



**Standard Terms and Conditions
South Africa**

2nd edition, valid from 12\01\2023

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1. SCOPE

These Standard Terms and Conditions are incorporated into the Agreement by and between the ENEL Group Company and the Provider as of the Effective Date with the same force and effect as if they were set forth in full text therein. In addition to the provisions set forth in the Agreement, the following conditions shall apply.

2. DEFINITIONS

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

- (a) “**Advance Payment**” means any sums labelled in the Agreement as advance payments, mobilisation payments, or words of similar import, as well as any payment on account of the Contract Price other than a progress payment or final payment.
- (b) “**Advance Payment Bond**” means an unconditional Standby Letter of Credit or a Bank Guarantee, payable with 30-day notice, issued by a reputable South African bank acceptable to Company (or confirmed by a reputable South African bank acceptable to Company, if issued by a foreign bank), in an amount and expiry date as stipulated in the Agreement. The Advance Payment Bond shall guarantee that the advanced sum will be returned if the Agreement under which the advance was made cannot be fulfilled.
- (c) “**Affiliate**” means, in relation to any Person, any other Person, who: (a) directly or indirectly Controls, or is Controlled by, or is under common Control with, such Person; or (b) directly or indirectly beneficially owns or holds fifty percent (50%) or more of any class of voting stock or other equity interests of such Person; or (c) has fifty percent (50%) or more of any class of voting stock or other equity interests that is directly or indirectly beneficially owned or held by such Person, or (d) either holds a general partnership interest in such Person or such Person holds a general partnership interest in the other Person.
- (d) “**Agreement**” means the written contract entered into by Company and Provider which incorporates these Standard Terms and Conditions by reference, as the same may be amended, supplemented or modified from time to time in accordance with the terms hereof. Any reference to the Agreement shall be deemed to include the Contract Documents.
- (e) “**Applicable Law(s)**” means any act, statute, law, regulation, Permit, ordinance, rule, judgment, order, decree, directive, guideline or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any Governmental Authority with jurisdiction over the Provider, the Company, or the services / supplies / works to be performed under the Agreement, and includes any of the same as they may be amended or imposed from time-to-time.
- (f) “**Business Day**” or “business day” means any Day excluding Saturdays, Sundays and South African public holidays.
- (g) “**Change**” has the meaning set forth in Section 18.1.
- (h) “**Change Order**” means a material Change in Agreement as agreed in writing by the Parties.
- (i) “**Change Order Request**” has the meaning set forth in Section 18.2.
- (j) “**Company**” means the ENEL Group Company being a Party of the Agreement.
- (k) “**Confidential Information**” has the meaning set forth in Article 11.
- (l) “**Contract Documents**” shall mean the documents identified as such in the Agreement.
- (m) “**Contract Price**” shall mean the price for the services / supplies / works as set forth in the Agreement.
- (n) “**Control**” means possession, directly or indirectly of the power to direct or cause the direction of the management or policies of a Person, whether through the ownership of voting securities or otherwise.
- (o) “**Currency**” means the currency or currencies in which the Contract Price is expressed, and may be referenced by their official name, their customary sign or their 3-letter Code according to the ISO 4217 standard.
- (p) “**Day**” or “**day**” means a period of 24 (twenty-four) consecutive hours from 12:00 midnight, and shall include Saturdays, Sundays and all public holidays.
- (q) “**Dispute**” has the meaning set forth in Section 15.1.
- (r) “**Effective Date**” means the date, as stipulated in the Agreement, when the Agreements is entered into.
- (s) “**ENEL Group**” means Enel S.p.A. and its Affiliates.
- (t) “**Financially Distressed**” means in relation to any entity:
 - (a) it appears to be reasonably unlikely to be able to pay all of its debts as they become due and payable within the immediately ensuing six months; or



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- (b) it appears to be reasonably likely to become insolvent within the immediately ensuing 6 (six) months;
- (u) **“Financing Parties”** means the lenders, security holders, investors, institutions, equity providers and other Persons providing debt, equity, or tax equity financing or refinancing to or on behalf of Company for the development, construction, ownership, operation or maintenance of a Project or any portion thereof, or any trustee or agent acting on behalf of any of the foregoing.
- (v) **“Force Majeure Event”** shall have the meaning set forth in Section 13.1 of these Standard Terms and Conditions.
- (w) **“Governmental Authority”** means any and all foreign, national city, municipal, local or regional authorities, departments, bodies, commissions, corporations, branches, directorates, agencies, ministries, courts, tribunals, judicial authorities, legislative bodies, administrative bodies, regulatory bodies, autonomous or quasi-autonomous entities or taxing authorities or any department, municipality or other political subdivision thereof.
- (x) **“HSE Terms”** means the document entitled “Health, Safety and Environmental Terms” located at <https://globalprocurement.enel.com/documents/hse-terms>.
- (y) **“Insolvency Event”** means in relation to an entity:
- (a) a receiver, liquidator, business rescue practitioner, trustee or similar official appointed over any of the assets or undertaking of the entity;
 - (b) the entity suspends payment of its debts generally;
 - (c) the entity is or becomes Financially Distressed;
 - (d) the entity enters into or resolves to enter into any arrangement, scheme or compromise with, or assignment for the benefit of, its creditors generally or any class of them;
 - (e) an application or order is made for the winding-up or dissolution of, or the appointment of a provisional liquidator, to the entity or a resolution is passed or steps are taken to pass a resolution for the winding-up or dissolution of the entity otherwise than for the purpose of an amalgamation or reconstruction which has the prior consent of all shareholders, or steps are taken to commence business rescue proceedings under the *Companies Act, 2008*;
- (z) **“Intellectual Property Rights”** means trade secrets, patents, patentable inventions, copyrights, trademarks, service marks, trade names, utility models, industrial designs, proprietary rights or information, licenses or other intellectual property rights.
- (aa) **“Interest Rate”** means the lesser of (a) the per annum rate of interest equal to the benchmark prime lending rate as may from time to time may be charged by Citibank on the unsecured overdrawn current accounts of its most favoured corporate clients in the private sector from time to time, on the basis that such interest is compounded monthly in arrears and calculated on a 365 day year factor, irrespective of whether or not the year is a leap year (and which rate of interest is at times also referred to as the prime commercial overdraft rate of interest). In the case of a dispute as to the rate so payable, the rate shall be certified by any manager or assistant manager whose appointment it will not be necessary to prove, of any branch of Citibank, whose certificate shall be prima facie proof thereof, plus 1.5% (one point five percent) and (b) the maximum rate permitted by Applicable Law.
- (bb) **“Liquidated Damages”** such amount as the Parties agree the Provider will pay to the Company as pre-determined damages if the Provider breaches the terms of this Agreement whether in respect of an act or omission which is in conflict with the Provider’s contractual obligations.
- (cc) **“Party” or “Parties”** means, respectively, a party or both parties to this Agreement.
- (dd) **“Performance Bond”** means an unconditional Standby Letter of Credit or a Bank Guarantee, payable with 30-day notice, issued by a reputable South African bank acceptable to Company (or confirmed by a reputable South African bank acceptable to Company, if issued by a foreign bank), in an amount and expiry date as stipulated in the Agreement. The Performance Bond shall guarantee the faithful, complete and timely fulfilment of Provider’s obligations under the Agreement.
- (ee) **“Permit”** means any waiver, exemption, variance, certificate, franchise, permit, approval, exemption, authorization, clearance, license, consent, or similar order of or from, or filing or registration with, or notice to, any Governmental Authority that are necessary for the performance of the Agreement.
- (ff) **“Person”** means any natural or juristic person, firm, company, corporation, government, state, agency or organ of a state, association, trust or partnership, Governmental Authority or other entity of whatever nature (whether or not having separate legal personality).



