**Annex 4**

**to the Conditions of Negotiated Procedure**

No 9-LIN(Services)/2017

**SERVICE CONTRACT No [...]**

[...][……………………....] 2017

Vilnius

Amber Grid AB, represented by \_\_\_\_\_\_\_\_\_\_, hereinafter referred to as the “**Customer**”, on the one part, and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, represented by the \_\_\_\_\_\_\_\_\_\_\_, hereinafter referred to as the “**Contractor**”, on the other part, acting in accordance with the Conditions of the Negotiated Procedure for the Procurement of the services of evaluation of technical condition of the buried pipeline of branches and sections of the main gas transmission pipeline from above the ground (diagnostic services) (the ‘**Services**’), hereinafter referred to as the ‘**Conditions**’, procurement No […], the Final Tender submitted by the Contractor (the ‘Tender’) and the results of the Procurement, have entered into this Contract (the “**Contract”**). The Customer and the Contractor are hereinafter collectively referred to as the “**Parties**” and each individually as the “**Party**”.

1. SuBJECT OF CONTRACT:

1.1. The Contractor shall provide the services of evaluation of technical condition of the buried pipeline of branches and sections of the main gas transmission pipeline (MGP), specified in Appendix 2 to this Contract ‘Technical Specifications of the Pipeline Diagnostics Services’, total length approx.. 10.4 km, from above the ground, without excavating soil and without interrupting the gas supply (diagnostic services) (the ‘**Services**’). The scope of the Services and terms of provision thereof are set out in the Conditions and the Contract with Appendices thereto.

1.2. The Contractor shall, on the terms and conditions of the Contract, provide all the Services referred to in Clause 1.1 above using his own labour, facilities, skills, experience and knowledge, correct any defects in the output of the Services and indemnify the Customer for any losses incurred due to deficiencies in the Services, and the Customer shall accept the Services duly provided and to pay the Price to the Contractor.

1.3. The Parties agree that the Customer shall be entitled to refuse from part of the Services during the execution of the Contract in the event of circumstances beyond control of the Parties which could not have been reasonably foreseen by the Parties at the time of submission of the Tender and the risk of which the Parties had not assumed (e. g. in case of explicitly provable inaccuracies or mistakes in the technical documentation on the basis of which a requirement laid down in the Conditions of the Negotiated Procedure was based), as a result of which part of the Services has become unnecessary, or it has been established, upon commencement of the Services, that part of the Services has become unnecessary, or part of the Services has become unnecessary due to amendments to legal acts; however, the total value of the Services so refused may not exceed 50% of the Price. If unforeseen circumstances arise, the Customer can purchase more services but the value of such services may not exceed 20% of the Price. In case of refusal of part of the Services or purchase of additional Services, the Price shall be reduced or increased by the value of the Services refused/added, as determined on the basis of the rates quoted in the Tender. Where the level of detail of the rates quoted in the Tender is not sufficient for such determination, the value of the Services refused/added shall be determined according to a cost estimate provided by the Contractor and agreed with the Customer; such cost estimate shall be drawn up specifically for the said determination. The Customer shall be entitled to check the cost estimate, verify that the prices quoted therein are in line with market prices, and negotiate with the Contractor over such prices.

1.4. Should it transpire during the execution of the Contract that any of the materials, equipment, mechanisms etc. specified in the Contract are no longer produced, and the Contractor the manufacturer’s confirmation thereof, the Contractor may, upon receipt of the Customer’ consent, which cannot be refused without a justification, provide materials, equipment, mechanisms etc. of another model, on condition that their characteristics are not worse than those specified in the Contract, without increasing their price, without changing the terms of delivery and other terms and conditions of the Contract.

1.5. Appendices to the Contract shall form an integral part thereof.

**2. CONTRACT PRICE AND TERMS OF PAYMENT**

2.1. The price of the Contract shall be the total Tender Price, i. e. the sum of the price for the Services quoted in the Tender excluding value added tax (**VAT**) plus VAT (the “**Price**”). The VAT shall be calculated at the rates effective as of the date of issue of a tax invoice.

2.2. Prices of parts and components of the Price for individual facilities (excluding VAT) and the rates (excluding VAT) are set out in Appendix 1 to this Contract ‘Prices for the Pipeline Diagnostic Services’.

2.3. The Parties agree that the Price excluding VAT (the rates specified in Appendix 1 excluding VAT) shall include all the costs of the Contractor related to the execution of the Contract including costs of licences, permits, expenses related to preparations for the provision of the Services, translations of and agreements on documents, business trip costs and other amounts payables, taxes and duties except VAT, and the Price/rates shall not be increased on any grounds.

2.4. The Customer shall pay to the Contractor for the actually provided Services of good quality in parts, on completion of the Services at a facility and upon correction of all defects (if any), on the basis of the signed Interim/Final Services Transfer and Acceptance Certificate and tax invoices issued by the Contractor. The Customer shall make payments to the Contractor against tax invoices no later than within 45 (forty five) days after the date of receipt of the tax invoice.

2.5. The Services Transfer and Acceptance Certificates shall be delivered to the Customer to the address: Gudelių g. 49, Vilnius. In case if the output of the Services is accepted in parts, the Services Transfer and Acceptance Certificates and the tax invoices shall be delivered to the Customer no later than on the first day after the end of the reporting month. Tax invoices issued on the basis of the signed Service Transfer and Acceptance Certificates shall be submitted via the E-invoice Information System.

2.6. All payments under this Contract shall be made in euro by a bank transfer to the Contractor’s account specified by the Contractor.

2.7. It shall be prohibited to increase the Price (excluding Vat) during the term of the Contract or to modify the essential terms and conditions of thereof.

