

EPC CONTRACT - PABIANICE BESS PROJECT

Lump Sum Turnkey Engineering, Procurement and Construction Contract for a Utility-Scale Battery
Energy Storage System (BESS)

between

JF Energia Dobroń sp. z o.o.

and

[CONTRACTOR]

This Contract is made on _____ between:

JF Energia Dobroń sp. z o.o. with its registered office in Pabianice, ul. Stefanii Sempołowskiej 4, 95-200 Pabianice, entered in the Register of Entrepreneurs of the National Court Register under KRS No. 0000966494, NIP 7312076235, REGON 521806116, share capital PLN 5,000.00, represented by [●], hereinafter referred to as the “**Employer**”;

And

[**Contractor legal name**], a company organised and existing under the laws of [●], with its registered office at [●], entered in [relevant register] under number [●], NIP/tax number [●], represented by [●], Hereinafter to be referred to as the “**Contractor**”.

The Contractor and Employer hereinafter collectively referred to as the “**Parties**” and each as a “**Party**”.

WHEREAS:

- A. The Employer is developing the utility-scale Battery Energy Storage System project known as the **Pabianice BESS Project**, to be connected to the Polish transmission system operated by Polskie Sieci Elektroenergetyczne S.A. (**PSE**), and wishes to procure a complete, fully integrated and operational BESS together with all grid-connection and ancillary works allocated to the Employer
- B. The Employer intends to engage the Contractor on a lump-sum turnkey Engineering, Procurement and Construction basis.
- C. The Contractor shall design, procure, manufacture, factory test, transport, deliver, install, construct, integrate, test, commission and complete the Project, remedy Defects, provide the required documentation and obtain or support obtaining the approvals allocated to it under this Contract, in particular Annex 1 – Employer Requirements, so that the Project is complete, safe, compliant with Applicable Laws, the Connection Agreement (subject to any amendments thereto) and the Employer Requirements, and capable of achieving COD and the Performance Guarantees. The Contractor shall provide O&M services according to the Contract.
- D. The Project is co-financed under a Grant Agreement with the National Fund for Environmental Protection and Water Management (Narodowy Fundusz Ochrony Środowiska i Gospodarki Wodnej - NFOŚiGW). The Grant Agreement identifies the physical effect of the Investment as

one electrochemical energy storage system with a storage capacity of at least 120.00 MWh and power of 59.40 MW. The Contractor acknowledges the grant-funded character of the Project and shall cooperate with the Employer to comply with the Grant Agreement, including audit trail, cost eligibility, documentary evidence and reporting requirements.

- E. The Contractor acknowledges that the Works comprise a complete and integrated result and that all works, supplies, software, interfaces, documentation, tests, temporary works, services and activities reasonably necessary to achieve the contractual result are included in the Contract Price.
- F. The Contract has been entered into following the Employer's competitive RFQ procedure. The RFQ together with its annexes and the Contractor's offer submitted in that procedure form part of the Contract. No qualification, reservation or deviation contained in the Contractor's offer shall prevail unless expressly accepted in this Contract or in a signed deviations schedule.

CONDITIONS OF CONTRACT

1. 1. GENERAL PROVISIONS

1.1. DEFINITIONS

In the Conditions of Contract (these "**Conditions**"), which include the Present Document and its Annexes the following words and expressions shall have the meanings stated. Words indicating persons or parties include corporations and other legal entities, except where the context requires otherwise.

Definitions

"**Advance Payment**" means any advance payment agreed by the Employer and specified in Annex 4 in particular, payment related to the Milestone Notice to Proceed.

"**Affiliate**" shall mean any entity that directly or indirectly controls, is controlled by or is under common control with a party. For the purposes of this definition, "**control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of the controlled entity, whether through the ownership of voting securities or partnership or other ownership interests or by contract or otherwise.

"Annexes" or **"Annex"** means the annexes listed in Clause 27 LIST OF ANNEXES, forming an integral part of the Contract.

"Authority" or **"Authorities"** means any public administration authority, governmental or local government authority, court, regulatory authority, tax authority, inspection body, law enforcement authority, public fund, public agency or other body exercising public-law powers or performing public tasks under applicable law, competent in relation to the Works, the Project or either Party's obligations under this Contract.

"Base Date" means the date on which the Contract is signed by both Parties.

"BESS" means the Battery Energy Storage System described in the Contract, in particular in Annex 1 - Employer Requirements including, without limitation, the Battery Units, Battery Management System (BMS), Energy Management System (EMS), Power Conversion System (PCS), transformers, switchgear, auxiliary systems, fire detection and suppression systems, thermal management systems, communication and control systems and the relevant containers or enclosures.

"BESS Facility" means the BESS together with the associated civil, electrical, control, communication, fire-safety and Grid Connection infrastructure forming part of the Project and comprised in the Works.

"Battery Units" means the battery cells, modules, racks, containers or enclosures and associated battery-side equipment supplied as part of the BESS.

"Business Day/s" means any day from Monday to Friday, excluding public holidays in Poland.

"Certificates" means the certificates and acceptance protocols issued after the completion of each test provided in Annex 1, in particular in all Appendixes 04 – Testing and Commissioning to Annex 1;

"Commencement Date" has the meaning stated in Clause **8.1 COMMENCEMENT OF WORK**.

"Contract", **"Contract Agreement"** or **"Conditions"** means this contract and the annexes (and the appendices to the annexes) attached thereto as per Clause **27, LIST OF ANNEXES**, thereto.

"Contract Documents" means the documents forming the Contract and listed in the order of precedence in Clause 1.5.

"Contract Duration" has the meaning given in Clause **1.6 CONTRACT EFFECTIVENESS AND DURATION**.

"Contract Price" means the firm lump-sum remuneration (pl wynagrodzenie ryczałtowe) stated in the Contractor's Offer submitted in response to the RFQ and accepted by the Employer, for the complete performance of the Contract, subject only to adjustments expressly permitted by the Contract.

"Contractor's Offer" means the Contractor's offer submitted in response to the RFQ, as accepted by the Employer and subject to the order of precedence in Clause 1.5.

"Connection Agreement" means the grid connection agreement No. DS/ME/2026/PABIANICE concluded between the Employer and PSE relating to the Project, together with the applicable connection conditions, schedules, annexes and amendments. In the event of any discrepancy between the Connection Agreement and this Contract, and in particular with Annex 1, the data and information provided for in Annex 1 shall prevail and shall be taken into account, including in particular the capacity of the BESS. The Contractor shall be responsible for agreeing of the amendments and preparation of the annex implementing the agreed amendments to Connection Agreement and any annexes thereto in order to adapt it to the requirements set out in the Contract, including, in particular, Annex 1, and shall be made in a timely manner enabling the proper implementation of the Project; the Contractor shall act on behalf of and for the benefit of the Employer based on an appropriate power of attorney to negotiate an annex or agreement amending the Connection Agreement. No annex or amendment to the Connection Agreement may be executed by the Contractor on behalf of the Employer without the Employer's prior written approval of its final form.

"Contractor" means the person(s) named as the contractor in the Contract Agreement and the legal successors in title to such person(s).

"Contractor's Documents" means the calculations, computer programs and other software, drawings, manuals, models and other documents of a technical nature supplied by the Contractor under the Contract described in Clause 5.2 CONTRACTOR'S DOCUMENTS and in Annex 1, in particular in Appendix 5.01 to Annex 1

"Contractor's Equipment" means all apparatus, machinery, vehicles and other things required by the Contractor for the execution and completion of the Works and the corrective actions undertaken during the Defects Notification Period as further described in Clause **12 DEFECTS LIABILITY**.

"Contractor's Personnel" or **"Contractor Party"** means the Contractor's Representative and all personnel whom the Contractor utilises on Site, who may include the staff, labour and other employees of the

Contractor and of each Subcontractor; and any other personnel assisting the Contractor in the execution of the Works.

"Contractor's Representative" means the person named by the Contractor in the Contract or appointed from time to time by the Contractor under Clause 4.3 CONTRACTOR'S REPRESENTATIVE, who acts on behalf of the Contractor.

"Contractor Taxes" shall have the meaning set forth in Clause **24 CONTRACTOR TAXES**.

"Control" means, with respect to a Party, the power to direct the management and policies of such Party.

"Cost" means all additional reasonable expenditure to which Contractor may be expressly entitled to as per the conditions of this Contract, whether on or off the Site, including overhead and similar charges, but does not include profit.

"Critical Path Analysis" means the analysis of the critical path of the Project Time Schedule in Annex 4 and the impact of any event on a Milestone, including COD.

"Day" means a calendar day (and **"Days"** refers to several calendar days), and **"Year"** means 365 days.

"Defect" means any defect, fault, non-conformity, deficiency or incomplete performance of the Works, including any failure to comply with the Contract, Applicable Laws, the Connection Agreement, Good Industry Practice, Performance Guarantees or the intended purpose of the Project.

"Defects Notification Period" or **"Contractual Warranty Period"** means the period specified in Clause 12, without prejudice to longer manufacturer warranties, statutory warranty (rękojmia) rights or liabilities that survive its expiry.

"Direct Agreement" means a direct agreement among the relevant Financing Parties, the Employer and the Contractor, as applicable, containing customary project-finance notice, cure and step-in arrangements and entered into on terms mutually acceptable to its parties

"Employer" means the person named as employer in the Contract and the legal successors in title to this person.

"Employer Requirements" means Annex 1 which consist of the following Appendices:

00 General Conditions_BESS EPC
Appendix 1.01 - Definitions & Abbreviations
Appendix 1.02 - List of Standards
Appendix 2.01 - Responsibility matrix
Appendix 3.04 - DC cables
Appendix 3.08 - LV Switchgear
Appendix 3.09 - Transformers LV-MV
Appendix 3.09b - Transformer HVMV
Appendix 3.10 - MV Switchgears
Appendix 3.11 - AC Cables
Appendix 3.13 - Transformer Stations-BESS
Appendix 3.14 - Earthing - HV Substation
Appendix 3.14 - Earthing
Appendix 3.15 - Fences and Gates
Appendix 3.16 - Security Systems
Appendix 3.17.b - SCADA
Appendix 3.17.d - Comm Ctrl Systems-HV
Appendix 3.18b - Spare Parts list & Building
Appendix 3.19 - Electrical Protection
Appendix 3.19b - Electrical Protection - HV sub
Appendix 3.20 - Civil Works
Appendix 3.23 - Battery System
Appendix 3.24 - Power Conversion System
Appendix 3.26 - Fire&ThermalRunawayMitig
Appendix 3.27 - HV Equipment
Appendix 3.28 - HV Substation building
Appendix 4 - Testing Process Flowchart-BESS
Appendix 4.03b - Mechanical Completion
Appendix 4.04 - Pre-Commissioning
Appendix 4.05 - Commissioning
Appendix 4.06 - GridCompl&SystServiceQualif
Appendix 4.07b - Tests on Completion
Appendix 4.08b - Tests after Completion
Appendix 5.01-Contract Documentation List
Appendix 5.02 - Project Programme Requirements
Appendix 5.03 - O&M Manual Requirements

Appendix 5.04 - Manufacturer Warranties
Appendix 5.08 - Cyber Security
Appendix 5.09 - O&M Services Specifications
Appendix 6.00 - Project information and site data
Appendix 6.1 Building Permit
Appendix 6.1.a Construction design_RFQ
Appendix 6.2 TSO Grid Connection Condition
Appendix 6.2.a TSO GCA – app1
Appendix 6.2.b TSO GCA - ap2 schedule
Appendix 6.3 Geotechnical study
Appendix 6.4 HV Line Layout
Appendix 6.4.a HV Line Layout Concept
Appendix 6.5 2h BESS Layout
Appendix 6.5.a 2h BESS Layout-orthophoto
Appendix 6.5.b 2h BESS SLD

and the functional, technical, interface, documentation and performance requirements incorporated therein.

“Building Law” means the Building Law Act dated July 7, 1994, as amended.

“Investment Manager” or “Employer Investment Manager” means the physical person or legal entity designated by Employer, to control from Employer's side the due completion of the Works and supervise the interfaces between Contractors' Works and Employer's Works as per Clause **3.2 EMPLOYER INVESTMENT MANAGER**. If so indicated by the Employer, the Employer Investment Manager may also perform the function of the investor supervision inspector within the meaning of the Building Law.

“Equipment” means all plant, machinery, devices, electrical and electronic equipment and components intended to form part of the Works.

“Employer's Equipment” means the apparatus, machinery and vehicles (if any) made available by the Employer for the use of the Contractor in the execution of the Works, as stated in the Project inputs, if any.

“BMS” means the Battery Management System forming part of the BESS.

"EMS" means the Energy Management System forming part of the BESS, as described in particular in Annex 1 – Appendix 1.01 to Annex 1.

"PCS" means the Power Conversion System forming part of the BESS.

"PPC" means the Power Plant Controller or equivalent plant-level controller used to control the Project at the relevant grid interface.

"OEM" means the original equipment manufacturer of the relevant Equipment.

"O&M" means operation and maintenance.

"Employer's Documents" or **"Employer's Permits"** means any documents provided by the Employer to the Contractor as listed in Annex 1;

"Employer's Personnel" means the Employer's Representative and all employees, advisers, agents and other personnel of the Employer or the Employer's Representative notified to the Contractor as being involved in the Project.

"Employer's Representative" means the person named by the Employer in the Contract or appointed from time to time by the Employer under Clause **3.1 THE EMPLOYER'S REPRESENTATIVE**, who acts on behalf of the Employer.

"Employer Taxes" shall have the meaning set forth in Clause 25 EMPLOYER TAXES.

"Financing Parties" shall mean (i) any lender providing construction, interim or long-term financing (including any other refinancing thereof) for the Project, any lessor under a leveraged lease transaction, and any trustee or agent acting on their behalf (including, without limitation, the independent engineer selected by such parties, if any), and (ii) any equity investor providing financing or refinancing for the BESS Facility, and any trustee, agent, or independent engineer acting on their behalf.

"Grant Agreement" means the grant agreement no. 486/2025/Wn5/OA-EO-FM/D concluded between the Employer and NFOŚiGW for co-financing of the Project, including its schedules and any amendments thereto.

"Investment" means the investment co-financed under the Grant Agreement and implemented through the Project.

"Financial and Implementation Schedule" or **"Payment Schedule"** means the schedule (forming Annex 4, identifying the Milestones, the payment amounts or percentages allocated to them.

"NFOŚiGW" means Narodowy Fundusz Ochrony Środowiska i Gospodarki Wodnej (National Fund for Environmental Protection and Water Management).

"PSE" or **"TSO"** or **"Network Operator"** or **"Grid Operator"** means Polskie Sieci Elektroenergetyczne S.A., acting as the transmission system operator, and its legal successors.

"IRIESP" means the applicable transmission grid operation and maintenance instruction (Instrukcja Ruchu i Eksploatacji Sieci Przesyłowej), as amended from time to time.

"NC RfG" means Commission Regulation (EU) 2016/631 establishing a network code on requirements for grid connection of generators, to the extent applicable to the Project, as amended or replaced from time to time.

"Force Majeure" is defined in Clause **21 FORCE MAJEURE**.

"Good Industry Practice" means the degree of skill, diligence, prudence and foresight reasonably expected from an experienced EPC contractor performing utility-scale BESS and high-voltage grid-connection projects of comparable size and complexity in Poland or the European Union.

"Free Issued Material" means any materials, equipment or other items supplied or made available by the Employer for incorporation into or use in connection with the Works.

"Goods" means Contractor's Equipment, Materials, Permanent Works and Temporary Works, or any of them as appropriate.

"Grid Connection" means all Works, equipment, interfaces, tests, documents and cooperation obligations allocated to the Contractor under this Contract and necessary for connection of the Project to the PSE transmission system, energisation, import/export of electricity, completion of PSE technical tests, operation in the transitional connection arrangement.

"Hazardous Substance" or **"Hazardous Materials"** means any substance, mixture, material, waste or good classified, regulated or subject to special handling, transport, storage, disposal, safety or environmental requirements under Applicable Laws of Poland or directly applicable European Union

law, including hazardous waste, dangerous goods, radioactive materials, petroleum products and substances presenting a material health, safety, fire or environmental risk.

"Health and Safety Plan" or **"HSE"** means the project-specific health and safety plan prepared and maintained by the Contractor in accordance, in particular, with Annex 1, Clauses 4.7 SAFETY PROCEDURES and 6.5 HEALTH AND SAFETY.

"DNSH" means the "do no significant harm" principle to the extent applicable to the Project under the Grant Agreement and Applicable Laws.

"Key Events" and **"Key Milestones"** and **"Milestone"** mean the events and milestones specified in Clause 8.2 and Annex 4, including the PSE and NFOŚiGW critical milestones.

"Laws" or **"Applicable Laws"** shall mean all laws of Poland and/or European Union (as the case may be), statutes, treaties, ordinances, judgments, decrees, injunctions, writs, orders, rules, regulations, interpretations, licenses and permits or any similar form of decision or determination, or any written interpretation or administration of any of the foregoing, by any governmental authority having jurisdiction.

"Energy Law Act" means the Polish Act of 10 April 1997 – Energy Law (pl *Prawo energetyczne*), as amended from time to time.

"KSeF" means the Polish National e-Invoicing System (pl *Krajowy System e-Faktur*), to the extent applicable to the Parties under Applicable Laws.

"Contractual Penalties" or **"Liquidated Damages"** means contractual penalties (kary umowne) stipulated under the Contract. References to delay penalties mean penalties for delay attributable to the Contractor or to the entity for which the Contractor is responsible for (pl. *złotka*);

"Material Defect" means a Defect which prevents or materially restricts safe energisation, grid connection, lawful use, commercial operation, achievement of a Performance Guarantee, compliance with PSE/NFOŚiGW requirements, or which creates a material safety, fire, cybersecurity, structural or environmental risk.

"Minor Defect" means a Defect which does not constitute a Material Defect and does not prevent safe and lawful operation of the Project in accordance with the Contract.

"PAC" or **"PAC Certificate / Take-Over Certificate"** means the express written acceptance protocol issued or signed by the Employer under Clause 10. PAC may be issued with Minor Defects recorded on the Punch List B but shall not arise by lapse of time or deemed acceptance.

"COD" or **"Commercial Operation Date"** means the date expressly confirmed in writing by the Employer after satisfaction of the COD conditions stated in Annex 1, including completion of the Works, PAC, required PSE connection and commissioning steps, ability to safely charge and discharge the BESS in the transitional connection arrangement, and delivery of documents required for lawful commercial operation. COD is not deemed to occur by lapse of time.

"Major Subcontract" means any subcontract for the BESS OEM, battery cells/modules/racks, PCS, main power transformer, EMS/PPC/SCADA, MV/HV works, fire-safety systems or any other subcontract identified as material in the RFQ (if any).

"Major Subcontractor" is a subset of Subcontractors and means any Subcontractor with whom the Contractor has entered into a Major Subcontract.

"Materials" means things of all kinds intended to form or forming part of the Permanent Works, including the electrical equipment to be supplied by the Contractor under the Contract.

"Network" or **"Grid"** means the Polish national electricity system (KSE) and, for the purposes of the Grid Connection, the transmission network operated by PSE (temporary and/or final as well), unless the context expressly refers to another network operator.

"Norms and Standards" or **"Codes and Standards"** means the state of the art, customs, techniques, methods, norms, standards, measures, safety norms, grid connection norms, health norms and environmental protection norms applicable in the Poland or in any country in which any equipment or material is to be manufactured or any service is to be performed, whether internationally recognised or specified in the Contract, concerning the design, study, construction, completion, delivery, erection, commissioning, proper operating condition, operation and maintenance of generating facilities or energy storage facilities of a size, characteristics and operation comparable to those of the Battery Energy Storage System. For the avoidance of doubt, Norms and Standards or Codes and Standards shall also include all requirements, obligations and provisions applicable to the Project and/or the Works under the relevant network codes, including NC RfG, as well as the transmission grid code/instruction for transmission system operation and maintenance (IRiESP) and any other applicable grid codes, instructions, standards or requirements issued by the relevant transmission system operator or distribution

system operator. As regards seismic codes, reference shall be made to the seismic codes applicable in Poland.

"Permits" means all permits, licences, approvals, decisions, consents, notifications, registrations and authorisations required under Applicable Laws or the Connection Agreement for the Project or the Works.

"Notice to Proceed" or **"NTP"** means the written notice issued by the Employer authorising commencement of the Works or the part of the Works identified in that notice and starting the corresponding Project Time Schedule activities.

"Party" means the Employer or the Contractor, as the context requires.

"Performance Certificate" means the certificate issued by the Employer in accordance with Clause 12.13 following satisfaction of the conditions stated there, without extinguishing any rights or obligations which survive its issuance.

"Performance Security" means the security described in Clause 4.2(a), whether provided as a guarantee or a cash security deposit.

"Performance Security Guarantee" (pl. *Gwarancja Należytego Wykonania Umowy*) means the guarantee form of the Performance Security, substantially in the form of Annex 5.

"Performance Guarantee" means the guaranteed technical and operational parameters set out in Annex 1, including, in particular, usable energy capacity, round-trip efficiency and availability as described in Appendix 4.08b to Annex 1.

"Permanent Works" refers to all elements that form part of the final facility and remain after Project completion.

"Project" means the Pabianice utility-scale BESS project, including but not limited to the BESS, substation and 220 kV connection infrastructure, all systems and interfaces required for safe and lawful operation. Description of the Project shall include, in particular, Annex 1 – Employer's Requirements.

"Pre-Existing Hazardous Materials" means Hazardous Materials that existed on or in the Battery Energy Storage System Site prior to the date Contractor or any of its Subcontractors or other representatives are present on the Battery Energy Storage System Site.

"Programme" shall have the meaning set forth in Clause **8.3 PROGRAMME**.

"Project Input" means any document expressly identified in Annex 1 as information made available by the Employer, subject to the risk allocation and priority rules of the Contract.

"RFQ" means the request for quotation / tender documentation issued by the Employer for award of this Contract, including its annexes, clarifications and addenda.

"Punch List" means the list of outstanding items identified in connection with energisation, commissioning or PAC and classified as Punch List A or Punch List B.

- i. Punch List A Category means Material Defects and other items which must be remedied before the relevant energisation / commissioning certificate or PAC because they prevent safe, lawful or contract-compliant operation.
- ii. Punch List B Category means Minor Defects which do not prevent PAC. The Employer may issue PAC with such items outstanding, subject to a binding remedy deadline.

"SCADA System" means a Supervisory Control And Data Acquisition System, which monitors, controls and gathers data in real time from remote locations.

"Scheduled NTP Date" means the scheduled date for issuance of the NTP specified in Annex 4.

"NTP Longstop Date" means the longstop date for issuance of the NTP specified in Annex 4.

"Section" means a set of the Battery Energy Storage System that can be connected simultaneously to the electrical grid on a specific substation.

"Schedule of Values" means the detailed breakdown of the Contract Price provided by the Contractor under Clause 16.1 for payment, Variation valuation, audit and NFOŚiGW settlement purposes, without affecting the lump-sum nature of the Contract Price.

"Serial Defect(s)" has its meaning defined in Appendix 1.01 to the Annex 1

"Contractor's Scope" or **"Scope"** means the Works and other obligations allocated to the Contractor under the Contract, including Annex 1 and the applicable responsibility and interface matrices.

"Site" means the Project site in Pabianice and all areas made available for execution of the Works, as further identified in Annex 1.

"Subcontractor" means any person engaged by the Contractor to perform any part of the Works.

"Further Subcontractor" means any person engaged by a Subcontractor. References to Subcontractors include Further Subcontractors where the context permits.

"Take Over" means PAC under Clause 10.

"Take Over Certificate" means the PAC / Take-Over protocol referred to in Annex 1, in particular in Appendix 4.07b - Test on Completion – to Annex 1.

"Take Over Date" or **"PAC Date"** means the date expressly stated in the PAC / Take-Over Certificate, which shall take place no later than the date indicated in Annex 4 for the PAC milestone.

"Technical Expert" or **"Independent Expert"** or **"Expert"** means an Expert as defined in Appendix 1.01 to Annex 1 and a reputable and competent organisation, mutually agreed upon, which is selected by the Parties to resolve an outstanding issue in accordance with the provisions of the Contract;

"Technical Dispute" means a dispute of a predominantly technical nature in connection with the Contract which the Parties cannot resolve through their project and senior-management representatives and which may be referred to an Independent Expert under Clause 23.3 before or alongside arbitration, as applicable.

"Temporary Storage Area(s)" means any area within or adjacent to the Site approved by the Employer for temporary storage of Goods before installation.

"Temporary Works" means all temporary works of every kind (other than Contractor's Equipment) required on Site for the execution and completion of the Permanent Works and the remedying of any defects during the defect notification period.

"Tests" means collectively all tests described in the Contract, in particular in the group of Appendices 04 – Testing and Commissioning attached to Annex 1.

"Tests after Completion" means the tests which are specified in the Contract, and which are carried out under Clause 13 TESTS AFTER COMPLETION and Annex 1, in particular Appendix 4.08b - Test after Completion – to Annex 1

"Tests on Completion" means all the tests which are specified in the Contract and which are carried out under Clause 9 TESTS ON COMPLETION and Annex 1, in particular Appendix 4.07b - Test on Completion – to Annex 1

"Time for Completion" means the period for achieving COD and the pre-COD Milestones stated in Annex 4, as extended only in accordance with Clause 8.4.

"Variation" means any change to the Works, pursuant to provisions of Clause 15 VARIATIONS AND ADJUSTMENTS.

"Defects and Warranty Security" means the security described in Clause 4.2(b), whether provided as a guarantee or cash security deposit.

"Defects and Warranty Guarantee" (pl. *Gwarancja Usunięcia Wad i Usterek*) means the guarantee form of such security, substantially in the form of Annex 6.

