibility of ENEL. Within the framework of personnel hiring the Contractor undertakes to comply with the anti-discrimination local legislation.

18.1.6 The Contractor undertakes to send, upon ENEL's request, supporting evidence about the fulfillment of the following obligations:

- a) Payment receipts of salaries, holidays, bonuses and any applicable benefits due to the employees;
- b) Payment receipts related to Social Security and Income Tax.

18.1.7 The Contractor shall execute the collective labor agreements with the trade associations for the branch of industry under the scope of its corporate purpose and ENEL may at any time request the Contractor to provide supporting evidence about the compliance with the Contract provisions.

### 19 ECONOMIC GUARANTEE.

19.1 The Contractor shall guarantee the performance of all contractual obligations as well as the payment of damages and losses arising from the breach of the Contract. ENEL promotes the use of electronic protocols (such as SWIFT communications) or alternative means to digital documents (such as the electronic signature) ensuring traceability and authenticity of the documents.

19.2 ENEL may request the establishment of the Performance Guarantee, Advance Payment Guarantee (if applicable) and Warranty Guarantee, which may be submitted at the Contractor's discretion either in cash or as a guarantee issued by a financial institution approved by ENEL and in compliance with the requirements listed below.

19.3 The economic guarantee shall:

- be issued in accordance with the template attached to the Contract, subject to the Law and enforceable in Costa Rica;
- be unconditional and irrevocable;
- be issued for the benefit of ENEL;
- be payable on first demand only upon submission by ENEL of a written request to the issuer stating that ENEL has the right of repayment of the economic guarantee.

19.4 The financial institution issuing the guarantee shall be subject to ENEL's prior approval and shall be a local bank (or the local branch of the entity, in the case of foreign banks) of recognized creditworthiness, an insurance company or a financial intermediary authorized by the competent authorities to operate in the business of guarantees.

19.5 Should the issuer's creditworthiness deteriorate, the Contractor shall provide within sixty (60) days, upon ENEL's request, a replacement guarantee issued by a financial institution approved by ENEL. If no guarantee is submitted, ENEL may, in accordance with the applicable law, withhold and suspend any payments due to the Contractor.

19.6 The existence of a guarantee shall not limit the Contractor's liability under the Contract to the amount or the period of validity of the guarantee.



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- 19.7 If the Price of the Contract should increase, or its Duration should be extended, during its performance, ENEL may request the Contractor to provide an additional or replacement economic guarantee to cover the increase in the Contract Price.
- 19.8 Failure by the Contractor to comply with the required addition or replacement of the guarantees in accordance with clauses 19.5 and 19.7 above, shall entitle ENEL to terminate the Contract or, in accordance with the Law, to withhold and suspend payments to the Contractor until the due guaranteed amount is reached.
- 19.9 Where the Contractor fails to provide the guarantee within the terms specified, and without prejudice to any other remedy available, ENEL may terminate the Contract or suspend its effects until the Contractor provides a guarantee approved by ENEL, or ENEL accepts other equivalent guarantees offered by the Contractor. In any case, ENEL shall be entitled to withhold, in accordance with law, for their delivery to the Contractor upon fulfillment of its obligation to provide the required guarantees, the payments due to the Contractor up to 10 % of the total amount of the Contract, without prejudice to ENEL's right to terminate the Contract.
- 19.10 Unless otherwise set out in the Contract or in the General Conditions, the guarantee(s) established by the Contractor shall be effective for thirty (30) calendar days after the expiry of the Warranty Period or, if applicable, of the Final Acceptance and such guarantee(s) shall be returned, upon the Contractor's written request, after ENEL has applied all the deductions and carried out all the checks. If the economic guarantees issued expire earlier, the Contractor shall extend them to meet the period required, and the renewal shall be made at least forty-five (45) days in advance; otherwise, this shall be construed as a contractual breach in accordance with these General Conditions.

### 19.11 Performance Guarantee

19.11.1 If agreed under the Contract, and unless the Contract sets out a different percentage, the Contractor shall deliver to ENEL a first demand guarantee for an amount equal to 20 % of the Price, as a guarantee for the accurate, proper and due performance of the obligations arising from the Contract on the Contractor, including the obligation to pay any amount due to ENEL, such as penalties. The Performance Guarantee shall also cover the warranty obligations of the Contractor before the delivery of the Warranty Guarantee.

19.11.2 The Contractor shall make available the Performance Guarantee before the Contract signature.

19.11.3 If the Contractor performs all of its contractual obligations, the Performance Guarantee shall be returned to the Contractor within ten (10) calendar days from the date of issue of the Warranty Guarantee.

### 19.12 Advance Payment Guarantee

19.12.1 If ENEL makes advance payments to the Contractor, the Contractor shall deliver to ENEL a first demand guarantee for an amount equal to 100 % of the payment made.

19.12.2 The Contractor shall deliver to ENEL this Guarantee before ENEL makes the advance payment.

19.12.3 The Advance Payment Guarantee shall be returned to the Contractor after the Contractor has fulfilled a portion of the Scope of Contract having a value, in accordance with the Price, equal to the advance payment.

### 19.12.4 Warranty Guarantee

19.12.5 If provided for by the Contract, and unless the Contract sets out a different percentage, the Contractor shall deliver to ENEL a first demand guarantee for an amount equal to 5 % of the Price, as a guarantee for the Contractor's obligations during the warranty period.

