

To:

Parco Eolico Casalduni House S.r.l.

Viale Abruzzo, 410

Chieti (Italy)

Chieti, 22 December 2020

Dear Sirs,

Following our discussions, we are pleased to submit to you our proposed text of Engineering, Procurement and Construction Agreement which (complete with its Annexes) reads as follows:

* * *

ENGINEERING, PROCUREMENT AND CONSTRUCTION AGREEMENT

Between

- (1) **Parco Eolico Casalduni House S.r.l.**, an Italian *società a responsabilità limitata*, with registered office in Chieti, at Viale Abruzzo, 410, registered with the Register of enterprises (*Registro delle imprese*) of Chieti-Pescara, registration number and tax code 01527100620, hereby represented by the sole director, Mr. Lino Bergonzi (the “**Principal**”);

AND

- (2) **Renexia Services S.r.l.**, an Italian *società a responsabilità limitata*, with registered office in Chieti, viale Abruzzo 410, registered with the Register of enterprises (*Registro delle imprese*) of Chieti-Pescara, registration number and tax code 02533210692, hereby represented by the managing director, Mr. Giuliano Tatasciore (the “**Contractor**”),

(the Principal and the Contractor shall be also referred to as together the “**Parties**” and individually a “**Party**”).

WHEREAS

- (A) The Principal is an existing company, established in accordance with the laws of Italy, which has been incorporated for the promotion, development and operation of wind farms installations. The Principal intends to acquire, install and operate a series of equipment destined to produce electric energy by means of wind technology.
- (B) The Contractor is a currently existing company, established in accordance with the laws of Italy which activities include the engineering, procurement and construction of wind power projects, and the maintenance and servicing of wind turbine generators. The Contractor has represented to the Principal that it is skilled and competent in carrying out the engineering, procurement and construction, on a “turnkey” basis, of wind farms and that has sufficient resources to carry out all related works. In addition, the Contractor belongs to a group of companies that has wide experience in providing services alike the services that are provided under those agreements.
- (C) The Principal holds the necessary authorisations, as better listed in Annex D1 (Principal's Permit), to build operate and manage of a wind farm, to be construed in the Municipalities of Casalduni, Pontelandolfo and Campolattaro, Benevento Province, Campania Region, Italy, for a total capacity of 36,45 MW and composed of, *inter alia*, No. 10 (ten) SG132 3465 kW + 50Hz wind turbine generators, together with related ancillary equipment and infrastructures, inclusive of cabins, cabling, connections and facilities and any ancillary systems necessary to deliver electricity to the public electricity grid (the “**Wind Farm**”).
- (D) The Principal holds the rights to use (by reason of rights *in rem* agreements or otherwise), or, by the limits set forth pursuant to Article 6.2(ii) below, will have the right to use, certain properties and premises located in the Municipalities of Casalduni, Pontelandolfo and Campolattaro, Benevento Province, Campania Region, Italy, as described under Annex D2 (List of Properties) hereof for the purposes of installing and operating the Wind Farm (the “**Site**”).

- (E) On 8 June 2020, the Contractor has executed with Siemens Gamesa Renewable Energy Eolica S.L Unipersonal (“**Siemens Gamesa Spain**”) and Siemens Gamesa Renewable Energy Wind S.r.l. (“**Siemens Gamesa Italy**”) (Siemens Gamesa Spain and Siemens Gamesa Italy, together and on a joint and several basis, the “**WTGs Manufacturer**”) a contract for the sale, transportation, installation, start-up and testing of the WTGs (as defined below) (as amended and supplemented on 30 June 2020 and 20 July 2020, and as further amended and/or supplemented from time to time, the “**Wind Turbine Supply Agreement**”).
- (F) The Principal and the Contractor wish to enter hereby an engineering, procurement and construction agreement (this agreement, together with all exhibits and schedules attached hereto, the “**Agreement**”) under which the Contractor offered to be entrusted by the Principal, who intends to accept such offer, the activities aimed at engineering, designing, procuring, supplying, transporting to the Site, building, rigging, positioning, installing, commissioning, testing, entering into operation and making good on a turn-key basis of the Wind Farm, subject to, *inter alia*, the technical specifications listed in Annex A hereof (the “**Technical Specifications**”), so to ensure the achievement of the timely Permanent Energisation.

All the above Recitals being stated as an integral and substantial part of this Agreement and in consideration of the same, NOW, THEREFORE, THE PARTIES HAVE HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS

1.1. *Certain defined terms.*

“**Affiliate**” means, as to a specified Person, any other Person that, directly or indirectly, controls or is controlled by or is under common control with the Person in question, for which purpose “control” has the meaning set forth in Article 2359 of the Italian Civil Code.

“**Annual Period**” means each one of the two 12-month periods beginning respectively (i) on the date of commencement of the Warranty Period and (ii) on the first anniversary thereof.

“**Applicable Law**” means all national (or state) or regional or local, legislation, statutes, ordinances, judgments, decrees, injunctions, writs, orders, rules and regulations of any Governmental Authority having jurisdiction over the Parties and/or the Wind Farm and/or the manufacture of the Equipment and/or the performance of the Parties' obligations as set forth in this Agreement.

“**Applicable Permits**” means each and every national, regional and local license, authorization, certification, filing, recording, permit or other approval with, or notice of, any Governmental Authority, having jurisdiction over the matter in question, including the Principal's Permits and the Contractor's Permits.

“**Bond**” means any of the Advance Payment Bond, the Performance Bond and the Warranty Bond.

“**Business Days**” means any day (other than a Saturday and a Sunday or a day on which banks are not open for business in Pamplona, Navarra (Spain) or in Milan (Italy) or Rome (Italy)).

“**Cable Supply Contract**” means the agreement for the supply of the cables needed for the construction of the Wind Farm to be entered into by and between the Contractor and the relevant subcontractor.

“**Change in Law**” means (i) the enactment, adoption, promulgation, modification or repeal after the Effective Date of any Applicable Laws in Italy or any change of their generally accepted interpretation; or (ii) the imposition of any material change in the conditions on the issuance or renewal of any Applicable Permit after the Effective Date, which in the case of either (i) or (ii), establishes requirements affecting the performance of the Parties' obligations as set forth in this Agreement, which requirements are more burdensome than those applicable on the Effective Date or those specified in this Agreement. Parties agree and acknowledge that the entering into force of any law which is already published by the competent authorities at the Effective Date, but which, by its terms, enters into force or becomes applicable to either Party or the Agreement after the Effective Date, shall not be deemed as “Change in Law” under this Agreement.

“**Change of Control**” means any change in the entity being entitled with the control of the Contractor as at the Effective Date. The reference to the terms “control”, “controlling” and “controlled” shall be interpreted according to Article 2359, par. 1 and 2, of the Italian Civil Code.

“**Civil Works Take Over Certificate**” means (i) with respect to the General Civil Works, a certificate evidencing that the Contractor has completed the General Civil Works and relevant Civil Works Tests and (ii) with respect to the Interconnection Civil Works, a certificate evidencing that the Contractor has completed the Interconnection Civil Works, both to be issued in the form set out in Annex BB (Civil Works Take Over Certificate).

“**Civil Works**” means the Interconnection Civil Works and the General Civil Works.

“**Civil Works Tests**” means the tests to be listed under Annex O hereof.

“**Contractor Guarantee for ToT**” means the bank guarantee that may be issued by the Contractor in favour of the WTGs Manufacturer pursuant to clause 8.1 (*Title to the Equipment*), point (i), letter (B) of the Wind Turbine Supply Agreement in connection with the transfer of title and ownership of the Equipment (as defined under the Wind Turbine Supply Agreement).

“**Contractor’s Permits**” means the transportation, installation, start up and testing permits and any other permit, licence and authorization necessary for Contractor to perform its obligations hereunder.

“**COVID-19**” means the novel coronavirus which was first reported as an infectious outbreak in Wuhan, China and subsequently declared by the World Health Organisation as a public health emergency of international concern.

“**Crane Pads**” has the meaning set forth under Annex A (Technical Specifications).

“**Decree 81/2008**” means the Legislative Decree No. 81 of 9 April 2008, as further amended and/or integrated from time to time.

“**Definitive Project**” means the definitive project attached under Annex Z.

“**Design Safety Manager**” means the “*coordinatore in materia di sicurezza e di salute durante la progettazione dell’opera*” pursuant to Article 89, paragraph 1, letter e), of Decree 81/2008.

“**Effective Date**” means the date of execution of this Agreement.

“**Electrical Losses**” means the electrical losses measured between the low voltage terminals of the WTG’s transformers and the connection point to the grid.

“**Electrical Substation Contract**” means the “*Contratto di Appalto per la Realizzazione della Sottostazione di Trasformazione MT/AT 30/150 kV relative al Parco Eolico di Casalduni (BN)*” entered into by and between the Contractor and the relevant subcontractor.

“**Electrical Works Reliability and Commissioning Test**” means the commissioning test of the Electrical Works described in Annex E (Electrical Works Reliability and Commissioning Test) hereof.

“**Electrical Works Reliability Test**” means the reliability test of the Electrical Works described in Annex E (Electrical Works Reliability and Commissioning Test) hereof.

“**Equipment**” means all materials, supplies, apparatus, machinery, equipment, parts, tools, components, instruments, appliances, and appurtenances thereof that are required for prudent design, transportation, installation, assembly, construction, tests and/or operation of the Wind Farm in accordance with the Technical Specifications and Good and Prudent Practices.

“**Final Design**” means the final design of the Wind Farm as will be provided by the Contractor on the basis of the Definitive Project.

“**Financing Parties**” means a bank, fund, private equity fund or major financial institution or other Italian or foreign financial institutions which provide financing the the Principal for the construction, ownership, maintenance and/or operation of the Wind Farm.

“**Force Majeure**” means any event unforeseeable or any event foreseeable but inevitable, which is not due to the wilful misconduct, fault or gross negligence of the Party affected, as a result of which such Party is delayed in the performance of, or is unable to perform, its obligations under this Agreement (other than any obligation for the payment of money), including, but not limited to, drought, fire, flood, hailstorms, earthquake, lightning outside the operating rates under the Technical Specification and/or provided that the relevant damages are not due to the lightning protection system not being in accordance with IEC 61024 -I, epidemic, war (whether declared or undeclared), acts of foreign enemies, martial law, expropriations, confiscations, acts of god, gusts of wind exceeding those specified by the WTG’s IEC class, inclement weather (such as wind speeds beyond the cranes specifications indicated

in the Operation and Maintenance Manuals) that prevents the transportation, erection, installation, start up or tests of the WTGs in safe conditions, unexpected surface and/or underground waters, landslides, accidents involving land, river, sea and/or air transport, riot, explosions, strikes or other industrial disputes, disturbance, sabotage, terrorism, vandalism, criminal acts by third parties. All this provided in any case that the Parties hereby expressly acknowledge and agree that the following events will not be qualified, for any relevant purpose of this Agreement, as Force Majeure:

- (i) strikes, labour disputes or other such conditions by workers affecting exclusively the employees of the Party invoking the Force Majeure event (or any of its subcontractors and/or suppliers and/or any of their Affiliates);
- (ii) stops provided by the competent authorities due to failure to comply with Applicable Laws by the Party invoking the Force Majeure event (or any of its subcontractors and/or suppliers and/or any of their Affiliates);
- (iii) rejected materials (*scarti di materiale*) due to defects attributable to the Party invoking the Force Majeure event or any of its subcontractors and/or suppliers and/or any of their Affiliates;
- (iv) events caused, due or however attributable to the Party invoking the Force Majeure and/or its subcontractors and/or suppliers and/or Affiliates;
- (v) non exceptional meteorological conditions on statistical basis;
- (vi) changes in the financial conditions of the Contractor or Principal;
- (vii) failure to make payment;
- (viii) a failure or lack of available labour, materials or other resources.

For the purpose of this definition of "Force Majeure" the Parties agree that COVID-19, including its relevant effects and impacts, shall be deemed to constitute a Force Majeure event only and to the extent that it effectively causes the interruption or suspension of the activities to be performed under this Agreement (by way of example if, *inter alia*, the competent authorities adopt or impose quarantines, restrictions of movement and other emergency response measures in connection with COVID-19).

"General Civil Works" means all the works referred to in Article 3.1 (other than the Interconnection Civil Works).

"Good and Prudent Practices" means the best practises, methods, equipment, specifications and standards of safety and performance, as the same may change from time to time, that are expected to be adopted at an international level by a professional, fully skilled and experienced contractor in connection with the design, procurement and construction of projects similar to the Wind Farm as well as the performance of this Agreement.

"Governmental Authority" means any, state, regional, local or other governmental, judicial, public or statutory instrumentality, tribunal, agency, authority, body or entity, or any political subdivision thereof, having legal jurisdiction over the matter or Person in question.

"Grid Operator" means Terna.

"GSE" means Gestore dei Servizi Energetici - GSE S.p.A..

"IEC" means the International Electrotechnical Commission.

"Independent Expert" Bureau Veritas or DNV GL or another party to be agreed in writing by the Parties in case Bureau Veritas or DNV GL will not be available in the future.

"Interconnection Point" means the physical interconnection point at substation level between the power system of the Wind Farm and the external power system (owned by the Grid Operator), as more particularly described in the folder named "STMD" into the Annex A (Technical Specifications).

"Interconnection" means, having occurred Permanent Energisation, the entry into operation ("*entrata in esercizio*") of the Wind Farm, in accordance with the Applicable Law, as resulting from the GAUDI (*Gestione Anagrafica Unica degli Impianti*) system managed by Terna.

"Interconnection Date Deadline" means the guaranteed date to achieve the Interconnection, being 31 December 2021.

“Interconnection Civil Works” means all the civil works necessary for the Interconnection of the Wind Farm to the public grid, inclusive of those works, even if not expressly detailed under this Agreement, which may be needed in order to achieve Interconnection on a temporary and final basis.

“Italian Civil Code” means the Royal Decree dated 16 March 1942, No. 262, as subsequently amended and modified.

“Long Stop Date” means 31 July 2022.

“Main Components” means the blades, hub, tower, main shaft, generator, gearbox and transformer of the WTGs.

“Non-Critical Punch List Items” means those minor defects, errors and deficiencies detected by the Contractor and the Principal (in consultation with the Technical Consultant) and listed in the dedicated punch list enclosed with the Wind Farm Take Over Certificate (the **“Punchlist”**) which are not expected to materially affect the proper operation of the Wind Farm in accordance with the Applicable Law, Technical Specifications, Type Certificate and Good and Prudent Practices. Should the Contractor and the Principal disagree on the Punchlist, the Parties shall defer to the Independent Expert.

“Operation and Maintenance Manuals” means the user’s manual and the maintenance manual for the Equipment and the manual that will be delivered by the final crane’s provider that will be subcontracted, including all technical documentation related to the Wind Farm, which will be made available to the Principal within 5 days from the payment by the Principal of the milestone payment upon the Wind Farm Take Over, as these may be updated by Contractor from time to time.

“Operator” means Siemens Gamesa Italy, acting as operator of the WTGs in relation to the Wind Farm.

“Parent Company Guarantee” means the parent company guarantee to be issued, in favour of the Principal, by Toto Holding S.p.A., in an amount equal to Euro 15,000,000.00, valid until the date of expiry of this Agreement, to be provided by the Contractor in accordance with the form as set out in Annex KK hereto.

“Permanent Energisation” means the unconditional electrical connection, either provisional (provided that such provisional connection is duly authorised under the Applicable Law, the Applicable Permits and the Grid Operator, it entitles the Principal to inject in the grid any and all the electricity it may produce, and the underlying and completion of any works, services and costs that may be needed to be incurred for such connection becoming permanent shall be included within the scope (and Price) of this Agreement and at exclusive liability of the Contractor, even if such permanent connection occurs after the Wind Farm Take Over) or permanent, of the Wind Farm to the electricity public grid, in compliance with the Technical Specifications and allowing the electrical parameters (including voltage and frequency) at the Interconnection Point to be by the limits suitable for the correct operation of the Wind Farm in every load condition, whether the Wind Farm is receiving or generating electricity as published on the GAUDI (*Gestione Anagrafica Unica degli Impianti*) database of Terna.

“Person” means any individual, corporation, partnership, limited liability company, association, joint stock company, trust, unincorporated organization, joint venture, government or political subdivision or agency thereof.

“Principal’s Permits” means the interconnection agreement, licenses related to the delivery of electricity to the grid, license to construct, Site Agreements, planning permissions, the permits necessary with respect to the interconnection agreement and any conditional use Permit required for the construction and operation of the Wind Farm on the Site and any other Permits necessary for the Principal to perform its obligations hereunder or to construct, own, operate or maintain the Wind Farm.

“PSC” means the *“Piano di Sicurezza e Coordinamento”* pursuant to Article 100 of Decree 81/2008.

“Quality Warranty” has the meaning ascribed thereto in Article 11.1.

“Reliability Test Report” means the report including output from the reliability test made according to Annex Q.

“SCADA System” means the supervision and control system of the WTGs as more particularly described in the Section “Wind Turbine Generators” of Annex A (Technical Specifications) hereof.

“SCADA Test Report” means the report including output from the reliability test made according to Annex R.

“**Scope of Works**” means the scope of works of this Agreement as described under Annex FF: Scope of Works.

“**Site Data**” means the Site data specifications prepared or handed over by Contractor comprising: (a) all WTGs site layout, including the exact location of each WTG at the Site with UTM coordinates, access roads, storage areas, crane pads and erection platforms and electrical power line easements, (b) complete wind resource and other Site data reflected on the wind data questionnaire of the Contractor, (c) geotechnical study, all as described in Annex D21), and (d) the electrical one-line diagram for the Wind Farm, all as described in Annex A.

“**Take Over Certificate**” means each of the Civil Works Take Over Certificate, the Electrical Works Take Over Certificate, the SCADA Take Over Certificate, the Wind Farm Take Over Certificate and the Mechanical Completion Take Over Certificate.

“**Technical Consultant**” means Fichtner Italia S.r.l. and/or any physical person or legal entity appointed from time to time by the Financing Parties.

“**Terna**” means Terna S.p.A., with registered office in Viale Egidio Galbani, 70 – 00156 Rome Italy, number of registration by the Companies’ Registry of Rome, tax code and VAT number 05779661007.

“**Time Schedule**” means the time schedule hereof as Annex G (Time Schedule) hereof.