"Security" means, collectively or as the context requires, the Performance Security, the Defects and Warranty Security.

"Works" and **"Work"** mean all activities to be executed in order to perform the Contract with due diligence, including all works under the Contract, in particular, the scope of works described in Annex 1.

1.2. INTERPRETATION

At any time and unless expressly stated otherwise, when the following expressions and derivatives thereof appear in the Contract, their connotations shall be extended or limited as set out here below:

- "Including", "included", "include", "such as", "comprising", "comprise" and the like shall be deemed to be completed by the expression "but not limited to".
- "Require", "request", "submit", "answer", "notify", "instruct", "state", "inform", "agree" and the like shall be deemed to be completed by the expression "in documentary form".

- "written" or "in writing" means hand-written, type-written, printed or electronically made, and resulting in a permanent record.
- "Fault", "breach", "failure", "default", "deficiency", "defective performance" and the like shall be understood as any failure whatsoever to comply with Contract requirements, whether by act, omission, negligence, misperformance, non-performance or late performance.
- "Clauses" and "sub-Clauses" shall mean Clauses and sub-Clauses of the Contract unless otherwise specified.

Where the context so requires, words indicating the singular also include the plural, and vice-versa and words indicating one gender include all genders.

The marginal words and other headings shall not be taken into consideration in the interpretation of these Conditions.

1.3. COMMUNICATIONS

Wherever these Conditions provide for the giving or issuing of approvals, certificates, consents, determinations, claims, notices and requests, unless differently stated in the Contract, these communications shall be:

- a) sent by registered mail and with a copy by email. The date of notification shall be the date of reception of the registered mail ;
- b) delivered, sent, or transmitted to the address for the recipient's communications as stated in the Contract. However:
 - (i) if the recipient gives notice of another address, communications shall thereafter be delivered accordingly; and
 - (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

Approvals, certificates, consents, and determinations shall not be unreasonably withheld or delayed.

The Addresses of the Parties are stated here below:

Employer:

Attn:

Address: Post Code:

Mail:

Contractor :

Attn:

Address: Post Code:

Mail:

In case of any change in the aforesaid addresses or numbers of either Party, that Party shall notify in writing or in the documentary form (for example by e-mail) the other Party of such

change within seven (7) Days after the change. In case such change is not notified pursuant to the conditions hereinabove, the notifications shall continue to be validly made at the aforesaid address of the relevant Party.

1.4. LAW AND LANGUAGE

The Contract shall be governed by and construed in accordance with the laws of the Republic of Poland.

The Contractor shall perform the Works in accordance with the Polish Building Law (Prawo budowlane), Energy Law (Prawo energetyczne), fire-safety, environmental, Codes and Standards, waste, occupational health and safety, technical inspection, cybersecurity and other Applicable Laws, as well as directly applicable European Union law and the requirements of PSE applicable to the Project.

The working language of the Contract and day-to-day communications may be Polish.

Unless a Clause or mandatory law provides otherwise, contractual termination is intended to have effect for the future and does not prejudice rights accrued before its effective date.

1.5. PRIORITY OF DOCUMENTS

The Contract Documents are mutually explanatory. In the event of conflict, discrepancy, inconsistency or ambiguity, the following order of precedence shall apply, unless an expressly stated provision provides otherwise:

- (a) written amendments and Variations executed in accordance with the Contract, with a later executed instrument prevailing over an earlier inconsistent instrument
- (b) the Contract Agreement and these Conditions of Contract;
- (c) the Employer Requirements (Annex 1)
- (d) the RFQ issued by the Employer together with all RFQ annexes, clarifications and addenda;
- (e) the Annex 4 to the Contract;
- (f) the Connection Agreement with PSE, including the connection conditions, schedules and annexes, in the scope relevant to the Contractor's obligations;
- (g) the Contractor's offer submitted in the RFQ, solely to the extent consistent with the documents listed above and excluding any reservation, qualification, disclaimer or deviation not expressly accepted by the Employer in writing;
- (h) the remaining Annexes.

Any work, service, supply, interface or documentation necessary to achieve the complete contractual result shall be deemed included in the Works and Contract Price even if expressly described in only one Contract Document.

1.6. CONTRACT EFFECTIVENESS AND DURATION

This Contract is entered into and becomes effective as from the Base Date. However, the rights and obligations which are expressly or implicitly subject to the issuance by Employer of the Notification to Proceed, shall come into full force and effectiveness as of the date of receipt by the Contractor of such Notification to Proceed.

1.7. ASSIGNMENT

No Party may assign whole or part of its rights and obligations under the Contract without the prior written (otherwise null and void) agreement of the other Party, which agreement such other Party shall not unreasonably withhold. Notwithstanding the foregoing, the Contractor hereby agrees that the Employer may, as security in favour of the Financing Parties, assign its rights established under this Contract, including its rights to any moneys due, or to become due.

At the Employer's reasonable request in connection with the financing or refinancing of the Project, the Contractor shall cooperate in good faith in negotiating and entering into a Direct Agreement with the Financing Parties on customary project-finance terms, provided that such Direct Agreement shall not materially increase the Contractor's substantive obligations or liabilities under this Contract without the Contractor's consent.

1.8. CARE AND SUPPLY OF DOCUMENTS

Each of the Contractor's Documents shall be in the custody and care of the Contractor, unless and until taken over by the Employer. Subject to Clause **1.10 EMPLOYER'S USE OF CONTRACTOR'S DOCUMENTS** with regard to the intellectual property rights, upon receipt of each document by the Employer from the Contractor, the Contractor's Documents property shall be transferred to the Employer. Unless otherwise stated in the Contract, the Contractor shall supply to the Employer two (2) copies of each of the Contractor's Documents.

If a Party becomes aware of an error or defect of a technical nature in a document which was prepared for use in executing the Works, the Party shall promptly give notice to the other Party of such error or defect.

1.9. CONFIDENTIALITY

Both Parties shall treat the details of the Contract and any other information exchanged between the Parties during the preparation or execution of the Contract as private and confidential, except to the extent necessary to carry out obligations under it or to comply with the Applicable Laws. The Parties shall not publish, permit to be published, or disclose any particulars of the Works in any trade or technical paper or elsewhere without the previous agreement of the other Party.

The restrictions of this Clause shall expire the earlier of i) five (5) years after the date of disclosure, or ii) three (3) years after termination, or iii) three (3) years after the issuance of the Performance Certificate.

1.10. EMPLOYER'S USE OF CONTRACTOR'S DOCUMENTS

As part of the lump-sum Contract Price and without any additional remuneration, the Contractor hereby transfers to the Employer, upon creation and delivery to the Employer of each relevant deliverable, all transferable economic copyrights (autorskie prawa majątkowe) in all copyright works comprised in the Contractor's Documents and other project-specific deliverables, together with, to the extent applicable, all transferable related rights (prawa pokrewne) and sui generis database rights, without territorial limitation and for the full period of legal protection. The Contract Price includes remuneration for the transfer of each such right on each field of exploitation specified below.

The transfer covers, to the fullest extent permitted by Polish copyright law, all fields of exploitation known as at the Base Date and relevant to the Project, including:

- (a) fixation and reproduction, in whole or in part, by any technique, including printing, reprographic, digital, magnetic, optical and electronic techniques;
- (b) recording, uploading, inputting into computer memory, servers, networks, databases and cloud environments, storing, archiving and making backup copies;
- (c) circulation and distribution of originals and copies, including placing on the market, lending and rental;
- (d) public performance, display, presentation, broadcasting, rebroadcasting and making available in such a manner that any person may access the work at a place and time chosen by them, including through electronic networks;
- (e) use for the design, permitting, financing, construction, completion, testing, commissioning, operation, maintenance, repair, replacement, modification, expansion, repowering, decommissioning, dismantling and reconstruction of the Project;
- (f) translation, adaptation, alteration, modification, combination with other works or documentation, integration and development, and use and disposal of works created as a result of any such acts;
- (g) disclosure and making available to Affiliates, PSE, Authorities, NFOŚiGW, Financing Parties, insurers, technical and legal advisers, O&M contractors, replacement contractors, operators, purchasers and other persons involved in financing, ownership, operation, maintenance or disposal of the Project.

Together with the economic copyrights, the Contractor transfers to the Employer the exclusive right to authorise the exercise of derivative copyrights (pl *wyłączne prawo zezwalania na wykonywanie zależnego prawa autorskiego*) and irrevocably consents, to the extent legally permissible, to the Employer and persons authorised by the Employer making any translations, adaptations, alterations, modifications, integrations or other changes to the Contractor's Documents and to using, disposing of and further modifying the resulting derivative works, without further consent or remuneration.

The Contractor shall procure from its personnel, designers, Subcontractors, suppliers and other authors or rightholders all rights, assignments, licences and consents necessary to give full effect to this Clause, including undertakings not to exercise moral rights (pl *autorskie prawa osobiste*) in a manner that prevents or restricts the Employer or persons authorised by the Employer from using, modifying, completing or developing the Contractor's Documents. The Contractor warrants that the rights transferred under this Clause are valid, free from undisclosed encumbrances and sufficient for the Employer's intended use of the Project, subject only to disclosed third-party standard software rights governed by Clause 26.

The Employer may transfer, assign, license or otherwise make available the acquired rights, in whole or in part, to any third party, including an Affiliate, purchaser of the Project, Financing Party, operator, O&M contractor or successor, without further consent of the Contractor.

If, after the Base Date, a new field of exploitation becomes known which could not validly be covered by this Contract at the Base Date, the Contractor shall, upon the Employer's request, promptly execute a separate transfer of the relevant economic copyrights and derivative rights on such field without additional remuneration, to the extent permitted by Applicable Laws.

For standard third-party software or other third-party materials that cannot legally or commercially be transferred, the Contractor shall procure for the Employer, to the fullest extent commercially available, a perpetual or full-lifecycle, irrevocable, transferable, sublicensable and fully paid-up licence sufficient for operation, maintenance, repair, replacement, modification, expansion and transfer of the Project, including the access rights, configuration files, credentials and documentation required under Clause 26.

1.11. CONTRACTOR'S USE OF EMPLOYER'S DOCUMENTS

As between the Parties, the Employer shall retain the copyright and other intellectual property rights of the documents made by (or on behalf of) the Employer that are contained in the Project Inputs and of other documents made by (or on behalf of) the Employer communicated to the Contractor for the purpose of execution of the Contract. The Contractor may, at his cost, copy, use, and obtain communication of these documents for the purposes of the Contract.

They shall not, without the Employer's consent, be copied, used or communicated to a third party by the Contractor, except as necessary for the purposes of the Contract.

1.12. PERMITS AND COMPLIANCE WITH LAWS

- a) The Employer shall obtain and maintain only those land rights, planning/environmental decisions, permits, approvals and grid-connection rights expressly allocated to the Employer in Annex 1. The

Contractor shall timely prepare and provide all technical documents, designs, statements and cooperation reasonably required for the Employer to obtain or maintain such items.

- b) The Contractor shall be responsible for respecting and executing the Works in accordance with, among other things, the planning, zoning, environmental or similar permission for the Permanent Works, and any other licenses, exemptions, permits and approvals, local building and construction permits, and easements obtained for the construction and operation of the BESS Facility, all of such as are found in the Contract annexes.
- c) Except for permits and approvals expressly allocated to the Employer, the Contractor shall, at its own cost, give all notices and obtain and maintain all permits, approvals, consents, certifications and registrations required under Applicable Laws for its design, procurement, construction, installation, testing, commissioning, defect-remedy and other Works, and shall indemnify the Employer against consequences of the Contractor's failure to do so.
- d) The Contractor shall be bound by any and all resolutions which the local authorities may issue, without any limitation in accordance with Applicable Laws.
- e) The Contractor shall be responsible for obtaining and maintaining all the consents and permits, certification or registration required by Applicable Laws for operating and/or conducting its business and the Works on Site.
- f) The Contractor shall indemnify and hold the Employer harmless for fines and penalties incurred as a result of the violation by the Contractor of the Applicable Laws during the execution of the Works by the Contractor.
- g) In particular, the Contractor shall, as part of the Works, prepare and submit all documents, designs, applications and other materials required to obtain any amended building permit (*zamienne pozwolenie na budowę*) necessary for the proper execution of the Works. For this purpose, the Contractor shall act in the name and on behalf of the Employer before the competent authorities on the basis of an appropriate power of attorney granted by the Employer. The Contractor shall diligently conduct the relevant administrative proceedings, promptly respond to requests of the authorities and keep the Employer informed of their progress. The Contractor shall initiate and conduct such proceedings sufficiently in advance and in such manner as to ensure that the amended building permit is obtained in due time so as not to delay or otherwise adversely affect the proper and timely performance of the Contract.
- h) The Employer shall, at its own cost, obtain and maintain a licence for the storage of electricity required under the Energy Law Act (*pl koncesja na magazynowanie energii elektrycznej*) in connection with the operation of the BESS Facility. The Contractor shall fully and promptly cooperate with the Employer in connection with the preparation, filing and conduct of any proceedings relating to such licence and shall provide, without undue delay and in any event no later than within three (3) Business Days following the Employer's request, all documents, technical data, certificates, declarations, statements, drawings, specifications, test results and other

information reasonably required for the purpose of obtaining, maintaining or amending such licence. The Contractor shall also, within the same time limit, provide any supplements, corrections or clarifications to such documents or information as may be reasonably requested by the Employer or required by the competent authority.

1.13. ENTIRE AGREEMENT. MODIFICATIONS

This Contract contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements and commitments with respect thereto. There are no other oral understandings, terms or conditions and neither Party has relied upon any representation, express or implied, not contained in this Contract.

This Contract may be modified or amended only by an instrument in writing, otherwise null and void, signed by all of the Parties hereto.

2. 2. EMPLOYER

2.1. RIGHT OF ACCESS TO THE SITE

The Employer shall hand over the Site to the Contractor on the date agreed by the Parties. The Site shall comprise all areas falling within the boundaries specified in Annex 1.

Upon handover of the Site to the Contractor, the Contractor shall assume full care, custody, control and responsibility for the Site, the Works, all materials, equipment, temporary works, facilities and other property located on or brought onto the Site in connection with the Works, and shall remain responsible for their proper protection, security, maintenance and condition until completion and acceptance of all Works by the Employer in accordance with the Contract.

From the date of handover of the Site until completion and acceptance of all Works, the Contractor shall bear the risk of any loss of or damage to the Site, the Works, materials, equipment and other property under its care, custody or control, except to the extent that such loss or damage is directly caused by an act or omission of the Employer or another contractor engaged directly by the Employer. The Employer shall ensure that the Contractor has the necessary rights of access to and use of the Site throughout the period required to perform the Works. Employer and persons authorised by the Employer may access and perform activities on the Site, provided that they do not unreasonably interfere with the Contractor's performance of the Works.

The Employer shall have the right to enter and inspect the Site at any time upon giving the Contractor at least one (1) Business Day's prior notice. No prior notice shall be required where, in the Employer's reasonable opinion, immediate access is necessary due to an actual or potential threat to life, health, safety, property or the environment, or in order to prevent or mitigate material damage.

The Employer may withhold handover of, or access to, the Site until the Contractor has duly provided the Performance Security required under the Contract.

2.2. GRID CONNECTION

The Employer is the party to the Connection Agreement with PSE and shall maintain the connection rights and perform those obligations which by law or by their nature must be performed by the Employer as a grid user. The Contractor shall perform, on a back-to-back basis, all technical, design, construction, testing, commissioning, documentation and cooperation obligations under the Connection Agreement and PSE requirements which are allocated to the Contractor by Annex 1 or are reasonably necessary to achieve the contractual result.

The Contractor shall prepare all technical documentation and data required for PSE submissions, to amend Connection Agreement, participate in PSE meetings, support and perform compliance tests within its Scope, promptly remedy non-compliance and provide test results, declarations and records in sufficient time for the Employer to meet each PSE Milestone.

Where PSE participation, witnessing, approval, or operational action is required for any of the grid compliance Test or energisation step, the Employer shall coordinate the formal interface with PSE, and the Contractor shall provide all equipment, personnel, documentation, test procedures, and reasonable technical assistance required for successful and timely completion.

2.3. EMPLOYER'S PERSONNEL

The Employer shall be responsible for ensuring that the Employer's Personnel:

- a) cooperate with the Contractor's efforts under Clause 4.5 CO-OPERATION AND INTERFACE, and
- b) take actions similar to those which the Contractor is required to take under Clause 4.7 SAFETY PROCEDURES and Clause 4.15 PROTECTION OF THE ENVIRONMENT.

2.4. PAYMENT OBLIGATION

The Employer commits to pay the Contractor the Contract Price stated in Clause **16.1 THE CONTRACT PRICE** in consideration of the Works and all other sums required to be paid by the Employer pursuant to the terms of the Contract.

3. 3. THE EMPLOYER'S ADMINISTRATION

3.1. THE EMPLOYER'S REPRESENTATIVE

The Employer will appoint an Employer's Representative to act on his behalf under the Contract. In this event, he shall give notice to the Contractor of the name, address, duties and authority of the Employer's Representative.

The Employer's Representative shall carry out the duties assigned to him, and shall exercise the authority delegated to him by the Employer. Unless and until the Employer notifies the Contractor otherwise, the

Employer's Representative shall be deemed to have the full authority of the Employer under the Contract.

Employer's Representative is not authorized to change the written terms of the Contract; such amendment to the Contract shall require signatures from authorized signatories of the Employer. Employer's Representative is not authorized to release or discharge Contractor of its duties, obligations or responsibilities hereunder. The Employer's Representative shall not be entitled to issue any instruction to the Contractor that might be construed as being a Variation unless with the prior written consent of the Employer. Employer's Representative is not authorized to exercise the provisions in Clause **17**

TERMINATION & RESOLUTION BY EMPLOYER.

Contractor's liability including liability for errors, omissions, non-compliance and breach of the Contract shall in no manner be affected by any proposal, inspection, examination, testing, verification, test, consent, approval or similar act by Employer's Representative.

If the Employer wishes to replace any person appointed as Employer's Representative, the Employer shall give the Contractor no less than seven (7) Days' notice of the replacement's name, address, duties and authority, and of the date of appointment.

3.2. EMPLOYER INVESTMENT MANAGER

The Investment Manager, appointed by Employer, will undertake the following duties from the Commencement Date until the issuance of the PAC Certificate and the removal of all Punch List Items under this Contract, in relation to any of the foregoing matters:

- a) Supervise the coordination of the interfaces of the Contractor Works and other contractors' works, with the project management and reporting activities in accordance with the Project Time Schedule and with these Key Events,
- b) Control Contractor's obligations regarding Applicable Law, Norms and Standards and compliance with the specifications of this Contract and its Annexes. In particular, Investment Manager is entitled to stop the Works in case Health and Safety law and regulations breaches are verified, and,
- c) Assist Employer in the project management of works on Site,

Except as otherwise stated in the Contract:

- a) The Investment Manager is not authorized to amend the Contract or release or discharge Contractor of its duties, obligations or responsibilities. The Investment Manager shall not be entitled to issue any instruction to the Contractor that might be construed as being a Variation unless with the prior written consent of the Employer.
- b) Contractor's liability, including liability for errors, omissions, non-compliance and breach of the Contract, shall in no manner be affected by any proposal, inspection, examination, testing, verification, test, consent, approval or similar act by the Investment Manager.

- c) Whenever carrying out duties or exercising authority, specified in or implied by the Contract, the Investment Manager shall be deemed to act in the name and on behalf of the Employer.

The Investment Manager may issue to the Contractor or the other contractors (at any time) instructions which may be necessary for the execution of the Works if there is interference between Contractor Works and other contractors' works, and to remedy any defects, all in accordance with the Contract. The Contractor shall only take instructions from the Investment Manager or from its staff to whom the appropriate authority has been delegated under this Clause.

The Contractor shall comply with the instructions given by the Investment Manager or delegated assistant, on any matter related to the Contract. Whenever practicable, the Investment Manager or delegated assistant shall give instructions in writing or in documentary form. If the Investment Manager or a delegated assistant:

- a) gives an oral instruction, and
- b) receives a written or documentary confirmation of the instruction, from (or on behalf of) the Contractor, within two (2) Business Days after giving the instruction, and
- c) does not reply by issuing a written or documentary rejection and/or instruction within two (2) Business Days after receiving the confirmation,

then the confirmation shall constitute the written or documentary instruction of the Investment Manager or delegated assistant (as the case may be).

Whenever these Conditions provide that the Investment Manager shall proceed in accordance with this Clause to agree or determine any matter in regard to interface coordination, execution of works and handovers between Contractor and other contractors on Site, the Investment Manager shall consult with other contractors and Contractor in an endeavour to reach agreement. If agreement is not achieved, the Investment Manager shall endeavour to make a fair determination in accordance with the Contractor and the other contractors' obligations, taking due regard of all relevant circumstances and send a notice to Employer's Representative for each agreement or determination, with supporting particulars.

3.3. INSTRUCTIONS

The Employer may issue to the Contractor instructions which may be necessary in order for the Contractor to be able to perform his obligations under the Contract. Each instruction shall be given in writing and shall state the obligations to which it relates and the Clause (or other term of the Contract) in which the obligations are specified. If any such instruction constitutes a Variation, Clause **15 VARIATIONS AND ADJUSTMENTS** shall apply.

The Contractor shall take instructions from the Employer, or from the Employer's Representative or an assistant to whom the appropriate authority has been delegated under this Clause.

3.4. DETERMINATIONS

Whenever these Conditions provide that the Employer shall proceed in accordance with this Clause **3.4 DETERMINATIONS** to agree or determine any matter, the Employer shall consult with the Contractor in an endeavour to reach an agreement. If agreement is not achieved, the Employer shall make a fair determination in accordance with the Contract, taking due regard of all relevant circumstances.

The Employer shall give notice to the Contractor of each agreement or determination, with supporting particulars. Each Party shall give effect to each agreement or determination, unless the Contractor gives notice to the Employer of his dissatisfaction with a determination within fourteen (14) Days of receiving it. Either Party may then proceed in accordance with Clauses **23.3 TECHNICAL DISPUTE** and **23.4 ARBITRATION**.

4. 4. THE CONTRACTOR

4.1. CONTRACTOR'S GENERAL OBLIGATIONS

The Contractor shall design, execute and complete the Works and remedy Defects so that the Project constitutes a complete, fully integrated and operational BESS and satisfies the Contract, Applicable Laws, the Connection Agreement, the PSE requirements, Codes and Standards, the Employer Requirements, the RFQ and Good Industry Practice.

The Contractor shall be responsible for all labour, supervision, materials, Equipment, software, services, Temporary Works, interfaces and other items necessary to achieve the contractual result, whether or not expressly identified, if reasonably inferable or necessary for completion, Grid Connection, energisation, testing, COD or achievement of the Performance Guarantees.

The Contractor shall comply with all obligations of the Employer under the Connection Agreement which, by their nature, relate to design, procurement, construction, installation, testing, commissioning, documentation or technical cooperation and are capable of performance by the Contractor. The Contractor shall provide all information and documents required for the Employer to make the notifications, amendments and declarations to PSE under the Connection Agreement.

The Contractor acknowledges that the Project is co-financed by NFOŚiGW and shall perform the Contract in a manner enabling the Employer to comply with the Grant Agreement. Upon request made at least in documentary form (via e-mail), the Contractor shall provide, within 3 Business Days counted from the day of request, all invoices, breakdowns, acceptance protocols, payment evidence, certificates, test reports, serial-number lists, declarations of conformity, DNSH-related information and other documents required for NFOŚiGW settlement, audit or control. The Contractor shall retain such records for the period notified by the Employer.

To the extent attributable to a breach by the Contractor, the Contractor shall indemnify the Employer for any reduction, suspension, recovery or loss of NFOŚiGW funding, including interest and directly

related costs, subject only to the limitations expressly stated in Clause 19 and excluding any loss caused by the Employer's own breach or act.

The Contractor represents and warrants throughout the term of the Contract, including the warranty and defects period, that:

(a) neither the Contractor nor any of its Subcontractors or further subcontractors is or will be a person or entity subject to sanctions imposed in connection with Russia's aggression against Ukraine;

(b) for as long as the prohibition in Article 5k(1) of Council Regulation (EU) No 833/2014 of 31 July 2014 concerning restrictive measures in view of Russia's actions destabilising the situation in Ukraine, as amended from time to time, or any replacing provision, remains applicable, performance of the Contract, including contractual guarantee, statutory warranty (rękojmia), manufacturer-warranty, spare-parts and defect-remedy obligations, shall not involve any person or entity whose participation is prohibited by that provision;

(c) the Contractor shall immediately notify the Employer of any change affecting the representations above.

Any material breach or inaccuracy of the sanctions representations shall constitute a material Contractor default and entitle the Employer to suspend the affected performance, require replacement of the relevant entity and, where the breach is not capable of prompt cure or continued performance would expose the Employer to sanctions risk, terminate the Contract for Contractor default.

4.2. BONDS AND GUARANTEES

The Contractor shall, at its own cost, provide the security instruments specified below. The Performance Security and the Defects and Warranty Security are the two principal performance securities under the Contract and may be provided, at the Contractor's option, either in the form of the relevant bank or insurance guarantee payable on first demand, unconditional, irrevocable, further described below or as an interest-free cash security deposit (*kaucja gwarancyjna*) in the same amount and for the same security period.

(a) Performance Security (pl: Zabezpieczenie Należytego Wykonania Umowy): an irrevocable, unconditional, first-demand bank or insurance guarantee for **10%** of the Contract Price excluding VAT, in the form of Annex 5 or another form expressly accepted by the Employer, or, alternatively, a cash security deposit in the same amount. The Performance Security shall be provided no later than fourteen (14) Days after Notice to Proceed has been issued by the Employer and, in any event, before commencement of physical Works or payment of any Advance Payment and shall remain valid or retained until at least sixty (60) Days after PAC and delivery of a compliant Defects and Warranty Security.