19.12.6 The Contractor shall deliver to ENEL such Guarantee when ENEL returns the Performance Guarantee.

19.12.7 The Warranty Guarantee shall be returned to the Contractor within one (1) month from the expiry of the Warranty Period.

## 20 INSURANCES.

20.1 The Contractor shall assume all liability for injury or damages caused to persons or property in the performance of the activities - including those performed by Subcontractors or third-party agents - specified in the Contract and undertakes to take out adequate insurance policies at its own expense, in relation to the risk, and with financially stable and renowned insurance companies, throughout the term of the Contract, for:

- a) losses or damages that may be caused to materials and equipment covered by the Contract during their processing, loading and transportation, up to the date and place of delivery to ENEL, with the Contractor's full liability for any damage caused to the materials or equipment. This obligation is also assumed by the Contractor with regard to materials and equipment provided by ENEL for the performance of the Contract, from the moment they are made available to the Contractor or its Subcontractors, until they are returned to ENEL.
- b) civil liability for losses and damages that may be caused by the Contractor's personnel or by its subcontractors' personnel, to the personnel or properties of ENEL and/or of third parties arising from the performance of activities under Contract. In all circumstances, ENEL shall not be liable for any causes attributable to the Contractor.

20.2 Similarly the Contractor undertakes to take out insurance for civil liability with adequate limits on compensation according to the risk, to cover claims for damage to property, personnel and/or for financial damage that may be caused to ENEL or third parties arising from defects or malfunction of materials or equipment attributable to the Contractor. Furthermore, the Contractor shall be liable for environmental damage or the imminent possibility that it may take place, as well as for the costs related to prevention, reduction and repair, in accordance with the conditions laid down in the applicable legislation.

20.3 If the Contract provides for the storage of materials by the Contractor at ENEL's premises, ENEL may request, and the Contractor shall take out, in addition to the insurances specified above, an insurance for theft and other damages that may be caused to the stored and/or deposited materials, for the entire duration of the Contract.



- 20.4 The above policies shall include a provision obliging the insurance company to pay ENEL directly. The limits of the insurance policy shall cover damaging events subject to claims received within the period of performance of the Contract and/or after the Warranty Period.
- 20.5 The insurance policy shall provide for the total waiver of the insurer against ENEL, with no exceptions whatsoever.
- 20.6 The Parties agree that the existence, validity and effectiveness of the insurance policies referred to in this clause is an essential condition for ENEL and, therefore, if the Contractor is not able to prove at all times the existence of the insurances, ENEL may terminate the Contract, notwithstanding the Contractor's obligation to pay compensation for the damages suffered by ENEL.
- 20.7 If at ENEL's discretion the insurances submitted by the Contractor are not sufficient to cover the risks, both in relation to the delivery of materials and/or equipment, as well as to the performance of the contractual works and/or services, the Contractor undertakes to modify and amend the insurance coverages according to the requirements of the Contract.
- 20.8 Similarly, the Contractor undertakes to take out, at its own expense and with financially stable and renowned insurance companies, any other type of compulsory insurance that may be required by applicable law, for the entire duration of the Contract.