2.8. The Customer shall be entitled to retain a payment for the Services if the Contractor has failed to correct defects in the Services specified by the Customer, within a time limit set by the Customer, had caused damage to the gas pipeline and/or inflicted material damage to the Customer and has not indemnified the Customer for the damage or is in breach of the Contract otherwise and has failed to rectify the violation.

2.9. Should defects in the output of the Services be detected at acceptance of the Services, the Customer shall be entitled to deduct the amount required for the correction of the defects from the amounts payable to the Contract for the Services.

2.10. The payable amount specified in the tax invoice issued by the Contractor shall be reduced by the amount of penalties and fines accrued.

**3. TERMS AND CONDITIONS OF PROVISION OF SERVICES AND TRANSFER OF OUTPUT OF THE SERVICES**

3.1. The Contractor shall provide the Services within the time limits set in Clause 3.2 of the Contract and shall complete all the Services no later than by **14 December** **2018.**

3.2. Facilities at which the Services shall be provided and other terms:

3.2.1. The diagnostic Services (field works) at all the MGP facilities specified in Appendix 1 to this Contract ‘Prices for the Pipeline Diagnostic Services’ shall be provided according to the Service Provision Schedule (the **‘Schedule’**) but **no later than by 14 September 2018**. On completion of the diagnostic Services at each facility, the Contractor shall prepare and submit to the Customer the Service Transfer and Acceptance Certificate for signature.

3.2.2. On completion of the Services referred to in Clause 3.2.1 at each facility, the Contractor shall prepare and submit to the Customer a preliminary report in an electronic format (licenced program selected by the Contractor or MS Excel format), enabling to evaluate the collected information about the technical condition of the MGP with the information about the most dangerous defects – **no later than within 20 days** after completion of the Services referred to in Clause 3.2.1.

3.2.3. the Contractor shall prepare and submit to the Customer a final report on the Services provided at each facility in writing (hardcopy format) in 2 copies and in an electronic format (licenced program selected by the Contractor and MS Excel format) recorded in an HDD, with the detailed analysis of all defects – **no later than within 40 days** after completion of the Services referred to in Clause 3.2.1.

3.2.4. The final report for a facility shall specify, inter alia:

- the spatial position of the MGP having regard to the terrain (cartography);

- The technical software designed for the information, the technical equipment used and the analysis of source data (magnetic field measurement data).

3.2.5. The Contractor shall submit all the documents including certificates and technical documentation in English or Lithuanian.

3.2.6. The Contractor shall prepare the Schedule, obtain the Customer’s agreement and submit the Schedule to the Customer no later than within 7 days after the signature of the Contract. The Schedule shall establish the interim and final time limits for the completion of the Services at individual facilities as set in Clauses 3.2.1-3.2.3 within the final deadline specified in Clause 3.1 above.

3.3. The interim time limits for the provision of the Services set in the Schedule under Clause 3.2.6 may be changed, due to objective and justified circumstances, by a mutual agreement concluded in writing, provided that this does not affect the final deadline for the completion of the Services at a facility and/or the final deadline for the completion of all the Services specified in Clause 3.1 of the Contract. The Parties explicitly agree that the Contractor’s request to change the interim time limits for the provision of the Services shall not be binding upon the Customer. The Schedule (if drawn up) shall also be amended if the final deadline for the completion of the Services at a facility and/or the final deadline for the completion of all the Services specified in Clause 3.1 of the Contract is extended in the cases referred to in Clause 3.3 above, and such extension is documented by mutual agreement of the Parties.

3.3. The final deadline for the completion of the Services at a facility and/or the final deadline for the completion of all the Services specified in Clause 3.1 of the Contract may be extended if, during the provision of the Services:

3.3.1. Defects of the pipeline are detected and/or other circumstances occur due to which it becomes impossible to provide the Services within the time limits set in the Schedule (e. g. unforeseen technical obstacles preventing from the provision of the Services or any part thereof; the Services cannot be provided/commenced due to circumstances within control of third parties) etc.; prolonged (lasting more than 30 days) adverse weather conditions due to which the provision of the Services is impossible, such as intensive downpours, floods, thick mist, gusty winds, abundant snow, snowstorm etc. (only applicable to the Services the quality of provision of which and the provision itself depends on weather conditions);

3.3.2. The Customer’s actions or omissions preventing the Contractor from due and timely fulfilment of his obligations under the Contract including the Customer’s delay in assigning specialists responsible for the fulfilment of contractual obligations, failure to issue the Consent referred to in Clause 4.2.1 below or other consents required for the provision of the Services for the issue of which the Customer is responsible, the Customer’s failure to fulfil other contractual obligations or improper fulfilment thereof;

3.3.3. Failure of a state or municipal institution to perform its functions within a set (or reasonable) time limit;

3.3.4. Prolonged procurement procedures, which makes commencement and/or completion of the Services during the term specified in Clause 3.1 above impossible or too complicated (e. g. the Contract was signed later than specified in the Customer’s (Contracting Entity’s) notification of the conclusion of the Contract with the winning tenderer; at the moment of signature of the Contract when, based on the information provided during the Procurement, the Service Provider (Contractor) had reasonably planned to provide the Services or a part thereof, etc.);

3.3.5. The sequence of provision of the Services at individual facilities may be changed at the Customer’s request provided no later than 7 calendar days in advance, or upon prior agreement with the Customer.

3.4. The final deadline for the completion of the Services at a facility and/or the final deadline for the completion of all the Services specified in Clause 3.1 of the Contract may only be extended for the period of existence of the circumstances referred to in Clause 3.3, however, the total duration of all extensions may not exceed 12 months. The Parties shall conclude a separate agreement on the extension of interim and/or final time limits, which shall form an integral part of the Contract.