“**TLC System**” means the telecommunication system to connect the Wind Farm with Terna, the WTGs Manufacturer and the Principal in accordance with the standard regulations provided by Terna.

“**Tower**” means a steel tubular tower with a hub height of 114 meters (measured from the base of such tower to the centre of the WTG hub), made of more sections, on which a WTG can be mounted.

“**Tower Foundations**” has the meaning set forth under Annex A (Technical Specifications).

“**Type Certificate**” means the type certificate included in Annex A (Technical Specifications).

“**Warranty Period**” means a 24-month period from the Wind Farm Take Over Date.

“**Wind Farm Take Over**” means the acceptance of the Wind Farm by the Principal, pursuant to the terms and conditions of Clause 10.3.7 below.

“**Wind Farm Take Over Date**” means the date in which the Wind Farm Take Over has occurred in accordance with this Agreement.

“**Wind Farm Take Over Deadline**” means 30 April 2022.

“**Wind Turbine**” or “**WTG**” means all or any one of the No. 10 (ten) SG132 3465 kW + 50Hz wind turbine generators that form part of the Equipment, including their corresponding Towers. The Contractor guarantees that the wind turbines generators that shall be supplied under this Agreement, shall have all the Technical Specifications necessary to comply with the Applicable Law and the Principal will be entitled to terminate this Agreement pursuant to Article 1456 of the Italian Civil Code, claiming for further damages, should the above guarantee not be respected. The Contractor shall provide for the supplied turbine the data sheet issued by the manufacturer of the alternator, which would certify the nominal power of the alternator as defined in the Application Procedures of GSE and likely to certify that the nominal power of the Wind Farm for GSE is equal to 34,65 MW.

“**Worksite Safety Manager**”: means the “*coordinatore in materia di sicurezza e di salute durante la realizzazione dell’opera*” pursuant to Article 89, paragraph 1, letter f), of Decree 81/2008.

“**WTG Location**” means the location by the Site where are to be erected the WTGs as indicated in Annex H (WTG Location) hereof.

In addition to the above, the following terms have the meanings set forth in the Articles or Sections set forth below:

Definition	Location
Advance Payment Bond	Article 7.3.
Agreement	Whereas (G)

Approved Subcontractors' Agreement/s	Article 7.4.
Approved Subcontractor Declaration	Article 7.4.
Performance Bond	Article 7.3.
Change Order	Article 8.1.2. (a).
Civil Works Tests	Article 10.3.1(ii)
Principal's Representative	Article 4.2.
Commissioning Tests	Article 10.3.1.(iv)
Confidential Information	Article 15.1.
Contractor's Representative	Article 4.7.
Delay Event	Article 8.2. (b)
Delay Liquidated Damages	Article 8.2. (b)
Direct Agreement	Article 23.1.
Dispute	Article 7.2.2
Electrical Losses Warranty	Article 11.3.3.
Electrical Works	Article 3.2.
Electrical Works Reliability and Commissioning Test	Article 10.3.1. (iii)
Electrical Works Take Over Certificate	Article 10.3.4.
Electrical Works Tests	Article 10.3.4.
Hazardous Substances	Article 5.25.
Mechanical Completion Test	Article 10.3.1(i)
Mechanical Completion Take Over Certificate	Article 10.3.2.
Milestone Certificate	Article 7.2.1.
Noise Warranty	Article 11.3.2.
Payment Schedule	Article 7.1.
Power Curve Warranty	Article 11.3.1.
Price	Article 7.1.
Principal Caused Delay	Article 8.1.2. (c)
Principal Event of Default	Article 17.3.
Reliability Test	Article 10.3.1 (v)

Representatives	Article 15.4.
SCADA Take Over Certificate	Article 10.3.6.
SCADA Test	Article 10.3.1 (vi)
Serial Defect	Article 11.2.2
Siemens Gamesa Italy	Whereas (E)
Siemens Gamesa Spain	Whereas (E)
Site	Whereas (D)
Subcontractors Bank Guarantees	Article 7.3.
Subcontractors Payment(s)	Article 7.4.
Technical Specifications	Whereas (G)
Tests	Article 10.3.1.
Warranty Bond	Article 7.3.
Warranty Limitations	Article 11.5.
Wind Farm	Whereas (C)
Wind Farm Take Over	Article 10.3.7.
Wind Farm Take Over Certificate	Article 10.3.7.
Wind Farm Take Over Date	Article 10.3.7.
Wind Turbine Supply Agreement	Whereas (F)
WTGs Manufacturer	Whereas (F)
WTG Take Over Certificate	Article 10.3.5.

1.2. Interpretation.

In this Agreement:

- (i) definitions used shall apply equally to both the singular and plural forms of the terms defined and reference to one gender shall include all genders;
- (ii) all references herein to Articles, sections and annexes shall be deemed references to Articles and sections and annexes of this Agreement unless the context shall otherwise require;
- (iii) references to any contracts, agreements (including this Agreement) Applicable Permits or other binding documents shall be deemed references to such documents as amended, supplemented or otherwise modified from time to time;
- (iv) any reference to suppliers shall be read as reference to suppliers of the Equipment, excluding any entity performing, in whole or in part, works and/or maintenance/replacements activities, if any, provided under this Agreement and having access to the Site; any entity performing the above activities, including any supply of Equipment, if any, is referred to as subcontractor;

(v) this Agreement and the Annexes hereof shall be construed in accordance with the following priority order and, for the avoidance of doubt, in case of conflicts, the content of any document having a higher priority shall prevail over any document having a lower priority:

- (1) this Agreement;
- (2) any Annexes to this Agreement.

1.3. *List of Annexes*

The following Annexes are enclosed to this Agreement, it being agreed that the content of some of them is recorded on not rewritable CD-ROMs which the Parties sign:

- Annex A: Technical Specifications;
- Annex B: Milestone Certificate;
- Annex C: Subcontractors;
- Annex D2: List of Properties;
- Annex D21: Soil
- Annex E: Electrical Works Reliability and Commissioning Test;
- Annex F: Payment Schedule;
- Annex G: Time Schedule;
- Annex H: WTG Location;
- Annex K: PSC;
- Annex L: Mechanical Completion Take Over Certificate;
- Annex M: VOID;
- Annex N: Mechanical Completion Test;
- Annex O: Civil Works Test;
- Annex P: Commissioning Test;
- Annex Q: Reliability Test;
- Annex R: SCADA Test;
- Annex S: Power Curve Warranty;
- Annex T: Noise Warranty;
- Annex U: Electrical Loss Warranty;
- Annex X: Electrical Works Take Over Certificate;
- Annex Z: Definitive Project (included under Annex A Technical Specifications);
- Annex BB: Civil Works Take Over Certificate;
- Annex CC: VOID;
- Annex DD: Bonds;
- Annex EE: Direct Agreement;
- Annex FF: Scope of Works;
- Annex GG: WTG Take Over Certificate;
- Annex HH: SCADA Take Over Certificate;
- Annex II: Wind Farm Take Over Certificate;
- Annex KK: Parent Company Guarantee.

2. **OBJECT**

- 2.1. Under this Agreement, the Principal entrusts the Contractor, who accepts, with the task of taking care and performing the Scope of Works in consideration of the Price to be paid by the Principal, all subject to and in accordance with the terms and conditions of this Agreement.
- 2.2. In particular, by the execution of this Agreement, Principal engages the Contractor, and Contractor fully accepts such engagement, to perform the following activities:
 - a. the engineering, design, procure, realization, supply and delivery to the Site of the Scope of Works on a “turnkey” basis and which fully meets the Technical Specifications and guaranteed performance levels set forth under this Agreement;
 - b. availability of any and all equipment, tools and materials, including spare parts required for erection and commissioning, necessary for the performance of the Scope of Works and not to be installed in the Wind Farm;
 - c. fabrication, purchasing, delivery at Site, storage, assembling, erection, installation, mechanical completion, commissioning, testing, start up, certification and take-over as well as the making good of the Wind Farm;
 - d. the delivery to the Principal of the Operation and Maintenance Manuals, which will be made available to the Principal within the Wind Farm Take Over and as a condition of the same;
 - e. the drafting and delivery to the Principal of the Final Design according to the deadline provided under the Time Schedule and in strict accordance with the Definitive Project. The Final Design, as delivered to the Principal by the Contractor, shall be approved by the Principal (on the basis of the positively verification of the Technical Consultant). The Contractor undertakes to modify the Final Design and to accept and implement the amendments to the draft of the Final Design proposed by the Technical Consultant. The Final Design, as verified and approved by the Technical Consultant, shall constitute an integral and substantial part of this Agreement. In case of disputes arising in connection with this paragraph, Article 25.2 of the Agreement shall apply;
 - f. the supply to the Principal the “as-built” documentation and all the certificates required by the Applicable Laws, prior than and as a condition for the achievement of the Wind Farm Take Over Certificate; and
 - g. the training of the operation and maintenance personnel of the Principal and/or the Operator,all in accordance with the terms and conditions of this Agreement, the Applicable Laws, the Principal’s Permits and the Good and Prudent Practices.
- 2.3. The Contractor also undertakes to comply with any further obligations set out in this Agreement and to carry out any further activity, even if not expressly included in the Scope of Works or otherwise provided for in this Agreement, which is necessary for the realization in a workmanlike manner of both the Wind Farm and the Scope of Works in accordance with the foregoing and to realize on a turnkey and fixed price basis a fully functioning Wind Farm.
- 2.4. The Contractor shall perform the activities under this Agreement (i) on a fixed price turnkey basis and not subject to any alteration and/or adjustment, except for the provisions in this Agreement expressly allowing for adjustments to the Price at a certain and guaranteed date and in a workmanlike manner, and (ii) with the organisation of the necessary means and at its own risk, pursuant to Article 1655 of the Italian Civil Code.
- 2.5. The Parties agree that the Wind Farm shall be designed, constructed and commissioned by the Contractor by the limits and in full compliance with the provisions set forth by the Applicable Permits and the Technical Specifications.
- 2.6. The Contractor will perform and supply to the Principal the engineering, Civil Works, Equipment, electrical discharge infrastructure, surveillance and security systems, monitoring and control systems, transportation to the WTG Location, loading and unloading, assembly and installation, management and performance of the tests and supplies necessary for the tests (including any costs related to the relevant certifying laboratories), start-up, operation and management of the Scope of Works in accordance with the provision of this Agreement.

- 2.7. The Contractor expressly acknowledges that all of its obligations under this Agreement (including the preparation, review, furnishing and procurement of the Final Design, the professional engineering and designs) consist in the rendering of services comprised in its specific and usual professional activity. Accordingly, the exclusion of liability for simple negligence (*colpa lieve*) as provided by Article 2236 of the Italian Civil Code (to the extent applicable to activities under this Agreement) shall not apply to the Contractor's liability in relation to this Agreement.

3. WORKS

The Contractor, also through its subcontractors, as better provided herein pursuant to Article 5.15, shall fulfil, *inter alia*, the Scope of Works, ensure the delivery of the supplies and provide the services described in the following paragraphs of this Article 3, including the review and approval of the Final Design. The Contractor shall take full responsibility for Final Design, prepared in accordance with the Applicable Law, Applicable Permits and Good and Prudent Practices, which shall be verified and approved by the Technical Consultant.

The Parties acknowledge that Annex FF describes in detail the Scope of Work of the Contractor.

3.1. Civil Works.

Civil Works shall include the provision of the materials, foundations, structures and labour needed for the levelling of the ground and access routes to the substation, permanent structures, and other elements, protection and control centres; likewise, the civil works shall comprise the ancillary installations to the Wind Farm, including the necessary infrastructure to its Interconnection and any other element necessary to the operation and commercial exploitation of the same. The Civil Works shall be carried out by the Contractor as per the specifications included in this Agreement and its Annexes, in accordance with the Time Schedule and, in any case, shall include:

- a. design of the Access and Site Roads. The Contractor shall construct the Access and Site Roads in accordance with Annex A (Technical Specifications);
- b. design of trenches, according to Annex A (Technical Specifications). The Contractor shall place the power cables and optical fibre cables in the trenches and thereafter backfill such trenches;
- c. storage areas, lay-by areas and office area, as provided in the Section "Transport Manual" of Annex A (Technical Specifications). The Contractor shall construct the Crane Pads storage areas lay-by areas and office areas in accordance with the Section "Technical Book" of Annex A (Technical Specifications); once the Crane Pads have been completed and before the erection of the WTGs, the Contractor shall give evidence to the Principal, the Technical Consultant and the WTGs Manufacturer of the compliance of the bearing capacity of the relevant Crane Pad with the technical requirements of the WTGs Manufacturer, as stated in Annex A (Technical Specifications);
- d. design of Tower Foundations as provided in Annex A (Technical Specifications). The Contractor shall construct the Tower Foundations in accordance with such Annex A (Technical Specifications) at the WTG Location. The Contractor shall embed the Foundation Sections in the Tower Foundations to be built with standard technical solutions. Once the Tower Foundations have been completed and before the erection of the WTGs, the Contractor shall give evidence to the Principal, the Technical Consultant and the WTGs Manufacturer of the compliance of the planarity of the relevant anchor cage with the technical requirements of the WTGs Manufacturer, as stated in Annex A (Technical Specifications) and shall provide a document evidencing to the Principal the acknowledgment by the WTGs Manufacturer that the Tower Foundations are fit for the WTGs;
- e. design of the civil works related to the Interconnection Civil Works. The Contractor shall construct the substation in accordance with the Technical Specifications;
- f. construction of substation fences, substation gates and other items.

3.2. Electrical works

The electrical works (the "**Electrical Works**") to be performed by the Contractor under this Agreement include the following:

- a. design of the electrical works up to the Interconnection Point. The Contractor shall construct the Electrical Works in accordance with the Technical Specifications;

- b. design and construct of the electrical collector system, including all power cables, switchgears, earthing system;
- c. design of the TLC System;
- d. supply and laying of optical fibre cables;
- e. Equipment for the measuring and metering of energy (including remote measurement equipment), validated by the competent authorities;
- f. Equipment for the measure and invoicing of energy in accordance with the Technical Specifications and Applicable Law;
- g. electricity supply with an autonomous point of delivery;
- h. monitoring and control systems including the relevant wind data measurement system;
- i. protections, including security and surveillance systems with respect to the substation.

3.3. *Assembly, erection and installation.*

The assembly, erection and installation to be performed by the Contractor under this Agreement include the following:

- a. transport, unload, assemble, erect and install the Wind Turbines at their respective WTG Locations, as set forth in Annex H (WTG Location), all the Equipment, materials, accessories, and secondary equipment required for the correct and safe operation of the Wind Farm, and TLC System. The Contractor shall inform in advance the Principal when are scheduled physical visits to the facilities where the Wind Turbines and related equipment are being manufactured so the Principal (through one or two representatives) may attend, subject to the terms and conditions of the Wind Turbine Supply Agreement, together with the Contractor, to such visits;
- b. carrying out the Interconnection Civil Works;
- c. loading, transportation, unloading and storage in the works of all of the supplied Equipment and materials. The Contractor shall load and subsequently transport them to the Wind Farm from their applicable place of manufacture. The Contractor shall perform any provisional changes and upgrades to roads, associated road furniture, bridges port piers, temporary stock areas or similar on the transportation route that shall be needed for the transportation of the Equipment and materials the Wind Farm;
- d. labour required for the assembly and installation of all the Equipment, accessories and materials supplied; and
- e. carrying out of the electrical and mechanical tests of the Wind Farm in order to ensure a continuous and safe operation of the Wind Farm.

3.4. *Quality control process during the overall construction period by the Wind Farm take Over.*

The Contractor shall perform all the works and supply all the Equipment and materials of a quality compliant with the Technical Specifications, Applicable Permits, the Applicable Law and the Grid Operator requirement.

3.5. *Formation and training of staff*

The Contractor hereby undertakes to procure that the WTGs Manufacturer provide to the Principal's operating personnel, or to the personnel of the company designated by the Principal, the training necessary in order for those personnel to become skilled in the operation and maintenance of the Wind Farm by twenty-four (24) months following the issuance of the Wind Farm Take Over Certificate. For this purpose, the Parties shall agree upon a training program (which shall have a maximum duration of 15 (fifteen) calendar days) for operation and maintenance of the Wind Farm, which program shall include training in all of the necessary technical aspects in English.

3.6. *Works management*

The Contractor shall handle the management and the supervision of the Scope of Works and shall assume the obligations and responsibilities established for this purpose by this Agreement and the Applicable Law.

3.7. *Guarding*

The Contractor shall guard the Site and the Wind Farm pursuant to Good and Prudent Practices and according to the procedures detailed under Annex FF.

The Contractor shall guard the Site and ensure that access to the Site is allowed only to Contractor and such persons who are expressly or implicitly authorised by the Contractor or the Principal until all of the Scope of Works have been taken over by the Principal.

Up and until risk of loss and damage has been transferred to the Principal in accordance with Article 10 below, the Scope of Works shall be kept in good maintenance order according to the Good and Prudent Practices, operated exclusively by the personnel of Contractor or its subcontractors.

Without prejudice to the above and to the duty of the Contractor, while operating the Wind Farm, to comply with directives and/or instructions by the operator of the Grid and/or the distribution grid and collaborate with the Principal in this respect, it will be the Principal (and not the Contractor) to manage the relationship with the same.

3.8. Consumables required until the occurrence of the Wind Farm Take Over

During the whole term of performance of the Scope of Works, the Contractor must contract and convey to the Site (at its own expenses) the supply of any utilities and services necessary for the works and the performance of its obligations under this Agreement, including the supply of electricity, potable water, construction water, fuel, labour and health and safety facilities (washing facilities, toilets etc.) in full compliance with Applicable Laws, Good and Prudent Practices and in accordance with the terms and conditions of this Agreement.

The Contractor shall provide, likewise at its own expense, whatsoever instruments, meters, and devices that may be necessary for these purposes.

