

Employer

**SAKO BRNO A.S.**

Project

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

Date

**February 2021**

## **Part I.a**

# **CONTRACT**



Parties:

**SAKO Brno, a.s.**

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

ID No: 60713470 , VAT No.: CZ 60713470

company duly incorporated in the the Business Register administered by the Regional Court

in Brno,

file no. B 1371

Bank connection: [TO BE COMPLETED], account number: [TO BE COMPLETED]

Represented by [TO BE COMPLETED]

(hereunder referred to as the "Employer")

and

**[TO BE COMPLETED BY THE CONTRACTOR]**

with registered office at: [TO BE COMPLETED BY THE CONTRACTOR]

ID No: [TO BE COMPLETED BY THE CONTRACTOR], VAT No. [TO BE COMPLETED BY THE CONTRACTOR]

company duly incorporated in the Business Register administered by [TO BE COMPLETED BY THE CONTRACTOR]

court in [TO BE COMPLETED BY THE CONTRACTOR ],

file no. [TO BE COMPLETED BY THE CONTRACTOR],

Bank connection: [TO BE COMPLETED BY THE CONTRACTOR], account number: [TO BE COMPLETED BY THE CONTRACTOR],

Represented by [TO BE COMPLETED BY THE CONTRACTOR]

(hereunder referred to as the "Contractor")

enter into the Contract in accordance with the provisions of Section 124 of Act No. 134/2016 Sb., on Public Procurement, Section 2586 et seq. Act No. 89/2012 Sb., Civil Code as of this day.

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**The Parties, aware of their obligations under this Contract and with the intention of becoming bound by this Contract, have agreed on and agree with the following wording of the Contract:**

## **PREAMBLE**

The objective of the Contractor is to use the SAKO Premises for the implementation of the project entitled "*High-efficient combined heat and power facility utilizing renewable sources (OHB II - line K1)*".

## **1. DEFINITIONS**

- 1.1 The Parties agree that the following terms used in this Contract shall have the meaning specified in this Article 1 herein:
- 1.1.1 **SAKO Premises** means the real estate, including components and accessories, owned by the Employer, intended for the implementation of the project entitled "*High-efficient combined heat and power facility utilizing renewable sources (OHB II - line K1)*", which will be used by the Contractor to implement the Contract Object. As of the date of the Contract execution, the SAKO Premises consist of real estate specified in the Planning Documentation;
- Once the Construction is completed, it will become part of the SAKO Premises Line;
- 1.1.2 **Standard working hours** mean the Employer's usual working hours from Monday to Friday from 7 a.m. to 6 p.m. and on Saturday to Sunday from 7 a.m. to 3 p.m.;
- 1.1.3 **Contract Amount** means the total price for which the Contractor shall implement the Contract Object, including remedying Defects, while this price is defined under Appendix II.d Prices and Payment Conditions;
- 1.1.4 **day** means a calendar day;
- 1.1.5 **Commencement Date** means the date of notification in accordance with the Programme;
- 1.1.6 **Effective Date** means the date on which this Contract becomes effective;
- 1.1.7 **Contract Object** means a summary of all operations under the Contract that are necessary for the delivery of the Line as per the requirements under the Contract and achieving results envisaged by the Contract, and which are necessary for the operation of the Line by the Employer, with the Contract Object specified under Article 5.3 herein;
- 1.1.8 **Temporary Installations** mean any operations required on the Site to perform and complete the Permanent Installations

and to remedy Defects;

- 1.1.9 **Line Documentation** (also referred to as “**Documentation**”) means documents that are drawn up in accordance with appendices to the Contract, in particular attestations, certifications, declarations of conformity, documents on inspections, test reports required by the Legal Regulations for the operation of the Line; the Project Documentation also forms a part of the Line Documentation;
- 1.1.10 **VAT** means value added tax in the amount applicable to the relevant deliveries at the relevant time;
- 1.1.11 **Guarantee Period** means the period defined under Article 16.7 herein;
- 1.1.12 **Programme** means the binding time-limits for meeting the obligations of the Parties agreed with respect to the Design, Engineering Services, Construction of the Line, Preliminary Taking Over of the Contract Object as per Appendix II.i Contract Programme (including any subsequent changes made in accordance with the Contract);
- 1.1.13 **Engineering Services** mean all activities aimed at obtaining any and all supporting documents, statements, consents, opinions, permits, decisions, notifications, announcements and any other legal and factual steps necessary for proper and timely construction of the Line and proper use and operation of the Line in accordance with the Legal Regulations;
- 1.1.14 **Security** means the original bank guarantee document or the amount of money deposited in favour of the Employer;
- 1.1.15 **Authorities** mean any public authority (administrative or public body and/or body in a similar position and/or an entity authorized or entitled by such bodies or authorities) which is entitled to take decisions on the rights and obligations and/or to check and/or review and/or to assess (including imposing sanctions for deficiencies and failures to meet obligations under the law) and performance of any duties and obligations of the Parties, in particular in relation to this Contract or to define duties having an impact on the Parties in general. Authorities shall always include the means the construction authority, and the provider of a subsidy granted to the Employer in relation to the Contract Object or a part thereof, and a bank or any other financial institution through which the Contractor provided the Employer with a bank guarantee in accordance with Article 29 herein, or any other public authority before which proceedings are pending in relation to the performance of this Contract;
- 1.1.16 **Guarantee Compensation** means the calculated amount, which takes into account the fact that a Defect in the form of a failure to comply with the Guaranteed Values (Guarantees) will, if not remedied,

encumber the Employer's property in the form of increased costs or reduced revenues for a longer period, in accordance with the formula

$$\text{Guarantee Compensation} = [|A - B| * (\text{Unit price})] * [(1 + ((C + 0,03) * n))]$$

"A" - Guaranteed value (guarantee) - represents the assumption set by the Contract, in particular Appendix II.h Guarantees, adjusted by the calculation for the required annual availability of 8,000 hours and a period of duration of 15 years

"B" - Actual value (guarantee) - represents the condition actually reached by the Line, adjusted by the calculation for the required annual availability of 8,000 hours and a period of duration of 15 years

"Unit price" - the unit price of a specific guarantee which is common at the relevant time and place of the Defect

"C" - the CNB discount rate at the time of the Defect

„n“ – 15 years

If the Defect is remedied, at the time of the remedy the contractual penalty shall be reduced to the amount calculated in accordance with the above formula, multiplied by a fraction, where the numerator is the Defect duration expressed in whole months of its duration in years and the denominator is 180 (i.e. the total number months in 15 years). The Parties declare that the 15-year period used in the calculation of the contractual penalty corresponds to a reasonable estimate of the expected lifetime of the Line;

- 1.1.17 **Line** means the summary of all results of the Construction of the Line, i.e. construction, installation and technological operations related to the construction of the waste-to-energy line K1, the so-called "3rd incineration boiler", which forms a functional unit defined under Appendix A1 Overall Scope of Works and which forms part of the Contract Object;
- 1.1.18 **Quality Manual** means a document drawn up by the Contractor in accordance with the requirements defined under Appendix B7 Requirements for Quality;
- 1.1.19 **Material** means things of all kinds (except for technological equipment) that should for or form a part of the Construction, including materials supplied by the Contractor without installation (if any) under the Contract;
- 1.1.20 **month** means a month in the Gregorian calendar;
- 1.1.21 **Contractor's Tender** means the Contractor's complete tender submitted in the Procurement Procedure, including all additions and changes accepted by the Employer;

- 1.1.22 **Employer** means the company SAKO Brno, a.s., with its registered office at Jedovnická 4245/2, Czech Republic, ID number 607 13 470, which implemented the Procurement Procedure as a contracting authority;
- 1.1.23 **Waste** means input raw materials, which are necessary in particular for the operation of the Line, while the requirements for Waste are defined under Appendix E8 Approved waste types for Employer's Existing Plant;
- 1.1.24 **Persons on the Contractor's side** mean any of the following persons:
- 1.1.24.1 Contractor's Representative;
  - 1.1.24.2 Contractor's Workers; and
  - 1.1.24.3 Workers of the Contractor's Subcontractors;
  - 1.1.24.4 other persons in accordance with Appendix B1 Project Organization;
- with any relation to the Line;
- 1.1.25 **Persons on the Contractor's side** mean:
- 1.1.25.1 Employer's Representative;
  - 1.1.25.2 Owner's Engineer
  - 1.1.25.3 Employer's suppliers and subcontractors;
  - 1.1.25.4 Employee's Workers;
- with the exception of the Contractor and any Person on the Contractor's side. The structure of Persons on the Employer's side is specified under Appendix B1 Project Organization;
- 1.1.26 **OZ** means Act No. 89/2012 Sb., the Civil Code, as amended, and/or any generally binding legal regulation superseding this Act;
- 1.1.27 **Works** mean Permanent installations or Temporary installations or any of them, as the case may be;
- 1.1.28 **Test Plan** means documents draw up by the Contractor in accordance with the Employer's Requirements for individual phases of the Line Construction;
- 1.1.29 **Subcontractor(s)** mean(s) persons hired by the Contractor at any time and on the basis of any legal title in order to perform and meet its duties and obligations under the Contract and subcontractors of such persons at any level of subcontracting; the Subcontractors include persons who sold things used to perform the Contract Object to the Contractor;
- 1.1.30 **Planning documentation** means
- a) zoning permit \_\_\_\_ *(to be added)*
  - b) EIA



c) any other existing and effective documentation, which is not affected by the documents listed above under letters a) and b), including designs, data collection, decisions, consents and supporting documents, defined in particular in the SZ and implementing regulations, which relates to and is connected to the SAKO Premises or the Construction of the Line, and which results in a description of the actual condition of the SAKO Premises and all rights and duties related to it

including any and or updates after the Contract execution;

- 1.1.31 **Provider of the Bank Guarantee** means a bank domiciled in the Czech Republic and/or within the European Union that meets, as a minimum, the following long-term rating requirements with at least one of the following rating agencies: Moody's „A3“, Fitch/IBCA „A-“, Standard & Poor's „A-“;
- 1.1.32 **Permits** mean any permits, consents, approvals, certificates, authorizations, public contracts or certificates required by the Legal Regulations and any necessary third party consents or any agreement with any third party (legal acts) necessary for the performance of the Contract Object, regardless of who is obliged to be their holder under the Legal Regulations;
- 1.1.33 **Employer's Requirements** mean any and all terms and conditions of the Employer set out in the procedure under the PPA stipulated in the tendering documentation of the public contract entitled " High-efficient combined heat and power facility utilizing renewable sources (OHB II - line K1)" in accordance with Section 28 (1) (b) of the PPA, as amended as of the date of the Contract execution, and which form a part of the Contract as appendices specified under Article 38.12.2 herein;
- 1.1.34 **Employee** means, in relation to certain a person, its (i) employees, regardless of the type of employment relationship; (ii) other workers (e.g. self-employed persons cooperating on the basis of commercial contracts); and (iii) statutory bodies or their members;
- 1.1.35 **Legal Regulations** mean:
- 1.1.35.1 any effective generally binding legal regulation which forms a part of the system of law of the Czech Republic;
  - 1.1.35.2 relevant binding guidelines, methodologies and other regulations binding upon the Employer and/or the Contractor provided that they are publicly available or that their existence has been announced and the content has been made available to the other Party;
  - 1.1.35.3 the ČSN standards specified in this Contract or any similar standards, if it is obvious that they need to be complied with

for the purposes of the proper implementation of the Contract Object, and

- 1.1.35.4 any enforceable regulation of the European Union;
- 1.1.36 **Project documentation** means any drawings, reports, formulas, calculations, software and any other documents and data related to the design, construction, completion and operation of the Line from the construction and technical point of view, which are the result of the Contractor's operations under this Contract;
- 1.1.37 **Design** means the activities performed or organized by the Contractor, during which the Project Documentation will be drawn up in accordance with the Contract;
- 1.1.38 **Surveys** mean indicative reports/surveys related to the condition of the Site and the subsoil. Surveys also include maps available via the website [www.gis.brno.cz](http://www.gis.brno.cz);
- 1.1.39 **Preliminary Taking Over of the Contract Object** means the activity defined under Article 16.1 herein which can be take place under the terms and conditions set out under Article 16 herein;
- 1.1.40 **Year** means 365 days;
- 1.1.41 **Construction Team** means the natural persons through whom the Contractor will perform key activities under this Contract. The list of persons who are members of the Construction Team forms part of the Contractor's Tender. For the avoidance of doubt, the members of the Construction Team must be at least those persons through which the Contractor has demonstrated its technical qualification in the Procurement Procedure, or persons who will replace them provided that they also meet the relevant qualification criteria;
- 1.1.42 **Contract** (also referred to as "**Part I**") means this Contract including any and all appendices and Appendixes hereto;
- 1.1.43 **Owner's Engineer** means a person [IDENTIFICATION DATA OF THE OWNER'S ENGINEER WILL BE ADDED] who, on the basis of a contractual relationship with the Employer, carries out activities or is authorized to control and/or manage the Contractor's activities under the Contract or, as the case may be, another person authorized by the Employer to do so, if the Contractor is informed about it in writing.
- 1.1.44 **Existing Facility** (also referred to as the "**EfW Line K2 and K3** ") means lines K2 and K3, which the Employer operates and will operate for the period of implementing the Contract Object in accordance with the Contract;
- 1.1.45 **Construction of the Line** (also referred to as the "**Construction**" or "**Assembly**") means all Works, operations and supplies that are required under the Legal Regulations and under this Contract for the proper and timely construction and commissioning of the Line under

this Contract, and the Construction will also include removal of the existing facilities located on the SAKO Premises in accordance with the Planning Documentation and the Employer's Requirements;

- 1.1.46 **Developer** means a person defined in the SZ and implementing Legal Regulations including rights and duties;
- 1.1.47 **Site** means land, i.e. a defined part of the land, including components and accessories, or civil structures forming separate items that will be used for the Construction of the Line, including any related activities, while the Site will be defined in accordance with the Contract, Employer's Requirements and Planning documentation and will comply with the Legal Requirements.
- 1.1.48 **SZ** means Act No. 183/2006 Sb., on town and country planning and building code (the Building Act), as amended, and/or any generally binding legal regulation superseding this Act;
- 1.1.49 **Permanent Installations** mean work to be performed by the Contractor under the Contract;
- 1.1.50 **Use of land and buildings** means the use of land and buildings in the SAKO Premises during the Construction of the Line, exclusively for the Design, Engineering Services and Construction of the Line carried out in accordance with the Contract;
- 1.1.51 **Defect (similarly Defective)** means any Defect of the Contract Object, which consists mainly in defective processing, material, machinery used in the Construction of the Line, defective Project Documentation, Line Documentation, defective technology or technological parts or defective Site preparation while taking into account established industrial practice and Legal Regulations, i.e. any discrepancy between the Contract Object and the Contract;
- 1.1.52 **VDS** means Regulation No. 499/2006 Sb., on Construction Documentation, as amended, and/or any generally binding legal regulation superseding this Regulation;
- 1.1.53 **Performance Insufficiency** means a condition where the Contract Object fails to meet the Guarantees. Performance Insufficiency is a Defect of the Contract Object;
- 1.1.54 **Performance Tests** mean the tests defined in the Employer's Requirements, in particular Appendix A11 End of Assembly, Commissioning, and Testing, Appendix A20 Procedure for Guarantee Tests incl. Guarantee tests in accordance with Article 16 of the Contract, the purpose of which is to validate compliance with the parameters of the Contract Object defined in the Employer's Requirements, or tests, the performance of which is agreed by the Parties or tests obliged to be performed based on a decision made by Authorities;

- 1.1.55 **Engineering services outputs** mean the documentation, data, decisions or legal actions necessary to meet the purpose of the Engineering Services and which will be handed over to the Employer in accordance with Article 12.11.12 herein;
- 1.1.56 **Procurement procedure** mean the procurement procedure in accordance with the PPA related to the implementation of the public contract entitled " *Highly efficient equipment for combined heat and power generation from renewable sources (OHB II - line K1)*", which preceded the execution of the Contract;
- 1.1.57 **Equipment** means equipment, machinery and vehicles intended for the construction or forming part of Permanent Installations;
- 1.1.58 **Employer's Representative** means a person in accordance with Article 8.1 et seq. of the Contract.
- 1.1.59 **Contractor's Representative** means a person in accordance with Article 8.5 et seq. of the Contract.
- 1.1.60 **ZEVO** means the Existing Facility for waste-to-energy and the future equipment of the Line, which will be operated by the Employer as one functional unit, in particular for the purposes of electricity and heat production from renewable energies including compliance with all legislative and regulatory requirements of the Authorities;
- 1.1.61 **Resources** means electricity, water and other inputs or raw materials necessary for the performance of the Contract Object or operation of the Line in accordance with the Employer's Requirements;
- 1.1.62 **The Contractor** means [the **CONTRACTOR TO COMPLETE ITS IDENTIFICATION DATA**], whose tender was evaluated as the most advantageous in accordance with the procurement terms and conditions in the Procurement Procedure and meeting all terms and conditions the meeting of which was required in the Procurement Procedure;
- 1.1.63 **Trial Operation Period** means the period defined under Article 15.15 et seq. of the Contract during the performance of the Contract Object, which precedes the Preliminary Taking Over of the Contract Object and during which the Performance Test will be conducted. The Trial Operation Period shall be governed by the Contract and the terms conditions set by the relevant Authority;
- 1.1.64 **Change in Legal Regulations** means a change in Legal Regulations made after the Contract conclusion;
- 1.1.65 **PPA** means Act No. 134/2016 Sb., the Public Procurement Act, as amended, and/or any generally binding legal regulation superseding this Act.

## 2. INTRODUCTORY PROVISIONS

- 2.1 In the event of a change in the Legal Regulations with such a change affecting the performance of the Contract Object by the Contractor, the Parties acknowledge that the Employer bears no responsibility for such a change.
- 2.2 The Contract is governed by the language of the Czech Republic, which is the Czech language. During the performance of the Contract Object Work, the Parties, including the Persons on the Employer's side and the Persons on the Contractor's side, shall communicate in the Czech or English language as instructed by the Employer. In accordance with the Contract, all documentation shall be handed over to the Employer in the Czech or English language as instructed by the Employer. In accordance with the Contract, the final version of all documentation shall be handed over to the Employer in the Czech language. The provisions of the previous sentence do not apply to standard brochures, leaflets and any other similar documents.
- 2.3 If there is a discrepancy between the provisions of the Contract, the terms and conditions set by the Authorities in relation to the performance of the Contract Object shall take precedence over the provisions of the Contract.

### **Employer's representation**

- 2.4 To the best of its knowledge, the Employer represents that as of the date of the execution of the Contract, the information given in the appendices hereto drawn up by the Employer corresponds to the actual and legal status that is and/or (objectively assessed) should be known to the Employer.

### **Contractor's representation**

- 2.5 The Contractor represents that it is a legal entity duly incorporated and existing under the [TO BE COMPLETED BY THE CONTRACTOR] under the system of law and that it meets all terms and conditions and requirements set out in this Contract and is entitled to execute this Contract and duly discharge the obligations specified herein. In accordance with Section 5 of the Civil Code, the Contractor furthermore declares that it is a person capable of demonstrating its ability to act with the knowledge and care associated with the relevant profession and having professional competence to implement the Contract Object specified herein, with such a competence concerning professional qualification of the Contractor in a scope in which the qualification was demonstrated by the Contractor in the procedure conducted under the PPA and in which it is defined by this Contract.
- 2.6 The Contractor declares to the best of its knowledge that as of the date of executing this Contract:
  - 2.6.1 no claim was raised against the Contractor, no litigation, arbitration or administrative proceedings or any dispute litigated in any other manner that could adversely affect the Contractor's ability to perform its obligations under the Contract and/or prevent or limit the Contractor's right to enter into this Contract;

- 2.6.2 even when all due care is exercised, is not aware of any impending dispute which could adversely affect the Contractor's ability to perform its obligations under the Contract and/or prevent or limit the Contractor's right to enter into this Contract;
  - 2.6.3 is not insolvent in any manner and no insolvency is imminent in accordance with the Legal Regulations; and
  - 2.6.4 has no obligations, the performance of which would adversely affect its ability to perform its obligations under the Contract.
- 2.7 The Contractor declares that it is able to secure all funds needed to perform the Contractor's obligations arising from this Contract.

### **3. APPLICABLE LAW**

- 3.1 The Contract is governed exclusively by the valid and effective system of law of the Czech Republic.

### **4. INTERPRETATION OF THE CONTRACT**

- 4.1 The following rules of interpretation shall apply to this Contract, unless the context expressly stipulates otherwise:
- 4.1.1 references to this Contract include any amendments hereto, provided that they are made in a manner which is in accordance with this Contract and the PPA;
  - 4.1.2 references to Legal Regulations refer to the relevant regulation as amended, or to the corresponding provision of the legal regulation by which the referenced legal regulation will be superseded;
  - 4.1.3 reference to any document is a reference to the document in its form at the relevant time, i.e. in the form including changes and additions made;
  - 4.1.4 reference to the Contract includes appendices hereto.
- 4.2 If there is a discrepancy between this Contract, appendices hereto and/or the Contractor's Tender, the provisions of the Contract shall prevail if this corresponds to the purpose and significance of such a provision. If there is a discrepancy between the Employer's Requirements and the Contractor's Tender, the Employer's Requirements shall prevail. A discrepancy is not understood as a situation where the Contractor's Tender provides a broader scope or higher quality of performance than as stipulated in the Employer's Requirements. The Employer shall decide whether the Contractor's Tender provides a broader scope or higher quality than as stipulated in the Employer's Requirements. If there is a discrepancy within the meaning of this article, the Parties undertake to make every effort to clarify such a discrepancy by mutual agreement.
- 4.3 Documents forming the Contract shall be understood as one document explaining the other document. For the purposes of interpreting the meaning

of the Contract and any and all documents forming or related to the Contract, the following order of precedence applies:

- 4.3.1 requirements stipulated by the relevant binding Legal Regulations save for Article 1.1.35.3 herein;
  - 4.3.2 requirements stipulated by binding and guiding ČSN standards;
  - 4.3.3 the Contract;
  - 4.3.4 appendices to the Contract in the order listed under Article 38.12.1 to 0 the Contract;
  - 4.3.5 Contractor's Tender;
  - 4.3.6 established industrial practice.
- 4.4 For the purposes of interpreting the meaning of the appendices, the document with the highest priority is listed as the first and the priority of documents is descending.
- 4.5 The rules agreed herein above shall not apply if the Contract expressly stipulates a different order of precedence.
- 4.6 For the avoidance of doubt, the Parties do not consider the facts in respect of which representations are provided in this Contract to be decisive for its execution. Shall these representations prove to be untrue, the Parties shall not proceed in accordance with the provisions of the Legal Regulations concerning invalidity or ineffectiveness of the legal act; however, without prejudice to the right to damages caused by potential untrue nature or any other incorrectness of the other Party's representation.
- 4.7 Shall the Contract impose an obligation on the Employer to cooperate, this is understood as cooperation in terms of providing support to the Contractor, not as fulfilling the purpose of the Contract.
- 4.8 The calculation of time-limits and periods is governed by the relevant provisions of the OZ.