3.5. The liability for compliance with the applicable legal provisions on environmental protection, safety at work, health safety, fire safety etc. and other Lithuanian legal acts shall lie with the Contractor.

3.6. The Contractor shall be liable for the security of his own and the Customer’s property, including safety of the employees, tools, facilities, and machinery as well as the third party property.

3.7. The outputs of the Services shall be accepted by the Customer’s representative responsible for the execution of the Contract, and the Contractor’s representative shall take part and sign the Interim/Final Services Transfer and Acceptance Certificate (for each facility individually and/or all the Services under the Contract).

3.8. On receipt of the Interim/Final Services Transfer and Acceptance Certificate, the Customer shall sign it no later than within 5 working days, or if deficiencies or defects of the Services are found – the Customer shall return it to the Contractor without signing, at the same time specifying the deficiencies/defects and setting a reasonable time limit but no longer than 5 (five) working days for the correction thereof, unless the Parties agree otherwise. Upon correction of the deficiencies/defects, the transfer and acceptance of the Services shall take place according to the procedure set out in this Clause.

3.9. The Contractor shall correct the deficiencies/defects within the time limit set in Clause 3.8 of the Contract at his own cost. Upon correction of the deficiencies/defects, the transfer and acceptance of the Services shall take place according to the procedure set out in this Contract.

3.10. Title to the output of the Services shall pass to the Customer from the moment of signature of the Final Service Transfer and Acceptance Certificate (for each facility individually).

3.11. The Contractor shall import his diagnostic equipment for the provision of the Services into the Republic of Lithuania. The place of delivery: Panevėžys gas compression station, address Verslo g. 11, Maksvytiškių k., Panevėžio r., Republic of Lithuania and/or Gudelių g. 49, Vilnius, Republic of Lithuania. On completion of the MGP pipeline diagnostic (on completion of all the Services referred to in Clause 3.2.1 at all the facilities), the Contractor shall take the equipment used for the provision of the Services away at his own cost. The Contractor shall complete customs formalities at import and export of the diagnostic equipment and transport the equipment in the territory of Lithuania at his own cost.

3.12. The Contractor shall also take the following actions required for the provision of the Services:

3.12.1. deliver technical documentation and diagnostic equipment;

3.12.2. provide all the equipment, vehicles, personal protection equipment etc. for the provision of the Services.

**4. OBLIGATIONS OF THE PARTIES**

**4.1. The Customer shall:**

4.1.1. Upon submission of all the requisite documents by the Contractor, issue to the Contractor a written permit to work in the operating natural gas transmission system’s facilities and/or their safety zone (the **‘Consent’**).

4.1.2. Accept the properly provided Services from the Contractor and pay for them in due time on the terms of the Contract.

4.1.3. Timely furnish the Contractor with the information required for the provision of the Services.

4.1.4. Without assuming liability for the time limits and quality of provision of the Services, assist the Contractor in the performance of preparatory and diagnostic works including:

4.1.4.1. at the Contractor’s reasonable request, furnish the Contractor with the documentation (schemes, layouts of the MGP if available) and other information required for the Contractor for the performance of the Contract;

4.1.4.2. Assign at least two employees to carry the Contractor’s pipeline diagnostic equipment along the surface of the MGP (according to Appendix 3 to the Contract);

4.1.4.3. Permit the use of a workshop at the address Verslo g. 11, Maksvytiškių k., Panevėžio r., Republic of Lithuania, or Gudelių g. 49, Vilnius, Republic of Lithuania, ensuring power supply thereto;

4.1.4.4. Clean the MGP surfaces from plants and from obstacles within a strip of land 2-3 m wide (buildings, trees, fences etc.);

4.1.4.5. Ensure access to the existing cathodic protection control posts for the connection of contacts or ensure access to the pipelines (hole-digging, removal and placement of insulation as well as burying works);

4.1.4.6. On completion of the Services and on receipt of the preliminary report, organise, on the basis of its results, the uncovering of the most important defects detects, making open test pits, removal and replacing of insulation, and covering the pipeline with soil again.

4.1.4.7 Appoint a professional, who knows the pipeline routes and instruct him to carry out assistance to the Contractor, especially when communicating with third party landowners and other Lithuanian people and, if necessary, in obtaining permits and licenses.

4.1.5. Appoint persons responsible for the execution of the Contract, authorised to take all the actions stated above in order to ensure, to the extent that this is within the Customer’s control, that the Contractor can provide the Services.

**4.2. The Contractor shall:**

4.2.1. Provide the Services in a quality manner within the time limits stated in Clause 3.1 of the Contract, in accordance with this Contract and Appendices thereto, the Contract Documents, the Tender, and provisions of Lithuanian legal acts;

4.2.2. Provide himself with all the means necessary for the performance and completion of the Services as well as correction of defects therein;

4.2.3. Obtain the Consent prior to commencement of provision of the Services and not provide any Services in the operating facilities of the natural gas transmission system and/or safety zones without such Consent. The Consent issued by the Customer shall be valid in all the specified facilities and areas during the provision of the Services. The Contractor shall ensure that all the subcontractors having concluded subcontracts for the provision of the Services with the Contractor would obtain the Consent if they assigned works in the said facilities and areas;

4.2.4. Ensure that throughout the term of validity of the Contract, irrespective of whether the Contractor’s qualifications and entitlement to carry out the relevant activities were checked during the Procurement procedure, or checked in part, that the Contractor, his employees and/or subcontractors and employees thereof comply with the qualifications requirements set in the Conditions and/or current Lithuanian legislation and are entitled to provide the Services; that the Services are provided by qualified specialists and other persons holding the requisite qualifications and/or entitlement certificates. The Contractor may replace the specialists specified in the Application and/or the Tender only for objective reasons (death or sickness of the specialist, termination of the labour relationship with the Contractor/subcontractor etc.), and only with specialists possessing qualifications and experience not lower/shorter than those set in the Conditions and/or current Lithuanian legislation, subject to the Customer’s prior written consent for such replacement according to a procedure laid down in this Contract.

