

## KAUNAS CHP PROJECT

### EPCM SERVICES

#### 1 CONTRACTING PARTIES

This agreement ("Agreement") is entered into on 15.03.2017 between

a) UAB Kauno kogeneracinė jėgainė, VAT registration number LT100009225616, address: Aguonų str. 24, LT-03212 Vilnius, Lithuania, as "Client"

and

b) ÅF Consortium,

ÅF-CONSULT LTD, entity code 1800189-6, address: Bertel Jungin aukio 9, 02600 Espoo, Finland,

AF-CONSULT UAB, entity code 135744077, address: Lvovo str. 25, LT-09320 Vilnius, Lithuania, and

ÅF-CONSULTING AS, entity code 10449422, address: Akadeemia tee 21/3, Tallinn, Estonia,

acting pursuant to Joint operating agreement concluded on 13th of June, 2016, as "Consultant".

The Client and the Consultant being both separately referred to also as a Party and jointly as Parties.

#### 2 INTENTION

The Client will construct, in Kaunas, Lithuania, a new CHP power plant (the "Project").

The Parties have agreed that the Consultant shall provide to the Client the necessary engineering and procurement services as well as construction and commissioning management services for the implementation of the Project (hereinafter also referred to as the "Assignment") in accordance with the terms and conditions of this agreement (the "Agreement").

#### 3 OBLIGATIONS OF THE CONSULTANT

1. The Consultant shall be responsible for the engineering and procurement services as well as the construction and commissioning management services necessary to implement a fully functioning power plant subject to and in accordance with this Agreement and its Appendices.
2. The Consultant shall carry out its duties as specified in Appendix 1 and in accordance with the Main Time Schedule of the Project (as amended from time to time) and commits itself to comply with the ISO 9001 quality management standard. The Consultant shall exercise all skill, care and diligence expected from a professional

experienced consultant in the relevant field of business in the discharge of the services to be performed by it.

3. The Consultant acknowledges that it has received and acquainted himself with the Main Equipment (as defined below) contracts and any other engineering documentation handed over by the Client.
4. The procurements for the Project shall be made in the Client's name, based on the procedure and on the terms and conditions approved by the Client and upon Client's prior approval and as decided by the Client. For the avoidance of doubt, unless otherwise agreed between the Parties any and all agreements in connection with the said procurements shall be entered into and signed by the Client and the contractual relationship established by such agreements shall be a legal relationship between the relevant supplier/contractor and the Client and the decisions related to such relationship shall be made by Client on its responsibility and discretion.

The Consultant acknowledges that the Project will be implemented through split contract packages and therefore it is vital that the Consultant will co-operate closely with all suppliers and contractors in order to manage the configuration of the entire power plant. The Consultant shall act as the Client's representative in managing, supervising and controlling the supplies and works by the suppliers and the contractors. In any matters relating to the procurements the Consultant shall act loyally towards the Client demonstrating professionalism, skill and fairness.

5. The Consultant shall report to the Client as defined in Appendix 1.
6. The Consultant shall have a documented quality assurance system. The Consultant shall prepare the services specific quality control programme. The Client shall have the right at any time and on reasonable notice during the validity of the Agreement have access to the documents and records relating to the services.
7. All items paid for or prepared and/or possessed by the Client and handed over to the Consultant shall remain in the Client's ownership and shall be marked, if possible, accordingly. At the completion of the Project the Consultant shall, without delay, make an inventory of such items and submit them to the Client.
8. At the completion of the Project or at the end of the term of this Agreement, as the case may be, the Consultant shall hand back all items and documentation handed over to it by the Client except that the Consultant may retain one copy of all such items for archiving purposes unless otherwise requested by the Client.
9. The Consultant shall not use materials received from the Client for any other purposes than completing the Assignment for the Client.
10. The Consultant warrants that the all the documents necessary to perform Consultant's duties delivered to the Client ("Deliverables") and the use thereof as well as



the services it performs do not infringe any intellectual property rights or trade secrets. The Consultant shall at its own expense defend, indemnify and hold the Client and its affiliated companies harmless against all claims and actions alleging that the Deliverables or the services performed infringe any of the above mentioned rights of a third party.