## **5. PURPOSE AND SUBJECT OF THE CONTRACT**

- 5.1 The purpose of performing the Contract is to achieve a status when the Employer will be able to use the Line to incinerate a maximum volume of Waste with minimum operational interruptions, new high-quality waste-to-energy facility, while keeping minimum capital and operating expenditure, while taking into account maximum heat and electricity production.
- 5.2 The subject of the Contract is the Contractor's obligation to implement the Contract Object in due and timely manner at its own expense and risk in accordance with the Contract, while achieving all the values and qualities specified in the Contract during the Warranty Period. All characteristics of the Contract Object listed in particular under Appendix II.h Guarantees are considered to be binding upon the Contractor.

- 5.3 The subject of the Contract Object is specified in the Employer's Requirements.
- 5.4 In accordance with the provisions of Section 100 (1) of the PPA, the Employer is entitled to inform the Contractor no later than 90 Days from the Effective Date that the subject of the Contract Object will not cover the implementation of some or all of the parts specified in more detail under Appendix A21 Options. The costs incurred by the Contractor during the period specified under this article in connection with the parts specified under Appendix A21 Options shall be borne by the Contractor.

## **6. SUBCONTRACTING**

- 6.1 The Subcontractors, through whom the Contractor demonstrated compliance with any part of the qualification criteria during the procedure conducted in accordance with the PPA prior to the execution of this Contract, are listed, including a general description of their performance, under Appendix B1 Project Organization and Appendix F1 Subcontractors.
- 6.2 The Contractor may hire Subcontractors other than those listed under Appendix F1 to perform work reserved by the Contractor to be performed through a Subcontractor or which may be hired to perform its obligations under the Contract provided. If it is a Subcontractor through which the Contractor demonstrated compliance with any part of the qualification criteria during the Procurement Procedure, such a Subcontractor may only be hired with a prior written consent of the Employer and provided that the Contractor will continue to comply with the qualification criteria required by the Employer in the Procurement Procedure and will document this to the Employer in writing. The facts or information related to the new Subcontractor shall, in terms of the form, type and content, correspond to the Employer's requirements specified in the relevant qualification requirement (the compliance with which is demonstrated through the Subcontractor) during the Procurement Procedure. The Employer shall respond to the request for such a consent within 14 days and shall not unreasonably withhold such a consent. In particularly urgent cases, the submission of documents and information related to a new/other Subcontractor is possible even after the actual replacement of the Subcontractor and the Contractor is obliged to submit these documents and information to the Employer without undue delay.
- 6.3 The Contractor shall be fully liable to the Employer for the performance of its obligations under the Contract, regardless of hiring Subcontractors for such a performance.
- 6.4 The Contractor undertakes to make sure that the selection of the Subcontractor and the performance of the Contractor's obligations under this Contract through a Subcontractor will not breach the Legal Regulations.
- 6.5 The Contractor shall make available to the Employer, upon request, documents necessary to inspect performance of its obligations under Article 6 herein and provide the Employer with related information and copies of documents no later than 2 weeks from receipt of the Employer's request. The Contractor is entitled



to black out or otherwise make illegible data that are confidential in the relationship between the Contractor and the relevant Subcontractor, in particular the price of the relevant performance provided by the Subcontractor or any other third party in the documents submitted or made available.

- 6.6 If the Subcontractors demonstrably breach the terms and conditions set out in the Contract, the Employer shall be entitled to request that the Contractor replace such Subcontractors. When replacing the Subcontractor, the Contractor shall comply with the obligations set out under this Article herein.
- 6.7 Prior to executing the Contract, the Contractor submitted to the Employer a list of Subcontractors who will be hired by the Contractor to perform work under this Contract, if they participate in the implementation of part of the Contract Object in the amount of a minimum of CZK 20,000,000 excl. VAT. The Contractor shall update the list of these Subcontractors during the implementation of the Contract Object in accordance with the hired Subcontractors and shall always submit the updated list to the Employer and the Owner's Engineer without undue delay. Together with this list, the Contractor shall submit documents listed under Appendix F1 Subcontractors. As instructed by the Employer and/or the Owner's Engineer, the Contractor shall identify those Subcontractor who participate in the implementation of the Contract Object. The Owner's Engineer is entitled to instruct the Contractor that the Subcontractor designated by the Owner's Engineer should not perform work related to the Contract Object and should be replaced by another Subcontractor or such work should be performed by the Contractor. The Owner's Engineer shall always justify the instruction given to the Contractor in accordance with the previous sentence. Provisions of this Article 6.7 do not apply to Subcontractors defined under Article 6.1 herein.
- 6.8 Before engaging the relevant Subcontractor in accordance with the first sentence under Article 6.7 herein to implement the Contract Object, the Contractor shall inform the Employer accordingly in writing and submit to the Employer:
- 6.8.1 identification data of the Subcontractor in accordance with Section 28 (1)(g) of the PPA,
  - 6.8.2 information which specific part of the Contract Object will be implemented by the relevant Subcontractor,
  - 6.8.3 confirmation (even just by e-mail) of the relevant Subcontractor that it has become familiar with the possibilities and conditions of direct payments to Subcontractors,
- and all this no later than 7 days before the engagement of the relevant Subcontractor in the implementation of the Contract Object unless such information was provided by the Contractor to the Employer in writing earlier.
- 6.9 The Contractor shall pay the Subcontractors the price in the agreed amount and under the agreed terms and conditions.

- 6.10 In accordance with the provisions of Section 106 of the PPA, the Employer reserves the possibility to make payment of due amounts corresponding to the construction work, supplies or services provided by the Subcontractor on the basis of a written request made by the Subcontractor, if the Contractor is in default of payment of the relevant amount to the Subcontractor for a minimum of 45 days from its due date.
- 6.11 Direct payment to the Subcontractor shall be made by the Employer on the basis of an invoice - tax certificate - issued by the Subcontractor to the Employer and including information on the amount to be paid directly to the Subcontractor (hereinafter referred to as the "**the amount for direct payment**") and particulars in accordance with Article 26 herein. An invoice shall also include:
- 6.11.1 a copy of the document specifying the existing obligation between the Contractor and the Subcontractor (purchase order, contract or any other similar document) and the amount of the agreed price (or prices of partial performance) in connection with the implementation of the Contract Object under the Contract,
- 6.11.2 The list of actually performed construction work /supplies/ services, incl. their valuation or handover protocol approved (signed) by the Contractor which will explicitly indicate that the amount for direct payment shown in the invoice is set at the correct amount; if the Subcontractor is not able to document the completed implementation by a signed list of actually performed construction work /supplies/ services, incl. their valuation or handover protocol, the Subcontractor is entitled to document the completed implementation by the contract with the Contractor and a document on the completed Subcontractor's implementation if it shows the required amount and
- 6.11.3 information when the amount to have been paid by the Contractor to the Subcontractor was due.
- 6.12 The amount for direct payment specified by the Subcontractor in the invoice to be paid by the Employer shall not higher than the amount corresponding to the construction work, supplies or services actually performed by the Contractor.
- 6.13 The Employer will inform the Contractor about the fact that he has received an invoice from the Subcontractor for direct payment to the Subcontractor and about the relevant documents in accordance with Article 6.11 herein. If the Contractor fails to prove within 14 days from the date of receipt of the information from the Employer that the statements made by the Subcontractor in the documents in accordance with Article 6.11 herein are incorrect, it is it understood that the Contractor agrees to the direct payment to be made in favour of the Subcontractor.
- 6.14 The invoice becomes due 35 days from the date of delivery to the Employer. The Employer is entitled to return the invoice to the Subcontractor before the due date if the invoice fails to include the required details or if it contains incorrect data. The Employer is entitled to return the invoice if the Contractor proves

within the specified period that the statements made by the Subcontractor in the documents in accordance with Article 6.11 herein are incorrect. Justified return of the invoice interrupts the invoice payment term.

- 6.15 In the event that the performance for which the Subcontractor requests direct payment from the Employer has been paid to the Contractor, the Employer shall pay the Subcontractor the amount for direct payment and the following payment or payments to be made by the Employer to the Contractor under this Contract will be reduced by this amount; the Employer shall inform the Contractor in writing about the set-off made with respect to the Contractor's receivable. If there is no future payment that the Employer could set off with respect to the Contractor's receivable, the amount to be paid on the basis of the Contract by the Employer directly to the Subcontractor represents the amount of the contractual penalty for the Contractor's failure to perform the obligations in accordance with Article 6 herein and the Contractor undertakes to pay such a contractual penalty to the Employer no later than 2 weeks from the date of delivery of the request for payment.

## **7. FINANCING OF CONTRACTOR'S COSTS AND EXPENSES**

- 7.1 For the avoidance of doubt, the Parties agree that, unless otherwise specified herein, the Employer shall not be liable for any obligations, duties and debts incurred by the Contractor with respect to any third party in relation to ensuring payment of costs and expenses incurred by the Contractor in relation to the performance of obligations under this Contract and the Employer will, in particular, not assume any debt nor accede to any debt incurred by the Contractor, will not secure or corroborate any debt incurred by the Contractor or provide any of its assets as a pledge or any other surety. The Contractor may not encumber the Employer's assets, including the Line, with any debts or any right of a third party, in particular a lien, surety, transfer of a right as security, etc. without the Employer's written consent.
- 7.2 The Contractor undertakes to secure the financing of all its obligations under this Contract which are not paid by the Employer in the cases expressly stipulated herein in its own name and at its own risk and expense.

## **8. REPRESENTATIVES OF THE PARTIES**

### **Employer's Representative**

- 8.1 The Employer's Representative is a person authorized to represent the Employer in connection with the performance of this Contract during legal negotiations and factual negotiations to the extent resulting from the Legal Regulations or specified in a proper written authorization or power of attorney.
- 8.2 The Employer's Representative is entitled to authorize another person to represent the Employer to the extent specified by the Representative. Where this Contract refers to the Employer's Representative, this reference also applies to the person authorized in this manner. The Employer may thus authorize more

Employer's Representatives, regardless of whether the Employer does so in the same or different extent of authorization.

The Employer's Representative is specified under Appendix B1 Project Organization.

- 8.3 The Employer is entitled to change or add an Employer's Representative at any time, and this change shall become effective with respect to the Contractor upon the Contractor's receipt of a notification of this change. Such a change, addition of an Employer's Representative, does not require an amendment to this Contract.
- 8.4 The actions or instructions of the Employer's Representative to the extent envisaged herein shall be considered as actions or instructions of the Employer and the Contractor or the Contractor's Representative shall follow them.

### **Contractor's Representative**

- 8.5 The Contractor's Representative is a person authorized to represent the Contractor in connection with the performance of this Contract during legal negotiations and factual negotiations to the extent resulting from the Legal Regulations or specified in a proper written authorization or power of attorney.  
The Contractor's Representative is named in the Contractor's Tender.
- 8.6 Approval of the Contractor's Representative after the execution of the Contract, follows Appendix B1 Project Organization. The Contractor is entitled to replace or add the Contractor's Representative after approval by the Employer. If the Employer does not approve the Contractor's Representative, either upon the execution of the Contract or during the implementation of the Contract Object, the Employer shall inform the Contractor of the reasons for such a disagreement. Such a change, addition of a Contractor's Representative, does not require an amendment to this Contract. If it concerns a representative subject to the obligation to demonstrate compliance with the qualification criteria during the procedure conducted under the PPA preceding the execution of the Contract, the replacement of such a Contractor shall be governed by the provisions of Article 23.2 herein.
- 8.7 All actions or instructions of the Contractor's Representative are considered as actions or instructions of the Contractor, unless the Contractor notifies the Employer in advance that a specific action or instruction is not an action or instruction of the Contractor.

## **9. EMPLOYER'S BASIC REQUIREMENTS FOR THE LINE**

- 9.1 The Parties agree that the requirements specified in the Planning Documentation, Legal Regulations related to the Line and the Employer's Requirements will be complied with during the implementation the Contract Object and the Construction of the Line.
- 9.2 If the Contractor requests the Employer to submit the documentation of the Existing Facility, the Employer shall provide such documentation within 14 days

from the date of the Contractor's request. The Contractor shall specify the required documentation in the request. The documentation of the Existing Facility is indicative in nature and does not release the Contractor from the obligation to implement the Contract Object in a proper and timely manner.

## **10. SITE AND SUBSOIL**

- 10.1 The definition of the Site, the conditions and circumstances of handing over the Site to the Contractor, conditions of using the Site by the Contractor (including rights and obligations of the Parties) are agreed in the Contract for the purposes of Design, Engineering Services and Construction of the Line and further specified in the Planning Documentation and the Employer's Requirements.
- 10.2 The Employer has commissioned and handed over to the Contractor the indicative Surveys and Planning Documentation. The Contractor confirms that it became duly familiar with the Surveys and the Planning Documentation and validated them on the basis of available means and possibilities before submitting the Tender in the Procurement Procedure and does not consider the Surveys and the Planning Documentation to be incorrect, incomprehensible or insufficient. The Contractor declares that he sufficiently reviewed the professional qualification of the authors, the results and methodologies applied in these Surveys, and accepts the risk of their inaccuracy or incompleteness. Should the Surveys and/or Planning Documentation prove to be incorrect or incomplete, the Contractor may not raise objection that it entered into this Contractor in error, nor request any compensation or relief from the Employer, unless otherwise specified in this Contract. When performing its operations, the Contractor is obliged to respect the Surveys and to comply with the Planning Documentation, which shall be without prejudice to Articles 10.4 and 11.10.5 herein.
- 10.3 Unless expressly stipulated otherwise in this Contract, the Employer bears the responsibility and risk of:
  - 10.3.1 unforeseen characteristics of the land on which the Site is located, including its subsoil;
  - 10.3.2 construction or replacement or relocation of buried services; however, not those the relocation of which is required by the Employer's Requirements.
- 10.4 The Contractor undertakes if, at any time during the Design, Engineering Services or Construction of the Line, a need arises, to ensure in a timely manner, to a sufficient extent and in accordance with the Legal Regulations, with due professional care and with satisfactory results the following:
  - 10.4.1 physical and geophysical survey of the subsoil condition of the Site and its surroundings, including any civil structures and networks located on, above or below the Site;
  - 10.4.2 review and evaluation of the condition of the Site, soil and subsoil, in particular the profile of the Site and its bearing capacity, risks of

- accidents, damage to property and characteristics of the material to be extracted from the Site;
- 10.4.3. review of the scope of necessary modifications of the Planning Documentation and modifications within the Construction of the Line;
  - 10.4.4. review of the necessary access to the Site, its equipment, risk of accidents, protection of property and health of any persons.
- 10.5. The Contractor undertakes to promptly:
- 10.5.1. take into account the information and outputs obtained in accordance with Article 10.4 herein as part of the Design, Engineering Services and Construction of the Line, in particular to take appropriate measures;
  - 10.5.2. inform the Employer in writing about the information and outputs obtained in accordance with Article 10.4 herein and about measures taken in accordance with the previous article herein.
- 10.6. If any fact that the Contractor identifies during the implementation of the Contract Object gives rise to the need to change the Planning Documentation, the Contractor shall inform the Employer of such a need and follow its instructions. If any necessary change in any part of the Planning Documentation affects the Programme and deadlines specified therein, it is also necessary to proceed in accordance with Article 27 herein.
- 10.7. The Site shall be handed over to the Contractor within the time-limit set out herein. The Contractor shall use access routes and connection points specified by the Employer and the energy and media connection points for the implementation of the Contract Object.
- 10.8. The Contractor shall draw up a draft Site plan, including draft principles of the construction organization in accordance with VDS, and submit it for approval to the Employer together with the request for handover of the Site in writing (hereunder, Articles 23.14 and 24.2 herein also referred to as the "**Request**"). The Contractor shall submit the Request to the Employer in a proper and timely manner. The Employer shall comment on the submitted Request in writing within 14 days of its submission. In the comment made in accordance with the previous sentence, the Employer shall specify whether it approves the Request or not, including the reasons for a disapproval. In case of disapproval of the Request, the Contractor is obliged to modify the Request in accordance with the Employer's comments in accordance with the previous sentence and to submit the modified Request to the Employer within 7 days from the Employer's disapproval of the Request. The procedure set out herein shall apply repeatedly until the Request has been approved.
- 10.9. When drawing up the draft Site plan, the Contractor shall comply with the principles set out in VDS and the principles set by the Employer for the operations of the suppliers in the field of protection of property and persons, occupational safety, fire protection and environmental protection specified in the Employer's Requirements. The Site Plan shall include, inter alia, a following areas as a minimum:

- 10.9.1. technical report (character of the Construction, overview of the existing and new facilities, Construction management structure);
  - 10.9.2. Construction progress programme;
  - 10.9.3. Construction transport and logistic solutions (access roads, short-term and long-term occupation of areas, number of Workers);
  - 10.9.4. Site accommodation design, describing, as a minimum:
    - i. Site security and guarding;
    - ii. occupational health and safety precautions, fire protection and environmental protection in accordance with Appendix B2 Requirements for Health, Safety, and Environment;
    - iii. Site sanitary facilities;
    - iv. provision of medical care on Site;
    - v. Site evacuation plan;
  - 10.9.5. coordination and general layout of the Site.
- 10.10. Within 28 days from the Effective Date, but no later than at the beginning of the work on the Site, the Contractor shall, in relation to the duties concerning occupational health and safety, submit information in writing to the Employer related to the risks arising from work performed on the Site. Further details are set out under Appendix B2 Requirements for Health, Safety, and Environment. Without this, the Contractor may not commence the work. After submitting the written information in accordance with the first sentence of this Article, the Employer shall comment on the information within 21 days from the day of receipt. The Contractor shall comply with the Employer's comments made in accordance with the previous sentence and adhere to the resulting obligations under this Contract and to enforce these obligations in relation to its employees, suppliers and third parties, without any financial or time-related claims raised against the Employer.
- 10.11. The Contractor undertakes to notify the Employer immediately of any fire, accident or occupational injury incurred by its employees, as well as accidents having an impact on the environment, if they occur on the Employer's premises and regardless of the location of such an event, if the Employer's property got damaged or such damage is imminent.
- 10.12. If the Contractor uses tools, scaffolding, dedicated technical equipment, etc. provided by the Employer during the implementation of the Contract Object, these objects will be used at his own risk and the Contractor is obliged to compensate for all damage arising as a result of their use. The Contractor shall use these objects in accordance with generally binding regulations.
- 10.13. For the avoidance of doubt, the Parties agree that the performance of the Contractor's obligations in accordance with Article 10 herein is without prejudice to the Contractor's obligation to obtain the Employer's consent to such changes under the Contract (in particular, changes in the rights and

obligations of the Parties) for which this Contract requires or envisages the Employer's consent.

## **11 PROJECT DOCUMENTATION AND ENGINEERING SERVICES**

### **Project documentation**

- 11.1 The Contractor is obliged and undertakes to obtain the Project Documentation for the purposes of implementing the Contract Object. The Project Documentation shall be prepared with professional care and in accordance with the Contract.
- 11.2 The Project Documentation shall be prepared in accordance with the requirements set out in the Employer's Requirements, the Planning Documentation and within the limits of the Contractor's Tender.
- 11.3 For the purposes of preparing the Project Documentation, the Employer shall provide the Contractor, at his request, with a power of attorney to the extent necessary to conduct negotiations with administrative bodies, persons concerned (administrators and owners of public service networks), any other third parties and any other necessary legal acts related to the preparation of the Project Documentation no later than 2 weeks of the receipt of the Contractor's request.
- 11.4 The Contractor undertakes to obtain the Project Documentation at its own expense, either by itself and/or in its own name and at its own account (as the Employer /purchaser) and liability/risk from a third party in accordance with the rules of hiring Subcontractors in accordance with Article 6 herein. In relation to the Building Act, the Contractor shall act as a representative of the Developer for the purposes of preparing the Project Documentation (the Employer is the Developer). In connection with the preparation of the Project Documentation, the Employer may not incur any debt or obligation or liability towards any third party. The Employer is not responsible for any obligations and debts associated with the Project Documentation.
- 11.5 The Contractor shall submit the draft Project Documentation in accordance with the Employer's Requirements for comments to the Owner's Engineer. The draft Project Documentation will be submitted in at least two copies in printed form and in electronic form in\* pdf or \* doc format, unless the Parties agree on a different number of copies. The draft Project Documentation will be prepared in accordance with other requirements, which are specified in the Employer's Requirements, in particular Appendix A14.7 hereto. The structure of the submitted draft will be agreed with the Employer in accordance with Appendix A14.7 hereto and amended in the manner specified under Appendix A14.7 hereto. The Contractor is not entitled to commence follow-up construction work or any other follow-up operations (initiation of administrative proceedings for the purposes of obtaining a Permit, etc.) prior to obtaining the opinion of the Owner's Engineer and/or the Employer on the draft Project Documentation. The Employer and/or the Owner's Engineer is entitled to request a prompt



explanation/additional information and/or documents from the Contractor, which are necessary for a proper review of the submitted draft Project Documentation. The Employer and/or the Owner's Engineer shall submit to the Contractor in writing specific reasonable reservations to the submitted draft no later than 28 days from the date of submission of the draft Project Documentation. Specific reasonable reservations of the Employer and/or the Owner's Engineer to any part of the Project Documentation shall be understood as: non-compliance of the submitted draft Project Documentation with the Contract. The Contractor shall consider the Employer's and/or the Owner's Engineer's reasonable reservations and, if necessary, incorporate them in the relevant part of the Project Documentation within 14 days from the date of the of the Employer's and/or the Owner's Engineer's reasonable reservations. Reasonable reservations raised by the Employer and/or Owner's Engineer do not release the Contractor from its responsibility to prepare the Project Documentation and implement the Contract Object in accordance with the Contract.