4.2.5. Inform the Customer immediately about expiry of the term of validity of certificates and/or other documents issued to the Contractor, the subcontractors or their specialists, or other persons;

4.2.6. Assume full responsibility for the health and safety at work for all the employees of the Contractor and the subcontractors and safe operation of equipment and ensure safe working conditions during the term of performance of the Services, take relevant precautions to ensure safety of the Contractor’s, subcontractors’ at places of provision of the Services, and ensure the availability of medical aids and supplies required for the first aid at the construction such places at all times throughout the term of execution of the Contract and the compliance of such places with other statutory requirements. The Contractor shall assume full responsibility for compliance with the environmental protection, health and safety at work, fire safety, gas sector safety and other statutory requirements;

4.2.7. Provide the Services with maximum care and professionalism, in accordance with the Lithuanian legal acts and regulations governing the provision of this type of the Services;

4.2.8. Enable the Customer’s representatives to check progress of execution of the Contract and the quality of the Services;

4.2.9. Assume liability and indemnify the Customer for any disruption in the operation and/or any damage done to the main gas pipeline and other legal acts if the violations were committed due to the fault of the Contractor or its subcontractors in the provision of the Services or any other breach of the Contract or improper execution thereof;

4.2.10. Inform the Customer (and relevant institutions when required) immediately but in all cases no later than within 2 (two) working days about any incidents affecting people’s and environmental safety;

4.2.11. Upon the completion of the Services, no later than within 3 (three) working days, issue a written notification of the completion of the Services to the Customer;

4.2.12. Transfer the output of the Services to the Customer, with the proper execution of the completion documentation in accordance with the procedure set out in the Contract;

4.2.13. Provide training in the use of the diagnostic equipment, data and licensed software for one employee (engineer) of the Customer, such training being not shorter than 16 hours;

4.2.14. If necessary the Customer may hire, for the evaluation of quality of the Services and the efficient use of the results of the MGP inspection, an independent expert organisation with recognised experience in the area of inner MGP diagnostics services.

4.2.15. Pay expenses for his employees’ business trips, accommodation, catering, rent of premises, insurance, communications, sending of equipment and devices, completing customs formalities for and storing equipment and devices, and other expenses related to the Procurement Object;

4.2.16. The Contractor shall furnish the Customer, at the latter’s request, about preparations and methods proposed by the Contractor for the provision of the Services. Any significant changes in such preparations and methods shall be notified to the Customer in advance;

4.2.17. Obtain any permits and licences required for the provision of the Services. This permits and licenses do not account for entering third party property

**5.** **PERFORMANCE SECURITY**

5.1. ***In order to secure the fulfilment of obligations under the Contract,*** the Contractor shall submit to the Customer, within 5 working days after the signature of the Contract, ***a performance security acceptable to the Customer*** – an unconditional and irrevocable first-demand guarantee issued by a bank registered in the Republic of Lithuania or a foreign country, or a surety bond issued by an insurance company (the **‘Performance Security’**). If the Contractor submits a surety bond issued by an insurance company, it shall be accompanied by a copy of payment order evidencing that an insurance premium for the surety bond has been paid. The amount of the Performance Security shall be at least EUR 5,000.

5.2. Should the Contractor fail to submit the Performance Security according to provisions of Clause 5, it shall be deemed that the Contractor has refused to conclude the Contract. In such a case the Customer shall be entitled to invite, according to Article 94(2) of the Republic of Lithuania Law on Procurement Conducted by Contracting Entities Operating in the Water, Energy, Transport and Postal Services Sectors, another Service Provider to conclude the Contract, and may use the Tender Security submitted by the Contractor and demand that the Contractor pays the Customer’s losses incurred due to non-conclusion of the Contract including the difference in the prices offered by the newly invited Service Provider and the Contractor to the extent to which such difference is not covered by the Contractor’s Tender Security.

5.3. The Performance Security shall remain valid, on the terms not worse that those stated in Clause 5, throughout the term of the Contract, i. e. until the deadline for the completion of the Services referred to in Clause 3.1 plus 45 (forty five) days thereafter. Should the Performance Security expire earlier or becomes non-compliant with the provisions of Clause 5 for any reason, the Contractor shall renew the Performance Security no later than 10 (ten) working days prior to the expiry thereof at its own expense (by concluding a new contract or renewing the existing contract with the bank/insurance company) and submit evidence of this to the Customer.

5.4. Should the Customer make use of the Performance Security, the Contractor seeking to continue the discharge of his contractual obligations shall submit to the Customer a new Performance Security compliant with the provisions of Clause 5no later than within 10 days. Any subsequent amendments or additions to the Contract or documents related thereto shall not affect the enforceability or scope of the guarantor’s undertakings under the Performance Security and shall not release the Contractor from full discharge of his obligations thereunder.