11. The Consultant may not use the Customer as a reference without the Customer's prior written consent. The Consultant is always allowed to use the services as its reference in respect of its sales and marketing activities and publications. Confidential information of the Client shall not by doing so be disclosed.

#### 4

#### **OBLIGATIONS OF THE CLIENT**

1. The Client shall hand over to the Consultant all initial data and information in his possession, which the Consultant has requested the Client to hand over and which is necessary for the performance of the Consultant's services hereunder in due time. The Client shall be responsible for the correctness of such data and information. The Consultant shall review the items handed over to it and in the event that the Consultant discovers any errors, discrepancies and/or inconsistencies in the handed over initial data and information the Consultant shall immediately notify the Client thereof.
2. The Client shall select and enter into a contract with the supplier of the Boiler Plant, Flue Gas Treatment Plant, Steam Turbine Plant and the Crab Cranes ("Main Equipment").
3. The Client shall react promptly to the Consultant's proposals and make any necessary decisions without undue delay and if requested by the Consultant in two weeks of Consultant's request at the latest.
4. The Client shall arrange and grant access to its premises necessary for the performance of the Consultant's services hereunder and give reasonable support to the Consultant to enable effective provision of Consultant's services under this Agreement.
5. The Client shall bear all costs related to the Consultant's site facilities as defined in Appendix 6.3.

#### 5

#### **AGREEMENT DOCUMENTS**

The documents listed below shall be an integral part of this Agreement. The said documents shall be interpreted to complement each other. In the event and to the extent of any inconsistency or discrepancy between two or more documents which form a part of this Agreement the order of priority of the documents shall be the following:

- The body of this Agreement
- Appendix 0.1 Fortum's Supplier Code of Conduct
- Appendix 0.2 General Conditions for Consulting - KSE 1995

- Appendix 0.3 General information for tender of EPCM Consultant services
- Appendix 1 Specification of EPCM services
- Appendix 1.1 Project safety manual
- Appendix 1.2 Contractor safety management
- Appendix 1.3 Consultant's detailed scope of work
- Appendix 2 Initial data of the plant
- Appendix 2.1 Boiler ITT
- Appendix 2.2 Turbine ITT
- Appendix 2.3 Flue gas treatment ITT
- Appendix 2.4 Crab cranes ITT
- Appendix 2.5 Site layout
- Appendix 2.6 Main process diagram
- Appendix 2.7 Single line diagram
- Appendix 3 Organisation charts
- Appendix 3.1 Consultant's engineering, procurement and management organization
- Appendix 3.2 Consultant's site organization
- Appendix 3.3 Consultant's commissioning organization
- Appendix 3.4 Division of man-hour table
- Appendix 3.5 List of sub-consultants
- Appendix 4 Project main milestones
- Appendix 4.1 Project Overall Time Schedule
- Appendix 5 Documentation
- Appendix 5.1 Schedule for documentation submittal
- Appendix 5.2.1 Instructions For Filling Data Collection Tables (informative)
- Appendix 5.2.2 MMS Data Sheets, More Instructions for Filling Data Collection Tables (informative)
- Appendix 5.2.3 Device Data Collection Equipment Kaunas.xlsx
- Appendix 5.2.4 Device Data Collection Others Kaunas.xlsx
- Appendix 6 Payment terms
- Appendix 6.1 Price specification
- Appendix 6.2 Charging basis for Consultant's works and expenses for additional works

- Appendix 6.3 List of site facilities to be reimbursed by the Client
- Appendix 7 Bonus/penalty mechanism
- Appendix 7.1 Cost estimation
- Appendix 8 Preliminary purchase package list
- Appendix 9 Financial guarantees
- Appendix 10 Documentation of Technical Design Project
- Appendix 11 Project plan