## **21 INTELLECTUAL PROPERTY.**

- 21.1 The Contractor represents and warrants that in the performance of the contractual activities and in the design, manufacturing, sale, distribution or marketing of any product or service supplied to ENEL, the Contractor has not infringed, is not infringing and shall not infringe any third party's intellectual property rights, such as rights on trademarks, patentable inventions, copyrighted works, utility models, industrial designs and trade secrets.
- 21.2 Where the Contractor should require to use any third party's intellectual property right to perform its contractual obligations, ENEL reserves the right to request to the Contractor the relevant documentation. Upon ENEL's request, the Contractor shall provide any additional information, explanation, evidence, correspondence, manual and other documents or data relating to the resources protected by intellectual property rights, used in the performance of the Contract.
- 21.3 The Parties agree that, as for ENEL's products, samples or technical specifications that are delivered by ENEL to the Contractor for the performance of the Contract, the Contractor: (i) may not in any way copy, disclose, distribute, reproduce, process, translate, modify, adapt, develop, decompile, dismantle, reverse-engineer (or, in any case, carry out operations intended to extract the source codes) – in full or in part – any of such ENEL's products, samples or technical specifications, (ii) may not perform or manufacture any works, objects, items, products, samples or technical specifications derived therefrom; (iii) shall not use such products, samples, technical specifications or information covered by ENEL's intellectual property for any purpose other than the proper fulfillment by the Contractor of its contractual obligations, (iv) shall ensure that the aforementioned prohibitions are complied with also by the other parties involved, or which may be involved, by the Contractor in the performance of the Contract, (v) shall not disclose, and ensure that its employees do not disclose, them to third parties without the prior written authorization by ENEL, and shall keep them confidential in accordance with clause 22 below.
- 21.4 The Contractor is responsible for obtaining or achieving in due time the licenses, permits and authorizations required by the holders of patents, models and related trademarks, as well as other intellectual property rights. The Contractor shall be responsible for the payment of any royalty, compensation, remuneration, charge and/o fee due on this basis.
- 21.5 The Contractor represents and warrants that there are no existing contracts, agreements, licenses, permits, restrictions, requirements, patents, certificates, obligations for the Contractor, nor any other circumstances that prevent, or may prevent, ENEL from using or otherwise exploiting the intellectual property for the performance of this Contract, as well as the product, service, supply, license, document, object, item to which it is embedded or into which it is included.
- 21.6 If, as a result of a dispute raised by the owners or concessionaires of the rights referred to in this clause, ENEL has to totally or partially modify the materials to be supplied under the Contract, they shall be modified as soon as possible at the Contractor's expense, without this resulting in a deterioration of the quality of the supply, the operating features or the warranties. If the above occurs, a new process for the approval of prototypes shall be carried out, where this is prescribed for the relevant type of supply and before the materials are supplied. The Contractor shall indemnify ENEL for any costs related thereto, including, without limitation, transport costs, costs for tests, certifications, customs clearance, receipt of permits/authorizations or documents, as well as those for the purchase of any replacement or additional materials/items and any other costs and expenses.
- 21.7 All the amounts shall be payable to ENEL within 30 calendar days after the receipt of the relevant request from ENEL.
- 21.8 If legal action is taken against ENEL by a third party for breach by the Contractor of the obligations referred to in clause 21, the Contractor shall, at ENEL's request, provide a coverage (according to the provisions of clause "ECONOMIC GUARANTEE") in relation to the value of the claims, within ten (10) calendar days. The Contractor shall release ENEL from any liability for infringements of the intellectual property rights and undertakes to make any reasonable effort to hold ENEL harmless from any damage relating to a claim or complaint against ENEL, and undertakes to indemnify ENEL for any loss or damage, either direct or indirect, arising from claims or subpoena.
- 21.9 Any claim, whether judicial or extra-judicial, made against the Contractor by third parties relating to the intellectual property rights, shall be immediately reported to ENEL.
- 21.10 All the documents, drawings, plans, computer programs, as well as copies thereof, provided by ENEL to the Contractor for the performance of the contractual services, including rights on inventions, patents, copyrighted works, utility models and other intellectual property rights required, or that will be required, for the performance of the contractual services according to the documents provided to the Contractor by ENEL, shall be the property of ENEL. The Contractor shall use them solely for the purposes of performing the Contract and shall return them to ENEL, taking at all times suitable measures in relation to the processing, use and transfer of data to ensure security and confidentiality, pursuant to clause "CONFIDENTIALITY" below.



- 21.11 The intellectual property rights and the technology and methods resulting from the works or services delivered by the Contractor in the performance of the Contract, and the relevant records created shall belong to ENEL, without giving the Contractor any right to increase the price specified in the Contract for such works or services.
- 21.12 The drawings, documents, plans, computer programs, as well as copies thereof, and in general any outcome (and the related intellectual property rights, including but not limited to patent applications, pending patents, database rights, copyrights, trademarks, rights on trade and industrial secrets and any relevant application on a worldwide basis, software designs and models, know-how) generated by the Contractor during the performance of the Contract (the "Foreground IPRs") shall be the exclusive property of ENEL, which shall also automatically become the owner of any relevant work in progress, generated from time to time during the performance of the Contract. Each Party acknowledges and agrees that each Party's Background IPRs shall remain the exclusive property of such Party and the other Party shall have no claim in relation to any such right; Background IPRs include all present and future intellectual property rights, including but not limited to patent applications, pending patents, database rights, copyrights, trademarks, rights on trade and industrial secrets and any relevant application on a worldwide basis, software designs and models, know-how, belonging to each Party before the signature of this Contract or gradually developed in parallel projects outside the scope of this Contract. Before signing the Contract, each Party shall specify in an annex attached to the Contract, its own Background IPRs which are relevant to the performance of the Contract. Therefore, if the Contractor intends to use these Background IPRs for the performance of the Contract, any Foreground IPRs belonging to ENEL shall be limited to the Add-ons (the "Add-ons"), which are the additional parts (generated by the Contractor in the performance of the Contract on the basis of its Background IPRs) that, in any way, do not include or contain any Background IPRs. The Parties shall agree in writing the list of the items constituting such Add-ons previously and/or within 30 (thirty) days after the expiry or termination of the Contract.
- 21.13 The marketing methods and the way the technology covered by the Contract is distributed to third parties, as well as any benefits arising therefrom, are regulated by the Contract.
- 21.14 Failure by the Contractor to comply with the intellectual property obligations set out in this clause, shall entitle ENEL to terminate the Contract, without prejudice to its right to undertake any action and claim compensation for any damages suffered.
- 21.15 The Contractor shall not use ENEL's trademarks, logos and/or distinguishing marks and shall not disclose for commercial purposes the services provided to ENEL, without ENEL's prior written authorization.