The Performance Security shall secure all monetary claims of the Employer arising out of or in connection with the Contractor's failure to duly and timely perform its obligations under the Contract which are

required to be performed prior to or by PAC, including, without limitation, claims for contractual penalties, liquidation damages, damages, reimbursement of costs, costs of substitute performance, amounts payable following termination of the Contract, any reduction, recovery or loss of NFOŚiGW funding to the extent attributable to the Contractor, and any obligation of the Contractor to repay or reimburse all or any part of the Advance Payment, including any unamortised or otherwise unsettled portion thereof.

The Performance Security shall also secure claims which arose during its validity period but are quantified, become due or are asserted thereafter.

(b) Defects and Warranty Security (pl Zabezpieczenie Usunięcia Wad i Usterek): an irrevocable, unconditional, first-demand bank or insurance guarantee for **5%** of the Contract Price excluding VAT, in the form of Annex 6 or another form expressly accepted by the Employer, or, alternatively, a cash security deposit in the same amount. The Defects and Warranty Security shall be provided no later than seven (7) Business Days before the scheduled PAC and shall remain valid or retained throughout the Contractual Warranty Period plus six (6) months and, if any Defect-remedy obligation remains outstanding upon expiry of that period, until six (6) months after final completion of such obligation. If the Contractor fails to provide the Defects and Warranty Security by the required date, the Employer shall be entitled to retain (deduct) 5% of the Contract Price excluding VAT from the final payment or other amounts due to the Contractor and hold such amount as an interest-free Defects and Warranty cash security deposit.

The Defects and Warranty Security shall secure all monetary claims of the Employer arising out of or in connection with the Contractor's obligations relating to Defects, Punch List items, contractual warranty, statutory warranty (rękojmia), repair, replacement, re-performance, testing and re-testing of remedial works, including, without limitation, claims for contractual penalties, liquidation damages, damages, reimbursement of costs and costs of substitute performance incurred as a result of the Contractor's failure to properly or timely perform such obligations.

The Defects and Warranty Security shall also secure claims relating to Defects notified or circumstances occurring during the applicable warranty or security period, even if the relevant claim is quantified, becomes due or is finally determined after expiry of that period.

Each guarantee shall be issued by a reputable bank or insurance undertaking acceptable to the Employer and authorised to issue such guarantees in Poland or another Member State of the European Union or the European Economic Area (EEA). The Contractor shall submit the proposed wording of each guarantee to the Employer for approval before its issuance. The Employer may reject any wording which materially departs from the applicable form attached to the Contract.

If any guarantee is issued for a period shorter than the period for which the relevant security is required under the Contract, the Contractor shall, no later than twenty-one (21) Days before its expiry, procure an extension of such guarantee or provide a replacement guarantee complying with the Contract, so that the required security is maintained without interruption. Each guarantee shall expressly provide that failure to deliver such extension or replacement within the above period entitles the Employer to make a demand for payment under the guarantee.

If the Contractor fails to extend or replace the relevant guarantee within such period, the Employer may draw such guarantee up to its full available amount and retain the proceeds as an interest-free cash security deposit replacing that guarantee. Such cash security shall secure the same obligations, remain subject to the same security period and be released on the same terms as the guarantee which it replaces.

If the Contractor otherwise fails to deliver, renew, extend, replace or replenish any required security on time, the Employer may, without prejudice to any other rights or remedies: **(i)** withhold from any amount due to the Contractor an amount up to the required security and retain it as an interest-free cash security deposit; and/or **(ii)** before expiry of an existing guarantee, make a demand under such guarantee and retain the proceeds as an interest-free cash security deposit.

Any cash security deposit shall secure the same categories of claims as the guarantee or security which it replaces and shall be returned in its nominal amount after expiry of the relevant security period and settlement of all secured claims, or, where applicable, within fourteen (14) Days after delivery of a replacement guarantee accepted by the Employer.

Any amount drawn under a guarantee or applied from a cash security deposit shall, if the secured obligation or relevant security period remains ongoing, be replenished by the Contractor within seven (7) Business Days after the Employer's demand so that the required level of security is maintained.

4.3. CONTRACTOR'S REPRESENTATIVE

The Contractor shall appoint the Contractor's Representative and shall give him all authority necessary to act on the Contractor's behalf under the Contract. The authority of the Contractor's Representative does not cover a change to the written terms of the Contract; such amendments to the Contract shall require the signature from the authorized signatory of the Contractor.

4.4. SUBCONTRACTORS

The Contractor may engage Subcontractors only in accordance with this Clause, the RFQ and Article 647¹ of the Polish Civil Code. The Contractor remains fully responsible for every act and omission of each Subcontractor and Further Subcontractor as for its own acts and omissions.

Before any Subcontractor commences construction works, the Contractor shall submit to the Employer, in the form and time required by Article 647¹ of the Polish Civil Code and this Contract, the detailed scope of subcontracted works and the proposed subcontract or relevant extract identifying the parties, scope and payment terms.

Major Subcontractors, including the BESS OEM, battery cell/module supplier, PCS supplier, main transformer supplier, EMS/PPC/SCADA supplier and HV contractor, require the Employer's prior written approval. The Employer will not unreasonably withhold this approval. Any change of a Major Subcontractor or material technology requires the Employer's prior written approval.

The Contractor shall ensure that each subcontract requires timely payment to Subcontractors, prohibits further subcontracting beyond the level approved by the Employer, contains sanctions-compliance and audit/document obligations corresponding to this Contract, and enables the Contractor to provide the Employer with all information required for NFOŚiGW, PSE and statutory purposes.

Where any part of the Works covered by an invoice has been performed by a Subcontractor or Further Subcontractor, submission of the following documents together with the invoice is a condition precedent to payment of the corresponding amount by the Employer:

- (i) a Contractor statement identifying all Subcontractors and Further Subcontractors involved in the invoiced Works;
- (ii) for each such entity, an original or electronically signed statement confirming that all remuneration for the relevant invoiced scope has been fully paid;
- (iii) in the same statement, a waiver and release, to the extent legally permissible, of all claims against the Employer and the Contractor arising from that paid scope, including claims based on statutory joint and several liability;
- (iv) relevant subcontractor acceptance protocols (if any); and
- (v) a quantitative and financial breakdown of the subcontracted Works if requested by the Employer.

If no Subcontractor or Further Subcontractor participated in the invoiced Works, the Contractor shall submit with the invoice a statement to that effect. The Employer may withhold the affected payment until the required documents are complete and satisfactory, without the Contractor being entitled to interest for the period attributable to such non-compliance.

If a Subcontractor or Further Subcontractor asserts a payment claim against the Employer or the Employer makes a direct payment in connection with the Works, the Employer may deduct or set off

the amount paid and all reasonable related costs from any amount due to the Contractor or from any security. The Contractor shall indemnify the Employer against amounts, interest, costs and expenses arising from the Contractor's or its subcontracting chain's failure to pay Subcontractors, to the extent permitted by law.

The Employer may inspect at any time the Contractor's financial records relating to settlement with Subcontractors and Further Subcontractors to the extent relevant to the Works. The Contractor shall procure corresponding access rights in its subcontracts and shall cooperate in any NFOŚiGW audit or control of Contractor/Subcontractor documents.

4.5. CO-OPERATION AND INTERFACE

The Contractor shall coordinate the works on Site and the interfaces with other participants engaged in the Project, on Site, under the supervision of the Employer's Investment Manager and in accordance with the specifications set out in this Contract. The Contractor shall remain responsible for coordinating and completing its scope, including services to be performed by Subcontractors.

For the avoidance of doubt, the Contractor shall also be responsible for coordinating all technical interfaces relating to the Works, including electrical, mechanical, communication, control, EMS, BMS, SCADA, PPC, fire protection and cybersecurity interfaces falling within the Contractor's Scope.

4.6. SETTING OUT

The Contractor shall set out the Works in relation to original points, benchmarks, lines and levels of reference specified in the Contract. The Contractor shall be responsible for the correct positioning, alignment, dimensions and levels of all parts of the Works, and shall, at its own cost, promptly rectify any error therein.

The Employer may verify the setting out at any time. Any verification, inspection or approval by the Employer shall not relieve the Contractor of its responsibilities under this Clause.

The Contractor shall protect and preserve all survey markers, benchmarks and reference points and control points established for the Project. Any such marker, benchmark, reference point or control point lost, disturbed or damaged due to the acts or omissions of the Contractor shall be promptly reinstated or replaced by the Contractor, at its own cost, to the reasonable satisfaction of the Employer.

4.7. SAFETY PROCEDURES

The Contractor shall:

- a) comply with all Applicable Laws and all Site health, safety and environmental requirements ,
- b) take care of the safety of Contractor's persons, its subcontractors, and affiliate's personnel entitled to be on the Site,

- c) use reasonable efforts to keep the Site and Works on Site clear of unnecessary obstruction and to maintain safe working conditions at all times.
- d) prepare, implement and maintain appropriate health, safety and environmental procedures throughout the execution of the Works, in accordance with Good Industry Practice and the Employer's Site rules
- e) ensure that all personnel under its control receive appropriate safety training and comply with the Contractor's HSE procedures and the Employer's Site safety rules.

4.8. SITE DATA AND SOIL CONDITIONS

The Contractor shall, after the Commencement Date and at its own cost, carry out such geotechnical, soil and other Site investigations as are reasonably necessary for the proper design and execution of the Works.

The Contractor shall not be responsible for ground, subsoil, geological, geotechnical, hydrological or other physical Site conditions which were not disclosed by the Employer and could not reasonably have been known to the Contractor before submission of its Offer.

If such conditions materially affect the Works, the Contractor shall promptly notify the Employer and shall be entitled to an appropriate extension of time and adjustment of the Contract Price in accordance with the Variation procedure.

4.9. HAZARDOUS MATERIALS

If Contractor or any of its Subcontractors or vendors releases any Hazardous Materials on, at, or from the Site, or becomes aware of any person who has stored, released or disposed of Hazardous Materials on, at, or from the Site during the Work, Contractor, as soon as it becomes aware of such occurrence, shall immediately notify Employer in documentary form. If Contractor's Work involved the area where such release occurred, Contractor shall immediately stop any Work affecting the area.

Except for Hazardous Materials incorporated into the Work, Contractor shall, at its sole cost and expense, take all necessary or desirable remedial action to clean up or arrange and contract for the disposal, transportation, record-keeping and reporting of Hazardous Materials (a) brought to the Site by the Contractor or its Subcontractor, or (b) generated by or produced by the Contractor or its Subcontractor from the materials or equipment brought to the Site by Contractor or Subcontractor (not pre-Existing Hazardous Materials); in each case by licensed, insured, competent and professional contractors in a safe manner and in accordance with Applicable Law and any governmental Authority requirements.

4.9.1. Discovery of Hazardous Materials after Commencement Date

Contractor acknowledges that Employer has provided the relevant information regarding Hazardous Materials.

Contractor shall not be responsible for any pre-existing Hazardous Materials encountered at the Project Site. If the Contractor encounters Hazardous Materials in or on the Site which create a safety or health hazard for the Employer, Contractor, any Subcontractor or any employee, agent or representative of either Party, or which would create a health hazard for the general public or the surrounding environment, the Contractor :

- (i) may suspend the performance of Works to the extent required to avoid any such safety or health hazard and until sufficient action to protect employees of Employer, Contractor and Subcontractors has been taken; and
- (ii) shall immediately notify the Employer.

If the Contractor suffers delay as a result of any such event, the Contractor shall give notice to the Employer and, provided that the Contractor is not in default of its obligations, shall be entitled after notice to the Employer, to an extension of time for any such delay under Clause **8.4 EXTENSION OF TIME FOR KEY EVENTS AND OF TIME FOR COMPLETION.**

4.9.2. Use and Storage of Hazardous Materials

The Contractor shall not bring any Hazardous Materials on the Site, nor shall permit any Subcontractor to bring such material, other than Hazardous Materials to be used by Contractor or supplied to Employer and incorporated into the Works in a manner that both:

- a) does not violate, or require reporting or disclosure under, any Applicable Laws relating to environmental protection, and
- b) is consistent with prudent industry practices for manufacturing, delivering, constructing, assembling, testing, commissioning, operating and maintaining BESS projects.

The Contractor shall bear all responsibility and liability for such materials brought and used on the Site. The Contractor shall ensure that all lithium-ion batteries, battery modules, battery containers and other electrochemical storage equipment are transported, stored, handled, installed and commissioned in accordance with the manufacturer's requirements, Applicable Laws, Good Industry Practice, Codes and Standards and all applicable fire safety regulations.

4.10. RELATIONSHIP WITH LANDOWNERS

The Employer shall be responsible for obtaining the rights of access to the Site and for communicating to the Contractor any restrictions, obligations or arrangements agreed with the landowners, occupiers or other authorised third parties.

The Contractor shall comply with all reasonable access rules, restrictions and instructions communicated by the Employer and shall ensure that its Personnel, Subcontractors and suppliers do likewise.

Any gates, barriers or access control devices required to remain closed under agreements with landowners or occupiers shall be kept closed at all times, except for the time strictly necessary to allow the passage of personnel, vehicles or equipment.

The Contractor shall be liable for any damage caused by the Contractor, its Personnel, Subcontractors or suppliers to crops, livestock, fences, access roads, utilities or any other property belonging to landowners, occupiers or third parties, to the extent arising from the performance of the Works. The Contractor shall promptly repair such damage or compensate the affected party in accordance with Applicable Laws.

The Contractor shall install, maintain and, where required under the Contract, remove all temporary fencing, barriers, signage and access control measures forming part of the Works, in accordance with the Contractor's Scope, the interface and responsibility requirements in Annex 1 and any Site-specific requirements set out in the Employer Requirements.

4.11. RIGHTS OF WAY AND FACILITIES

The Contractor shall bear all costs and charges for special and/or temporary rights-of-way which he may require, including those for access to the Site (on public roads, etc). The Contractor shall also obtain, at his risk and cost, any additional facilities outside the Site which he may require for the purposes of the Works.

4.12. ROADS

The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's Personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

- a) the Contractor shall be responsible for any maintenance which may be required for his use of access roads;
- b) the Contractor shall provide all necessary signs or directions along access roads and shall obtain any permission which may be required from the relevant authorities for its use of routes, signs and directions;
- c) the Employer shall not be responsible for any claims which may arise from these or otherwise of any access road,
- d) the Employer does not guarantee the suitability of the access roads to the Site,
- e) costs due to non-suitability of the access roads, for the use required by the Contractor, shall be borne by the Contractor,
- f) the Parties will meet before transportation begins in order to sign a certificate of road inspection that will constitute the baseline, and
- g) the Parties will meet after transportation of the Goods under this Contract has been completed to compare the actual status of the Roads with the baseline and define works that the Contractor must execute before the Take Over. The Contractor will be responsible for cleaning and restoring public roads.

4.13. TRANSPORT OF GOODS

The Contractor shall provide the Employer, on a weekly basis, a detailed transport program specifying at minimum the estimated and confirmed time of departure, time of arrival to the Port (which will be defined before the Commencement Date) and time of arrival to the Site with respect of the main equipment of the Project.

The Contractor shall be responsible for packing, loading, transporting, receiving, unloading, storing and protecting all Goods, Materials and other things required for the Works.

The Contractor shall also be responsible for unloading, storing and protecting the Free Issue Material.

The Contractor shall secure and maintain marine cargo insurance on an all risks basis with cover in accordance with prevailing international market terms and conditions (i) insuring all materials, equipment, machinery, spares, supplies and other items to be incorporated in the Works against all risks of physical loss or damage by any means of transport from anywhere in the world to the Site or vice versa (from warehouse to warehouse) so including intermediate transit, intermediate transshipments, and all inland transportation (ii) from the date of first shipment until delivery at Site for last shipment and (iii) with a limit not less than the equivalent of maximum possible value of any one vessel or conveyance.

The complete requirements of this insurance are given in Clause **20 INSURANCE**.

The Contractor shall indemnify and hold the Employer harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from the transport of Goods and shall negotiate and pay all claims arising from their transport.

The Goods may be stored temporarily within the Site.

4.14. CONTRACTOR'S EQUIPMENT

The Contractor shall be responsible for all Contractor's Equipment. When brought to the Site, Contractor's Equipment shall be deemed to be exclusively intended for the execution of the Works.

4.15. PROTECTION OF THE ENVIRONMENT

Contractor shall take all measures necessary to protect the environment, both on and outside the Site, to avoid any damage, injury or nuisance to persons or property, resulting from pollution or any other consequence of the performance and the Operation of the Works, including pollution arising from the storage, handling, installation, commissioning or replacement of battery systems, electrolyte leakage, contaminated firefighting water, hazardous waste and damaged battery modules and to comply with the environmental management plan, as per the Applicable Laws, Code and Standards. Contractor shall ensure that any emissions, surface discharges, evacuations, effluents emanating from the Works shall neither exceed the thresholds stipulated in the Contract nor the thresholds provided by Norms and Standards and by Applicable Laws.

In case of temporary storage areas agreed to be affected during construction, Contractor shall take all actions to return the area to its original state or to a condition equivalent to that existing prior to the commencement of the Works, fair wear and authorised permanent Works excepted

In the event where Contractor fails to comply with the obligations above and in the absence of any satisfactory response within eight (8) Days of notice by Employer, the Employer may take any necessary dispositions, either itself or by any contractor it may choose, the consequent costs will be at the expense of the Contractor and deducted from any amount owed or to be owed in the future to the Contractor. Contractor shall indemnify Employer for any fine, penalty or third-party claim incurred as a result of non-compliance by Contractor with the Applicable Law, Norms and Standards and, more generally, with its obligations under this Clause.

Regarding noise, Contractor shall take all measures to avoid nuisances during the time of construction. The Contractor shall take reasonable measures to protect wildlife, vegetation and environmentally sensitive areas identified in the Employer's Requirements, environmental Permits or Applicable Laws.

The Contractor shall maintain records and make reports concerning environment as the Employer may reasonably require. Contractor must submit, upon the Employer's request, detailed reports including information which will be required by the Employer, with regard to compliance with its environmental obligations. Contractor shall have as well suitable personnel providing information and details in this regard when the Financing Parties and relevant authorities perform inspections on Site.

The Contractor shall take all reasonable steps to protect the environment (both on and off the Site) and in particular shall comply with any provisions of environmental mitigation measures.

4.16. RESPONSIBLE QUALIFIED EXPERTS

Contractor shall be responsible to provide Employer with the services of a responsible qualified expert, including performing the role of the construction manager (*pl kierownik budowy*) in line with the Contruction law requirements, that shall be a qualified and registered local engineer (or technical engineer) holding all professional qualifications, registrations, licences and authorisations required under the Applicable Laws and shall sign the documentation of the BESS Facility required to commence the Works (where such signature or certification is required by Applicable Laws). Additionally, a responsible, qualified expert provided by the Contractor shall sign all declarations, certificates and statements of responsibility required under Applicable Laws and, in particular, under RFQ. Contractor shall also appoint a technical director or equivalent responsible site manager required under Applicable Laws (registered local architect or engineer) for the execution of the project who shall be frequently present on Site.

For Battery Energy Storage System (BESS) Projects, the Contractor shall designate a suitably qualified engineer with demonstrated experience in battery systems, electrical integration and commissioning activities.

4.17. ELECTRICITY, WATER, GAS AND TELECOM

Contractor shall obtain and maintain any required permit, license, approval, authorization and permission required for the electricity, water, gas and telecom connection, as well as payment of any taxes, expenses derived from the proper obtainment of the said permits, licenses, approvals, authorizations and permissions and shall pay for the used quantities of electricity, water, gas, telecom and other services as may be available on the Site for the purposes of the construction, from the Commencement Date to the date of issuance of the Take Over Certificate.

After the date of issuance of the Take Over Certificate, the Contractor shall be entitled to use such electricity, water, gas, telecom and other services as may be available on the Site during the Test and Defects Notification Period. The Contractor shall, at its risk and cost, provide any appliances necessary for the connection and the use of such services. The used quantities shall be re-invoiced to the Contractor by the Employer in accordance with the bills received from utilities or suppliers and deducted from any sums payable to the Contractor.

4.18. EMPLOYER'S EQUIPMENT & FREE-ISSUED MATERIAL

If the Contract provides for machinery, equipment or Free-Issued Materials to be supplied by the Employer, they shall be brought on to the Site by the Employer, or Employer's other contractor, at its cost and risk, within the time specified in the Contract.

The Contractor shall inspect the machinery and equipment and Free-Issued Materials upon receipt at the Site and shall notify the Employer, the Employer's Representative of any visible lack or defect. Then, the Employer may take any necessary measure or may ask the Contractor to proceed to such rectification as a Variation.

After such visual inspection above, this machinery, equipment and Free-Issued Materials shall be placed under the guard, risks, custody and control of the Contractor. The Contractor's obligations of inspection, care, custody and control shall not relieve the Employer of his liability for any undetectable shortage, defect or default. Contractor shall also undertake to operate such equipment and materials in accordance with the Contract.

The Contractor shall thoroughly inspect such Free-Issued Materials upon receipt, verify their apparent condition, completeness, conformity with the Contract requirements and compatibility with the Works, and shall promptly notify the Employer of any visible defect, shortage, damage or inconsistency. Failure to provide such notice within the period specified in the Contract shall constitute acceptance of the apparent condition of the Free-Issued Materials. The Contractor shall not be liable for latent or inherent manufacturing defects in such Free-Issued Materials, except to the extent that such defects should reasonably have been identified by an experienced EPC contractor during receipt, inspection, storage, installation, testing or commissioning, or where the Contractor has failed to comply with its obligations regarding inspection, storage, handling, installation, testing, commissioning or notification. Contractor

shall be responsible for the storage of the Free-Issued Materials, as well as any and all consumable parts, materials, supplies and other equipment required to assemble and install such Free-Issued Materials, as well as any other property owned or leased by Contractor or any Subcontractor pursuant to the real property rights or as otherwise provided by Contractor.

The Contractor shall store the Free-Issued Materials in compliance with the relevant manufacturer's storage instructions and warranty conditions.

Contractor shall not have the right to refuse deliveries of the Free Issued Material and any cost incurred by the Employer related to Contractor's failure to provide adequate storage space at the convened time will be borne by the Contractor.

4.19. PROJECT TIME SCHEDULE

The Contractor shall administer the Works in accordance with the Project Time Schedule in Annex 4 and shall regularly update the status of Works to reflect the actual progress of the Works.

Notwithstanding the above, the Contractor shall be entitled to an extension of time in case of Adverse Weather Conditions exceeding thirty (30) Days in aggregate during the execution of the Works. Such Adverse Weather Conditions shall be justified by the Contractor to the Employer with contemporaneous meteorological records and evidence demonstrating the actual impact on the critical path of the Project Time Schedule, and the Contractor will not be entitled to payment of any Cost for delays caused by such Adverse Weather Conditions. No extension of time shall be granted for climatic conditions, seasonal weather events or adverse weather conditions that could reasonably have been anticipated by an experienced contractor operating in the Poland.

For the purposes of this Clause, "Adverse Weather Conditions" means weather conditions at the Site which (i) materially exceed the statistical weather conditions applicable to the Site over the preceding five (5) years, (ii) could not reasonably have been anticipated by an experienced EPC contractor, and (iii) prevent, for safety or technical reasons, performance of activities on the critical path for more than two (2) consecutive Days

For the application of the Adverse Weather Conditions here above, meteorological data shall be delivered by the BESS Facility's weather station, if it has already been commissioned, or, if not, by the closest public weather station.

The Contractor shall only be entitled to an extension of time to the extent it demonstrates that:

- (i) the weather event exceeds the historical weather data applicable to the Site;
- (ii) the event directly affects activities located on the critical path;
- (iii) the Contractor has implemented all reasonable mitigation measures;
- (iv) the Contractor notifies the Employer within five (5) Business Days after becoming aware of such event.

The Contractor shall use all reasonable endeavours to mitigate the effects of Adverse Weather Conditions and to minimise any resulting delay, including by resequencing the Works where reasonably practicable.

4.20. PROGRESS REPORTS

The Contractor shall prepare monthly progress reports and submit them to the Employer in a proper and agreed format as a PDF, duly signed, in one electronic copy by email and, if requested by the Employer, in addition in paper as the original. The first report shall cover the period up to the end of the first calendar month following the Commencement Date. Reports shall be submitted monthly thereafter, each within seven (7) Days after the last day of the period to which it relates.

Reporting shall continue until the later of the two events hereunder:

- a) Take Over Certificate is issued, or
- b) Contractor has completed all outstanding work which is highlighted in the Punch List (if any) attached to the Take Over Certificate.

Each report shall include:

- a) a detailed project schedule based on Annex 4 Project Time Schedule;
- b) charts and detailed descriptions of progress, including each stage of design, engineering , Contractor's Documents, procurement, manufacture, delivery to Site, construction, erection, testing, commissioning, energisation and trial operation, in addition to particulars of any events likely to jeopardize the Project schedule and the measures being (or to be) adopted in order to remedy such events;
- c) for the manufacture of each main item of the Works and Materials (to the extent that such item is already designated and or assigned to the project during assembly and/or manufacturing), the name of the manufacturer, manufacture location, percentage of progress, and the actual or expected dates of shipment and arrival at the Site;
- d) status of the obtaining of the necessary permits and authorisations for transport of equipment;
- e) the details described in Clause 6.8 RECORDS OF CONTRACTOR'S PERSONNEL AND EQUIPMENT;
- f) a list of Variations, notices given under Clause **23 CLAIMS DISPUTES AND ARBITRATION**;
- g) comparisons of actual and planned progress including identification of any activities affecting the critical path and the measures being (or to be) adopted to overcome delays if any;
- h) copies of quality assurance documents, test results and certificates of materials;
- i) safety statistics, including details of any hazardous incidents and activities relating to environmental aspects; and
- j) any events of Force Majeure.
- k) a summary of the status of inspections, Factory Acceptance Tests (FAT), Site Acceptance Tests (SAT), commissioning activities and any outstanding non-conformities.