## 6 CONTACTS BETWEEN CLIENT AND CONSULTANT

1. Contacts between the Client and the Consultant will be made by telephone, by e-mail, and/or in joint meetings. The Consultant shall prepare memorandums of meetings including documenting matters which have been agreed by telephone or e-mail and are of particular importance for the performance of the services by the Consultant or for the Project.
2. Consultant's representatives:  
Project Supervisor:  
Project representative:
3. Client's representatives:  
Project Supervisor:  
Project Representative:

## 7 ACCEPTANCE

The services of the Consultant (or a part thereof) shall be deemed to be accepted on the day the Consultant notifies the Client of the completion of the services or a part thereof unless the Client presents, within two weeks from the date of receipt of the notification by the Consultant, reason(s) for non-acceptance. Minor and unessential defects, non-conformances or omissions irrelevant to services and/or to the Project shall not hinder the acceptance provided that the remedy of these defects, non-conformances or omissions and the time schedule of the remedy have been agreed between the Parties prior to such acceptance.

The Client's approval of the services carried out by the Consultant does not release the Consultant from its liability.

## 8 CONSULTANT'S ORGANISATION AND PERSONNEL

The Consultant shall not subcontract the whole or main part of its services and shall primarily perform the services by using its own personnel. The list of sub-consultants is set forth in Appendix 3.5. Any not listed sub-consultants and/or sub-contractors engaged by the Consultant for the performance of the services shall be approved by the



Client in advance. For the purposes of this clause personnel of the Consultant's group companies is considered as own personnel.

The Consultant's project organization is set forth in Appendix 3. The Consultant shall only in compelling circumstances and with the prior written consent of the Client have the right to substitute a key person (as defined in Appendix 3 according to ITT letter clause 9) engaged in the performance of the services with a person of comparable qualification. Should a need for such substitution arise the Consultant shall give the Client immediate notice of such need and the Client shall respond without unreasonable delay, but not later than within 5 days from the receipt of the notice. In case the person substituted is marked as a key person in the project organisation (Appendix 3), the Consultant shall be liable to pay 50 000 € to the Client for substituted Project Manager, Site Manager and Commissioning Manager and 25 000 € for each substituted other key persons, unless the substitution is made because of termination of the employment contract, sickness preventing continued and uninterrupted work, maternity leave or similar permissible or compelling reasons or is made with the prior approval of the Client.

## 9 LIABILITIES AND INSURANCE

1. The Consultant shall be liable for damage and/or loss caused by its performance of and/or its failure to perform the services as well as for the performance and/or failure to perform of any of its sub-consultants.

The total aggregate liability of the Consultant under or in connection with this Agreement whether in contract or tort or otherwise is limited to 100% of Consultant's remuneration under this Agreement.

Notwithstanding anything to the contrary in this Section "Liabilities and Insurances" or elsewhere in this Agreement any limitations of liability of the Consultant shall not apply in case of gross negligence or wilful misconduct, personal injury or death or any infringement of intellectual property rights.

2. The Client shall obtain an EAR/CAR insurance for the Project with deductible of not more than 50,000 EUR per occurrence.
3. The Consultant shall obtain and maintain in effect during the term of this Agreement the following insurances with adequate covers and amounts:
  - Professional Indemnity Insurance,
  - Third Party Liability Insurance, and
  - Insurances covering the Consultant's and his sub-consultants' and/or subcontractors' personnel.

The amount of the general Third Party Liability insurance shall not be less than EUR 5,000,000.00 in aggregate and the deductible shall not be more EUR 50,000.00 for any one occurrence.

Upon the Client's request the Consultant shall provide insurance certificates of such insurance to the Client.

