

## Part 0.e NON-DISCLOSURE AGREEMENT

### Public Contract:

#### "High-efficient combined heat and power facility utilizing renewable sources (OHB II - line K1) "

over-the-limit utilities contract for construction works awarded in a negotiated procedure with prior publication pursuant to the provisions of Section 60 of the PPA.



**SAKO Brno, a.s.**

registered address: Jedovnická 4247/2, 628 00 Brno  
ID No: 60713470

## Part 0 - Procurement documentation

### Part 0.f – Non-disclosure agreement

Parties:

**1. SAKO Brno, a.s.**

with registered office at: Jedovnická 4247/2, 628 00 Brno

represented by: \_\_\_\_\_

ID No: 6389407

(hereunder referred to as the "**Contracting Authority**")

and

**2.** \_\_\_\_\_

represented by: \_\_\_\_\_

with registered office at: \_\_\_\_\_

ID No: \_\_\_\_\_

company registered in the Commercial Register administered by  
\_\_\_\_\_ file number \_\_\_\_\_

(hereunder referred to as the "**Participant**")

have entered as of this day today into this Agreement in accordance with the provisions of Section 1746 (2) of Act No. 89/2012 Coll., the Civil Code, as amended (hereunder referred to as the "**Civil Code**")

(hereunder referred to as the "**Agreement**")

## **Part 0 - Procurement documentation**

### **1. PURPOSE OF THE AGREEMENT**

- 1.1. The Contracting Authority announced its intention to award an over-the-limit utilities public contract in a negotiated procedure with prior publication entitled "*High-efficient combined heat and power facility utilizing renewable sources (OHB II - line K1)* " (hereunder referred to as the "**Public Contract**").
- 1.2. The Participant intending to participate in the Public Contract procurement procedure requires provision of those parts of the Public Contract procurement documentation which contains information that the Contracting Authority considers confidential and requires their protection (hereunder referred to as the "**Confidential Information**") both over the duration of the procurement procedure and after the termination of the contract concluded on the basis of the procurement procedure or after cancellation of the procurement procedure. To this end, the Parties hereto enter into this Agreement, which shall govern the rules for handling Confidential Information received by the Participant.

### **2. SUBJECT OF THE AGREEMENT**

- 2.1. The subject of this Agreement is the obligation of the Participant to use the Confidential Information under this Agreement only in the manner and for the purpose specified in this Agreement.
- 2.2. Unless the Parties agree otherwise, the Participant is not entitled to handle Confidential Information in any other way but in compliance with this Agreement.
- 2.3. The purpose of this Agreement is, in particular, to prevent from the disclosure of any technical information covered by this Agreement which the Contracting Authority considers as its trade secret or know-how or as the subject of intellectual property rights.

### **3. CONFIDENTIAL INFORMATION**

- 3.1. Unless agreed otherwise between the Participant and the Contracting Authority, all information provided by the Contracting Authority to the Participant and listed in Annex 1 to this Agreement shall be considered as Confidential Information, the use of which is subject to this Agreement. All information that is undoubtedly directly or indirectly related to the information according to the previous sentence is also considered confidential as per this paragraph.

### **4. USE OF CONFIDENTIAL INFORMATION**

- 4.1. All Confidential Information remains the exclusive property of the Contracting Authority and the Participant is entitled to use the information only for the purposes of its participation in the procurement procedure for the award of the Public Contract or to the extent necessary for the performance of the Public Contract.
- 4.2. The Participant undertakes to keep the Confidential Information in confidence and not to disclose it to any third party. The Participant is entitled to disclose the Confidential

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Information to a third party only with the prior written consent of the Contracting Authority or provided that the terms and conditions specified under Article 5 herein are met.

- 4.3. The Participant is entitled to disclose the Confidential Information to its employees only to the extent necessary for a specific person to become familiar with the Confidential Information for the purposes of the Participant's participation in the Public Contract procurement procedure or the performance of the Public Contract. These persons shall be informed of the confidential nature of the information provided and committed to keep the information in confidence.