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- (gg) **“Personnel”** means, with respect to a Party or entity, such Party’s or entity’s employees, agents, personnel, representatives, invitees, subcontractors, vendors and any other third party independent Providers with whom such Party or entity has contracted, and its agents’, personnel’s, representatives’, invitees’, subcontractors’, vendors’ or third party independent Providers’ respective employees, agents, personnel, representatives, invitees, subcontractors, vendors or third party independent Providers.
- (hh) **“Programme”** means the schedule of dates and milestones for timely completion of the object of the Agreement, as set forth in the Agreement.
- (ii) **“Provider”** means the Party which enters the Agreement with Company.
- (jj) **“Provider’s Safety Plan”** means Provider’s standard construction environmental, health, and safety plan.
- (kk) **“Prudent Industry Practices”** means, in connection with the performance of the services / supplies / works, those practices, methods, specifications and standards of safety, performance, dependability, efficiency and economy internationally recognised by members of the applicable industry as good and proper, and such other practices, methods or acts which, in the exercise of reasonable judgment by those reasonably experienced in the applicable industry in light of the facts known at the time a decision is made, would be expected to accomplish the result intended at a reasonable cost and consistent with Applicable Laws, reliability, safety and expedition. Prudent Industry Practices are not intended to be limited to the optimum practices, methods or acts to the exclusion of all others, but rather to be a spectrum of good and proper practices, methods and acts.
- (ll) **“Representative(s)”** shall mean the person(s) nominated as such by each Party in the Agreement that will have responsibility for and will act as a single point of contact in all day-to-day matters related to the Agreement.
- (mm) **“Retainage”** shall have the meaning set forth in Section 5.6 of the Standard Terms and Conditions.
- (nn) **“Scope of Work”** means the services / supplies / works and work to be provided, or caused to be provided, by or through Provider under the Agreement, as more particularly in the Agreement.
- (oo) **“Standard Terms and Conditions”** means this document, as amended from time to time.
- (pp) **“Subcontractor(s)”** means a corporation, partnership, or individual having a direct contract with Provider for performing and portion of the Scope of Work, and its employees and representatives.
- (qq) **“Sub-Tier Supplier”** means any supplier that indirectly provides any goods, materials or services to Provider in connection with Provider’s performance of this Agreement.
- (rr) **“Termination Payment”** shall have the meaning set forth in Section 16.1 of these Standard Terms and Conditions.
- (ss) **“Warranty Period”** means the period referred to in Article 7 of the Standard Terms and Conditions.
- (tt) **“Warranty Bond”** means an unconditional Standby Letter of Credit or a Bank Guarantee, payable with 30-day notice, issued by a reputable South African bank acceptable to Company (or confirmed by a reputable South African bank acceptable to Company, if issued by a foreign bank), in an amount and expiry date as stipulated in the Agreement. The Warranty Bond shall guarantee the faithful, complete and timely fulfilment of Provider’s obligations during the Warranty Period.

3. SCOPE OF WORK AND PROVIDER’S OBLIGATIONS.

Standards. Provider shall perform the Scope of Work from Effective Date through the date specified in the Agreement, in accordance with the requirements set forth by the Company as specified by the Exhibits, Schedules or Annexures of the contract including conditions herein. - The Agreement may be renewed only upon written notice sent by either Party to the other at least forty-five (45) days prior to the expiry of the Agreement, specifying the duration of the renewal, unless the other Party decides to terminate the Agreement.

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

3.2 **Provider’s Representative.** Provider shall designate a Representative in writing, who has the responsibility for and acts as a single point of contact in all day-to-day matters related to the Scope of Work. Provider shall not change its Representative or any other key member of the Provider’s staff engaged in this Agreement without the prior written notice to Company and shall replace him/her with an equally qualified person.

3.3 **Cooperation.** Provider shall cooperate with Company and Company’s other third-party service providers, and use commercially reasonable efforts to schedule, coordinate, and perform the Scope of Work under this Agreement so as not to delay or adversely impact its timely performance and completion of the applicable Scope of Work all in accordance with the Program set forth in the Agreement.



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

3.5 Third Party Service Providers. The Provider acknowledges that (i) Company may use third parties through outsourcing or otherwise to provide various types of goods and services including, without limitation, the types of services provided by Provider, and (ii) nothing in this Contract shall be deemed to grant Provider the exclusive right to provide the Scope of Work.

If any part of the Scope of Work depends upon the work of a third party service Provider, the Provider shall, prior to proceeding with the relevant part of the Scope of Work, inspect the work of such third party service provider and promptly report to the Company any apparent discrepancies or defects in such work.

3.6 Subcontracting.

- (a) Notwithstanding that anticipated Subcontractors may be designated or anything else in this Agreement to the contrary, Provider may not enter into any subcontract with any Person unless such subcontracting is approved by Company in writing at its sole discretion, which approval shall not be unreasonably conditioned, withheld or delayed. Except as otherwise expressly provided in this Agreement, Provider shall be solely responsible for engaging, managing, supervising and paying all Subcontractors and Persons directly or indirectly employed by it. Provider shall require that all the Scope of Work performed be received, inspected and otherwise furnished in accordance with this Agreement and Provider shall be solely liable for all acts, omissions, liabilities and works (including defects therein) of its Subcontractors. All contracts with Subcontractors shall be consistent with the terms and provisions of the Agreement. Without limiting Company's right to condition its approval of a subcontract on additional conditions, all subcontracts shall: (i) require the Subcontractors to comply with Applicable Law, (ii) provide that Company has the right of inspection as provided hereunder, (iii) require such Subcontractors to be subject to the labor, health and safety, security, confidentiality, and ethics and anticorruption provisions of this Agreement, (iv) provide guarantees and warranties with respect to its portion of the Scope of Work; (v) not aggregate to more than 49% of the Contract Price (unless otherwise provided elsewhere in this Agreement or approved by Company in advance and in writing), provided that subcontracts between Provider and Provider Affiliates shall not count towards such limit; and (vi) only one tier of subcontracting is permitted, therefore subcontracted activities may not be executed or performed using any further tier of subcontracting (unless required by Applicable Law or unless otherwise provided elsewhere in this Agreement and with Company's prior written approval). Except as set forth in Section 3.6 b), no contractual relationship shall exist between Company and any Subcontractor with respect to the Scope of Work. Provider shall require and shall cause all Subcontractors to perform their portions of the Scope of Work in accordance with the requirements of this Agreement. Where a Subcontract is required to mobilise a Project Site, Provider shall provide a minimum of two weeks prior notice to Company of such pending Subcontract mobilization.
- (b) No Subcontractor is intended to be nor shall it be deemed a third-party beneficiary of this Agreement. Nothing contained herein shall obligate Company to pay any Subcontractor and Provider shall be solely responsible for paying each Subcontractor in accordance with the applicable subcontract between Provider and the Subcontractor; provided, however, each agreement between Provider and a Subcontractor with respect to the Scope of Work shall name Company as an intended third-party beneficiary and shall include a provision to allow the assignment of that agreement to Company, following a default by Provider or termination or expiration of this Agreement.
- (c) Without in any way derogating Provider's representations and warranties and other testing requirements and guarantees set forth herein with respect to the Scope of Work, Provider shall use reasonable efforts to obtain from all Subcontractors any representations, warranties, guarantees, and obligations offered by such Subcontractors and to negotiate the longest reasonably practicable warranty periods at no additional cost with respect to design, materials, workmanship, equipment, tools, supplies, and other items furnished by such Subcontractors. To the extent assignable, Provider shall assign, or shall assist Company in obtaining directly, all representations, warranties, guarantees, and obligations of all Subcontractors at the request and direction of Company, and without recourse to Provider, to Company upon default by Provider or termination or expiration of this Contract; provided, however, that, notwithstanding such assignment, Company shall be entitled to enforce each such representation, warranty, guaranty, and obligation so long as Provider has any liability under this Contract. .
- (d) Subcontracting will not relieve the Provider from any of its warranties, liabilities or obligations under this Agreement. The Provider will be responsible for the acts and defaults of its Subcontractors, Affiliates, agents or employees, as if they were the acts and defaults of the Provider.
- (e) Payments of each milestone by the Company, is subject to sufficient proof that all the Provider's Subcontractors (if there is any Subcontractor) had been paid prior, and that the Provider will submit such confirmation as part of its invoice package with proof of milestone completion sign off by the Company's site representatives.

3.7 This Section 3.7 is applicable only for Works Agreements:

If Company has paid Provider in accordance with the requirements of this Agreement, Provider shall discharge and cause to be released, at Provider's sole expense, whether by payment or entering into an appropriate suretyship in accordance with Applicable Laws, within 10 (ten) days after receipt of a written demand from Company, any lien in respect to the Scope of Work (whether or not any such lien is valid or enforceable) created by, through or under, or as a result of any act or omission (or alleged act or omission) of, Provider or any Subcontractor, or other person providing labour, service or materials within the Scope of Work. Upon



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the failure of Provider to promptly discharge or cause to be released any lien as required by this Section 3.7, within ten (10) days after notice to Provider, Company may, but shall not be obliged to, pay, discharge or call up the suretyship for such lien and, upon such payment, discharge or calling up of the suretyship therefor, shall be entitled to immediately recover from Provider the amount thereof together with all expenses incurred by Company in connection with such payment, discharge or calling up, or set off all such amounts against any sums owed by Company to Provider. Provider shall notify Company of the operation or creation of any lien against the Scope of Work promptly upon learning of the existence of such lien. Acceptance by Provider of the final payment shall constitute a release by Provider of Company, Affiliates, Financing Parties and every officer and agent thereof from all liens, claims and liability hereunder with respect to any Scope of Work performed or furnished in connection with this Agreement, or for any act or omission of Company or of any Personnel relating to or affecting this Agreement, except claims for which Provider has delivered a notice to Company. No payment by Company shall be deemed a waiver by Company of any obligation of Provider under this Agreement.

3.8 SHERQ, Expediting, Shipping and Logistics Requirements.

(a) **Introduction**

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

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

- <http://globalprocurement.enel.com>, in the section "Other Useful Documents";
- <https://globalprocurement.enel.com/documents/hse-terms>; and
- <https://corporate.enel.it/en/company/policy-environmental-enel>.

Provider shall comply with the same principles, including those set forth in the HSE Terms, when applicable, and ensure that its Subcontractors and Sub-Tier Suppliers comply with the same.