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**TIME SCHEDULE AND DELAY**

1. The Consultant shall commence its performance under this Agreement immediately after the signing of this Agreement and shall carry out its services and obligations in accordance with the Main Time Schedule (as amended from time to time) until the completion of all the obligations of the Consultant under this Agreement and until the completion of the Project. The project main milestones and preliminary Main Time Schedule are set forth in Appendix 4 and 4.1.
2. The Consultant shall carefully monitor the progress of its services and the Project and identify, observe and notify the Client about any actual, threatening and/or potential delays to the time schedules of its services and of the Project and the Consultant and the Client shall in cooperation try to find means for the remedy of such actual, threatening and/or potential delays in the time schedules of the services and/or the Project.
3. The Client is entitled at any time to audit the progress of the Assignment at the Consultant's premises, provided it gives Consultant reasonable prior notice. The Consultant shall provide the Client with personnel and all information necessary in order to be able to assess the quality and progress of the Assignment.

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**BASIS FOR CHARGING; TERMS OF PAYMENT**

The Total price of the Agreement, which includes the fixed price lump sum (paragraph 1 below), time-work remuneration and reimbursable costs (paragraph 3 and 4 below), bonus/ penalty based remuneration (paragraph 5 below), compensation for possible variations (section 14), value added tax to be calculated on top of the above mentioned sums, shall not exceed a sum of EUR 8.958.537,50 VAT included. In case the applicable value added tax changes during the validity of the Agreement, the Total price of the Agreement shall be recalculated respectively to reflect the change in the value added tax rate. For avoidance of doubt, the Client is not obliged to pay the said amount to the Consultant. The Consultant's actual remuneration shall be calculated based on the remuneration rules described below.

The Consultant's remuneration shall be based on the following remuneration systems:

1. Fixed price lump sum of EUR 5.923.000,- for the services included in the fixed price lump sum scope of services in accordance with the Appendix 1 and which are required for the implementation of the Project. The payment schedule for the fixed price lump sum is set forth in Appendix 6.
2. The fixed price lump sum shall be invoiced and paid in EUR.
3. Time-work remuneration by group of persons shall apply to additional services outside the fixed price lump sum scope of services and to changes in the scope of services. The scope, and the time schedule effects, of such changes in the scope of the services shall be agreed in advance between the Client and the Consultant. The Consultant shall not be obligated to commence the performance of any additional services or changes in the scope of services unless and until the Parties have agreed



upon their impact on the contractual conditions, the time schedules and the remuneration. Such agreement shall be confirmed with a written agreement signed by the Parties (Change Order or Amendment). This subsection shall also be applied to additional works and services incurred by the Consultant and caused by the Client or third parties. The charged fees are set forth in Appendix 6.2.

The additional and/or change works shall be invoiced and paid according to the payment terms agreed between the Parties in the above mentioned written agreement (Change Order or Amendment) after their performance has been accepted for invoicing by the Client's Project Manager.

4. Reimbursement of the Consultant's other costs. The Client shall reimburse the Consultant's costs such as copying and beforehand agreed travelling costs related to additional and change works referred to in subsection 3. above as set forth in Appendix 6.2.

The breakdown of the costs associated with the additional and change works shall be presented to the Client's Project Manager monthly for approval. These costs can be invoiced after they have been accepted for invoicing by the Client's Project Manager.

5. Bonus/penalty based remuneration. The Consultant's total remuneration shall be adjusted based on the bonus/penalty mechanism set forth in Appendix 7.
6. In case the Client is in delay more than thirty (30) days with a payment due and payable under this Agreement, the Consultant may cease its performance of the services or terminate the Agreement in accordance with the this Agreement including the regulations of Appendix 0.2 (General Conditions for Consulting - KSE 1995) subject to ten (10) days prior written notice to the Client.
7. In case the performance of the services is delayed more than two (2) months from the Main Time Schedule (as amended from time to time) due to reasons beyond the Consultant's control, the Consultant may request the remuneration to be adjusted to reflect the new time schedule.
8. The sums and fees in the Agreement and its Appendices are exclusive of value added tax (VAT). VAT shall payable in accordance with the Lithuanian law.
9. Any payments under this Agreement shall be made within thirty (30) days of the receipt of the relevant invoice unless otherwise specified in this Agreement.

