

DIVISION OF RESPONSIBILITY AND INDEMNITY AGREEMENT

by and between

[PARTY 1 full name],

having its registered office at [place], [country]

- hereinafter referred to as “Party 1” -

and

[PARTY 2 full name],

having its registered office at [place], [country]

- hereinafter referred to as “Party 2” -

- Party 1 and Party 2 hereinafter referred to individually
as “Party” or collectively as the “Parties” -

WHEREAS

- A. **[CUSTOMER]** (hereinafter called the “**Customer**”) is currently under final stages of negotiations for the **[PROJECT]** (hereinafter referred to as the “**Project**”).
- B. The Parties, intend to submit the final bid for the Project, as a consequence of which the Parties will act as a Consortium and be jointly and severally liable to the Customer for the performance of all obligations under the final contract for implementation of the Project (the “**Contract**”) and in external dealings Party 1 Party 2 will formally act as a consortium leader.
- C. Irrespective of the Parties acting as a Consortium in the external dealings and their joint and several liability towards the Customer for performing the Contract, the Parties agree that in relation to each other, Party 2 risks and responsibilities shall not be higher than or different from what would be Party 2 risks and responsibilities if it were only a subcontractor of Party 1, without any direct liability towards the Customer.

NOW, THEREFORE, the Parties agree as follows:

1 CONTRACTUAL ARRANGEMENT

This Agreement forms part of a broader contractual arrangement for the Project, which comprises the following documents (collectively, the “**Project Documents**”):

- b) the present Agreement;
- c) supply agreement(s) between the Parties in respect of the Project concerning the supply of **[Party 2 scope of supply]** for the Project (the “**Supply Agreement**”);
- d) Consortium Agreement;
- e) the Bid and, if the Project is awarded to the Parties, the Contract.

In the event of any inconsistencies, ambiguities or discrepancies between the aforementioned agreements, the sequence set out above shall prevail.

2 DIVISION OF RESPONSIBILITY

- 2.1 In accordance with the Bid, the Consortium Agreement and the Contract, the Parties agree that, in relation to each other, the responsibilities, risks and liabilities of the Parties in respect of the Project Documents and the Project shall be allocated as follows:
- 2.2 Party 2 shall not assume any responsibilities, risks or liabilities in relation to the Project Documents or the Project, other than those expressly defined by the terms of the Supply Agreement. The scope of work to be provided by Party 2 and all its obligations, responsibilities, risks, liabilities and payment terms shall be definitively defined by the terms and specifications of the Supply Agreement.
- 2.3 All other responsibilities, risks and liabilities in respect of the Project Documents or the Project shall be the sole responsibility of Party 1.

Please refer to Appendix 1a for a general description of the scope of works to be provided by each Party. However, this general description shall be subject to the detailed specifications of the Supply Agreement.

3 INDEMNIFICATION

- 3.1 In the event that any joint and several liability of the Parties arises under the Bid, the Consortium Agreement or the Contract, Party 1 shall indemnify Party 2 from all claims raised or brought against Party 2 by or on behalf of the Customer or any other third party under or in relation to the Contract and/or the Project (any such claim hereinafter referred to as a "Relevant Claim").
- 3.2 Party 2 shall notify Party 1 in writing without delay upon receipt of any relevant claim from the customer. Party 1 shall immediately assume control of the defence and shall, to the extent permitted by law, direct all subsequent proceedings, negotiations, communications and other dealings in relation to the Relevant Claim. Party 2 shall cooperate with Party 1 in respect of the defence of the claim and shall not settle the relevant claim without Party 1's prior written approval. In the event that Party 1 has not commenced action within a reasonable time period, not exceeding twenty-one days, Party 2 shall be entitled (but not obliged) to take measures for defending or settling the relevant claim. Party 1 shall be bound by these measures and shall bear all risks and consequences.
- 3.3 Party 1 shall reimburse and hold Party 2 harmless from all reasonable costs and expenses (including legal fees) incurred by Party 2 in connection with Relevant Claims.
- 3.4 This indemnity obligation shall apply in all cases where a relevant claim is brought against Party 2 in relation to the bid, the contract or the project. This indemnity obligation shall apply regardless of the subject matter or root cause of the claim and regardless of whether or not such claim is due to a default on the part of Party 2. However, it shall be without prejudice to Party 2's obligations and liabilities pursuant to the Supply Agreement. The indemnity obligation set out in this Article shall remain in full force and effect regardless of any amendment, change, suspension or early termination of any of the other Project Documents, any breach of or default by Party 2 or any of its affiliates in relation to these contracts, or any waiver or forbearance under any of these contracts.
- 3.5 The provisions of this Agreement shall be without prejudice to any obligations and liabilities of Party 2 pursuant to the Supply Agreement. However, Party 1's obligation to indemnify Party 2 pursuant to this Agreement shall be absolute and enforceable in all circumstances. The indemnity obligation shall not be excluded, limited or impaired in any way by any suspension or termination of the Supply Agreement or by any counterclaims, rights, remedies, objections or defences which Party 1 may have under or in relation to the Supply Agreement, any other legal relationship between Party 1 and Party 2 (or any of their affiliates) or any other legal basis or theory. Party 1 hereby waives any rights of retention, set-off or other remedies, objections or defences which could exclude, limit or otherwise impair the application or enforcement of this obligation to indemnify Party 2.
- 3.6 In the event that this Agreement is terminated or otherwise ceases to be effective, Party 1's obligation pursuant to this Article shall remain valid and continue to apply for all relevant claims originating from acts, omissions or events that occurred prior to the effectiveness of this Agreement.