### 5. SUBCONTRACTORS

- 5.1. If the Participant considers cooperating with a third party on the preparation of the indicative or final tender for the execution of the Public Contract and/or the potential execution of the Public Contract by the Participant, the Participant undertakes to share the Confidential Information with these parties (hereunder referred to as the "**Subcontractors**") only in accordance with this Article 5 herein.
- 5.2. Any third party cooperating with the Participant in accordance with paragraph 5.1 herein is considered a Subcontractor regardless of whether or not:
- the co-operation takes place within a consortium formed by the Participant and such a third party, the members of which are jointly and severally liable to the Contracting Authority, or
  - the cooperation is based on subcontracting arrangements between such a third party and the Participant, or
  - the cooperation is based on a subcontractor relationship between the Participant and such a third party, or
  - The Participant and the third party have chosen another form of cooperation.
- 5.3. Sharing of Confidential Information to the extent necessary is possible only provided that the Participant has entered into a non-disclosure agreement with the Subcontractor, under which the Confidential Information provided to the Participant and shared with the Subcontractor will be subject to protection by the Subcontractor under the same terms conditions as set out herein; this condition is considered fulfilled in particular if the Contracting Authority receives a copy of such a non-disclosure agreement signed by persons representing the Subcontractor and the Participant, as well as a list of all Subcontractors to whom Confidential Information has been or may be disclosed by the Participant in any manner.

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### **6. FULFILLMENT OF THE PURPOSE OF THE AGREEMENT**

- 6.1. The Participant undertakes to return all the provided Confidential Information to the Contracting Authority, if objectively possible, upon fulfilling the purpose of this Agreement in accordance with Article 1 herein or at a written request of the Contracting Authority and immediately destroy any copies or other information in connection with the performance of the subject and purpose of this Agreement . The Participant also undertakes not to keep disclosing or using any Confidential Information in any manner and to ensure performance of this obligation also with respect to all parties to whom the Confidential Information has been disclosed.

### **7. BREACH OF OBLIGATIONS**

- 7.1. The Participant shall be liable for a breach of the obligations related to the handling of Confidential Information pursuant to Article 4 herein caused by its Subcontractor, as if such a breach was caused by the Participant itself.
- 7.2. If the Participant breaches any obligation under this Agreement, the Contracting Authority shall have the right to claim payment of a contractual penalty from the Participant in the amount of CZK 20,000,000 for each breach of such obligation, unless it is a negligible breach for which the Participant can prove that such a breach could not result in a loss/damage.
- 7.3. The Participant's obligation to pay a contractual penalty under this Agreement is without prejudice to the Contracting Authority's right to compensation for damage caused by a breach of obligations that resulted in the claim for the contractual penalty in full.

### **8. FINAL PROVISIONS**

- 8.1. The obligation to protect Confidential Information is binding on the Participant regardless of the possible termination of this effect of this Agreement for an unlimited period of time from the conclusion of this Agreement. Provisions concerning liability and contractual penalties shall be considered effective even in case of a breach of obligation during the period specified in the previous sentence.
- 8.2. The Participant is not entitled to assign obligations arising from this Agreement to a third party without the consent of the Contracting Authority. The Contracting Authority is entitled to assign the obligations arising from this Agreement to a third party without the prior consent of the Participant. Any dispute shall be adjudicated by the Czech courts in accordance with the applicable Czech system of law. The local jurisdiction of the courts is agreed according to the registered office of the Contracting Authority.
- 8.3. The Contracting Authority may set off any and all its receivables from the Participant, both due, unpaid and future. In this context, the parties to the Agreement exclude the application of the provisions of Section 1987 (2) of the Civil Code. The Participant is not

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entitled to set off any of its receivables from the Contracting Authority arising from this Agreement.

- 8.4. This Agreement may only be amended by a written agreement between the Parties in the form of numbered amendments to this Agreement, signed by a person or persons authorized to represent that Party.
- 8.5. Annex No. 1 Specifications of Confidential Information forms an integral part of the Agreement.

**Contracting Authority**

**Participant**

At \_\_\_\_\_ date \_\_\_\_\_

At \_\_\_\_\_ date \_\_\_\_\_

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SAKO Brno, a.s.

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### **Annex No. 1**

#### **SPECIFICATIONS OF CONFIDENTIAL INFORMATION**

1. Price data from the sheet entitled "Jednotkové ceny\_Unit prices" of the Binding economic model (Part 0.d to the Procurement documentation);
2. The binding form of the Economic Model in .xlsx format (Part 0.d to the Procurement documentation)
3. 3D model (Part III - appendix D3 3D model of project to the Procurement documentation)