(b) **Health & Safety**

The Provider is responsible to provide and implement a health & safety management system in accordance with the Company's HSE Terms and the applicable Occupational Health and Safety Act 85 of 1993 as promulgated and as may be amended in accordance with the Applicable Laws. This will be in the form of health and safety file which must be comprised of the health & safety system or philosophy itself; health & safety plan; the competencies; method statements; health and safety risk life cycle management system, policies and procedures; inspection forms and any other relevant part as may be required. In maintaining the system, the Provider must also ensure that there is project specific health and safety risk life cycle management system in place. And that the Health and Safety Management system must be designed to prevent injury to all persons at or near the project site(s) and all public and private property that are at or near the project site(s) that are in any manner affected by the performance of the Scope of Work. The Provider is responsible for and must notify the Company as soon as the Provider becomes aware of any injury in connection with performance of the Scope of Work and in particular not later than an hour after occurrence of injury incident.

(c) **Environmental**

The Provider will be responsible to provide and implement environmental management system in accordance with the Company's HSE Terms and the Applicable Laws. The environmental management system must be comprised of the environmental management system; environmental management plans; waste management systems and plans; project specific environmental risk life cycle management system; the competencies; method statements; policies and procedures; inspection forms and any other relevant part as may be required. The Provider must also manage the permitting process; permitting tracker and ensure that all outstanding permits are acquired as specified or as required for the works.

(d) **Quality**

The Provider is responsible to implement a Quality Management System in accordance with the Company's requirements. These must be presented in the form of quality management file and actual performance which must include quality management system or philosophy itself; quality control plan; the competencies; method statements; policies and procedures; quality inspections and test plans for each activity or milestone and interfaces; inspection forms and any other relevant part as may be required or deemed necessary by the Company.

(e) **Procurement, Expediting, Shipping and Logistics**

The Procurement, Expediting & Logistics management system must include among others (a) Provider's procurement plans; (b) the expediting and logistics rights; (c) and the competencies as may be required. And where such level of detail is not specified, the Provider will request clarification from the Company so as to better execute the works accordingly.



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3.9 Broad-Based Black Economic Empowerment (BBBEE).

- (a) The Provider agrees that it is required, throughout the term of this Agreement, to have and maintain level [4] or better and higher rated BBBEE contributor status as contemplated under the Broad-Based Black Economic Empowerment Amendment Act, 2013 (Act No. 46 of 2013) (read with the Codes of Good Practice) ("Contributor Status Level") measured and verified by a reputable verification agency ("Verification Certificate"). The Provider will provide evidence of such compliance by submission to the Company of a Verification Certificate on the first anniversary of the Effective Date of this Agreement, and every anniversary thereafter. The Provider will also provide such other supporting documentation and/or information reasonably requested by the Company or the Department of Energy to authenticate the information presented in the Verification Certificate and must maintain the contracted BBBEE level for the duration of this contract.
- (b) In the event that the Contributor Status Level of the Provider falls below the level expressed in sub-clause (a) above, the Company may grant the Provider one year to rectify the drop ("Cure Period"). The Parties understand and agree that:
- (i) The Provider will hold the Company harmless and indemnify the Company from all penalties, claims, costs or damages incurred by the Company as a result of the Provider's Contributor Status Level drop. Following written notification from the Company of any penalties, claims, costs or damages incurred, the Provider will reimburse the Company of said will be immediately payable by the Provider as if incurred by the Provider.
- (ii) no Cure Period will be provided if the Contributor Status Level of the Provider drops below a level [4].
- (c) The Company reserves the right to carry out independent audits and document verification for compliance with the obligations set out in this sub-clause 3.9.

(d) **SUPPLIER DEVELOPMENT AND LOCALISATION (SD&L) TARGETS**

Supplier Development and Localisation is a poverty alleviation and job creation initiative in line with South African Department of Trade and Industry strategic objectives and is also in line with Enel Creation of Shared Value Initiatives (CSV). The SD&L requirements for this Agreement will include (but not limited to):

(i) **LBS – Large Black Suppliers**

- Large Black Suppliers is defined as follows:

A large-measured entity (being an entity with turnover in excess of R35 million ("LME"), and with a B-BBEE Status of 1-4.

- The target is a percentage of the local content portion of the tender only.

(ii) **BWO – Black Woman Ownership**

- This refers to procurement from "Black Woman Owned Enterprises" is defined as follows:

An Exempted Micro-Enterprise or a Qualifying Small Enterprise that is more than 50% owned and effectively managed by Black women. The target is a percentage of the local content portion of the tender only.

(iii) **SBE - Small Black Enterprises**

- This refers to procurement from "Small Black Enterprises" as defined in the Directive as follows:

An Exempted Micro-Enterprise or a Qualifying Small Enterprise that are more than 50% owned and effectively managed by Black persons as Small Medium Enterprises "SME"). The target is also a percentage of the local content portion of the tender as well.

(iv) **Local content to Site**

- Local to Site is the area surrounding the project Site, as defined above. Enel is committed to support local to site businesses and let the businesses benefit from Company's spend on the project.

- Local to Site is a percentage of Local Content portion of the tender.

(v) **Local Content**

- This is the percentage of the total tender that represents value added in South Africa by South African resources – meaning further procurement anywhere within the country.

- In simpler terms the Local content will mean the total spend minus the imported component.

Providers must maintain records to certify imported content e.g. bill of materials, expenditure records, income statements, which requirements will be included as part of this Agreement to account or report on the SD&L requirements.

(vi) **Skills Development**



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The Provider must develop the targets as to skills development i.e how many electricians, safety officers, plumbers, data captures will the tender develop through this Agreement – that in this Agreement will be referred to as Skills Development.

3.10 Monthly Reporting. Unless otherwise provided in the Agreement or Technical Specifications, the Provider shall, by the fifth (5th) Day following the end of each month, prepare and submit a monthly job and progress report to the Company in the form provided by the Company. The monthly reports should also contain any supporting documentation requested by the Company.

- (a) This requirement to report shall continue until the Provider has completed the Scope of Work. Further, the Provider shall:
 - (i) participate in monthly review or progress meetings or any other calls as may be requested by the Company from time to time; and
 - (ii) provide to the Company, promptly upon becoming aware thereof, a report describing the occurrence of any act, omission or condition materially affecting the Scope of Work or the Provider's ability to perform any of its obligations under this Agreement,
- (b) The Company may, at its own cost, appoint an independent auditor to verify the monthly reports and any supporting documentation submitted by the Provider.

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

4. COMPANY OBLIGATIONS

Unless otherwise expressly specified in this Agreement, the sole obligation of Company is to pay Provider the Contract Price pursuant to the terms of clause 5 (*Terms and conditions of payment*) below.

5. TERMS AND CONDITIONS OF PAYMENT

5.1 The Contract Price is due and payable in accordance with this Agreement upon completion of any applicable invoicing milestones and payment terms set forth in the Agreement. For the avoidance of doubt, the Contract Price is inclusive of any present tax applicable to the furnishing of any portion of the Scope of Work hereunder (including any applicable withholding taxes in South Africa to companies registered in foreign countries), with the sole exception of the South African Value Added Tax ("VAT"), which shall be added to the Contract Price when applicable.

5.2 Delivery of Invoices and Payment Terms.

- (a) Provider shall issue to Company (no more frequently than once a month) an invoice for the Scope of Work performed. Supportive documentation, as well as any document necessary to demonstrate the completion of a milestone or completion of the Scope of Work to Company's satisfaction shall be included with each invoice submission. Only to the extent that an allowance for reimbursable expenses is expressly set forth in the Agreement, invoices shall be substantiated by receipts for such reimbursable expenses incurred in accordance the Company's Reimbursable Expenses Policy.
- (b) Payment shall be made by way of electronic funds transfer into the bank account nominated by Provider and shown in each invoice, on or before the payment terms stipulated in the Agreement (or if not stipulated in the Agreement, within 45 (forty-five) days after Company's receipt of the documentation required hereunder at Company's address nominated for receiving invoices). Company shall have no obligation to pay Provider more than the Contract Price.
- (c) Invoices shall be made subject to milestone sign off by the responsible Company delegated representative.
- (d) The payment and invoicing procedures herein may be varied at sole discretion by the Company from time to time in the interest of process improvement.

5.3 Disputes and Adjustments of Invoices. Company may dispute, in good faith, the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement for any arithmetic or computational error within 120 (one hundred and twenty) days of the date such invoice, or such adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due, with notice of the objection given to the Provider. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within 45 (forty-five) Days of such resolution along with interest accrued at the Interest Rate from and including the due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment.



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5.4 **Offsets.** Company may deduct and set-off (including by way of a draw on the Advance Payment Bond, Performance Bond, or Warranty Bond, if applicable) against any amounts that are to be paid to the Provider under this Agreement, as the case may be, as Liquidated Damages (if applicable) or refunds due or to become due from Provider to Company hereunder caused by Provider's failure to perform the Scope of Work according to the terms of this Agreement, and/or are reasonably necessary to protect Company from a loss because of: (a) defects in the Scope of Work not timely remedied; (b) third-party claims filed against Company because of the acts or omissions of Provider, (c) liens filed that Provider is required to discharge (that have not been bonded off or are not covered by insurance maintained hereunder); (d) failure of Provider to make undisputed payments when due to Subcontractors; or (e) damage to Company, the property of Company, or any of its Affiliates, to the extent the costs of such damages are not covered by the insurance Provider is required to maintain hereunder. Provider shall not have any rights of termination or suspension hereunder as a result of Company's exercise or attempted exercise of its rights under this sub-clause 5.4. Company shall release payments withheld pursuant to this sub-clause 5.4 within thirty (30) days from the date when Provider cures all such events or breaches to the reasonable satisfaction of Company.