- l) an updated register of the key procurement activities, including long lead items and their forecast delivery dates
- m) a summary of the status of Punch List items, corrective actions and outstanding technical issues
- n) photographic records of the progress of the Works, illustrating the principal construction activities carried out during the reporting period

A daily log book shall be made and maintained available on the Site.

4.21. SECURITY OF THE SITE

Unless otherwise stated in the Contract, the following dispositions are applicable until the Take Over date:

- a) The Contractor is responsible for the security of the Site and for keeping unauthorised persons off the Site. The Contractor shall keep a record of persons entering and leaving the Site, including name, identity card number, and vehicle identification number, and make it available to the Employer upon request.
- b) Authorized persons shall be limited to the Contractor's Personnel and Employer's Personnel; and to any persons notified to the Contractor by the Employer, Employer's Representative or Investment Manager.
- c) The Contractor shall hire, at its own cost and risk, a local security services company to provide services anytime the Contractor is not present on Site (night shift, weekends and public holidays). The Contractor will manage security directly when it is present on Site. The scope of these services must include all open access to the Site and all Employer's Equipment and Free-Issued Materials stored on the Site

It is understood that, even when there may be other contractors performing works on Site, the Contractor shall be fully responsible with regard to the Employer for complying with the obligations regarding security of the Site.

The Contractor shall be responsible for the care, custody and protection of the Works, all equipment at the Site, the Employer's Equipment and the Free-Issued Materials from the time they are delivered to and accepted at the Site until Take Over. During such period, the Contractor shall bear the risk of any loss, theft, vandalism or damage thereto and shall, at its own cost, promptly repair, replace or reinstate the affected items, except to the extent such loss or damage results from an act or omission of the Employer or a risk expressly allocated to the Employer under the Contract.

Upon Take Over, responsibility for the security and protection of the Site and the Works shall pass to the Employer, except in respect of any Works or areas remaining under the Contractor's control for the purpose of completing outstanding Works or remedying Defects.

That being said, if Take Over occurs and Punch List B has not been fully cleared, the Employer will be granted responsibility as mentioned above, but the Contractor will bear the costs related to surveillance

and security of the Site until such date when all punch list items related to Site security (fences, CCTV and others) have been cleared.

4.22. CONTRACTOR'S OPERATIONS ON SITE

The Contractor shall confine his operations to the Site, cable rout and connection point, and to any additional areas which may be agreed with the Employer as working areas. The Contractor shall take the necessary precautions to keep the Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land and shall ensure that its operations do not interfere unnecessarily with the Employer's activities or those of other contractors working on the Site.

During the execution of the Works, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage and rubbish produced by the Contractor during the course of its work and Temporary Works which are no longer required and shall maintain the Site in a clean, safe and orderly condition at all times in accordance with Good Industry Practice.

Within the timeframe set forth in Clause 10 TAKING OVER, the Contractor shall clear away and remove all Contractor's Equipment, surplus material, wreckage and rubbish produced by the Contractor during the course of its work. However, the Contractor may retain on Site, during the Defects Notification Period, such Contractor's Equipment and materials as are required for the Contractor to fix Punch List Category B elements as well as Defects, provided that such equipment and materials do not unreasonably interfere with the Employer's use, operation or maintenance of the Works.

The Contractor shall not remove, relocate or dispose of any Employer's Equipment or Free-Issued Materials without the Employer's prior written approval.

If the Contractor fails to comply with the above provisions, Employer may, after notice to remedy has remained without satisfactory response for more than thirty (30) Days, remove, dump, sell or otherwise dispose of any remaining Site Equipment, surplus material, wreckage, rubbish and Temporary Works, at Contractor's risk and cost. In the event of sale, Employer shall be entitled to retain, from the proceeds of such sale, an amount sufficient to meet the costs incurred in clearing and in restoring the Site. The balance of the proceeds shall be paid to the Contractor. If the proceeds of the sale are insufficient to meet the Employer's costs, the outstanding balance shall be recoverable from the Contractor by the Employer and deducted from any sums payable to the Contractor.

4.23. TRAINING OF EMPLOYER'S PERSONNEL

The Contractor shall adequately train the Employer's personnel, its Subcontractor's personnel, and other parties as designated by the Employer, on the operation and use of the facilities. Such training shall be carried out in two (2) sessions, one during the Time for Completion and another during the Defects Notification Period, upon request by the Employer.

The training shall include both theoretical and practical sessions covering the operation, monitoring, routine inspection, preventive maintenance, emergency procedures, safety requirements and shutdown and restart procedures applicable to the Works.

For Battery Energy Storage System (BESS), the training shall additionally cover battery operation, Battery Management System (BMS), Energy Management System (EMS), thermal management systems, fire detection and suppression systems, emergency response procedures, alarms, fault diagnosis and recovery procedures.

The Contractor shall provide all training materials, operating manuals, maintenance manuals and presentation documents in English and in Polish where required by the Contract, PSE, Codes and Standards, NFOŚiGW or Applicable Laws. Such documentation shall be delivered in electronic format and may be used by the Employer for future internal training purposes.

The Contractor shall maintain attendance records signed by all participants and shall provide copies of such records to the Employer upon completion of each training session.

4.24. VESTIGES AND REMAINS

In the event of discovery on the Site, of fossils, coins, articles of value or antiquities, structures and other artefacts or objects of geological or archaeological interest, war remains and contaminated soil, the Contractor shall take all precautions to prevent its employees, agents, Subcontractors or other parties under its control from removing or damaging any such artefacts or objects. Upon discovering any such remains or objects, the Contractor shall immediately advise the Employer's Representative with copy to the Investment Manager. Employer's Representative with the assistance of the Investment Manager shall issue instructions for dealing with such discoveries in accordance with Applicable Laws.

In the event that the instructions of the Employer's Representative give rise to delays and/or Costs in the performance of the Works, the Contractor shall give notice to the Employer's Representative and Investment Manager thereof, within fifteen (15) Days of the instructions of the Employer's Representative, failing which any claim for such delays or Costs shall lapse. Contractor shall then, by means of a second notice given to the Employer's Representative within twenty (20) Days, specify and justify the extension of the Time of Completion and, where needed, the postponement of Key Events as well as the Costs it requests. The Investment Manager shall then consult the Contractor pursuant to Clause **3.2 EMPLOYER INVESTMENT MANAGER** and send its Determination to the Employer's Representative for validation:

- (a) to extend, if necessary, the Time for Completion and postpone one or several Key Events in accordance with provisions of Clause **8.4 EXTENSION OF TIME FOR KEY EVENTS AND OF TIME FOR COMPLETION**, and
- (b) to add to the Contract Price, if necessary, the Cost resulting therefrom,

The Employer's Representative shall notify its decision to the Contractor.

Failure by the Employer's Representative to notify a decision within thirty (30) Days shall not constitute deemed approval of the Contractor's request. The Contractor may issue a reminder and, if the matter

remains unresolved, pursue the claim solely in accordance with Clause 23.2 CONTRACTOR'S CLAIMS and the dispute-resolution provisions.

4.25. NO LIENS

Contractor shall not directly or indirectly create, incur, assume or suffer to be created by it or any Subcontractors, employees, labourers, material men or other suppliers of goods or services any lien or encumbrance on the Site or any part of, or interest in, any thereof, and to the extent such a lien is licit under the Applicable Law.

4.26. CONTRACTOR'S CUSTOMS CLEARANCE AND IMPORT TAXES

The Contractor shall be responsible for conducting all import formalities, procedures and paperwork of the Materials under its scope, in accordance with the Applicable Laws, with regards to the customs clearance. Any delay caused by negligence, willful misconduct or lack of good diligence of the Contractor will not entitle the Contractor to an extension of Time for Completion.

All port dues, landing charges, pilotage, lighterage, customs duties, legalisation fees and fees in connection with other customs formalities and all other dues and charges whatsoever relating to the importation of goods, equipment and materials required to perform the Works shall be for the sole account of the Contractor, except for the Free Issued Material.

The Contractor declares that it has taken into account in establishing the Contract Price, the unit rates, service rates and all other prices, fees and taxes of any nature whatsoever payable (whether levied on or payable by the Contractor or any of its Subcontractors) and the like (including all direct and indirect costs and expenses to discharge the same and any and all penalties and fines pertaining to any of the above) for which it is liable in connection with customs clearance.

For the sake of clarity, a customs clearance broker will be hired by the Contractor, and it is understood that:

- i) The Employer shall have no responsibility in respect of the customs clearance broker engaged by the Contractor. Any delay attributable to the customs clearance process shall be considered attributable to the Contractor only to the extent that such delay results from any improper act or omission of the Contractor or of any person acting on its behalf, for its benefit or pursuant to its instructions;
- iii) Materials shall be delivered in line with the Incoterms 2020 and all taxes, fees and duties payable to Authorities related to import shall be borne by Contractor.

4.27. RECYCLING AND END-OF-LIFE MANAGEMENT OF BATTERIES

The Contractor shall ensure that the Battery Units supplied under the Contract comply with all Applicable Laws relating to the collection, transport, treatment and recycling of batteries at the end of their service life.

Prior to the issuance of the Take-Over Certificate, the Contractor shall provide the Employer with all technical information and documentation reasonably required to enable the Employer to comply with its obligations regarding the end-of-life management of the Battery Units, including any documentation required by Applicable Laws.

Where the battery manufacturer operates a battery collection, take-back or recycling scheme, the Contractor shall inform the Employer of the applicable conditions and procedures.

Nothing in this Clause shall limit or reduce the Contractor's obligations under the warranties or any other provisions of the Contract.

5. 5. DESIGN

5.1. GENERAL DESIGN OBLIGATIONS

The Contractor shall be deemed to have scrutinised, prior to the Base Date, in particular, Annex 1 Employer Requirements, including the Interfaces and Responsibility Matrix, (including design criteria and calculations, if any) and the documents provided by the Employer.

The Contractor hereby endorses said documentation and shall be responsible for the design of the Works and for the accuracy of any design (including design criteria and calculations), as well as for verifying their adequacy, consistency, completeness and suitability for the intended purpose of the Works, except as stated below.

The Employer shall not be responsible for any error, inaccuracy or omission of any kind in the Employer's Requirements as originally included in the Contract and shall not be deemed to have given any representation of accuracy or completeness of any data or information, except as stated below. Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from his responsibility for the proper design and execution of the Works.

The Contractor shall promptly notify the Employer of any discrepancy, ambiguity, inconsistency, omission or error identified in the Contract, in particular in Employer's Requirements. Any failure by the Contractor to identify or notify such matters shall not relieve the Contractor of its obligations under the Contract.

The Contractor warrants that the design of the Works shall comply with the Contract, Applicable Laws, Permits, Good Industry Practice, the applicable Codes and Standards, Grid Connection Agreement and shall be fit for the intended purpose specified in the Contract.

However, the Employer shall be responsible for the correctness of the following portions of the Employer's Requirements and of the following data and information provided by (or on behalf of) the Employer:

- a) portions, data and information which are stated in the Contract as being immutable or the responsibility of the Employer,
- b) definitions of intended purposes of the Works or any parts thereof, and,

- c) criteria for the testing and performance of the completed Works.

5.2. CONTRACTOR'S DOCUMENTS

The Contractor shall prepare documents in sufficient detail as specified in the Annexes, in particular in Annex 1 - Appendix 5.01 to Annex 1 and to meet all legal and regulatory requirements and to permit the performance of the Works.

Unless otherwise stated in the Contract, Contractor's Documents shall be prepared in Polish and English. The Contractor shall provide to the Employer, within fifteen (15) Days following the Commencement Date, a submittal schedule setting out the anticipated dates of issue of all documents required under the Contract and the applicable interface and coordination requirements in Annex 1.

Unless otherwise stated in the Employer's Requirements, each review period of the Contractor's Document provided shall not exceed twenty-one (21) days, calculated from the date on which the Employer receives a Contractor's Document. A Contractor's Document, when provided to the Employer, is considered ready for both review and for use, and it complies with the Contract.

The Contractor shall ensure that all Contractor's Documents are complete, coordinated, internally consistent and suitable for the execution, operation and maintenance of the Works.

The Employer may, within the review period, give notice to the Contractor that a Contractor's Document fails (to the extent stated) to comply with the Contract. If a Contractor's Document so fails to comply, it shall be rectified, resubmitted and reviewed in accordance with this Sub-Clause, at the Contractor's cost.

If the Contractor fails to resubmit corrected Contractor's Documents within the period reasonably specified by the Employer, the Employer may withhold approval of the relevant part of the Works until compliant documents have been submitted.

For each part of the Works, and except to the extent that the Parties otherwise agree:

- a) execution of such part of the Works shall not commence prior to the expiry of the review periods for all the Contractor's Documents which are relevant to its design and execution;
- b) execution of such part of the Works shall be in accordance with these Contractor's Documents, as submitted for review; and
- c) if the Contractor wishes to modify any design or document which has previously been submitted for review, the Contractor shall immediately give notice to the Employer. Thereafter, the Contractor shall submit revised documents to the Employer in accordance with the above procedure.

The Contractor shall maintain a document revision register identifying the latest approved revision of each Contractor's Document and shall ensure that only the current revision is used for the execution of the Works.

Any such agreement (under the preceding paragraph) or any review (under this Sub- Clause or otherwise) shall not relieve the Contractor from any obligation or responsibility.

The Employer's review, comments, approval or absence of comments shall not constitute acceptance of the design and shall not relieve the Contractor of any of its obligations, liabilities or responsibilities under the Contract.

5.3. CONTRACTOR'S UNDERTAKING

The Contractor undertakes that the design of the Equipment, the Contractor's Documents, the execution of the Works and the completed Works will be in accordance with:

- a) the Applicable Laws, and
- b) the documents forming the Contract, as modified by Variations,
- c) Codes and Standards.

5.4. LAWS, TECHNICAL STANDARDS AND REGULATIONS

The design, the Contractor's Documents, the execution and the completed Works shall comply with the Code and Standards applicable to the Works and with the Applicable Laws.

If after the Base Date a change to the above Code and Standards and/or Applicable Law, as set forth in Clause 8.4 EXTENSION OF TIME FOR KEY EVENTS AND OF TIME FOR COMPLETION comes into force, then the Contractor shall give notice to the Employer and submit proposals for compliance and the Employer shall initiate a Variation as per Clause 15.1 VARIATION PROCEDURE.

5.5. AS BUILT DOCUMENTS OR MARK COPY AND DRAWINGS

Contractor shall prepare and submit to the Employer comprehensive as-built documentation required by the Contract, in particular in Annex 1.

The Contractor shall prepare and submit to the Employer a complete set of as-built drawings (including an electronic copy in native format prepared by Contractor in accordance with the standard of performance), which accurately and completely represent in reasonable detail the Works as assembled, erected and installed no later than the date of Take Over, unless Annex 1 specifies an another date.

The drawings and documentation shall include all elements indicated in Annex 1, in particular civil, structural, architectural, electrical, mechanical, control, communication and SCADA systems, together with all equipment schedules, cable schedules, protection settings, network configurations and other information necessary for the safe operation, maintenance, repair, modification and future extension of the Works

Contractor shall prepare and keep updated a complete set of "as built" records, precisely describing the Works as executed, with details of execution and dimensions. These records shall be kept on-Site

and four (4) copies shall be provided to the Investment Manager prior to commencement of the Tests on Completion.

5.6. MAINTENANCE MANUALS

Prior to commencement of the Tests on Completion, the Contractor shall supply to the Employer provisional maintenance manuals in sufficient detail for the Employer to operate and maintain (preventive and corrective activities) the Works (hereinafter referred to as "**Maintenance Manual**").

The Maintenance Manual shall include all operating procedures, preventive and corrective maintenance procedures, inspection schedules, troubleshooting guides, recommended spare parts lists, manufacturer's maintenance requirements, calibration procedures, safety precautions, emergency procedures and maintenance intervals applicable to the Works.

For Battery Energy Storage System (BESS) Projects, the Maintenance Manual shall additionally include procedures relating to the Battery Management System (BMS), Energy Management System (EMS), PCS, thermal management systems, fire detection and suppression systems, battery replacement procedures, emergency isolation procedures, software and firmware management, alarm management and cyber security recommendations provided by the equipment manufacturers.

The Works shall not be considered to be completed for the purposes of taking over under Clause **10 TAKING OVER** until the Employer has received the final Maintenance Manual in sufficient detail for the Employer to operate and maintain (preventive and corrective activities) the Battery Energy Storage System; in particular, all as-built drawings of the Battery Energy Storage System in native file that will become the Employer's property, as per Clause **1.10 EMPLOYER'S USE OF CONTRACTOR'S DOCUMENTS**.

5.7. DESIGN ERROR

The Employer shall not be responsible for any error, inaccuracy or omission of any kind in the Employer's Requirements as originally included in the Contract and shall not be deemed to have given any representation of accuracy or completeness of any data or information. Any data or information received by the Contractor, from the Employer or otherwise, shall not relieve the Contractor from his responsibility for the design and execution of the Works.

If an error, omission, ambiguity, inconsistency or inadequacy is attributable to the Contractor's design, Contractor's Documents or failure to perform the review obligations under Clause 5.1 with the standard of an experienced EPC contractor, the Contractor shall correct the relevant documents and Works at its own cost and without entitlement to an extension of time.

The Contractor shall send design documents to the Employer once they are ready, in accordance with the Project Time Schedule. The Employer shall proceed to send such design documents to a third-party recognised auditor in order to validate that such documents are compliant with the standards as established in Annex 1 Employer Requirements.

If an error, omission, ambiguity, inconsistency or inadequacy results from data or information for which the Employer is expressly responsible under Clause 5.1 and could not reasonably have been identified by the Contractor before submission of its Offer or through the Contractor's required review, the Contractor shall promptly notify the Employer and the resulting change shall be dealt with as a Variation, including any demonstrated time and Cost impact.

Any review, comment, audit or approval by the Employer or any third-party reviewer shall not relieve the Contractor of responsibility for design matters allocated to it under the Contract.

6. 6. STAFF AND LABOUR

6.1. LABOUR LAWS

The Contractor and its Subcontractors shall comply with all the relevant labour Laws applicable to the Contractor's Personnel, including Applicable Laws of Poland relating to their employment, health, safety, welfare, immigration and emigration, and shall grant them all their legal rights.

The Contractor shall be fully responsible for complying with, and controlling the compliance of, its employees and Subcontractors with Applicable Laws, particularly concerning health and safety matters, and shall also provide all necessary and applicable elements and appliances for the personal protection of its employees.

The Contractor shall require its employees and its subcontractor's employees to obey all Applicable Laws, including those concerning safety at work.

6.2. EMPLOYER'S AUDITOR

The Employer may name a labor auditor for the control of the documentation and labor conditions provided herein who shall be entitled to review all documentation provided by the Employer, inspect the labor conditions and staff at the Site without pre-notice and exert all the necessary actions to control the Contractor's compliance of the labor, insurance and social security obligations. This audit shall not exempt the Contractor from its obligations and from the consequences derived of its lack of compliance. The Contractor is obliged to cooperate with the auditor and provide requested documents, information and explanations.

6.3. NON-ENTICEMENT

Until the issuance of the Performance Certificate, and for a period of six (6) months thereafter, neither Party shall actively recruit, or attempt to recruit, staff and labor from amongst the other Party's Personnel.

6.4. FACILITIES FOR STAFF AND LABOUR AND STORAGE

The Contractor shall procure and supply, at its own expense, whether by producing itself or by procuring from others, all materials, equipment and services required for the performance of its obligations under

this Contract (whether on or off the Site), including the furnishing of labour, equipment, materials and tools necessary for the performance of the Work.

6.5. HEALTH AND SAFETY

The Contractor shall be responsible for health and safety in connection with the execution of the Works and shall comply, and shall ensure compliance by its Personnel, Subcontractors and suppliers, with all Applicable Laws, the Contract and the HSE Requirements applicable to the Project.

Before commencement of Works on the Site, the Contractor shall prepare and submit to the Employer a project-specific Health and Safety Plan, including appropriate risk assessments, method statements, emergency procedures and identification of the persons responsible for HSE matters. The Contractor shall keep such plan updated throughout the execution of the Works. Any review or acceptance of the Health and Safety Plan by the Employer shall not relieve the Contractor of any obligation or responsibility under the Contract.

The Contractor shall appoint a suitably qualified person responsible for HSE matters on the Site and shall ensure that all personnel engaged in the Works are appropriately trained, equipped and authorised to perform their duties safely. The Contractor shall maintain appropriate Site security, first-aid arrangements, safety equipment, warning signs and other measures reasonably required for the safe execution of the Works.

For the BESS, the Contractor shall implement appropriate safety and emergency procedures addressing, in particular, electrical hazards, arc flash, battery thermal runaway, fire, hazardous gas release, electrolyte leakage, emergency isolation and evacuation, and shall ensure appropriate coordination with the relevant emergency services.

The Employer shall be entitled to monitor and inspect the Contractor's compliance with HSE requirements and to require the Contractor to promptly remedy any non-compliance. In the event of an imminent threat to health, life, property or the environment, the Employer may require suspension of the affected Works until the relevant risk has been eliminated. Any such inspection, instruction or suspension shall not relieve the Contractor of its responsibility for HSE matters.

The Contractor shall immediately notify the Employer of any serious accident, fire, environmental incident, hazardous material release or other material HSE event occurring in connection with the Works and shall provide the Employer with a written incident report, including the root cause and corrective actions, within five (5) Business Days. The Contractor shall maintain appropriate HSE records and make them available to the Employer upon reasonable request.

6.6. CONTRACTOR'S SUPERINTENDENCE

Throughout the design and execution of the Works, and as long thereafter as is necessary to fulfil the Contractor's obligations, the Contractor shall provide all necessary superintendence to plan, arrange, direct, manage, inspect and test the Work.

The Contractor shall ensure that such superintendence is continuously available whenever Works are being performed on the Site and that the persons exercising such superintendence have the authority to make decisions on behalf of the Contractor in relation to the execution of the Works.

Superintendence shall be given by a sufficient number of persons having adequate knowledge of the language for communications (defined in Clause **1.4 LAW AND LANGUAGE**) and of the operations to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents), for the satisfactory and safe execution of the Works.

If, in the Employer's reasonable opinion, any member of the Contractor's supervisory personnel is incompetent, negligent or otherwise unsuitable for the proper execution of the Works, the Employer may require the Contractor to replace such person within a reasonable period, and the Contractor shall promptly comply with such requirement.

6.7. CONTRACTOR'S PERSONNEL

The Contractor shall provide, manage, oversee, hire, and remove all labor and personnel required in connection with the Works, all of whom shall be competent to perform those portions of the Work each will perform on the Project, including:

- (a) professional engineers licensed to perform engineering services in each jurisdiction where the performance of the Works requires such licensing;
- (b) a project engineer;
- (c) lead structural, mechanical, electrical instrumentation and control, civil, cost and schedule engineers;
- (d) procurement personal;
- (e) Battery Energy Storage System (BESS) specialists
- (f) commissioning engineers
- (g) SCADA, EMS and BMS engineers
- (h) assembly, erection, installation, construction, testing, start-up, training, and quality assurance personnel and supervisors.

A sufficient number of personnel (as described above) shall be mobilized by the Contractor for the Project pursuant to prudent industry practices. Such personnel shall have extensive experience, in their relevant field of expertise, for the execution of Battery Energy Storage System (BESS) Projects or projects of similar complexity.

The Contractor shall not replace any key personnel identified in the organisational chart without the Employer's prior written notification, except where such replacement is required due to resignation,

illness, force majeure or other circumstances beyond the Contractor's reasonable control. Any replacement shall possess qualifications and experience at least equivalent to those of the person being replaced. The Employer may require the replacement of any personnel, at Contractor's sole expense if, in Employer's reasonable opinion, such person is creating a safety hazard. Replacement of Contractor's personnel if required by Employer pursuant to this Clause shall not relieve Contractor of any of its obligations hereunder or be construed as a waiver by the Employer of any of its rights under this Contract.

The Employer shall have the right to require the immediate removal and permanent expulsion from the Site and from any work associated with the Work of any person:

- (a) that at any time is found under the influence of, or in possession of, alcohol or drugs; or
- (b) that, in the Contractor's or Employer's reasonable opinion (as set forth in writing and delivered to the Contractor), is causing or creating a condition that is detrimental to the Project;

provided, however, that the Contractor shall not be required to terminate such employee or cause the termination of the employment of such person, except in Contractor's sole discretion. The Contractor shall provide the Employer with its organizational chart (with names, titles and functions), as well as information as to the Contractor's key supervisory personnel and representatives both on the Site and at Contractor's home office.

If appropriate or requested by the Investment Manager or Employer's Representative, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

6.8. RECORDS OF CONTRACTOR'S PERSONNEL AND EQUIPMENT

The Contractor shall submit to the Employer details showing the number of each type of Contractor's Personnel and of each type of Contractor's Equipment on the Site. Details shall be submitted each calendar month, in a form approved by the Employer, until the Contractor has completed all work known to be outstanding at the completion date stated in the Take Over Certificate for the Works.

6.9. DISORDERLY CONDUCT

The Contractor shall at all times take all reasonable precautions to prevent any unlawful, riotous or disorderly conduct by or amongst the Contractor's Personnel and its Subcontractors' Personnel on Site, and to preserve the peace and protection of persons and property on and near the Site.

The Contractor shall promptly remove from the Site any person whose conduct constitutes a serious breach of this Clause or who poses a risk to the safety or security of persons, property or the Works.