**Option A- Bank guarantee**

At the signing of the Agreement, and in any event prior to the payment of the first payment to be made by the Client, the Consultant shall arrange and deliver to the Client a first demand, irrevocable and unconditional guarantee issued by a first class European bank acceptable to the Client in the amount corresponding to 10% of the fixed price



lump sum specified in Article 11 as a security for its performance under the Agreement (the "Performance Bond"). The Performance Bond shall be in the form and substance set forth in Appendix 9 and shall remain in full force and effect until the fulfilment of all of the obligations of the Consultant under this Agreement and the completion of the Project. The Performance Bond shall however expire on [date to be inserted] at the latest. The Consultant is obliged to ensure the appropriate extension of Performance Bond in case his obligations are not fulfilled and/or Project not completed by indicated date, prior to this date.

#### **Option B- Parent Company Guarantee**

Within 14 days from the signing of the Agreement and prior to the payment of the first payment to be made by the Client, The Consultant shall provide to the Client a Parent Company Guarantee. The Parent Company Guarantee shall be in the form and substance set forth in Appendix 9 and shall remain in full force and effect until the fulfilment of all the obligations of the Consultant under this Agreement.

This Option B may be used by the Consultant only in case the potential issuer of guarantee has been approved by the Customer, based on evaluation of its financial standing and reputation. The Consultant willing to use this Option B shall apply the Customer with necessary particulars on the date of signing this Agreement at the latest. The Customer shall announce his decision on acceptance of financial standing and reputation of the potential issuer no later than in 10 (ten) days. In case the decision is negative, the Consultant shall be required to fulfil all requirements under Option A as a condition precedent for any of the Client's payments in accordance with the Agreement.

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#### **TERMINATION**

This Agreement shall remain valid until both Parties have fulfilled all their obligations under the Agreement unless terminated earlier in accordance with this Agreement.

The Client may at any time terminate the Agreement by providing the Consultant a written notice thereof. The Consultant shall forthwith from such notice stop carrying out the Assignment. In case of such termination the Consultant shall be reimbursed according to the principles set out in clause 8.1.3 of Appendix 0.2.

1. In the case stipulated in article 8.1.5 of Appendix 0.2 (General Conditions for Consulting - KSE 1995) the Client is not in any way responsible nor in any way obliged to cover any damage suffered by the Consultant and is obliged to pay for the unfinished work or part of it, if the Client may make use of it for the execution of the Project.
2. The termination or expiration of this Agreement shall not (a) relieve either Party of its obligations with respect to the confidentiality of the other Party's information as set forth in this Agreement and with respect to the dispute resolution provisions of this Agreement; (b) relieve either Party of any obligation set forth in this Agreement which expressly or by implication survives termination hereof; and (c) shall not relieve either Party of any obligations or liabilities for loss or damage to the other Party arising out of or caused by acts or omissions of such Party prior to the effectiveness of such termination (or expiry) or arising out of such termination

subject to the indemnification and liability provisions as well as to the limitation of liability set forth in this Agreement.

**14****VARIATIONS TO THE AGREEMENT**

1. The Client may, until the whole of the services have been accepted, require variations in the originally agreed scope of services. Any such variation shall be agreed in writing between the Parties as an amendment to this Agreement. Given the nature of the services to be provided under this Agreement and the risk of unforeseen circumstance occurring during the validity of the Agreement, the Client may purchase any additional services, which are not covered by the original scope of the services, but are directly related and necessary for performance of the services and reaching the initial aim thereof. The total aggregate remuneration paid to the Consultant for such variations shall not exceed 20% (twenty percent) of the fixed price lump-sum specified in clause 11.1 of this Agreement (VAT excluded). In case the amount of remuneration to be paid to the Consultant for the variations exceeds the above specified 20%, the Client shall receive necessary consents from public authorities and (or) perform necessary public procurement procedures (where required under laws) for entering respective amendments to the Agreement under this clause.
2. The Consultant shall further carry out any variations which become necessary or desirable due to changes in laws and regulations which apply to the services. This obligation shall apply in respect of all amendments which come into effect after the signing of the Agreement and before the termination or expiry of this Agreement. The Consultant shall be responsible for being up to date with new laws and regulations that may apply.
3. For the sake of clarity, the procedures agreed for changes to the scope of services and additional services in clause 11 above shall be applied also in case of variations referred to above.