5.5 **This Section 5.5 is applicable only for Works Agreements: Lien Waivers.** Should the Company specifically require it in writing, Provider shall submit the following releases and waivers with its invoice or other application for payment: (a) in respect of the Scope of Work for which payment is being requested, unconditional waivers and releases of all liens or notarial bonds in the form set forth in the file "**Form of Lien Waivers**" (which will be transmitted opportunistically to the Provider, whether for progress payments or final payment, as applicable) from Provider and each of its Subcontractors and Providers to be paid from such invoice or application of payment, and (b) in respect of Scope of Work for which payment has already been received under a previous invoice or application of payment, unconditional waivers and releases of all liens and notarial bonds in the form set forth in such "Form of Lien Waivers" (whether for progress payment or final payment, as applicable) from Provider and each of its Subcontractors and Providers that has been paid from such previous invoice or application or payment.

5.6 **Retainage.** If expressly provided for in the Agreement, Company may withhold as Retainage from each payment due and payable to Provider hereunder, other than from the payment due and payable with respect to achievement of acceptance, in terms of sub-clause 3.7, an amount equal to a percentage of the Contract Price as specified in the Agreement (the "**Retainage**"). Company shall hold the Retainage as security for the performance of Provider's obligations hereunder and any interest thereon shall accrue for the account of Company and not Provider. Company may use the Retainage to cure a Provider event of default, for Delay Liquidated Damages (if applicable), for payment of unpaid and payments made to remove liens filed by, and any and all other amounts payable to Company hereunder. Company shall release and return to Provider the Retainage held by Company (less any amount utilized by Company to satisfy obligations of Provider related to this Agreement) within the period stipulated in the Agreement (or if not stipulated in the Agreement, within forty-five (45) Days after Company's receipt of an invoice, acceptance by Company in terms of sub-clause 3.7 and such other documentation as is otherwise required hereunder).

6. TAXES

6.1 The Provider and the Company shall cooperate with each other to minimize the tax liability of both Parties to the extent legally permissible and supply resale and exemption certificates, if applicable, and other information as reasonably requested. To the extent taxes are applicable to Provider's performance of the Scope of Work, Provider shall separately state and show applicable taxes on all invoices.

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

6.3 The Provider shall treat all individuals performing the Scope of Work under the Agreement as employees of the Provider for purposes of income tax and other medical aid, unemployment and disability insurance premiums. No exceptions are permitted under this section without a written amendment to this Agreement prior to an individual performing any services / supplies / works under this Agreement.

7. WARRANTY

7.1 The Provider shall warrant:

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

b) that all materials and equipment:

- comply with the relevant legal requirements and the Technical Specifications, as well as with other provisions set forth in the Agreement;
- are free from visible or hidden defects;
- fit for the intended purpose which is specified in the Agreement;
- are new or, only to the extent explicitly provided in the Agreement, refurbished;



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- that the services and works (if any) comply with all legal requirements and the Technical Specifications, as well as with other provisions set forth in the Agreement and are performed in a competent and diligent manner, suitable for their intended purpose.

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

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

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

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

a) replace (or, to the extent provided for in the Agreement, repair), as soon as possible in order to minimize the impact on Company business and in any case, within the timeframe set forth in the Agreement (or, in the absence of a specific deadline in the Agreement, correction of the defects shall not exceed the timeframe originally agreed for delivery of the equipment or material or for the performance of the defective service or work resulted as defective), all defective materials and equipment, services or works that do not comply with the warranties established in sub-clause 7.1 hereof. The Provider shall obtain Company's approval, which cannot be unreasonably withheld or denied, prior to implementing any remedy action. To the extent option to repair is set forth in the Agreement and the material is not repairable, in accordance with Provider's reasonable opinion, such defective materials and equipment shall remain in storage at Company's facilities until they are replaced, at Company's sole discretion, without prejudice to Company's right to use the rejected materials until they are replaced.

b) replace all supplied materials and equipment in the event of any serial defects, thereby justifying the solution adopted to prevent those defects being produced in the remaining materials or equipment that need to be supplied. A serial defect is considered to exist when the percentage of defective materials and equipment covered by the Agreement exceeds the percentage established in the Agreement, or if it is not specified, when the percentage exceeds 10% of the total quantity of the same materials or equipment to be supplied under the Agreement;

c) return the equipment/sites made available by Company in the same condition in which they were made available;

d) indemnify Company from any claim made by third parties.

7.6 The above-mentioned obligations, and all expenses for various reasons arising from the execution of the warranty (including but not limited to transport, installation, deinstallation, storage), shall be paid exclusively by the Provider, without Company being liable for any charges or costs.

7.7 Without prejudice to sub-clauses 7.5 (a) and 7.6, if the Provider fails to comply with the obligations referred to in this clause, the Company shall be entitled to adopt – upon previous communication to the Provider – any appropriate measure independently, or by recurring to third parties' assistance, at the Provider's expense. The Provider shall also be obliged to compensate the Company for any damages or losses it has suffered, as provided for in the Agreement. In particular, if Provider fails to implement remedy actions within the aforementioned timeframes, Company may apply a penalty for the delay according to the Agreement.

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

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

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

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

8. INSURANCE

8.1 Insurance. During the term of this Agreement, the Provider shall maintain the insurance policies indicated in the Agreement, or if not indicated therein, Provider shall maintain at least the following insurance policies:



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- (a) Workers Compensation Liability and Employers Liability Insurance: As per local regulation. Coverage of diseases and accidents of local and foreign employees shall be included, if applicable.
- (b) Commercial General Liability ("GL") Insurance: Coverage in an amount equal to the Contract Price. Coverage of material and personal damages shall be included, also for third parties and terminated operations
- (c) Provider's Machinery and Tools Insurance: Coverage of damages to Provider's Machinery and Tools as necessary to reach the cost of replacement. The Parties agree that shall this Insurance Policy not be obtained by the Provider, Provider shall be deemed to exempt Company of any and all responsibility of damages to Provider's Machinery and Tools.

8.2 Prior to start of construction, the Provider shall provide certificates of insurance as evidence that the coverage outlined in herein is current and maintains the limits as specified herein.

9. REPRESENTATIONS

9.1 Compliance with Applicable Laws. The Provider represents and warrants that it and its employees or representatives shall comply with all Applicable Laws, applicable codes, and safety standards regarding performance of the Scope of Work.

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

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

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

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

Company may terminate the Agreement, upon a prior written notice of seven (7) days, in case Provider or any of its Subcontractors, Sub-Tier Suppliers, third parties engaged by the Provider and operator belonging to its supply chain are subject to a Sanction or if Provider provides unfaithful representations under this Section 9.2. Only in the latter case, the Provider shall indemnify and hold Company harmless for any related damage, loss, cost or expense.

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

9.3 Capability & Capacity. The Provider represents and warrants that it and its have and will have throughout performance of the Scope of Work, all the required authority, ability, skills, experience and capacity necessary to perform and covenants that it shall diligently perform the services / supplies / works in a timely and professional manner all in accordance with the Prudent Industry Practices.

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

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

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

9.7 The Provider represents and warrants that it owns or has the right to use and maintain all the Intellectual Property Rights (as such term is defined in clause 10 below) necessary for the performance or provision of the Scope of Work.



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9.8 Ethic Clauses.

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

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

(c) Provider acknowledges the Company’s commitments contained in the abovementioned documents and, when conducting its own business and managing its relationships with third parties, declares to refer to equivalent principles as those set forth under sub-clauses 9.8(a) and (b) above, as well as ensures that its Subcontractors, Sub-Tier Suppliers, third parties engaged by the Provider and its whole supply chain do the same.

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

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

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

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

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

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

(j) Provider undertakes to inform the Company of any situation, to the best of its knowledge, after due inquiry, also referred to its Subcontractors, Sub-Tier Suppliers, third parties engaged by the same and its whole supply chain, which may result in failure to comply with the obligations set forth in this clause 9.8, as well as the plan to remedy said situations.

(k) Company reserves the right to carry out any control and monitoring activity, through inspections, audits and/or requests for documentation, geared to verifying whether the obligations under this clause 9.8 have been fulfilled, both on the part of Provider and also on that of any of its Subcontractors, Sub-Tier Suppliers, third parties engaged by Provider and operators belonging to its whole supply chain. In such cases, the Provider has the obligation to grant access to Company to its premises and to provide promptly the requested documentation, as well employ its best efforts to cause its Subcontractors, Sub-Tier Suppliers, third parties engaged by Provider and its whole supply chain to do the same.

