

**ADDENDUM NO. 2 TO THE AGREEMENT REGARDING KAUNAS CHP PROJECT**

**CONSULTING SERVICES (SERVICES OF ENGINEERING, PROCUREMENT,  
CONSTRUCTION MANAGEMENT (EPCM))**

CONSULTANT		CLIENT	
<p>Name and address:</p> <p>AF Consortium,</p> <p>AF-CONSULT LTD Bertel Jungin aukio 9 02600 Espoo, Finland,</p> <p>AF-CONSULT UAB Lvovo str. 25 LT-09320 Vilnius Lithuania, and</p> <p>AF-CONSULTING AS Akadeemia tee 21/3, Tallinn Estonia</p>		<p>Name and address:</p> <p>UAB KAUNO KOGENERACINĖ JĖGAINĖ Žvejų g. 14 LT-03910 Vilnius Lithuania</p>	
<p>Vat number:</p> <p>AF-CONSULT LTD: 1800189-6 AF-COUSULT UAB: 135744077 AF-CONSULTING AS: 10449422</p>		<p>Vat number:</p> <p>LT100009225616</p>	
Telephone	Telefax	Telephone	Telefax
Email		Email	
Reference		Reference	

**RECITALS:**

Whereas:

- (a) The Purchaser and the Consultant defined above have entered into an agreement regarding consulting services (services of engineering, procurement, construction management (EPCM)) for the purposes of Kaunas CHP Project ("the Agreement") dated 15 03 2017;
- (b) The Consultant has been selected by the Client by means of public procurement;
- (c) During implementation of Kaunas CHP Project the Parties to the Agreement have identified the necessity of certain additional services related to services provided by the Consultant under the Agreement;
- (d) In accordance to Article 97 para. 1 sub-para 2) of the Law on Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors the public procurement contract may be adjusted without separate procurement procedure where the necessity to acquire additional services from the supplier arises and change of supplier is impossible due economical or technical reasons such as *inter alia* interoperability of services and the change of supplier would expose the contracting entity to severe inconveniences and/or duplication of costs;
- (e) The Client intends to acquire additional services corresponding to (d) above from the Consultant under the Agreement for the purposes of due completion of Kaunas CHP Project;
- (f) In order to facilitate acquisition of necessary additional services under the Agreement, budgetary limits set out in the Agreement shall be revised.

Therefore, the Parties have agreed to modify the relevant provisions of the Agreement and restate them as follows:

**2 CHANGE TO THE PROVISIONS OF THE AGREEMENT**

- 1.1. Clause 11 of the Agreement shall be revised and restated as follows:

**11 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 10 610 133,78 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.*

1.2. Clause 14 of the Agreement shall be revised and restated as follows:

**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, also bonuses, coverage of cost and other payments for the Consultant in accordance to this Agreement shall **not exceed a sum specified in clause 11 of this Agreement**. In case the amount of remuneration to be paid to the Consultant for the variations, bonuses, coverage of cost and other payments for the Consultant exceeds the specified amount the Parties shall agree and enter 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.*

**2 OTHER PROVISIONS**

**2.1 Validity**

This Addendum shall come into force on the date of signing thereof and become an integral part of the Agreement. All conditions of the Agreement shall apply to this Addendum. Capital definitions used in this Addendum shall have the same meaning as assigned by the Agreement except for the cases where this Addendum specifies contrary;

**2.2 Change to the Agreement**

This Addendum shall modify relevant provisions of the Agreement to the extent defined herein. All other provisions of the Agreement shall remain unchanged and binding between the Parties to the Agreement.

**3 COPIES AND SIGNATURES**

This Extension has been executed in two original copies, one for each Party.

Place:

Date:

Authorised signatures of Client and Consultant \_\_\_\_\_