## **22 CONFIDENTIALITY.**

- 22.1 "Confidential Information" includes, without limitation, economic and financial documents, data and information relating to business strategies, product information and/or production processes (design, study and development), means and costs of production, sales information, development and customer management strategies, any kind of data about customers, contractors and their technical or commercial profile, documentation regarding technical and economic bids in public and private tenders, data about tests and/or operations of plants, equipment, machineries and products, business analysis, market researches, business and marketing plans and other statistical data that are relevant for the business, internal organization procedures, ideas for 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. The term also includes economic, financial and technical documents referring, for instance, to patentable inventions, patents, patents 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, machineries and products, results of Research and Development (R&D) activities. Furthermore, the term applies to any internal procedure, patent, license or information that:
- (i) is expressly qualified as "confidential", "strictly confidential", "secret" (or in any other similar way) by the disclosing Party; or
  - (ii) the receiving Party knew or ought to have known to be confidential due to its nature or to the treatment carried out by the disclosing Party, considering that such information is not publicly known, is not easily accessible to third parties and is subject to appropriate measures to preserve its non-public nature.
- 22.2 Confidential Information includes all information relating to a Party and made available to the other Party, before or during the performance of the Contract, either by the administrators, managers or employees of the disclosing Party, or its Subcontractors or Affiliates and their relevant administrators, managers, employees or subcontractors (hereinafter, "disclosing Party's Representatives"). Confidential Information also includes all information regarding the disclosing Party's Representatives.
- 22.3 Confidential Information shall not include all information that:
- the receiving Party may prove to have legitimately known before or upon commencement of the performance of the Contract;
  - the receiving Party may prove to have lawfully received by third parties not bound by (or not in breach of) any legal or contractual non-disclosure obligation.
  - after disclosure to the receiving Party, due to reasons other than any of the receiving Party's default, becomes generally known or easily accessible for the persons within the circles that normally deal with this kind of information.
- 22.4 All Confidential Information that each of the Parties makes available (orally, in writing, in electronic format or in any other form) for the purposes of and/or during the performance of the Contract, as well as any other Confidential Information of which the Parties may become aware as a result of other contracts executed between the Parties and/or entered into by each of the Parties with a third party, and/or as a result of the relevant pre-contractual negotiations, including all documents, information, specific knowledge (regardless of how they have been collected, acquired or developed in relation to the Contract), may only be used for the purposes of performing the Contract and shall be confidential.
- 22.5 In particular, Confidential Information may not be disclosed to third parties without the prior and explicit written consent of the disclosing Party. Furthermore, each of the Parties may not use, copy, reproduce, translate, modify, adapt, develop, dismantle or separate, nor reverse-engineer or carry out any other operation intended to extract the source codes - in full or in part- of the Confidential Information received, without the prior and explicit consent of the disclosing Party.

- 22.6 Notwithstanding the foregoing, the receiving Party may disclose Confidential Information to fulfill a legal request by a competent court, a government agency or a competent authority, having jurisdiction on such Party, provided that in this case the Party informs the other Party (where legally allowed) before disclosing the Confidential Information, so that the other Party may defend, limit or protect from such disclosure, and provided that: (i) the disclosure only refers to the portion of Confidential Information strictly required to be disclosed, and (ii) the Party makes any reasonable effort to obtain a confidential treatment for any Confidential Information disclosed.
- 22.7 Each of the Parties:
- shall restrict the disclosure of Confidential Information exclusively to the Representatives and Affiliates that effectively need to know such information, due to their degree of involvement in the performance of the Contract;
  - shall bind its Representatives and Affiliates in order to ensure that they fully comply with the obligations set out in this clause;
  - shall be held liable for any action or omission by its Representatives and Affiliates that leads to a breach of the obligations to maintain confidentiality and not to use Confidential Information for purposes other than the performance of the Contract.
- 22.8 The Party receiving the Confidential Information shall create and manage logical and physical data, using state-of-the-art international techniques and practices, in order to ensure protection of such data from unauthorized access, reproduction, disclosure or use. After termination of the Contract, the receiving Party shall return all data, documents and information received from the other Party or in its possession, for the purposes of carrying out the contractual activities, and shall destroy all copies and files that it may have, unless otherwise authorized in writing by the disclosing Party. The receiving Party shall confirm the destruction of these data to the other Party within fifteen (15) days from the request and shall issue a written statement certifying that such Party does not hold any document or other items containing (or related to) Confidential Information.
- 22.9 The Parties shall ensure that Confidential Information is not disclosed during the performance of the Contract and for five (5) years after its termination, except as otherwise provided for by the Contract or where required by the Law or by a competent Authority. Notwithstanding the foregoing, in the case of Confidential Information qualified as "strictly confidential" by ENEL, the obligations of confidentiality and non-use set forth in this clause shall survive the termination of the Contract for any reason whatsoever, unless otherwise provided by the disclosing Party, and shall be valid until the receiving Party is able to prove that said Confidential Information has become generally known among or readily accessible to persons within the circles that normally deal with this kind of information for any reason other than the disclosure by the receiving Party.
- 22.10 The Parties shall agree in writing the provisions relating to the contents, the means of communication, the date of publication of the press articles and news or communications of any kind in relation to the Contract or any other subject or information related thereto.
- 22.11 The Parties acknowledge and agree that compensation for damages may not represent an adequate indemnification for the breach of confidentiality and that the affected Party shall be entitled to seek and obtain other remedies or to avoid any possible violation or damage arising from such breach, according to the current legislation. In the case of any breach of the confidentiality requirements, any of the Parties may also decide to terminate the Contract.
- 22.12 If required by the disclosing Party, and provided that it does not affect the performance of the Contract, the other Party shall at any time return or destroy, or request its Representatives to return or destroy, all the hard copies of the Confidential Information in their possession. Furthermore, the receiving Party shall make, and ensure that its Representatives make, any reasonable effort to return or destroy any related data stored in electronic format and shall confirm the destruction of these data to the disclosing Party within fifteen (15) days from the relevant request, and shall issue a written declaration certifying that such Party does not hold any document or other items containing (or related to) Confidential Information.
- 22.13 Each Party acknowledges and agrees that Confidential Information is, and shall remain, the exclusive property of the disclosing Party. Nothing in the Contract shall be construed - unless expressly specified in writing - as granting a license or a similar instrument in relation to patents, copyrights, inventions, discoveries or improvements made, conceived or acquired, either before or after the performance of the Contract.
- 22.14 Each of the Parties represents and warrants to the other Party that it shall not infringe any third party's right on trade secrets in the performance of the Contract.
- 22.15 **Cyber Security.**
- 22.15.1 The Contractor may access ENEL's IT system only if authorized by ENEL. The Contractor is responsible for the activities performed on ENEL systems by using its digital identity, which shall be protected at any time. In performing such activities, the Contractor shall comply with the following rules of conduct:
- a) never disclose or provide the authentication credentials to anyone;
  - b) not insert passwords into e-mail messages or other forms of electronic communication, nor disclose them over the phone to anyone;
  - c) never memorize passwords to access ENEL's applications via browser through the "remember password" functionality;
  - d) ensure that no one is watching when the Contractor enters the credentials to access IT devices or systems, in order to prevent theft of the Contractor's credentials;
  - e) never use the same password for the authentication to different systems;
  - f) access to information systems shall be limited to software/tools specifically provided 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 IT systems shall not violate the Law;
  - h) the (permanent or temporary) workstation used shall not be connected to Internet services other than those provided or authorized by ENEL and shall be equipped with the required antivirus. All necessary measures shall be taken to prevent the spread of viruses, malwares or any illegal software that may cause interruptions in the service or loss of data;