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

(m) Without limiting the requirements of Section 3.6(Subcontracting) above, Provider shall use commercially reasonable efforts to enter into contracts with its Subcontractors that contain terms which are substantially similar to the ethic and anticorruption provisions of this Agreement, so as to carry out the intent and accomplish the purpose of Company that all Subcontractors and Sub-Tier Suppliers conduct business in a way that: (i) meets the fundamental responsibilities regarding human rights described in Section 9.8(b) and (d), (ii) does not give the appearance that Company is attempting to improperly influence any Governmental Authority in the manners described in 9.8(f) and (h), and (iii) provides Company with the transparency regarding potential conflicts of interest and Enel Code of



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Ethics violations in the manner described in 9.8(i) and (j). In addition, Provider shall include in its contracts with its Subcontractors a provision that is substantially similar to the foregoing sentence.

10. Intellectual Property.

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

10.2 IP Indemnity. Provider shall indemnify, defend and hold Company, and its present and future Affiliates, and their respective directors, officers, shareholders, members, employees, agents and representatives, harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) of any kind whatsoever arising from (i) actual or alleged infringement or misappropriation by Provider or any Subcontractor or Sub-Tier Supplier of any Intellectual Property Rights in connection with the Agreement, including without limitation, any deliverable, (ii) Provider's or any Subcontractor's violation of any third-party license to use intellectual property in connection with the Agreement, including, without limitation, any deliverable.

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

10.4 Company Rights. Provider: (i) may not in any way copy, publish, distribute, reproduce, process, translate, modify, adapt, develop, decompile, dismantle, subject to reverse engineering operations (or, in any case, subject to operations intended to extract the source codes) – in full or in part – any Company products, samples or technical specifications that are delivered by Company to Provider in furtherance of Provider's performance of this Agreement; (ii) may not make any derivative works, objects, items, products, samples or technical specifications; (iii) shall not use Company's products, samples, technical specifications or intellectual property information for any purpose other than due performance of the Agreement; (iv) shall not disclose, and shall cause its employees not to disclose, Company's products, samples, technical specifications or intellectual property information to any third party without Company's prior written consent, and shall keep these documents in strict confidence in accordance with this Agreement. Company shall own all reports, original and final reproducible drawings, plans, designs, specifications, calculations, studies, software program tapes, models, notes, and memoranda, provided by Company to Provider and otherwise prepared by Provider and Provider's Subcontractors in providing the Scope of Work pursuant to this Agreement. Provider agrees to give Company thirty (30) days' notice prior to Provider destroying or otherwise disposing of any duplicate documentation or drawings relating to the Scope of Work. If Company desires, Provider shall forward such documentation to Company, at any time taking appropriate precautions in relation to the processing, use and transfer of data to ensure security, non-disclosure and strict confidence in accordance with this Agreement.

10.5 Background IPRs and Foreground IPRs. Any idea, invention, work of authorship, drawing, design, formula, algorithm, utility, tool, pattern, compilation, program, device, method, technique, process, improvement, development or discovery whether or not patentable, or copyrightable, or entitled to legal protection as a trade secret or otherwise, that Provider may conceive, make, develop, create, reduce to practice, or work on, in whole or in part, in the course of performing the Agreement shall constitute a "work made for hire," shall be owned by Company (as of the moment such ownership right is generated), and shall be delivered to Company upon completion of the Work ("Foreground IPRs"). Provider hereby assigns to Company, without royalty or any further consideration, all Provider's rights, title, and interests in and to any such Foreground IPRs. Each Party recognizes and agrees that each Party's present and future Intellectual Property Rights pertaining to each Party before the signature of this Agreement or successively acquired in parallel projects outside of the scope of this Agreement ("Background IPRs") remain exclusive property of such Party and the other Party shall have no claim in relation to any such right. If the Provider uses its Background IPRs for the performance of this Agreement, any Foreground IPRs belonging to Company shall be limited to the additional parts (generated by the Provider in performing the Agreement on the basis of its Background IPRs) that do not, in any way, include or contain any of its Background IPRs.

10.6 Continued Use. If requested by Company, Provider agrees to take all actions necessary, at Company's sole cost and expense, to obtain, maintain or enforce patents, copyrights, trade secrets and other proprietary rights in connection with any invention, and Provider agrees that its obligations under this clause 10 shall continue beyond the termination or completion of this Agreement.



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11. CONFIDENTIALITY

11.1 The term "Confidential Information" refers, but is not limited to, economic and financial documents, data and information that regards, but is not limited to, business strategies, information about products and/or production processes (design, study and development), means and costs of production, sales information, development strategies and customer management, any kind of data about clients, suppliers and their technical or commercial profile, documentation regarding technical and economic offers in public and private tenders, data about tests and/or the functioning of plants, equipment, machines and products, business analysis, market researches, business and marketing plans other statistical data that are relevant for the business, internal organization procedures, ideas of advertising and new trademarks not yet used in the market, prices, features, concepts, prototypes and layouts of new products or services not yet launched on the market, etc. It also applies to technical documents data and information, referring for instance, but not limited to patentable inventions, patents, patent applications, licenses, source code of any kind of software, its principles and the related algorithms; discoveries, algorithms and formulas; new production processes and methods; new methodologies for testing plants, equipment, machines and products, results of activities of Research and Development (R&D). In addition, it applies to any other information

- expressly qualified as "confidential", "strictly confidential", "secret" (or in any other similar way) by the disclosing Party or
- which the receiving Party knew or ought to have known to be confidential by way of its nature or treatment performed by the disclosing Party, considering that said information is not publicly known, not easily accessible by third parties and subject to appropriate measures to preserve its non-public nature.

11.2 Confidential Information includes all information relating to a Party, made available to the other Party, before or during the performance of the Agreement, either by the administrators, managers or employees of the disclosing Party, or by the Subcontractors or Affiliates of said Party and its corresponding administrators, managers, employees or Subcontractors (hereinafter, "Representatives of the disclosing Party"). Confidential Information also includes all information regarding the Representatives of the disclosing Party.

11.3 It will not be considered confidential the information that

- (i) the receiving Party can prove to have legitimately known before the beginning of the performance of the Agreement;
- (ii) the receiving Party can prove to have received from third parties not subject to (or in breach of) any non-disclosure obligation by law or contract;
- (iii) after the communication to the receiving Party, without any responsibility of said Party, became generally known or readily accessible to persons within the circles that normally deal with the kind of information in question.

11.4 All Confidential Information that any of the Parties makes available (verbally, in writing, in electronic format or in any other way) to the other Party for the purposes of, and/or during the performance of the Agreement, as well as any other Confidential Information of which any of the Parties may have knowledge as a result of other contracts signed between the Parties, and/or pre-contractual negotiations thereof, as well as all related documents and specific knowledge (regardless of how they have been compiled, obtained or developed) can be used only for the purpose of executing the Agreement and they shall be treated as confidential, according to the provisions of this clause.

11.5 In particular, Confidential Information may not be disclosed to third parties without the prior written and express authorization of the disclosing Party. In addition, without prior written and express authorization from the disclosing Party, the other Party may not use copy, reproduce, translate, modify, adapt, develop, dismantle or separate the Confidential Information provided, perform reverse engineering operations or any operation intended to extract the source codes - wholly or partially - of said Confidential Information.

11.6 Notwithstanding the foregoing, the receiving Party may disclose the Confidential Information to satisfy a legal demand by a competent court of law or governmental body, or competition authority, having jurisdiction over it, provided however that in these circumstances said Party shall notice the other Party (when legally possible) prior to disclose said Confidential Information so that the other Party has the opportunity to defend, limit or protect against such disclosure; and, provided further that (i) it is disclosed only that portion of the Confidential Information which is legally required to be disclosed and (ii) reasonable efforts to obtain confidential treatment for any Confidential Information so disclosed are put in place.

11.7 Each of the Parties:

- (i) must restrict the disclosure of Confidential Information exclusively to the Representatives that effectively need to have it due to their degree of involvement in the performance of the Agreement;
- (ii) bind its Representatives in order to ensure that they fully comply with the obligations contained in this clause;
- (iii) will be held responsible for any action or omission of its Representatives that leads to a breach of the obligations to keep the secrecy of the Confidential Information and not to use it for purposes different from executing the Agreement.

11.8 The Party receiving the Confidential Information is obliged to manage the related logical and physical data using the best available international techniques and practices, to guarantee the protection of said data from unauthorized access, reproduction, communication or use. Once that the Agreement has expired, the Party receiving the Confidential Information shall return all the data,



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documents and information provided by the other Party or in its possession, for the purpose of carrying out the contractual activities, in addition to destroying all copies and files that it may have, unless it has received written permission to the contrary from the Party that provided the Confidential Information. In this regard, the receiving Party will confirm the destruction of said data to the other Party within a maximum period of fifteen (15) days from the request and shall declare in writing not to be retaining any documents or other objects containing (or related to) Confidential Information.

11.9 Both Parties guarantee that Confidential Information will not be disclosed during the performance of the Agreement and for a period of five (5) years after it has expired, except when another term is agreed in the Agreement or when it is required by law or by a competent Authority. Notwithstanding the foregoing, in the case of Confidential information qualified as "strictly confidential" by Company, the obligations of confidentiality and non-use set forth in this clause 11 shall survive the termination of the Agreement for any reason whatsoever unless otherwise provided by the disclosing Party, and shall be valid until the receiving Party is able to demonstrate that said Confidential information has become generally known among or readily accessible to persons within the circles that normally deal with the kind of information in question for any cause different from its disclosure by the receiving Party.