- 11.6 The Contractor undertakes to submit the documents, the obligation to prepare which results from the Legal Regulations, to the Employer no later than on the date of the Preliminary Taking Over.
- 11.7 The Contractor undertakes submit the Project Documentation to the Employer no later than by the deadline in accordance with the Programme in the form specified under Article 11.5. A written handover protocol will be drawn up and signed by the Parties on the handover and takeover of the Project Documentation, which will be prepared by the Contractor.
- 11.8 The Contractor shall prepare the as-built design documentation in the form and format specified under Article 11.5 and hand it over to the Employer no later than on the date of the Preliminary Taking Over.

### **Engineering Services**

- 11.9 The Contractor is obliged and undertakes to ensure Engineering Services necessary for the implementation of the Contract Object in a proper and timely manner and at its expense.
- 11.10 The Engineering Services will be ensured in accordance with the deadlines set in the Programme.
- 11.11 As part of the Engineering Services, the Employer shall provide the Contractor, at its request and within a reasonable time period, with a power of attorney to the extent necessary to conduct negotiations with administrative bodies, persons concerned (administrators and owners of public service networks), any other third parties and any other necessary legal acts related to the Engineering Services no later than 14 days of the receipt of the Contractor's request. The Employer shall provide the Contractor only with the absolutely necessary co-operation in relation to representing the Employer within the Engineering Services, for example in the form of forwarding documents delivered by

administrative bodies to the Employer and providing information communicated by the administrative bodies to the Employer.

- 11.12 The Contractor undertakes to hand over the outputs of the Engineering Services corresponding to this Contract to the Employer. A table with an overview of such documents shall always be handed over, three copies of the documents (all this also in the form of data on a CD/DVD carrier), and as one original. The handover will take place at the Employer's registered office, no later than on the date of the Preliminary Taking Over. However, the duplicate of the building permit and documents on its coming into force shall be submitted in this manner no later than 14 days from their coming into force. A written handover protocol will be drawn up and signed by the Parties on the handover and takeover of the Outputs of the Engineering Services, which will be prepared by the Contractor.

### **Liability for defects in Project Documentation and Engineering Services**

- 11.13 The Contractor is responsible for making sure that the Project Documentation and Engineering Services will comply with the requirements set out in this Contract, in particular that they will meet the purpose of the Contract in accordance with Article 5 herein. If the Project Documentation and/or Engineering Services are provided by a Subcontractor, the Contractor shall provide a guarantee for such performance in a minimum extent of requirements under Article 19 herein.

## **12 QUALITY ASSURANCE OF CONTRACT OBJECT**

- 12.1 The Contractor shall make sure that the Contract Object will be implemented in accordance with the requirements set out in the Contract, the Employer's Requirements and the Legal Regulations valid and effective as of the date of the Preliminary Taking Over.
- 12.2 The Contractor declares that a quality management system will be introduced in accordance with the technical standard ČSN EN ISO 9001: 2015, for civil and/or process structures, OHSAS 18001 or ČSN EN ISO 45001, for civil and/or process structures, ČSN EN ISO 14001 for civil and process structures or, as the case may be, any other standards superseding these standards throughout the Contract duration.
- 12.3 Throughout the Contract duration, the Employer is at any time entitled to audit the quality assurance system under the Contract, check the implementation of the Contract Object and check all documentation prepared under the Contract, and the Contractor is obliged to allow the Contractor to perform such checks at any time upon its request.
- 12.4 The Contractor shall prepare the Quality Manual and/or the Test Plan within the time-limit and in accordance with the requirements defined in the Employer's Requirements.
- 12.5 During the implementation of the Contract Object, the Contractor is obliged to update the Quality Manual and/or the Test Plan as necessary, e.g. if a circumstance that makes it necessary to amend the Quality Manual occurs. The

Contractor is obliged to submit the updated Quality Manual and/or the Test Plan to the Employer without undue delay after its update.

- 12.6 The Contractor is obliged to participate in any test or inspection that the Contractor or any of its Subcontractors will conduct in accordance with the Contract. Provisions of Article 15 herein shall apply to the performance of such tests. The Employer is entitled to participate in the inspections and tests through a person authorized by the Employer in writing. The Owner's Engineer will always participate in the performance of tests or inspections in accordance with the Contract. When conducting tests at the Contractor's, the Contractor is obliged to pay reasonable travel expenses, meals and accommodation for the Employer or a person authorized by the Employer and the Owner's Engineer. At the request of the Employer, the Contractor shall, at its own risk, book accommodation for the Employer and the Owner's Engineer and pay also for the transport from the place of accommodation to the place where the Contractor conducts the tests. All expenses incurred by the Owner's Engineer shall be paid to the Employer who will make a settlement with the Owner's Engineer in accordance with the provisions of a separate contract. This arrangement does not establish any rights or obligations regarding a settlement of the above expenses between the Contractor and the Owner's Engineer.
- 12.7 The Contractor is obliged to allow the Employer to perform any inspection or test beyond the scope of the Test Plan provided that:
- 12.7.1 no such inspection or test shall endanger the progress of implementing the Contract Object, shall not affect the proper functioning of the inspected or tested part of the Contract Object or performance of other obligations of the Contractor under the Contract. If the performance of such inspection or test endangered the progress of implementing the Contract Object, affected the proper functioning of the inspected or tested part of the Contract Object or performance of other obligations of the Contractor under the Contract, the Contractor shall promptly document this to the Employer. If the Employer still insists on performing such an inspection or test, the Contractor shall not be liable for any damage caused by such inspection or test.
  - 12.7.2 all Contractor's documented and reasonable expenses incurred as a result of performing such inspections or tests will be reimbursed to the Contractor by the Employer, if the test results show that the requirements are in accordance with the Contract, otherwise such expenses shall be borne by the Contractor, and
  - 12.7.3 the Employer will ask the Contractor to perform such inspection or test at least 14 days in advance, and
  - 12.7.4 the Employer shall provide the Contractor with relevant inspection and supporting documents at least 7 days in advance.
  - 12.7.5 for the rest, the performance of tests under Article 12.7 shall be governed by the procedure specified under Article 15 herein.

- 12.8 In order to check the performance of work on the Site and the performance of Employer's technical supervision the Contractor is obliged to allow the Employer access to the Site without prior written notice. During the Employer's technical supervision, the Employer is entitled to check whether the work is performed in accordance with the Contract and Legal Regulations.
- 12.9 The Employer or the Owner's Engineer is entitled to instruct the Contractor to interrupt the performance of the Contract Object, if the performance of the Contract Object endangers safety, life or health of persons on the Site or if there is a risk of serious damage to property located on the SAKO Premises.
- 12.10 The Contractor is obliged to lend to the Employer at his request free of charge all necessary aids, means, measuring instruments, provide media, etc. and assistance in accessing drawings and production data, which are necessary for the Employer's participation in the tests and inspections under the Contract.
- 12.11 If any test or inspection in accordance with the Employer's Requirements fails for reasons attributable to the Contractor, a repeated test will be performed at the Contractor's expense. The Contractor shall reimburse the Employer for any expenses reasonably incurred by the Employer in participating in the repeated test in accordance with this Article.
- 12.12 No part of the Contract Object on the Site may be made inaccessible without performing a relevant inspection or test required by this Contract and specified in the Test Plan.
- 12.13 As part of the quality assurance related to the Contract Object, the Contractor shall comply with the obligations under Act No. 309/2006 Sb., stipulating further requirements for health and safety at work in labour relations and Government Regulation No. 591/2006 Sb., on further minimum requirements for safety and health protection at work on construction sites, as amended, and which are set out under Appendix B2 Requirements for Health, Safety, and Environment.
- 12.14 The Contractor is obliged to ensure that the Subcontractors and their suppliers should proceed in accordance with the valid Test Plan, comply with the Quality Manual, comply with the obligations arising from the Legal Regulations referred to in the previous article as well as other requirements stipulated by the Contract, in particular under Appendix B2 Requirements for Health, Safety, and Environment.
- 12.15 Unless stipulates otherwise herein, all costs incurred by the Contractor in conducting the tests or inspections in accordance with the Contract shall be part of the Contract Amount.
- 12.16 No arrangements in accordance with Article 12 herein shall relieve the Contractor from the liability for the proper and timely implementation of the Contract Object.
- 12.17 If the Employer finds out that the Contract Object is being implemented in a manner that endangers its proper execution, it shall notify the Contractor accordingly and specify facts justifying the Employer's findings. The Contractor undertakes to take appropriate measures without undue delay to remedy the

situation and inform the Employer without undue delay of the measures taken, specifying what measures have been taken and for what reason. If the Contractor fails to take effective measures to ensure remedy, the Employer will be entitled, at its discretion, to request specific measures or tests. If, despite such a request, the measures or tests proposed by the Employer are not performed, the Employer is entitled to terminate this Contract with 2-month notice commencing upon the delivery of the notice to the Contractor.

- 12.18 In the event that the tests performed at the request of the Employer confirm the conclusions made by the Employer, the Contractor undertakes to take appropriate measures to remedy the defective condition. In the event of the Contractor's delay in adopting or taking such measures, the Employer is entitled to terminate this Contract with 2-month notice commencing upon the delivery of the notice to the Contractor.
- 12.19 If the implementation of the Contract Object is interrupted due to a breach of the Contractor's obligations stipulated by the Contract, no time-limits for the implementation of the Contract Object will be set.

### **13 SAMPLES**

- 13.1 The Contractor is obliged to submit samples to the Employer in accordance with the Contract, in particular the Employer's Requirements.
- 13.2 The price of samples is included in the Contract Amount.

### **14 CONSTRUCTION OF THE LINE**

#### **Contractor's obligations related to the Construction of the Line**

- 14.1 The Contractor is obliged and undertakes to implement the Contract Object in a proper and timely manner at its own expense and to carry out the Construction of the Line with professional care in accordance with the Contract, in particular the Employer's Requirements.
- 14.2 In relation to the Engineering Services and the Construction of the Line, the Contractor shall act as a representative of the Developer (the Employer is the Developer). In connection with the Construction of the Line, the Employer may not incur any debt or obligation towards any third party. The Employer may not incur any debt or obligation towards any third party or administrative body in relation to the Engineering Services with the following exception. The Contractor undertakes, on behalf of the Employer and at its own expense/risk and cost, to perform all obligations and liabilities of the Employer in relation to any administrative or similar proceedings related to the Engineering Services with respect to the administrative bodies, Authorities, or persons concerned, where the Employer acts as Developer, in a proper and timely manner. The Contractor furthermore undertakes to reimburse the Employer for any all damages arising from the breach of obligations under the previous sentence, including the reimbursement of any administrative sanctions. The Contractor shall make sure that all Permits are kept valid and effective for the time period necessary for the

Construction of the Line. The Employer is not responsible for any obligations and debts associated with the Construction of the Line.

- 14.3 As part of the Construction of the Line, the Employer shall provide the Contractor, at its request, with a power of attorney to the extent necessary to conduct negotiations with administrative bodies, persons concerned (administrators and owners of public service networks), any other third party and any other necessary legal acts related to the Construction of the Line no than 14 days of the receipt of the Contractor's written request. The Employer shall also give the necessary consents to the Contractor at its request within 14 days of the submission of the written request by the Contractor, if such consents are not contrary to the Legal Regulations.

**Contract Object implementation Programme**

- 14.4 The Contractor undertakes to ensure the implementation of the Contract Object in accordance with the Programme, which the Contractor had submitted before the execution on of the Contract and which now forms Appendix II.i Contract Programme.
- 14.5 The Contractor shall update the Programme no later than 14 days from the Effective Date in relation to the date of the completion of the Procurement Procedure and execution of the Contract. Following an update made in accordance with this Article 14.5 herein, any changes can only be made in accordance with Article 27 herein.
- 14.6 The Contractor shall develop a detailed work progress programme within 14 days from the Effective Date (hereinafter referred to as the "**Detailed Programme**") on the basis of the milestones set out in the Programme. The Detailed Programme shall be prepared in accordance with the requirements set out under Appendix B3 Requirements for Planning and Reporting. The Detailed Programme will reflect the milestones set out in the Programme and will include the planned process of providing detailed information on the design, purchasing, production, inspection, transportation, Assembly, Testing, Commissioning and Trial Operation Period. The provisions concerning the Detailed Programme are governed by the Employer's Requirements, in particular under Appendix B3 Requirements for Planning and Reporting and Appendix C1 Reviewable Project and Design Data.
- 14.7 If the Contractor finds out that the progress of implementing the Contract Object in accordance with the Detailed Programme indicates that there will be a delay compared to the Programme, or the Employer finds out this circumstance and makes a request to the Contractor, the Contractor shall submit the following to the Employer without undue delay from such a finding; however, no later than within 14 days:
- 14.7.1 a report explaining the reasons for such a delay; and
  - 14.7.2 the updated Programme corresponding to the circumstance (if requested so by the Employer) will specify the manner and time-limits during which the Construction of the Line will be implemented so as to

meet the time-limit for the Preliminary Taking Over of the Contract Object and/or specify steps to be taken to minimize such a delay.

- 14.8 If there is no change in the Programme made in accordance with Article 27 herein, although a negotiation will be held between the Parties in accordance with the Article, such a fact shall be without prejudice to the implementation of the Contract Object in accordance with the Programme.
- 14.9 The Contractor is obliged to take into account in the Programme and the Detailed Programme that there may be a delay in the implementation of the Contract Object due to the operation of the Existing Facility. This is a delay excluding the Contractor's ability to perform work in accordance with the Programme for a maximum of 3 consecutive days, and such a delay may occur repeatedly, but no more than once in a period of 2 consecutive months. If it becomes impossible to perform the work in accordance with this article, the Contractor will not be entitled to claim extension of the time-limit for the implementation of the Contract Object.

### **Owner's Engineer**

- 14.9 The Employer is entitled to appoint and may, at any time during the term of this Contract, replace the Owner's Engineer by a unilateral written notice delivered to the Contractor. The Owner's Engineer is not entitled to enter into amendments to the Contract on behalf of the Employer. The Owner's Engineer exercises the rights and obligations of the Employer in accordance with the Employer's instructions and the rights and obligations specified in this Contract or arising from this Contract, unless expressly stipulated otherwise or unless the Employer decides otherwise at any time during the term of the Contract. If the Owner's Engineer performs work for the Employer for which the Employer's consent is required, it is understood that the Employer gave such consent. Unless otherwise stipulated herein, the Owner's Engineer is not entitled to relieve the Contractor of any obligation or liability of the Contractor under this Contract or the Legal Regulations. For the avoidance of doubt, the Parties acknowledge that if the Contract stipulates that a certain right or obligation of the Employer is exercised and performed by the Owner's Engineer, such a right or obligation is that of the Employer and the Owner's Engineer is only entitled to represent the Employer in exercising and performing such a right or obligation. At the same time, the Parties acknowledge that if an authorization is granted to the Owner's Engineer under this Contract, such an authorization is also held by the Employer.
- 14.10 The Contractor shall be bound by the instructions given by the Owner's Engineer, if they are in accordance with the Legal Regulations and the requirements or terms and conditions set out by the Authorities, this Contract and if they are factually feasible.
- 14.11 If the Owner's Engineer is invited in accordance with this Contract to determine the value, costs or extension of the time-limit within the framework stipulated by this Contract, the Owner's Engineer shall discuss this in good faith with the Contractor so that an agreement can be reached on the relevant matter. If no

agreement is reached, the Owner's Engineer shall take a decision that is fair, reasonable and in accordance with the purpose of the Contract.

- 14.12 Any approval, verification, confirmation, consent, review, inspection, instruction, notification, proposal, requirement, test or similar action of the Owner's Engineer or the Authorities (including absence of disapproval) does not relieve the Contractor from any liability under the Contract including liability for errors, omissions, irregularities and discrepancies.

#### **Inspections during the Construction of the Line**

- 14.13 Any agreed inspection and supervision during the Construction of the Line may be performed by the Employer and/or the Owner's Engineer and/or a Person on the Employer's side authorized to do by the Employer. As regards inspections in accordance with Articles 14.13 to 14.18 herein, the provisions of Articles 15.4 to 15.11 herein apply.
- 14.14 The Contractor shall ensure that all inspection days are held in accordance with the Employer's Requirements and the instructions of the Construction Manager. The Contractor furthermore undertakes to participate in these inspection days as well as inspection days organized by the Employer or the Owner's Engineer throughout the term of the Contract in a qualified manner.
- 14.15 If the Contractor convenes an inspection day outside the scope of the Employer's Requirements, it shall always invite the Owner's Engineer and the Employer. Irrespective of whether the Owner's Engineer and/or the Employer participate in such an inspection day or not, the Contractor shall promptly send to the Employer and the Owner's Engineer the minutes of meeting of each such inspection day, incl. attendance sheet no later than within 3 days.
- 14.16 The minutes of the inspection day shall include the subject of the inspection day, the opinion of the Owner's Engineer, the Employer and the Contractor on the result of the inspection; if requested so by the Contractor, made by the Employer or the Owner's Engineer or if it follows explicitly from the content of this Contract, the list of individual points the agenda with detailed deadlines and their performance in accordance with the Programme and responsibilities of individual participants in the construction or their performance, agreed deadlines for remedying detected Defects, list of changes and signatures of the participants.
- 14.17 The Contractor shall allow the Employer and/or Persons on the Employer's side (after entering into a contract on operations between such a Party, the Contractor and the Employer) a reasonable access to any part of the Site for the purposes of inspecting the condition and progress of the implementation of the Contract Object and determining whether the Contractor is properly performing its obligations under this Contract.
- 14.18 The Contractor shall, to the extent required by Legal Regulations, enable and ensure the inspection of the Site, Line and documents related to its operations under this Contract, in the manner, time and to the extent required by the



Authorities and/or the Owner's Engineer and shall provide cooperation accordingly.

- 14.19 In the Request related to the Site plan in accordance with Article 10.8 herein, the Contractor shall define areas for the needs of the Employer and Persons on the Employer's side in accordance with the Employer's Requirements; however, always with a minimum size of three standard construction cabins. The Employer and the Persons on the Employer's side are entitled to use this area for their own needs at any time. The Contractor is obliged to define this area so that the facilities located in this area can be connected to service networks.
- 14.20 If the Employer and/or the Owner's Engineer reasonably believes that a certain part of the Contract Object (including parts that have already been made available for inspection) is Defective, it is entitled to request this part to be uncovered and made accessible to the Employer for inspection at any time prior to the Preliminary Taking Over and the Contractor shall comply with this request made by the Employer and/or the Owner's Engineer.
- 14.21 If such an inspection conducted in accordance with the previous article herein proves that the relevant part of the Contract Object does not show any Defect, the Contractor is entitled to claim compensation of costs reasonably spent on performing the work in accordance with Article 0.14.20 herein from the Employer. If such an inspection proves that the relevant part of the Contract Object shows Defects, the Employer and/or the Owner's Engineer will make a written record thereof, which will be handed over to the Contractor on site. In such a case, the Contractor is not entitled to any compensation or extension of time-limits under this Contract.
- 14.22 If the Employer finds out that the Contractor or Persons on the side of the Contractor do not comply with its obligations under this Contract, the Employer and/or the Owner's Engineer may request a remedy or suspend; however, no later than until the error is remedied and confirmed by a person authorized to do so by the Employer, other operations of the Contractor as part of the Construction of the Line, and furthermore request compensation of costs associated with such an inspection. The Contractor undertakes to comply with the requirements in accordance with the previous sentence in a proper and timely manner. The Contractor undertakes to promptly inform the Employer in writing about the inspection and findings made by the Authorities. For the avoidance of doubt, it is understood that the Contractor will not be entitled to any compensation or extension of time-limits under this Contract in such a case.

### **Site logbook**

- 14.24 The Contractor is obliged to keep a site logbook since the commencement of the construction work on the Site until the date when Defects have been remedied. After remedying the Defects, the Contractor shall submit the Site logbook to the Employer.
- 14.26 The Contractor shall make sure that the Site logbook is kept in accordance with the SZ and Regulation No. 499/2006 Sb., on construction documentation, as

amended. The Contractor shall enter in the Site logbook all important circumstances related to the Construction and facts decisive for the performance of this Contract, in particular the time progress of work, deviations from the Programme/ Detailed Programme or conditions set out in a decision or measure, or, as the case may be, other data necessary for assessing the work by the Authorities, justification of immaterial deviations from the Programme/Detailed Programme. The Contractor shall enter all decisive and significant facts concerning the progress of the construction on a daily basis. Entries in the Site logbook will be signed by the Contractor's electronic signature. Entries in the Site logbook shall always be made by the Contractor on the day when the relevant work was performed or when the circumstances that are the subject of the entry occurred. Apart from the Contractor, only the Employer and the Owner's Engineer or a representative authorized by them in writing or authorized Authorities may make necessary entries in the Site logbook.