- i) all e-mail 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 erased by an appropriate encryption software;
- k) it is forbidden to modify the system configuration to avoid security checks;
- l) in order to prevent the disclosure of information to unauthorized persons, attention shall be paid to printed documents, removable hard drives, removable storage devices and video screens.

22.15.2 If at any time during the term of the Contract, its performance requires or entails the access and/or use by the Contractor of any application available on ENEL's systems and/or ENEL's IT infrastructure ("ENEL Systems"), this clause [22.15.2] shall apply to the Contractor. Upon ENEL's request, at any time and for any reason, the Contractor shall participate in and implement ENEL's two-factor authentication system (the "Multifactor Authentication System"), as a mandatory requirement to access and/or use the ENEL Systems. To participate in and implement the Multifactor Authentication System, the Contractor undertakes to meet the following requirements: (i) a smartphone and a working SIM card (also personal or for mixed-use) are required; (ii) each smartphone used for the purposes of the Multifactor Authentication System shall be associated exclusively with the personal identity of the specific employee, agent, Subcontractor, representative or other Contractor's personnel who may access and/or use the ENEL Systems on behalf of the Contractor; and (iii) the Contractor shall fulfill all of the foregoing requirements at its sole risk, cost and expenses. ENEL does not bear any charge (financial or otherwise) for the supply of the smartphone and shall not be liable to the Contractor or any third party for any damages, claims or losses, either direct or indirect, arising out of or connected with the failure and/or defective functioning or unlawful use of any smartphone that is used for the Multifactor Authentication System by the Contractor's employees, agents, Subcontractors, representatives or other personnel.

### **23 PROCESSING OF PERSONAL DATA.**

ENEL and the Contractor shall comply with the legislation on the protection and processing of personal data. When processing personal data on behalf of ENEL, the Contractor shall implement suitable security, technical and organizational measures to prevent any breach of personal data, and shall comply with the EU General Data Protection Regulation 679/2016, either within or outside the European Union and shall promptly inform ENEL of any breach of personal data occurred during the performance of the Contract.

### **24 SUPPLIER PERFORMANCE MANAGEMENT.**

24.1 ENEL monitors and assesses the performance of Contractors through a dedicated Supplier Performance Management ("SPM") process. The main topics evaluated during the assessment are the following:

- a) quality of activities;
- b) compliance with the schedule;
- c) compliance with health, safety and environmental rules;
- d) respect of human rights;
- e) cooperation and innovative solutions proposed during the performance of the Contract.

24.2 On the basis of the items listed above, ENEL shall assign a score to the Contractor. In the case of a positive score, the Contractor may have access to the incentive actions specified in the "Regulations on incentive management", available at: <https://globalprocurement.enel.com/es/convertirse-en-proveedor/supplier-performance-management>. In case of application by ENEL of the remedies set forth in the Contract for breaches of contractual obligations, ENEL will assign to the Contractor a negative score.

### **25 VALUE ENGINEERING AND GAIN SHARING<sup>1</sup>.**

25.1 "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 cost and other applicable factors, while reducing the Price without affecting the safety, quality, and environmental compliance of the Scope of Contract. Value Engineering is the result of such practices or designs being or not a deviation from the Technical Specifications, thus resulting in a deviation from and/or modification to the Contract. Value Engineering shall not include standard optimization taken during the design process that ENEL and the Contractor would normally perform.

25.2 ENEL and the Contractor may submit "Value Engineering" proposals. Any "Value Engineering" proposals submitted by the Contractor, shall be aimed at reducing the Price through direct and quantifiable adjustments to the Scope of Contract.

The Contractor's proposals to ENEL shall be reviewed and approved by ENEL.