11.10 Both Parties will agree in writing regarding the content, the means of communication, the date of publication of the press articles and the news or communications of any kind in relation to the Agreement or any matter or information related thereto.

11.11 Both Parties acknowledge and agree that the restoration of the damages may not represent sufficient compensation for the breach of confidentiality and non-use obligations and that the Party that suffers the infraction shall have the right to seek other repairs or to avoid any possible violation or damage of such violation according to the current legislation. In case of breach of the confidentiality and non-use obligations, any of the Parties may also decide to terminate the Agreement.

11.12 At any time, if the disclosing Party so requires and it does not affect the performance of the Agreement by the other Party, the other Party shall return or destroy or request that its representatives return or destroy all copies of the Confidential Information in its possession or that of its representatives. In addition, the receiving Party will do everything in its power or will require its representatives to do so, to return or destroy any data stored in electronic format and will confirm the destruction of said data to the disclosing Party within a maximum period of fifteen (15) days from the request and declares in writing not to be retaining any documents or other objects containing (or related to) Confidential Information.

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

11.14 Any Party represents and warrants to the other Party that in performing the Agreement it shall not violate any trade secrets rights of third parties.

11.15 Cyber Security.

11.16 Provider can access Company's IT system only if authorized by Company. Provider is responsible for the activities performed on Company systems by using its digital identity, which should be anytime safeguarded. In performing such activities, the Provider shall comply with following rules of conduct:

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



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- l) it is forbidden to modify the configuration of the system to avoid security checks;
- m) in order to prevent the disclosure of information to unauthorized persons, attention shall be paid to printed documents, removable hard drives, removable storage and video screens.

11.17 If at any time during the term of the Agreement, the performance of the Scope of Work requires or involves the Provider gaining access to and/or using any application available on Company's systems and/or Company's IT infrastructure ("Enel Systems"), this clause 11.17 applies to the Provider. Upon the request of Company at any time and for any reason, the Provider shall participate in and implement Company's dual factor authentication system (the "Multifactor Authentication System"), as a mandatory requirement to access and/or use any Enel Systems. The Provider undertakes that, for the Provider to participate in and implement the Multifactor Authentication System, (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 must be associated exclusively with the personal identity of the specific employee, agent, Subcontractor, representative or other personnel of the Provider who will access and/or use the Enel Systems on behalf of the Provider; and (iii) the Provider shall satisfy all of the foregoing requirements at its sole risk, cost and expenses. Company does not bear any charge (financial or other) for the supply of the smartphone and shall not be responsible or liable to the Provider or any third party for any damages, claims or losses, direct or indirect, arising out of or connected with the failure and/or defective functioning or unlawful use of any smartphone that is used for the Multifactor Authentication System by the Provider's employees, agents, Subcontractors, representatives or other personnel.

12. TRANSFER TO THIRD PARTIES

12.1 Company's Right to Assign. Company may at any time assign its rights and obligations under this Agreement to an Affiliate of Company or to lenders of the project or to a future owner of the site where the Scope of Work is being performed, without Provider's consent.

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

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

13. FORCE MAJEURE

13.1 Definition of Force Majeure. "Force Majeure Event" means an event or circumstance that (i) prevents one Party from performing its obligations under this Agreement; (ii) is not within the reasonable control of, or is not the result of the negligence of, the claiming Party; and, (iii) by the exercise of due diligence, the claiming Party is unable to overcome or avoid, or cause to be avoided.

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

- (a) the absence of sufficient financial and/or technical means to perform obligations or the failure to make payments in accordance with this Agreement;
- (b) any labour disturbance, strike or dispute of Provider's workers or Personnel or any Subcontractor's workers or personnel or any independent Provider engaged by Provider or any of its Subcontractors;
- (c) mechanical or equipment failure unless caused by an event that would qualify as a Force Majeure Event under this definition;
- (d) storms and other climatic or weather conditions that a Provider with experience in facilities can reasonably predict and whose harmful effects could have been consequently avoided in part or totally by the Provider;
- (e) the unavailability or shortages of labour or equipment and materials despite being reasonably predictable, or that could have been avoided or remedied in advance;
- (f) delays or contractual breaches of any Provider's Subcontractor, unless such delays or contractual breaches are in turn a consequence of a Force Majeure Event; and
- (g) the status of the Site or road access to the Site where the contractual activities are carried out, which is known and accepted by the Provider.

13.3 Excuse from Performance; Notice. If either Party is rendered wholly or partially unable to perform its obligations under this Agreement because of a Force Majeure Event, that Party shall be excused from whatever performance is affected by the Force Majeure Event to the extent so affected. The Party impacted by the Force Majeure Event shall promptly give the other Party notice describing the particulars of the occurrence. In no event shall the notice be more than five (5) calendar days after the affected Party



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becomes aware of such occurrence. Within twenty (20) calendar days after such occurrence, the non-performing Party shall give the other Party written notice estimating the expected duration and probable impact on the performance of such Party's obligations hereunder. The non-performing Party shall continue to furnish timely regular reports with respect thereto during the continuation of the Force Majeure Event. The suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event. The non-performing Party shall exercise all reasonable efforts to mitigate or limit damages to the other Party. As soon as the non-performing Party can resume performance of its obligations hereunder, that Party shall give the other Party written notice to that effect and shall promptly resume performance. If a Force Majeure Event exceeds one hundred eighty (180) calendar days, each Party shall have the right to terminate this Agreement upon giving Provider five (5) days written notice, with no compensatory break-fees or penalties due to termination.

14. INDEMNITY

14.1 As between Company and Provider, Provider shall be solely liable for and Provider shall indemnify, defend and hold Company, and its present and future direct or indirect parent company(ies), subsidiaries, Affiliates, divisions and their respective directors, officers, shareholders, employees, agents, representatives, successors and assigns, harmless from and against any and all claims, actions, suits, proceedings, losses, liabilities, penalties, damages, costs or expenses (including attorneys' fees and disbursements) resulting from (i) injuries to or death of any and all individuals, including, without limitation, members of the general public, or any employee, agent, independent Provider or consultant or Affiliate of either Company or Provider, arising out of or connected with the performance of the Scope of Work, whether or not the conduct of Provider or any Subcontractor was wrongful for the purposes of the law of delict and whether or not Company's wrongful conduct contributed to the injuries or death, (ii) damage to, loss, and/or destruction of property, including, without limitation, to, property of Company or Provider arising out of or connected with the performance of the Scope of Work, whether or not the conduct of Provider or any subcontractor was wrongful and whether or not Company's wrongful conduct contributed to the property damages, (iii) third-party claims of any kind, whether based upon negligence, strict liability or otherwise, arising out of or connected with Provider's or any of its Subcontractors' acts or omissions in breach of this Agreement, or (iv) Provider's failure to comply with Applicable Law. The indemnification obligation shall not apply to the extent that injuries, death, loss, damage or destruction is caused by the negligence or wilful misconduct of Company or its employees.

14.2 If any claim is brought against Company, then Provider shall be entitled to participate in and assume the defence of such claim, with counsel reasonably acceptable to Company, unless in the opinion of counsel for Company a conflict of interest between Company and Provider may exist with respect to such claim. If Provider does not assume the defence of Company, or if a conflict precludes Provider from assuming the defence, then Provider shall reimburse Company on a monthly basis for Company's defence through separate counsel of Company's choice. Even if Provider assumes the defence of Company with acceptable counsel, Company, at its sole option, may participate in the defence, at its own expense, with counsel of its own choice without relieving Provider of any of its obligations hereunder.

14.3 Provider's indemnification obligation under this Agreement shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for Provider under any employment legislation.

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

15. DISPUTE RESOLUTION

15.1 Any dispute, controversy or claim arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination (a "Dispute") shall be decided in the manner set out in this clause 15.

15.2 Any Party that is of the view that a Dispute has arisen shall give written notice thereof to the other Party/ies concerned, provided that such notice shall clearly identify the Dispute and shall provide full particularity thereof ("Dispute Referral").

15.3 The seat of the arbitration shall be Johannesburg. The arbitration shall be conducted in English and in accordance with the provisions of the Arbitration Act and the rules of the Arbitration Foundation of Southern Africa ("AFSA").

15.4 Subject to clause 15.6, the Parties shall appoint a panel of 3 (three) arbitrators. Each Party shall be entitled to appoint 1 (one) arbitrator, which appointment shall be concluded within 7 (seven) Days of the Dispute Referral, and the two arbitrators so nominated, shall be entitled to appoint the third arbitrator, which appointment shall be concluded within 7 (seven) Days of being requested by any Party to do so.

15.5 If a Party does not conclude on the appointment of an arbitrator, or if the two nominated arbitrators do not conclude on the appointment of the third arbitrator, in the timescale set out above, that arbitrator shall, at the request of any Party, be appointed by the President of AFSA.