5.5. The Performance Security shall guarantee that the Contractor:

5.5.1. shall provide the Services according to the provisions of the Contract;

5.5.2. shall provide the Services within the time limits stipulated in the Contract;

5.5.3. shall not unlawfully refuse to provide or continue the Services under the Contract;

5.5.4. shall pay penalties for the breach of the Contract stipulated therein and indemnify the Customer for any damages including non-pecuniary damages sustained by the Customer due to the improper performance of the Contractor’s obligations under the Contract;

5.5.5. shall conclude a new contract or renew the existing contract with the bank/insurance company for a new Performance Security within the time limit set in Clause 5.4, should the Performance Security expire at a earlier date than stipulated in Clause 5.3 above.

5.6. Should the Contractor fail to timely submit a new Performance Security or renew the existing one, the Contractor shall pay, at the Customer’s request, a fine of EUR 50 for each delayed until the date when the Contractor fulfils his obligation.

**6. QUALITY AND WARRANTIES**

6.1. The Contractor guarantees that at the moment of the signing of the Final Services Transfer and Acceptance Certificate the output of the Services shall meet the requirements set out in the Conditions of the Negotiated Procedure, the Tender and the Contract and the Lithuanian legal acts and shall be performed in a quality manner, without defects that could reduce or negate the value of the Services.

6.2. The Contractor shall be liable for any non-compliance of the output of the Services as of the moment of its transfer to the Customer with quality requirements, even if the non-compliance comes to light later.

6.3. The Contractor shall give a 12 month warranty to the output of the Services and the equipment installed during the provision of the Services (if any), starting from the date of signature of the Final Services Transfer and Acceptance Certificate. If the Customer is unable to use the output of the Services for which a warranty has been given, for reasons in the Contractor’s control, the warranty term shall not apply until such reasons are eliminated by the Contractor.

6.4. Having found a defect in the quality of the Services, the Customer may, at his own discretion:

i) demand to correct the defects and/or deficiencies at no cost for the Customer, within a reasonable time limit;

ii) demand to reduce the Price accordingly;

iii) correct the defects and/or deficiencies by his own efforts or by hiring third parties, at the Contractor’s risk and cost.

6.5. Claims for any defects and/or deficiencies detected during the warranty term may be made at any time during such term.

6.6. The Contractor shall correct any defects and/or deficiencies detected during the warranty term no later than within 30 days except for cases where the Contractor proves that a longer period is required for the correction, and shall indemnify the Customer for any losses incurred by the Customer due to such defects and/or deficiencies.

6.7. The Contractor agrees with the Price and undertakes to provide all the Services referred to in Clause 1.1 above for the Price, as well as any additional services the need for which becomes clear during the execution of the Contract, to correct any defects and/or deficiencies in the output of the Services, and to indemnify the Customer for any losses incurred by the Customer due to such defects and/or deficiencies.

6.8. The Contractor warrants that any copyright product developed as the result of the Services cannot, is not and will not be encumbered by any Contractor’s or third party’s pecuniary rights, demands or claims. Such copyright shall be included in the Price and shall be considered to be transferred to the Customer indefinitely, in an unlimited territory, irrevocably and unconditionally from the date of payment made by the Customer to the Contractor for the part of Services resulting in any copyright product, from the date of acceptance of the output of the Services by the Customer. The Contractor shall indemnify the Customer for any losses incurred due to the Contractor’s failure to fulfil his obligations under this Clause.

**7. SUBCONTRACTORS**

7.1. The Contractor shall inform the Customer in writing, within 5 working days after the date of signature of the Contract but no later than prior to commencement of the Services, about the known subcontractors agreed with the Customer, specifying their names, contact details and representatives (applicable to the extent that such information was not provided in the Tender). During the term of the Contract, the Contractor shall inform the Customer in advance about any changes in the subcontractors’ details.

7.2. The Contractor shall inform the Customer in advance and agree on any new subcontractors that the Contractor intends to hire during the term of the Contract, and shall obtain the Customer’s prior written consent.

7.3. In case if the Contractor has relied on the capacities of the subcontractors specified in the Tender in order to comply with the qualifications requirements for the Contractor’s experience and professional qualifications, the Services for which such capacities are required shall be provided by such subcontractors.

7.4. The following subcontractors on the capacities of which the Contractor **has relied** in order to comply with the qualifications requirements set in the Conditions and/or legal acts, have been specified in the Tender: [...].

7.5. The following subcontractors on the capacities of which the Contractor has not **relied** in order to comply with the qualifications requirements set in the Conditions and/or legal acts, have been specified in the Tender: [...].

7.6. The part of the Contract for which the Contractor intends to hire subcontractors as stated in the Tender may be changed (reduced or increased) on the terms and conditions set out in this Clause. Provided that the Contractor possesses the requisite qualifications and entitlement to execute the relevant part of the Contract, the Contractor may, at any time during the execution of the Contract, refuse from the subcontractors already hired or to be hired and to provide the relevant part of the Services by his own effort. In such a case the Contractor shall give the Customer an advance notice and obtain the latter’s written consent to the reduction of the part of the Contract that the Contractor had intended to assign to subcontractors. The Contractor may also increase the part of the Contract that he had intended to assign to subcontractors as stated in the Tender, upon receipt of a prior written consent of the Customer. Where the Services or any part thereof can only be provided by an entity with relevant qualifications and entitlement, new subcontractors shall be hired according to a procedure set out in Clauses 7.7 and 7.8 below.