- 14.27 The Employer and the Owner's Engineer are entitled to check the contents of the Contractor's Site logbook and at least once a week they shall confirm such a check with their signature and add their opinion to the records. If the Contractor does not agree with an entry in the Site logbook, it shall add its opinion to this entry within 3 days at the latest. The content of the Contract cannot be changed by an entry in the Site logbook.
- 14.28 Neither the entries in the Site logbook nor minutes of the inspection days are considered as changes in the Contract, nor do they establish a right to change the Contract.
- 14.29 The Contractor shall make sure that the Site logbook is at any time available (in a 24/7 mode) to the Employer, the Owner's Engineer and persons authorized by the Employer.
- 14.30 The Contractor shall also make the Site logbook available electronically in a data repository so that the Employer and the Owner's Engineer can view the Site logbook in such data repository and make entries in it. The Site logbook shall be kept up-to-date in such data repository. The Contractor shall submit to the Employer a proposal for the method of keeping the Site logbook in the data repository no later than 42 days from the Effective Date of the Contract. The Employer is entitled to make comments on this proposal no later than 21 days from the date of submission of the proposal and to give comments on the proposal, which the Contractor shall incorporate or take into account in the maximum possible extent and no later than 7 days from the date of submission of the proposals or comments.

### **Assembly of the Line**

- 14.31 The Contractor shall submit samples to the Employer in accordance with the Contract and the Employer's Requirements.
- 14.32 To commence the Assembly, Contractor shall draw up a protocol in accordance with the Employer's Requirements and send it to the Employer no later than 13

days before the date of the planned commencement of the Assembly. No later than 7 days from the date of delivery of this protocol, the Employer shall inform the Contractor whether it approves the protocol or not, including the reasons for disapproval. In case of disapproval, the Contractor shall modify the protocol in accordance with the Employer's comments in accordance with the previous sentence or take other steps necessary for the protocol to be approved by the Employer and submit the modified protocol to the Employer without undue delay. This procedure will be repeated until the Employer has approved the protocol. The Employer shall approve the protocol by its signature. Failure to approve the protocol is not establish a reason for extending the time-limit for the implementation of the Contract Object.

- 14.33 The Assembly of the Line will commence by signing the protocol on the commencement of the Assembly by the Employer and the Contractor and will take place in accordance with the Programme.
- 14.34 The Assembly of the Line means progressive execution of the individual parts of the whole performed in a proper technical and chronological sequence resulting in such a condition that the follow-up tests will be possible in accordance with Article 15 herein in accordance with the Employer's Requirements, in particular Appendix A11 End of Assembly, Commissioning, and Testing.
- 14.35 The Assembly will be completed by signing the protocol on the completion of the Assembly, which will be drawn up by the Contractor in accordance with the Employer's Requirements. The protocol on the completion of the Assembly will contain specifications of the work or other facts that were not performed in accordance with the Contract. Details concerning this protocol and its updates are specified in the Employer's Requirements. The Contractor shall send this protocol to the Employer without undue delay, but no later than within 7 days after the completion of the Assembly. No later than 7 days from the date of delivery of this protocol, the Employer shall inform the Contractor whether it approves the protocol or not, including the reasons for disapproval. In case of disapproval, the Contractor shall modify the protocol in accordance with the Employer's comments in accordance with the previous sentence or take other steps necessary for the protocol to be approved by the Employer and submit the modified protocol to the Employer without undue delay. This procedure will be repeated until the Employer has approved the protocol. The Employer shall approve the protocol by its signature. Failure to approve the protocol is not establish a reason for extending the time-limit for the implementation of the Contract Object.

## **15 TESTING AND COMMISSIONING PROCEDURE**

- 15.1 The Contractor shall perform the tests in accordance with the Employer's Requirements, in particular Appendix A11 End of Assembly, Commissioning, and Testing, unless the Contract specifies otherwise. The Contractor shall submit to the Employer a draft version of all documents in accordance with the Test Plan, separately for the production phase, Construction of the Line, Trial Operation

and the Guarantee Period phases, which are specified in the Employer's Requirements. The Contractor shall submit the Test Plan to the Employer within the time-limit and in accordance with the requirements defined in the Employer's Requirements.

- 15.2 The Contractor shall submit to the Employer the commissioning plan as part of the Test Plan within the time-limit and in accordance with the requirements defined in the Employer's Requirements, in particular under Appendix C1 Reviewable Project and Design Data and under Appendix A11 End of Assembly, Commissioning, and Testing.
- 15.3 The Contractor undertakes to adhere to the chronology of all tests as stipulated under Appendix A11 End of Assembly, Commissioning, and Testing when performing the tests.
- 15.4 Following any potential necessary cooperation with third parties, the Contractor shall notify the Employer and/or the Owner's Engineer of the date when the Contractor is ready to perform each individual test specified in the Employer's Requirements by sending a readiness protocol specifying which specific test listed in the Employer's Requirements is to be performed. The protocol will also include the date, time and place of the test. This protocol shall be delivered to the Employer at least 14 days before the date of the test given in the protocol. This time-limit may only be shortened by agreement between the Parties. The Employer shall inform the Contractor no later than 7 days after receipt of the readiness protocol whether the Employer agrees to the performance of the test. In case of disapproval, the Employer shall justify its decision not to have the test performed and the test will not take place. The test specified in the readiness protocol shall be performed within the time-limit specified by the Contractor in the readiness protocol following the Employer's approval. The date of the test, which will be specified in the readiness protocol, can only be changed by agreement of the Parties.
- 15.5 If, for reasons attributable to the Contractor, the date of the test is postponed and the Employer has agreed to have the test performed in accordance with Article 15.4 of the Contract, the Employer is entitled to instruct the Contractor in writing to perform such a test no later than 21 days after receiving this written instruction. The Contractor shall perform the test on the day or days, time and place as specified by the Employer. This date can only be changed with a consent of the Employer, if the Contractor sends a justified request to the Employer to change the date of the test no later than 14 days before the announced date of the test. The Employer is not obliged to comply with such a request.
- 15.6 After performing each individual test, the Contractor shall draw up a report on the results of the performed test and hand it over to the Employer no later than 7 days from the day when the test was performed.
- 15.7 The Employer shall comment on the report on the test results in accordance with the previous paragraph in writing no later than 7 days from the date of the report receipt. As part of the comment, the Employer will state whether the test results are accepted or rejected. The Employer is entitled to reject the test results

if they do not comply with the Contract and/or the requirements of the Authorities. The Employer shall give the reasons for rejecting the test results in its comments. If the Employer states in its comments that the test results are accepted, it is understood that the test was performed in accordance with the Employer's Requirements and the results and/or parameters specified in the Employer's Requirements have been achieved.

- 15.8 If the Employer rejects the results of the performed test, the Contractor shall without undue delay ensure repair or correction of the work performed so far on the Contract Object so that the performed or already performed work is in accordance with the Contract, unless the Contract stipulates otherwise. Without undue delay after such a correction, the Contractor shall inform the Employer in writing of the reason why the test results were not in accordance with the Contract and/or the requirements of the Authorities and what measures were taken to repair or correct work not yet performed or work being performed.
- 15.9 Between the date of sending the written comments of the Employer in accordance with Article 15.7 herein and the date of correction performed by the Contractor in accordance with Article 15.8, the Employer is not in default of any of its obligations to the Contractor arising from the Contract or Legal Regulations. During this period, no time-limit related to the Contractor's request for an extension of the time-limit for the implementation of the Contract Object shall run.
- 15.10 In the event of a failed test, the Employer is entitled to request a repetition of such a test, under the same conditions as those under which the test was originally performed. Provisions under Article 12.11 shall be applied *mutatis mutandis*.
- 15.11 The Contractor shall ensure and/or provide all instruments, support, documents and any other information, electricity, equipment, fuel, consumables, tools, manpower, materials and suitably qualified and experienced personnel for the purpose of proper and timely performance of tests under the Contract. The Employer undertakes to provide the Contractor with co-operation necessary for the Contractor to perform the test.
- 15.12 The Contractor shall ensure continuous presence of workers until the commencement of the Trial Operation Period so as to ensure reliable and safe operation of the Contract Object, any potential repairs and provision of any necessary parts and their availability.
- 15.13 The related costs in accordance with previous Article 15.12 herein are included in the Contract Amount.
- 15.14 When performing tests in accordance with Article 15, the provisions under Articles 12.6 to 12.8 shall apply.

#### **Trial Operation Period**

- 15.15 The Trial Operation Period lasting a minimum of 3 months shall commence provided that the following conditions are met:

- 15.15.1 successful performance of tests, i.e. if the results of tests in accordance with Article 15 herein are accepted by the Employer, if these are tests that are to be performed prior to the commencement of the Trial Operation Period in accordance with the Employer's Requirements, in the sense of Appendix A11 End of Assembly, Commissioning, and Testing;
  - 15.15.2 effectiveness (legal force) of the decision of the construction authority by which the Trial Operation Period will be permitted or ordered or the occupancy permit of the Contract Object;
  - 15.15.3 consent of a third party, if such consent is required for the Trial Operation Period by Legal Regulations;
- 15.16 The Contractor undertakes to obtain a decision of the construction authority concerning the permit or order for the Trial Operation Period in accordance with the Contract in a duration that will enable its implementation and evaluation in accordance with the Contract and trouble-free transition of the Line without any interruption from the Trial Operation to full-fledged use and operation following the issue of the occupancy permit or approval and to obtain consent of any third party if necessary for the purposes of the Trial Operation Period. The Contractor shall also ensure compliance of the decision issued in accordance with the previous sentence with the work performed in accordance with the Contract. The Contractor shall ensure that the terms and conditions agreed under Article 15.15 for the entire duration of the Trial Operation Period.
- 15.17 The Employer shall implement the Trial Operation using its workers or persons designated for that purpose and under the Contractor's supervision. The Contractor undertakes to provide the Employer with all cooperation in relation to the Trial Operation and enable its implementation. The purpose of the Trial Operation is to validate that the Contract Object can be operated in accordance with the Contract and that it meets the requirements set out in the Contract, including appendices hereto. For this purpose, compliance with the guaranteed parameters, which are set out under Appendix II.h Guarantees and the most important data related to the performance listed under Appendix A13 Process and Design Data, will be validated during the Trial Operation Period. Tests performed during the Trial Operation Period will be governed by the Employer's Requirements, in particular by Appendix A11 End of Assembly, Commissioning, and Testing and Appendix A20 Procedure for Guarantee Tests.
- 15.18 The Contractor is liable for the accuracy of directions and instructions given to the Employer and Persons on the Employer's side in relation to the operation of the Line during the Trial Operation Period. The Contractor shall not be liable for damage resulting from a failure to comply with such instructions. The Trial Operation will commence once the terms and conditions agreed under Article 15.15 have been met, by signing the protocol on the commencement of the Trial Operation Period. The Contractor shall draw up a protocol in accordance with the Employer's Requirements and send it to the Employer no later than 14 days before the date of the planned commencement of the Trial Operation Period.

No later than 7 days from the date of delivery of this protocol, the Employer shall inform the Contractor whether it approves the protocol or not, including the reasons for disapproval. In case of disapproval, the Contractor shall modify the protocol in accordance with the Employer's comments in accordance with the previous sentence or take other steps necessary for the protocol to be approved by the Employer and submit the modified protocol to the Employer without undue delay. This procedure will be repeated until the Employer has approved the protocol. The Employer shall approve the protocol by its signature. Failure to approve the protocol is not establish a reason for extending the time-limit for the implementation of the Contract Object.

- 15.19 The inputs required for the operation of the Contract Object from the commencement of the Trial Operation Period, in particular the Resources for the actual operation of the Contract Object and Waste, shall be ordered by the Contractor and paid by the Employer at its own expense. The Employer shall also, at its own expense, ensure removal of all output waste raw materials (namely slag and the so-called "end product") during the Trial Operation Period.
- 15.20 If, during the Trial Operation Period, the Line fails to meet the requirements set for the Trial Operation Period in the Test Plan agreed by the Employer and other requirements specified in the Employer's Requirements and in the Contract, the Contractor shall make changes or modifications to the Contract Object at its own expense as necessary to make sure that the Line meets the specified requirements. The Contractor shall make such changes or modifications without undue delay after notifying the Employer accordingly. The Contractor shall repeat the Trial Operation or a part thereof at its own expense on the basis of the Employer's instruction.
- 15.21 The Contractor shall perform Performance Tests during the Trial Operation Period in accordance with the Employer's Requirements, in particular in accordance with the requirements specified under Appendix A11 End of Assembly, Commissioning, and Testing.
- 15.22 In accordance with the Employer's Requirements, the Contractor shall inform the Employer about the possibility to commence the Performance Tests, no later than within 7 days from the date when such tests are to commence in accordance with the Test Plan.
- 15.23 The Contractor is responsible for ensuring that the Performance Tests are performed within the time-limits specified in the Test Plan. If the Contractor fails to perform the tests even within the additional time-limit of 21 days, which elapses after the agreed test date, the Employer shall be entitled to perform the tests at the expense and risk of the Contractor.
- 15.24 Testing during the Performance Tests will take place in accordance with the Test Plan, which the Contractor shall submit to the Employer in accordance with the Employer's Requirements and the Employer shall approve it in accordance with the Employer's Requirements. The Employer is entitled to request a change in the Test Plan in justified cases specified to the Contractor. In such a case, the Contractor shall discuss such a change with the Employer and shall

accommodate such a request made by the Employer in justified cases. If a change in the Test Plan results in increased costs on the part of the Contractor, the Employer is obliged to reimburse such costs to the Contractor. The Employer is not entitled to request a change in the Test Plan if such a change would make it impossible for the Contractor to meet the time-limits for the performance of the Contract Object.

- 15.25 The Contractor shall draw up a protocol on the commencement and completion of the Performance Tests within the time-limits and in accordance with the specifications defined under Appendix A11 End of Assembly, Commissioning, and Testing, unless specified expressly otherwise under Article 15.15 and the following herein.
- 15.26 If the Employer interrupts the performance of the Performance Tests for reasons that are not attributable to the Contractor, the period of such interruption will not be included in the period for which the Performance Tests are to be performed.
- 15.27 The Performance Tests shall be performed in a continuous manner over a defined period of time without any stopping or interruption. If the operation of the Line clearly indicates that the Contract Object is not in accordance with the Contract, the Contractor shall promptly and at its own expense perform work necessary to bring the Line into compliance with the Employer's Requirements. If the operation of the Line is stopped or if any of the operating results of the Performance Tests fails to meet the Employer's Requirements, in particular requirements under Article 5.2 and the following herein, and even if the Contract Object fails to show usual characteristics during the Performance Tests, the Performance Tests will be repeated, in their total duration as specified in the Employer's Requirements.
- 15.28 After the successful performance of the Performance Tests, the Contractor shall submit a report on the results of these tests to the Employer within the time-limits and in accordance with the specification defined under Appendix A11 End of Assembly, Commissioning, and Testing, unless stipulated otherwise herein.
- 15.29 If, on the basis of the Performance Tests performed in accordance with this Article, compliance with the environmental requirements under the Employer's Requirements, in particular Appendix II.h Guarantees, has not been demonstrated, this shall be understood as a material breach of the Contract.
- 15.30 The failure to meet the terms and conditions and requirements set out in the Contract for the Trial Operation Period and the Performance Tests shall not relieve the Contractor from its responsibility to implement the Contract Object in a proper and timely manner.
- 15.31 The Trial Operation Period shall only be completed after successful completion of all prescribed tests in accordance with the Test Plan approved by the Employer, regardless of whether the possible time-limit for the Trial Operation set by the construction authority has ended or not. A protocol will be signed between the Parties and it will include all test protocols of partial tests



performed so far in accordance with the Contract and/or the Employer's Requirements. The protocol shall be drawn up by the Contractor in accordance with the Employers Requirements, in particular Appendices No. A11 End of Assembly, Commissioning, and Testing and No. A20 Procedure for Guarantee Tests and both Parties shall confirm it by their signatures.

- 15.32 The protocol drawn up in accordance with Article 15.31 herein shall be sent to the Contractor without undue delay, but no later than within 7 days after the completion of the Trial Operation Period in accordance with the Contract. No later than 7 days from the date of delivery of this protocol, the Employer shall inform the Contractor whether it approves the protocol or not, including the reasons for disapproval. In case of disapproval, the Contractor shall modify the protocol in accordance with the Employer's comments in accordance with the previous sentence or take other steps necessary for the protocol to be approved by the Employer and submit the modified protocol to the Employer without undue delay. This procedure will be repeated until the Employer has approved the protocol. The Employer shall approve the protocol by its signature. Failure to approve the protocol is not establish a reason for extending the time-limit for the implementation of the Contract Object.

#### **Occupancy permit**

- 15.33 The Contractor undertakes to obtain the final occupancy permit or any other decision by which the use of the Line will be permitted in accordance with this Contract and/or the requirements of the Authorities, with optimal linkage to the Trial Operation Period so as not to affect continuous operation of the Line prior to the Preliminary Taking Over of the Contract Object.

## **16 PRELIMINARY TAKING OVER**

- 16.1 Preliminary Taking Over of the Contract Object is the result of a procedure, the subject of which is an investigation into the actual condition of the preliminarily taken over Contract Object or, as the case may be, a part thereof, including possible inspection of the Site, in presence of the Employer and the Contractor or their authorized persons in order to commence the Warranty Period under the Contract.
- 16.2 The Contractor shall notify the Employer in writing no later than 28 days before the date of the Preliminary Taking Over of the Contract Object that the Contract Object (or a part thereof) is ready for the Preliminary Taking Over, including the draft time schedule of the Preliminary Taking Over, within 14 days of receiving the time schedule, the Employer shall submits its comments and instructions on the draft time schedule of the Preliminary Taking Over to the Contractor, based on which the Contractor undertakes to adjust the programme for the Preliminary Taking Over of the Contract Object. The Preliminary Taking Over takes effect upon signing the Preliminary Taking Over protocol, which will be drawn up by the Contractor in accordance with the Employer's Requirements. The Employer undertakes not to withhold the signature of the Preliminary

Taking Over protocol and grant without undue delay, if the terms and conditions specified under Article 16.2 herein are met.

- 16.3 The Employer is entitled to take over the Contract Object with Defects, if such Defects do not substantially prevent from the operation of the Contract Object or do not restrict the operation or do not prevent from reliable and safe operation of the Contract Object. In such a case, the Parties shall duly describe such Defects in the Preliminary Taking Over protocol, which is understood as claiming such Defects or, as the same be, agree on specific claims resulting from these Defects, which is without prejudice to the Employer's right to change claims resulting from Defects under Article 19.3 herein. Furthermore, the Defects will be settled in accordance with Article 19 herein. If it is not obvious whether a certain Defect significantly prevents from the operation of the Contract Object or significantly restricts the operation and prevents from reliable and safe operation, the Employer shall determine whether it is such a Defect.
- 16.4 The Employer will confirm with its signature in the Preliminary Taking Over protocol the taking over of the Contract Object and shall take over the Contract Object if:
  - 16.4.1 the Contract Object is in accordance with the requirements defined in the Contract, unless the Contract stipulates otherwise or the Parties agree otherwise;
  - 16.4.2 the Trial Operation Period was completed and approved by the Employer;
  - 16.4.3 the occupancy permit, which is effective, has been issued or the Occupancy permit, which has become final;
  - 16.4.4 the Employer accepted, in accordance with Article 15, the results of the tests, the performance of which is required in the Employer's Requirements before the Preliminary Taking Over of the Contract Object, unless the Contract stipulates otherwise or the Parties agree otherwise;
  - 16.4.5 the documentation related to the Line will be submitted to the Employer in a form approved by the Employer;
  - 16.4.6 the Site is properly and completely cleared, unless the Parties agree otherwise;
  - 16.4.7 the Employer's Workers were trained by the Contractor in accordance with Appendix A12 Training;
  - 16.4.8 all supporting documents in accordance with Article 26.10 hereto;
  - 16.4.9 the Contract Object does not show any legal defects, and no third party exercises any rights in relation to the Contract Object or a part thereof
- 16.5 The Preliminary Taking Over protocol will contain:
  - 16.5.1 designation of the Contract Object;

- 16.5.2 designation of the Employer and the Contractor, number and date of the Contract;
  - 16.5.3 commencement and completion of work on the Contract Object;
  - 16.5.4 Employer's declaration on Preliminary Taking Over of the Contract Object in accordance with Article 16 herein;
  - 16.5.5 date and signature of the protocol;
  - 16.5.6 names and signatures of the representatives of the Contractor and the Employer authorized to hand over and take over the Contract Object;
  - 16.5.7 list of submitted documentation;
  - 16.5.8 list of costs from the commencement of the implementation of the Contract Object until the Preliminary Taking Over;
  - 16.5.9 date of commencement of the guarantee for the Contract Object and the expected date of the guarantee termination (in the event of no claim or no interruption of the guarantee period in accordance with Article 19 herein);
  - 16.5.10 list of Defects with the date of their removal;
  - 16.5.11 period no longer than 21 days after the confirmation of the Preliminary Taking Over Protocol to complete the clearance of the Site (i.e. cleaning, removal of structures, relocation of machinery etc.), if the Site has not been cleared up and disposed of yet, or information on the date when the clearance took place and the Site disposed of.
- 16.6 The Preliminary Taking Over protocol includes documents specified in the Employer's Requirements and the following documents:
- 16.6.1 bank guarantee in accordance with Article 29 herein;
  - 16.6.2 documents related to the disposal of waste from the construction work on the Contract Object in accordance with Act No. 241/2020 Sb., on waste, as amended (hereinafter referred to as the "Waste Act") and its implementing regulations;
  - 16.6.3 records and protocols on performed tests as stipulated by the Contract (a minimum of the original + 2 copies);
  - 16.6.4 test records and certificates related to the employed equipment and materials (a minimum of the original + 2 copies);
  - 16.6.5 records concerning verification of works and structures built in during the implementation of the Contract Object (a minimum of the original + 2 copies);
  - 16.6.6 geodetic survey of the completed Contract Object and geometric plan necessary to enter the Line in the Land Registry, meeting all requirements for entering the Line in the Land Registry (a minimum of the original + 2 copies);

- 16.6.7 sheets and operating instructions related to the delivered equipment (a minimum of the original + 2 copies);
- 16.6.8 documents on the performance of other prescribed tests, attestations, certificates, declarations of conformity of the applied materials and products (a minimum of the original + 2 copies);
- 16.6.9 instructions concerning the individual technical equipment and documents concerning operator training (a minimum of the original + 2 copies);
- 16.6.10 as-built design documentation of the Contract Object in 4 originals, one of them in a data form (on a CD);
- 16.6.11 handling, operating rules, instructions for operation and maintenance of the Contract Object and maintenance documentation (a minimum of the original + 2 copies);
- 16.6.12 supporting documents in accordance with Article 11.6 herein if prepared in accordance with the Contract (a minimum of the original + 2 copies);
- 16.6.13 list of Subcontractors who participated in the implementation of the Contract Object indicating the specific parts of the Contract Object implemented by these Subcontractors in a scope corresponding to the requirements of the PPA;

unless these documents have been handed over by the Contractor to the Employer earlier. If only a part of the above is handed over within the Preliminary Taking Over of the Contract Object, the Contractor shall hand over to the Employer documents concerning such a part of the Contract Object.