**15****COMPLIANCE**

1. The Consultant represents, warrants and undertakes to the Client on the date hereof as follows:
  - a) neither the Consultant nor, to the best of knowledge of the Consultant, any director, officer, agent, employee, affiliate or person acting on behalf of the Consultant, has engaged in any activity or conduct which would violate any applicable anti-bribery or anti-corruption law or regulation;
  - b) the Consultant has instituted and maintains policies and procedures designed to prevent bribery and corruption by the Consultant and its Affiliated Companies and by persons associated with such companies;
  - c) the Consultant complies duly with the Supplier Code of Conduct; and



- d) the Consultant will inform the Client immediately on any material change in the above stated (a-c) matters.
2. A breach of the Supplier Code of Conduct may be considered a substantial breach of the terms and conditions of this Agreement entitling the Client to terminate this Agreement with immediate effect. Should the Client have such right to terminate this Agreement, the Client shall also, without any liability to the Consultant, be entitled to seize performing of its obligations under this Agreement until the investigations by the relevant authorities regarding the Consultant's breach have come to an end and/or the applicable court has rendered in the matter a non-appealable and final decision.
3. Notwithstanding anything to the contrary set out in this Agreement, should the Consultant commit a breach of the Supplier Code of Conduct entitling the Client to terminate this Agreement, the Consultant shall at its own cost indemnify the Client and hold the Client harmless against:
  - i. any cost and expense incurred by the Client due to the termination of this Agreement;
  - ii. all additional costs and expenses incurred from making a cover purchase, including, but not limited to, the possible difference in price; and
  - iii. any consequence, liability, damage and/or cost or expense that may cause to the Client due to the action, circumstance and/or matter which constitutes the breach of Supplier Code of Conduct.
4. The Client shall during the validity of this Agreement have the right (i) to inspect or (ii) to appoint an independent auditor to inspect the Consultant's premises and such records, as well as such documents as the Client may reasonably require for the purpose of verifying the Consultant's compliance with its obligations under this Agreement. Such audit shall be conducted at the Client's expense, except in those cases where the auditor detects material deviations from the Consultant's contractual obligations, in which case the reasonable costs of the audit shall be borne by the Consultant, in addition to any rights the Client may have as a consequence of the Consultant's non-fulfilment of its contractual obligations. The Parties shall agree on the date and time of the audit. Any and all reports or records or notes taken by the auditor shall be maintained by the auditor and the Client in confidence, but may however be used and disclosed in any dispute resolution proceeding between the Parties or to the extent disclosure is required by competent authorities.

1. On page 1, the wording inside the box "Translation" to be deleted.
2. On page 2 following is added at the end of the definition of concept "Total price":  
"Total price shall include the fixed price lump sum (clause 11.1), time-work remuneration and reimbursable costs (clause 11, paragraph 3 and 4), bonus/ penalty based remuneration (clause 11.5), compensation for possible variations (section 14), VAT payable under laws to be calculated on top of the above mentioned sums, other applicable fees and taxes, and shall stipulate an overall maximum amount which may be paid by the Client to the Consultant under this Agreement, which shall not be exceeded during validity term of the Agreement the amount indicated in Section 11 of the Agreement.
3. Clause 1.4 to be deleted.
4. Clause 2.1.2 (Clients status) to be deleted.
5. Clause 2.1.5 (Client's status), A new sentence to be added to the end of clause 2.1.5 as follows: "The foregoing shall, however, not in any way limit the Client's right in its sole discretion to engage any such auxiliary consultants and the Consultant's obligation to collaborate with such auxiliary consultants."
6. Clause 2.2.1 (Clients liability) to be deleted.
7. Clause 2.2.3 (Clients liability) to be replaced with following wording: "The Consultant's limitations of liability set out in clause 3.2.3 shall be applied, mutatis mutandis, to limit the liability of the Client."
8. Clause 3.1.2 (Consultants status) to be replaced with following wording: "While performing the task, the Consultant shall co-operate with the other consultants and experts as required by the project."
9. Clause 3.1.3. (Consultant's status) Second paragraph shall be deleted.
10. Clause 3.1.4 (Consultants status).A new paragraph is added to clause 3.1.4 as follows: "In the event that the Client considers that any member of such staff, who has a significant role in the Assignment, is lacking necessary competence or the Client finds it difficult to collaborate with such a person, the Client shall have the right to have such person to be replaced by the Consultant without any undue delay and at no cost to the Client."
11. Clause 3.2.5 (Consultant's Liability). In the first paragraph "one" year shall be replaced by "two" years.  
  