"Value Engineering" proposals shall include:

- a) the proposed changes to the Scope of Contract (detailed description, attribution of responsibilities among the Parties, etc.);
- b) the anticipated savings and/or improvements in the Scope of Contract (financial or otherwise) that will be achieved by either Party;
- c) the estimated costs to be incurred by either Party;
- d) any other impact on the provisions of the Contract.

25.3 ENEL shall make any commercially and technically reasonable efforts to review and respond to the "Value Engineering" proposals within fifteen (15) days from their receipt. If a "Value Engineering" proposal is approved, the proposing Party shall timely develop a specific implementation plan.

25.4 No "Value Engineering" proposal shall be implemented unless a formal acceptance in writing has been issued by ENEL.

<sup>1</sup> This clause shall only apply to Contracts which are not subject to laws banning or limiting the use of this mechanism. .

25.5 The monetary value of the "Value Engineering" proposals shall be referred to as the "Gain Sharing". The Contractor shall submit a proposal of Gain Sharing distribution between ENEL and the Contractor. Should the proposal be approved, the Contractor may be entitled to receive such portion of the Gain Sharing as agreed upon by the Parties.

25.6 Upon approval of a "Value Engineering" proposal, the Contractor shall submit a Change Order request in accordance with the provisions of clause 9.4.

## **26 GOVERNANCE.**

### **26.1 Contract Governance Structure**

26.1.1 Where provided for by the Contract, the Parties may set up a committee (so-called "Review Group") to supervise the progress of the performance of the Contract. The Review Group is made up of an equal number of representatives of the Parties. Each Party may periodically change its representatives in the Review Group at its sole discretion, notifying the other Party of the change.

26.1.2 From time to time, by mutual agreement between the Parties, additional representatives of both Parties, with appropriate technical skills, experience and knowledge, or external consultants, may be invited to attend the meetings of the Review Group, without prejudice to the obligation for all third parties to sign and comply with confidentiality obligations.

26.1.3 The Review Group is chaired by a representative of ENEL.

### **26.2 Decision-making process.**

26.2.1 All the decisions of the Review Group shall be unanimous. If the Review Group, after making good faith efforts, fails to reach an agreement, this matter shall be referred to the representatives of ENEL and the Contractor specified for this purpose in the Contract. These representatives shall promptly meet and negotiate in good faith to resolve this issue.

### **26.3 Responsibility.**

26.3.1 The Group's responsibilities include:

- a) support and facilitate ongoing cooperation and communication between the Parties;
- b) supervise and coordinate the transfer of information;
- c) periodically evaluate the performance of the Contract;
- d) discuss in good faith all potential improvements that may be implemented during the performance phase.

26.3.2 Unless otherwise agreed under the Contract, the Review Group meets at least once a year at ENEL's premises or other venues agreed by the Parties. Alternatively, the Review Group may meet by teleconference, videoconferencing or other similar communication equipment.

26.3.3 The Chairman of the Review Group is responsible for sending the agenda, reasonably in advance of all meetings, as well as for the preparation of the final minutes of each meeting.

26.3.4 Any expenses for attending the meetings shall be borne by each Party.

## **27 KPI (KEY PERFORMANCE INDICATOR).**

27.1 The Contractor shall perform the Contract satisfying the service levels, where expressly provided for by the Contract.

27.2 The Parties shall monitor and verify the achievement of the service levels in accordance with the terms set out in clause "GOVERNANCE" above.

## **28 GLOBAL COMPACT.**

28.1 Each of the Parties acknowledges the content of the so-called "Ten Principles" of the United Nations Global Compact, and declares to manage its business activities and operations in order to meet such fundamental responsibilities in the areas of human rights, labor, environment and anti-corruption.

28.2 In particular, the Contractor undertakes to fully comply with the principles of the Global Compact and with the Law, and shall ensure that all activities carried out, either directly or by its Subcontractors, Subsuppliers, other Third Parties appointed by the Contractor and its entire supply chain, comply with the following principles of the Global Compact:

### **a) HUMAN RIGHTS.**

One: Businesses must support and respect the protection of internationally recognized human rights in conducting their business activities.

Two: Businesses must ensure that they do not take part in human rights violations.

### **b) LABOR.**

Three: Businesses must uphold the freedom of association and the effective recognition of the right to collective bargaining.

Four: Businesses must uphold the elimination of all forms of forced and compulsory labor.

Five: Businesses must uphold the effective abolition of child labor.

Six: Businesses must uphold the elimination of discriminatory practices in employment and education.



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### c) ENVIRONMENT.

Seven: Businesses must conduct their affairs in a preventive manner to avoid potential damage to the environment.

Eight: Businesses must undertake initiatives to promote greater environmental responsibility.

Nine: Businesses must encourage the development and diffusion of environmentally friendly technologies.

### d) ANTI-CORRUPTION.

Ten: Businesses must work against corruption in all its forms, including extortion and bribery.

28.3 The Contractor undertakes to inform ENEL of any situation which, to the best of its knowledge, after due inquiry, including situations related to its Subcontractors, Subsuppliers, Third Parties appointed by the Contractor and its entire supply chain, may result into a failure to fulfill these principles, as well as the plan to remedy these situations.

28.4 Throughout the Duration of the Contract, the Contractor undertakes to allow ENEL to verify the degree of compliance with the requirements set out in this clause, by carrying out inspections, audits and/or requests for documents. In such cases, the Contractor shall grant ENEL access to its facilities and duly provide the requested documents, and the Contractor shall employ its best efforts to fulfill this obligation and ensure that its Subcontractors, Subsuppliers, Third Parties appointed by the Contractor and its entire supply chain do the same.