**Warranty Period**

- 16.7 The Warranty Period, which lasts 24 months, shall commence on the date following the signing of the protocol on the Preliminary Taking Over and acceptance of the Contract Object by both Parties. The purpose of the Warranty Period is to verify that the Contract Object will meet the requirements defined in the Employer's Requirements during operation and will reach the parameters set out in the Employer's Requirements during operation, in particular Appendix II.h Guarantees. A protocol will be drawn up on the commencement of the Warranty Period by the Contractor.
- 16.8 During the Warranty Period, the Line will be operated by the Employer. The Contractor shall provide necessary cooperation during the operation of the Contract Object at the request of the Employer. The related costs are included in the Contract Amount.
- 16.9 The Warranty Period will no continue for a period during which the Contract Object or a part thereof cannot be used for the purpose for which the Contract Object was intended, in particular due to remedying Defects in accordance with Article 19 herein.

- 16.10 The Employer is entitled to decide on the extension of the Warranty Period for a maximum period of 24 months from the expected date of termination of the Warranty Period, if the Line fails to reach the guaranteed values during operation in accordance with Appendix II.h. Guarantees on the basis of the performed Guarantee Test or evaluation of the availability parameters under the Contract. The Employer shall take a decision no later than 21 days before the date of the planned termination of the Warranty Period and shall notify the Contractor in writing. Similar provisions of the Contract shall be applied to the extended Warranty Period as to the original Warranty Period.
- 16.11 After the end of the first year of the Warranty Period, a test verifying the parameters of the Contract Object specified under Appendix II.h (hereinafter also referred to as the "**Guarantee Test**") will be performed. The Guarantee Test shall be conducted in accordance with the provisions of the Contract related to the Performance Test including time-limits specified or agreed therein. After the completion of the Guarantee Test, its results will be evaluated by the Employer.
- 16.12 As regards the costs of the Guarantee Test it is agreed that the Contractor shall bear all costs associated with the Guarantee Test save for a case when the Contract Object showed no Defects upon the takeover and the Guarantee Test confirms compliance with the guaranteed values and fails to demonstrate any Defect not shown in the Contract Object upon the takeover. The Contractor shall not bear costs associated with the Guarantee Test if the Contract Object has been taken over with a Defect that the Contractor is not obliged to remedy in connection with provisions under Article 19.17 herein.
- 16.13 In the event of Defects that have not yet been reported by the Employer to the Contractor, the evaluation of the Guarantee Test is understood as notification of such Defects in accordance with Article 19.1 herein. By evaluating the Guarantee Test, the Employer shall be entitled to the following rights:
- 16.13.1 in the event that the Guarantee Test confirms the remedy of a Defect shown in the Contract Object upon takeover, and the Contractor was obliged to remedy such a Defect, the Contractor shall pay a contractual penalty to the Employer in the amount of the Guarantee Compensation reduced in accordance with Article 1.1.16 herein;
- 16.13.2 in the event that the Guarantee Test does not confirm the remedy of a Defect shown in the Contract Object upon takeover and the Contractor was obliged to remedy such a Defect, the Contractor shall pay a contractual penalty to the Employer in the amount of the Guarantee Compensation;
- 16.13.3 in the event that the Guarantee Test demonstrates a Defect not shown in the Contract Object upon takeover, the Contractor shall pay a contractual penalty to the Employer in the amount of the Guarantee Compensation; if the Employer requests its remedy, it is agreed that if it is remedied by the date agreed between the Employer and the Contractor in accordance with Article 19 herein, the penalty will be reduced in accordance with Article 1.1.16 herein.

**Procedure for repeating tests during the Warranty Period**

- 16.14 The following tests can be performed during the Warranty Period:
- 16.14.1 Repeated Performance Tests in accordance with Section 15.27 herein;
  - 16.14.2 tests that could not be performed before the Preliminary Taking Over of the Contract Object to the Employer for objective reasons and/or were unsuccessful and could not be repeated before the Preliminary Taking Over due to the impossibility to set the date and/or place for performing the Tests. Tests referred to under this Article 16.14.2 may only be repeated if these are tests, the performance of which does not prevent from the issue of the occupancy permit for the Contract Object;
  - 16.14.3 the tests to be performed as a result of remedying a Defect during the Warranty Period; and
  - 16.14.4 any other tests, the need for which results in particular from the requirements of the Authorities or Legal Regulations.
- 16.15 Tests in accordance with Article 16.14.3 mean tests that shall be performed if the Contract Object shows a Defect and in order to remedy or verify the remedy of such a Defect it is necessary to perform a test in accordance with the Contract.
- 16.16 Repeated Performance Tests or any tests, the repetition of which is performed for reasons attributable to the Contractor, shall be performed at the expense of the Contractor. The costs of the Guarantee Test are governed by Article 16.12 herein.
- 16.17 Repeated tests in accordance with Article 16.14.2 shall be performed during the Warranty Period without undue delay after the Preliminary Taking Over and/or after identifying the need for such a test and/or at the request of the Employer. The date, time and place of the tests shall be set by the Employer and notified to the Contractor at least 14 days in advance. If the Contractor does not arrive at the specified time to the specified location of the test, the Employer is entitled to perform the test through the Persons on the Employer's side. In such a case, it is understood that the test was performed in the presence of the Contractor, properly and without its comments on the quality of implementation and the Contractor is bound by the results of this test.
- 16.18 The Contractor, or the Employer, if the Employer performs the tests, shall draw up a report on the result of the performed tests. The other Parties are entitled to attach their opinion to the report on the results within 7 days of its receipt. If the performed test shows that the Contract Object is Defective, the Employer shall always list such facts in the report on the results (if it is draw up by the Employer) or in its opinion on the report drawn up by the Contractor. The listing of such facts is understood as a notification (claim) of the Defect in accordance with Article 19.1 herein. Furthermore, the procedure will be in accordance with Article 19 herein.
- 16.19 If the tests performed during the Warranty Period it shows that the Contract Object or a part thereof is Defective, the Employer is in such a case entitled to

the payment of a contractual penalty in accordance with Appendix IIc Contractual penalties for non-compliance with values. If the Contractor pays such a contractual penalty to the Employer in full and in a timely manner, it is understood that the Employer's rights resulting from the Defects to which the contractual penalty applies are satisfied.

## **17 CONFIRMATION OF THE COURSE OF THE WARRANTY PERIOD**

- 17.1 No later than 14 days from the date of termination of the Warranty Period, the Contractor shall submit to the Employer a protocol on the course of the Warranty Period. The protocol shall specify which tests were performed in accordance with the Employer's Requirements and what their results were. The Employer shall confirm this protocol by its signature if the facts listed in the report correspond to the actual course of the Warranty Period and the results of the tests performed. Along with the protocol in accordance with the first sentence, the Contractor shall submit to the Employer the current form of supporting documents specified under Articles 16.5 and 16.6 herein, if they were changed or modified after their submission in accordance with the provisions of Article 16 herein.
- 17.2 If there is a change or modification of the documents referred to Article 16.5 and 16.6 herein, the Contractor shall submit the updated version of these documents no later than 14 days before the date of termination of the Warranty Period. If the supporting documents referred to under Articles 16.5 and 16.6 herein could not be submitted in accordance with the provisions of Article 16 herein, they will be submitted to the Employer with a confirmation in accordance with the previous paragraph.

## **18 TRAINING**

- 18.1 The Contractor is obliged to carry out training for the Persons on the Employer's side, for whom the Employer requires a training in relation to the operation of the Line.
- 18.2 The obligation to carry out such a training is specified in more detail under Appendix A12 Training. The minimum scope of documentation that the Contractor shall draw up and submit to the Employer in relation to the training is specified under Appendix C1 Reviewable Project and Design Data.
- 18.3 The training will be considered completed if fully completed before the Preliminary Taking Over of the Contract Object in the specified scope and with the specified number of persons to be trained.

## **19 DEFECT LIABILITY AND QUALITY GUARANTEE**

- 19.1 The Contractor undertakes to implement the Contract Object in accordance with the Contract. The Contractor also provides the Employer with a quality guarantee in a scope specified under Article 19.6 herein. In terms of the Employer's rights related to the Defects, it is decisive when the Defect occurred.

If the Contract Object shows Defects, the Employer shall notify the Contractor of such Defects in writing. Contrary to the provisions of Section 2112 (1) OZ, the Defects may be notified by the Employer within 12 months after the Employer could detect such a Defect given a timely inspection and sufficient care; however, no later than within 3 years from the termination of the Warranty Period. As part of the Defect notification, the Employer shall specify the Defect to the Contractor by providing a description of the Defect, in particular specifying how the Defect manifests itself. The Contractor shall inform the Employer within 28 days from the date of delivery of the written claim of the time needed, of financial, operational and/or other costs of remedying such a Defect, while quantifying the costs in relation to Article 19.5.1 and/or 19.5.2 and/or 19.5.3 herein in accordance with which of these Defects claims may be used in accordance with the Contractor's information and shall specify the method of remedying the Defect or the Contractor shall specify that the Defect is irremediable. This notification shall be drawn up by the Contractor in accordance with Appendix B4 Requirements for Notifications, Variations and Deviations. The Parties may agree to extend the time-limit referred to herein, in particular if it is necessary to inspect the Contract Object for the purposes of notification under the previous sentence.

- 19.2 The Employer shall inform the Contractor in writing within 56 days from the date of delivery of the Contractor's written notification in accordance with Article 19.1 herein whether the Employer accepts the Contractor's proposal specified in the notification in accordance with the previous paragraph or whether the Employer choose to claim the defect liability rights under Article 19.5 herein. In no case shall the Contractor make the choice of the Defect liability right instead of the Employer.
- 19.3 If the Employer's notification made in accordance with Article 19.2 contains a choice of the Defect liability right consisting in repair of the Contract Object, modification of the Contract Object or replacement of a part of the Contract Object, the Contractor shall proceed to remedy the Defect without undue delay while taking into account the nature of the Defect. The Contractor shall agree with the Employer on the date of commencement of the work aimed to remedy the Defect. If no such agreement is reached, the Employer shall set the date of commencement of such work.
- 19.4 If the Employer's notification in accordance with Article 19.2 contains a choice of the Defect liability right consisting in the repair of the Contract Object, modification of the Contract Object or replacement of a part of the Contract Object, and if the Contractor fails to commence remedying the Defect or fails to remedy the Defect, both without undue delay, the Employer will be entitled to set a time-limit for the commencement of remedying the Defect. If the time-limit set in accordance with the previous sentence lapses, the Employer is entitled to have the Defect remedies by itself or through a third party and claim compensation for all costs reasonably incurred by ensuring such an alternative Defect remedy from the Contractor.
- 19.5 The Employer has the following Defect liability rights:



- 19.5.1. request the Defect remedy by repairing the Contact Object, or
- 19.5.2. request the Defect remedy by modifying the Contact Object, or
- 19.5.3. request the Defect remedy by replacing the defective part of the Contact Object, or
- 19.5.4. request the remedy of legal defects, or
- 19.5.5. request a discount on the Contract Amount, or
- 19.5.6. withdraw from the Contract in the event that the Defect is irreparable.

The Employer's choice to exercise the rights from the Defect liability and/or a specific right resulting from the Defects may be changed by the Employer at any time within the time-limit for the Defect notification agreed under Article 19.1 herein.

If it is not possible to remedy the Defect in a manner in accordance with Articles 19.5.1 to 19.5.4 herein, the Employer is entitled to make also other claims at its discretion while taking into account the nature of the Defect in accordance with Article 19.5 herein within 2 years from identifying the impossibility to remedy the Defect.

- 19.6 The Contractor guarantees to the Employer that the Contract Object will be fit for the agreed purpose for a minimum of 60 months for the construction part of the Contract Object and 24 months for other parts of the Contract Object (hereinafter also referred to as the "**Guarantee Period**") and that the Contract Object will keep and achieve the agreed characteristics, i.e. will achieve the performance and other values specified under the Contract, if not agreed, this Guarantee shall apply to the usual purpose and characteristics, unless the Contract stipulates a different duration of the Warranty Period, in particular under Appendix II.h Guarantees (hereinafter also referred to as the "**Quality Guarantee**"). The Guarantee Period is extended for some parts of the Contract Object listed under Appendix II.h Guarantees, which also contains a description of the agreed characteristics of some parts of the Contract Object, as well as a description of the guaranteed performance and other values of the Contract Object. The Warranty Period commences on the date of the Contract Object by the Employer, unless the Contract stipulates a different duration of the Warranty Period, in particular under Appendix II.h Guarantees.
- 19.7 If the Employer's Requirements and/or the terms and conditions of a Contractor's Subcontractor stipulate a longer duration of the Warranty Period and/or the Quality Guarantee than as stipulated under Article 19.6 herein for the Contract Object or a part thereof, such a longer duration of the Warranty Period and/or the Quality Guarantee shall apply between the Parties in relation to such a delivery. At the request of the Employer, the Contractor shall ensure the possibility to exercise such rights under Article 19 herein in favour of the Employer with the Contractor's Subcontractor. The provisions of this Article 19.7 do not exclude the Contractor's liability under the Contract, in particular under Article 19 herein.

- 19.8 If the Contract is terminated before the date of the Preliminary Taking Over of the Contract Object, the provisions under Article 19.6 herein shall apply in relation to parts of the Contract Object not implemented so far under the Contract and the Warranty Period shall commence upon the termination of the Contract.
- 19.9 If the Contract Object shows a Defect preventing from proper operation of the Line and it is a Defect that can be remedied, the Contractor undertakes, with the Employer's consent, to take steps immediately enabling the use, no later than within 24 hours and commence remedying the Defect without undue delay; however, no later than within 24 hours of the Defect notification and remedy such a Defect no later than 72 hours after the Defect notification if the nature of the Defect enables so, in other cases the Contractor shall make every effort to remedy the Defect as fast as possible. If the Contractor fails to commence remedying the Defect preventing the proper use of the Line within the agreed time-limit, the Employer shall be entitled to have the Defect remedied by itself or via a third party and claim compensation for all costs reasonably incurred through such an alternative Defect remedy from the Contractor.
- 19.10 The Defects shall always be remedied by the Contractor at its own risk and expense.
- 19.11 In addition to the rights arising from Defects, the Contractor undertakes to pay the Employer a contractual penalty in case of Defects in the amount specified in this Contract and in accordance with Appendix II.c Contractual penalties for non-compliance with values.
- 19.12 Once the Defect has been remedied, the Contractor shall submit to the Employer a summary final report including specifications of the Defect, how it was caused and how the Defect was remedied.
- 19.13 If it is not possible to use the Defective Part of the Contract Object for the intended purpose under the Contract, the Quality Guarantee for such part of the Contract Object shall re-commence from the date of demonstrable remedy of the Defect.
- 19.14 If for the first 2 consecutive years from the date of signing the protocol on Preliminary Taking Over and acceptance of the Contract Object by both Parties, a failure or Defect occurs more than twice in relation to the the same item (including any item of equipment forming an integral part thereof), the Contractor is obliged to:
- 19.14.1 replace such an item with a new item of higher quality that may (as the case may be) be supplied by another manufacturer and/or supplier; and
  - 19.14.2 to obtain a manufacturer's/supplier's in favour of the Employer for replacing the item with a new item, if the relevant item cannot be repaired.
- 19.15 The Contractor is entitled to enter the SAKO Premises for the purpose of remedying he Defects to the extent necessary for such a remedy.

- 19.16 The Defect remedy is without prejudice to the Employer's right to the payment of a contractual penalty and/or damages.
- 19.17 If the Defect consists in non-compliance with the Guaranteed values under Appendix II.h, the Employer is entitled to the amount of the Guarantee Compensation if choosing a discount from the price.

## **20 LINE DOCUMENTATION**

- 20.1 The Contractor shall draw up the Line Documentation for the Employer in accordance with the Employer's Requirements and in accordance with the specification defined under the Employer's Requirements, in particular Appendix A14.7.
- 20.2 The Contractor shall draw up the Line Documentation in accordance with the Legal Regulations that are valid and effective as of the date of the Preliminary Taking Over of the Contract Object.
- 20.3 The Employer shall review the submitted Line Documentation, manual for operation and maintenance of the Contract Object, including instructions for operation after its takeover in accordance with Appendix C1 Reviewable Project and Design Data. The Contractor shall modify the Line Documentation in accordance with the Employer's instructions, if the Documentation is not drawn up in accordance with the Employer's Requirements. The Contractor shall make such modifications that the Documentation is handed over to the Employer within the time-limits in accordance with the Programme and the Employer's Requirements, or without undue delay after the Employer's instruction. The Documentation, the accuracy and completeness of which will be confirmed in writing by the Employer, will be handed over to the Employer without undue delay.
- 20.4 The Contractor shall update and review the documents handed over in accordance with Article 20.3 until the Preliminary Taking Over of the Contract Object so that the Employer has at its disposal the final form of these documents, which will correspond to the current status as of the date of the Preliminary Taking Over of the Contract Object.
- 20.5 Unless the Contract stipulates expressly otherwise, the following applies to the approval/ acceptance of the Documentation:
- 20.5.1 The Employer is entitled not to approve or accept only such Documentation which is in conflict with the provisions of the Contract and/or Legal Regulations and/or which, to the detriment of the Employer, changes the rights or obligations of the Parties arising from the Contract, imposes additional requirements or transfers risks to the Employer beyond the Contract;
- 20.5.2 if the Employer raises comments related to the Documentation for reasons specified under Article 20.5.1 above, the Contractor is obliged to incorporate these comments at its own expense. In the event that the Contractor duly incorporates these comments and at the same time does

not make another changes to the delivered performance, then (except in the cases under Article 20.5.3 below), the Employer is no longer entitled to repeatedly not approve/not accept the documentation, nor raise any new comments beyond the comments communicated to the Contractor in accordance with Article 20.5.1 above. This provision shall not apply if the Contractor fails to incorporate the comment completely or correctly. Furthermore, this provision shall not apply to any repeated comments raised by Authorities or third parties;

- 20.5.3 exceptions may be comments that result either from facts that the Contractor intentionally concealed from the Employer or which could not be known to the Employer at the time of the original review of the Documentation even when exercising professional care and a failure to incorporate the comments into the relevant Documentation could adversely affect implementation of the Contract Object or its operation, or result from the incorporation of Defects rightfully identified by the Employer by the Contractor;
- 20.5.4 The Contractor shall be liable for any inaccuracies or omissions in any Documentation regardless of its acceptance by the Employer; the approval/acceptance of Documentation by the Employer does not relieve the Contractor from the obligations under this Contract or from a liability for a breach or in relation to a breach of the Contract.
- 20.6 The Contractor shall be liable for any discrepancies, errors or omissions in the specifications, drawings and any other Documentation drawn up by it, irrespective of whether these specifications, drawings or any other Documentation have been approved by the Employer or not. The Contractor shall also ensure that the Documentation submitted by it represents correct, complete and comprehensive Documentation enabling proper, safe and unrestricted operation, maintenance, repairs, and any other handling of the Contract Object and its use and operation in a manner which is fully in accordance with this Contract, Legal Regulations and standards referred to under this Contract and the Employer's Requirements. The Contractor shall also ensure that the submitted Documentation will be fully up-to-date and will reflect the actual technical condition and implementation if the Contract Object on the date of Preliminary Taking Over of the Contract Object (unless the nature of the Documentation or the Contract indicate otherwise).
- 20.7 The Contractor shall keep up-to-date Project Documentation, drawings, reports, logbooks, minutes, letters, notifications and other documents drawn up in relation to the implementation of the Contract Object available on the Site and handed over to the Employer in in accordance with this Contract. At the request of the Employer, the Contractor shall promptly allow the Employer to inspect this Documentation and allow the Employer to obtain copies thereof.