4 CONSORTIUM LEADER

Party 2 shall act as the Consortium leader. The Consortium leader's role is purely administrative and includes the following tasks:

- Representing the Consortium as the main point of contact for communication and coordination with the Customer and third parties on matters related to the Project;

СОГЛАШЕНИЕ О РАСПРЕДЕЛЕНИИ РИСКОВ И ВОЗМЕЩЕНИИ

между

[Полное наименование СТОРОНЫ 1],

имеющее зарегистрированный офис по адресу **[место]**, **[страна]**,

- далее именуемое “СТОРОНА 1” -

и

[Полное наименование СТОРОНЫ 2],

имеющее зарегистрированный офис по адресу **[место]**, **[страна]**,

- далее именуемое “СТОРОНА 2” -

СТОРОНА 1 и СТОРОНА 2 далее по отдельности именуются
как “СТОРОНА” или совместно как “СТОРОНЫ”

ПОСКОЛЬКУ

- А. [ЗАКАЗЧИК] (далее именуемый **“Заказчик”**) находится на завершающей стадии переговоров по [ПРОЕКТУ] (далее **“Проект”**).
- Б. Стороны намерены подать твердое предложение по Проекту, в результате чего Стороны будут действовать как Консорциум и нести солидарную ответственность перед Заказчиком за выполнение всех обязательств по окончательному контракту на реализацию Проекта (**“Контракт”**), и в рамках внешних взаимоотношений Сторона 1 и Сторона 2 выступают формально как руководители консорциума.
- В. Вне зависимости от того, что Стороны действуют в качестве Консорциума во внешних отношениях и несут солидарную ответственность перед Заказчиком за выполнение Контракта, Стороны соглашаются, что во взаимоотношениях между ними риски и обязанности Стороны 2 не будут превышать или отличаться от тех, которые были бы у Стороны 2, если бы она была только субподрядчиком Стороны 1, без каких-либо прямых обязательств перед Заказчиком.

НАСТОЯЩИМ Стороны договорились о нижеследующем:

1. ДОГОВОРНЫЕ УСЛОВИЯ

Настоящее Соглашение является частью более широких договорных обязательств по Проекту, включающих следующие документы (**“Документы Проекта”**):

- а) настоящее Соглашение;
- б) соглашения о поставке между Сторонами в рамках Проекта, касающиеся поставки [перечень поставок СТОРОНЫ 2] для Проекта (**“Соглашение о Поставке”**);
- в) Соглашение о Консорциуме;
- г) Тендерное Предложение и, если Проект будет присужден Сторонам, Контракт.

В случае возникновения несоответствий или расхождений между вышеперечисленными соглашениями, приоритет будет иметь последовательность, изложенная выше.

2. РАЗДЕЛЕНИЕ ОТВЕТСТВЕННОСТИ

- 2.1. В соответствии с Тендерным Предложением, Соглашением о Консорциуме и Контрактом Стороны соглашаются, что, по отношению друг к другу, ответственность, риски и обязательства Сторон по Документам Проекта и Проекту распределяются следующим образом:
- 2.2. СТОРОНА 2 не несет никакой ответственности, рисков или обязательств в отношении Документов Проекта или Проекта, кроме тех, что прямо определены условиями Соглашения о Поставке. Объем работ, выполняемых СТОРОНОЙ 2, и все ее обязательства, ответственности, риски, обязательства и условия оплаты окончательно определяются условиями и спецификациями Соглашения о Поставке.
- 2.3. Вся остальная ответственность, риски и обязательства в отношении Документов Проекта или Проекта возлагаются исключительно на СТОРОНУ 1.

3. КОМПЕНСАЦИЯ

- 3.1. В случае возникновения солидарной ответственности Сторон по Тендерному Предложению, Соглашению о Консорциуме или Контракту, СТОРОНА 1 обязуется возместить СТОРОНЕ 2 все претензии, выдвинутые против СТОРОНЫ 2 Заказчиком или любым третьим лицом в