4. REPRESENTATIVES - SAFETY COORDINATION

- 4.1. The Contractor has - and shall ascertain that the Contractor's subcontractors have - the health and safety technical qualifications and requirements provided for, *inter alia*, by Article 90, paragraph 9, of Decree 81/2008.
- 4.2. The Principal hereby designates Mr Paolo Sammartino as its representative who, for the purpose of and by this Agreement, shall act on behalf of the Principal *vis-à-vis* the Contractor, unless otherwise notified to the Contractor by the Principal at any time (the "**Principal's Representative**").
- 4.3. The Principal has appointed, with a separate engagement letter, (i) Mr Riccardo del Re as a "*Design Safety Manager*", (ii) Mr Luca di Giannatale as a "*Worksite Safety Manager*", and (iii) Mr Stefano Ventura as a "*Direttore dei Lavori*"; the Principal shall also have the right to appoint further representatives having specific powers and duties, to be previously communicated in writing to the Contractor upon appointment.
- 4.4. The *Design Safety Manager* has drafted the PSC hereof as Annex K ("PSC") hereof, pursuant to the provisions set forth under Article 100 of Decree 81/2008. The PSC is an integral and substantial part of this Agreement. The Parties mutually acknowledge that the PSC includes (as identified by point 4 of ANNEX XV to the Legislative Decree no. 81/2008), among other things, a part dedicated to the estimation of security costs that constitutes compliance with the provisions of art. 26, 5th paragraph of Legislative Decree 81/2008. Such PSC will not release or limit the liability of the Contractor in the performance of this Agreement.
- 4.5. The Parties further agree that no action or omission of the Principal's Representative shall: (a) limit, impair, reduce and/or affect the Contractor's full and unconditional responsibility and liability under this Agreement; and (b) imply any control by or responsibility of the Principal over the works which shall be in the full responsibility of the Contractor, except as otherwise provided herein as well as by the Applicable Law with respect to health and safety matters.
- 4.6. The Parties further agree that the Principal may, upon written notice to the Contractor, replace at any time the designated Principal's Representative, the Design Safety Manager, the Worksite Safety Manager and the *Direttore dei Lavori*.
- 4.7. The Contractor hereby designates Mr Raffaele Petricciuolo as its representative who, for the purpose to this Agreement, shall act on behalf of the Contractor *vis-à-vis* the Principal (the "**Contractor's Representative**"); the Contractor's Representative shall conduct status meetings

with the Principal, to be held on a weekly basis or at any time upon the Principal's reasonable written request.

- 4.8. Except as otherwise mandatorily provided by Applicable Law the Parties agree that the Contractor, until the due completion of the Scope of Works, is the sole responsible and shall guarantee that all works will be carried out in full compliance with the Applicable Law related to health and safety matters, including (but not limited to) Decree 81/2008, the provisions set forth under this Agreement, the instructions provided for by the Design Safety Manager and the Worksite Safety Manager. In particular, the following are also responsibility of the Contractor:
- (i) the duties and obligations provided for by Legislative Decree no. 81/2008, in particular to the articles 96 and 97, also on the basis of the definitions of the safety coordinators and of any other Applicable Law;
 - (ii) the delivery, before the commencement of the performance of this Agreement, of the documentation referred to in ANNEX XVII of Legislative Decree no. 81/2008 attesting its and potential subcontractors' professional technical suitability, including a copy of the DURC (Single Document of Contributing Regularity); and
 - (iii) in any case, the proper implementation, within the Site, of all the measures and oversights aimed at the protection of the health and safety of its own workers and subcontractors, including the obligation to identify the reference person, pursuant to art. 2 of Legislative Decree no. 81/2008.
- 4.9. The Contractor may, and upon the Principal's reasonable and motivated written request shall, change the Contractor's Representative by providing written notice to the Principal of such change in accordance with Article 18 hereof.

5. GENERAL CONTRACTOR'S OBLIGATIONS

- 5.1. The Contractor shall observe the obligations stipulated in this Agreement and its Annexes and shall be responsible for all costs related to the works as provided in this Agreement.
- 5.2. The Contractor shall transfer to the Principal all as-built documentation, handbooks, Operation and Maintenance Manuals and other documents, together with all intellectual property rights it may have in relation to such documents. The Contractor agrees to grant and hereby grants to the Principal and any future owner or operator of the Wind Farm an irrevocable, non-exclusive, royalty-free license of use of all documents developed by the Contractor under this Agreement for the exclusive use of the operation, maintenance or repair of the Wind Farm. In addition, the Contractor hereby grants to the Principal, and any future owner or operator of the Wind Farm an irrevocable, non-exclusive, royalty-free license under all patents, copyrights and other proprietary information of the Contractor related to the works performed under this Agreement now or hereafter owned or controlled by the Contractor for the operation, maintenance or repair of the Wind Farm or any subsystem or component thereof designed, specified, constructed or supplied by the Contractor under this Agreement provided the Contractor is legally able to grant such rights. No other license in such patents and proprietary information is granted pursuant to this Agreement.
- 5.3. The Contractor agrees to perform all the activities and actions for the correct installation, the Interconnection and the commissioning of the Wind Farm, using the human and material resources which are necessary. For this purpose, the Contractor shall use all the different types of labour (different types of specialisations and qualifications) required for the performance of the services by the deadlines agreed to in this Agreement.

Personnel, Contractor's Equipment, Goods and Consumables

- 5.4. The Contractor shall provide all personnel, materials, equipment, goods and consumables necessary for the Contractor to duly and timely execute and complete its obligations under this Agreement. For this purposes, Contractor shall provide an adequate number of supervisory personnel and a competent level of supervision for the performance of the Works, including the Contractor's Representative who shall possess full authority to receive instructions from Principal and to act on those instructions subject to the provisions of this Agreement.
- 5.5. The Contractor shall render the Scope of Works to be performed under this Agreement as an autonomous contractor through its own (and its subcontractors') means and organization, and at

its own risk, with diligence and care, guaranteeing adequate quality standards and according to (i) the Good and Prudent Practices and the specific modalities set forth in the Final Design, and (ii) instruction of the *Direttore dei Lavori*, in compliance with the Applicable Law and Applicable Permits. The Contractor shall be solely and exclusively responsible for the organization and coordination of the personnel engaged in the performance of the works, exercising in its regard the relevant direction and supervision power.

- 5.6. With respect to the personnel, the Contractor shall comply with all rules and obligations as established by the Applicable Law, collective and individual agreements including, by way of example, the payment of salaries, social security charges, insurances and withholding taxes on the income received by the workers involved in the performance of the works. The Contractor shall also correctly fulfil any other obligations or charges with respect to the work relationships with the personnel involved in the performance of the works, also complying with all applicable provisions in terms of safety and hygiene at work (Decree 81/2008 as subsequently amended), hereby undertaking any and all connected liability.
- 5.7. The Contractor (and each subcontractor) shall use only personnel duly employed in accordance with the Applicable Law or equivalent foreign law and the applicable National collective bargaining agreements ("*contratti collettivi nazionali di lavoro*") or equivalent collective bargaining agreements.
- 5.8. Upon Principal's request, the Contractor shall, within 10 days from such request, provide adequate and official documentation attesting the correct payment of salaries, social security charges, insurances towards its personnel (e.g. DURC, copy of F24 forms, copy of DM10/2 forms) or equivalent foreign document. In addition, the Contractor shall provide any further documents lawfully and reasonably required by the Principal regarding the personnel involved in the performance of the works.
- 5.9. The Contractor shall fully indemnify and hold the Principal harmless, for the entire duration of this Agreement and also after its termination, from any request of payment and/or of indemnification and/or from any fine (including administrative and civil fines) deriving from any breach of the obligations undertaken by the Contractor vis-à-vis its personnel (and/or by the subcontractors, if any, towards their personnel) including, but not limited to, the obligations regarding payment of salaries, social security, insurances, taxes and to fully indemnify and hold the Principal harmless from (i) any detrimental consequences (including, in case of dispute, the payment of legal fees to its lawyers,) that may derive to the Principal from the application of: (a) Article 1676 of the Italian Civil Code, (b) Article 29 of the Legislative Decree no. 276/2003, as amended, (c) Article 35 of the Law Decree no. 223/2006, as amended and (d) Decree 81/2008, as amended, and from (ii) any claim or action started by the Contractor's personnel (and/or by personnel of any subcontractors, if any) in connection with alleged employment or *de facto* relationships with the Principal which have their ground in actions or behaviour of the Contractor. Furthermore, the Contractor expressly undertakes to indemnify and hold the Principal harmless, for any cost, claim, reimbursement, sanction or any other payment request current or threatened against the Principal according to Decree 81/2008 by Contractor's personnel (and/or by personnel of any subcontractors, if any) for damages occurred and not indemnified by INAIL (Mandatory Insurance for Injuries at Work) or by other equivalent insurance compliant with the Applicable Law.
- 5.10. Furthermore, the Contractor shall indemnify and hold the Principal harmless, for the entire duration of this Agreement, from all injuries or damages to individuals or property or Equipment that may occur during the performance of the Scope of Works and, in any case, at any time until the Wind Farm Take Over Date, without prejudice to any other right the Principal may enforce against the Contractor under this Agreement and/or the Applicable Law. The Contractor shall be responsible for the proper care and protection of all Equipment, WTGs and materials and the works performed in accordance with this Agreement.
- 5.11. The Contractor shall be the sole responsible for health and safety on the Site and other places and/or premises in which the Contractor will, from time to time, carry out the works according to the Applicable Law. The Contractor shall provide all studies, documents, plans which are required under health and safety Applicable Law (such as the "*Piano Operativo di Sicurezza - POS*", as defined by Decree 81/2008). Before filing such POS with the *Worksite Safety Manager*, the Contractor verifies whether the POS of the executing companies (which shall be prior filed with the Contractor pursuant to Article 101 of Decree 81/2008) is compliant with its own POS.

- 5.12. The Contractor, until the Wind Farm Take Over Date, will adopt, maintain and supervise all measures and programs required to ensure the safety of any persons involved in the works in accordance with Applicable Law, Good and Prudent Practices and this Agreement. Unless otherwise agreed, the Contractor shall, for the entire duration of this Agreement and in any case until Wind Farm Take Over:
- (i) provide proper substation fencing and gates;
 - (ii) take all reasonable steps to protect the environment on the relevant part of the Site where the Wind Farm is located and to avoid damage and nuisance to persons or to properties resulting from pollution, including noise or other causes arising as a consequence of its method of operation, complying at all times with Applicable Law.
- 5.13. The Contractor shall promptly remedy any violations of national collective bargaining agreements and/or take all reasonable steps that may be available to promptly solve any labour jurisdictional disputes. The Contractor shall advise the Principal promptly in writing of any actual or threatened labour dispute of which the Contractor has knowledge that might materially affect the performance of the works by the Contractor.
- 5.14. The Contractor shall also be solely responsible for the submission of any information required by the labour or tax authorities having jurisdiction over the Site in respect of the personnel working on the Site or from time to time employed or hired by the Contractor and its subcontractors to carry out any work on the Site. The Contractor shall also be responsible to submit copies of that documentation to the Principal. The Contractor shall keep always in the Site the so-called "*Libro Unico*" and "*Registro Infortuni*" containing information on its personnel and those of its subcontractors working on the Site. The Principal and the Technical Consultant shall have full access to the information contained in such documents.

Subcontractors

- 5.15. The Contractor may use and engage subcontractors to perform some of its obligations under this Agreement. The Contractor shall use and engage the approved subcontractors expressly listed in Annex C to perform some of its obligations under this Agreement. The Contractor shall be free, without seeking Principal's consent, to subcontract parts of the works under this Agreement to subcontractors other than those expressly listed in Annex C in accordance and within the limits set forth under Clause 5.16 below.
- 5.16. In the event that the Contractor intends, for any reasons, not to appoint any of the approved subcontractor listed in Annex C for the performance of the activities to be subcontracted to any of them, unless for work of value lower than Euro 350,000.00 per single subcontract agreement and 1,000,000.00 Euro in aggregate then the Contractor must seek for the written approval of the Principal by submitting to the Principal a written request which must include: (i) details related to the part of the Scope of Works to be subcontracted; (ii) name and details of the proposed subcontractor; (iii) information related to the financial and technical capability of the proposed subcontractor along with its track records; and (iv) any other information that should be reasonably requested by the Principal. The Principal shall consent the use of subcontractors, such consent not to be unreasonably withheld or delayed, within 10 (ten) Business Day from receipt of the written request by the Contractor. The designation by the Contractor, even with the consent of the Principal, of subcontractors will not in any case exonerate the Contractor from the exclusive and full responsibility towards the Principal for the complete, exact and timely execution of all the obligations assumed under this Agreement.
- 5.17. Before any subcontractor appointed by the Contractor (including, only for the sake of clarity, the approved subcontractors listed in Annex C) starts performing its activities in connection with this Agreement, the Contractor shall provide to the Principal for such subcontractor (i) certificate of enrolment at the Chamber of Commerce, or equivalent documentations under applicable laws; (ii) the so called "*certificazione antimafia*" ("*comunicazioni ed informazioni antimafia*"), or equivalent documentations under applicable laws; (iii) the DURC (*Documento Unico di Regolarità Contributiva*), or equivalent documentations under applicable laws and (iv) signed copy of the operation safety plan ("*Piano Operativo di Sicurezza*").
- 5.18. The Contractor shall not be entitled to subcontract the entire Scope of Works under this Agreement and shall be solely responsible for paying each subcontractor any amounts due to such subcontractor. Use of subcontractors will not relieve the Contractor from its obligations

under this Agreement. The Contractor shall be directly liable for compliance by all subcontractors with all the provisions of this Agreement and it shall be liable for any acts or defaults of any subcontractor, its agents or employees, to the same extent as if such acts or defaults had been committed by the Contractor, its own agents or employees. No subcontractor is intended to be nor shall it be deemed to be a third-party beneficiary of this Agreement. The Contractor shall timely and properly perform all obligations, including payment obligations, *vis-à-vis* each subcontractor.

- 5.19. The Contractor agrees to make sure that the subcontractors correctly fulfil any obligations towards their personnel including, but not limited to, the obligations regarding salary, social security, insurances, taxes etc. In addition, the Contractor's subcontractors shall comply with the Applicable Law related to health and safety matters, including (but not limited to) Decree 81/2008. Neither the act of subcontracting nor any approval of the subcontractors by the Principal shall release the Contractor from any obligation or liability towards the Principal.
- 5.20. The Contractor undertakes towards the Principal to ensure pursuant to Article 1381 of the Italian Civil Code that all the Subcontractors perform the respective obligations in accordance with the terms and conditions agreed under the relevant subcontract agreement. For this purpose, the Contractor shall promptly provide to the Principal, the Technical Consultant copies of the Cable Supply Contract and the Electrical Substation Contract executed in relation to this Agreement and will ensure pursuant to Article 1381 of the Italian Civil Code that the terms and conditions agreed under such subcontract agreements are compliant and consistent with the terms and conditions agreed under this Agreement. Furthermore, the Contractor undertakes to (i) keep informed the Principal of any material event occurring in the activities to be performed under the subcontract agreements which may have a material impact on the correct and timely performance of the obligations agreed under this Agreement and (ii) promptly exercise any of its rights (including the rights to demand for the payment of liquidated damages or penalties or to enforce any guarantee) so to ensure the correct and timely performance of the subcontract agreements.

Taxes

- 5.21. The Contractor shall pay any charges and taxes relating to the materials and Equipment (including for the avoidance of doubt, the Wind Turbines) which are the object of this Agreement and for the performance of the Scope of Works.

General obligations – Permits and technical information

- 5.22. The Contractor agrees:

- (i) to procure, to comply with and to maintain in full force and effect of all Contractor's Permits in construction phase at the Contractor's sole cost and responsibility;
- (ii) to prepare and to provide all technical information and documentation, including all of the designs, that may be required in connection with the tests, commissioning, Interconnection and providing all required technical assistance to the Principal (and/or any third party appointed by the Principal). The Contractor shall submit any documentation that may be requested to be submitted to the relevant authorities pursuant to the Applicable Law in relation with the development of the works (*i.e.* the construction activities performed during the relevant period) on behalf of the Principal if is the said the one that is requested to submit such information;
- (iii) to supervise and ensure compliance with the technical conditions for connection established by the Grid Operator and any other technical requirement or determining established by the Grid Operator and Applicable Laws relating to the functioning of the Wind Farm until the Wind Farm Take Over Date;
- (iv) to provide all of the information relating to the technical details of the supplied installations (calculations, designs, quality regulations, tests, materials, etc.) and the progress of the Scope of Works to the Principal, to the Technical Consultant. The Contractor shall provide a comprehensive monthly report to the Principal and the Technical Consultant. The monthly progress report must be presented before day 5 (five) of each calendar month following to which the report is referred;
- (v) to perform any and all the Scope of Works in accordance with the terms and conditions contained in any and all the Principal's Permits, including, for the sake of clarity, fulfilling

and complying with any and all the instructions, recommendations and/or, guidelines of Terna or Enel and any national, regional and local administrations. In relation to the above, the Contractor represents to have deeply examined the Principal's Permits, which are fit and complete for the performance of any activities of the Contractor under this Agreement.

Site conditions

- 5.23. The Contractor represents that it has studied, examined and inspected the Site a portion of it subsoil as better identified in Annex D21 (Subsoil) hereof (the "**Subsoil**"), its surroundings and its accesses. The Contractor has agreed to provide the Scope of Works described in this Agreement (including the design of the Tower Foundations) based on inspection of the Site, the Subsoil and surface and of its climatologic, hydrographic, hydrological, geotechnical, archaeological and seismic conditions and any other natural or artificial physical circumstances in general of the Site and of the Subsoil which could affect the implementation of the Wind Farm.

Accordingly, the Contractor accepts the risk connected to the Site and the Subsoil conditions, the morphological characteristics, environmental and meteorological conditions relevant of the Site as well as the election of the Wind Turbines made by the Principal, expressly acknowledging and declaring that the above conditions are suitable for the performance of the Scope of Works and the fulfilment of its obligations under this Agreement.

Inspections

- 5.24. The Contractor shall: (i) allow access to the Technical Consultant and to the Principal to attend any Test, providing reasonable notice of all such Tests to the Technical Consultant and to the Principal and to carry out its own tests on the Wind Farm; (ii) allow access to the Principal, also by means of the Technical Consultant, will have the right to access the Site so to undertake surveys and inspections, at any other time, by giving at least 5 (five) Business Days' notice of the expected access to the Site to the Contractor so to undertake any surveys and inspections; and (iii) promptly provide all related information reasonably requested by the Technical Consultant or the Principal.