7.7. In order to replace a subcontractor or to hire a new subcontractor, the Contractor shall furnish the Customer with documents evidencing that:

(i) the new subcontractor to be hired meets the qualifications requirements laid down in the Conditions of Negotiated Procedure, the Contract and the Lithuanian legal acts (if any);

(ii) there are objective reasons referred to in Clause 7.8 of the Contract which necessitate the replacement of the existing subcontractor on the capacities of which the Contractor has relied in order to meet the qualifications requirements laid down in the Conditions and/or the legal acts, or the hiring of a new subcontractor for the Services for which qualifications requirements are laid down in the Conditions and/or the legal acts and the Contractor has relied on his own qualifications to prove compliance with such requirements;

(iii) grounds for elimination of the new subcontractor do not exist (applicable in cases where: (a) the Contractor intends to replace an existing subcontractor on the capacities of which the Contractor has relied in order to meet the qualifications requirements laid down in the Conditions and/or the legal acts; (b) the Contractor intends to hire a new subcontractor for the Services for which qualifications requirements are laid down in the Conditions and/or the legal acts and the Contractor has relied on his own qualifications to prove compliance with such requirements. The absence of grounds for elimination shall be checked if this is provided in the Conditions.

7.8. The Contractor shall be able to replace a subcontractor on whose capacities the Contractor relied in the Procurement procedure and to hire a new subcontractor for the Services for which qualifications requirements are set in the Conditions and/or legal acts, and the Contractor has substantiated compliance with such requirements by his own qualifications, only for objective reasons: improper provision of the Services by the subcontractor due to which the Contractor may be subjected to liability under the Contract; refusal to fulfil the subcontractor’s obligations in relation to the Services, or improper fulfilment of such obligations posing a realistic threat of breaching the Contract in terms of the Services’ quality and/or time limits; the subcontractor’s insolvency, bankruptcy or restructuring; change in the legal acts of the Republic of Lithuania; seeking to avoid renewal of the Contract on the terms and conditions thereof (if provided in the Contract; requirements set by state or local authorities during the provision and/or commissioning of the Services etc.

7.9. Where at least one ground for elimination identified in the Conditions (if identified) can be applied to the position of a subcontractor the grounds for elimination of which have been checked, such subcontractor shall be replaced, within the time limit set by the Customer, with a subcontractor that complies with the requirements.

7.10. Provided that the Customer gives his written consent, the part of the Contract for which the Contractor intends to hire subcontractors and which is specified in the Tender, may be changed and subcontractors may be added or replaced without a separate written agreement of the Parties.

7.11. The Contractor shall be fully liable to the Customer for the non-fulfilment of obligations by the subcontractors or improper fulfilment thereof.

**8. TERMINATION AND LIABILITY**

8.1. The Party which is not able to fulfil its obligations specified in the Contract and the Appendices thereto shall immediately notify this to the other Party, but no later than within 10 (ten) working days after the moment when such circumstances transpire, and, if necessary, other persons concerned.

8.2. Should the Party fail to fulfil its contractual obligations, the other Party may suspend the fulfilment of its obligations by giving the defaulting Party a 10 (ten) days’ written notice.

8.3. Should the Customer fail to timely pay for the Services duly provided and accepted, the Contractor may charge penalty at the rate of 0.02% of the outstanding amount. The Parties agree that the above provision shall not apply to the Customer if the Customer fails to make payments against tax invoices issued by the Service Provider in breach of the time limit set in Clause 2.4 due to circumstances related to the Contractor (e. g. penalty was applied to the Contractor but recalculated (reduced) later).

8.4. Should the Contractor delay in fulfilling his contractual obligations the Customer shall be entitled to charge penalty without a formal warning and without prejudice to other remedies under the Contract. Should the Contractor delay in providing the Services or any part thereof or fails to timely fulfil other contractual obligations, the Contractor shall pay to the Customer penalty at the rate of 0.05% of the value of the Services not provided for each delayed day, until the obligation is fulfilled. Where it is impossible to determine the value of the obligations, the Contractor shall pay a fine of EUR 50 per day.

8.5. Should the Contractor (his employees) or any of the subcontractors hired by him (their employees) provide the Services without the requisite qualifications and/or entitlement to carry out relevant activities, or if the Contractor (his employees) or any of the subcontractors hired by him (their employees) are providing the Services without the Customer’s Consent referred to in Clause 4.2.1 (e. g. the Consent was not issued, has expired, was revoked or suspended by the Customer etc.), or if the Customer has revoked or suspended the Consent due to the Contractor’s or any of the subcontractors’ failure to comply with the conditions of the Consent (e. g. the Services were provided by employees without qualifications or not specified in the Consent; the employees did not have personal protection equipment etc.), the Contractor shall pay, at the Customer’s request, a fine of EUR 2,000 for each case of violation. Payment of the fine does not give the right to provide the Services without requisite qualifications and/or entitlement to carry out relevant activities and/or a valid Consent.

8.6. Should the Contractor hire a new (additional) subcontractor or replace a specialist indicated in the Application and/or Tender without the Customer’s prior written consent, the Customer shall be entitled to demand termination of an agreement with such specialist, and the Contractor shall terminate such agreement at the Customer’s request and pay the Customer a fine of EUR 2,000 for each case of violation. Payment of the fine does not give the right to such specialist to provide the Services without completing the specialist replacement procedure referred to in Clause 4.2.4 of the Contract.

8.7. Should the Contractor fail to comply with the procedures for replacing and/or hiring new subcontractors set out in the Contract, the Customer shall be entitled to demand termination of a contract with the relevant subcontractor, and the Contractor shall terminate such contract at the Customer’s request and pay the Customer a fine of EUR 2,000 for each case of violation. Payment of the fine does not give the right to such subcontractor to provide the Services without completing the subcontractor adding/replacement procedure referred to in Clause 8 of the Contract.

8.8. The Customer shall have the right to demand that the Contractor and the economic operators (subcontractors) on whose capacities the Contractor had relied in order to comply with the requirements for economic and financial capacity as stated in the Conditions, would assume joint and several liability for the execution of the Contract.