15.6 Notwithstanding the foregoing, if the Dispute is in respect of a monetary claim in respect of an amount less than R1 000 000 (one million Rand), the dispute shall be determined by a single arbitrator appointed jointly by the Parties within 7 (seven) Days of the Dispute Referral, failing which, the arbitrator shall be appointed by the President of AFSA.

15.7 The costs of the arbitration will be borne by the Party referring the Dispute or borne equally if the Parties mutually agree to the referral of the Dispute. However, if requested by any Party to do so, the arbitrator shall make a decision on a costs order or apportionment of costs between the Parties.



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15.8 The Parties irrevocably agree that the decision in these arbitration proceedings: (a) shall be binding on them; (b) shall be carried into effect; and (c) may be made an order of any Court of competent jurisdiction.

15.9 The provisions of this clause 15: (a) shall not preclude any Party from seeking interim relief on an urgent basis in a court of competent jurisdiction; and (b) are severable from the remainder of this Agreement and will survive the termination of this Agreement.

16. TERMINATION AND SUSPENSION

16.1 The Company, for its sole convenience, may suspend or terminate this Agreement, in whole or in part, at any time by giving written notice of its intention to do so. If the Provider fails to carry out any material obligation under the Agreement, the Company may, in its sole discretion, by provide written notice requiring the Provider to make good the failure and to remedy it within a specified reasonable time.

16.2 In the event of a suspension, the Parties agree that said suspension will not result in an increase of the Contract Price and re-commencement of work will immediately occur following written notice from the Company. In the event of a termination for convenience pursuant to this Section, Provider shall be entitled to recover a "Termination Payment" equal to the sum of the following, without duplication: (a) that portion of the Contract Price that is applicable to Scope of Work completed up to the date of termination that has not previously been paid to Provider (as determined below); (b) the expenses reasonably incurred by Provider in withdrawing Provider's Personnel from the project site and in otherwise demobilizing; and (c) the expenses reasonably incurred by Provider in terminating contracts with Subcontractors pertaining to the Scope of Work (excluding fees of any Affiliates of Provider), except to the extent Company has instructed Provider not to terminate such contracts, in which event such contract will be assigned to Company, subject to Company's assumption of same. The Termination Payment shall not include any costs incurred by Provider after the date set forth in the notice of termination that Provider reasonably could have mitigated. Provider shall use all reasonable, diligent efforts to mitigate the costs associated with termination of this Agreement. No amount shall be allowed for anticipated profit on unperformed Scope of Work. In the event the Agreement is terminated by Company for convenience pursuant to this clause, neither Party shall have any further obligations or liability except for performance of their obligations which are either expressly stated in this Agreement to survive the termination.

16.3 Termination for breach. Upon the occurrence of any of the following events, Company may terminate this Agreement upon notice to Provider:

- (a) Provider becomes insolvent, generally does not pay its debts as they become due, admits in writing its inability to pay its debts, or makes a general assignment for the benefit of creditors, or commences any case, proceeding or other action seeking reorganization or receivership, or adopts an arrangement with creditors, under any bankruptcy, insolvency, reorganization or similar Applicable Law for the relief of creditors or affecting the rights or remedies of creditors generally;
- (b) Insolvency Event, business rescue or similar proceedings are commenced against Provider and such proceeding is not dismissed or stayed within forty-five (45) days;
- (c) any representation or warranty made by Provider herein was false or intentionally misleading when made and Provider fails to remedy such false or intentionally misleading representation or warranty within thirty (30) days after the date of the notice from Company with respect thereto;
- (d) Provider attempts to assign or transfer this Agreement or any right or interest herein, except in accordance with the requirements set forth in this Agreement;
- (e) Provider fails to make any undisputed payment of money when due and fails to cure such non-payment within thirty (30) days of receipt of written notice from Company of such failure to pay;
- (f) Provider fails to comply with its health, safety or environmental obligations and the HSE Terms;
- (g) the Provider fails to comply with clause 3.9 (Broad –Based Black Economic Empowerment) and 3.10 (Monthly Reporting);
- (h) Provider fails to perform or observe in any material respect any provision of this Agreement not otherwise addressed in sub-clauses 16.3(a) – 16.3(g), inclusive, of this Section 16.3, and such failure remains uncured for ten (10) days; provided that no such cure period will apply to failures for which no cure or remedy is possible.

16.4 No Prejudice. The exercise by Company of any rights under this clause 16, shall be without prejudice to any other rights Company may have at law or in equity, under this Agreement or otherwise, and shall not give rise to any rights or claims for compensation or consequential damages. Termination of this Agreement shall not relieve Provider of its obligations, or from any liability, under this Agreement and shall not affect the rights of the Parties accrued prior to such termination.

16.5 If this Agreement is terminated by Company pursuant to sub-clause 16.2 hereof, then upon the effective date of any such termination, each Party will pay to the other Party all undisputed compensation and expenses, if any, owed by such Party under this Agreement up to and including the date of termination.

16.6 If this Agreement is terminated or suspended by Company pursuant to sub-clause 16.2 or 16.3 thereof, then upon receipt of any such notice, Provider will, unless the notice requires otherwise: (a) immediately cease and discontinue service on the date of such notice and to the extent directed and specified by Company in such notice; (b) plan no further orders for materials or services other than as may be necessarily required for completion of any portion of the Scope of Work that is not terminated or suspended; (c)



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promptly make every reasonable effort to obtain cancellation on terms satisfactory to Company; and (d) take actions necessary, and otherwise assist Company as directed, in the maintenance, protection and disposition of property acquired by Company under the Agreement. Further, in the event that the Company terminates this Agreement, Company may:

- (a) Take over and arrange for completion of performance of Provider's Scope of Work, and Provider will be liable to Company for damages incurred by Company for such completion of performance; and, (f) Proceed with any and all remedies of law available to Company for breach of contract by Provider.

17. COMPANY'S CLAIMS

17.1 If the Company considers itself to be entitled to any payment under any Clause of this Agreement, and to any extension of the contractual terms, it will give notice and particulars to the Provider within thirty (30) days of being aware of the event which causes such claim.

17.2 The particulars will specify the Clause or other basis of the claim and will include substantiation of the amount and extent to which the Company considers itself to be entitled in connection with this Agreement. The Company will then proceed in accordance with Clause 19 (*Determinations*), to determine (i) the amount (if any) which the Company is entitled to be paid by the Provider, and (ii) the extension (if any) of the contractual terms or any that which will affect the Agreement.

18. CHANGE ORDERS/VARIATION ORDERS

18.1 Except to the extent provided in this Clause, there shall be no change to the Scope of Work, the Contract Price or the Programme except to the extent provided in a written Change Order. The Company shall have the right by written directive to order changes to this Agreement, including additions and/or deletions to the Agreement and/or the Scope of Work (each such written directive a "Change Order"). Change Orders shall be in the form set forth in the Agreement. Provider shall comply with all such Change Orders. Should Provider claim that the changes are of such a nature to increase or decrease the Contract Price, then unless such Change Order includes an agreed upon adjustment to the Contract Price and/or the Programme, Provider shall submit to Company, in writing, within five (5) days of receipt of the Change Order, all claims for adjustment in the Contract Price (if any), and/or any proposed changes to the Program. Provider shall not be entitled to a change in the Contract Price or Program unless so authorized by Change Order.

18.2 Company may, from time to time, without invalidating this Agreement, order or approve by notification in writing (in the form of a Change Order Request set forth in Agreement) to Provider (a) Changes in all or a portion of the Scope of Work and/or (b) acceleration of the Scope of Work. Provider shall comply with any request for a Change and shall make a written response thereto within seven (7) Days after receiving such request. If Provider believes that giving effect to any Change so requested by Company will increase or decrease its cost of performing the services / supplies / works, shorten or lengthen the time needed for completion of the Scope of Work, or require a modification of any other provisions of the Agreement, its response to the Change Order Request shall set forth such Changes (including any amendments to the Agreement) that Provider proposes as necessary as a result of the requested Change and its justification therefor. The Parties shall set forth the agreed upon Change in the Scope of Work and agreed upon amendments to the Agreement, if any, in a Change Order. Each Change Order shall constitute a final settlement of all items covered therein, including any compensation for impact on, or delay or acceleration in, performing the Scope of Work.

18.3 Provider shall not perform any Changes to the Scope of Work until Company has approved in writing the proposed adjustments or has expressly authorized Provider in writing to perform the Change prior to such approval. If Company does not approve the proposed adjustments and Provider and Company are unable mutually to agree upon alternative adjustments, Company may by written notice to Provider cancel the Change. Upon receiving from Company, a written approval or written authorization to perform, Provider shall diligently perform the Change in accordance with and subject to all of the terms of this Agreement. Provider shall not suspend, in whole or in part, performance of this Agreement during any Dispute over any Change Order unless directed to do so by Company, and if directed to proceed with a Change or disputed item pending review and agreement upon adjustments, Provider shall (without waiving any rights with respect to such Change or disputed item) do so.

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

18.5 Approval of Change Order. Company shall within twenty-eight (28) Days from the date of receipt of such information either approve or disapprove the draft Change Order, in writing, or request additional time to consider the draft Change Order. If Company approves the Change Order, Company and Provider shall then sign the Change Order which shall operate as an amendment to this Agreement.