Obligation to clean the Site and remove Hazardous Substances

- 5.25. The Contractor shall keep the Site free from any accumulation of used materials, debris, refuse, packaging, or waste, and must periodically perform the necessary cleaning and storage activities.
- 5.26. The Contractor shall be responsible for the Hazardous Substances used, produced, transported to or from the Site as well as disposed by the Contractor and/or any of its subcontractors at the Site in connection with the Contractor's performance of its obligations under this Agreement are transported, moved, used, stored or disposed in accordance with the Applicable Law and the Principal's Permits. Any cost of clean-up, transportation, treatment, storage or disposal of the above Hazardous Substances shall be the sole responsibility and expense of the Contractor. For the purposes of this Agreement, "**Hazardous Substances**" means, collectively, any chemical, substance or material that is or becomes regulated, governed, listed or controlled pursuant to the Applicable Law as a toxic substance, hazardous substance, hazardous material, dangerous or hazardous waste, or any similar classification as to which liability is imposed on the basis of potential impact to safety, health or the environment pursuant to the Applicable Law.
- 5.27. Within 30 (thirty) Days following the date when Wind Farm Take Over is achieved the Contractor must disassemble, dismantle and remove from the Site all tools and materials that are not necessary during the Warranty Period.
- 5.28. If the Contractor fails to comply with its cleaning and storage obligations following receipt of a (20) twenty Days written notice sent by the Principal detailing the alleged contractual failure in this respect, together with the request to comply with the obligations, the Principal may arrange for the removal of materials (by itself or by third parties), at Contractor's expense and liability.

Others

- 5.29. The Contractor shall ensure, at its own costs and expenses, that during the construction a 24/7 (twenty-four-hours-a-day, seven-days-a-week) broadband or satellite connection is available and meets the requirements set out in the Section Wind Turbine Generators of Annex A (Technical Specifications) hereof to allow the retrieval of operational data generated by the WTGs and by the SCADA System.

- 5.30. The Contractor shall procure that no Change of Control occurs without the prior written consent of the Financing Parties.
- 5.31. The Contractor undertakes to promptly provide the WTGs Manufacturer with the Contractor Guarantee for ToT in order to obtain the full ownership of the Equipment (as defined under the Wind Turbine Supply Agreement) in compliance with the relevant provisions of the Wind Turbine Supply Agreement by no later than ten (10) Business Days from the date it has become aware of the following:
- (i) Siemens Gamesa Spain and/or Siemens Gamesa Italy (each as defined under the Wind Turbine Supply Agreement) become bankrupt or insolvent, go into liquidation, start any insolvency or pre-insolvency proceeding, have a receiving or administration order made against them, compounds with their creditors, or carry on business under a receiver, trustee or manager for the benefit of their creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events; and/or
 - (ii) the rating of Siemens Gamesa Renewable Energy S.A. falls below BB- (as rated by S&P or a comparable other rating agency).

6. GENERAL OBLIGATIONS OF THE PRINCIPAL

- 6.1. The Principal shall comply with the obligations provided for its responsibility hereunder and under the relevant Annexes.
- 6.2. The Principal must fully and timely carry out at its own expense, the following:
- (i) duly and timely pay the Price when due, subject to the conditions set forth under the following Article 7;
 - (ii) obtain and comply with all of Principal's Permits and enter into agreements with the owners of land to obtain the relevant rights relating to the areas which are required for the access to the Site and the construction and exploitation of the Wind Farm which are not available as of the date hereof or, in alternative, upon its exclusive discretionary decision, to proceed with the expropriation procedure of one or several of the plots of land that are part of the Site;
 - (iii) allow free access of vehicles to the Site, provided that Contractor shall be responsible for obtaining any Applicable Permits that may be required to use or enlarge public roads in connection with the supply of Equipment or the construction of the Wind Farm according to Annex A;
 - (iv) pursuant to Article 89 of Decree 81/2008, appoint the professionals indicated under Article 4.3. and 4.4. above. In accordance with Article 100 and annex XV of the same Legislative Decree, the Principal has provided the PSC attached to this Agreement under Annex K (PSC) hereof by 10 Business Days before the commencement of the works;
 - (v) collaborate in good faith with the Contractor for the good outcome and result of the Scope of Works which are the object of this Agreement;
 - (vi) provide any reasonable documentation and timely disclose to the Contractor any information which may affect the duly execution and implementation of the provisions of this Agreement;
 - (vii) obtain any Permits, contracts, consents, approval or rights necessary to sell or deliver electricity produced by the WTG(s);
 - (viii) comply with the requirements of connection to the grid; and
 - (ix) cooperate with the Contractor and provide any and all documents available to the Principal, necessary in order for the Contractor to obtain all of the Contractor's Permits.

7. PRICE, CONDITIONS OF PAYMENT AND BONDS

7.1. Price

The overall consideration payable by the Principal to the Contractor under this Agreement (the "**Price**"), as better specified in the schedule in Annex F (the "**Payment Schedule**") is equal to Euro 42,132,000.00 (inclusive of Euros 132,000.00 (Euro 398,000.00 in case of performance of the activities

during a Covid-19 event) for the coverage of the health and safety costs referred to in Article 26, paragraph 5, of Decree 81/2008 (as better specified by the PSC)).

Any reference to the Price in this Agreement shall not include VAT, which shall also be due and payable by the Principal in accordance with Applicable Law. However, the Contractor expressly waives to ask for the payment of the VAT until the earlier of:

- (i) the date on which the Principal confirms to have obtained a committed VAT facility; and/or
- (ii) the date on which the Principal has received the reimbursement of the relevant VAT credit from the Tax Authority.

Except for the variations to the Price allowed under this Agreement, the Price is a fixed amount, closed and agreed and may not be changed; as such, it shall not be modified and shall not be subject to any revisions as a result of changes in the price of labour, materials, exchange rates, or any other similar item, including the modification of any taxes to be paid on the goods or services which form part of the scope of this Agreement, except in the terms expressly included in the same. In this respect, the Parties agree and undertake to depart from (and acknowledge that this Agreement prevails on) Articles 1660 (*variazioni necessarie del progetto*), 1661 (*variazioni ordinate dal committente*) and 1499 (*interessi compensativi sul prezzo*) of the Italian Civil Code. Articles 1664 (*onerosità e difficoltà dell'esecuzione*) and 1467 (*eccessiva onerosità sopravvenuta*) of the Italian Civil Code will not apply to this Agreement, as the Contractor has kept into account (and accepted) the risk connected to any circumstances which may affect the works and activities under this Agreement (including fluctuations of prices) as well as the risky nature of this Agreement pursuant to Article 1469 (*contratto aleatorio*) of the Italian Civil Code.

The Price shall be paid by the Principal through bank wire transfers in immediately available funds to the bank account already indicated by the Contractor to the Principal (or to such other bank account/s as the Contractor may indicate to the Principal from time to time) pursuant to the Payment Schedule provided the relevant invoice is issued by the Contractor, pursuant to the Applicable Law.

7.2. Conditions of payment

7.2.1 The Contractor, when according to the Payment Schedule is to be paid any amount of the Price, shall deliver a milestone certificate according to the form under Annex B to the Principal and the Technical Consultant together with any documents indicated thereunder and required to demonstrate the achievement of the relevant milestone and including the Approved Subcontractor Declaration (the "**Milestone Certificate**") (as such form may be revised by the Parties in good faith upon advice of the Technical Consultant).

7.2.2 Should the Principal's Representative, by 5 (five) Business Days following the receipt of the Milestone Certificate:

- (i) give written notice to the Contractor of its approval by returning the Milestone Certificate duly signed (subject to positive verification of the Technical Consultant), the Contractor shall issue an invoice and the Principal shall make the payment of the amount indicated in the Milestone Certificate in favour of the Contractor by bank wire transfer by 5 (five) Business Days from the date of the Milestone Certificate to which the invoice relates;
- (ii) give notice to the Contractor of its non-approval of the Milestone Certificate (in consultation with the Technical Consultant) or any items thereof (a "**Dispute**"), the following settlement procedure shall apply.

The Principal may only Dispute a Milestone Certificate if: (a) errors in calculation exist provided that where the correction of such errors in calculation is obvious to the Principal, the Principal shall notify the Contractor and invite it to re-submit the Milestone Certificate; or (b) the works and activities indicated in the Milestone Certificate do not correspond, in terms of either quality or quantity, to the actual works and activities performed and deliveries received by the Contractor pursuant to the Agreement; or (c) lack of any certification, document or activities required under the relevant Milestone Certificate to achieve payment of the portion of the Price it refers to. In case a Milestone Certificate is deemed disputed according to paragraph (ii) above, the Principal shall, by 3 (three) Business Days as from receipt of a further request of the Contractor following the expiry of the original 5 (five) calendar days term, give written notice of the reasons of its non-approval, which may only be by the items under (a) or (b) or (c) above.

Any Dispute which the Parties are unable to amicably settle by a period of 30 days, shall be submitted to the Independent Expert.

7.2.3 The Principal's failure to pay any amount (or respectively, the Contractor's failure to pay any amount) which is not in Dispute under this Agreement when due shall automatically give rise to default interest which will be accrued on a daily basis and will be paid on the day of payment by the Principal (or, as the case might be, the Contractor), on the basis of a 360-day year and will be determined by adding one month EURIBOR plus six hundred basis points of the date when the payment fell due. The Parties expressly agree and recognize that the default interest, determined as stated above, is not seriously iniquitous ("*gravemente iniquo*") for the relevant creditor for the purposes of Article 7 of the Legislative Decree 231/2002. The Parties further agree that, in case the interest rate referred to above exceeds the maximum rate permitted by Legislative Decree 231/2002 and related implementation regulations, such interest rate shall be considered as automatically reduced to the default interest rate determined from time to time according to Legislative Decree 231/2002.

7.2.4 It remains understood that no payment will be due by the Principal to the Contractor according to this Contract in lack of delivery by the latter of the "*documento di regolarità contributiva*" duly updated.

7.3. Bonds

The Contractor shall make issue by the following subcontractors the following autonomous and first demand bank guarantees issued - in form and substance acceptable for the Financing Parties - by a primary institution having a credit rating equal or higher than BBB (as rated by S&P or a comparable other rating agency) or any other financial institutions acceptable by the Financing Parties - providing for the Principal as beneficiary of the same as well as for their assignment as security in favour of the Financing Parties (the "**Subcontractors Bank Guarantees**"):

Subcontractor	Amount	Time of issuance / Time of expiry ¹
WTGs Manufacturer	APB: € 5,154,000.00	APB: 31/12/2020 - 30/04/2022
	PB: € 2,577,000.00	PB: 01/05/2021 - 30/04/2022
	WB: € 2,577,000.00	WB: 1/05/2022 - 30/04/2024
Substation Supplier	PB: € 122,000.00	PB: 31/1/2021 - 31/1/2022
	WB: € 122,000.00	WB: 1/2/2022 - 31/1/2024

In addition to the Subcontractors Bank Guarantees, the Contractor shall provide the Principal with the following guarantees:

- (a) on the Effective Date, the Parent Company Guarantee;
- (b) by no later than 15 January 2021, an advance payment guarantee, issued by a primary bank or insurance institution in the form of first demand guarantee, having a guaranteed amount equal to Euro 5,500,000 which, summed to the guaranteed amount provided for under the Subcontractors Bank Guarantees in place at that time, shall be equal to 26% of the Price (the "**Advanced Payment Bond**"). The Advance Payment Bond shall remain in force until the Wind Farm Take Over and the guaranteed amount shall be automatically reduced as follows:

Effective Date	1st milestone (Cables Supply Contract)	2nd milestone (Cables EXW)	3rd milestone (Cables Delivery on site)	4th milestone (Anchors bolts delivery on site)	5th milestone (Transformer EXW)	7th milestone (WTG Foundation completed)
Euro 5,500,000	Euro 5,250,000	Euro 5,000,000	Euro 4,650,000	Euro 3,750,000	Euro 3,300,000	Euro 2,000,000

¹ These dates are indicative and are actually based on the achievement of the relevant milestones under the sub-contracts.

- (c) as a condition for the payment of the *WTGs contract/SSE contract signing*, a performance bond, issued by a primary bank or insurance institution in the form of first demand guarantee, with a guaranteed amount equal to Euro 3,400,000 which, summed to the guaranteed amount provided for under the Subcontractors Bank Guarantees in place at that time, shall be equal to 15% of the Price (the "**Performance Bond**"). The Performance Bond will be increased to Euro 3,600,000 as condition for the payment of the Milestone "*Anchor Bolts delivery on site*" and shall remain in force until the Wind Farm Take Over and, in any case, up to the date when the Contractor has delivered to the Principal the Warranty Bond;
- (d) upon Wind Farm Take Over, a warranty bond issued by a primary bank or insurance institution in the form of first demand autonomous guarantee, having a guaranteed amount equal to Euro 1,500,000 which, summed to the guaranteed amount provided for under the Subcontractors Bank Guarantees in place at that time, shall be equal to 10% of the Price (the "**Warranty Bond**"). The Warranty Bond shall remain in force for the whole Warranty Period, and after one (1) year from the Wind Farm Take Over can be reduced to an amount equal to Euro 750,000 which, summed to the guaranteed amount provided for under the Subcontractors Bank Guarantees in place at that time, shall be equal to 5% of the Price, upon assessment of absence of claims and litigations between the Parties under this Agreement.

The Parties agree that each of the Advance Payment Bond, the Performance Bond and the Warranty Bond shall be issued according to the form under Annex DD or in forms accepted by the Financing Parties, by a bank or insurance institutions having a credit rating equal or higher than BBB (as rated by S&P or a comparable other rating agency) or equivalent expressly approved in writing by the Financing Parties.

The Contractor undertakes to promptly inform the Principal on any breach by the WTGs Manufacturer to allow promptly enforcement of the relevant Subcontractors Bank Guarantees.

For the sake of clarity, the Principal shall be entitled to enforce up to the full outstanding amount of any Bond:

- (i) at any time, if Contractor has failed to observe or perform any of the terms, conditions or provisions of this Agreement; or
- (ii) the Contractor becomes bankrupt or insolvent, goes in liquidation, starts any insolvency or pre-insolvency proceeding, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these act or events; or
- (iii) on or after the date which is 30 days prior to the scheduled expiration of such Bond, if on such date the Contractor has not provided a replacement bond conforming to the terms of this Agreement.

7.4. Payments to the subcontractors

In the light of the functional link between this Agreement, the Wind Turbine Supply Agreement, the Electrical Substation Contract and the Cable Supply Contract entered into between the Contractor and any of the approved subcontractor listed in Annex C of this Agreement (jointly, the "**Approved Subcontractors' Agreement/s**"), and in compliance with the bankability needs of the Wind Farm as agreed with the Financing Parties, the Parties acknowledge and agree that before payment of any portion of the Price, the Contractor shall deliver the relevant Milestone Certificate to the Principal, which shall include a declaration of the relevant Approved Subcontractors (the "**Approved Subcontractor Declaration**") on the status of the payments of the contract price under the relevant Approved Subcontractors' Agreement and:

- (i) if the Approved Subcontractor Declaration states that there are no amounts outstanding under the relevant Approved Subcontractors' Agreement, the payment of Price shall be directly paid by the Principal to the Contractor; or, alternatively
- (ii) if the Approved Subcontractor Declaration states that there are amounts outstanding under the relevant Approved Subcontractors' Agreement, the payment of Price will be utilized by the Contractor to pay such amounts due to the Approved Subcontractors pursuant to the terms and conditions of the Approved Subcontractors' Agreements. It remains agreed and understood between the Parties that: (A) the portion of the Price

destined to pay the amounts due in favor of the relevant Approved Subcontractor under this paragraph (ii) ("**Subcontractors Payment(s)**"), derogating from any contrary provisions under this Agreement and the Approved Subcontractors' Agreements, shall be directly paid and settled by the Principal in favor of the relevant Approved Subcontractor, and (B) the portion of the Price exceeding the Subcontractors Payment(s) shall be directly paid by the Principal to the Contractor.

In light of paragraph (ii) above, therefore:

- (iii) the Contractor shall give to the Principal all required documents, in adequate advance time in order to comply with the relevant terms of payment provided for under the Approved Subcontractors' Agreements, in order to (a) define, calculate and settle the relevant Subcontractors Payment; and (b) apportion, with respect to each Milestone Certificate and instalment of payment of the Price, the relevant portion pertaining to the Subcontractors' Payment;
- (iv) the Contractor hereby grants to the Principal, which accepts, a delegation of payment ("*delegazione di pagamento*") to the Principal to perform and settle, on behalf and on the name of the Contractor, each and all Subcontractors Payments;
- (v) the Parties shall perform all required, relevant or appropriate activity to enforce and binding, also towards third parties, including the Approved Subcontractors, the above-mentioned mechanism of payment and the delegation of payment of the Subcontractors' Payment; and
- (vi) the Parties covenant and agree that the mechanism of payment of the Subcontractors Payments, as detailed under this paragraph 7.4 (*Payments to the subcontractors*), will not release or limit the obligation and liability of the Contractor under this Agreement.

8. DEADLINES FOR INSTALLATION, DELAY LIQUIDATED DAMAGES AND FORCE MAJEURE

8.1. Deadlines for installation

8.1.1 Subject to any extension of time in accordance with the provisions of this Agreement, to the applicable extent, the Contractor hereby undertakes to complete the execution of its tasks, supply and installation as well as the Scope of Works in accordance with the Time Schedule.

8.1.2 The Contractor shall however be entitled to adjust the Time Schedule to reflect the delays that have arisen during or may have effect on the fulfilment of this Agreement by the Contractor and which have been caused by any of the following events.

- (a) **Change Orders.** Either Party may issue a request for a change in the Equipment and/or Scope of Works; provided, however, that both Parties must agree to such change by means of a change order (the "Change Order"), which shall be a written instrument signed by the Principal and the Contractor stating their mutual agreement upon all of the following: (i) a change in the Equipment and/or Scope of Works, such as an addition, a deletion, or another modification (such as, by way of example, a reinforcement or change in the height of the Towers); (ii) the amount of the adjustment in the Price; and/or (iii) the extent of the adjustment in the Time Schedule. The Parties agree and acknowledge that neither the Contractor nor the Principal shall be obligated to agree to and perform any proposed Change Order, and that the Contractor shall not perform any Change Orders until the Principal has approved in writing the proposed adjustments or has expressly authorized the Contractor in writing to perform the Change Order.
- (b) **Change in Law and Force Majeure.** The Parties agree that to the extent any Change in Law or Force Majeure event affects the Contractor's performance under this Agreement or its ability to meet the Time Schedule set forth herein or the Principal's obligations under this Agreement, the relevant Party shall be entitled to ask for a Change Order (which in any case shall be agreed by the Principal), being understood that only an adjustment of the Time Schedule will be permitted (so as to cover the time lost as a result of such events) and that in no circumstances a Force Majeure event may determine an increase of the Price or other indemnifications. In case of Change in Law the Contractor shall be entitled to an adjustment of the Time Schedule and an increase of the Price and in such circumstance the Principal shall be entitled to terminate this Agreement under the

provisions of Article 1467 (*risoluzione per eccessiva onerosità sopravvenuta*) of the Italian Civil Code. It being understood that in case of a Change in Law which determines a saving in the costs for the Contractor, such saving (as duly documented by the Contractor) shall be in favour of the Principal (through a reduction of the Price). In case Principal terminates this Agreement subject to Article 1467 of the Italian Civil Code, consequences of such termination shall be the payment by Principal of all the amounts due and duly documented for the Works already performed by Contractor.