In the second paragraph of clause 3.2.5 the word "damage" shall mean defects and deficiencies.
12. Clause 3.2.7 (Consultant's liability). The Consultant may only avoid its liability as referred to in the first paragraph of clause 3.2.7 if the written notice provided by the Consultant expressly in detail specifies the entailed additional risk.
13. Clause 5.3 (Special conditions); Clause 5.4. (Expenses). For avoidance of doubt Appendices 6.1, 6.2 and 6.3 to the Agreement shall include a finite list of Special compensations and Expenses payable under the Agreement in addition to the



remuneration (i.e. in addition to the fixed price lump-sum, time-work remuneration, bonus remuneration and remuneration for possible variations) payable to the Consultant under this Agreement.

14. Clause 6.1.1, paragraph 2 (Safekeeping of documents and information)) shall be replaced with the following: "Both Parties shall keep in confidence all material and information received from the other Party in relation to the Assignment and marked as confidential or which should be understood to be confidential, and may not use such material or information for any other purposes than those set forth in this Agreement. The confidentiality obligation shall, however, not be applied to any material or information: (a) which is generally available or otherwise public; or (b) which the Party or its affiliated company has received from a third party without any obligation of confidentiality; or (c) which was in the possession of the receiving Party or its affiliated company prior to receipt of the same from the other Party without any obligation of confidentiality related thereto; or (d) which a Party or its affiliated company has developed independently without using material or information received from the other Party; or (e) which a Party or its affiliated company shall disclose pursuant to a law, decree, stock exchange regulations or an order issued by the authorities or judicial order.

Notwithstanding the foregoing obligations, the Client may disclose confidential information to its affiliated companies and/ or legal, tax, financial and technical advisors. The foregoing obligations shall not limit the Client's right to disclose and use the Deliverables received from the Consultant for the purposes of the Client's internal use, including but not limited to, use in connection with the project they have been prepared for as well as the operation, maintenance, upgrades and modifications to the CHP power plant and for any other projects of the Client. Each Party is entitled to use the professional skills and experience acquired in connection with this Agreement.

The foregoing obligations of confidentiality shall survive the termination or cancellation of this Agreement for a period of five (5) years."

15. Clause 6.2.1 (Copyright etc.) shall not in any way restrict the Client's right to use and utilize (including right to modify and make copies) the plans, designs, drawings, computer programs, files or other products of intellectual origin created by the Consultant for its internal purposes (including right to submit such plans, designs, drawings, computer programs, files or other products of intellectual origin to third parties, however, solely for performance of services to the Client). For avoidance of doubt the Consultant hereby specifically agrees that the Client itself or engaging third parties has the right to modify and further develop the plans, designs, drawings, computer programs, files and other products of intellectual origin created by the Consultant for implementation of the Project (including, but not limited to the situations, when this Agreement is terminated or becomes invalid), and the Consultant further undertakes, without any additional compensation, to furnish the Client with any additional consents in any form to use, modify and (or) transfer Consultant's deliverables produced under this Agreement to third party for the purposes of Project if such additional consents are required under applicable laws.