- 20.8 The Contractor is obliged to eliminate any Defects in the documentation without delay and at his own expense, provided that Article 19 herein applies to the procedure for remedying defects.
- 20.9 The Employer shall use, reproduce, change or modify the documentation drawn up or provided by the Contractor to the Employer on the basis of or in connection with the purpose of the Contract in accordance with Article 5, for the entire period of existence of the Contract Object (with respect to the scope of rights to the documentation, which is copyright, Article 21 of the Contract shall also apply). For the avoidance of doubt, it is agreed that in the event that maintenance, repairs and reconstruction (upgrade) or other operations in relation to the Contract Object is performed for the Employer or with its knowledge and consent by any third party, the Employer is entitled to provide such a party with a necessary part of the Documentation (and without any consideration to the Contractor) without prior consent or notification to the Contractor. The Employer undertakes that in its contractual relationship with such a third party it will stipulate the obligation to use the submitted Documentation only for the purpose of performing the subject of the concluded contractual relationship and such a third party may not use this Documentation in any other manner without the Employer's prior consent. The Contractor expressly declares and agrees that the Employer and any third party performing maintenance, repairs and reconstructions (upgrade) and any other operation related to the Contract Object is also entitled to make any necessary changes to the Documentation so that the Documentation corresponds to the actual current technical condition and implementation of the Contract Object following the relevant maintenance, repairs and reconstruction (upgrade) or any other operation.
- 20.10 For the avoidance of doubt, the Parties furthermore agree that the Employer is entitled to provide and make available to the necessary extent the Documentation (or a part thereof) drawn up or provided by the Contractor to the Employer on the basis of or in connection with the performance of the Contract as part of the tender documentation in any procurement or tendering procedure in accordance with the PPA for repairs, maintenance or reconstruction (upgrade) or in relation to the need to make any other changes to the Contract Object. The tender conditions shall stipulate the obligation of any third party who collect the tender documentation (regardless of whether they submit a tender or not), to treat the submitted Documentation as confidential information including trade secrets or any other intellectual property rights protected by law and use the submitted documentation exclusively for the purposes of the relevant order. Such third parties shall be prohibited from using the Documentation in any other manner and for any purpose other than under this Article. The Employer may provide technical documentation to third parties with whom a contract will be concluded in a procurement or tendering procedure under this Article under the terms and conditions stipulated under Article 20.10 herein.

**21 LICENSE AGREEMENT**

- 21.1 The Contractor grants to the Employer exclusively for the purposes of the Construction and operation of the Line an exclusive right of use unlimited in time, location and quantity and an authorization to exercise intellectual property rights (license in accordance with relevant legal regulations) to Project Documentation and Engineering Services Outputs and Line Documentation (which are protected by intellectual property law), which will be draw up and ensured under the Contract, and the Employer is in particular entitled to the following under this right (license):
- 21.1.1 use the Project Documentation and/or Engineering Services Outputs and/or Line Documentation for the purpose for which they were drawn up;
  - 21.1.2 change or supplement the Project Documentation and/or Engineering Services Outputs and/or the Line Documentation by itself or through a third party and, as part of these changes, make this part of another copyright;
  - 21.1.3 draw up or incorporate the Project Documentation and/or Engineering Services Outputs and/or Line Documentation within other project documentation;
  - 21.1.4 copy the Project Documentation and/or Engineering Services Outputs and/or Line Documentation in any manner;
  - 21.1.5 grant a sub-license to any third party after the Preliminary Taking Over of the Contract Object in the full scope of the license granted;
  - 21.1.6 assign such a licence in its entirety to a third party after the date of the Preliminary Taking Over of the Contract Object;
  - 21.1.7 is entitled to submit the documents referred to under this Article to the Authorities or any third party authorized in accordance with Legal Regulations or on the basis of a decision made by the Authorities.
- 21.2 The Contractor shall provide such rights in favour of the Employer in accordance with Article 21.1 herein also in relation to its Subcontractors.
- 21.3 The Contractor undertakes to make sure that in relation to information systems delivered in accordance with Appendix A7 Technical Specifications for Control and Monitoring System (CMS), the Employer will be entitled to make changes or additions to the information systems (in particular, programming the information programs) that will be necessary for operating the Line under the Contract.
- 21.4 The Contractor shall bear all costs of ensuring the right of use and authorization to exercise the intellectual property right (license), including royalties for the provision of licenses in accordance with the Legal Regulations. The Contractor shall provide the Employer with the agreed license in accordance with this Article 21 herein free of charge, the payment for which is part of the price of the Contract Object.

- 21.5 The Employer is not obliged to make use of the agreed license and the rights arising from it. The Employer expressly agrees that the Contractor shall exercise, over the term of this Agreement, the rights granted to the Employer under such a license but exclusively for the purposes of proper performance of this Contract.
- 21.6 The Contractor and the Persons on the Contractor's side have the right to free Use of the land and buildings forming the SAKO Premises, exclusively for the Design, Engineering Services and Construction of the Line in accordance with the Contract.

## **22 EMERGENCY WORK**

- 22.1 If, under connection with the implementation of the Contract Object, protective or repair work is required calling for immediate intervention aimed at preventing from damage to the Contract Object, human health or serious damage to other property located in the SAKO Premises, the Contractor is obliged to promptly start performing such work. The price of such work included in the Contract Amount.
- 22.2 If the work in accordance with Article 22.1 herein is not commenced by the Contractor, the Employer is entitled to ensure the performance of such work at the expense of the Contractor. The Employer shall submit documents or otherwise prove the effectiveness of the performance of such work and the effectiveness of the costs of its performance to the Contractor no later than 21 days from the date of such work. After submitting such documents or proving the above, the Contractor shall pay such costs to the Employer.

## **23 OBLIGATIONS OF THE CONTRACTOR**

- 23.1 The Contractor undertakes to do the following throughout the term of the Contract:
- 23.1.1 notify the Employer without delay as soon as it becomes aware that judicial, arbitration, insolvency or administrative proceedings or a dispute handled in any other manner are ongoing or imminent if (i) the Contractor is or would be a party to such proceedings or dispute and (ii) if such a dispute could significantly adversely affect the Contractor's ability to perform its obligations under the Contract; this notification shall be made by the Contractor without undue delay after becoming aware of such a fact;
- 23.1.2 does not wind up or limit its business/operations or change its subject of business/operations in such a manner that could endanger the performance of the Contractor's obligations under the Contract.
- 23.2 The Contractor undertakes to perform the relevant operations under this Contract through persons who are members of the Construction Team. The list of persons who are members of the Construction Team forms part of the Contractor's Tender. In the event of a replacement of a member of the Construction Team, through which the Contractor complies with the technical

qualification in the Procurement Procedure, the new person shall meet the qualification requirements in accordance with the qualification documentation of the Procurement Procedure. Replacement of the member of the Construction Team may occur only on the basis of the prior written consent of the Employer issued at the request of the Contractor and provided that the requirement specified in the previous sentence is met. The Contractor shall document performance of such a requirement to the Employer in writing. The facts or information related to the new member of the Construction Team, shall, in terms of the form, type and content, correspond to the Employer's requirements specified in the relevant qualification requirement (the compliance with which is demonstrated through the member of the Construction Team) during the Procurement Procedure. The Employer shall respond to the request for such a consent no later than 14 days from the date of delivery of the Contractor's request and shall not unreasonably withhold such a consent. In particularly urgent cases, the submission of documents and information related to a new/other member of the Construction Team is possible even after the actual replacement of the member of the Construction Team and the Contractor is obliged to submit these documents and information to the Employer without undue delay.

- 23.3 The Contractor shall have the qualifications demonstrated during the Procurement Procedure for the entire term of the Contract.
- 23.4 By signing the Contract, the Contractor confirms that he has become familiar with the Employer's Requirements in the Procurement Procedure. If the Contractor detects deficiencies or inaccuracies in the Employer's Requirements, he is obliged to notify the Employer of them without undue delay, after the Employer's Requests have been submitted or the Effective Date, if the Employer's Requests have been submitted to him before concluding the Contract. The Contractor undertakes to implement the Contract Object in its own name, at its own risk, expense and responsibility in accordance with the Contract and Legal Regulations. The Contractor shall become familiar with the Legal Regulations concerning the Contract Object or its implementation, and decrees and regulations, and shall comply with them for the entire term of the Contract. Furthermore, the Contractor shall comply with the Legal Regulations, which will take effect prior to the execution of the Contract or during its term. The Contractor shall comply with other regulations, circulars, decrees or guidelines that are generally binding.
- 23.5 The Contractor is responsible for the implementation of the Contract Object by the Subcontractor and their suppliers as if it implemented the Contract Object itself.
- 23.6 The Contractor shall provide at its own expense all equipment necessary for the implementation of the Contract Object, unless the Parties agree otherwise.
- 23.7 If, as a result of a failure to meet the obligations set out under Article 23 herein, the Employer shall incur damage (e.g. by imposing a penalty on the Employer for the Contractor's failure to comply with the obligations stipulated by the Legal



- Regulations by the Contractor), the Contractor shall compensate such damage to the Employer.
- 23.8 During the implementation of the Contract Object, the Contractor shall comply with the provisions of the Contract, including appendices hereto, shall comply with documents and instructions of the Employer and the Owner's Engineer, and provide the Employer with the required documentation and information. The Contractor shall notify the Employer without undue delay of any unsuitable nature of instructions given to the Contractor by the Employer and the Owner's Engineer.
- 23.9 The Contractor bears exclusive responsibility for occupational safety during the implementation of the Contract Object in accordance with Legal Regulations, in particular Act No. 309/2006 Sb., on other conditions for safety and health at work, as amended, and Government Regulation No. 591/2006 Sb. on more detailed minimum requirements for safety and health at work on construction sites, as amended. The Contractor shall comply with instructions given by the occupational health and safety coordinator who will be hired by the Employer. Furthermore, the Contractor is responsible for ensuring that the rules, regulations and working methods or procedures required by the Legal Regulations governing the field of labour law are complied with. The Contractor shall furthermore comply with obligations set out under Appendix B2 Requirements for Health, Safety, and Environment.
- 23.10 During the implementation of the Contract Object, the Contractor is obliged to comply with the Legal Regulations in the field of labour law and hygiene and is liable for their violation.
- 23.11 During the implementation of the Contract Object, the Contractor is obliged to comply with the obligations related to the environment and its protection in accordance with the Employer's Requirements and Legal Regulations.
- 23.12 The Employer is not responsible for arithmetic or any other accuracies in the Contractor's Tender. If it is found out, after the execution of the Contract, that the Contractor's Tender contained arithmetic errors that would result in a change in the price of the Contractor's Tender if such errors did not occur, the Contractor shall not be entitled to claim any payment with respect to such errors.
- 23.13 The Contractor shall comply with decisions, instructions or other regulations imposed to the Employer or the Contractor by the Authorities in relation with the Project Documentation and the provision of Engineering Services.
- 23.14 The Contractor shall submit the Request in accordance with Article 10.8 herein to the Employer within 28 days from the Effective Date.
- 23.15 The Contractor shall keep the Site in order and ensure that no unauthorized personnel is allowed access to the Site. The Contractor shall keep order on roads used the implementation of the Contract Object and used them so as not to endanger traffic or other road users in accordance with the Employer's Requirements.

- 23.16 During the implementation of the Contract Object, the Contractor is a waste producer in accordance with Act No. 241/2020 Sb., on waste, as amended. During the implementation of the Contract Object, the Contractor shall comply with the obligations set out under this Act or other Legal Regulations related to waste management.
- 23.17 If presence of asbestos at the SAKO Premises is demonstrated during the implementation of the Contract Object, the Contractor shall inform the Employer of such a fact without undue delay. The provisions of this Article shall not apply in the case of circumstances known in advance, which result, in particular, from Surveys, the Employer's Requirements or Planning Documentation.
- 23.18 When implementing the Contract Object, the Contractor shall comply with the Planning Documentation, the valid Urban Master Plan of the City of Brno and related Legal Regulations. When implementing the Contract Object, the Contractor shall comply with the instructions or decisions of the Authorities, in particular, in the field of urban planning and construction regulations, which are related to the land at the SAKO Premises.
- 23.19 The Contractor shall take all measures to prevent from any leakage that could endanger the health of persons or cause serious damage to property. If case of such leakage, the Contractor shall promptly inform the Employer.
- 23.20 The Contractor shall proceed with professional care during the implementation of the Contract Object. The Contractor shall not endanger safety and reliability of operation of Employer's other equipment. During the implementation of the Contract Object, the Contractor shall proceed in such a manner as to minimize in the maximum possible extent the supply of energy within the Existing Equipment and provision of services or performance of other work by the Employer. The provisions herein shall not apply, unless otherwise stipulated herein, or if indicated so by the Legal Regulations or decisions of the Authorities, in a manner and to the extent and in time indicated by the Legal Regulations or decisions of the Authorities.
- 23.21 If the Contractor performs work that is to affect the Existing Facility, it shall inform the Employer about the performance of such work sufficiently in advance while taking into account its nature, at least 7 days before the date of commencement of such work.
- 23.22 The Contractor shall perform all import/export customs acts associated with the implementation of the Contract Object in accordance with Legal Regulations.
- 23.23 During the implementation of the Contract Object, the Contractor shall comply with the Employer's Requirements in relation to the environment, Resources that will be used during the implementation of the Contract Object or work on Site, in particular by Appendix E1 External Utilities Specifications. During the implementation of the Contract Object, the Contractor shall proceed in a manner preventing from their excessive use.

- 23.24 Until the commencement of the Trial Operation Period of the Line in accordance with Article 15 herein, the Contractor shall pay for fuel, consumables and lubricants ordered by the Contractor and necessary for the performance of work under this Contract, including the disposal of waste and waste materials. Prior to the commencement of the Trial Operation Period, all tanks and silos with consumables including all oil and lubrication tanks shall be filled by the Contractor. The value of degradation of construction and/or technological part subject to degradation is included in the performance of work and in the Contract Amount.
- 23.25 Consumption of Resources in accordance with Article 23.24 herein will be recorded by the Employer during the implementation of the Contract Object. For the purpose of these records, the Contractor shall provide necessary cooperation to the Employer/Owner's Engineer. Based on the measured data, the Employer shall issue an invoice to the Contractor related to the Resources, while the prices of the Resources will be the standard prices at the given place and time. The Contractor undertakes to pay the Employer for the Resources in accordance with this Article the amount specified in the invoice. The invoice shall always be issued by the Employer over a period of one month. The invoice shall be payable within 30 days from the date of its delivery to the Contractor. As regards potential Contractor's operations after the completion of the Contract Object (in particular, remedying Defects), the provisions herein shall apply mutatis mutandis. If the consumed quantity of Resources and their financial value cannot be determined due to lack of cooperation on the part of the Contractor, the Employer shall determine the consumed quantity of Resources on the basis of available information and at its own discretion, provided that the limit set in the Employer's Requirements for the quantity of consumed Resources could not be determined over the duration of insufficient cooperation on the part of the Contractor. As regards the payment for the consumption of Resources in accordance with Article 23.25 herein, the provisions under Article 26 herein shall apply similarly.
- 23.26 If, for reasons on the part of the Contractor, the duration of the Trial Operation Period is extended compared to the duration specified in the Contract, the Contractor shall pay for the Resources necessary for the operation of the Contract Object in accordance with Article 23.25 herein.
- 23.27 Unless the Contract stipulates otherwise or the Parties agree otherwise, the Contractor shall submit any documentation to the Employer and/or the Owner's Engineer in four copies in printed form and one copy on CD/DVD.
- 23.28 The Contractor shall pay all fees or satisfy the claims of any third party related to:
- 23.28.1 obtaining and ensuring all required materials outside the Site;
  - 23.28.2 removal of materials from demolition and excavations and other excess material, including hazardous waste, except for where the relevant storage area is located on the Site and specified in the Contract or if the storage on the Site was approved in advance by the Employer,

including the use or removal of part or all materials, waste, rubble, including hazardous waste.

- 23.29 As regards information systems delivered in accordance with Appendix A7 Technical Specifications for Control and Monitoring System (CMS), the Contractor shall ensure compatibility with the existing systems operated by the Employer, which are described in the said Appendix. Compatibility will be ensured in such a manner that the delivered system will have the same or similar functions and will be controlled in an identical manner. The Contractor shall ensure the compatibility of the visual appearance of the delivered information system with the existing systems of the Employer.
- 23.30 The Contractor is obliged to comply with the obligations set out in Appendix II.e Social responsibility requirements for the entire term of the Contract.
- 23.31 Any confirmation by the Employer of any document drawn up or delivered by the Contractor shall not relieve the Contractor from the obligation to properly prepare such documents in accordance with the requirements defined in the Contract.
- 23.32 Under Section 2 (e) of Act No. 32/2001 on Financial Control in Public Administration and on the Amendment to some Acts (Act on Financial Control), as amended, the Contractor shall cooperate with the Employer during a financial control. The Contractor shall also provide co-operation during a control performed by a grant provider as an Authority and provide co-operation to the Employer in the preparation of reports or other documents requested from the Employer by a grant provider as an Authority.
- 23.33 The Contractor shall provide at its own expense all equipment necessary for the implementation of the Contract Object, unless the Parties agree otherwise.

## **24 RIGHTS AND OBLIGATIONS OF THE EMPLOYER**

- 24.1 The Employer shall provide the Contractor with all necessary co-operation that can be reasonably requested from the Contractor.
- 24.2 The Employer undertakes to provide the Site to the Contractor no later than 14 days from the date of approval of the Request in accordance with Article 10.8 herein. The Parties shall draw up a report on the handover and acceptance of the Site on the date of the handover of the Site. The protocol shall be drawn up by the Contractor. The Employer shall ensure access to the Site for the Contractor and Persons on the Contractor's side.
- 24.3 The Employer shall provide Waste that is necessary to perform the tests in accordance with the Contract and the Employer's Requirements. The Employer is entitled to all revenues from the sale of Resources at the time of testing and commissioning of the Line in accordance with Article 14 herein.
- 24.4 The Employer shall enable connection to utilities at connection points for the Contractor in accordance with Appendix E1 External Utilities Specifications.

- 24.5 Co-operation that can be reasonably requested from the Employer means in particular the following:
- 24.5.1 proper and timely familiarizing with the draft documents necessary to prepare the Project Documentation, individual parts thereof, proposed changes related to the Design, Engineering Services and Construction of the Line, and with other proposals, opinions on these proposals and their approval, if the proposals are in accordance with the contract;
  - 24.5.2 granting a power of attorney to the Contractor to negotiate contracts with utilities administrators on behalf of the Employer in connection with obtaining a building permit under the Contract;
  - 24.5.3 performance of the agreed obligations upon completion of individual Contract milestones in accordance with the Programme;
- 24.6 At the request of the Contractor, the Employer is obliged to obtain, without undue delay and at its own expense, all permits, licenses, approvals, authorizations or decisions; however, only those for which Legal regulations expressly require that the Employer obtains them only in its own name, without being able to be represented and shall submit these after receipt to the Contractor without undue delay. The Contractor is obliged to provide the Employer with all cooperation necessary for obtaining the above-mentioned permits, licenses, approvals, authorizations or decisions. If the permit, license, approval, authorization or decision may be obtained on the basis of a power of attorney, the Employer shall, at the request of the Contractor, issue such power of attorney to the Contractor.
- 24.7 The Employer shall refrain from intentionally establishing any direct or indirect obstacles preventing from or hindering the performance of the Contract by the Contractor or increasing the risks which the Contractor assumed by executing this Contract.
- 24.8 The cooperation agreed in this Article shall apply within the framework of other provisions herein unless such other arrangements result in an express prohibition of cooperation or other arrangements related to the content and scope of the cooperation, in which case such different arrangements shall prevail.
- 24.9 Notwithstanding the provisions of this article herein, the Contractor is responsible for the proper implementation of the Contract Object.
- 24.10 If it is not possible to follow the procedure for the implementation of the Contract Object stipulated by the Contract, the Employer shall determine further procedure and communicate it to the Contractor. If the Contract assumes in any of its provisions that an agreement is to be reached between the Parties and no such agreement is reached, the Employer shall determine further procedure and communicate it to the Contractor.

**25 OWNERSHIP RIGHT**

- 25.1 The Contractor and the Persons on the Contractor's side have the right to free Use of the land and buildings forming the SAKO Premises, exclusively for the Design, Engineering Services and Construction of the Line implemented in accordance with the Contract.
- 25.2 For the avoidance of doubt, the Parties agree that the Contractor does not have and will not have the right of superficies in the sense of Section 1240 et seq. of the OZ nor any other right in rem in respect to property in the possession of the Employer.
- 25.3 The Employer automatically becomes the owner of the completed Contract Object, in the form of individual technical units implemented in accordance with the Programme. The Employer also becomes the owner of any part that is to be installed or otherwise connected to the Line upon its delivery to Site. For the avoidance of doubt, the Parties agree that if, during the implementation of the Contract Object, the Contractor becomes entitled to any property right in relation to the application of Legal Regulations related to standardized obligations with respect to any part of the Contract Object, the Contractor shall not be entitled to such a right with respect to the specifics of this Contract.
- 25.4 The Employer becomes the owner of any part of the Documentation in accordance with this Contract drawn up by the Contractor upon its submission to the Employer in accordance with the Contract.
- 25.5 Unless the Contract stipulates otherwise, any part, in particular electricity or steam, generated during testing in accordance with the Employer's Requirements, is owned by the Employer.
- 25.6 The risk of damage to the Contract Object passes to the Employer on the date of the Preliminary Taking Over of the Contract Object by the Contractor.
- 25.7 For the avoidance of doubt, the Parties agree that the Contractor is not entitled to any compensation for construction on a third party's land in the sense of Section 1083 et seq. of the OZ.

**26 PAYMENT AND PAYMENTS TERMS****Contract Amount**

- 26.1 The Employer undertakes to pay the Contractor the Contract Amount for proper implementation of the Contract Object specified under Appendix II.d Prices and Payment Conditions. This Contract Amount includes all costs incurred by the Contractor in relation to the implementation of the Contract Object. The Contract Amount does not include the value added tax, which the Contractor shall pay in accordance with the Legal Regulations.
- 26.2 The Contract Amount agreed under Article 26.1 shall be paid in accordance with the terms and conditions and schedule of payments, which is specified under Appendix II.d Prices and Payment Conditions. In addition to these terms

and conditions, the Contractor shall follow the rules specified under Article 26 herein.