- (c) Principal Caused Delays. If the timely performance of this Agreement is delayed or disrupted or suspended by any action or omission on the part of the Principal or its subcontractors in violation of the Principal's obligations under this Agreement, or any failure or delay on the part of the Principal to perform such obligations with exception of the payment of any amounts which is in Dispute under this Agreement (a "**Principal Caused Delay**"), then (i) the Time Schedule shall be equitably adjusted by adding the additional days necessary to recover any delay caused by such Principal Caused Delay; and (ii) Principal shall reimburse the Contractor for Contractor's reasonably incurred and duly documented substantiated cost incurred by reason of such Principal Caused Delay, this being without prejudice to the Contractor's rights pursuant to other provisions of this Agreement. If the performance of this Agreement is suspended for more than 5 (five) months due to a Principal Caused Delay, the Contractor shall have the right to terminate this Agreement by notice to the Principal.

The Contractor shall notify the Principal of the beginning and ending of the aforementioned circumstances as soon as reasonable.

The Contractor shall not be entitled to claim an extension of the Scope of the Works and/or adjustment of the Price in case of adverse weather conditions. The Contractor shall not be entitled to claim an extension of the Time Schedule during the first 30 accumulated days of adverse weather conditions provided that such adverse weather conditions require effectively, as confirmed by the Technical Consultant, the stoppage, ceasing or delay of the works.

8.2. *Delay Liquidated Damages*

If:

- (a) Contractor fails to meet the Interconnection Date Deadline or the Wind Farm Take Over Deadline; and
- (b) there is no excusable delay pursuant to a Force Majeure event or a Principal Caused Delay (it remains understood that a delay attributable to the Contractor for failing in fulfilling its obligations following the implementation of the remedies provided under Clauses 9.1 and 9.2 below shall not be deemed an excusable delay),

then the Contractor shall pay, pursuant to Article 1382 of the Italian Civil Code, delay liquidated damages, save for the termination and related remedies as provided for under Clause 17 (*Termination*), to Principal equal to 0.24% of the Price per each week of delay, with respect to the relevant term to achieve the Interconnection Date Deadline (the "**Delay Event**" and the above liquidated damages, the "**Delay Liquidated Damages**"), up to a total amount equal to 10% of the Price.

The above is in the understanding that no Delay Liquidated Damages shall be due and payable by the Contractor pursuant to this Agreement if the Interconnection Date Deadline is not delayed beyond the 1 week grace period fixed in the Time Schedule, irrespective of whether or not there exist a delay by the Contractor under the present Agreement.

It is understood and agreed by the Parties that any sums which would be payable hereunder are in the nature of liquidated damages and are fair and reasonable. Without prejudice to termination as provided for in Clause 17 (*Termination*), or to the applicable injunctive relieves, the Principal's sole and exclusive remedy in damages for any and all delay losses suffered by the Principal as a result of the Contractor's failure to achieve the Interconnection Date Deadline scheduled in the Time Schedule shall be the payment by the Contractor of the Delay Liquidated Damages. As a consequence, the Contractor waives any right of reduction of the amount of such liquidated damages pursuant to Section 1384 of the Italian Civil Code.

9. **FORCE MAJEURE**

9.1. *Force Majeure*

If either Party is rendered wholly or partially unable to perform its obligations (other than any payment obligations) under this Agreement because of the occurrence of a Force Majeure event, the obligations of that Party (other than payment obligations) that are prevented by the Force Majeure event will be postponed pending the ending of the Force Majeure event, to the extent so prevented. Upon the occurrence of a Force Majeure event:

- (a) the affected Party will give the other Party written notice describing the particulars of the occurrence known to such affected Party, including an initial estimation of its expected duration and likely impact on the performance of such Party's obligations hereunder;
- (b) the notice described in paragraph (a) above shall be given promptly, and in any case no later than 5 Business Days, after the affected Party becomes aware of such occurrence;
- (c) the suspension of performance shall be of no greater scope and of no longer duration than strictly required by the Force Majeure event; and
- (d) when the affected Party is able to resume performance of the affected obligations under this Agreement, that Party shall give the other Party written notice to that effect and the affected Party promptly shall resume performance under this Agreement.

The Party affected by the occurrence of a Force Majeure event shall exercise commercially reasonable efforts to mitigate damages to the other Party.

9.2. *Mitigation*

The Parties shall endeavour to perform their respective obligations under this Agreement so far as is reasonably practicable, notwithstanding the occurrence of a Force Majeure event.

Following the end of a Force Majeure event, to the extent possible, the Contractor shall perform its obligations under this Agreement in order to recover any delay, if any, in the Time Schedule.

10. TRANSFER OF TITLE; TESTS, TAKE OVER

10.1. *Transfer of title*

- (a) Title to, and ownership of, the Equipment (excluding the WTGs, the SCADA System, and any other equipment supplied by the WTGs Manufacturer under the Wind Turbine Supply Agreement) shall pass to the Principal free of all encumbrances, liens or charges of any nature upon payment of the milestone Wind Farm Take Over of the Payment Schedule.
- (b) Title to, and ownership of, the WTGs, the SCADA System, and any other equipment supplied by the WTGs Manufacturer under the Wind Turbine Supply Agreement shall pass to the Principal free of all encumbrances, liens or charges of any nature as follows:
 - (i) 90% of title and ownership of the Equipment upon payment of the milestone VII of the Payment Schedule; and
 - (ii) the remaining 10% of title and ownership of the Equipment upon the earlier of:
 - (a) upon payment of the milestone Wind Farm Take Over of the Payment Schedule; or
 - (b) the date of delivery of the Contractor Guarantee for ToT.
- (c) Despite the transfer of title and ownership of the Equipment, the responsibility for care and custody together with the risk of loss or damage to such Equipment shall remain with the Contractor according to Article 10.2 below.

10.2. *Transfer of risk*

The Contractor shall bear the risk of loss and damage with respect to the Equipment, the Wind Farm and - more in general - the Scope of Works until the Wind Farm Take Over Date, at which point the risk of loss and damage shall pass to the Principal automatically. During the period of time before the Wind Farm Take Over Date, the Contractor shall be responsible for such risk of loss or damage.

To the extent that the Wind Farm Take Over Date is not achieved as a result of a Principal Caused Delay, the Contractor shall retain the risk of loss or damage to the Equipment, the Wind Farm and the Scope of Works until the passage of title to the Principal, provided that the Principal shall reimburse the

market standard duly documented costs resulting from the maintenance of the risk by the Contractor during the period of time throughout which the take over of the Wind Farm is prevented or delayed for the above mentioned reason.

The Contractor shall be released from any liability for incidents deriving from the Principal's failure to abide by the Technical Specifications.

10.3. Tests and Take Over

10.3.1. Tests.

As soon as the Contractor deems it appropriate upon proper realization of the relevant portion of the Scope of Work, it shall perform and procure each and any below tests (all, together, the "Tests" and, each of them, a "Test"):

- (i) the mechanical completion test of each Wind Turbine pursuant to the procedure described in Annex N (Mechanical Completion Test) hereof (the "**Mechanical Completion Test**");
- (ii) the civil works test pursuant to the procedure described in Annex O hereof (Civil Works Test) (the "**Civil Works Test**");
- (iii) the electrical reliability and commissioning works tests of the Electrical Works pursuant to the procedure described in Annex E (Electrical Works Reliability and Commissioning Test) hereof (the "**Electrical Works Reliability and Commissioning Test**");
- (iv) the commissioning tests of each Wind Turbine, which shall consist of the test specified in Annex P (Commissioning Test) hereof (the "**Commissioning Tests**");
- (v) the reliability test of each Wind Turbine, that will be carried out according to Annex Q (Reliability Test) hereof (the "**Reliability Test**"); and
- (vi) the SCADA test pursuant to the procedure described in Annex R (SCADA Test) hereof (the "**SCADA Test**").

The Contractor shall notify the Principal and the Technical Consultant with at least a five (5) Business Days prior notice of the start of the relevant Tests in order to allow the Principal, and/or any of its representatives, and the Technical Consultant to organize properly their attendance at the relevant Tests. The Contractor shall perform the relevant Tests. The Contractor shall provide such electricity and consumables as may be required to carry out the Tests in compliance with Article 3.8 above. The Contractor's technical personnel (or, when applicable the installer and/or manufacturer's personnel, under the Contractor's supervision) shall operate the Wind Farm during the Tests, although the Principal (and its personnel) and the Technical Consultant shall be entitled to be present during any Test. Any third party entrusted with the supervision, vigilance and quality control of the Contractor shall also be entitled to attend and witness the Tests.

In case the Principal's Representative (or any other individual designated by the Principal) and/or the Technical Consultant cannot attend the Tests at the date notified by the Contractor due to Force Majeure, such tests shall be postponed and performed as soon as practicable in order to allow the Principal's Representative (or any other individual designated by the Principal) and the Technical Consultant to attend the Tests.

10.3.2. Mechanical Completion Take Over

The Mechanical Completion Take Over shall take place for each WTG when it is installed and the relevant Test in Annex N (Mechanical Completion Test) are successfully completed. Upon completion of the relevant Test, the Contractor shall fill out, sign and deliver to the Principal and the Technical Consultant the relevant signed certificate (the "**Mechanical Completion Take Over Certificate**") in the form under Annex L (Mechanical Completion Take Over Certificate) hereof.

The Principal shall have five (5) Business Days from the day the Principal receives a Mechanical Completion Take Over Certificate to sign it, with the prior written approval of the Technical Consultant, and subsequently return it to the Contractor. If the Principal refuses to sign Mechanical Completion Take Over Certificate, the Principal shall send a written statement providing detailed reasons for such refusal and the issue shall be submitted to the Independent Expert. If the Contractor has not received the Mechanical Completion Take Over Certificate signed by the Principal or the rejection by the Principal by the above term, then the Mechanical Completion Take Over Certificate will be deemed accepted by the Principal provided that the Technical Consultant has confirmed in writing to the Principal, copy to

the Contractor, its no objection to the execution of the Mechanical Completion Take Over Certificate, otherwise the Mechanical Completion Take Over Certificate will be deemed not accepted by the Principal. If the Technical Consultant raised any objection so that the Mechanical Completion Take Over Certificate will be deemed not accepted, the same shall be submitted to the Independent Expert.

The presence of Defects (except Non-Critical Punch List Items) shall be grounds for the Principal to withhold its signature on the Mechanical Completion Take Over Certificate.

10.3.3. Civil Works Take Over

The Civil Works Take Over shall take place when the applicable Civil Works are completed and the relevant Test in Annex O (Civil Works Test) hereof are successfully completed. Upon completion of the applicable Civil Works Test, the Contractor shall fill out, sign and deliver to the Principal and the Technical Consultant the relevant signed Civil Works Take Over Certificate in the form under Annex BB (Civil Works Take Over Certificate) hereof.

The Principal shall have five (5) Business Days from the day the Principal receives a Civil Works Take Over Certificate to sign it, with the prior written approval of the Technical Consultant, and subsequently return it to the Contractor. If the Principal refuses to sign the Civil Works Take Over Certificate, the Principal shall send a written statement providing detailed reasons for such refusal and the issue shall be submitted to the Independent Expert. If the Contractor has not received the Civil Works Take Over Certificate signed by the Principal or the rejection by the Principal by the above term, then the Civil Works Take Over Certificate will be deemed as accepted by the Principal provided that the Technical Consultant has confirmed in writing to the Principal, copy to the Contractor, its no objection to the execution of the Civil Works Take Over Certificate, otherwise the Civil Works Take Over Certificate will be deemed not accepted by the Principal. If the Technical Consultant raised any objection so that the Civil Works Take Over Certificate will be deemed not accepted, the same shall be submitted to the Independent Expert.

The presence of defects (except Non-Critical Punch List Items) shall be grounds for the Principal to withhold its signature on the Civil Works Take Over Certificate.

10.3.4. Electrical Works Take Over

The Electrical Works shall, following successful Mechanical Completion, be subject to the Electrical Works Tests. The "**Electrical Works Tests**" consist of the Electrical Works Commissioning Test and the Electrical Works Reliability Test.

The Contractor shall perform the Electrical Works Commissioning Test prior to the commencement of the Electrical Works Reliability Test that will be performed following the date of Permanent Energisation and the successful completion of the Electrical Works Commissioning Test.

The Contractor shall due its best effort to comply with its duties to conduct timely the Electrical Works Tests and to this purpose in case it was not possible otherwise, shall use temporary generation units.

The Electrical Works Take Over shall not occur before the Electrical Works Tests are completed and Permanent Energisation occurred.

The Contractor shall, following successful completion of the Electrical Works Reliability Test, fill out, sign and deliver to the Principal and the Technical Consultant the relevant certificate (the "**Electrical Works Take Over Certificate**") in the form under Annex X (Electrical Works Take Over Certificate) hereof together with a signed copy of the successful results of the Electrical Works Commissioning Test and the Electrical Works Reliability Test.

The Principal shall have 2 Business Days from the day the Principal receives an Electrical Works Take Over Certificate to sign it, with the prior written approval of the Technical Consultant, and subsequently return it to the Contractor. If the Principal refuses to sign the Electrical Works Take Over Certificate, the Principal shall send a written statement providing detailed reasons for such refusal and the issue shall be submitted to the Independent Expert. If the Contractor has not received the Electrical Works Take Over Certificate signed by the Principal or the rejection by the Principal by the above term, then the Electrical Works Take Over Certificate will be deemed accepted by the Principal provided that the Technical Consultant has confirmed in writing to the Principal, copy to the Contractor, its no objection to the execution of the Electrical Works Take Over Certificate, otherwise the Electrical Works Take Over Certificate will be deemed not accepted by the Principal. If the Technical Consultant raised any objection

so that the Electrical Works Take Over Certificate will be deemed not accepted, the same shall be submitted to the Independent Expert.

The presence of Defects (except Non-Critical Punch List Items) shall be grounds for the Principal to withhold its signature on the Electrical Works Take Over Certificate.

10.3.5. WTG Take Over

The Contractor shall, following successful completion of the Commissioning Test, and the Reliability Test of each Wind Turbine, fill out, sign and deliver to the Principal and the Technical Consultant a signed certificate (the "**WTG Take Over Certificate**") in the form under Annex GG (WTG Take Over Certificate) hereof, together with a signed copy of Reliability Test Report, related to the relevant Wind Turbine.

The Principal shall have five (5) Business Days from the day the Principal receives a WTG Take Over Certificate to sign it, with the prior written approval of the Technical Consultant, and subsequently return it to the Contractor. If the Principal refuses to sign a WTG Take Over Certificate, the Principal shall send a written statement providing detailed reasons for such refusal and the issue shall be submitted to the Independent Expert. If the Contractor has not received a WTG Take Over Certificate signed by the Principal or the rejection by the Principal by the above term, then the relevant WTG Take Over Certificate will be deemed accepted by the Principal provided that the Technical Consultant has confirmed in writing to the Principal, copy to the Contractor, its no objection to the execution of the WTG Take Over Certificate, otherwise the WTG Take Over Certificate will be deemed not accepted by the Principal. If the Technical Consultant raised any objection so that the WTG Take Over Certificate will be deemed not accepted, the same shall be submitted to the Independent Expert.

The presence of Defects (except Non-Critical Punch List Items) shall be grounds for the Principal to withhold its signature on a WTG Take Over Certificate.

10.3.6. SCADA Take Over

The Contractor shall, following successful completion of the SCADA Test, fill out and sign the relevant certificate (the "**SCADA Take Over Certificate**") in the form under Annex HH (SCADA Take Over Certificate) hereof and provide it to the Principal and the Technical Consultant, together with a signed copy of the SCADA Test Report.

The Principal shall have five (5) Business Days from the day the Principal receives a SCADA Take Over Certificate to sign it, with the prior written approval of the Technical Consultant, and subsequently return it to the Contractor. If the Principal refuses to sign the SCADA Take Over Certificate, the Principal shall send a written statement providing detailed reasons for such refusal and the issue shall be submitted to the Independent Expert. If the Contractor has not received the SCADA Take Over Certificate signed by the Principal or the rejection by the Principal by the above term, then the SCADA Take Over Certificate will be deemed accepted by the Principal provided that the Technical Consultant has confirmed in writing to the Principal, copy to the Contractor, its no objection to the execution of the SCADA Take Over Certificate, otherwise the SCADA Take Over Certificate will be deemed not accepted by the Principal. If the Technical Consultant raised any objection so that the SCADA Take Over Certificate will be deemed not accepted, the same shall be submitted to the Independent Expert.

The presence of Defects (except Non-Critical Punch List Items) shall be grounds for the Principal to withhold its signature on the SCADA Take Over Certificate.