16. Clause 7.1 (Schedule, delays and work interruptions) second paragraph, the following words shall be deleted: " referred to in clause 5.5.4".  
  
Clause 7.2 (Schedule, delays and work interruptions), add the following words after "...reimburse the Consultant for the": "incurred, documented and additional costs for".
17. Clause 7.3 (Schedule, delays and work interruptions). With reference to clause 7.3 the Client shall be entitled to suspend (interrupt) the performance of the Assignment at any time by notifying the Consultant thereof in writing.
18. Clause 7.4 (Schedule, delays and work interruptions), to be replaced with the following: "The Consultant shall pay liquidated damages according to the rules specified in the Appendix 7 "Bonus/Penalty Mechanism" to this Agreement."
19. Clause 7.6 (Schedule, delays and work interruptions) For the avoidance of doubt the Client shall not be liable to compensate of any expenses or costs the Consultant incurs due to circumstances or events specified in clause 7.6.
20. Clause 8.2.2 (Consultants right to terminate the contract). Delete points b)-d).
21. Clause 8.3.1 (Assignment of contract). Notwithstanding clause 8.3.1 the Client has right in its sole discretion to assign the contract or any part thereof to its affiliated company. For the purposes of this section "affiliated company" shall mean any legal entity that is (a) directly or indirectly owning or controlling the Client, or (b) under the same direct or indirect ownership or control as the Client, or (c) directly or indirectly controlled by the Client for so long as such ownership or control lasts. Ownership or control shall exist through direct or indirect ownership of more than forty percent (40%) of the nominal value of the issued equity share capital or more than forty percent (40%) of the shares entitling the holders to vote for the election of the members of the board of directors or persons performing similar functions. However, in case of such assignment of the contract by the Client to its affiliated company, the Client shall indemnify and hold the Consultant harmless from losses incurred by the Consultant due to the affiliated company's inability to pay the remuneration, which has become due under the Agreement.
22. Clause 9 (Validity order between the contractual documents). Delete clause 9.
23. Clause 10.1 (Obtaining an expert opinion), Clause 10.1 shall not be applied.
24. Clause 10.2 (Arbitration) shall be replaced with the following: "Clause 10.2. shall be replaced in its entirety by an arbitration clause as follows: "10.2. Arbitration and governing law. All disputes arising out of or in connection with this Agreement shall be finally settled under the Rules of Arbitration Institute of the Stockholm Chamber of Commerce by one or more arbitrators appointed in accordance with the said Rules of Arbitration. The place of arbitration shall be Stockholm, Sweden. The language of the arbitration shall be English. This Agreement shall be governed by and construed in accordance with the laws of Lithuania."



## 17

**GENERAL PROVISIONS**

1. This Agreement has been drawn up in the English language which shall be the ruling language.
2. The official language of the Project is English. All correspondence between the Client and the Consultant shall be in English.

Any documents and materials required for the authorities (including, but not limited to the documents for any permit applications, commissioning etc.), as well as training and Operation & Maintenance documentation shall be delivered in Lithuanian, unless in a particular situation the Client has decided to arrange translation itself. Also any other documents and materials shall upon the Client's request, be submitted in Lithuanian language, if so required under the applicable laws and regulations or required by competent authorities.

3. If after the date of signing of the Agreement the cost or duration of the services to be performed under this Agreement is altered as a result of changes in the laws and/or regulations in any country in which the services are to be performed the agreed remuneration and the time for completion shall be adjusted accordingly without time or other limits to the adjustments.
4. If any part or any provision of the Agreement is found to be void or unenforceable, such part or provision shall be deemed to be deleted from the Agreement and replaced with a provision nearest to correspond to the intention and background of the deleted provision. All other provisions of the Agreement shall continue to be in full force.

This Agreement comes into effect immediately when both Parties have signed it. This Agreement has been signed in two copies, one for each Party

Authorised signatures of Client and Consultant

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