- 26.3 After reaching payment milestones for payment specified under Appendix II.d Prices and Payment Conditions, the Contractor shall issue an invoice to the Employer - a tax document- in accordance with this Appendix. This interim invoice - tax document - can only be used to invoice a part of the performance that was executed in the scope specified under Appendix II.d Prices and Payment Conditions and in accordance with the Contract. A list of work performed by the Contractor in order to reach the payment milestone for payment in accordance with Appendix II.d Prices and Payment Conditions forms an integral part of the invoice - tax document.
- 26.4 The Contractor shall submit the interim invoice in accordance with the previous article, including the list of performed work for approval to the Owner's Engineer in three written copies and electronically, at any time no later than 7 days after the work required to reach the milestone in accordance with Appendix II.d Prices and Payment Conditions has been performed. The invoice shall be based on a list of work performed over the period preceding the given milestone, as drawn up by the Contractor and confirmed in writing by the Owner's Engineer in accordance with Appendix II.d Prices and Payment Conditions.
- 26.5 Work performed on the basis of a possible amendment to the Contract will be invoiced separately in accordance with the relevant amendment.
- 26.6 The invoice - the tax document- for the performance of the Contract Object shall meet requirements for tax documents in accordance with Act No. 235/2004 Sb., On value added tax, as amended, in accordance with the provisions of Section 435 of the Civil Code and include the following data:
- 26.6.1 bank designation and account number in accordance with the Contract;
  - 26.6.2 designation of the Contract Object;
  - 26.6.3 registration number of the Contract of the Employer and the Contractor;
  - 26.6.4 and other data potential defined under Appendix II.d Prices and Payment Conditions or in the Employer's instructions.
- 26.7 The Owner's Engineer shall comment on the invoice - tax document - no later than 7 days from the date of receipt from the Contractor. The Owner's Engineer is entitled to perform any inspection of the Site, the Line Documentation or any other Documentation related to the Line Construction on behalf of the Employer in order to verify the content of the submitted invoice and raise any objections as to the scope of work performed, type of work, the quality of work performed and formal requirements of the related to the list of work. Once the invoice - tax document has been approved including the list of work in the entire scope, the Owner's Engineer will submit the relevant invoice to the Employer.

- 26.8 If the invoice - tax document - list work that has not been approved and confirmed by the Owner's Engineer, the Employer is entitled to return the invoice before its due date. The original invoice term is interrupted if the invoice - tax document- is returned for justified reasons. A corrected or revised invoice - tax document - will be issued with a new due date. In the case of returning the invoice in accordance with the Employer's authorization under this Article, the Employer is not in delay.
- 26.9 The Employer undertakes to pay individual invoices - tax documents- provided that the terms and conditions agreed herein are met, no later than 30 days from the date when the invoice including the list of work is fully approved by the Owner's Engineer.
- 26.10 The Contractor is obliged to submit to the Employer a final statement no later than upon the date of signature of the protocol on Preliminary Taking Over of the Contract Object by both Parties, which will contain:
- 26.10.1 the final itemized list of all actually performed work, things, rights of use and services delivered as part of the implementation of the Contract Object. The list will be broken down into individual items in accordance with Appendix II.d Prices and Payment Conditions. The valuation will include a list of all invoices that relate to the relevant part of the Contract Object, which will contain the itemized budget of the actually invoiced work and supplies, and
- 26.10.2 any invoice for performed work which has not yet been invoiced in accordance with this Article.
- 26.11 In case of an invoice issued in accordance with Article 26.10.2 herein, the provisions of this Article 26 herein shall be applied.
- 26.12 The Employer's monetary obligation (debt) is understood as being met on the date when the amount due is debited from the Employer's account. If, for reasons attributable to the bank, there is a delay in the payment of the invoice, the Employer is not in delay with the payment of the relevant amount over this period.

**Right of set-off and right of retention**

- 26.13 The Employer may set off its obligations under this Contract in relation to the Contractor against any receivables from the Contractor.
- 26.14 The Contractor may not set off any of its obligations under this Contract in relation to the Employer against any receivables from the Employer otherwise than by agreement of the Parties, unless otherwise specified herein below.
- 26.15 Without the prior consent of the Employer, the Contractor may not exercise the right of retention against any things of the Employer or Persons on the side of the Employer or their monetary funds.

**Value added tax**

- 26.16 All liabilities and amounts under this Contract are calculated without VAT.



- 26.17 If any performance under this Contract is a taxable supply under the Legal Regulations related to VAT, VAT shall be added to the liabilities so that the recipient of the performance receives the relevant amount specified in this Contract after the VAT deduction.
- 26.18 Wherever reference is made in this Contract to the costs of any of the Parties, such costs shall be calculated exclusive of VAT, unless the relevant person paying the costs is not entitled to deduct VAT in relation to a specific performance.
- 26.19 The Contractor warrants and represents that it is and over the term of the Contract will be registered as a VAT payer and will meet its tax obligations related to VAT in a proper and timely manner, unless the Parties agree otherwise. A copy of the Contractor 's VAT registration form an appendix to this Contract (see Article 0 herein). The Contractor undertakes to promptly prove to the Employer without delay, at his request, all facts concerning the performance of its obligations and liabilities under this Article.
- 26.20 Provided that VAT is added in accordance with the Contract, the Employer is entitled to pay VAT directly to the account of the Contractor's tax administrator, if:
- 26.20.1 The Contractor is registered as an unreliable payer in the sense of Act No. 235/2004 Sb., On Value Added Tax, as amended, as amended, as of the date of taxable supply, or
  - 26.20.2 the payment or part thereof will be made by non-cash transfer to an account maintained by the payment service provider outside the country, or
  - 26.20.3 the payment or a part thereof will be made by non-cash transfer, however, to a different account of the Contractor than the one published by the tax administrator in a manner allowing remote access, and if the payment for such performance exceeds twice the amount under the law governing cash payment restrictions, the exceeding of which results in the duty to make cashless payment, with which the Contractor agrees.
- 26.21 If the rules that allow the Employer to avoid the risk of VAT liability for the Contractor change within the framework of Legal Regulations, the Employer shall be automatically entitled to proceed in accordance with these new rules without the necessity to conclude an amendment to this Contract, with which the Contractor agrees.

**Interest on late payment**

- 26.22 In the event that any of the Parties is in delay in performing its monetary obligation, the Parties have agreed on interest on late payment in the amount stipulated by valid and effective Legal Regulations.

**27 CHANGES TO THE CONTRACT**

- 27.1 During the term of the Contract, the Employer is entitled to propose changes in the obligation under the Contract to the Contractor in accordance with the conditions specified in this Article herein.
- 27.2 During the term of the Contract, the Contractor may propose changes to the Employer which the Contractor considers necessary or desirable from the point of view of improving the quality or economic efficiency of the Contract Object. The Employer may approve or reject any change proposed by the Contractor at its own discretion.
- 27.3 The Contractor is entitled to submit requests for changes to the Contract in accordance with Appendix B4 Requirements for Notifications, Variations and Deviations.
- 27.4 For the avoidance of doubt, the Parties acknowledge that any changes to the Contract shall always be made in accordance with the provisions of Section 222 of the PPA.
- 27.5 The Contractor acknowledges that the submission of a request in accordance with Appendix B4 Requirements for Notifications, Variations and Deviations shall not entitle the Contractor to change the Contract. The Contract shall always be changed by an effective written amendment (unless the amendment specifies another effectiveness of the amendment to the Contract) concluded between the Employer and the Contractor, provided that the terms and conditions under Article 27.4 herein are met.
- 27.6 Notwithstanding Article 27.1 and/or 27.2 herein, any change that is necessary due to any Contractor's failure to perform its obligations or is caused by facts for which the Contractor is responsible, or is necessary to achieve compliance of the Contract Object with the Contract, shall not be considered as a change under this Article 27 herein, and such a change shall not result in any modification of the Contract Amount, time-limits for performance or any other provisions of the Contract and will not establish any claims of the Contractor for whatever reason.
- 27.7 If the request for a change in the Contract fails to meet the requirements specified under Appendix B4 Requirements for Notifications, Variations and Deviations, the Employer is not obliged to deal with such a request.
- 27.8 The Contractor has the right to have the time-limit for the implementation of the Contract Object specified in the Programme extended if, during the operations referred to under Article 11 herein, a competent Authority delays issuance of its decision or permit, the obtaining of which is required of the Contractor in accordance with the said Article. A delay in issuing a decision or permit by the competent Authority is considered as a situation when a minimum of 90 days have elapsed since the commencement of the administrative or other proceedings. Administrative or other proceedings are initiated on the date when the Contractor submits its request to the relevant Authority for the issuance of its decision or permit. In such a case, the given

time-limit for the implementation of the Contract Object in accordance with the Programme shall be extended by the number of days by which the Authority delays issuance of the decision or permit in accordance with this Article.

27.9 The Contractor has the right to have the time-limit for the implementation of the Contract Object extended if:

27.9.1 The Employer instructs the Contractor to interrupt the implementation of the Contract Object due to the operation of the Existing Facility, and

27.9.2 the period of interrupting the implementation of the Contract Object in accordance with the Employer's instruction will exceed the period specified under 14.9 herein.

27.10 Procedure in the event of a change in the obligation under the Contract proposed by the Employer:

27.10.1 the request for change, which will contain, as a minimum, a basic description of the change and the Employer's requested time for implementation, which is the subject of the change, shall be sent by the Employer to the Contractor in writing;

27.10.2 Based on the submitted request for change, the Contractor shall process and submit to the Employer a proposal for the change within 14 days from the delivery of the request for change. The proposed change prepared by the Contractor shall contain, in particular:

- i. detailed description of the change;
- ii. proposal modification of the Programme or a statement that the implementation of the change shall not affect the Programme;
- iii. impact on the Contract Amount, including the costs of preparing the change and the costs of implementing the change, payment terms and a statement that the implementation of the change shall not affect the Contract Amount;
- iv. impact on the Existing Facility or a statement that the implementation of the change will not affect the Existing Facility.

27.10.3 If, for any reason, the Employer decides not to continue preparing the change after the change proposal has been submitted, the Employer shall notify the Contractor accordingly without undue delay. In such a case, the Contractor is entitled to monetary compensation for demonstrable costs resulting from the preparation of the change proposal. This shall not apply if the change is initiated by the Contractor.

- 27.10.4 evaluation of any impact of any change in accordance with Article 27.10.3 above shall be calculated by the Contractor as per the rates and prices specified herein. If such rates and prices are not specified herein, the Contractor shall use the current price level of materials, equipment, things, work and services, or submit a detailed individual calculation of the items, which will show the size, unit of measure, unit price (broken down, as a minimum, into delivery and assembly) and the total price.
- 27.10.5 Upon receipt of the proposed change, the Employer and the Contractor shall agree on all matters contained therein. After that, the Contractor shall, if necessary, revise the proposed change.
- 27.10.6 Within 14 days from the date following such an agreement, or from the revision of the proposed change, the Employer shall issue a change order to the Contractor provided that the Employer intends to have such a change made, including the relevant change proposal. Subsequently, the change order issued in this manner shall be confirmed by both Parties. If the Employer is unable to take a decide within the said 14 days, it shall notify the Contractor accordingly and request a reasonable extension of this time-limit. The Contractor is obliged to comply with this Employer's request.
- 27.10.7 after mutual confirmation of the change order, an amendment to the Contract shall be concluded in accordance with Article 27.5. The change order shall be attached to such an amendment.
- 27.11 Procedure in the event of a change in the obligation under the Contract proposed by the Employer:
  - 27.11.1 if the Contractor proposes a change in accordance with Article 27.2 herein, it shall submit a written change proposal to the Employer listing the reasons for the proposed change and information specified under Article 27.10.2 herein no later than 21 days after the Contractor became aware of, with the exercise of professional care, could have become aware of, an event or circumstance giving rise to the request for change. If the Contractor fails to do so within the specified time-limit, the Contractor will not be entitled to be compensated for the costs related to the preparation of the change proposal as well as the costs related to the change, unless the Employer decides otherwise. The Employer is also entitled to reject such a change proposal or a change and the Employer is fully free of any liability in relation to the rejected change proposal or change. When valuing any change, the Contractor is obliged to proceed in accordance with Article 27.10.4 herein.
  - 27.11.2 after receiving the change proposal in accordance with Article 27.11 (change of a Contract obligation proposed by the Contractor) the Parties shall proceed in accordance with the procedures specified under Article **Chyba! Nenalezen zdroj odkazů.** herein. However, if

the Employer decides not to accept the change proposal submitted by the Contractor in accordance with Article 27.11.1 herein, and not to continue with the change, the Contractor will not be entitled to be compensated for the costs related to the preparation of the change proposal.

- 27.11.3 if the Contractor finds out that it is necessary to adopt a technical solution that is not in accordance with binding standards, it may request the Employer to grant an exemption. Such a request shall include a technical justification. If the solution is based on a foreign standard, the relevant standard shall be submitted in the Czech translation. This solution will not establish an increase in the Contract Amount, change in the time-limits for performance, or any other requirements of the Contractor.
- 27.12 The Contractor shall prepare and maintain a record of the changes made, the nature, costs incurred to implement the change, the date of commencement and completion of its implementation and status of all changes, both proposed and approved or rejected by the Employer. The Contractor shall submit a copy of such a record to the Employer once a month.
- 27.13 The change order under this Article 27 herein shall become an Appendix to the amendment in accordance with Article 27.5 herein.
- 27.14 When requesting a change in the Contract in relation to the agreement in accordance with Article 27.8 and/or 27.9 herein, the Contractor shall proceed in accordance with this article herein. The Employer shall accommodate such a request if the terms and conditions specified under Article 27.8 and/or 27.9 herein are met, which shall be documented by the Contractor along with the request to change the Contract.
- 27.16 Provisions under these Articles 27.8 and 27.9 herein represent a reserved changes in obligations under Section 100 of the PPA.
- 27.17 Any change made under this Article 27 herein shall not be in conflict with the minimum technical conditions defined under Article 2, namely all the minimum and maximum values listed in Tables 1 to 4 under Appendix II.h Guarantees.

## **28 COMPENSATION FOR DAMAGE**

- 28.1 Each Party shall be liable for damage caused under applicable legal regulations and this Contract. The Contractor shall also be fully liable for the performance of the Contract if relevant parts of performance under this Contract are ensured through its Subcontractor.
- 28.2 Both Parties undertake to make every effort to prevent from damage and to minimize the damage caused.
- 28.3 In accordance with Article 28.1 herein, such damage also concerns damage which is imminent and this is damage that can reasonably be expected while taking into account all the circumstances that the damage will occur and to

what extent, while also taking into account all the circumstances for who is responsible for such damage.

- 28.4 Both Parties are obliged to compensate for damage demonstrably incurred by the respective other Party.
- 28.5 The total sum of any such amounts which one Party is entitled to claim from the other Party, whether it is any pecuniary claim incurred by the entitled Party under the Contract or appendixes hereto or damage demonstrably incurred by the Party under this Contract and for reasons attributable to the other Party, shall not exceed 100% of the Contract Amount excl. VAT.

## **29 Security**

### **Security for the implementation of the Contract Object**

- 29.1 The Contractor shall provide the Employer with a Security in the amount of 10% of the Contract Amount excl. VAT in order to secure all Employer's receivables under this Contract against the Contractor, in particular, for proper implementation of the Contract Object, payment of contractual penalties, remedying of Defects, quality guarantee, discounts on the Contract Object, compensation for non-material damage, compensation of costs agreed in the Contract, which the Employer is entitled to satisfy using the Security. The Employer is entitled to draw upon the Security in cases where it has a receivable due from the Contractor under the Contract, in particular in cases where the Employer has a receivable due from the Contractor for payment of contractual penalties, remedying of Defects, quality guarantee, discounts on the Contract Object, damages, compensation for non-material damage or compensation of costs agreed in the Contract.
- 29.2 The Contractor shall submit the Security in accordance with Article 29.1 herein no later than 14 days after the Effective Date. The Contractor shall keep the Security in full force and effect and meeting the requirements under Article 29 herein for at least 28 days after the expected date of the remedying of Defects; however, as a minimum until the expiration of the Warranty Period and the Quality Guarantee in accordance with Article 19 herein. The amount of the Security shall be governed by Appendix II.d Prices and Payment Conditions. If the Security is drawn upon, the Contractor shall promptly replenish the Security to the amount specified under Appendix II. Prices and Payment Conditions. If a bank guarantee is submitted, this guarantee must be issued in the amount and period of validity specified under Appendix II.d Prices and Payment Conditions, while meeting the requirements under this article, and while meeting the time-limits specified in the Programme.
- 29.3 If a confirmation of the progress of the Warranty Period is submitted in accordance with Article 17 herein, the Contractor is entitled to reduce the amount of the Security to 5% of the Contract Amount excl. VAT on the date following the day of submitting the confirmation specified herein. The Contractor shall submit to the Employer documents which clearly show that the bank guarantee for payments has been reduced in accordance with this

Article 29 herein without undue delay after the reduction in the amount of the bank guarantee and/or at the request of the Employer.

- 29.4 When increasing and reducing the amount of the bank guarantee for payments, all terms and conditions specified under this Article 29 shall be met.
- 29.5 If the Contractor submitted a Security to the Employer in the form of a monetary guarantee, the Contractor is entitled to replace it at any time with a bank guarantee; in such a case, the Employer shall return to the Contractor the monetary guarantee in the undrawn amount, including interest, if any, within 28 days from the date on which the letter of bank guarantee was submitted to the Employer by the Contractor. If the Contractor submitted the Security to the Employer in the form of a bank guarantee, the Contractor is entitled to replace it at any time by depositing a financial guarantee; in such a case, the Employer shall return the letter of guarantee to the Contractor within 28 days from the date when the Employer received the full monetary guarantee from the Contractor. A combination of a bank guarantee and a monetary guarantee is not allowed. In order to perform the obligation to submit the Security in the form of a bank guarantee, the Contractor is entitled to submit individual bank guarantees that correspond to the amount of the Security specified under Article 29.2 herein. The provisions of this Article shall apply mutatis mutandis to such individual bank guarantees.
- 29.6 The bank guarantee shall meet, as the minimum, the following terms and conditions over the period specified under Article 29.2 herein:
- 29.6.1 it will be irrevocable; and
- 29.6.2 will be issued by the Bank Guarantee Provider; and
- 29.6.3 will be issued in favour of the Employer enabling draw-down in the full amount of the bank guarantee;
- 29.6.4 will secure all Employer's receivables due under this Contract against the Contractor, in particular for the payment of contractual penalties, remedying of Defects, quality guarantee, discounts of the Contract Amount, compensation for damages, compensation for non-material damage or compensation of costs agreed in the Contract; and
- 29.6.5 The Employer's satisfaction under the bank guarantee will be unconditional, without objections, conditions, protests of the bank guarantee provider and without the bank examining or contesting the reasons for the requested draw-down (the Contractor shall, in particular, ensure that the Employer will not be obliged to demonstrate or prove the reason for drawing upon the bank guarantee in any manner in relation to the bank guarantee provider); and
- 29.6.6 upon the first request of the Employer, after submitting a written request of the Employer to the bank guarantee provider specifying the amount to be paid.

- 29.7 In the event that the bank guarantee is to be returned and no supplement to the bank guarantee is issued, the Employer shall return the expiring bank guarantee to the Contractor only against a new bank guarantee covering the next period (unless it is a letter of bank guarantee issued in electronic form). If the Contractor fails to replace the expiring bank guarantee and fails to submit a new guarantee document to the Employer no later than 42 days prior to the expiry of the expiring bank guarantee or fails to issue a supplement to such a bank guarantee, the Employer shall be entitled to draw upon the amount from the bank guarantee and the amount thus drawn shall become a monetary security in accordance with Article herein.
- 29.8 If the Contractor provided the Employer with a monetary security or the Employer obtained the Security from a bank guarantee in accordance with Article 29.7 herein and the Employer has drawn upon from the Security, the Contractor is obliged to replenish the Security no later than 28 days from the date of notification of draw-down of the required amount. The Employer shall return the undrawn Security to the Contractor no later than 28 days from the date of expiry of the period specified under Article 29.2 herein, including interest, if any, and interest on late payment for the period over which the Employer was or must have been aware of the unauthorized draw-down of the Security. To this end, the Employer is obliged to deposit the funds from the drawn Security in a special bank account with an interest rate standard at the given time and place.

**Bank guarantee for payments**

- 29.9 The Contractor shall submit a bank guarantee in order to secure payments made by the Employer to the Contractor (hereinafter referred to as the "**bank guarantee for payments**"). The Employer is entitled to draw upon the bank guarantee for payments in all cases where the Employer is entitled to a refund of a relevant part of a paid amount under the Contract or Legal Regulations, and is entitled to use such funds drawn upon in this manner to satisfy its claims for a refund of the relevant part of the payment.
- 29.10 The amount of the bank guarantee for payments is specified under Appendix II.d Prices and Payment Conditions.
- 29.11 The Contractor shall submit the bank guarantee for payments in the amount specified under Appendix II.d Prices and Payment Conditions no later than 21 days before the date of the planned milestone specified for part payment No. 2 under Appendix II.d Prices and Payment Conditions.
- 29.12 The amount of the bank guarantee for payments will be increased during the implementation of the Contract Object in relation to facts specified under Appendix II.d Prices and Payment Conditions. If the amount of the bank guarantee for payments is to be increased in accordance with this Appendix, the Contractor shall submit all necessary documents no later than 14 days before the date on which the increase is to take place in accordance with this Appendix, and such documents shall clearly show that the bank guarantee for payments was increased to the amount required under Appendix II.d Prices



and Payment Conditions. The Contractor shall submit such documents to the Employer within the time-limit specified herein or at any time without undue delay at the request of the Employer.

- 29.13 The amount of the bank guarantee for payments will be increased during the implementation of the Contract Object in relation to facts specified under Appendix II.d Prices and Payment Conditions. The bank guarantee may be reduced at the earliest on the date following the performance of the last of the following conditions:
- a) meeting a milestone specified under Appendix II.d Prices and Payment Conditions, which is associated with the right to the bank guarantee reduction,
  - b) meeting all payment terms related to the milestone mentioned above under letter a)
  - c) approval of the invoice related to the milestone mentioned above under letter a) in its entirety by the Owner's Engineer.