10.3.7. Wind Farm Take Over

The "**Wind Farm Take Over**", as certified and agreed by the Parties under the relevant certificate (the "**Wind Farm Take Over Certificate**") in the form under Annex II (Wind Farm Take Over Certificate) hereof, is subject to and will occur upon each and all the following conditions having been met:

- (i) all the Mechanical Completion Take Over Certificates for each and all the WTGs, the Civil Works Take Over Certificate, the Electrical Works Take Over Certificate, all the WTG Take Over Certificates, all the documents entered into with the WTGs Manufacturer and the SCADA Take Over Certificate have been executed (or deemed as executed by the Principal) as per above;
- (ii) the Wind Farm has achieved Interconnection;
- (iii) any Applicable Permits to be obtained by the Contractor in relation to the works and Equipment under this Agreement have been obtained and have been complied with;

- (iv) the Contractor has assigned to the Principal all the manufacturer's and supplier's warranties in relation to the works and Equipment under this Agreement;
- (v) all technical documentation (certificates, O&M and health & safety manuals, documents evidencing any factory test, etc.) and all required documentation to interconnect the Wind Farm to the grid have been prepared and submitted to the Grid Operator by the Contractor, if such submission is requested pursuant to Applicable Law;
- (vi) all technical documentation (certificates, Operation and Maintenance Manuals, health & safety manuals, documents evidencing any factory test, etc.) and all related guarantees and collaterals provided for under any agreements with subcontractors as due or envisaged to be due at the Wind Farm Take Over, have been made available to the Contractor and/or the Principal, pursuant to the terms and conditions of such agreements with subcontractors;
- (vii) the Warranty Bond has been delivered to the Principal even though its effectiveness may start as from the upon the delivery of the Wind Farm Take Over;
- (viii) the Parties agreed on the Punchlist, provided that the aggregate value of the Non-Critical Punch List Items shall not constitute more than 1% of the Price;
- (ix) manufacturer's and supplier's warranties have been assigned as per Section 11.7 below.

On the date in which all the above conditions are met, the Contractor shall, fill out and sign, the Wind Farm Take Over Certificate (which shall include, *inter alia*, the express Contractor's statement of the date on which such conditions have been met) and provide it to the Principal and the Technical Consultant.

The Principal shall have five (5) Business Days from the day the Principal receives the Wind Farm Take Over Certificate to sign it, with the prior written approval of the Technical Consultant, and subsequently return it to the Contractor. If the Principal refuses to sign the Wind Farm Take Over Certificate, the Principal shall send a written statement providing detailed reasons for such refusal and the issue shall be submitted to the Independent Expert. If the Contractor has not received the Wind Farm Take Over Certificate signed by the Principal or the rejection by the Principal by the above term, then the Wind Farm Take Over Certificate will be deemed refused by the Principal.

The "**Wind Farm Take Over Date**" will be the date on which the above conditions have been met (i) as certified and agreed by the Parties under the Wind Farm Take Over Certificate duly executed by both Parties, with the prior written approval of the Technical Consultant, or, alternatively, (ii) as certified by the Independent Expert or a Court pursuant to this Agreement.

The Contractor shall remedy at its sole cost all Non-critical Punchlist Items by and no later than 60 days after the execution of both Parties of the Wind Farm Take Over Certificate or a different period as agreed between the Parties in such certificate, with the prior written approval of the Technical Consultant. Failure by the Contractor to fulfil this obligation shall entitle the Principal to complete the pending works on its own and charge the Contractor for the duly justified costs as well as the value of the same indicated under the Wind Farm Take Over Certificate.

11. WARRANTIES

11.1. Defect Warranty.

11.1.1 During the Warranty Period, the Contractor warrants to the Principal that:

- (a) the Equipment: (i) has been designed in compliance with the Technical Specifications and with the relevant IEC Standard for class IIA for the SG132 3,465 MW detailed in the said Technical Specifications and in compliance with the Applicable Laws, (ii) shall be new, unused and free from defects in material, workmanship and title;
- (b) the works under the Scope of Works will be free from defects resulting from faulty design and/or workmanship and shall conform to the requirements of this Agreement, the Principal's Permits and the Applicable Laws.

The Contractor shall either repair or replace (or cause to repair or replace), using new and/or refurbished parts, according to the Good and Prudent Practices, defective or non-conforming Equipment and Scope of Works promptly upon receipt of notice from the Principal or discovery by the Contractor of a defect or non-conformance of the Equipment and Scope of Works during the Warranty Period, without cost or expense to the Principal.

The Contractor shall re-perform or cause any non-conforming works to be re-performed promptly upon receipt of notice from the Principal or discovery by the Contractor of a defect or non-conformance of the works during the Warranty Period, without cost or expense to the Principal.

The Contractor expressly agrees and acknowledges that the defect warranty also covers any defect that, although evident (*riconoscibile*), has not been detected before or on Wind Farm Take Over.

11.1.2 The Contractor shall be held liable for any defect in the repaired or replaced Equipment and/or re-performed the Scope of Works under the same terms as those applicable to the original Equipment and/or Scope of Works, for a period of:

- (a) twelve (12) months from the repair or re-performance or the balance of the original Warranty Period, whichever is longer;
- (b) twenty-four (24) months from the replacement.

11.1.3 Defective or non-conforming parts, which have been replaced under this Agreement, shall be removed or caused to be removed by the Contractor (or by Operator on behalf of the Contractor) at its own costs and become and remain the property of the Contractor.

11.1.4 The quality warranty provided by the Contractor under this Article 11.1.1(a) is a good performance warranty (*garanzia di buon funzionamento*) for the purposes of Article 1512 of the Italian Civil Code. For the avoidance of doubt, the Parties expressly derogate from Article 1495 of the Italian Civil Code and from any other shorter term that may be applicable for the exercise of the rights provided under this Article 11.1.

11.1.5 The Principal shall provide the Contractor (or subcontractors) with access to the Site and the Parties shall coordinate the Contractor's (or the Contractor's subcontractors) performance of work at the Site in connection with its obligations under this Article in order to minimize the disruption of the generation of electricity at the Wind Farm.

11.1.6 The Contractor hereby provides and confirms the 10 (ten) years warranty on the stability of the Equipment and the Scope of Works pursuant to Article 1669 of the Italian Civil Code.

11.1.7 The Quality Warranty covers third party software and open source software on a pass through basis. This means it is covered in the same manner, period, and to the same extent as the software that was provided to the Contractor by the provider of said software. For software defects the Contractor can solely decide to provide: an update, or upgrade the affected part when such become available, or provide a workaround to the extent reasonable.

11.2. *Serial Defect*

11.2.1 In the event that an identical failure or defect occurs in No. 3 WTGs or more of the same Main Component (except for the blades in which case it shall occur in at least 6 blades) of the WTGs during any of the two Annual Periods comprised in the Warranty Period, the Contractor shall conduct an investigation of the root cause of such identical failure or defect as soon as practicable.

11.2.2 Following such investigation, the Contractor shall provide the Principal and the Technical Consultant with a comprehensive report on the results thereof and if the Contractor has identified the existence of a serial failure (a "**Serial Defect**"), the Contractor shall include such determination in the report and shall select at its option one of the following remedies for the benefit of the Principal: the Contractor will formulate a repair plan or, if need be according to the Good and Prudent Practices, a design modification that the Contractor will apply to all WTGs in accordance with a time schedule which will be provided to the Principal as soon as practicable. The repair or design modification so applied will bear a 2-year warranty period against design and execution defects, in the terms and conditions of the Quality Warranty described in Article 11.1 herein and subject to the Warranty Limitations described in Article 11.5 herein.

11.2.3 In the event that the Serial Defect only affects specific sub-series of the relevant Main Component, the remedy identified in the Contractor's report will be applied solely to those Main Component units belonging to such sub-series.

11.2.4 If the Principal, in consultation with the Technical Consultant, and the Contractor do not agree on whether or not the identical failure or defect constitutes a Serial Defect, they will negotiate the

matter in good faith and if they fail to reach an agreement during a four week period following commencement of such negotiation, then any of them shall have the right to submit the matter for determination by the Independent Expert under Article 11.5 herein.

11.3. *Power Curve, Noise Warranty, Electrical Losses Warranty*

11.3.1 The Contractor provides to the Principal the power curve warranty set forth, on the times provided, and subject to the conditions and limitations in Annex S (Power Curve Warranty) hereof (the "**Power Curve Warranty**").

11.3.2 The Contractor provides to the Principal the noise warranty set forth, on the times provided, and subject to the conditions and limitations in Annex T (Noise Warranty) hereof (the "**Noise Warranty**").

11.3.3 The Contractor provides to the Principal the electrical losses warranty of the WTGs set forth, on the times provided, and subject to the conditions and limitations in Annex U (Electrical Loss Warranty) hereof (the "**Electrical Losses Warranty**").

11.3.4 For the avoidance of any doubt, where compensation for a loss can be claimed for the same loss under two or more separate provisions under this Agreement, the Principal shall not be entitled to have the same loss compensated by more than one provision.

11.4. *Procedure*

Any claim by the Principal for breach of the warranties provided under this Agreement must be notified in writing to the Contractor, by the following time periods, failing which, any right thereunder shall expire:

- (i) in respect of claims under 11.1.6, one year from the date on which the Principal becomes aware of a matter which could give rise to indemnification thereunder; and
- (ii) in respect of any claim other than those under paragraph (i) above, not later than 60 Business Days from the date on which the Principal becomes aware of a matter which could give rise to indemnification thereunder.

By 10 Business Days following the notice, the Contractor will notify the Principal the period necessary for remediation. If the Contractor fails (a) to send the aforementioned notice and work plan or (b) fails to complete any necessary works by the minimum time required in accordance with Good and Prudent Engineering Practices or within the time period agreed with the Principal, the Principal will be entitled to perform such works directly or through third parties and, in any case, shall have the right to enforce the Warranty Bond for relevant costs, save for the right of demand compensation from the Contractor for the documented and reasonable expenses incurred, without prejudice to Principal's rights under this Agreement. The performance of such measures by the Principal shall not impair or affect any of Contractor's liabilities or obligations under this Agreement.

In case of any technical dispute arising on any warranty under this Agreement, the Parties shall defer the matter to the Independent Expert.

11.5. *Warranty limitations and exclusions*

The warranties set forth above in this Article 11 are conditioned upon (i) Principal's siting and operation of the Equipment and the Scope of Works in accordance with the Site Data, the Technical Specifications and the Maintenance Manuals; and (ii) maintenance of the Equipment by Operator or any of its Affiliates (or their designated subcontractors) throughout the Warranty Period under the relevant maintenance agreement and remote operation of the WTGs by Contractor through the SCADA.

The warranties set forth in Article 11 are exclusive and in lieu of any warranties enforceable against the Contractor, whether expressed or implied, of performance and there are no other warranties applicable to the Equipment and the Scope of Works that may be claimed to the Contractor which extend beyond those set forth in this Article 11 and in this respect no other warranty, oral or written, which may have been given by an employee, agent or representative of the Contractor or its Affiliates shall be valid or enforceable against the Contractor. The Contractor is not and shall not be held liable for any alleged breach of the warranties which is caused by or arises out of any of the following events (provided that such events are not attributable to the Contractor) (the "**Warranty Limitations**"), provided that the

Contractor gives evidence that Warranty Limitation called upon is directly applicable to the relevant enforced Warranty:

- (a) Misuse or abusive operation of the Equipment, or operating conditions at the Site outside the ranges specified in the Technical Specifications and the Operation and Maintenance Manuals (unless performed by Contractor, Operator, their Affiliates or their subcontractors).
- (b) Installation or maintenance of the Equipment by any Person not authorized by Contractor or Operator and engaged by the Principal; operation or handling of the Equipment prior to the execution of the Wind Farm Take Over Certificate by any Person not authorized by the Contractor or Operator and engaged by the Principal.
- (c) Modifications of the Equipment not authorized by the Contractor or Operator; use of spare parts for the Equipment that are not authorized by Contractor or Operator.
- (d) Changes in Law requiring modifications of the Equipment such that it cannot perform at its warranted performance in accordance with this Agreement. In this latter case the new performances and relative warranties coming from the new modifications will be negotiated in good faith between the parties.
- (e) Lack of access to the Site or the Equipment not attributable to Contractor.
- (f) More than fifty (50) grid errors involving or requiring a shutdown or stoppage of the Equipment, computed during a yearly period.
- (g) Any external factors or conditions, Force Majeure events and wear and tear (such a minor peeling, air pocket and crack formations on the surface of the WTG blades).

11.6. *Disputes related to Compliance with the Warranties*

In case of a dispute between the Parties about the observance or inobservance of a Warranty, any of them may submit such dispute for determination by the Independent Expert, for which purpose the procedure described in Clause 25.2 of this Agreement shall apply mutatis mutandis, except that the time periods established in such Article shall be extended as follows:

- (i) the period of 15 Business Days for determination by the Independent Expert will be extended to 45 Business Days.
- (ii) the period of 3 Business Days to submit written responses will be extended to 10 Business Days.
- (iii) the general period of 5 Business Days for submissions will be extended to 10 Business Days.

11.7. *Manufacturers' and suppliers' warranties*

The Contractor represents and warrants that:

- (i) the defect warranty provided by the manufacturer/supplier of the medium voltage cables to be installed in the Wind Farm will have a tenor of, at least, 2 (two) years;
- (ii) the defect warranty provided by the manufacturer/supplier of the high voltage cables to be installed in the Wind Farm will have a tenor of, at least, 2 (two) years;
- (iii) the defect warranty provided by the manufacturer/supplier of the medium voltage electrical equipment to be installed in the Wind Farm will have a tenor of, at least, 2 (two) years;
- (iv) the defect warranty provided by the manufacturer/supplier of the high voltage electrical equipment to be installed in the Wind Farm will have a tenor of, at least, 2 (two) years; and
- (v) the defect warranty provided by the WTGs Manufacturer of the WTGs to be installed in the Wind Farm will have a tenor of, at least, 2 (two) years,

and that each of them may be transferred to the Principal in the terms set forth under this Agreement.

The Contractor hereby assigns to the Principal, effective as of the relevant Take Over Certificate or the earlier termination of this Agreement for any reason, to the maximum extent permitted, all related manufacturer's and supplier's warranties, including any rights and actions against them. The Contractor shall also procure the assignment by all subcontractors to the Principal of all related manufacturer's and/or supplier's warranties, if any, granted in connection with the portion of the works carried out by each subcontractor. The Contractor shall make any action and

execute any deed or agreement that may be necessary or advisable in order to implement the above assignment of warranties to the Principal.

The above manufacturers' and suppliers' warranties shall not relieve, in any way, the Contractor (nor any subcontractor) from any liability for warranties under this Agreement, provided that the Contractor is granted with the relevant power of attorney below.

Without prejudice to the above assignment, during the Warranty Period the Contractor will be responsible for enforcing, in the name and of behalf of the Principal, each warranty by manufacturers and suppliers of all the components of the Wind Farm. For these purposes, the Principal, upon written request of the Contractor, shall execute any power of attorney in this respect. Notwithstanding the above, if during the Warranty Period the Contractor has already remedied to a Defect or other guaranteed obligation in compliance with this Agreement as confirmed by the Technical Consultant, it shall have the right to enforce the warranties, and to retain any benefit which may then derive upon the enforcement by the Contractor (acting in the name and on behalf of the Principal) of any warranty, given by a manufacturer or supplier for the same Defect or guaranteed obligation.

12. LIMITATION ON THE CONTRACTOR'S LIABILITY

12.1. Save for termination remedies and related consequences and additional liabilities under this Agreement, the Parties agree that the sole and exclusive Principal's remedy for any and all losses or damages suffered by the Principal as a consequence of any breach of:

- (i) the warranties:
 - (a) provided under Clause 11.1, shall be the obligation by the Contractor to repair or replace the defective works or equipment or, failing to do comply with such obligations, the additional remedies provided thereunder;
 - (b) provided under Clause 11.2, shall be the obligation provided under such Clause 11.2;
 - (c) provided under Clause 11.3, shall be the Contractor's obligation to pay the liquidated damages set forth therein up to the maximum amounts set out at paragraph 12.2 below;
- (ii) the obligation to complete the execution of its tasks, supply and installation in accordance with the Time Schedule under Clause 8.1.1, shall be the Contractor's obligation to pay the liquidated damages set forth under Clause 8.2 up to the maximum amounts set out at paragraph 12.2 below.

Pursuant to Article 1382 of the Italian Civil Code, the Parties expressly agree that the application of any liquidated damages set forth in the paragraphs below excludes the Principal's right to claim for further damages. Each Party accepts and expressly represents that such liquidated damages under this Agreement are a genuine and fair pre-estimate of the losses which may be sustained by the non-defaulting Party in the event of breach by the other Party to its relevant obligation under this Agreement. As a consequence, the defaulting Party waives any right of reduction of the amount of such penalties pursuant to Section 1384 of the Italian Civil Code.

12.2. Always save for termination remedies and related consequences and additional liabilities under this Agreement, the maximum aggregate amount payable by the Contractor to the Principal pursuant to:

- (i) the Power Curve Warranty shall not exceed 10% (ten percent) of the Price (the "**Maximum Power Curve Warranty**");
- (ii) the Noise Warranty shall not exceed 10% (ten percent) of the Price (the "**Maximum Noise Warranty**");
- (iii) the Electrical Losses Warranty shall not exceed 10% (ten percent) of the Price (the "**Maximum Electrical Losses Warranty**");
- (iv) the Delay Liquidated Damages shall not exceed 10% (ten percent) of the Price (the "**Maximum Delay Liquidate Damages**"),

being understood that the maximum amount of the above liquidated damages due to the Principal pursuant to this Clause shall not exceed, in aggregate, 15% (fifteen) of the Price (the "**Maximum Aggregate Liquidated Damages**").

- 12.3. Without prejudice to the foregoing, and except in case of wilful misconduct, fraud or gross negligence, the maximum aggregate liability of the Contractor, Contractor's affiliates and its employees, Contractor's subcontractors of any tier and its employees, *vis-à-vis* the Principal under this Agreement, in relation to any possible breach or violations of its obligations (including obligations to pay liquidated damages) or any indemnification for breach of representations and warranties, shall not exceed one hundred percent (100%) of the Price, as adjusted for Change Orders. The maximum aggregate liability of the Principal, Principal's affiliates and its employees, Principal's subcontractors of any tier and its employees, *vis-à-vis* the Contractor under this Agreement shall not exceed one hundred percent (100%) of the Price.
- 12.4. Subject to the provisions of Clause 7.2.3, in no event shall either Party or its respective affiliates, employees, subcontractors, partners, successors or assigns be liable in contract, tort (including negligence), strict liability, indemnity and warranty or otherwise to the other Party, or its members, parent corporation, affiliates, partners, successors or assigns, for special, punitive, indirect, exemplary, incidental or consequential damages of any nature whatsoever (including loss of contract, loss of revenue or loss of production) resulting from such Party's performance, non-performance, or delay in performance of its obligations under this Agreement, or from its delay, termination (with or without cause) or suspension of performance under this Agreement.