8.9. The Parties agree that should the Contract be terminated by the Customer on a unilateral basis due to a material breach of the Contract by the Contractor, or for any reason due to the Contractor’s fault, the Contractor shall pay to the Customer a fine of 10% (ten percent) of the Price and shall indemnify the Customer for any losses not covered by the fine.

8.10. The Parties agree that any fines and penalties provided under any Clause of this Contract shall be deemed to be liquidated damages of the Customer in proportion to the breach of the Contract.

8.11. The Party may terminate the Contract if it can be seen, judging by the specific situation before the end of the term of the Contract, that the other Party will commit a material breach of the Contract. In such a case the Party may request that the other Party gives a confirmation that the Contract will be executed duly and in full. The Party may suspend the fulfilment of its contractual obligations until such confirmation is given.

8.12. The Party shall be entitled to terminate the Contract on a unilateral basis without applying to court or another dispute settlement institution if the other Party had committed a material breach of the Contract and had not rectified it within a reasonable term set in a written notice of the injured Party (intending to terminate the Contract); such term shall be not shorter than 30 (thirty) days starting from the day when the defaulting Party received the notice of the injured Party.

8.13. It shall be deemed that **the Contractor is in material breach of the Contract in the following cases** (but not limited to them):

8.13.1. the Contractor fails to ensure quality of the Services and has failed to correct deficiencies of the Services’ quality within a time limit set by the Customer;

8.13.2. the Customer has reasonable grounds for believing, due to the failure of the Contractor to comply with the contractual time limits for the provision of the Services, that the Contractor will not be able to complete the Services at the agreed time;

8.13.3. the Services are provided in violation of the time limit set in Clause 3.2.3 and the delay is longer than 40 days, even though the Contractor was warned in writing about the delay in providing the Services and submitting the final report for any facility;

8.13.4. the Contractor had damaged the gas pipeline and/or caused other losses to the Customer, and failed to indemnify the Customer for such losses within a reasonable time limit set by the Customer;

8.13.5. repeated violations of Clauses 4.2.2, 4.2.3 and/or 7, for which sanctions referred to in Clauses 8.5-8.7 of the Contract were imposed on the Contractor and/or the Contractor was warned in writing;

8.13.6. the Services are provided in violation of the time limits set in the Schedule and the provision of the relevant part of the Services is delayed by more than 20 days, provided that the Contractor was worn in writing about the delay;

8.13.7. the Contractor is in breach of other obligations under the Contract, which is qualified, in other provisions of the Contract, as a material breach of thereof;

8.13.8. the Contractor is in breach of other obligations under the Contract due to which continuation of execution of the Contract has become meaningless or impossible.

8.14. The Customer shall have the right to terminate the Contract on a unilateral basis without applying to court or another dispute settlement institution by giving the Contractor a written notice at any time, without giving the Contractor any additional term for the elimination of the circumstances that from grounds for the termination, in the following cases:

8.14.1. the Contractor has become insolvent;

8.14.2. bankruptcy proceedings have been instituted against the Contractor or bankruptcy procedures have been started out-of-court;

8.14.3. restructuring proceedings have been instituted against the Contractor;

8.14.4. a decision on the liquidation of the Contractor has been adopted (either on voluntary or forced basis);

8.14.5. the Contractor confirms to the Customer and/or other persons in writing, or otherwise publicly announces (i) his inability to pay current debts or make future payments; or (ii) his insolvency;

8.14.6. circumstances have come to light which provide grounds for the Customer to reasonably believe that the Contractor will not be able to duly fulfil his contractual obligations (e. g., the Contractor fails to discharge his financial liabilities to credit institutions and/or a competent authority has imposed sanctions on the Contractor whereby the Contractor’s rights related to the provision of the Services are revoked or substantially restricted).

8.15. The Customer shall have the right to renounce the Contract at any time prior to completion of the Services by giving the Contractor a 14 days’ written notice, at the same time paying the Contractor for the part of the Services completed by the date of receipt of the notice of termination and indemnifying the Contractor for direct losses, based on objective evidence, incurred by the Contractor due to the termination.

8.16. The Customer shall also have the right to terminate the Contract on a unilateral basis by giving the Contractor a 30 calendar days’ notice according to the provisions of Article 98 of the Republic of Lithuania Law on Procurement Conducted by Contracting Entities Operating in the Water, Energy, Transport and Postal Services Sectors.

8.17. It shall be deemed that the Customer has committed a material breach of the Contract if the Customer delays in paying the Contractor for the Services by more than 90 days, but not limited to such delay. The Parties agree that the above provision shall not apply to the Customer if the Customer fails to make payments against tax invoices issued by the Service Provider in breach of the time limit set in Clause 2.4 due to circumstances related to the Contractor (e. g. a penalty was applied to the Contractor but recalculated (reduced) later).

8.18. Should the Customer become insolvent or go bankrupt or should bankruptcy proceedings be instituted against the Customer during the term of the Contract, the Contractor may terminate the Contract by giving the Customer a 15 (fifteen) calendar days’ notice and demand indemnification for losses incurred due to the termination,.

8.19. Termination of the Contract shall release both Parties from its execution, however, does not cancel the right to demand indemnification for losses arising from the termination and penalties.

8.20. Individual cases of liability for the breach of the Contract are provided in other Clauses thereof as well.

8.21. The Contractor may be exempted from liability for a breach of the Contract if the Contractor is not responsible for the reasons beyond his control that gave rise to the violations (e. g. due to the Customer’s actions, third-party actions, actions of the State etc.).