7. 7. SITE, MATERIALS AND WORKMANSHIP

7.1. MANNER OF EXECUTION

The Contractor shall carry out the construction of the Works, the production and manufacture and/or the supply of Materials excluding any Free-Issued Materials (if applicable), and all other execution of the Works:

- a) in the manner (if any) specified in the Contract,
- b) in accordance with Good Industry Practice applicable to utility-scale BESS and high-voltage grid-connection works, and
- c) with properly equipped facilities and non-hazardous Materials, except as otherwise specified in the Contract,
- d) in compliance with the Applicable Laws, Norms and Standards.

7.2. INSPECTION

The Contractor shall establish and maintain project-specific quality assurance and quality control procedures appropriate to the Works, including inspection and test records and non-conformance / corrective-action procedures. Such procedures and records shall be made available to the Employer upon request. Any review, audit, inspection or acceptance by the Employer shall not relieve the Contractor of its obligations or liability under the Contract.

The Employer and its authorised representatives, including the Financing Parties and their technical advisers, insurers, certifying bodies and competent Authorities, where applicable, shall have the right to inspect the Works and to maintain personnel at the Site for such purpose, subject in all cases to the Contractor's reasonable safety precautions.

If any portion of the Work should be covered contrary to the request of Employer or contrary to requirements specifically expressed in the Contract documents, such portion of the Work shall, if requested by Employer, be uncovered for observation and shall be re-covered at Contractor's expense. If any other portion of the Work has been covered which Employer has not specifically requested to observe prior to being covered, Employer may request to see such Work and Contractor shall uncover it. If such other portion of the Work is found not to be in accordance with the requirements of this Contract, the cost of uncovering, replacement and re-covering shall be charged to Contractor; provided, however, if such other portion of the Work is found to be in accordance with the requirements of this Contract, Employer shall pay such costs pursuant to an appropriate Variation in accordance with Clause **15 VARIATIONS AND ADJUSTMENTS**.

The Employer and the Employer's authorized representatives shall at all reasonable times:

- (a) Have full access to all parts of the Site and to all places from which natural Materials are being obtained, and

- (b) during production, manufacture, construction (at the Site and, to the extent specified in the Contract, elsewhere) and provision of the Services, be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture and production of Materials.

The Contractor shall make available all quality records, inspection and test plans (ITPs), inspection reports, factory acceptance test (FAT) reports, material certificates, calibration certificates and non-conformance reports reasonably requested by the Employer.

The Contractor shall give the Employer's Personnel, Investment Manager and control organisms full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment.

The Contractor shall not be required to delay manufacturing or other activities to accommodate the Employer's inspection.

The Contractor shall make reasonable efforts to provide the Employer with access to the facilities of its suppliers for the purposes described in this Clause.

Neither the Employer's Personnel nor the Employer assumes any liability for any inspection, examination or review of quality of the Equipment and/or Works or performance of any Services, and no such inspection, examination or review shall relieve or discharge the Contractor of its obligations and Contractor shall remain fully liable in connection therewith.

7.3. TESTING

This Clause shall apply to all tests specified in the Contract, other than the Tests after Completion.

In this regard, the Contractor shall comply with, in particular, Annex 1, including Appendix 4.07 - Test on Completion.

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labor, materials and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Employer, the time and place for the specified testing of any Works, Materials and other parts of the Works, which shall be carried at the Contractor's cost.

Prior to the commencement of any testing activities, the Contractor shall submit to the Employer for review a detailed test and inspection plan identifying the sequence of tests, applicable acceptance criteria, test procedures, required instrumentation, responsibilities and hold points.

Any tests, including but not limited to Factory Acceptance Tests (FAT), Site Acceptance Tests (SAT), commissioning tests or performance tests required under the Contract shall be carried out in accordance with the approved procedures and the applicable requirements set out in the Employer's Requirements.

If the Employer does not attend at the time and place mutually agreed with at least 5 business days' advance, the Contractor may proceed with the tests, unless otherwise instructed by the Employer, and the tests shall then be deemed to have been made in the Employer's presence.

The Contractor shall promptly forward to the Employer duly certified test reports. When the specified tests have been passed, the Employer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Employer does not attend the tests, the Contractor may proceed with the tests unless otherwise instructed by the Employer, and the test results shall be deemed valid, provided that they have been carried out in accordance with the Contract. Such non-attendance shall not constitute acceptance of the Works nor relieve the Contractor from any obligation or liability under the Contract.

7.4. REJECTION AND REMEDIAL WORK

If, as a result of a test or inspection, any part of the Works is not compliant with the relevant test or inspection procedure as included in the Contract, the Employer may reject the affected part of the Works by giving notice to the Contractor, with reasons. This is without prejudice to the other regulations established in Annex 1, which supplement given provisions.

The Contractor shall then make good the non-conformity and ensure that the rejected part complies with the relevant test or inspection procedure. The Employer may require such part to be retested according to the same relevant test or inspection procedure.

Notwithstanding any previous test or certification, the Employer may instruct the Contractor to:

- 1) Remove from the Site and replace any BESS Facility or Materials which is not in accordance with the Contract.
- 2) Remove and re-execute any other work which is not in accordance with the Contract, and
- 3) Execute any work which is urgently required for the safety of the Works, whether because of an accident, unforeseeable event or otherwise.

In the event Contractor fails to comply with such instructions, which comply with Clause **3.4 INSTRUCTIONS**, the Employer shall be entitled to employ and pay other persons to carry out the work. Except to the extent that the Contractor would have been entitled to payment for the work, the Contractor shall, subject to Clause **23.1 EMPLOYER'S CLAIMS**, pay to the Employer all costs arising from this failure.

7.5. OWNERSHIP OF WORKS AND MATERIALS

Title to each item of Equipment and Materials intended to form part of the Permanent Works shall pass to the Employer upon payment by the Employer of the Key Milestone payment covering delivery of that item to the Site. Title shall pass free and clear of liens, encumbrances, retention-of-title claims and third-party rights. If the Contractor's supply terms would otherwise reserve title, the Contractor shall procure an effective release of such reservation no later than that payment.

Where the Employer pays for an item before physical incorporation into the Works, the Contractor shall clearly identify and segregate such item as the property of the Employer and shall not sell, pledge, remove or otherwise dispose of it without the Employer's prior written consent.

Transfer of title shall not constitute acceptance of the relevant Equipment or Materials and shall not transfer the risk of loss or damage, which shall remain with the Contractor until PAC except to the extent loss or damage is caused by the Employer after taking operational control.

The Contractor shall ensure that its procurement and suppliers and Subcontractor arrangements permit transfer of title to the Employer in accordance with this Clause.

8. 8. COMMENCEMENT, DELAYS AND SUSPENSION

8.1. COMMENCEMENT OF WORK

8.1.1. Notice to Proceed.

The Employer may issue a formal written Notice to Proceed ("NTP") for the Works or specified parts of the Works when the relevant contractual conditions are satisfied. The NTP structure may include a specific NTP to the BESS / storage-unit supplier in order to enable the Employer to comply with the applicable PSE Milestones, including, where applicable, the milestone requiring such NTP by 31 December 2026.

The Scheduled NTP Date and the NTP Longstop Date shall be stated in Annex 4.

For contractual scheduling purposes, the Commencement Date shall be the date stated in the relevant NTP. This shall not, by itself, determine the date of commencement of the Investment for NFOŚiGW eligibility purposes.

If the NTP is not issued by the NTP Longstop Date specified in Annex 4 for reasons not attributable to the Contractor, all dates, Key Milestones, completion dates and other time periods applicable to the Contractor under the Contract shall automatically be extended on a day-for-day basis by the period between the Scheduled NTP Longstop Date and the actual date of issuance of the NTP, without the need for any further notice, claim, Variation or approval by the Employer.

Such automatic extension shall be without prejudice to the Contractor's entitlement to reimbursement of reasonable and properly documented additional costs directly resulting from the delayed issuance of the NTP, subject to the Contractor's obligation to mitigate such costs and to avoid any duplication of recovery.

If the NTP is not issued by the NTP Longstop Date specified in Annex 4 for reasons not attributable to the Contractor, the Contractor shall be entitled to terminate the Contract upon written notice to the Employer and to claim damages in accordance with the general principles of Polish law. The Employer shall not, however, be liable for any loss of profit, anticipated profit or other lost benefits (utraczone korzyści) relating to the unperformed Works.

For the avoidance of doubt, the Contractor may claim documented losses and additional costs actually incurred as a direct consequence of the failure to issue the NTP by the NTP Longstop Date, including irrevocable commitments reasonably entered into for the purposes of the Contract, subject in each case to the Contractor's duty to mitigate its loss.

The foregoing automatic extension of time shall apply up to the date of issuance of the NTP or, if the Contract is terminated before the NTP is issued, up to the effective date of such termination.

Failure to provide or maintain any required security shall be governed exclusively by Clause 4.2 and may justify withholding Site access, payment, suspension or termination only as expressly provided in the Contract.

The Contractor may exercise any payment-related suspension right only in accordance with the Contract and following the applicable notice and cure periods. No suspension right shall arise in respect of amounts validly withheld, disputed in good faith or unsupported by documentation required under the Contract.

If the NTP cannot be issued by the Scheduled NTP Longstop Date specified in Annex 4 due to circumstances attributable to the Contractor, including, without limitation, the Contractor's failure to provide any security required under the Contract, evidence of the required insurance coverage or any other document or condition required for issuance of the NTP, the Employer shall notify the Contractor of such failure and grant the Contractor a seven (7) Days cure period.

If the Contractor fails to remedy such failure within the cure period, the Employer shall be entitled to terminate the Contract by written notice with immediate effect and to claim the contractual penalty provided for in Clause 17.3. Payment of such contractual penalty shall not prejudice the Employer's right to claim damages exceeding the amount of the contractual penalty, to the extent permitted under Applicable Law.

For the avoidance of doubt, any delay in issuance of the NTP resulting from circumstances attributable to the Contractor shall not entitle the Contractor to any extension of time, adjustment of the Contract Price, reimbursement of costs or other compensation, and shall not affect the Contractor's liability for failure to meet the applicable Key Milestones.

Upon termination under this Clause, the Contractor shall promptly deliver to the Employer all Contractor's Documents, including completed designs, calculations, specifications, studies, reports, drawings, procurement records, permits and software configurations prepared up to the effective date of termination. Subject to payment of amounts due to the Contractor under this Clause, the Employer may use such documents in accordance with Clause 1.10.

Clauses **1.3 Communications**, **1.4 Law and Language** and **1.9 Confidentiality**, together with any other provisions which by their nature are intended to survive termination, shall remain effective following termination.

8.2. MILESTONES AND TIME FOR COMPLETION

The Milestones and payment allocation shall be set out in Annex 4 (Project Time Schedule).

8.3. PROGRAMME

The Contractor shall submit a time programme within the meaning and scope provided in Appendix 5.02 to Annex 1 (the "Programme") to the Employer within fourteen (14) Days of the Base Date.

The Contractor shall update the Programme monthly, or more frequently if reasonably required.

The Employer and the Contractor shall each be entitled to rely upon the Programme when planning their respective activities, without reducing their interface and coordination obligations under the Contract, including Annex 1.

During the coordination meeting each Party shall give reasonable notice to the other Party of specific probable future events or circumstances which may adversely affect or delay the execution of the Works, which shall then be included in the minutes of the meeting.

8.4. EXTENSION OF TIME FOR KEY EVENTS AND OF TIME FOR COMPLETION

The Contractor may apply for an extension of the Time for Completion and, where necessary, the postponement of one or several Milestones, if and to the extent such Milestone or the Time for Completion, in accordance with the Critical Path Analysis, may be delayed in the event of delays or prior to the termination of the period of Time for Completion upon any of the following grounds:

- (a) a Variation agreed in accordance with Clause 15.1 VARIATION PROCEDURE, unless the relevant Variation already determines the corresponding adjustment to the Time for Completion;

- (b) Any delay, interference or prevention (including suspension) by the Employer, its employees, or other project participants on Site, not contractually related to the Contractor and related to the Employer;
- (c) A cause of delay giving an entitlement to extension under a Sub-Clause of these Conditions; and/or,
- (d) Delays caused by Authorities or PSE, that is, circumstances in which all the conditions hereunder apply:
 - i. the Contractor has diligently followed all the procedures laid down by the relevant legally constituted public authorities in Poland, and
 - ii. these authorities delay or disrupt the Contractor's work, and
 - iii. the delay or disruption was not reasonably foreseeable by the Contractor at the Base Date.

Where the Contractor is entitled to apply for an extension of the Time for Completion, it shall give notice and submit supporting particulars in accordance with Clause 23.2 CONTRACTOR'S CLAIMS. No additional or shorter notice period shall apply under this Clause.

In case of failure to comply with Clause 4.5 CO-OPERATION AND INTERFACE, the Contractor shall not be entitled to apply for an Extension of Time for Completion under this Clause.

Notwithstanding the above, the Contractor will not be entitled to payment of any Cost for delays caused by point d) above.

8.5. RATE OF PROGRESS

If, at any time:

- a) actual progress is too slow to complete the Works within the Time for Completion, and/or
- b) progress has fallen (or will fall) behind the current Programme,

other than as a result of a cause listed in Clause **8.4 EXTENSION OF TIME FOR KEY EVENTS AND OF TIME FOR COMPLETION**, then the Employer may instruct the Contractor to review the Programme under Clause **8.3 PROGRAMME**, and submit a revised Programme, and supporting report describing the revised methods which the Contractor proposes to adopt in order to expedite progress and complete within the Time for Completion.

8.6. CONTRACTUAL PENALTIES FOR DELAY ATTRIBUTABLE TO THE CONTRACTOR (PL: ZWŁOKA)

If the Contractor fails to achieve a Milestone by its contractual date for reasons for which the Contractor is responsible (delay attributable to the Contractor, pl. *zwłoka*), the Employer may charge contractual penalties (kary umowne):

- (a) in respect of each pre-COD intermediate Milestone – in the amount of 0.01% of the Contract Price excluding VAT for each commenced Day of delay attributable to the Contractor, pl. *zwłoka*, provided that the contractual penalties relating to any individual such Milestone shall not exceed 5% of the

Contract Price excluding VAT and the aggregate contractual penalties relating to all pre-COD intermediate Milestones shall not exceed 15% of the Contract Price excluding VAT;

(b) in respect of COD – in the amount of 0.05% of the Contract Price excluding VAT for each commenced Day of delay attributable to the Contractor, pl. zwołka, subject to a maximum of 20% of the Contract Price excluding VAT; and

(c) in respect of each post-COD activities – in the amount of 0.01% of the Contract Price excluding VAT for each commenced Day of delay attributable to the Contractor, pl. zwołka, subject to the applicable aggregate cap under Clause 19.

Upon achievement of COD according to the schedule indicated in Annex 4, all contractual penalties accrued solely for delay attributable to the Contractor (pl. zwołka) in achieving pre-COD intermediate Milestones shall automatically lapse. Any amounts previously set off, deducted or paid solely on account of such penalties shall be credited against the next payment due to the Contractor or, if no further payment is due, reimbursed to the Contractor within thirty (30) Days.

For the avoidance of doubt, the foregoing catch-up mechanism shall not affect any contractual penalties for delay attributable to the Contractor (pl. zwołka) in achieving COD itself, any penalties relating to post-COD or any contractual penalties or other remedies arising from other breaches of the Contract.

The Employer may set off contractual penalties against amounts due to the Contractor or satisfy them from the applicable security. Payment or accrual of a contractual penalty shall not release the Contractor from the obligation to achieve the relevant Milestone.

The aggregate amount of contractual penalties for delay attributable to the Contractor under this Clause shall not exceed 25% of the Contract Price excluding VAT. The Employer shall be entitled to claim damages exceeding the amount of contractual penalties on general principles of Polish law, including in respect of any reduction, loss or repayment of NFOŚiGW funding attributable to the Contractor.

8.7. SUSPENSION OF WORKS BY EMPLOYER

The Employer may, at any time and by written notice to the Contractor, suspend all or any part of the Works and any related activities of the Contractor. The Employer may instruct such suspension on one or more occasions.

If the suspension results from circumstances not attributable to the Contractor, all affected Milestones, completion dates and other contractual time periods shall automatically be extended on a day-for-day basis by the duration of the relevant suspension. If the suspension results from circumstances attributable to the Contractor, no such extension shall apply.

For the purposes of this Clause, all periods of suspension resulting from circumstances not attributable to the Contractor shall be aggregated, irrespective of whether the suspensions are continuous or occur on separate occasions.

For an aggregate suspension period of up to forty-five (45) Days, the Contractor shall not be entitled to any additional payment, reimbursement of costs, compensation or damages arising from such suspension. Throughout any suspension, the Contractor shall continue, at its own cost, to properly

protect, secure, preserve and maintain the Site, the Works, Materials and Equipment as reasonably required to prevent any deterioration, loss or damage.

If the aggregate period of suspension exceeds forty-five (45) Days, the Contractor shall continue to protect, secure, preserve and maintain the Site, the Works, Materials and Equipment, and the Parties shall agree an appropriate additional remuneration for such activities for the period exceeding the aggregate forty-five (45) Days.

Upon the Employer's instruction to resume the Works, the Contractor shall promptly recommence the suspended Works and the Parties shall reasonably cooperate to update the Project Time Schedule accordingly.

9. 9. TESTS ON COMPLETION

9.1. CONTRACTOR'S OBLIGATIONS

The Contractor shall carry out the Tests on Completion in accordance with, in particular, this Clause and Annex 1, including Appendix 4.07b to Annex 1 and the grid compliance test stated in Appendix 4.06 to Annex 1.

All turnover generated by the BESS during the testing shall be the property of the Employer.

In considering the results of the Tests on Completion, appropriate allowances shall be made for the effect of any use of the Works by the Employer on the performance or other characteristics of the Works.

9.2. DELAYED TESTS

If the Tests on Completion are being unduly delayed by the Contractor, the Employer may by notice require the Contractor to carry out the Tests within ten (10) Days after receiving the notice. The Contractor shall carry out the Tests on such day or days within that period as the Contractor may fix and of which he shall give notice to the Employer.

If the Contractor fails to carry out the Tests on Completion within the period of fifteen (15) Days, the Employer's Personnel may proceed with the Tests at the risk and cost of the Contractor. These Tests on Completion shall then be deemed to have been carried out in the presence of the Contractor, and the results of the Tests shall be accepted as accurate.

To avoid any ambiguity, the Parties confirm that, when planning the execution of tests, taking into account the Contractor's obligation to perform tests in accordance with the schedule in Annex 4, the Contractor must take into account the time the Contractor has to verify the tests and reports.

9.3. RETESTING

If the Works, or a Section, fail to pass the Tests on Completion, Clause **7.4 REJECTION AND REMEDIAL WORK** shall apply, and the Employer or the Contractor may require the failed Tests, and Tests on Completion on any related work, to be repeated under the same terms and conditions.

The successful completion of any repeated Tests on Completion shall not, by itself, constitute the issue of the Take-Over Certificate or relieve the Contractor from any other conditions required under the Contract for Taking Over.

9.4. INTERFERENCE WITH TESTS ON COMPLETION

If the Contractor is prevented, for more than fourteen (14) Days, from carrying out the Tests on Completion by a cause for which the Employer is responsible, the Contractor shall carry out the Tests when the cause for which the Employer is responsible ceases and immediately after it is communicated to the Contractor.

If the Contractor suffers delay as a result of this delay in carrying out the Tests on Completion, the Contractor shall give notice to the Employer and shall be entitled subject to Clause **23.2 CONTRACTOR'S CLAIMS** to:

- a) an extension of time for any such delay, if completion is or will be delayed, under Clause **8.4 EXTENSION OF TIME FOR KEY EVENTS AND OF TIME FOR COMPLETION**, and

After receiving this notice, the Employer shall proceed in accordance with Clause 3.4 DETERMINATIONS to agree or determine these matters.

9.5. FAILURE TO PASS THE TESTS ON COMPLETION

If the Works, or a Section, fail to pass the Tests on Completion repeated under Clause **9.3 RETESTING**, the Employer shall be entitled to:

- a) order further repetition of the Tests on Completion under Clause **9.3 RETESTING**, at the costs and risks of the Contractor;
- b) reject the Works or Section (as the case may be), if the failure deprives the Employer of substantially the whole benefit of the Works or Section, in which event the Employer shall have the remedies provided in Clause 12.6 FAILURE TO REMEDY AND EMERGENCY WORKS and Clause 17, as applicable.

If the Employer elects to accept a performance shortfall that remains above the minimum acceptance threshold in Annex 1, the Contract Price may be reduced. Such acceptance or payment is limited to the expressly accepted shortfall and does not waive other Defects, warranties, claims or obligations. No PAC shall be issued where a minimum acceptance threshold is not achieved.

Taking over of the Works can take place when the Contractor and/or Authority have carried out all of the following steps and the Employer has validated them.

9.6. MECHANICAL & ELECTRICAL WORKS COMPLETION

Mechanical completion shall be done in accordance with Annex 1, including Appendix 4.03b to Annex 1 and should precede any test on completion.

9.7. WORKS READY FOR ENERGIZATION

The Works shall be deemed to be ready for energization on the date on which all the conditions here below are satisfied for the entirety of the Works:

- i. The Mechanical and Electrical Works are deemed to be done in accordance with Annex 1;
- ii. Precommissioning deemed to be done in accordance with Appendix 4.04 to Annex 1;
- iii. All the requirements set out in Annex 1 have been complied with; and
- iv. All the elements of Punch List Have been cleared.

9.8. COMMISSIONING COMPLETION

Commissioning completion can be done only in accordance with Annex 1. The Commissioning completion could take place only when:

- i. The Works Ready for Energization has been deemed to be completed and accepted by the Employer.
- ii. All of the conditions stipulated in Annex 1 have been met.

10.10. TAKING OVER

When the Contractor considers that the Works have been completed to the extent required for PAC, the Contractor shall submit to the Employer a written application for PAC, identifying the proposed PAC Date and confirming that the conditions for PAC under the Contract have been satisfied.

The application for PAC shall be accompanied by the documentation required under the Contract (in particular Appendix 4.07b to Annex 1), the RFQ, the Connection Agreement, Applicable Laws and the requirements applicable to the settlement of the NFOŚiGW funding, including:

- a) complete as-built documentation, including final drawings, schematics, settings, calculations and other Contractor's Documents reflecting the Works as actually executed;
- b) all required test, inspection and commissioning reports and certificates, including FAT, SAT, energisation, commissioning and performance test records required to be completed prior to PAC;
- c) documents and confirmations required under the Connection Agreement and applicable PSE requirements which are within the Contractor's Scope;
- d) any required occupancy permit, notification of completion of construction or other document permitting lawful use of the Works, to the extent its obtaining is allocated to the Contractor under the Contract;

- e) declarations of conformity, certificates, approvals and other documents required under Applicable Laws for the Equipment and Materials incorporated into the Works;
- f) operating and maintenance manuals, emergency procedures, HSE documentation and other documentation reasonably necessary for safe operation and maintenance of the Project;
- g) manufacturer warranties and warranty certificates together with documents required for the transfer or exercise of such warranties by the Employer in accordance with the Contract;
- h) confirmation of completion of the training required under the Contract and delivery of the agreed spare parts, special tools, access codes, passwords, software licences, configuration files and backups required for operation of the Project; and
- i) such other documents within the Contractor's Scope as are reasonably required for the Employer to demonstrate completion of the Project for the purposes of the NFOŚiGW funding.

The Contractor shall submit the complete PAC documentation sufficiently in advance to permit the Employer to carry out the PAC procedure. Within five (5) Business Days after receipt of the application, the Employer shall notify the Contractor of any material deficiency in the submitted documentation which prevents commencement of the PAC procedure. Minor documentary deficiencies which do not prevent proper verification of the Works shall not, by themselves, constitute grounds for postponing the PAC inspection and may be included in the Punch List.

Provided that the application and documentation are sufficiently complete to permit the inspection, the Employer shall commence the PAC inspection no later than ten (10) Business Days after receipt of the application. The Contractor shall provide reasonable assistance, personnel and access required to carry out the inspection.

Following completion of the PAC inspection, the Employer shall, within five (5) Business Days:

- a) sign or issue the PAC / Take-Over Certificate stating the PAC Date and, if applicable, attaching the agreed Punch List; or
- b) notify the Contractor in writing that PAC cannot be granted, specifying the Material Defects or other material non-compliances preventing PAC and the reasons for such refusal.

The Employer shall not unreasonably withhold or delay PAC where the contractual conditions for PAC have been satisfied.

PAC may be granted notwithstanding the existence of Minor Defects or minor outstanding works, provided that they do not materially impair or prevent safe operation, compliance with Applicable Laws or PSE requirements, achievement of the minimum Performance Guarantees required for acceptance, availability, operability, lawful commercial use of the Project or fulfilment of material NFOŚiGW requirements.

All such Minor Defects and outstanding works shall be recorded in a Punch List B attached to the PAC / Take-Over Certificate. The Punch List shall specify a reasonable and binding period for remedy of each item, taking into account its nature and the availability of replacement equipment or materials. Unless otherwise agreed in the PAC / Take-Over Certificate, the Contractor shall remedy Punch List B items

within thirty (30) Days after PAC, or within such longer period as is reasonably necessary for an item which, due to its nature, cannot reasonably be remedied within that period.

The Employer may retain from amounts otherwise due to the Contractor an amount equal to 200% of the reasonable estimated cost of remedying the outstanding Punch List B items, which amount shall be released promptly following confirmation that the relevant items have been remedied. The Employer shall provide the Contractor with a reasonable basis for determining the estimated remedy cost.

If any Material Defect exists, including any Defect which prevents or materially restricts safe operation, lawful use, energisation, PSE acceptance, achievement of the minimum Performance Guarantees required for PAC or COD, or the intended operation of the Project in accordance with the Contract, the Employer may refuse PAC.