13. INSURANCE POLICIES

13.1. General

The Contractor and the Principal, as provided below, shall, provide, maintain and pay the types and amounts of insurance with insurance companies (which insurance companies shall be reputable companies customary contracted by the Principal and/or customary used in the wind farm market) specified in this Article. The policies to be arranged by the Principal, when not specifically indicated, will be subject to deductibles, limits, sub-limits and customary exclusions. The Principal, shall be entitled, at its own unquestionable judgment, to enter into additional insurances coverage or policies in integration of and/or besides those foreseen by this article. The policies to be arranged by the Principal should be provided from starting date of the construction period.

13.2 The Contractor and the Principal shall ensure that the Insurances:

- a) are in full force and effect at all times of the performance of the Scope of Contract under the Contract;
- b) are placed with insurers who have an insurer security rating equal to or greater than BBB (as rated by S&P or a comparable other rating agency) for the policies contracted by the Principal; the policies contracted by the Contractor should be placed with primary insurance companies howsoever agreed absolutely by both the Parties;
- c) the policies contracted by the Principal are endorsed with a waiver by insurers of any rights of recourse, including subrogation rights, against the Contractor and their subcontractors as applicable by law.

13.3 Insurances to be taken out by the Principal

- (a) The Parties note that the Principal will take out, in accordance with Section 1891 of the Civil Code and including on behalf of the Contractor, any subcontractors of the latter and in generally on behalf of all participants in the Works, the following insurance policies:
 - (i) Marine Cargo Insurance policy – including DSU Insurances – to cover damage suffered by main components with a sum insured not less than the sum of the items to be shipped;
 - (ii) "Contractor's/Erection's All Risks (CAR/EAR)" policy – including ALOP guarantee - with insured values not less than the amount for reconstructing the entire plant from scratch, including the primary insurance "Third-Party Liability" section, with a maximum overall limit that will be expressly established by the Principal and in any case not less than Euro 5,000,000.00 and establishing cross-liability between the insured parties. The policy will take effect on the Works Start date until the date of take-over certificate. This policy will be

taken out by the Principal and will also include, in addition to the Principal, the Contractor, the Financing Parties any subcontractors and the suppliers as insured parties. The policy will take into account the specific characteristics of the works and technological plants to be constructed and will establish "All Risks" conditions of insurance.

- (iii) Employer's liability insurance (R.C.O.) – if any – with minimum coverage of Euro 5,000,000.00 per event, with a sublimit of Euro 2,500,000.00 for each injured person.
- (b) The excesses and insurance conditions will be agreed a priori by the Principal with the insurance company in the name and on behalf of all insured parties.
- (c) Risks and excesses not covered by these policies are payable by the Contractor.
- (d) By stipulating this Contract, the Contractor declares that it is aware of the need to take out the above-mentioned insurance policy.
- (e) It is understood that the Contractor will provide the Principal and the insurance company with all assistance and information that may be reasonably requested in order to enable the correct application of the insurance policies taken out by the Principal.
- (f) The costs for taking out and maintaining the above-mentioned policies will be incurred by the Principal.
- (g) Without prejudice to the provisions of letter (a), it is understood that the Principal reserves the right, at its exclusive discretion, to take out other cover or policies in addition to that established in this Article, simply giving prior notice to the Contractor. In this case the relative costs will remain payable by the Principal.

13.4 Insurances to be taken out by Contractor.

13.5 *Third Party Liability Insurance*

The Contractor shall, at its cost, provide and maintain a third party liability insurance with a minimum limit of indemnity not less than Euro 5,000,000, including coverage against any loss or damage caused by the Contractor during the onshore construction activities and completed operations.

13.6 *Employer's Liability Insurance*

The Contractor shall, at its cost, provide and maintain all insurance policies provided by the Applicable Law in favour of its personnel, including the policy with "*Istituto Nazionale per l'Assicurazione contro gli Infortuni sul lavoro*" (INAIL), with at least the minimum coverage required by Applicable Law, and employer's liability insurance (R.C.O.) with minimum coverage of Euro 5,000,000.00 per event, with a sublimit of Euro 2,500,000.00 for each injured person. The Contractor shall provide and maintain (and cause its subcontractors to maintain) this insurance to cover any work undertaken by the Contractor.

13.7 *Comprehensive Automobile Liability Insurance (if any)*

The Principal and the Contractor and every subcontractor shall obtain their own automobile liability insurance on vehicles in Italy used in connection with the work for third party property damage and personal injury with a limit ("*massimale unico*") per occurrence of at least the minimum limit required by Applicable Law.

13.8 *Subcontractors' Insurances*

The Contractor shall require all subcontractors providing Equipment, materials or services directly to the Contractor to obtain, maintain and keep in force, during the time for which they are involved in performance of the work, all insurance policies provided by the Applicable Law in favour of its personnel, including the policy with "*Istituto Nazionale per l'Assicurazione contro gli Infortuni sul lavoro*" (INAIL), "employers liability" (R.C.O.), third party liability and "*automobile liability*" (R.C.A.) insurance policies and insurance providing cover against loss or damage to any construction tools and equipment owned by the subcontractor or for which the subcontractor accepts responsibility. The Contractor shall obtain certificates of insurance evidencing such coverage and, if requested, provide the Principal with such certificates by a reasonable time.

13.9 *Insurance Certificates*

The Contractor shall provide evidence reasonably satisfactory to the Principal (prior to the date on which such is to be procured) that the insurance which such Party is obliged to procure under this Article is in force. The Contractor shall provide Principal with certificates showing that the said insurance is in force, the amount of the insurer's liability thereunder, and further providing that the insurance will not be cancelled or changed or not renewed until the expiration of at least thirty (30) days after written notice of such cancellation, change or non-renewal has been received by the Principal. At the request of the Principal, the Contractor shall deliver duplicates, certified by Contractor's independent insurance broker, of each policy of insurance required to be in effect hereunder (including, without limitation, each renewal policy) and prior to the beginning of any work at the Site and by 60 (sixty) days after the close of each calendar year, Contractor shall deliver to the Principal a certificate of insurance prepared by Contractor's independent insurance broker confirming:

- (i) that all insurance policies required to be maintained by Contractor pursuant to this Article 13 are in force on the date thereof;
- (ii) the names of the insurers issuing such policies;
- (iii) the amounts and expiration date or dates of such policies; and
- (iv) that all *premia* then due and payable have been paid.

13.10 *Expiration*

Not less than fifteen (15) days prior to the expiration date of any policy of insurance required to be in effect hereunder, Contractor shall deliver to Principal a certificate of insurance with respect to each renewal policy, certified by Contractor's independent insurance broker, bearing a notation that all *premium* then due and payable have been paid.

13.11 *Right to Procure Insurance*

If the Contractor fails to procure or maintain the full insurance coverage required to be maintained by it pursuant to this Agreement, the Principal, upon 21 (twenty-one) days' prior notice (unless such insurance coverage would lapse by such period, in which event notice should be given as soon as reasonably possible) to the Contractor of any such failure, may (but shall not be obligated to) take out the required policies of insurance and pay the *premium* thereon. All amounts so advanced therefore by the Principal shall become an obligation of the Contractor to the Principal, and the Contractor shall forthwith pay such amounts to the Principal, or at the Principal's option, the Principal may deduct such amounts from the Price.

13.12 *Cost Responsibility; Deductibles*

Any and all deductibles (unless expressly provided otherwise herein) in the insurance policies required by this Agreement shall be assumed by, for the account of, and at the sole risk of the Principal. The insured party shall have no responsibility to the insurance companies for payment of any *premium* or assessment under any policy if such insured party is not responsible for maintaining such insurance under this Agreement.

13.13 *Cancellation*

Irrespective of the requirements as to insurance to be carried as provided for in this Article, the insolvency, bankruptcy or failure of any insurance company to pay any claim accruing shall not excuse the Contractor from its obligations to carry or arrange to be carried insurance as herein required. In case of cancellation of any policy required to be carried by this Article 13, or the insolvency, bankruptcy or failure of any such insurance company that has issued a policy hereunder, the Contractor shall promptly obtain new insurance policies in the amounts and coverage required hereby.

13.14 *Other Insurance*

Any insurance other than that specified in this Article, which the Contractor may be required by law to carry or may desire for its protection, shall be secured and maintained at its own expense in such a manner as not to adversely affect the rights of the Principal and the Financing Parties (if any) in respect of the policies to be maintained under this Article 13. Any such policies of insurance shall contain waivers of subrogation as provided in this Article 13. For the avoidance

of doubt, the Contractor shall execute any insurance coverage required by Applicable Law, with particular regard to labour and safety matters.

13.15 *Standards*

All insurance described in this Article 13 shall be written by companies of good repute and standing reasonably satisfactory to each Party including Financing Parties. The Principal, the Contractor, any subcontractor shall not violate or knowingly permit any violation of any conditions or terms of the policies of insurance described herein.

13.16 *Disclosure*

The Principal and the Contractor shall disclose all information material to the risks covered by the insurance policies and shall promptly comply with any requests for information from any insurance company or insurance broker providing coverage pursuant to this Article 13.

13.17 *No Limitation of Liability*

The required coverage referred to and set forth in this Article shall in no way affect, nor are they intended as a limitation of, the Contractor's liability with respect to its performance of the work under this Agreement.

13.18 *Loss Payee*

The Contractor acknowledges and accepts that Erection / All Risks and Ocean Marine Cargo policies will be endorsed of encumbrance, pledge, assignment or may be endorsed with a Loss Payee Article in favour of the Principal and the Financing Parties (if any).

The insurance proceeds received under any such policy, shall be paid to the account specified in the loss payee Article and applied in or towards the replacement and repair of the property lost, damaged or destroyed except as otherwise directed by the Principal upon instructions of the Financing Parties, if any.

14. REPRESENTATIONS AND WARRANTIES

14.1. Each Party represents to the other Party that:

- (i) it is a company duly incorporated or formed (as applicable), validly existing and in good standing under the laws of Italy;
- (ii) it has all requisite corporate or limited liability company power and authority to execute, deliver and perform its obligations under this Agreement;
- (iii) the execution, delivery and performance of this Agreement has been duly authorized by all necessary corporate or limited liability company action on its part;
- (iv) this Agreement has been duly executed and delivered by it and constitutes a valid and binding agreement, enforceable against it in accordance with the terms thereof;
- (v) it is not currently in breach of, in default under, or in violation of, and the execution and delivery of this Agreement and the performance of its obligations hereunder will not constitute or result in any breach of, default under, or violation of, any Applicable Law or the provisions of such Party's organizational documents or any agreement or instrument to which such Party is bound or to which its assets are subject, which breach, default or violation could reasonably be expected to have a material adverse effect upon the ability of such Party to observe the provisions of, and to perform its obligations under, this Agreement;
- (vi) no suit, claim, action, arbitration, or legal, administrative or other proceeding is pending or, to the best its knowledge, threatened in written that would affect the validity or enforceability of this Agreement, the ability of such Party to fulfil its commitments hereunder in any material respect, or that could result in any material adverse change in the business or financial condition of such Party;
- (vii) it is (or shall be prior the date required by Applicable Laws) the holder of all governmental consents, licences, permits, or other authorizations required to permit it to perform its obligations under this Agreement.

- 14.2. The Parties shall be liable each other and are obliged to fully indemnify each other for any losses, damages, costs, and reasonable expenses or charges incurred as a direct consequence of a material breach of any of the representations and warranties set out in Article 14.1 above.

For these purposes, any material inaccuracy, lack of veracity or incompleteness of any representation or warranty granted by either Party under Article 14.1 above will be deemed to be a breach thereof.

15. CONFIDENTIALITY

- 15.1. Except in case requested under the Applicable Law, it is requested by any public authority or by any court or administrative body, the Parties agree to observe strict confidentiality with regard to as well as not to reveal, either directly and/or indirectly to third parties, this agreement, its terms, any inherent information contemplated herein and/or any information and/or documentation of which they may become aware in connection with or as a consequence of the execution of this Agreement (including by way of example but not limited to: information concerning the Parties and their business, its respective officers, employees, agents, accountants, etc., collectively, the "**Confidential Information**").
- 15.2. All the Confidential Information provided by each Party to the other shall be treated as confidential by the receiving party and may not be totally or partially revealed to third parties, unless express written consent is given by the Party which has provided the Confidential Information. The Party which receives the Confidential Information may not use said Confidential Information for any purpose other than the diligent execution of this Agreement.
- 15.3. The confidentiality obligation does not apply to information and/or documentation which:
- (i) is made public for reasons other than its disclosure by the Principal or its representatives;
 - (ii) is received by the Principal in compliance with the applicable law and from a source which is not bound by any confidentiality obligation;
 - (iii) is made known to the Principal via non-confidential means before its communication to the Contractor.
- 15.4. The following shall not be considered as third parties with respect to the Parties: the Parties' subsidiaries, shareholders, managers, representatives, subcontractors, staff, employees and/or external consultants, including the Financing Parties (if any) (collectively referred to as the "**Representatives**"). Each of the Parties shall cause its respective Representatives (i) to hold in strict confidence the confidential information and (ii) to assume a confidentiality commitment and not to use the Confidential Information for any purpose other than in connection with this Agreement.
- 15.5. Each Party is obliged to provide its respective Representatives which may have access to Confidential Information with instructions regarding confidentiality which must be observed during the use and handling of said Confidential Information.
- 15.6. The Contractor undertakes to gather, process and transfer any personal data (as defined under Legislative Decree 196/2003 and GDPR EU 2016/679, as subsequently amended and supplemented) included by the any Confidential Information to the Principal in compliance with any provisions set forth under Applicable Law as well as to indemnify and hold harmless the Principal for any losses that may be suffered by the latter as a consequence of any Contractor's breach of such provisions.
- 15.7. The Principal undertakes to manage and process the personal data (as defined under Legislative Decree 196/2003 and GDPR EU 2016/679, as subsequently amended and supplemented) included by the Confidential Information received by the Contractor in compliance with the provisions set forth under this Agreement and any Applicable Law as well as to indemnify and hold harmless the Contractor for any losses that may be suffered by the latter as a consequence of any Principal's breach of such provisions.

16. ENVIRONMENTAL PROTECTION

The Contractor must observe applicable environmental rules and regulations (also) with regard to any waste produced. In addition, during the execution of the works included in the scope of this Agreement, the Contractor shall be responsible for complying with the conditions outlined in

the EIA - environmental impact assessment for the Wind Farm, for the cleanness of the Wind Farm, as well as for removing debris once the construction works have finished, in compliance with the Applicable Permits and the Applicable Law.

The Parts expressly acknowledge that the Price also includes the remuneration for all the charges deriving from the fulfilment of this obligation even if not quantifiable on the date of stipulation of this Contract and whose *alea* remains the responsibility of the Contractor.

Without prejudice to the foregoing and anything in contrary provided in this Contract, the Contractor must put in place all the further precautions necessary to ensure compliance with the Applicable Law from time to time to the Contractor and/or the Site and/or the Works and/or the activities of realization of the same.

17. TERMINATION

17.1. Termination of the Agreement by the Principal

Upon any material default by the Contractor to perform any of its obligations under this Agreement, the Principal may terminate this Agreement pursuant to Article 1454 (*diffida ad adempiere*) of the Italian Civil Code, giving to the Contractor a period of 30 calendar days to cure the ground(s) for termination.

In addition, the Principal shall be entitled to terminate this Agreement under Article 1456 (*clausola risolutiva espressa*) of the Italian Civil Code in the event that:

- a) Contractor's failure in providing (or timely renew and replacing) the Principal with any of the Bonds, the Parent Company Guarantee or any of the Subcontractors Bank Guarantees provided that the Principal (I) has not already enforced the relevant Bond or Subcontractors Bank Guarantee; and (II) has notified in writing such failure to the Contractor by mean of a registered letter and the Contractor failed to remedy its breach within the fifteen (15) Business Days following such notice or such Bonds become invalid, ineffective or unenforceable for any reason whatsoever and are not replaced within thirty (30) calendar days;
- b) the Contractor is in breach of any of the provisions set forth under Decree 81/2008;
- c) the liability of the Contractor for liquidated damages under this Agreement has reached or exceeded the Maximum Aggregate Liquidated Damages or the liability of the Contractor for liquidated damages under this Agreement has reached or exceeded the maximum guaranteed amount under the Performance Bond;
- d) the Maximum Power Curve Warranty and/or the Maximum Noise Warranty and/or the Maximum Electrical Losses Warranty and/or the Maximum Delay Liquidate Damages is reached or exceeded;
- e) revocation, ineffectiveness, invalidity of any of the Applicable Permits or of any other permit necessary for the execution of this Agreement for any act or event attributable to the Contractor and/or any subcontractor;
- f) without prejudice to letter (c) above, the Contractor is in material breach of any of its warranty obligations under Clause 11 of this Agreement, unless the Contractor has cured such breach within the reasonable time according to the circumstance after the Principal has given to the Contractor written notice thereof. In case of discrepancy between the Parties, the Independent Expert shall settle down a reasonable time to cure such material breach;
- g) delay to enter into the Direct Agreement exceeding 10 days respect to the relevant term under this Agreement;
- h) failure by the Contractor or Subcontractors to comply with any obligations set forth under Clause 13 (*Insurance Policies*), unless the Contractor has cured such breach within fifteen (15) days after having become aware of such event or after the Principal or the relevant insurance company has given to the Contractor written notice thereof;
- i) suspension or abandonment of the Works exceeding one hundred and twenty (120) days, for reasons attributable to the Contractor;

- j) the Contractor leaves the Site without justification, despite of a written notice to fulfil which remains unsatisfied after fifteen (15) days from its transmission;
- k) breach of any of the representations made by the Contractor under Clause 14;
- l) any WTG fails to pass the tests for the WTG Take over Certificate on the repetitions thereof, as determined by common agreement of the Parties or by the Independent Expert, in accordance with Article 10.3.5, in which case, at the exclusive discretion of the Principal, this Agreement may be partially terminated in connection with such WTG only;
- m) Contractor's failure to pay to the Principal any due payment under this Agreement (including but not limited to liquidated damages) which is not legitimately in dispute, provided that the Principal notified in writing such failure to the Contractor by mean of a registered letter and the Contractor failed to remedy its breach within the thirty (30) days following such notice;
- n) a Change of Control occurs without the prior written consent of the Financing Parties;
- o) the Contractor transfers or assigns this Contract or any rights and/or obligations thereto without the prior consent of the Principal in accordance with Clause 22;
- p) without prejudice to the payment of Delay Liquidated Damages due under Clause 8.2 (*Delay Liquidated Damages*) above, the Wind Farm Take Over date, for reasons attributable to the Contractor, is not achieved within the Long Stop Date and/or the Technical Consultant confirms in writing to the Principal, the Contractor and the Financing Parties, providing in details the technical grounds for such analysis, that the Wind Farm Take Over is highly unlikely to occur or will not be achieved by the Long Stop Date;
- q) the Contractor does not provide the WTGs Manufacturer with the Contractor Guarantee for ToT in accordance with the terms set forth under Clause 5.31 above;
- r) any information provided to the Principal or the Technical Consultant by or on behalf of the Contractor is misleading untrue or incorrect in any material respect unless such event is remedied within ten (10) Business Days in form and substance satisfactory to the Principal having obtained the Technical Consultant approval;
- s) any litigation, arbitration or administrative proceedings is commenced against the Contractor in relation to the Wind Farm which if adversely determined would have (i) a material adverse change on the Wind Farm or, alternatively, (ii) a value exceeding Euro 400,000.00;
- t) the Contractor terminates or is entitled to terminate the Wind Turbine Supply Agreement;
- u) the Contractor terminates or is entitled to terminate the Electrical Substation Contract;
- v) the maximum liquidated damages set forth under Article 12.1 of the Wind Turbine Supply Agreement is reached or exceeded.