18.6 Change Order Pricing

- a) For all Change Orders, the Parties shall first attempt to negotiate a mutually acceptable lump sum increase or decrease to the Contract Price properly itemised and supported by sufficient substantiating data with a detailed cost breakdown to permit evaluation.
- b) In the event of a deductive Change Order, the amount of decrease in the Contract Price to be allowed for any deletion or change which results in a net decrease in the Scope of Work will be the estimated reduction in the cost of Scope of Work



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occasioned by such change including deduction, if any, in overhead. When both additions and reductions are involved in any one Change Order, the adjustment in the Contact Price shall be determined on the basis of net increase or decrease.

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

- a) a description of the proposed works to be performed and a program for its execution will be the responsibility of the Provider in all cases, to write detailed report or proposal to include (but not limited to), scope of Change proposed or required, resources, adjustments to the time schedule and any other risks to be managed including method statements required;
- b) The Provider's proposal for any necessary modifications to the program is of consideration to the agreed programme which will be an Exhibit covered in Section 28 (*Contract Annexures, Schedule And Exhibits*).
- c) The Provider's proposal for adjustment to the Contract Price; the Broad-Based Black Economic Empowerment obligations (if instructed by the Company on Determination); and schedule or time adjustments will be a requirement;
- d) And upon instruction for a proposal or notification for a proposal for Change Order or upon proposal, the Company will then proceed in accordance with Clause 19 (*Determinations*).

19. DETERMINATION

19.1 The Company will consult with the Provider in an endeavor to reach agreement. If agreement is not achieved within a reasonable time (and in any event within ten (10) Business Days after the commencement of consultation with the Provider), the Company will make a fair Determination in accordance with this Contract, taking due regard of all relevant circumstances. Unless otherwise agreed upon, the Determination procedure set out herein will not suspend the obligations of the Provider under this Contract.

19.2 The Company will give notice to the Provider of each agreement or determination, with supporting particulars. Each Party will give effect to each agreement. Unless the Provider gives notice to the Company, of its dissatisfaction regarding Determination (within five (5) Business Days of receiving it), then the matter will remain Determined. Otherwise, either Party may, if necessary, then refer the dispute to the dispute resolution process.

20. COST RECORDS AND ACCOUNTING

20.1 The Provider shall keep accounts, books and other records of all its billable charges incurred in performing its services / supplies / works hereunder and shall itemise and submit its billings to Company in such a manner as Company may reasonably direct. Provider shall maintain books and accounts of chargeable costs in accordance with generally accepted accounting principles consistently applied, and in such a manner as to permit verification of all entries made. For three (3) years from final payment under this Agreement, Provider shall preserve all such books and records, and shall upon three (3) days' written notice make such records available in Provider's office to Company and/or its designated independent auditors for purposes of verifying the costs charged herein.

20.2 The Company reserves the right to designate its own employee representative(s) or its contracted representative with a certified public accounting firm, who shall have the right to audit and to examine any cost, payment, settlement or supporting documentation resulting from any services / supplies / works performed on this Agreement. Any such audit(s) shall be undertaken by Company or its contracted representative at reasonable times and in conformance with generally accepted auditing standards. Provider agrees to fully cooperate with any such audit(s).

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

20.4 The Provider shall be notified in writing of any exception taken as a result of an audit of Provider or a Subcontractor. Provider shall refund the amount of any exception to Company within ten (10) Days. If Provider fails to make such payment, Provider agrees to pay such amount, plus interest, accruing at the Interest Rate from the date due until paid. In the event an audit verifies overcharges of five per cent (5%) or more, then Provider shall reimburse Company for the cost of the audit.

21. INTERPRETATION

21.1 Except where otherwise expressly provided or unless the context otherwise necessarily requires: "Articles," "Sections," or "Exhibits" (if any) shall be to Articles, Sections, or Exhibits (if any) of this Agreement, as the same may be amended, supplemented or replaced from time to time hereunder; (b) all references to a Person shall include a reference to such Person's successors and permitted assigns; (c) references to any agreement, document or instrument shall mean a reference to such agreement, document or



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instrument as the same may be amended, modified, supplemented or replaced from time to time; (d) the use of the word “including” or “include” in this Agreement to refer to specific examples shall be construed to mean “including, without limitation” and shall not be construed to mean that the examples given are an exclusive list of the topics covered; (e) the headings contained herein are used solely for convenience and should not be used to aid in any manner to construe or interpret this Agreement; (f) reference to a given Applicable Law shall mean such Applicable Law in effect as amended or modified as of the date on which compliance is required; (g) the phrase “and/or” shall be deemed to mean the words both preceding and following such phrase, or either of them; and (h) any pronoun includes the corresponding masculine, feminine or neuter forms. The words “will” and “shall” are used interchangeably throughout this Agreement; the use of either connotes a mandatory requirement; and the use of one or the other will not mean a different degree of right or obligation for either Party.

21.2 The Parties collectively have prepared this Agreement, with advice of legal counsels or attorneys; none of the provisions hereof shall be construed against one Party on the ground that such Party is the author of this Agreement or any part hereof.

22. CURRENCY

22.1 All amounts referenced herein are stated in **the currency or currencies stipulated in the Agreement**. All payments required to be made, including the Contract Price, any amounts under any Change Order and any other obligation to make payment of funds for whatever reason, by Company or Provider under or with respect to this Agreement shall be made in such currency (ies).

23. INDEPENDENT PROVIDER

23.1 The Provider is an independent Provider with respect to any and all of the Scope of Work performed and to be performed under the Agreement. The Agreement shall not be interpreted or construed to create an association, joint venture or partnership relationship among or between the Parties or any similar relationship, obligations or liabilities. Provider shall supervise the performance of its own Scope of Work and shall have control of the manner and means by which the Scope of Work hereunder are performed, subject to compliance with the Agreement and any plans, specifications, schedules, or other items approved by Company.

23.2 The Provider, for purposes of this Agreement, shall have no right, power or authority to bind Company to the fulfilment of any condition, contract or obligation, express or implied, between Company and any third parties as agent, attorney or representative of Company. Neither the Provider nor any of the Provider's employees or Subcontractors shall be deemed an employee of Company for any purpose, including for purposes of any of Company's employee benefit programs, income withholding taxes, social security or similar withholding taxes, or unemployment benefits under the law of any jurisdiction.

24. PROGRAMME AND DELAYS

24.1 The Provider acknowledges that time is of the essence of the Agreement and shall abide by the Programme set forth in the Contract Documents.

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

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

25. MISCELLANEOUS

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

25.2 Provider recognizes the importance to Company of timely completion of the Scope of Work and accordingly acknowledges and agrees that time is of the essence.

25.3 All standard pre-printed terms and conditions contained in a Provider proposal, invoice, or acknowledgement shall not apply to any Scope of Work performed by Provider.

25.4 No provision of this Agreement shall in any way inure to the benefit of any third person (including the public at large) so as to constitute any such person a third-party beneficiary of this Agreement or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any person not a party hereto.



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25.5 The failure of one party to insist upon or enforce, in any instance, strict performance by the other party of any of the terms of this Agreement, including those relating to compensation or to the exercise of any right herein conferred, shall not be construed as a waiver or relinquishment to any extent of its right to assert, enforce, or rely upon such terms or rights on any future occasion.

25.6 This Agreement constitutes the entire agreement of the Parties hereto, and supersedes any previous agreements or understandings. It may not be modified except in writing executed by both parties.

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

25.8 Processing of Personal Data. Both the Company and the Provider shall comply with applicable legislation on the protection and processing of personal data. While processing personal data on behalf of Company, the Provider shall adopt adequate technical and organizational security measures to avoid personal data breaches, shall comply with the Protection of Personal Information Act 4 of 2013 ("POPI"), and, to the extent applicable (and not in conflict with the provisions of POPI, European General Data Protection Regulation 679/2016, if applicable, and shall inform Enel without undue delay of any personal data breach occurred in the performance of the Agreement.

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

25.10 Survival. The obligations imposed on Provider by the Articles of this Agreement and clauses 5, 7, 8, 9, 10, 11, 13, 15, 17, 21, 23 shall survive cancellation or termination of this Agreement and final payment for the Scope of Work.

26. LANGUAGE AND UNITS OF MEASUREMENT

26.1 All contractual documentation, such as correspondence, data, calculations, drawings, reports, catalogues, etc., must be submitted in English language, and in the metric measurement system, unless the Agreement or Technical Specifications provide otherwise, or unless otherwise authorised by Company in writing.

27. NON-VARIATION

27.1 No agreement, whether consensual or otherwise, varying any of the terms or conditions of this contract shall be of any force or effect unless reduced to writing and signed by the Company's and the Provider's duly authorised representatives.

28. CONTRACT ANNEXURES, SCHEDULE AND EXHIBITS

28.1 For the purpose of concluding contracts which are scope specific, all annexures, schedules and exhibits which are part of this Agreement must be defined by the Company on a case by case or per project or contract.

28.2 The Provider herein agree to, in a case where annexures, schedules and exhibits to this contract are not defined nor provided, demand through a formal request to the Company all such contract documents as contemplated in this clause 28 of the contract.