In such case, the Parties shall record the identified Material Defects and, where reasonably possible, agree the period for their remedy. The Contractor shall remedy such Defects without undue delay and shall thereafter submit a renewed application for PAC. The renewed PAC inspection shall be limited, to the extent reasonably practicable, to verification of the previously identified Defects and any matters directly affected by their remedy.

PAC shall take effect on the date expressly stated in the PAC / Take-Over Certificate. Unless otherwise expressly provided in the Contract, the transfer of risk in the Works, commencement of the Contractual Warranty Period and any payment or security consequences expressly linked to PAC shall take effect from that date.

PAC shall not constitute a waiver or acceptance of any latent Defect, warranty claim, statutory rights, contractual penalties, damages or any other rights of the Employer under the Contract, the Connection Agreement, Applicable Laws or the NFOŚiGW requirements. Likewise, the identification of a particular Defect in the Punch List shall not prevent the Employer from subsequently notifying another Defect which could not reasonably have been identified during the PAC inspection.

There shall be no deemed PAC solely as a result of lapse of time, energisation, commissioning, use of the Works or any part thereof, payment of an invoice or participation of the Employer in any inspection or test. PAC shall require an express written PAC / Take-Over Certificate signed or issued by the Employer.

If the Employer, for reasons attributable to the Employer, fails to commence or complete the PAC procedure within the periods specified above despite the Contractor having properly submitted the Works for PAC, the Contractor shall be entitled to an appropriate extension of the affected contractual dates and, where the delay causes demonstrable additional costs, to reimbursement of reasonable and properly documented additional costs directly resulting from such delay, subject to the Contractor's duty to mitigate such costs.

11.11. O&M SERVICES

11.1. O&M SERVICES

During the Contractual Warranty Period, but not shorter than stipulated in Appendix 5.09 to Annex 1, the Contractor shall perform or procure, as part of the Contract Price, the operation and maintenance (O&M) services in accordance with Annex 1, in particular with Appendix 5.09 to Annex 1.

11.2. CONSUMABLES

The Contractor shall provide the spare parts and consumables required for warranty-remedy work.

11.3. PLANNING AND FOLLOW-UP OF O&M SERVICES

The Contractor shall make available to the Employer a forecast of the O&M services' planning.

Following each intervention, the Contractor shall provide the Employer with a report within fifteen (15) Days. Such report shall contain sufficient information and be properly documented in order to establish a track record of the interventions and the state of production, or non-production of the equipment on which the services were performed.

11.4. PRICE TREATMENT OF O&M SERVICES

No separate annual maintenance fee is payable unless expressly agreed by the Parties. O&M Services and maintenance services required to preserve warranties during the Contractual Warranty Period is included in the lump-sum Contract Price.

11.5. FAILURE TO PERFORM THE O&M SERVICES

In the event the Contractor fails to perform its obligations under Clause 11 O&M SERVICES, the Employer shall request the Contractor to execute its obligations within two (2) Days.

If, by the end of the cure period, the Contractor has failed to fulfil its O&M and warranty-preserving maintenance obligations, the Employer may engage a third party to perform the required activities at the Contractor's risk and cost and may recover or set off the reasonable documented costs against amounts due to the Contractor or applicable security. No additional consent – whether from the Contract or the court – is necessary to execute this Clause.

12.12. DEFECTS LIABILITY, WARRANTY

12.1. CONTRACTUAL WARRANTY

The Contractor warrants that throughout the Contractual Warranty Period the Works, including all Equipment, software, control systems and Contractor's Documents:

- a) shall comply with the Contract, Applicable Laws, the Connection Agreement and the applicable technical requirements;
- b) shall be free from defects in design, materials, workmanship, manufacture, installation, integration, software and commissioning; and

c) shall be fit for their intended purpose and capable of achieving the Performance Guarantees specified in the Contract.

The Contractual Warranty Period (Defects Notification Period) shall be [] months from PAC.

The contractual warranty is without prejudice to any longer manufacturer warranty and to the Employer's rights under statutory warranty (*rekojmia*) and general principles of liability under Polish law.

12.2. NOTIFICATION AND CLASSIFICATION OF DEFECTS

During the Contractual Warranty Period, the Contractor, as part of O&M Services, is responsible for promptly detecting the Defect, informing the Employer, and remedying it.

Notwithstanding the above, the Employer may also report the Defect at any time. The notice shall contain information reasonably available to the Employer concerning the nature and effects of the Defect. Lack of complete technical information shall not delay commencement of the applicable Reaction Time. In the event of an erroneous report, the Employer will not be responsible for the costs of such a report or the Contractor's response.

Defects shall be classified as follows:

a) **Critical Defect** – any Defect which causes or creates an immediate material risk of: (i) danger to persons, property or the environment, (ii) fire, thermal runaway or other material battery safety event, (iii) shutdown or material unavailability of the BESS or a material part thereof, (iv) inability to charge or discharge the BESS, or (v) material non-compliance with PSE or grid requirements;

b) **Major Defect** – any Defect materially affecting availability, performance, efficiency, operation or functionality of the Works but not constituting a Critical Defect;

c) **Minor Defect** – any other Defect which does not materially affect the safe and normal operation of the Works.

In the event of a reasonable disagreement as to classification, the Contractor shall nevertheless comply with the response requirements applicable to the classification notified by the Employer until the matter is resolved.

12.3. REACTION AND REMEDY TIMES

The Contractor shall comply with the following maximum times calculated from the occurrence of the Defect:

Defect	Reaction Time	Attendance on Site, if required	Remedy Time
Critical Defect	2 hours, 24/7	8 hours	24 hours for temporary restoration and 3 Days for final remedy
Major Defect	8 hours	24 hours	5 Business Days

Defect	Reaction Time	Attendance on Site, if required	Remedy Time
Minor Defect	1 Business Day	as reasonably required	10 Business Days

“**Reaction**” means acknowledgement of the Defect, commencement of diagnosis and confirmation to the Employer of the actions being taken to remedy the Defect.

“**Reaction Time**” and “**Remedy Time**” mean the respective maximum periods stated in the table above, as extended only in accordance with this Clause.

Where the nature of the Defect objectively prevents final remedy within the applicable Remedy Time, despite the Contractor acting with due diligence, the Employer shall not unreasonably refuse a reasonable extension, provided that the Contractor:

- a) notifies the Employer before expiry of the applicable Remedy Time;
- b) explains and documents the reasons for the extension;
- c) implements, where technically possible, a safe temporary solution or workaround; and
- d) proceeds with the final remedy without undue delay.

Any extension shall require the Employer's written approval.

12.4. REMEDY OF DEFECTS

The Contractor shall, at its own cost and risk, investigate and remedy each Defect, including all necessary dismantling, transport, replacement, reinstallation, commissioning and testing.

Any replacement part or component shall be new and of at least the same quality, specification and performance as the replaced item, unless otherwise approved by the Employer.

The Contractor shall also remedy all outstanding Punch List items within the periods specified in the PAC protocol.

Throughout remedial works, the Contractor shall comply with all applicable HSE, operational, and Site requirements and shall coordinate its activities with the Employer to minimise disruption to operation of the Project.

12.5. CONTRACTUAL PENALTIES FOR DELAY IN WARRANTY OBLIGATIONS

If, for reasons attributable to the Contractor (zwłoka) the Contractor fails to remedy the Defect within the applicable Remedy Time the Employer shall be entitled to charge the Contractor a contractual penalty equal to 0.02% of the Contract Price excluding VAT for each commenced Day of a delay attributable to the Contractor (pl zwłoka).

For the purposes of this Clause, in the case of a Critical Defect subject to the twenty-four (24) hour temporary restoration period under Clause 12.3, each “commenced Day of delay” shall mean each successive commenced period of twenty-four (24) hours following expiry of such initial twenty-four (24)

hour Remedy Time. The first period for which the contractual penalty may accrue shall commence immediately upon expiry of the applicable twenty-four (24) hour period for temporary restoration.

Payment of a contractual penalty shall not release the Contractor from its obligation to remedy the relevant Defect.

The Employer may set off contractual penalties against amounts due to the Contractor or satisfy them from the Defects and Warranty Security.

The Employer shall be entitled to claim damages exceeding the amount of contractual penalties on the general principles of Polish law, including loss of profits, to the extent the damage suffered exceeds the amount of the applicable contractual penalties.

12.6. FAILURE TO REMEDY AND EMERGENCY WORKS

If the Contractor fails to react or remedy a Defect within the applicable period, the Employer may, after giving the Contractor reasonable prior notice, remedy the Defect itself or through a third party at the Contractor's cost and risk.

No prior notice shall be required where immediate action is reasonably necessary to protect life, health, property, the environment, the BESS or the grid, or to prevent material escalation of damage.

The Contractor shall reimburse the Employer for reasonable and documented costs incurred in connection with such remedial works. Exercise of this right shall not prejudice any contractual penalties or other rights of the Employer.

No additional consent – whether from the Contract or the court – is necessary to execute this Clause.

12.7. REPAIRED AND REPLACED ITEMS

Any repaired, replaced or re-performed part of the Works shall be covered by a new warranty period of 24 months from completion of the relevant repair, replacement or re-performance, or for the remaining Contractual Warranty Period applicable to the Works, whichever period expires later.

The Contractor shall ensure that any applicable manufacturer warranties remain effective and shall transfer or make available to the Employer all rights under such warranties in accordance with the Contract.

12.8. RE-TESTING

Where remedy of a Defect may affect the safety, functionality or Performance Guarantees of the Works, the Employer may reasonably require the relevant tests to be repeated.

If the Defect is attributable to the Contractor, all reasonable costs of such tests, including any repeated tests required as a consequence of a failed test, shall be borne by the Contractor.

12.9. ACCESS

For the purpose of performing warranty obligations, the Contractor shall have reasonable access to the relevant parts of the Site and the Works, subject to prior coordination with the Employer and compliance with the Employer's HSE, security and operational requirements.

12.10. COMPLETION OF WARRANTY OBLIGATIONS

Expiry of the Contractual Warranty Period shall not affect:

- a) any Defect notified before expiry of the applicable warranty period;
- b) obligations relating to repairs or replacements performed during the warranty period;
- c) latent Defects;
- d) manufacturer warranties;
- e) statutory warranty (*rekojmia*); or
- f) any claims or liabilities which under the Contract or Applicable Law survive expiry of the warranty period.

The Defects and Warranty Security shall be released only in accordance with Clause 4.2 after expiry of the applicable security period and completion of all outstanding warranty obligations required as a condition for its release.

12.11. TRANSFER OF GUARANTEE OF EQUIPMENT

The Contractor shall procure and deliver manufacturer warranties for all key components, issued by the relevant manufacturer or another creditworthy warrantor acceptable to the Employer, in particular, in line with Appendix 5.04 to Annex 1. Unless Annex 1, in particular Appendix 5.04 to Annex 1 or the RFQ requires longer periods, the following minimum periods shall apply from PAC:

- 12.11.1. battery cells/modules/racks/containers - at least five (5) years for product defects and at least ten (10) years for the agreed capacity-retention / degradation performance warranty under the operating envelope stated in Annex 1;
- 12.11.2. PCS/inverters - five (5) years;
- 12.11.3. main power transformer(s) - five (5) years;
- 12.11.4. MV/HV switchgear, protection, metering and control equipment - five (5) years;
- 12.11.5. BMS, EMS, PPC and SCADA hardware and software support – two (2) years;
- 12.11.6. HVAC, fire detection/suppression and thermal-management systems - five (5) years;
- 12.11.7. major cables and other electrical balance-of-plant equipment - five (5) years; and
- 12.11.8. other material equipment - at least three (3) years.

At PAC, the Contractor shall assign/transfer (*pl przenosi*) to the Employer, to the fullest extent legally permissible, all rights under manufacturer and supplier warranties relating to the Works and shall deliver

all warranty certificates, registrations, claim procedures, contact details and evidence of manufacturer acknowledgement where required.

At the same time, the Employer authorises the Contractor, for the duration of the Contractor's Contractual Warranty Period, to exercise such transferred manufacturer-warranty rights in the Employer's name and for the Employer's benefit solely to perform the Contractor's obligations under the Contract. This authorisation does not prevent the Employer from exercising the rights directly and may be revoked for material breach.

The Contractor shall structure its supply contracts so that the required warranty rights are assignable. If any required manufacturer warranty cannot be assigned, is not delivered, expires early or is narrower/shorter than required, the Contractor shall procure an equivalent direct warranty or itself provide equivalent protection at its own cost for the missing period and scope. No manufacturer-warranty limitation reduces the Contractor's own liability under the Contract.

12.12. SERIAL DEFECT WARRANTY

From the date of signature of the PAC Certificate until expiry of the applicable Defects Notification Period (the "Serial Defect Warranty Period") within thirty (30) Days from the Serial Defect occurrence Contractor shall perform or ensure performance by its supplier of a root cause analysis (hereafter referred as "**Serial Defect Root Cause Test**") and provide the detailed written report to the Parties as to whether a Serial Defect has occurred. A third-party independent testing organization may be appointed by the Employer, at its own costs, to participate in the Serial Defect Root cause Test.

Upon determination by the Contractor or, if applicable, the third-party testing organization of the occurrence of a Serial Defect, the Contractor shall replace, or repair with a third-party validated procedure all parts or components installed on Site and affected by the conclusions of the Serial Defect Root Cause Test analysis, within sixty (60) Days. In the event of replacement, the Contractor shall replace the defective Equipment with new Equipment of equivalent or superior quality, functionality, performance and compatibility, fully compliant with the requirements of the Contract.

If a Serial Defect is confirmed, all costs incurred (including costs of the expert, costs related to replacing, recycling, shipping, dismounting and mounting of the parts or components and also all the tests to be performed or repeated after such replacement) shall be borne by the Contractor.

12.13. PERFORMANCE CERTIFICATE

Following expiry of the applicable Contractual Warranty Period and completion of all warranty and defect-remedy obligations then due, including all notified Defects and Punch List items and all Tests after Completion (Appendix 4.08b to Annex 1) required to be completed by that date, the Contractor may apply for the Performance Certificate.

Within fifteen (15) Business Days after receipt of a complete application, the Employer shall either issue the Performance Certificate or notify the Contractor of the outstanding conditions preventing its issuance. The Employer shall not unreasonably withhold or delay the Performance Certificate once the contractual conditions have been satisfied.

Issuance of the Performance Certificate shall not waive latent Defects, claims notified before its issuance, manufacturer warranties, statutory warranty (rękojmia), any renewed warranty period for repaired or replaced items, post-COD or any other rights or obligations which by their nature or express terms survive. Release of the Defects and Warranty Security shall remain governed exclusively by Clause 4.2.

13.13. TESTS AFTER COMPLETION

Tests after Completion shall be executed and completed in accordance with the Contract, in particular with Appendix 4.08b - Test after Completion - to Annex 1.

14.14. PERFORMANCE, GUARANTEES AND PENALTIES

14.1. GUARANTEES AS TO GRID COMPLIANCE

The Contractor warrants that the BESS Facility shall comply with, in particular, Annex 1, the Connection Agreement, PSE technical requirements, IRIESP, Norms and Standards and other Applicable Laws and shall be capable of lawful charging, discharging and control at the relevant connection point.

14.2. CONTRACTUAL PENALTIES FOR PERFORMANCE SHORTFALL

In addition to the warranties in Clause 12, the Contractor shall demonstrate through the Tests after Completion that the Performance Guarantees in Annex 1 – in particular in Appendix 4.08b - Test after Completion – to Annex 1, including usable energy capacity, round-trip efficiency and availability - have been achieved under the agreed reference conditions.

If, after the carrying out of the Tests after Completion, the performance is not achieved, the Contractor shall pay the Employer contractual penalties calculated in accordance with points 2.6.1, 2.6.2, and 2.6.3 of Appendix 4.08b to Annex 1, taking into consideration the following:

- Availability Penalty (point 2.6.1 of Appendix 4.08b to Annex 1) amounts to EUR 15,000,
- Capacity Penalty (point 2.6.2 of Appendix 4.08b to Annex 1) amounts to EUR 24,000,
- RTE Penalty (point 2.6.3 of Appendix 4.08b to Annex 1) amounts to 0.2% of the Contract Price excluding VAT.

14.3. CAP FOR PERFORMANCE CONTRACTUAL PENALTIES

The contractual penalties for performance shortfall under this Clause shall not exceed fifteen percent (15%) of the Contract Price excluding VAT unless Annex 1 expressly provides otherwise. This cap is separate from the delay-penalty cap unless the aggregate cap in the Contract is reached.

If the applicable performance contractual-penalty cap is reached and the Works still fail the minimum performance acceptance thresholds in Annex 1, the Contractor shall be in material default. The Employer may require further remediation/replacement, reject the affected part, reduce the Contract Price, or terminate the Contract in whole or in part, subject to Polish law and the Contract.

To the extent permitted by law and this Contract, the Employer may claim damages exceeding the amount of contractual penalties if its loss is higher, including documented loss or reduction of NFOŚiGW funding attributable to the Contractor.

14.4. BATTERY SAFETY AND THERMAL RUNAWAY GUARANTEE

The Contractor warrants that the Battery Energy Storage System has been designed to prevent thermal runaway propagation.

Any thermal runaway event propagating outside the originally affected battery module shall constitute a Material Defect.

15.15. VARIATIONS AND ADJUSTMENTS

15.1. VARIATION PROCEDURE

Either Party may at any time propose a Variation to the Works or to any other provision of the Contract.

A Party proposing a Variation shall submit a written Variation Request describing, in reasonable detail:

- a) the scope and reasons for the proposed Variation;
- b) the proposed modification to the Works, technical solution or other relevant contractual requirement;
- c) the anticipated impact, if any, on the Project Time Schedule, Key Milestones and Time for Completion; and
- d) the anticipated adjustment, if any, to the Contract Price and the basis for calculating such adjustment.

The receiving Party shall review the Variation Request without undue delay and may accept it, reject it or request reasonable additional information or clarification.

Where the Variation affects the Contract Price, the adjustment shall be agreed by the Parties having regard, where applicable, to the prices and rates contained in the Contract and the Contractor's Offer and, where these are not applicable, to reasonable and properly documented market costs. Upon the Employer's reasonable request, the Contractor shall provide supporting quotations or other evidence of the proposed costs.

A Variation shall become binding only when agreed by both Parties in accordance with Clause 15.3 below. Unless otherwise agreed in writing, submission or consideration of a Variation Request shall not entitle the Contractor to suspend or delay performance of the Works.

All Variations shall be implemented in compliance with the Grant Agreement, the rules applicable to the NFOŚiGW funding, the requirements applicable to the procurement procedure pursuant to which the Contract was awarded and Applicable Laws. No Variation shall be implemented if it would result in a modification of the Contract which is prohibited under such rules.

15.2. PERMITTED MODIFICATIONS OF THE CONTRACT

15.2.1. The Parties may amend the Contract in any case where such amendment does not constitute a material modification of the Contract under the rules applicable to the procurement procedure and the Grant Agreement.

15.2.2. Where an amendment would constitute a material modification, the Parties envisage that the Contract may be amended, in relation to the Contractor's Offer, upon occurrence of one or more of the following circumstances:

a) **Change in Law** – where there is a change in Applicable Laws, mandatory standards or binding requirements of a competent Authority occurring after the Base Date and affecting performance of the Contract, the Contract may be amended to the extent reasonably necessary to reflect the impact of such change on the Works, the Project Time Schedule or the Contract Price;

b) **change of the scope or timing of the Works**, where required as a result of:

i. a Force Majeure Event;

ii. circumstances not attributable to the Contractor which affect the performance of all or part of the Works;

iii. any amendment, modification or other change to the Grant Agreement, any schedule forming part of the Grant Agreement or other binding arrangements between the Employer and NFOŚiGW which affects the manner, scope or timing of performance of the Project;

c) failure or breakdown not attributable to the Contractor – where an equipment failure, infrastructure failure or other breakdown not caused by any act or omission of the Contractor affects the possibility of performing all or part of the Works, the relevant dates may be extended to the extent corresponding to the demonstrated effect of such event on the performance of the Contract;

d) acts of third parties or public Authorities – where acts, omissions, decisions, requirements or restrictions imposed by persons or entities unrelated to either Party, PSE, grid operators or competent public Authorities cause interruption, suspension or material disruption of all or part of the Works, the scope and/or the relevant dates may be amended to the extent corresponding to the impact of such circumstances on performance of the Contract;

e) archaeological findings – where performance of the Works is interrupted or restricted due to circumstances referred to in Article 32(1) of the Polish Act of 23 July 2003 on the Protection and

Guardianship of Monuments, the relevant dates and, where justified, the scope or Contract Price may be amended to the extent corresponding to the impact of such circumstances;

f) additional, substitute or omitted Works – where it becomes necessary or objectively justified to perform substitute or additional works, including due to an amended building permit, or where the Employer decides not to perform a part of the Works, the scope of the Works, quantities, Contract Price and relevant contractual dates may be appropriately adjusted, provided that such modification is permissible under the Grant Agreement and the rules applicable to the procurement;

g) change of technology or technical solution – at the request of either Party, where objective circumstances arise which were not reasonably foreseeable at the stage of preparation of the RFQ and which make the original solution technically inappropriate, inefficient, uneconomic or inconsistent with the purpose of the Project, the Parties may agree an alternative technology or technical solution and the corresponding adjustment of the Contract Price and/or Project Time Schedule;

h) necessity to apply different technical or technological solutions from those described in the Contractor's Offer, in particular where the originally proposed solution would create a material risk of non-performance, defective performance, failure to meet the Performance Guarantees or non-compliance with the Connection Agreement, Applicable Laws or other binding technical requirements;

i) delay attributable to the Employer in making the Site or a relevant part thereof available to the Contractor – the dates affected by such delay may be extended by the period of the Employer's delay, but only to the extent that such delay actually affects the relevant Works;

j) change in the applicable VAT rate occurring after execution of the Contract – the gross Contract Price shall be adjusted in respect of supplies, services or Works for which the tax obligation arises after the effective date of the statutory VAT-rate change, without changing the Contractor's net remuneration;

k) replacement of the Contractor, but only where such replacement is permissible under the rules applicable to the procurement procedure, including in particular where the new contractor succeeds to the rights and obligations of the original Contractor as a result of merger, demerger, transformation, restructuring, insolvency, acquisition or another permitted legal succession, provided that the new contractor satisfies the relevant qualification requirements and the replacement is not intended to circumvent the applicable procurement rules.

15.2.3. Any amendment referred to in Clause 15.2.2 shall be permissible only to the extent that it does not change the overall nature of the Contract and otherwise complies with the Grant Agreement and the applicable procurement and funding rules.

15.2.4. The Party relying on any circumstance referred to in Clause 15.2.2 shall provide the other Party with reasonable evidence demonstrating the occurrence of such circumstance and its anticipated impact on the Works, the Project Time Schedule and, where applicable, the Contract Price. In the case of the Contractor, such evidence shall be provided promptly after the Contractor becomes aware of the relevant circumstance, irrespective of whether the resulting amendment would be material or non-material.

15.2.5. For the avoidance of doubt, no Variation, extension of time or adjustment of the Contract Price shall arise to the extent that an amended building permit, an amendment to the Connection Agreement or any related PSE requirement is necessary to implement the Works and technical solution required by the Contract as at the Base Date, including Annex 1, or results from the Contractor's design, selected technology, error, omission or non-compliance with the Contract.

15.3. FORM OF VARIATIONS

Any Variation or other amendment to the Contract shall require the agreement of both Parties and shall be made in writing, or in an equivalent electronic form using qualified electronic signatures, in each case under pain of nullity, unless the Contract expressly provides that a particular adjustment occurs automatically without the need for an amendment.

No oral instruction, meeting minute, correspondence, Variation Request or conduct of either Party shall by itself constitute an amendment of the Contract.

16.16. CONTRACT PRICE AND PAYMENT

16.1. THE CONTRACT PRICE

In consideration for the full and proper performance of the Works and all other obligations of the Contractor under the Contract, the Employer shall pay the Contractor a fixed lump sum remuneration (the "**Contract Price**") in the amount specified in the Contractor's Offer submitted in response to the RFQ and accepted by the Employer.

The Contract Price is a lump sum price (wynagrodzenie ryczałtowe) and, except where the Contract expressly provides for an adjustment, includes all costs, expenses, risks, overheads and profit necessary for the complete performance of the Contractor's obligations under the Contract.

The detailed breakdown of the Contract Price included in the Contractor's Offer is provided for payment, reporting and NFOŚiGW settlement purposes and does not affect the lump sum nature of the Contract Price.

Before the first application for payment and additionally for each request of the Employer, the Contractor shall provide a detailed breakdown in the format required by the Employer. The breakdown is for payment, audit, NFOŚiGW and variation valuation purposes and does not convert the lump-sum Contract Price into a remeasurement contract.

The breakdown shall separately identify, at minimum: battery system; PCS; BMS; EMS/PPC/SCADA; transformers; MV/HV switchgear and protection; fire-safety systems; HVAC; civil works; electrical works; design and engineering; transport; testing and commissioning; spare parts; grid-connection works; works for the transitional connection arrangement.

The Contractor shall provide, at no additional cost, such additional cost allocations, invoice breakdowns, supporting documentation, serial-number schedules and acceptance evidence as the Employer reasonably requires to demonstrate eligible costs and project progress to NFOŚiGW.

The Contractor confirms that the lump-sum Contract Price includes the consideration for transfer of ownership, transfer of economic copyrights and derivative rights, warranties, documentation, training, testing and all other obligations under the Contract.

16.2. CURRENCIES OF PAYMENT

The Contract Price shall be payable in the currency or currencies expressly stated in the RFQ. For NFOŚiGW settlement and audit purposes the Contractor shall, when requested, provide PLN allocations/conversions using the methodology notified by the Employer, without changing the Contract Price.