In case of termination of this Agreement due to Contractor's default, the Principal shall be entitled to liquidated damages (*penale*) equal to 30% of the Price, without prejudice to the right of the Principal to claim for further damages. The Contractor shall have to pay the above liquidated damages within 20 calendar days from the termination.

Each Party accepts and expressly represents that each liquidated damage (including each Delay Liquidated Damages) under this Agreement is a genuine and fair pre-estimate of the losses which may be sustained by the non-defaulting Party in the event of breach by the other Party to its relevant obligation under this Agreement. As a consequence, the defaulting Party waives any right of reduction of the amount of such liquidated damages pursuant to Section 1384 of the Italian Civil Code.

17.2. *Consequence of the Termination of the Agreement by the Principal*

In addition to the above and provided that the Principal shall have the right to withhold any performance liquidated damages (including each Delay Liquidated Damages) accrued at the date of termination, in case of termination of this Agreement by the Principal for breach of the Contractor's obligation pursuant to paragraph 17.1 above:

- A. the Contractor shall cease the performance of its obligations hereunder, except for those that are reasonably necessary for the protection or security of the portion of the works and/or services already performed;
- B. with respect to the WTGs and the Scope of Works whose ownership has been transferred to the Principal upon the effectiveness of termination, the latter shall retain the WTGs and the Scope of Works, in which case the Principal shall pay any amount due, but not paid, relating to such retained WTGs and the Scope of Works.
- C. with respect to the WTGs and the Scope of Works whose Price has been paid by the Principal and the relevant ownership has not been already transferred to the Principal upon the effectiveness of termination, the latter, at its absolute discretion, shall retain the WTGs and the Scope of Works, in which case the Contractor shall promptly transfer the ownership of such WTGs and the Scope of Works to the Principal bearing all the relevant costs;
- D. the Contractor shall leave the Site in good state and taking care of removing its equipment and any waste or material; and
- E. the Contractor shall provide the Principal with the Contractor's documents and other design documents made by it in connection with this Agreement up to the date of termination.

In derogation to paragraph (B) and (C) above, if the Principal terminates this Agreement in one of the cases following described, the Principal shall have the right to return the WTGs and the Scope of Works to the Contractor, in which case the Contractor shall reimburse the Principal all sums paid by the Principal in relation to the Price and shall bear the relevant dismantling costs:

- (i) achievement of any of the maximum liquidated damages, after extension of an additional 10% to the maximum liquidated damages;
- (ii) suspension or abandonment of the works exceeding one hundred and eighty (180) days for reasons attributable to Contractor;
- (iii) a termination event under Article 11.1.3 last paragraph (i) or (ii) of the Wind Turbine Supply Agreement occurs.

17.3. Termination of the Agreement by the Contractor

Subject to and within the limits set forth under the Direct Agreement, upon any material default by the Principal to perform any of its obligations under this Agreement, the Contractor may terminate this Agreement pursuant to Article 1454 (*diffida ad adempiere*) of the Italian Civil Code, giving to the Principal a period of 30 calendar days to cure the ground(s) for termination.

The Contractor will be entitled to terminate this Agreement pursuant to Article 1456 (*clausola risolutiva espressa*) of the Italian Civil Code, at the occurrence of any one of the following events (each, a "**Principal Event of Default**"):

- A. Principal's failure to pay to the Contractor any required payment which is not legitimately in dispute, as provided for in Clause 7.2, provided that the Contractor notified in writing such failure to the Principal by mean of a registered letter and the Principal failed to remedy its breach within the thirty (30) days following such notice;
- B. the performance of this Agreement is suspended for more than 5 (five) months due to a Principal Caused Delay, as provided for in Clause 8.1.2;
- C. the Principal is in material breach of any other material provision of or has failed to perform any material obligation under this Agreement, and such breach is not cured within 30 days.

Upon the occurrence and during the continuance of a Principal Event of Default and following any applicable cure period, the Contractor may terminate this Agreement upon prior written notice to the Principal.

In case the Contractor terminates this Agreement according to the provisions of this Article, the Principal shall:



- (i) pay to the Contractor the damages which the Contractor has suffered in connection with the termination and any reasonable cost duly documented (including legal and technical advisers costs) incurred by the Contractor and associated with such termination;
- (ii) pay to the Contractor any amounts already due and outstanding at the time of termination and any amount due but not paid under this Agreement;
- (iii) return the Subcontractors Bank Guarantees, the Bonds and/or any other securities provided by the Contractor as in Clause 7.3 to the Principal,

and the Contractor shall:

- (a) with respect to the WTGs and Scope of Works whose Price has been paid by the Principal and the relevant ownership has not been already transferred to the Principal according to Article 10.1 of this Agreement, upon the effectiveness of termination, shall promptly transfer the ownership of such WTGs and Scope of Works paid to the Principal which shall retain the WTGs and Scope of Works;
- (b) leave the Site in good state and taking care of removing its equipment and any waste or material; and
- (c) shall provide the Principal with the Contractor's documents and other design documents made by it in connection with this Agreement up to the date of termination.

17.4. *Insolvency*

The Parties acknowledge and accept that the Principal has a specific interest in the performance of the works by the Contractor and, therefore, the Agreement will be terminated pursuant to Article 81 of the Royal Decree No. 267 of 16 March 1942, if the Contractor becomes bankrupt or insolvent, goes in liquidation, has a receiving or administration order made against him, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors, or if any act is done or event occurs which has a similar effect to any of these acts or events.

17.5. *Withdrawal Due to Force Majeure Event*

If the Parties' performance of its obligations pursuant to this Agreement is prevented for a period of seventy-five (75) consecutive calendar days or onehundred-twenty 120 non-consecutive calendar days in a year as a result of the occurrence of a Force Majeure event, then a meeting shall be held promptly between the Parties, attended by representatives of the Parties with decision-making authority regarding the subject matter of this Agreement, to attempt in good faith to mutually agree upon the reasonable course of action to be adopted by the Parties for the following three months, taking into consideration the likelihood of the affected Party being able to resume performance of its obligations under this Agreement. If the Force Majeure event continues for an additional three months or more, then such meeting between the Parties shall be held again, and this process shall be repeated until one of the following occurs: (i) the affected Party being able to resume performance of its obligations under this Agreement; (ii) the parties mutually agree to terminate this Agreement. If the Force Majeure event continues for a nine-months period, then any of the Parties may withdraw from this Agreement.

As a consequence of such withdrawal, with respect to the Equipment that has already been paid by the Principal upon the effectiveness of withdrawal, the latter, at its absolute discretion, shall retain the Equipment and the Contractor shall transfer the title to the Principal on such Equipment.

18. COMMUNICATIONS

Unless otherwise specified in other sections of this Agreement, any notice or communication required to be delivered to either Party pursuant to or in connection with this Agreement shall be given by registered mail with advice of delivery (with copy per telefax) to the addresses set forth below:

If to the Principal:

Parco Eolico Casalduni House S.r.l

Viale Abruzzo No. 410

Chieti (Italy)

Attention: Mr. Lino Bergonzi

PEC:

parcoeolicocasaldunihouse@pec.totoholding.it

Fax: +39 0871/8574254

Phone: 0871/58741

If to the Contractor:

Renexia Services S.r.l.

Viale Abruzzo No. 410

Chieti (Italy)

Attention: Mr. Giuliano Tatasciore

E-mail: renexiaservices@pec.totoholding.it

Fax: +39 0871/8574254

Phone: 0871/58741

19. TITLES, RECITALS AND ANNEXES

19.1. Titles

The titles given to the agreements in this Agreement are only intended to facilitate the intelligibility of the said and should not be considered as interpretative elements.

19.2. Recitals and annexes

The recitals and the annexes listed below, as may either be hereof or agreed upon by the Parties in good faith following execution of this Agreement, shall be deemed to be an integral part of this Agreement:

20. FAILURE TO EXERCISE RIGHTS – NO WAIVER

20.1. *The waiver of any of the rights or powers resulting from this Agreement by any of the Parties shall be made in writing.*

20.2. Failure or delay of a Party in exercising any right, action or claim arising from (or relating to) this Agreement shall not operate as a waiver thereof, nor shall any single or partial exercise of any right arising from this Agreement preclude any further or other exercise of that or any other right. A waiver of default shall not operate as a waiver of any other default, a waiver of the provision itself, or of the same type of default on a future occasion. No waiver shall be effective unless explicitly approved by the Financing Parties, set forth in writing and executed by the Party making the waiver. A waiver of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach.

21. SEVERABILITY

Without prejudice to article 1419 (*nullità parziale*) of the Italian Civil Code, if - at any time - any provision of this Agreement is or becomes illegal, invalid or unenforceable, neither the legality, validity nor enforceability of the remaining provisions of this Agreement will in any way be affected or impaired thereby.

22. ASSIGNMENT AND SET-OFF

22.1. Assignment

- (a) Without prejudice to the paragraphs below, the provisions of the Direct Agreement with the Financing Parties and Article 23 below, neither Party may assign to third parties, in whole or in part, its rights, claims or obligations under this Agreement, without the prior express written authorisation of the other Party.
- (b) Without prejudice to Article 23 below, the Contractor acknowledges and agrees without any objection (*accetta puramente e semplicemente*) - pursuant to and for the purposes of Articles 1248, 1264, 1265, 1407, 2800 and 2805 of the Italian Civil Code – that the Principal will be, at all times, entitled to assign this Agreement to the Financing Parties or to any person appointed by the latter in accordance with the provisions of the Direct Agreement.
- (c) Without prejudice to the provisions of the Direct Agreement with the Financing Parties and Article 23 below, the Contractor undertakes not to assign, transfer, dispose of its rights and/or obligations arising from this Agreement to any person without the prior written

consent of the Principal, unless the Financing Parties give their consent (such consent not be unreasonably withheld or delayed).

- (d) In addition to the above, the Parties agree and acknowledge that, should the Principal assign this Agreement either as a merger (*fusione*), sale, contribution, lease or usufruct of business concern (*cessione o conferimento di ramo d'azienda*), the Contractor waives and shall not benefit from the right of withdrawal under Article 2558 of the Italian Civil Code.

22.2. *Set-Off*

- (a) The Contractor will never be entitled to set-off its claims and rights against the Principal with any amount which may be (or become) due or payable to it by the Principal.
- (b) The Principal will be entitled, at all relevant times, to set-off its claims and rights against the Contractor with the liquidated damages which may be (or become) due or payable to it by the Contractor pursuant to this Agreement.

23. FINANCING PARTIES

23.1. The Contractor shall use its best efforts to comply with any reasonable request from the Financing Parties, and hereby undertakes to negotiate in good faith with the Principal and the Financing Parties any changes and any amendments to this Agreement and to the form of the direct agreement attached to this Agreement *sub* Annex EE (the "**Direct Agreement**") that may be required by the Financing Parties as a precondition to the approval of the financing.

23.2. In any case, the Contractor shall execute the Direct Agreement with the Principal and the Financing Parties within 15 (fifteen) Business Days from their request.

23.3. The Contractor acknowledges that:

- (a) any amendment of this Agreement shall be subject to prior written consent of the Financing Parties;
- (b) the Financing Parties and their advisors have the right to access the Site, subject to all applicable safety requirements and regulations, or any other place where the Equipment are located or are being worked on, in order to inspect the performance of the works under this Agreement;
- (c) each and all portion of the Tests, the approval of each Milestone Certificate and relevant invoice of the payment of the Price will be subject to positive verification of the Technical Consultant;
- (d) the execution of any Change Order will be subject to the prior written approval of the Technical Consultant.

23.4. The Contractor hereby acknowledges and accepts that the Principal's claims and rights under this Agreement, the Bonds and any other guarantee and the insurances may be fully or partially pledged or assigned as security, in one or successive instances, to the Financing Parties. The Contractor accepts such pledges and/or assignments without any reservation and undertakes to execute any further acceptance the Financing Parties may deem necessary or appropriate.

24. MISCELLANEA

24.1. *Taxes and expenses*

Each Party must bear the taxes arising from the execution of this Agreement in accordance with the provisions of the Applicable Law and exclusively assume the expenses incurred by it with respect to the negotiation, execution and performance of this Agreement, including those of its advisors.

The Parties represent to each other that the performance of the Scope of Work is subject to Value Added Tax ("**VAT**").

24.2. *Entire Agreement*

This Agreement contains the entirety of the agreements and terms agreed by the Parties with respect to the subject matter hereof and supersedes all previous understanding, communications, representations and understandings (oral or written) that may have been agreed upon or exchanged between the Parties prior to the date hereof, in whole or in part, as to the

subject matter hereof, including the engineering, procurement and construction agreement entered into on 3 July 2019 (the "**First EPC**"). For sake of clarity, this Agreement fully supersedes and replaces the First EPC and all the works already executed by the Contractor under the First EPC are subject to the terms, conditions and warranties set forth under this Agreement.

24.3. *Incorporation by Reference*

All schedules, programmes, exhibits, annexes and appendices attached to this Agreement are incorporated by reference herein made a part hereof for all purposes.

24.4. *Amendment of the Agreement*

An amendment to this Agreement (including the relevant Annexes and deeds connected therewith and/or accessory thereof Agreement) will be effective only if executed in writing by the duly authorised representatives of both Parties, subject to Clause 23.3(a).

24.5. *Negotiation*

The Parties declare, represent and acknowledge to each other that this Agreement has been thoroughly negotiated in all of its Clauses and Annexes; therefore the provisions of Articles 1341 (*Condizioni generali di contratto*) and 1342 (*Contratto concluso mediante moduli o formulari*) of the Italian Civil Code shall not apply.

24.6. *Successors and Assigns*

This Agreement shall inure to the benefit of and shall be binding upon the Parties and their respective successors and permitted assigns. Nothing in this Agreement, expressed or implied, is intended to confer any rights, remedies, obligations or liabilities under or by reason of this Agreement upon any person or entity other than the Parties.

24.7. *Language and Documentation*

All documentation, data, drawings, schedules, diagrams, specifications and details associated with the Scope of Work shall be provided by the Contractor to the Principal, and shall be properly referenced and compiled, also in the Italian language.

24.8. *Privacy*

The Contractor and the Principal represent and warrant to each other that they have complied and will timely comply with the obligations provided under the Applicable Law on personal data protection.

24.9. *Interpretation*

Each Party agrees that this Agreement will be interpreted fairly to carry out its purpose and intent. Articles 1362 and ff. of the Italian Civil Code on the interpretation of the agreements shall apply.

25. GOVERNING LAW, INDEPENDENT EXPERT AND JURISDICTION

25.1. *Governing Law*

This Agreement is subject to and shall be interpreted, construed and enforced according with Italian law, without regard to conflict of laws principles.

25.2. *Independent Expert*

In case of any technical dispute between the Parties under this Agreement, each of the Parties may submit the discrepancy to an Independent Expert for its determination.

The Independent Expert shall act as an arbitratore pursuant to Article 1349 of the Italian civil code and shall take a decision on the basis of its equitable determination ("equo apprezzamento") being excluded the possibility to decide on mere discretion ("mero arbitrio").

The Independent Expert shall issue his determination within 15 (fifteen) Business Days of such submission. The Party against whom the Independent Engineer determines shall bear the costs of the Independent Expert.

The disputing Party shall deliver to the Independent Expert and to the other Party a written brief stating (1) the general nature of the discrepancy, (2) the amount and extent of such discrepancy.

and (3) supporting data for such discrepancy. The opposing Party shall submit a written response to the disputing Party and the Independent Expert within 3 (three) Business Days, after receipt of the disputing Party's last submittal. Each Party's submissions shall be in the form of written statements by such Party, and each Party shall have the opportunity to respond any request for statements or information by the Independent Expert; provided, however, that all such submissions shall be made within 5 (five) Business Days of receipt of the initial submission to the Independent Expert.

The determination of the Independent Expert shall be in writing to the Parties.

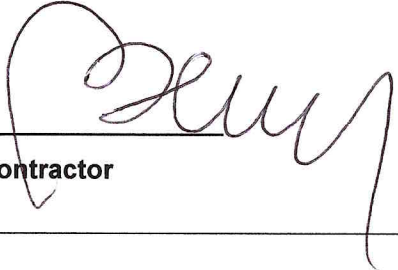
25.3. *Jurisdiction*

Without prejudice for any technical dispute to be referred to the Independent Expert according to this Agreement, the Parties agree that any conflict, controversy, legal proceedings, discrepancies or claims between them, relating to the existence, validity, enforceability, interpretation, cancellation or any other effect relating to this Agreement shall be exclusively and definitively resolved by the Courts of the city of Milan.

* * *

Should you intend to accept our proposal, please return a copy of the above reported text of Engineering, Procurement and Construction Agreement which (complete with its Annexes) duly countersigned by your company as an unconditional acceptance of it.

Best regards,

 as Contractor	Renexia Services S.r.l. an Italian <i>società a responsabilità limitata</i> , with registered office in Chieti, viale Abruzzo 410, registered with the Register of enterprises (<i>Registro delle imprese</i>) of Chieti, registration number and tax code 02533210692
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