28.5 ENEL shall be entitled to terminate the Contract, for causes attributable to the Contractor, whenever ENEL becomes reasonably aware that the Contractor or its Subcontractors, Subsuppliers, Third Parties appointed by the Contractor or its supply chain violated one of the above mentioned principles. The Contractor shall indemnify and hold ENEL harmless against any damage, loss, cost or expense arising therefrom.

## 29 CODE OF ETHICS.

### 29.1 General details.

29.1.1 The ENEL Group in the conduct of its business and in the management of relationships complies with the contents of its Code of Ethics, its Zero Tolerance Anti-Bribery Plan and its Human Rights Policy.

29.1.2 The Contractor acknowledges the commitments laid down in the Code of Ethics, the Zero Tolerance Anti-Bribery Plan and the Human Rights Policy and declares that the conduct of its business and the management of its relationships with third parties are inspired by equivalent principles, and the Contractor shall ensure that all of its Subcontractors, Subsuppliers, Third Parties appointed by the Contractor and its entire supply chain comply with such principles.

29.1.3 The Contractor represents to acknowledge the commitments undertaken by ENEL in its Code of Ethics and undertakes to comply with the principles of the International Labor Organization conventions, as well as with the legal regulations on: the protection of child and women labor; equal opportunities; the prohibition of discrimination, abuse and harassment; freedom of association and representation; forced labor; environmental safety and protection; health and hygiene conditions. Furthermore, the Contractor shall ensure that all of its Subcontractors, Subsuppliers, Third Parties appointed by the Contractor and its entire supply chain comply with the same.

29.1.4 Furthermore, the Contractor shall comply with the applicable legislation on salary, pensions and social security contributions, insurances, taxes, etc., in relation to all of its workers employed at any title in the performance of the Contract, and shall ensure that its Subcontractors, Subsuppliers, Third Parties appointed by the Contractor and its entire supply chain comply therewith. In the case of any conflict between the International Labor Organization conventions and the applicable regulations, the most restrictive rules shall apply.

29.1.5 Each of the Parties undertakes to prevent any form of corruption. Therefore, ENEL prohibits to make any promise, offer or request for unlawful payments, whether in cash or other utility, for the purpose of furthering its relationships with its stakeholders and this shall apply to all of its employees. The Contractor undertakes to comply with this obligation and to ensure that all of its Subcontractors, Subsuppliers, Third Parties appointed by the Contractor and its entire supply chain comply therewith.

29.1.6 ENEL reserves the right to carry out any control and monitoring activity (e.g. inspections, audits and/or requests for documentation) to verify the fulfillment of the obligations specified above, both by the Contractor and any of its Subcontractors, Subsuppliers, Third Parties appointed by the Contractor and operators belonging to its supply chain. In such cases, the Contractor shall grant ENEL access to its premises and duly provide the requested documents, and the Contractor shall employ its best efforts to ensure that its Subcontractors, Subsuppliers, Third Parties appointed by the Contractor and its entire supply chain do the same.

29.1.7 Failure by the Contractor to fulfill these obligations shall entitle ENEL to terminate the Contract and to request compensation for damages from the Contractor.

### 29.2 Conflict of interests.

29.2.1 During the performance of the Contract, the Contractor undertakes to have exclusive regard for the interests of ENEL, ensuring that there are no situations that might lead to the occurrence of any conflict of interest in relation to the activities to be performed.

29.2.2 Throughout the term of the Contract, the Contractor undertakes to adopt a suitable conduct in order to avoid potential conflict of interests. If any situation is considered as liable to create a conflict of interests - notwithstanding ENEL's right to terminate the Contract - the Contractor undertakes to promptly inform ENEL in writing and to follow its reasonable instructions, which shall be given after consultation and assessment of the requirements pointed out by the Contractor.

### 29.3 Health and Safety.

29.3.1 In ENEL, no work can be done compromising health & safety and/or environment. For this reason, as established in the Stop Work Policy, any risk situation or unsafe behavior shall determine the suspension of work and the restoration of health, safety and/or environmental conditions.





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29.3.2 ENEL 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”, the “Stop Work Policy” and the “Environmental Policy”, available at the following addresses:

<https://globalprocurement.enel.com/es/documentos> , under the section “Other useful documents” and

<https://globalprocurement.enel.com/es/documentos/documentacion-salud-y-seguridad> and

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

29.3.3 The Contractor acknowledges ENEL’s commitment in promoting and consolidating a culture of health, safety and environmental protection, and undertakes to comply with the same principles and with the provisions of the HSE Terms, as well as to ensure that its Subcontractors, Subsuppliers, Third parties engaged by the Contractor and its whole supply chain comply therewith.