16.3. ADVANCE PAYMENT

If the Employer agrees to make an Advance Payment, its amount and timing shall be stated in the Annex 4. Payment of the Advance Payment is conditional upon receipt of a compliant and valid Performance Security Guarantee.

The Advance Payment shall be amortised against subsequent milestone payments in the manner decided by the Employer.

16.4. PAYMENT SCHEDULE

All payments shall be made in accordance with the Annex 4

The Payment Schedule may be adjusted by the Employer where such adjustment is reasonably necessary to align the Contract with the payment schedule, settlement methodology or documentary requirements agreed with NFOŚiGW under the grant agreement or any amendment thereto. The Employer shall notify the Contractor of the adjustment. Such adjustment shall not change the total Contract Price or the Contractor's Scope unless implemented as a Variation, and the Contractor shall reasonably cooperate with the adjustment.

No payment becomes due unless the relevant Milestone has been achieved to the extent required for payment, the relevant acceptance protocol has been issued/signed as applicable, the Contractor has provided a correct invoice and all supporting documents required under the Payment Schedule, this Contract and NFOŚiGW requirements, including the Subcontractor statements required by Clause 4.4 where applicable.

16.5. INTERIM PAYMENTS

Each application for payment shall identify the relevant Payment Schedule item and Milestone and shall be accompanied by the documents required under the Contract, including acceptance protocol(s), detailed cost breakdown, evidence required for NFOŚiGW settlement and, where Subcontractors are involved, the statements and evidence required by Clause 4.4.

The Employer may reject or suspend the affected part of an application for payment if the supporting documents are incomplete, inconsistent, do not permit allocation to the relevant NFOŚiGW cost category, or if there is a credible risk of double payment to a Subcontractor.

Invoices shall be issued through the Polish National e-Invoicing System (KSeF) to the extent and from the date applicable to the Parties under Polish law. Where legally required, payments shall be made to an account included on the VAT taxpayers' white list and using the split-payment mechanism. The Contractor shall immediately notify the Employer of any change affecting these requirements.

The Employer's payment of an interim invoice does not constitute final acceptance of the relevant Works and does not waive any Defect, warranty, performance or liability claim.

16.6. TIMING OF PAYMENTS

The Employer shall pay any Advance Payment only after receipt of a correct advance invoice, a valid Performance Security Guarantee, and in accordance with the timing stated in Annex 4.

The Employer shall pay undisputed amounts under correctly issued invoices within thirty (30) Days, counted from receipt of the invoice together with all documents constituting a condition of payment under this Contract. If the supporting documents are incomplete, the payment period for the affected amount shall commence only after the deficiency is cured.

16.7. DELAYED PAYMENT

If the Contractor does not receive an undisputed amount when due under the Contract, it may claim the statutory interest for delay applicable to commercial transactions under Polish law, calculated on the overdue undisputed amount.

No interest shall accrue on amounts validly withheld or suspended due to incomplete invoices, missing Subcontractor statements, a bona fide dispute, set-off, or failure to satisfy a contractual condition of payment, for the period attributable to the relevant deficiency or dispute.

The Contractor's entitlement to the interest does not entitle the Contractor to suspend the Works except where an express termination/suspension right under the Contract has arisen.

17.17. TERMINATION

17.1. NOTICE TO CORRECT

If either Party materially fails to perform an obligation under the Contract and such failure is capable of remedy, the other Party may issue a written Notice to Correct describing the relevant failure and requiring it to be remedied within fourteen (14) Days from receipt of the notice.

Where the nature of the failure reasonably requires a longer period to achieve a permanent remedy, the defaulting Party shall not be considered to have failed to comply with the Notice to Correct if, within the fourteen (14) Day period, it has commenced appropriate remedial action and thereafter proceeds with such action diligently and without undue delay, unless the relevant failure creates an immediate material risk to safety, the Project, a PSE Key Milestone or the NFOŚiGW funding.

No cure period shall be required where the relevant ground for termination is by its nature incapable of remedy.

17.2. TERMINATION BY EMPLOYER

The Employer may terminate the Contract, in whole or in a material part, by written notice if the Contractor:

- a) fails to provide or maintain any security or insurance required under the Contract and fails to remedy such failure within the applicable cure period;
- b) materially fails to perform the Works in accordance with the Contract or fails to proceed with the Works with due diligence and does not remedy such failure following a Notice to Correct;
- c) fails to achieve COD in a timely manner stipulated in Annex 4 for reasons attributable to the Contractor;
- d) abandons the Works or clearly demonstrates an intention not to continue performance of a material part of its obligations;
- e) repeatedly fails material Tests on Completion or Tests after Completion and fails to implement an effective remediation plan within the cure period;
- f) assigns the Contract, subcontracts substantially all of the Works or replaces a Major Subcontractor or material BESS technology without the approval required under the Contract;
- g) commits a material breach of the sanctions, anti-corruption, HSE, environmental or cybersecurity requirements of the Contract;
- h) commits any act of bribery, corruption or other unlawful inducement in connection with the Contract;
- i) becomes insolvent, enters into liquidation or bankruptcy, or becomes subject to another analogous proceeding which materially affects its ability to perform the Contract; or

j) materially breaches an obligation relating to the Grant Agreement or NFOŚiGW requirements, where such breach causes or creates a material and reasonably demonstrable risk of suspension, reduction, recovery or loss of NFOŚiGW funding or failure to achieve the effects of the Investment.

Termination under paragraphs (d), (h), insolvency under paragraph (i), or a sanctions breach which makes continued performance unlawful may be exercised with immediate effect. In all other cases capable of remedy, termination may be exercised if the relevant failure has not been remedied within the cure period under Clause 17.1

17.3. CONTRACTUAL PENALTY UPON TERMINATION FOR CONTRACTOR DEFAULT

If the Employer terminates the Contract pursuant to Clause 17.2 due to a breach or other circumstance for which the Contractor is responsible, the Contractor shall pay the Employer a contractual penalty (*kara umowna*) equal to 5% of the Contract Price excluding VAT.

Payment of the contractual penalty shall not prejudice the Employer's right to claim damages exceeding the amount of such penalty on general principles of Polish law.

Such damages may include, to the extent attributable to the Contractor, any reduction, suspension, recovery or loss of NFOŚiGW funding, interest required to be repaid to NFOŚiGW and reasonable costs directly resulting therefrom, provided that the Employer shall not obtain double recovery in respect of the same loss.

17.4. CONSEQUENCES OF TERMINATION FOR CONTRACTOR DEFAULT

Upon termination pursuant to Clause 17.2, the Contractor shall:

- a) cease the affected Works, except for activities required for safety, protection and preservation of the Works and the Site;
- b) secure and protect the Site, Works, Equipment and Materials;
- c) promptly deliver to the Employer all Contractor's Documents, designs, calculations, software configurations, passwords, test records, permits, correspondence with Authorities and PSE and other documentation prepared in connection with the Works;
- d) deliver to the Employer all Goods and Materials for which title has passed to the Employer;
- e) reasonably cooperate in the transfer to the Employer or a replacement contractor of relevant permits, warranties, licences and subcontracts, to the extent legally possible; and
- f) remove its remaining Contractor's Equipment from the Site when instructed by the Employer.

The Employer may complete the Works itself or engage third parties to do so and may use the Contractor's Documents and other rights transferred or licensed to it under the Contract for this purpose.

The Employer shall determine the value of Works properly completed and Goods properly delivered up to the effective date of termination. The Employer may withhold payment until the reasonable costs of completing the Works, remedying Defects and other amounts due from the Contractor have been established and may set off such amounts against sums otherwise due to the Contractor or recover them from the applicable Security

17.5. TERMINATION BY THE CONTRACTOR

The Contractor may terminate the Contract by written notice if:

- a) an undisputed amount properly due to the Contractor remains unpaid for more than thirty (30) Days after its contractual due date and remains unpaid for a further fourteen (14) Days after the Contractor has issued a Notice to Correct;
- b) the Employer commits another material breach of the Contract which substantially prevents the Contractor from performing the Works and fails to remedy such breach in accordance with Clause 17.1;
- c) a suspension of substantially all of the Works for reasons not attributable to the Contractor continues for more than ninety (90) aggregate Days, unless the Parties agree otherwise; or
- d) the Contractor is entitled to terminate due to failure to issue the NTP by the NTP Longstop Date in accordance with Clause 8.1.

Termination shall take effect fourteen (14) Days after the Contractor's notice of termination, unless the relevant breach is remedied before expiry of that period.

Following termination under this Clause, the Contractor shall be entitled to payment for Works properly performed up to the effective date of termination, Goods to which title passes to the Employer, reasonable and documented demobilisation costs and any other damages recoverable in accordance with Applicable Law and the limitations of liability under the Contract.

17.6. NFOŚiGW / GRANT AGREEMENT

If the Grant Agreement is terminated, rescinded or otherwise ceases to provide funding for the Project, or if the NFOŚiGW funding is materially suspended, withdrawn or reduced, the Employer may terminate the Contract in whole or in part by giving the Contractor twenty-eight (28) Days' written notice, where continuation of the relevant Works is no longer reasonably justified.

If such event results from a breach of the Contract attributable to the Contractor, the termination shall be treated as a termination for Contractor Default under Clauses 17.2–17.4.

If the event is not attributable to the Contractor, termination shall be treated as termination under Clause 17.7 below

17.7. TERMINATION DUE TO PROLONGED IMPEDIMENT

If, as a result of circumstances beyond the reasonable control of both Parties and not attributable to either Party, the performance or continuation of all or a substantial part of the Works becomes impossible, unlawful or materially and persistently impracticable, either Party may request that the

Parties consult in good faith with a view to agreeing appropriate measures allowing the Contract to continue, including, where appropriate, a Variation of the scope, Project Time Schedule or method of performance.

Such circumstances may include, without limitation, a prolonged Force Majeure Event, a binding decision or action of a competent Authority, a material change affecting the possibility of implementing the Project, or another external event which materially prevents or obstructs the continuation of the Works and for which neither Party is responsible.

If such circumstances continue for more than sixty (60) Days and the Parties have not, despite reasonable efforts, agreed a commercially and technically reasonable solution allowing the Contract to continue, either Party may terminate the Contract, in whole or in the affected part, by giving the other Party at least twenty-eight (28) Days' written notice.

Termination under this Clause shall not constitute a default by either Party.

Upon such termination, the Contractor shall:

- a) cease the affected Works on the effective date of termination;
- b) properly protect and secure the Works, Site, Equipment and Materials;
- c) deliver to the Employer all Contractor's Documents and other documentation relating to the Works performed up to the effective date of termination;
- d) transfer to the Employer title to Goods and Materials paid for by the Employer or included in the termination settlement; and
- e) reasonably cooperate with the Employer in the orderly discontinuation or transfer of the affected Works.

The Contractor shall be entitled to:

- a) payment for Works properly performed up to the effective date of termination;
- b) payment for Goods and Materials properly procured for the Project which are transferred to the Employer;
- c) reasonable and properly documented costs of irrevocable commitments entered into before the circumstances giving rise to termination occurred, to the extent such commitments cannot reasonably be cancelled, transferred or otherwise mitigated; and
- d) reasonable and properly documented demobilisation and Site-security costs arising directly from the termination.

Neither Party shall be entitled to claim from the other Party loss of profit, anticipated margin or other lost benefits (utracone korzyści) arising as a consequence of termination under this Clause.

Each Party shall take reasonable measures to mitigate the consequences and costs of the circumstances giving rise to termination.

17.8. SURVIVAL

Termination shall not affect any rights or liabilities accrued before the effective date of termination or any provisions which by their nature are intended to survive, including provisions concerning payment, contractual penalties, damages, NFOŚiGW obligations and audit documentation, intellectual property, confidentiality, warranties, statutory warranty (*rękojmia*), indemnities and dispute resolution

18.18. SUSPENSION BY CONTRACTOR

18.1. CONTRACTOR'S ENTITLEMENT TO SUSPEND WORK

The Contractor may suspend all or part of the Works only where an undisputed amount properly due under the Contract remains unpaid and the Employer has failed to pay that amount within thirty (30) Business Days after receiving written notice from the Contractor identifying the overdue amount and stating the Contractor's intention to suspend.

No suspension right shall arise in respect of amounts validly withheld, set off, disputed in good faith or unsupported by the documents required under the Contract.

If the overdue undisputed amount is paid before termination, the Contractor shall resume normal performance as soon as reasonably practicable.

If the Contractor properly suspends the Works under this Clause and demonstrates resulting critical-path delay or reasonable additional Cost, it may claim the corresponding relief in accordance with Clauses 8.4 and 23.2, subject to its duty to mitigate and without duplication of recovery.

19.19. RISK AND RESPONSIBILITY

19.1. INDEMNITIES

For the purposes of this Clause 19, "Employer Indemnified Party" means the Employer, any member of the Employer's Personnel or any of their respective directors, officers, employees, agents or successors, and "Employer Indemnified Parties" means all of them collectively.

If there are any ambiguities as to the scope of the Contractor's liability based on the content of this Contract, the Parties should resolve these ambiguities based on Appendix 2.01- Responsibility Matrix - to the Annex 1.

19.1.1. Contractor's General Indemnity

The Contractor shall defend, indemnify and hold the Employer, Employer's Personnel, and their respective agents harmless against all claims, damages, losses and expenses (including legal fees and expenses) with respect to:

- (a) Bodily injury, sickness, disease or death, of any person whatsoever arising out of or in the course of or by reason of the design, execution and completion of the Works and the remedying of any defects, unless attributable to any negligence, willful act or breach of

the Contract by the Employer, Employer's subsidiaries and Affiliates, and the directors, officers, agents, employees, successors and assignees of each of them

- (b) Damage or loss of any property, real or personal to the extent that such damage or loss:
- i. Arises by reason of the design, execution and completion of the Works and the remedying of any defects, and
 - ii. Is not attributable to any negligence, willful act or breach of the Contract by the Employer, the Employer's Personnel, their respective agents, or anyone directly or indirectly employed by any of them.

19.1.2. Specific Indemnity

The Contractor agrees to indemnify, defend and hold any Employer Indemnified Party harmless, from and against all fines, penalties, related costs and expenses attributable to any failure of the Contractor or Subcontractors to comply with all Applicable Laws and Permits in connection with the performance of the Works.

19.1.3. Indemnity from Liens.

Provided that the Employer is not in default under this Contract for failing to pay an undisputed amount due hereunder, the Contractor shall indemnify and protect any Employer Indemnified Party from and against all claims, liens, charges or encumbrances arising from the performance of the Works by Contractor or otherwise caused by any Subcontractor or any employee, agent or Affiliate of Contractor or any of its Subcontractors. Such indemnity shall survive the termination of this Contract, but only with respect to Work for which the Employer has paid the Contractor, and only to the extent of that payment.

19.1.4. Contractor's Environmental Indemnity

The Contractor shall have liability for, and the Contractor agrees to indemnify, defend and hold the Employer Indemnified Party harmless against any breach by the Contractor or Contractor's obligations with respect to Hazardous Materials brought to the Site by Contractor or its Subcontractors, other than to the extent caused by the Employer Indemnified Party not attributable to the Contractor or any Subcontractor or Affiliate of Contractor.

19.1.5. Contractor's Infringement Indemnity

The Contractor shall indemnify and keep all indemnified Employer Parties harmless against any and all third party suits, actions, losses, damages, claims or liability of any type of character, type or description, including, but not limited to, all expenses of litigation, court costs and attorneys' fees, based upon any claim of infringement of any patent or other license or intellectual property right (whether by way of trademark or otherwise) resulting directly or indirectly from the manufacture, sale, supply or importation of the parts and components supplied by the Contractor or its Subcontractors pursuant to this Contract, and not specified by the Employer. Each Party agrees to notify the other as soon as reasonably possible of any material matters with respect to which the foregoing indemnity is likely to apply and of which the notifying Party has actual knowledge. If notified in writing of any action or claim for which the

Contractor may be liable to provide indemnity, the Contractor shall, without limitation, defend (subject to reasonable consultation with Employer) such action or claim at Contractor's expense and pay the cost and damages and attorneys' fees awarded against Employer in such action or claim, provided, however, that the Contractor shall have the right to control the defense and settlement of all such actions or claims. Such settlement shall be subject to the consent of the Employer, if applicable, and such consent should not be unreasonably withheld. Indemnification pursuant to this Clause shall not be predicated on the Employer having made payment on any such claim. In the event the apparatus or equipment, or any part thereof furnished hereunder, is in such a suit or proceedings related to Indemnities from Liens and is held to constitute infringement, the Contractor shall, at its option, and with Employer's approval, and at its own expense, either:

- (a) procure the right to continue using said software, parts and components thereof for the Employer;
- (b) replace it with non-infringing apparatus or equipment; or
- (c) modify it so it becomes non-infringing while retaining equivalent functionality.

To the extent not otherwise specified above, the Contractor shall be liable in accordance with the general principles of liability and the allocation of responsibilities set out in Appendix 2.01 – Responsibility Matrix to Annex 1. Such allocation shall not limit, exclude or otherwise prejudice any liability of the Contractor arising under any other provision of the Contract, including, in particular, liability for contractual penalties.

19.2. INDEMNIFICATION PROCEDURE

When required to indemnify any Party entitled to indemnification under Clause **19.1 INDEMNITIES** ("**Indemnified Party**"), the Party providing the indemnity (the "**Indemnifying Party**") shall assume on behalf of such Indemnified Party and conduct with due diligence and in good faith the defense of any claim against such party, whether or not the Indemnifying Party shall be joined therein, and the Indemnified Party shall cooperate with the Indemnifying Party in such defense. The Indemnifying Party shall have charge and direction of the defense and settlement of such claim, provided, however, that without relieving the Indemnifying Party of its obligations hereunder or impairing the Indemnifying Party's right to control the defense or settlement thereof, the Indemnified Party may elect to participate through separate counsel in the defense of any such claim, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party unless (a) the employment of counsel by such Indemnified Party shall have reasonably concluded that there exists a material conflict of interest between the Indemnifying Party and such Indemnified Party in the conduct of the defense of such claim (in which case the Indemnifying Party shall not have the right to control the defense or settlement of such claim, on behalf of such Indemnified Party) or (b) the Indemnifying Party shall not have employed counsel to assume the defense of such claim within a reasonable time after notice of the

commencement thereof. In each of such cases the fees and expenses of counsel shall be at the expense of the Indemnifying Party. The amount of any indemnity payment made under Clause **19.1 INDEMNITIES** shall be reduced by the amount of all insurance proceeds received by the Indemnified Party in respect of the event giving rise to the right of indemnity under Clause **19.1 INDEMNITIES**. All payments with respect to indemnities shall be made according to the provisions under this Clause **19 RISK AND RESPONSIBILITY**.

19.3. SURVIVAL OF INDEMNITIES

The indemnities set forth in this Clause 19 RISK AND RESPONSIBILITY shall survive the termination or expiration of this Contract.

19.4. CONTRACTOR'S CARE OF THE WORKS

The Contractor shall bear the risk of loss of or damage to the Works and Goods from commencement of its activities until PAC, notwithstanding any earlier transfer of title under Clause 7.5. Risk shall not transfer by deemed acceptance. For Punch List B items, the Contractor remains responsible for damage caused by its remedy activities and for the relevant outstanding item until clearance.

After responsibility and the risk of loss have accordingly passed to the Employer, the Contractor shall take responsibility for the care of any work outstanding on the date stated in a Take Over Certificate until this outstanding work has been completed.

If any loss or damage happens to the work performed by the Contractor during the period when the Contractor is responsible for their care, the Contractor shall rectify the loss or damage at the Contractor's risk and cost, so that such work conforms to the Contract.

The Contractor shall be liable for any direct loss or damage caused by any actions performed by the Contractor after a Take Over Certificate has been issued. The Contractor shall also be liable for any direct loss or damage which occurs after a Take Over Certificate has been issued and which arose from a previous event for which the Contractor was liable.

19.5. INTELLECTUAL AND INDUSTRIAL PROPERTY RIGHTS

In this Clause, "**infringement**" means an infringement (or alleged infringement) of any patent, registered design, copyright, trademark, trade name, trade secret or other intellectual or industrial property right relating to the Works; and "**claim**" means a claim (or proceedings pursuing a claim) alleging an infringement.

A Party receiving an intellectual-property claim shall notify the other Party promptly and provide reasonable details. Delay in notice shall not extinguish an indemnity claim except to the extent the indemnifying Party proves that the delay caused material, irrecoverable prejudice to its defence or settlement of the third-party claim.

The Employer shall indemnify and hold the Contractor harmless against and from any claim alleging an infringement which is or was a result of any Works being used by the Employer:

- (i) for a purpose other than that indicated by, or reasonably to be inferred from, the Contract, or
- (ii) in conjunction with anything not supplied by the Contractor, unless such use was disclosed to the Contractor prior to the Base Date or is stated in the Contract.

The Contractor shall indemnify and hold the Employer harmless against and from any other claim which arises out of or in relation to:

- (i) the Contractor's design, manufacture, construction or execution of the Works,
- (ii) the use of Contractor's Equipment, or
- (iii) the proper use of the Works.

If a Party is entitled to be indemnified under this Clause, the indemnifying Party may (at its cost) conduct negotiations for the settlement of the claim, and any litigation or arbitration which may arise from it. The other Party shall, at the request and cost of the indemnifying Party, assist in contesting the claim. This other Party (and its Personnel) shall not make any admission which might be harmful to the indemnifying Party, unless the indemnifying Party failed to take over the conduct of any negotiations, litigation or arbitration upon being requested to do so by such other Party.

19.6. LIMITATION OF LIABILITY

Subject to the exclusions below, the Contractor's aggregate liability for damages under the Contract shall not exceed 100% of the Contract Price. Contractual penalties are subject to their specific caps stated in the Contract and Annexes, without prejudice to the Employer's right to claim damages in excess of contractual penalties where expressly permitted.

No contractual limitation or exclusion shall apply to liability arising from: fraud; wilful misconduct; gross negligence; death or personal injury; infringement of intellectual property rights; environmental contamination attributable to the Contractor; battery fire or thermal runaway caused by design, manufacturing or installation defect; cybersecurity breach attributable to the Contractor; sanctions breach; unpaid Subcontractor claims for which the Employer incurs statutory liability; or loss, reduction, recovery or repayment of NFOŚiGW funding to the extent caused by the Contractor's breach.

The Party shall not be liable for indirect or consequential loss except where such loss falls within an express indemnity or an exclusion from the liability cap under the paragraph above.

19.7. OVERALL LIMITATION ON CONTRACTUAL PENALTIES

The aggregate amount of contractual penalties (kary umowne), including penalties for delay attributable to the Contractor (pl. zwłoka) and performance-related contractual penalties, shall not exceed 25% of the Contract Price excluding VAT, unless a lower specific category cap applies under the Contract or an Annex. This contractual-penalty cap does not limit the Employer's right to claim damages exceeding the penalties where the Contract so provides, and it does not limit liabilities expressly excluded from the general liability cap.

The above cap applies only to contractual penalties and does not reduce or replace the general liability cap or the uncapped liabilities specified in Clause 19. It also does not prevent the Employer from claiming damages exceeding contractual penalties where the Contract expressly permits such claim.

20. INSURANCE

20.1. GENERAL REQUIREMENTS FOR INSURANCES

The Contractor is responsible for effecting and maintaining the insurance specified in the relevant clause ("**Insuring Party**").

If a policy is required to indemnify joint insured, the cover shall apply separately to each insured as though a separate policy had been issued for each of the joint insured. If a policy indemnifies additional joint insured, namely in addition to the insured specified in this Clause, (i) the Contractor shall act under the policy on behalf of these additional joint insured except that the Employer shall act for Employer's Personnel and (ii) additional joint insured shall not be entitled to receive payments directly from the insurer or to have any other dealings with the insurer, and (iii) the Insuring Party shall require all additional joint insured to comply with the conditions stipulated in the policy.

Each policy insuring against loss or damage shall provide for payments to be made in the currencies required to rectify the loss or damage. Payments received from insurers shall be used for the rectification of the loss or damage or with respect to the insurance of the Works pursuant to sub-clause **20.2 CONSTRUCTION ALL RISK INSURANCE**, as the Employer instructs.

The Contractor shall, prior to commencement of the activity to which the relevant insurance applies, and in any event before the Employer permits the Contractor to commence such activity, submit to the Employer:

- a) evidence that the insurances required under this Clause have been duly effected, due premium is paid, and are in full force and effect; and
- b) copies of the policies relating to property insurance, including Construction All Risk Insurance and Transport/Marine Cargo Insurance, and insurance certificates identifying the key terms, limits and coverage of the Public or Third-Party Liability Insurance and Professional Indemnity Insurance.

Without limitation to the foregoing, evidence of the Construction All Risk Insurance and Public or Third-Party Liability Insurance shall be provided before commencement of any physical Works on the Site, and evidence of the Transport/Marine Cargo Insurance shall be provided before the first shipment of any Goods.

Each Party shall comply with the conditions stipulated in each of the insurance policies. The Contractor shall keep the insurers informed of any relevant changes to the execution of the Works and ensure that insurance is maintained in accordance with this Clause.

Neither Party shall make any material alteration to the terms of any insurance that would not be in compliance with this Clause without the prior approval of the other Party. Moreover, if any Insurer makes (or attempts to make) any substantial alteration, the Party first notified by the insurer shall promptly give notice to the other Party.

If the Contractor fails to effect and keep in force any of the required insurances under the Contract, or fails to provide satisfactory evidence and copies of policies or certificates in accordance with this Sub-Clause, the Employer may (at its discretion and without prejudice to any other right or remedy), subscribe insurance for the relevant coverage and pay the premiums due. The Contractor shall pay the amount of these premiums to the Employer, reimbursing the relevant amounts. In case the Contractor fails to reimburse the relevant amounts within a reasonable deadline, the Employer shall have the right to adjust (set off) the Contract Price accordingly.