8.22. Apart from cases referred to in Clause 8.21, the Contractor may also be exempted from liability under Clauses 5.6, 8.5-8.7 having regard to the Contractor’s effort to avoid the violations or to rectify them as soon as possible, to the share of the obligations fulfilled in due time, to the causes of the violations, behaviour of the Contractor (number of violations of the Contract during the term of the Contract; recurring or non-recurring violations), legal consequences arising from the violations or potential consequences etc.

**9. FORCE MAJEURE**

9.1. Force majeure shall be understood as specified in Article 6.212 of the Civil Code of the Republic of Lithuania.

9.2. The Party shall be released from its liability for failure to perform the Contract if it fails to perform the Contract due to force majeure, i.e.due to circumstances that are beyond control and could not have been reasonably foreseen by the Party at the moment of conclusion of the Contract, and the occurrence or consequences of which could not have been prevented by the Party. Lack of financial resources of the Party and failure by the Party’s counterparties to fulfil their obligations shall not constitute force majeure. The Parties to the Contract shall immediately or at least within 2 (two) working days notify each other on the occurrence of force majeure. The Party that fails to inform the other Party about force majeure may not rely on them to claim a release from liability for the failure to execute the Contract. In case of force majeure, the Parties shall be released from the fulfilment of their contractual obligations for the entire period of persistence of such circumstances but for not longer than 2 (two) months. Where the grounds for non-fulfilment of the obligations due to force majeure last for more than 2 (two) months, any Party shall be entitled to terminate the Contract. Upon termination of the Contract, the Parties shall settle up and fulfil other obligations under the Contract within 3 (three) working days after the date of termination thereof.

**10. MISCELLANEOUS**

10.1. The Contract shall come into effect after both Parties sign it and the Contractor submits to the Customer the Performance Security meeting the requirements set out in the Contract (*if required)*. The Contract shall remain in effect until complete fulfilment of the obligations by the Parties.

10.2. Invalidity of any provision of the Contract shall not render the entire Contract invalid except for cases where the Parties would not have concluded the Contract without such provision.

10.3. Any amendments and supplements to the Contract shall be valid if made in writing and signed by both Parties.

10.4. The Parties shall settle any disputes and disagreements through negotiations. Where the Parties fail to settle the disputes through negotiations, the dispute shall be settled in a court of the Republic of Lithuania according to a procedure prescribed by the Lithuanian law.

10.5. The Contract is made in two copies in Lithuanian and English and shall be kept by the Parties that have signed the copies. Where the Contract is made in Lithuanian and English, the English version shall be based on the Lithuanian version. In case of discrepancies between the Lithuanian and the English versions, the Lithuanian version shall prevail.

10.6. The Parties shall appoint their representatives responsible for the execution of the Contract, who shall not be entitled to amend and/or supplement the provisions thereof; the Customer’s representative shall also be responsible for the publication of the Contract and any amendments thereto according to the provisions of the Law on Procurement:

|  |  |
| --- | --- |
| Responsible person appointed by the Customer: |  |
| Responsible person appointed by the Contractor: |  |

The Parties may amend the Contract due to the replacement of their appointed representatives with other representatives by informing one another according to the procedure set out in Clause 10.7.

10.7. In case of change in the Party’s name, registered office addresses, address for correspondence, email address, telephone and fax numbers, bank details and legal registration data, the Party shall notify the other Party immediately. If no such notice is given, any documents or notices under the Contract, sent/delivered to the last known address of the Party shall be deemed to be duly served.

10.8. All information presented by the Customer to the Contractor for the performance of this Contract, also any data and information created by the Services provided by the Contractor shall be considered confidential (hereinafter referred to as the ‘Confidential Information’). The Contractor, his employees, representatives and consultants shall maintain confidentiality of such information and shall not disclose it, or any part thereof, to any third party in any form or by any method, unless the Customer gives his prior written consent, except for cases of mandatory provision of information established in the laws of the Republic of Lithuania. The Contractor, his employees, representatives and consultants shall not use the Confidential Information in any way which could cause damage/losses for the Customer. The Contractor shall comply with the confidentiality undertaking set out in this Clause during 10 years after the date of transfer of the output of the Services to the Customer.

10.9. At the Customer’s request the Parties shall conclude a written agreement on the Confidential Information in the form provided by the Customer (applicable if provided in the Conditions of the Negotiated Procedure).

10.10. The Parties to the Contract hereby agree and confirm that, during the execution of the Contract, the Parties will communicate in English or Lithuanian. The Contractor shall ensure that any information sent to the Customer are in Lithuanian or English, and interpreting is provided for the communication with the Contractor’s representatives and employees as necessary.

**11. APPENDICES TO THE CONTRACT**

11.1. Annex 1. Prices for the Pipeline Diagnostics Services - 1 page

11.2. Annex 2 (Service Provision Schedule Agreement Form) - 1 page

11.3. Annex 3 (Specifications of the Provision of the Services) - 2 pages.

**12. THE PARTIES’ ADDRESSES, TELEPHONE AND FAX NUMBERS AND CURRENT ACCOUNT NUMBERS**

12.1. The Customer*:* Savanorių pr. 28, LT-03116 Vilnius, tel. (8 5) 236 0855, fax. (8 5) 236 0850, e-mail: info@ambergrid.lt, <http://www.ambergrid.lt>, business ID: 303090867, VAT reg. No: LT100007844014, registered with the Register of Legal Entities of the Republic of Lithuania, the Registrar: State Enterprise Centre of Registers.

Account (IBAN): LT71 7044 0600 0790 5969 with AB SEB bankas, bank code 70440

12.2.**The Contractor**:

....................................................................................................................................................................................................................................................................................................................

The Customer The Contractor

**Amber Grid AB**