### 29.4 Integrity Clause.

- a) By submitting the bid and/or accepting the Contract, the Contractor<sup>2</sup> declares
- to acknowledge the commitments undertaken by ENEL S.p.A. and the companies directly or indirectly controlled by ENEL (hereinafter “ENEL”), specified in the Code of Ethics, the Zero Tolerance Anti-Bribery Plan (ZTC), the Human Rights Policy, in order to comply with the relevant principles in the performance of its business activities and in the management of the relationships with third parties;
  - <sup>3</sup> that to the best of its knowledge, the Contractor is not subject to any criminal proceedings in relation to tax crimes, crimes against the public administration, crimes against property, crimes against the personal freedom or the public order, environmental crimes;
  - <sup>4</sup> that the Contractor is not subject to any criminal investigation in respect of any matter, fact, or unlawful conduct constituting tax crimes, crimes against the public administration, crimes against property, crimes against the personal freedom or the public order, environmental crimes;
  - to be aware and to authorize - for the purposes of assessing the professional conduct of the declarant and of the relevant Company, according to the second and third paragraph above - that ENEL may independently collect additional information, in order to assess the accuracy of the statements made, considering the necessary existence of duties of loyalty for the Company involved.
- b) The Contractor undertakes to promptly inform and to provide all the relevant documents to ENEL:
- 1) if the Contractor becomes aware of the opening of any criminal proceedings, referred to in the second paragraph of letter a) above;
  - 2) if the Contractor becomes aware of the opening any criminal investigation, referred to in the third paragraph of letter a) above.

ENEL reserves the right to examine, at its discretion, the aforementioned information, in order to assess the professional conduct of the Contractor and of the relevant Company.

### 29.5 International sanctions.

29.5.1 Each Party represents and warrants to the other Party that, to the best of its knowledge, after due inquiry, at the execution date of the Contract, neither such Party nor any of its officers, members of its governing body, shareholders owning at least a 5% interest in the Party’s company or in any company of which such Party owns at least 50 % or is otherwise controlled by such Party, or is under common control by the ultimate parent company, are (i) subject to Sanctions, or (ii) are involved in any activity, or have been previously involved in any activity, which may expose them to Sanctions. For the purposes of this section, the term “Sanctions” refers to all the applicable economic or financial sanctions or trade embargos imposed or enforced in accordance with the laws, regulations, executive orders, restrictive measures or other related rules publicly issued or notified by: (i) the United Nations; (ii) the European Union; (iii) the United States government, including those established by the U.S. Department of the Treasury’s Office of Foreign Assets Control; (iv) the UK Her Majesty’s Treasury.

29.5.2 Each Party undertakes to fully comply with all the legal requirements related to Sanctions with regard to the performance of the Contract.

29.5.3 Each Party undertakes to maintain in effect and enforce policies and procedures designed to prevent the application of any Sanctions and to promptly notify in writing to the other Party the opening of any proceedings that may lead to the imposition of a Sanction and, in any case, the application of any Sanctions throughout the term of the Contract.

<sup>2</sup> The Legal Representative of the Company in his/her own right and on behalf of (a) the owner and the technical director, in the case of individual companies; (b) the partners and the technical director, in the case of business partnerships; (c) the general partners and the technical director, in the case of limited companies; (d) the managers holding powers of representation, the technical director and the single member (natural person), or the majority shareholder in the case of companies with less than four members, in the case of other type of company or consortium, **of the Company where they perform their office** and, where applicable, **on behalf of the Parent Company and of the** (e) owner and the technical director, in the case of individual companies; (f) the partners and the technical director, in the case of business partnerships; (g) the general partners and the technical director, in the case of limited companies; (h) the managers holding powers of representation, the technical director and the single member (natural person), or the majority shareholder in the case of companies with less than four members, in the case of other type of company or consortium, **of the Parent Company**.

<sup>3</sup> In relation to the Contractor and the persons listed in point 2.

<sup>4</sup> In relation to the Contractor and the persons listed in point 2.





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29.5.4 Furthermore, the Contractor represents that, to the best of its knowledge, after due inquiry, its Subcontractors, Subsuppliers, Third Party engaged by the Contractor and its entire supply chain, are not subject to any Sanctions and the Contractor shall promptly notify in writing, in accordance with clause 6 "COMMUNICATIONS" of these General Conditions, to ENEL any circumstance in its knowledge concerning the application of any Sanctions throughout the term of the Contract against its Subcontractors, Subsuppliers, Third Parties engaged by the Contractor and its entire supply chain.

29.5.5 In the event that the Contractor or any of its Subcontractors and/or Subsuppliers, third parties engaged by the Contractor or any operator belonging to its supply chain, are subject to a Sanction during the term of the Contract, or if the Contractor provides unfaithful representations under this clause, ENEL may terminate the Contract upon a prior written notice of 7 working days. In the last case, the Contractor shall indemnify and hold ENEL harmless against any damage, loss, cost or expense arising therefrom.

29.5.6 In such cases of termination, the Parties may negotiate in good faith in order to mitigate, to the extent applicable, any loss or damage related to the Sanctions or arising therefrom, within the notification period for termination. Should the Parties fail to reach an agreement within 7 calendar days from the notification of termination, the Contract shall be automatically terminated, without prejudice to any other action or remedy available in accordance with the applicable Law or the Contract.

### **30 GOVERNING LAW.**

The Contract and all the matters arising between the Parties in relation thereto or in connection therewith, shall be governed in accordance with the Costa Rican laws, to which the Contractor and ENEL expressly submit.

### **31 JURISDICTION.**

The Parties expressly agree that the interpretation, compliance and performance of this Contract shall be submitted to the jurisdiction of the competent Courts of Costa Rica, expressly and irrevocably waiving any other jurisdiction that may be applicable due to their present or future domicile or for any other reason whatsoever.