Nothing in this Clause limits the obligations, liabilities or responsibilities of the Contractor under the other terms of the Contract or otherwise. Any amounts not insured or not recovered from the insurers shall be borne by the Contractor in accordance with these obligations, liabilities, or responsibilities. However, if the Contractor fails to effect and keep in force an insurance which is available and which it is required to effect and maintain under the Contract, and the Employer neither approves the omission nor effects insurance for the coverage relevant to this default, any moneys which should have been recoverable under this insurance shall be paid by the Contractor.

With respect to any property insurance (if any) where both Parties are co-insured parties, any deductible under such insurance coverage shall be borne by the Party who bears the risk of loss at the time of the damage with respect to the property insured unless the other Party or any of the other Party's subcontractors has caused the damage in which case such other Party shall bear such deductible and reimburse the first Party accordingly.

20.2. CONSTRUCTION ALL RISK INSURANCE

The Contractor shall effect and maintain, a Construction All Risk Insurance covering the BESS Facility for an amount sufficient to cover the BESS Facility against all risks of physical loss and damages including mechanical and electrical breakdown, the costs of demolition, removal of debris and professional fees. This insurance shall be effective from the commencement of any on-site related activity for the Construction All Risk Insurance until the date of issuance of the Take Over Certificate for the Works.

On the Employer's request, the policy shall include extended maintenance coverage for twenty-four (24) months following PAC, to the extent such coverage is reasonably available in the insurance market on commercially reasonable terms.

Insurances under this Sub-Clause:

- a) shall be effected and maintained by the Contractor;
- b) With respect to property, coverages shall be in the joint names of the Parties, and payments from the insurers being held or allocated between the Parties shall be for the sole purpose of rectifying

the loss or damage – i.e., the party entitled to receive any amount paid by the insurer should be the Employer. The Contractor may also be named as a co-insured party; however, the Employer should have priority over the Contractor in receiving funds from the insurer in order to cover its loss.

20.3. INSURANCE FOR PARTIES' PERSONNEL

The Contractor shall effect and maintain insurance that covers liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death occurring in the scope of employment for any person employed by the Contractor.

Contractor shall have his own sub-contractors effect and maintain insurance that covers liability for claims, damages, losses and expenses (including legal fees and expenses) arising from injury, sickness, disease or death occurring in the scope of employment for any person employed by the sub-contractors for their own employees and shall be able to justify it upon Employer's request.

The insurance shall be maintained in full force and effect during the whole time that these personnel are assisting in the execution of the Works.

20.4. PUBLIC OR THIRD-PARTY LIABILITY INSURANCE (UBEZPIECZENIE ODPWIEDZIALNOŚCI CYWILNEJ)

The Contractor shall be obliged to cover its legal liability for any loss, damage, death or bodily injury which may occur to any third-party physical property or to any person which may arise out of the Party's performance of the Contract and occurring before the issue of the Performance Certificate.

This insurance shall cover at least € 20,000,000 per occurrence and in the aggregate annually, subject to availability in the insurance market.

This insurance specified in this Sub-Clause:

- shall be effected and maintained by the Contractor,
- shall be extended to cover liability for all loss and damage to the Employer's property arising out of the Contractor's performance of the Contract, and

Contractor shall have its Subcontractors effect and maintain insurance that covers their legal liability for loss, damage, death or bodily injury which may occur to any third party physical property or to any person, which may arise out of the Subcontractor's performance in relation to the Contract; Contractor shall submit to the Employer Subcontractors' insurance certificates evidencing compliance with the foregoing together with submission of any new Subcontractor for Employer's approval and thereafter upon request.

20.5. TRANSPORT/MARINE CARGO INSURANCE

The Contractor shall, at its own cost, effect and maintain Transport/Marine Cargo Insurance covering the Goods on a warehouse-to-warehouse basis worldwide, including loading, transshipment, inland transportation and unloading at the Site, until delivery of all relevant Goods to the Site. The insured limit shall be not less than the maximum value exposed in any one conveyance.

The Employer and such Financing Parties as the Employer may designate shall be included as additional insureds, loss payees or beneficiaries.

The Contractor shall provide the information and cooperation reasonably required for such cover and shall comply with reasonable survey and loss-prevention requirements.

The Contractor shall provide the Employer with evidence of the Transport/Marine Cargo Insurance before the first shipment and shall promptly provide information reasonably required for claims handling. The Contractor shall notify the Employer of any material transport damage within two (2) Business Days after discovery.

If the Contractor fails to provide information or cooperation required under this Clause and such failure causes the loss or reduction of insurance proceeds otherwise recoverable by the Employer, the Contractor shall reimburse the Employer for the demonstrated amount of such lost proceeds to the extent attributable to the Contractor, subject to Clause 19.

21.21. FORCE MAJEURE

21.1. DEFINITION OF FORCE MAJEURE

In this Clause, "**Force Majeure**" means an exceptional event or circumstance:

- a) which is beyond a Party's control,
- b) which such Party could not reasonably have foreseen or provided against before entering into the Contract,
- c) which, having arisen, such Party could not reasonably have avoided or overcome, and
- d) which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions (a) to (d) above are satisfied:

For the avoidance of doubt, inflation, exchange-rate movements, price increases, ordinary labour or material shortages, financing constraints, supply-chain congestion and Subcontractor/supplier defaults are Contractor risks and do not constitute Force Majeure unless and only to the extent they are the unavoidable direct consequence of an independently qualifying Force Majeure event and the Contractor has exhausted reasonable mitigation and alternative sourcing.

- (i) war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
- (ii) rebellion, acts or threats of terrorism, revolution, insurrection, military or usurped power, or civil war,
- (iii) riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Sub-contractors,
- (iv) munitions of war, explosive materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity,
- (v) labor dispute and/or strike of a national character,
- (vi) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity,

(vii) epidemic, pandemic or plague.

Any climatic condition for the Site cannot be considered as a Force Majeure event; climatic conditions shall remain a Contractor's risk.

21.2. NOTICE OF FORCE MAJEURE

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented, with supporting particulars. The notice shall be given within five (5) Days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure.

If such circumstances arise directly on the Site whilst the Parties are present at the Site then such notice shall be given promptly and, in any case, within three (3) days after the Party became aware.

The Party shall, having given notice, be excused of the performance of such obligations for so long as such Force Majeure event prevents it from performing them.

In case of failure to give notice of Force Majeure within the deadline above established, the Party shall not be excused of the performance of its obligations.

Notwithstanding any other provision of this Clause, and with the only exception of the Advance Payment, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract, when such payments become due as per the provisions of the Contract. Employer shall be excused from its obligations for making the Advance Payment in case of Force Majeure.

21.3. DUTY TO MINIMISE DELAY

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

21.4. CONSEQUENCES OF FORCE MAJEURE

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Clause **21.2 NOTICE OF FORCE MAJEURE**, and suffers delay by reason of such Force Majeure, the Contractor shall be entitled subject to Clause **23.2 CONTRACTOR'S CLAIMS**, to an extension of time for any such delay, if completion is or will be delayed, under Clause **8.4 EXTENSION OF TIME FOR KEY EVENTS AND OF TIME FOR COMPLETION**.

Each Party shall bear its costs arising from a Force Majeure. The Contractor shall not be entitled to claim for any such cost. After receiving this notice, the Employer shall proceed in accordance with Clause 3.4 DETERMINATIONS to agree or determine these matters.

If the Employer is prevented from performing any of its obligations under the Contract by Force Majeure of which notice has been given under Clause **21.2 NOTICE OF FORCE MAJEURE**, the Employer shall be

entitled to suspend the affected obligations until the moment the effects of such Force Majeure event have ceased.

21.5. TERMINATION FOR EXTENDED FORCE MAJEURE

Where a Force Majeure event results in circumstances in which the performance or continuation of all or a substantial part of the Works becomes impossible, unlawful or materially and persistently impracticable, the Parties shall first seek to mitigate the event and agree reasonable measures allowing the Contract to continue.

Any right to terminate the Contract as a result of prolonged Force Majeure, and the consequences of such termination, shall be governed exclusively by Clause 17.7 TERMINATION DUE TO PROLONGED IMPEDIMENT.

21.6. FORCE MAJEURE AFFECTING SUBCONTRACTOR

If any Subcontractor is entitled under any contract or agreement relating to the Works to relief due to force majeure on terms additional to or broader than those specified in this Clause, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Clause.

22.22. CHANGE OF CIRCUMSTANCES

For the avoidance of doubt, the following shall not constitute Force Majeure in themselves: inflation, exchange-rate movements, increases in labour, battery, raw-material, energy, logistics or financing costs; ordinary procurement difficulties; market shortages; supply-chain congestion; delay, default or insolvency of a Subcontractor or supplier; inability to obtain financing; or general economic circumstances. A direct effect of an otherwise qualifying Force Majeure event on a critical supply may justify time relief only if the Contractor proves that it could not reasonably avoid or mitigate the effect through alternative sourcing, expedited measures or other Good Industry Practice and that the event was not attributable to the Contractor or its supply chain.

23.23. CLAIMS, DISPUTES AND ARBITRATION

23.1. EMPLOYER'S CLAIMS

If the Employer considers himself to be entitled to any payment in connection with this Contract, and/or to any extension of the Defects Notification Period, he shall give notice and particulars to the Contractor. However, notice is not required for payments due under Clause 4.17 ELECTRICITY, WATER, GAS AND TELECOM, for Employer's Equipment, or for other services requested by the Contractor.

The Employer shall notify the Contractor of a claim within a reasonable time after becoming aware of the relevant circumstances, but failure to give notice within any specified administrative period shall not

extinguish or time-bar the Employer's claim unless mandatory Polish law so provides. No contractual time bar applies to latent Defects, fraud, wilful misconduct, gross negligence, NFOŚiGW/audit claims, third-party claims, Subcontractor claims, title/IP claims, environmental matters or claims not reasonably discoverable earlier.

The particulars shall specify the Clause or other basis of the claim and shall include substantiation of the amount and/or extension to which the Employer considers himself to be entitled in connection with the Contract. The Employer shall then proceed in accordance with Clause 3.4 DETERMINATIONS to agree or determine (i) the amount (if any) which the Employer is entitled to be paid by the Contractor, and/or (ii) the extension (if any) of the Defects Notification Period.

Notwithstanding any provision herein, the Employer may, upon the occurrence and continuance of any of the following events and upon written notice to the Contractor, withhold or retain such portion (including all) of any payment due to the Contractor under this Contract that is equal to the reasonable cost to cure the event giving rise to the holdback, including those listed here below.

- (a) A Contractor material breach has occurred, i.e. a substantial failure in the performance of the Contract, which is significant enough to allow the Employer to seek for damages,
- (b) Any part of such payment that is attributable to Works which contain one or more defects or have not been performed in accordance with the Contract and in particular the technical specifications.
- (c) The Contractor has failed to make payments to its Subcontractors in accordance with the terms of the applicable subcontract agreement or purchase order for equipment, material, or labour used in the Works for which the Employer has paid the Contractor.

23.2. CONTRACTOR'S CLAIMS

If the Contractor considers himself to be entitled to any extension of the Time for Completion and/or any additional payment, under any Clause of these Conditions or otherwise in connection with the Contract, the Contractor shall give notice to the Employer, describing the event or circumstance giving rise to the claim. The notice shall be given as soon as practicable, and not later than fifteen (15) Days after the Contractor became aware, or should have become aware, of the event or circumstance.

If the Contractor fails to give notice of a claim within such period of fifteen (15) Days, the Time for Completion shall not be extended, the Contractor shall not be entitled to additional payment, and the Employer shall be discharged from all liability in connection with the claim. Otherwise, the following provisions of this Clause shall apply.

The Contractor shall also submit any other notices which are required by the Contract, and supporting particulars for the claim, all as relevant to such event or circumstance.

The Contractor shall keep such contemporary records as may be necessary to substantiate any claim, either on the Site or at another location acceptable to the Employer. Without admitting liability, the Employer may, after receiving any notice under this Clause, monitor the record-keeping and/or instruct

the Contractor to keep further contemporary records. The Contractor shall permit the Employer to inspect all these records and shall (if instructed) submit copies to the Employer.

Within twenty (20) Days after the Contractor became aware (or should have become aware) of the event or circumstance giving rise to the claim, or within such other period as may be proposed by the Contractor and approved by the Employer, the Contractor shall send to the Employer a fully detailed claim which includes full supporting particulars of the basis of the claim and of the extension of time and/or additional payment claimed. If the event or circumstance giving rise to the claim has a continuing effect:

- a) this fully detailed claim shall be considered as interim;
- b) the Contractor shall send further interim claims at monthly intervals, giving the accumulated delay and/or amount claimed, and such further particulars as the Employer may reasonably require; and,
- c) the Contractor shall send a final claim within twenty-eight (28) Days after the end of the effects resulting from the event or circumstance, or within such other period as may be proposed by the Contractor and approved by the Employer.

Within twenty (20) Days after receiving a claim or any further particulars supporting a previous claim, or within such other period as may be proposed by the Employer and approved by the Contractor, the Employer shall respond with approval, or with disapproval and detailed comments. He may also request any necessary further particulars but shall nevertheless give his response on the principles of the claim within such time.

Each interim payment shall include such amounts for any claim as have been reasonably substantiated as due under the relevant provision of the Contract. Unless and until the particulars supplied are sufficient to substantiate the whole of the claim, the Contractor shall only be entitled to payment for such part of the claim as he has been able to substantiate.

The Employer shall proceed in accordance with Clause 3.4 DETERMINATIONS to agree or determine (i) the extension (if any) of the Time for Completion (before or after its expiry) in accordance with Clause 8.4 EXTENSION OF TIME FOR KEY EVENTS AND OF TIME FOR COMPLETION and/or (ii) the additional payment (if any) to which the Contractor is entitled under the Contract.

The requirements of this Clause are in addition to those of any other Clause which may apply to a claim. If the Contractor fails to comply with this or another Clause in relation to any claim, any extension of time and/or additional payment shall take account of the extent (if any) to which the failure has prevented or prejudiced proper investigation of the claim, unless the claim is excluded under the second paragraph of this Clause.

23.3. TECHNICAL DISPUTE

A “**Technical Dispute**” means a dispute of technical nature in connection with the Contract which the Parties are not able to resolve involving their respective senior management.

If the above amicable settlement fails then the Parties may, but shall not be obliged to, appoint an Independent Expert within thirty (30) Days from the Technical Dispute being raised or ten (10) Days from the time limit that was fixed for the managers to reach an agreement.

In case of any Technical Dispute, the Employer and Contractor, acting reasonably and in good faith, shall within such thirty (30) Days of written notification from the other Party of election of the Technical Dispute process mutually designate one (1) Independent Expert to resolve such Technical Dispute.

If a Party does not notify the other Party of its intention to appoint a Technical Expert, as indicated above, within the above-mentioned period of thirty (30) days starting from when such dispute has been raised to the other Party, then such Technical Dispute may only be settled in accordance with the provisions stated in **23.4 ARBITRATION** and neither Party shall have the right to request the Technical Expert appointment for such Technical Dispute.

Each Party shall be required to provide one proposal, budget or solution, as the case may be, as its proposed resolution to the Technical Dispute to the Independent Expert and the other Party not later than five (5) Business Days after the selection of the Independent Expert.

The Independent Expert shall be guided by consideration of this Contract and the applicable Law, and good BESS industry practices in its resolution of the Technical Dispute.

The Independent Expert shall render a decision resolving the matter within twenty (20) Business Days of the date of receipt of the second of the proposals submitted by the Parties for resolution by the Independent Expert. The Independent Expert shall not award to either Party any relief greater than that initially sought by such Party.

Such decision made by the Independent Expert shall be binding only to the extent that it is not disputed by a Party within fifteen (15) days from when such decision is notified to the Parties.

The Independent Expert will also provide an opinion on the cost and expenses and shall allocate them to the Parties based on the outcome of the Technical Dispute.

If such decision is disputed by any Party, the decision (including where applicable the decision on cost and expenses of the Independent Expert) shall not be binding for the Parties until confirmed by Arbitration, in which case the dispositions of Clause 23.4 ARBITRATION shall apply.

23.4. ARBITRATION

Any dispute, controversy or claim arising out of or in connection with this Contract, including its existence, validity, interpretation, performance, breach, termination or consequences of termination, which is not resolved amicably within 30 Business Days after a written notice of dispute, shall be finally resolved by the Court of Arbitration at the Polish Chamber of Commerce in Warsaw (Sąd Arbitrażowy przy Krajowej Izbie Gospodarczej w Warszawie) in accordance with its Arbitration Rules in force on the date of filing the Request for Arbitration.

The seat and place of arbitration shall be Warsaw, Poland. The language of arbitration shall be Polish. Documents originally prepared in English may be submitted in English unless the arbitral tribunal orders a Polish translation.

The tribunal shall consist of three arbitrators unless the applicable Arbitration Rules provide for a sole arbitrator and the Parties do not agree otherwise.

24.24. CONTRACTOR TAXES

Unless otherwise specified in the Contract, the Contractor shall be responsible for, and shall directly pay Contractor Taxes. If the Employer deducts or withholds Contractor Taxes, the Employer shall furnish within one (1) month to the Contractor accurate official receipts from the appropriate governmental authority for each deducted or withheld Contractor Taxes.

"Contractor Taxes" means all taxes, duties, customs charges, social-security contributions and public-law charges imposed on or payable by the Contractor, its personnel, Subcontractors or suppliers in connection with performance of the Contract, except VAT properly chargeable to the Employer and taxes expressly allocated to the Employer under the Contract. The Contractor is responsible for compliance with Polish tax and customs law applicable to its performance.

25.25. EMPLOYER TAXES

"Employer Taxes" means taxes and public-law charges imposed directly on the Employer in its capacity as owner/investor and expressly allocated to the Employer under the Contract. Nothing in this Clause obliges the Employer to gross up payments for taxes that Polish law requires it to withhold or deduct.

If the Employer is compelled by law to make any withholding or deduction due to any Taxes, the Contractor shall actually receive a payment decreased by such withholding or deduction or tax.

26.26. SOFTWARE LICENSES

26.1. THIRD-PARTY SOFTWARE

The Contractor shall procure for the Employer all software rights necessary for unrestricted operation, monitoring, maintenance, repair, replacement, modification, expansion and transfer of the Project. For project-specific software and source materials constituting copyright works created for the Project, transferable economic copyrights and derivative rights shall be transferred to the Employer within the lump-sum Contract Price in accordance with Clause 1.10. For third-party standard software, the Contractor shall procure a perpetual (or for the full technical life of the relevant equipment), irrevocable, transferable and sublicensable right of use sufficient for the foregoing purposes, to the fullest extent commercially available.

26.2. LIMITATIONS

No third-party end-user licence may materially restrict the Employer's rights required for operation and lifecycle management of the Project unless the restriction was expressly disclosed in the Contractor's Offer and accepted by the Employer in writing. The Contractor shall provide all administrator credentials, configuration files, backups, APIs/interfaces, documentation and other access required for operation and maintenance. The Employer may make all backup copies reasonably required and may grant access to PSE, O&M contractors, lenders, advisers, purchasers and service providers. Where source-code escrow is required, the Contractor shall establish and maintain it at its own cost.

27. 27. LIST OF ANNEXES

The following Annexes form an integral part of the Contract. They shall be completed and issued consistently with the RFQ before execution of the Contract; the RFQ and Contractor's Offer shall remain contract documents in accordance with Clause 1.5:

Annex 1 - Employer Requirements;

Annex 2 - RFQ issued by the Employer together with all RFQ annexes, clarifications and addenda;

Annex 3 - Contractor's Offer submitted in the RFQ, subject to the priority rules in Clause 1.5;

Annex 4 - Project Time Schedule / Milestones;

Annex 5 - Form of Performance Security Guarantee (Gwarancja Należytego Wykonania Umowy);

Annex 6 - Form of Defects and Warranty Guarantee (Gwarancja Usunięcia Wad i Usterek);

Signature

The Contract may be executed in written form or in electronic form using qualified electronic signatures, in each case with the legal effect required under Polish law. If executed electronically, the date of execution shall be the date on which the last required signature is affixed.

Technical annexes in native electronic formats (including .dwg, .xlsx, .csv and software/configuration files) may be exchanged through the agreed secure electronic repository. Their integrity and version shall be confirmed in the document register maintained under the Contract.

_____, this ____ day of _____.

SIGNED for and on behalf of Employer:

By : _____

Name : _____

Title : _____

SIGNED for and on behalf of the Contractor:

By: _____

Name: _____

Title: _____

ANNEX 5 - FORM OF PERFORMANCE SECURITY GUARANTEE

WZÓR GWARANCJI NALEŻYTEGO WYKONANIA UMOWY

Gwarancja nr [●]

Beneficjent: JF Energia Dobroń sp. z o.o. (dalej: „Zamawiający”)

Zleceniodawca: [dane Wykonawcy] (dalej: „Wykonawca”)

Umowa: EPC Contract for the Pabianice BESS Project z dnia [●] (dalej: „Umowa”)

Maksymalna kwota gwarancji: [10% Wynagrodzenia netto] (dalej: „Kwota Gwarancji”)

Na zlecenie Wykonawcy my, [bank / zakład ubezpieczeń], niniejszym nieodwołalnie i bezwarunkowo zobowiązujemy się zapłacić Zamawiającemu, na jego pierwsze pisemne żądanie, każdą kwotę lub kwoty łącznie do wysokości Kwoty Gwarancji, w terminie 14 dni od otrzymania żądania zawierającego oświadczenie Zamawiającego, że Wykonawca nie wykonał lub nienależycie wykonał zobowiązanie zabezpieczone niniejszą gwarancją wynikające z Umowy.

Poza oświadczeniem Zamawiającego, o którym mowa powyżej, nie jest wymagane przedstawienie dowodu naruszenia Umowy, wysokości szkody ani wcześniejsze dochodzenie roszczeń od Wykonawcy lub z innych zabezpieczeń. Gwarant nie jest uprawniony do potrącenia ani zatrzymania jakichkolwiek kwot z Kwoty Gwarancji.

Żadna zmiana, uzupełnienie, aneks, Variation, przedłużenie terminu, odstąpienie od uprawnienia ani inna modyfikacja Umowy nie zwalnia Gwaranta ani nie ogranicza jego odpowiedzialności.

Każda wypłata z niniejszej gwarancji automatycznie zmniejsza Kwotę Gwarancji o kwotę wypłaconą. Niniejsza gwarancja obowiązuje od [●] i wygasa w dniu [60 dni po PAC, pod warunkiem uprzedniego dostarczenia zgodnej z Umową Gwarancji Usunięcia Wad i Usterek]. Żądanie zapłaty doręczone Gwarantowi najpóźniej w dniu wygaśnięcia gwarancji pozostaje skuteczne.

Niniejsza gwarancja podlega prawu polskiemu. Spory wynikające z gwarancji będą rozstrzygane przez sąd powszechny właściwy miejscowo dla siedziby Zamawiającego, chyba że Zamawiający wyrazi pisemną zgodę na inne rozwiązanie.

ANNEX 6- FORM OF DEFECTS AND WARRANTY GUARANTEE

WZÓR GWARANCJI USUNIĘCIA WAD I USTEREK

Gwarancja nr [●]

Beneficjent: JF Energia Dobroń sp. z o.o. (dalej: „Zamawiający”)

Zleceniodawca: [dane Wykonawcy] (dalej: „Wykonawca”)

Umowa: EPC Contract for the Pabianice BESS Project z dnia [●] (dalej: „Umowa”)

Maksymalna kwota gwarancji: [5% Wynagrodzenia netto] (dalej: „Kwota Gwarancji”)

Na zlecenie Wykonawcy my, [bank / zakład ubezpieczeń], niniejszym nieodwołalnie i bezwarunkowo zobowiązujemy się zapłacić Zamawiającemu, na jego pierwsze pisemne żądanie, każdą kwotę lub kwoty łącznie do wysokości Kwoty Gwarancji, w terminie 14 dni od otrzymania żądania zawierającego oświadczenie Zamawiającego, że Wykonawca nie wykonał lub nienależycie wykonał zobowiązanie wynikające z gwarancji jakości, rękojmi, obowiązku usunięcia wad lub usterek, Punch List albo innego obowiązku dotyczącego wad wynikającego z Umowy.

Poza oświadczeniem Zamawiającego, o którym mowa powyżej, nie jest wymagane przedstawienie dowodu naruszenia, wysokości szkody ani wcześniejsze dochodzenie roszczeń od Wykonawcy lub z innych zabezpieczeń. Gwarancja obejmuje w szczególności kary umowne, odszkodowania oraz uzasadnione koszty wykonania zastępczego związane z obowiązkami dotyczącymi wad.

Żadna zmiana, uzupełnienie, aneks, Variation, przedłużenie terminu, odstąpienie od uprawnienia ani inna modyfikacja Umowy nie zwalnia Gwaranta ani nie ogranicza jego odpowiedzialności. Gwarant nie jest uprawniony do potrącenia ani zatrzymania jakichkolwiek kwot z Kwoty Gwarancji.

Każda wypłata z niniejszej gwarancji automatycznie zmniejsza Kwotę Gwarancji o kwotę wypłaconą. Niniejsza gwarancja obowiązuje od [●] i wygasa nie wcześniej niż sześć (6) miesięcy po upływie Okresu Gwarancji Umownej oraz po wykonaniu wszystkich zgłoszonych przed tą datą obowiązków usunięcia wad i usterek. Żądanie zapłaty doręczone Gwarantowi najpóźniej w dniu wygaśnięcia gwarancji pozostaje skuteczne.

Niniejsza gwarancja podlega prawu polskiemu. Spory wynikające z gwarancji będą rozstrzygane przez sąd powszechny właściwy miejscowo dla siedziby Zamawiającego, chyba że Zamawiający wyrazi pisemną zgodę na inne rozwiązanie.