The Contractor shall submit to the Employer documents which clearly show that the bank guarantee for payments has been reduced in accordance with this Article 29 herein without undue delay after the reduction in the amount of the bank guarantee and/or at the request of the Employer.

- 29.14 The amount of the bank guarantee for payments may be increased or reduced in the form of a supplement to the Contractor's existing letter of guarantee, or on the basis of a new bank guarantee for payments meeting the terms and conditions specified under this Article 29 herein. When increasing and reducing the amount of the bank guarantee for payments, all terms and conditions specified under this Article 29 shall be met.
- 29.15 The bank guarantee for payments shall meet the requirements for at least 28 days after the expected expiry of its validity in accordance with Appendix II.d Prices and Payment Conditions. Provisions of Article 29.2 shall also apply to the bank guarantee for payments.
- 29.16 The bank guarantee for payments shall meet at least the following requirements throughout its period of validity:
- 29.16.1 it will be irrevocable; and
  - 29.16.2 will be issued by the Bank Guarantee Provider; and
  - 29.16.3 will be issued in favour of the Employer enabling draw-down in the full amount of the bank guarantee;
  - 29.16.4 will secure all receivables of the Employer under this Contract with respect to the Contractor, in particular, a refund of a relevant part of payment, and
  - 29.16.5 The Employer's satisfaction under the bank guarantee will be unconditional, without objections, conditions, protests of the bank guarantee provider and without the bank examining or contesting the

reasons for the requested draw-down (the Contractor shall, in particular, ensure that the Employer will not be obliged to demonstrate or prove the reason for drawing upon the bank guarantee in any manner in relation to the bank guarantee provider); and

29.16.6 upon the first request of the Employer, after submitting a written request of the Employer to the bank guarantee provider specifying the amount to be paid.

#### **Bank Guarantee Provider**

29.17 The Bank Guarantee Provider shall meet the rating requirement specified under Article 1.1.31 herein for the entire period of validity of the bank guarantee in accordance with this Article herein. If the required rating of the Bank Guarantee Provider drops, the Contractor shall submit a bank guarantee in accordance with this Article 29 herein from a Bank Guarantee Provider that meets the rating requirement.

#### **Costs of obtaining, issuing and maintaining the Security and/ or the Bank Guarantee**

29.18 For the avoidance of doubt, all costs incurred by the Contractor in connection with the procedure under this Article 29 shall be borne by the Contractor.

### **30 INSURANCE**

30.1 The Employer undertakes to effect insurance in a minimum extent of the terms and conditions in accordance with Appendix II.f herein. The Employer shall keep the insurance in full force and effect for at least the period of time defined under this appendix in relation to the individual types of insurance.

30.2 The Contractor undertakes to effect insurance in a minimum extent of the terms and conditions in accordance with Appendix II.g hereto. The Contractor shall keep the insurance in full force and effect for at least the period of time defined under this appendix in relation to the individual types of insurance.

30.3 The Contractor undertakes to provide the Employer with all necessary cooperation so that the Employer can effect and maintain the insurance in accordance with Appendix II.f hereto.

30.4 The Contractor undertakes to comply with the terms of the insurance and the Contractor shall be fully and unconditionally liable for breaching such terms, in particular if such breach shall affect the insurance claims (e.g. a failure to pay the insurance benefits or its reduction due to a breach of the insurance terms and conditions).

30.5 Insurance effected by the Contractor in accordance with this Article will be arranged with an insurance company with (or its parent business corporation in accordance with Section 74 (2) of Act No. 90/2012 Sb., On Business Corporations and Cooperatives, as amended) a minimum financial rating of Moody's "A3 ", Fitch/IBCA" A- ", Standard & Poor's" A- "or their equivalent

from any other internationally recognized credit rating agency. Any deviations from this agreement may only be made with a prior written consent of the Employer.

- 30.6 The Contractor shall submit to the Employer the insurance policies for insurance coverage in accordance with the requirements in accordance with Appendix II.g herein within time-limits specified under Article 30 hereto. The submitted documents shall demonstrate compliance with the insurance terms and conditions in accordance with Appendix II.g hereto.
- 30.7 If the Employer requests so, the Contractor shall have the insurance policies effected in accordance with this Contract reviewed by an insurance broker designated by the Employer. The Contractor shall also demonstrate to the Employer, at its request, proper payment of premiums and performance of other obligations of the Contractor under the relevant insurance policies.
- 30.8 In the event of any changes in this Contract, which affect in particular the scope of insurance coverage, the amounts insured, sub/limits, deductibles or insurance period and effectiveness of the insurance coverage under this Contract, the Contractor shall discuss such changes with the Employer, subsequently take these changes into account in the effected insurance policy and submit a written report to the Employer accordingly without undue delay.
- 30.9 Any possible extensions of the insurance and any potential changes in the insurance in relation to the performance of this Contract shall be borne by the Contractor, including the payment of related costs, unless the extension or change in the insurance was caused exclusively by the Employer.
- 30.10 The Contractor submitted its professional liability insurance in accordance with Appendix II.g herein prior to executing the Contract. In accordance with the said appendix, the Contractor shall submit other Contractor's insurance it the Employer's request so, no later than 14 days from the date of receipt of such request; however, no later than the date of commencement of work on the Site.
- 30.11 The Contractor shall submit the insurance documents in accordance with Appendix II.g herein to the Employer no later than 14 days from the date of receipt of such a request.
- 30.12 If the Contractor fails to keep the insurance in full force and effect in accordance with the provisions of this Article and fails to make good such a breach of its obligation even within an additional period of time specified in the Employer's written notice, which shall be a minimum of 14 days, the Employer shall be entitled to withdraw from this Contract.

### **31 CONTRACTUAL PENALTIES**

- 31.1 The Parties have agreed on the following confirmation of the Contractor's obligations to the Employer by a contractual penalty.

- 31.2 In the event of a breach of the obligation to have the work performed through a Subcontractor, through which the Contractor demonstrated any part of the qualification criteria in the Procurement Procedure in accordance with Article 6.2 herein and/or in the event of replacing such a Subcontractor without providing relevant documents and information in accordance with Article 6.2 herein Contract, the Contractor shall pay to the Employer a contractual penalty in the amount of CZK 70,000, for each, even commenced, day of delay in performing the individual obligation.
- 31.3 In the event of a breach of the obligation under Article 6.8 herein, the Employer is entitled to the payment of a contractual penalty in the amount of CZK 30,000 from the Contractor for each identified case of such a breach.
- 31.4 In the event of a breach of the Contractor's obligations in accordance with Article 12.2 herein, the Contractor shall pay to the Employer a contractual penalty in the amount of CZK 30,000 for each, even commenced, day of delay in performing the individual obligation, namely each individual quality system in accordance with Article 12.2 herein which the Contractor will not have at its disposal.
- 31.5 In the event of the Contractor's delay in commencing construction work on the Contract Object within the time-limit in accordance with milestone No. 2 specified under Article 1, Appendix II.i Programme, the Contractor shall pay the Employer a contractual penalty of CZK 75,000 for each, even commenced, day of delay in meeting milestone No. 2.
- 31.6 In the event of the Contractor's delay in completing construction work on the Contract Object within the time-limit in accordance with milestone No. 4 specified under Article 1, Appendix II.i Programme, the Contractor shall pay the Employer a contractual penalty of CZK 150,000 for each, even commenced, day of delay in meeting milestone No. 4.
- 31.7 In the event of the Contractor's delay with the first boiler ignition and operation with Waste within the time-limit in accordance with milestone No. 8 specified under Article 1, Appendix II.i Programme, the Contractor shall pay the Employer a contractual penalty of CZK 300,000 for each, even commenced, day of delay in meeting milestone No. 8.
- 31.8 In the event of the Contractor' delay in the Preliminary Taking Over of the Contract Object within the time-limit in accordance with milestone No. 10 specified under Article 1, Appendix II.i Programme, the Contractor shall pay the Employer a contractual penalty of CZK 650,000 for each, even commenced, day of delay in meeting milestone No. 10.
- 31.9 In the event of a breach of the obligation to clear the Site under Article 16.5.11 herein, the Employer is entitled to the payment of a contractual penalty in the amount of CZK 70,000 from the Contractor for each, even commenced, day of delay in meeting this obligation.
- 31.10 In the event of the Contractor's delay in remedying a Defect in accordance with Articles 19.3 or 19.4 herein, the Contractor shall pay the Employer a contractual

penalty in the amount of CZK 70,000 for each, even commenced, day of delay in remedying the Defect in accordance with Article 19 herein.

- 31.11 In the event of a breach of the obligation to have relevant activities performed through persons listed in the Contractor's Tender in accordance with Article 23.2 herein and/or in the event of replacing such a person without providing relevant documents and information when replacing such a person in accordance with Article 23.2 herein, the Contractor shall pay the Employer a contractual penalty in the amount of CZK 70,000, for each, even commenced, day of delay in performing the individual obligation. The Contractor shall pay the Employer the contractual penalty in the same amount for a breach of obligations in accordance with Article 23.3 herein, for each, even commenced, day of delay in performing the individual obligation.
- 31.12 In the event of a breach of any obligation or commitment of the Contractor arising from Article 26.19 herein, the Contractor undertakes to pay the Employer a contractual penalty in the amount of CZK 1,000,000 for each individual breach of such obligation or commitment.
- 31.13 In the event of a breach of any obligation or commitment of the Contractor to provide a Security meeting all requirements under Article 29 herein, the Employer is entitled to claim a contractual penalty from the Contractor in the amount of CZK 70,000 for each, even commenced, day of delay in performing such obligation.
- 31.14 In the event of a breach of any individual obligation specified under Article 30 herein, the Contractor shall pay the Employer a contractual penalty of CZK 100,000 for each case of a one-time breach of an obligation and a contractual penalty of CZK 70,000 for each, even commenced, day of delay in the event of a continuing or repeated breach of such obligation.
- 31.15 In the event of a breach of any individual obligation under Article 35 herein, the Contractor shall pay the Employer a contractual penalty in the amount of CZK 1,000,000 for each case of one-time breach of an obligation and a contractual penalty in the amount of CZK 30,000 for each, even commenced, day of delay in case of continuing or repeated breach of an obligation, unless it is a negligible breach, in relation to which the Contractor demonstrates that such breach could not cause damage/harm.
- 31.16 In the event of a breach of any obligation or liability of the Contractor under this Contract and if such breach is not remedied by the Contractor within an additional period of 7 days from the date on which the Contractor received the Employer's request for remedy (if such a remedy is possible and if such a remedy is not possible, the Employer is not obliged to request for remedy), the Contractor shall pay the Employer a contractual penalty in the amount of CZK 70,000 for each case of a one-time breach of obligation and a contractual penalty in the amount of CZK 30,000 for each, even commenced, day of delay in the event of a continuing or repeated breach of the obligation.

- 31.17 In case of a failure to meet the guaranteed values specified under Appendix II.h Guarantees during the Warranty Period in accordance with Article 16.2 herein, the Contractor shall also pay the Employer the contractual penalties, which are listed under Appendix II.c Contractual penalties for non-compliance with values.
- 31.18 Unless the Contract stipulates otherwise, for the purposes of this Article it is understood that the measured values in accordance with Appendix II.h Guarantees are considered met if the achieved results measured immediately after the relevant tests meet the minimum requirements, i.e. the measured results may not be improved by adding measurement uncertainty and/or measurement tolerances.
- 31.19 The Contractor's obligation to pay a contractual penalty shall not exclude the Employer's claim for damage (harm) in the amount in which such damage exceeds the contractual penalty.
- 31.20 The total amount of contractual penalties that the Employer is entitled to claim from the Contractor shall not exceed the amount corresponding to 20% of the Contract Amount excl. VAT.
- 31.21 Notwithstanding any other provision of this Agreement, neither of the Parties shall be entitled to claim damages (harm) as indemnity if such damage was compensated on the basis of a claim under another legal right and to the extent in which it was compensated.
- 31.22 The agreed contractual penalties/interests on late payment shall be paid by the liable party regardless of the fault and regardless of whether and to what extent the other party suffers damage.
- 31.23 The Contractor shall be relieved from the obligation to pay a contractual penalty, to the payment of which the Employer is entitled in accordance with Articles 31.5 and/or 31.6 31.7 herein, only on condition that during the performance of the Contract Object, the time-limit for the Preliminary Taking Over of the Contract Object in accordance with milestone No. 10 specified under Article 1, Appendix II.i Programme will be met.
- 31.24 The Contractor shall be relieved from the obligation to pay a contractual penalty in accordance with this Article herein if an extraordinary and unpredictable and insurmountable obstacle occurring independently of its temporarily or permanently prevented the Contractor from meeting the relevant obligation. An obstacle arising from the Contractor's personal circumstances or incurred at a time when the Contractor was in delay in performing an agreed obligation or an obstacle which the Contractor was obliged to overcome under the Contract, shall not relieve the Contractor from the obligation to pay the contractual penalty.
- 31.25 The contractual penalties will be paid on the basis of issued invoices due 30 days from the date of receipt.

**32 CONTRACT TERMINATION**

- 32.1 The Parties may terminate the Agreement by agreement, notice or withdrawal, in writing.
- 32.2 If a specific breach of the Contract continues for more than 14 days or has occurred more than three times over any period of 6 consecutive months, the Employer is entitled to give a notice to the Contractor containing:
- 32.2.1 detailed specifications of the breach of the Contract with reference to the Contract provision breached by the Contractor;
  - 32.2.2 notice that if the breach of the Contract continues for more than 21 days from the date of delivery of this notice or occurs repeatedly in two or more months for 6 consecutive months from the date of delivery of the notice under this Article to the Contractor, the Employer is entitled to withdraw from the Contract.
- 32.3 The Employer is entitled to withdraw from the Contract if the Contractor proceeds in such a manner that significantly disrupts the operations and/or functioning of the Employer. In such a case, the Employer shall inform the Contractor in writing of the manner in which the Contractor disrupts its operation and ask him to promptly terminate such a disruption of its operations. If, despite such a request, the disruption of the Employer's operations and/or functioning is not terminated, the Employer is entitled to withdraw from the Contract in relation to the pending performance.
- 32.4 The Employer or the Contractor has the right to withdraw from the Contract in the event of a significant breach of the Contract by the other Party.
- 32.5 The Parties understand the following breaches of contractual obligations as significant breaches:
- 32.5.1 the amount of the contractual penalty in accordance with Article 31.5 and/or 31.6 and/or 31.7, and/or 31.8 herein reaches an amount corresponding to 10% of the Contract Amount;
  - 32.5.2 the number of days of the Contractor's delay in failing to meet the time-limits in accordance with milestones No. 2, No. 4, No. 8 and/or No. 10 specified under Article 1, Appendix II.i Programme will total 365 days;
  - 32.5.3 failure to demonstrate the existence of insurance in accordance with Article 30 herein;
  - 32.5.4 the Contractor breaches any of its obligations under Article 30 herein;
  - 32.5.5 breach of the Contractor's obligations related to the Security in accordance with Article 29 herein;
  - 32.5.6 other cases of significant breach of the Contract by the Contractor expressly specified in this Contract or appendices hereto (in particular, Appendix II.c Contractual penalties for non-compliance with values) considered as a significant breach of the Contract;

- 32.5.7 the Contractor assigns the Contract in violation of Article 38.7 herein;
  - 32.5.8 the Contract is changed in violation of Section 222 of the PPA;
  - 32.5.9 The Contractor gives or offers (whether directly or indirectly) any bribe, gift, any bonus, commission or any other valuable item as an incentive or reward to any person:
    - i. for performing or failing to perform any act in relation to the Contract, or
    - ii. for showing or, conversely, failing to show favour or disfavour to any person in relation to the Contract, or if any Person on the Contractor's side offers to give (either directly or indirectly) any such offer or reward to any person in accordance with Article 32.5.9.
  - 32.5.10 the Employer's delay in payment of an amount more than 60 days overdue,
  - 32.5.11 the Contractor implements the Contract Object in a manner that apparently fails to correspond to the agreed scope of the Contract Object and the agreed time-limit for the Preliminary Taking Over and acceptance of the Contract Object by the Employer.
- 32.6 The Employer is also entitled to withdraw from the Contract in the following cases:
- 32.6.1 if the competent court has ruled that the Contractor is insolvent in accordance with Act No. 182/2006 Sb., on Insolvency and Methods of its Resolution (Insolvency Act), as amended (regardless of the legal force of such a ruling);
  - 32.6.2 if insolvency proceedings have been initiated based on a petition of the Contractor, the Employer is entitled to withdraw from the Contract after filing such a petition. If a petition for the insolvency proceedings has been filed against the Contractor by another person or a public authority, the Employer is entitled to withdraw from the Contract unless such proceedings have been effectively terminated within 4 months from the date of filing such petition. The Employer is also entitled to withdraw from the Contract if a moratorium has been declared against the Contractor, a decision on the Contractor's bankruptcy has been issued, receivership has been imposed on the Contractor under any other legal regulation or if a similar situation under the law of the Contractor's domicile arises. Rules in accordance with Article 32.6 shall apply if these provisions relate to one of the suppliers as part of the joint participation of suppliers as the Contractor and other suppliers fail to meet the qualification criteria required in the Procurement Procedure.
- 32.7 The withdrawal is effective from the date of delivery of the written notice to the other Party.



- 32.8 The withdrawal from the Contract is without prejudice to the right of the entitled Party to the payment of the contractual penalty, interest on late payment or compensation for damage under Article 28 herein, license agreements, agreement, ownership title and other agreements which are, due to their nature, binding on the Parties even after withdrawal from the Contract or which are to survive in accordance with an explicit agreement made in other parts hereof. The withdrawal from the Contract is without prejudice to the liability for Defects that exist in relation to the part of the Contract Object completed as of the date of withdrawal. The guarantee provisions under the Contract shall apply mutatis mutandis to the guarantee provisions related to the part of the Contract Object completed so far. The Contractor is not entitled to claim payment from the Employer of the corresponding part of the agreed price for the removed parts of the Contract Object.
- 32.9 The procedure to be followed by the Parties after the Contract termination is specified under Appendix II.b Contract termination and cost determination.
- 32.10 The Party which, through its acts, delays or omissions, causes the other Party to withdraw from the Contract shall compensate the other Party for the costs incurred due to the withdrawal from the Contract. The method of determining costs in the event of the Contract termination for reasons attributable to the Contractor is specified under Appendix II.b Contract termination and cost determination. The provisions herein are without prejudice to the right of the withdrawing Party to pay any contractual penalty which is imposed for the breach of obligations establishing the reason for the withdrawal. These costs shall be credited as a non-cash payment to the account of the entitled Party within 30 days from the date when the entitled Party determines these costs to the obligated party; however, no later than within 2 years from the date of the Contract termination. The application of the procedure in accordance with Appendix II.b Contract termination and cost determination is without prejudice to the Employer's right to the payment of contractual penalties or compensation for damage by the Contractor under this Contract.
- 32.11 In cases where the Employer's right to withdraw from this Contract is established in relation to the breach of the Contractor's obligations, it is agreed, contrary to Section 2002 (1) of the OZ that the right to withdraw from the Contract may be exercised not without undue delay, but within a period of 3 years.
- 32.12 The Parties agree that in relation to the procedure under Article 32.5.1 herein it is not conclusive whether the amount of the contractual penalties in accordance with the said article was reduced or increased for any reason, in particular due to a court ruling.

### **33 TERM OF THE CONTRACT**

- 33.1 The Contractor undertakes to implement the Contract Object in a proper manner and hand it over to the Employer in accordance with the Programme.

**34 RESERVED CHANGE OF THE CONTRACTOR**

- 34.1 In accordance with the provisions of Section 100 (2) of the PPA, the Employer reserves to change the Contractor during the implementation of the Contract Object in the event that the Contract with the Contractor is terminated for any reason whatsoever.
- 34.2 If the Contract is terminated, the Employer is entitled to enter into a contract for the performance of the public contract with a new contractor under terms and conditions specified herein below and provided that the new contractor agrees to this change. In accordance with the decision made by the Employer with regard to the current status of the Contract performance, the new contractor shall assume the rights and obligations arising from the Contract with the Contractor, i.e. the new contractor shall assume the rights and obligations under the Contract concluded with the Contractor in its entirety, except for changes explicitly indicated in this Article as permitted changes to the Contract, or shall perform the remaining scope of performance in accordance with its tender submitted in the Procurement Procedure if such a remaining scope can be clearly determined. The original contractor shall cooperate with the new contractor to the extent necessary for entering into the contract with the new contractor in order to continue performing work to implement the Contract Object.
- 34.3 In the event of a change of the contractor, there may be a change of persons through whom the contractor demonstrated compliance with the qualification criteria in the Procurement Procedure, or other person; however, always in a manner meeting the qualification criteria specified in the Procurement Procedure or without the change affecting the ranking of participants in the Procurement Procedure (i.e. such a change will not deform the Procurement Procedure). In the event of a change of the contractor, the Employer shall decide whether the Contract Object will be completed at the price agreed with the existing contractor or at the price offered in the tender submitted in the Procurement Procedure by the participant who ranked second in accordance with Article 3434.5 herein. Changes made under this Article are permitted changes to the Contract.
- 34.4 In the event of termination of the participation of any of the contractors in the case of joint participation of several contractors, the Customer is entitled to enter into a contract with the remaining contractors, if the remaining contractors:
- 34.4.1 continue to be able to provide the performance under the Contract in the full scope;
  - 34.4.2 continue meeting the qualification criteria set out in the Procurement Procedure,
  - 34.4.3 the change reserved under this Article 3434.4 herein is without adverse prejudice to the evaluation of tenders submitted in the Procurement Procedure, and

34.4.4 the change reserved under this Article 34.4.4 herein is without prejudice to the ranking of the participants in the Procurement Procedure (i.e. such a change will not deform the Procurement Procedure).

In this case, these remaining contractors undertake to conclude an amendment with the Employer without undue delay with such amendment specifying the above. In the event that the remaining contractors fail to meet the qualification criteria set out in the tender documentation for the Procurement Procedure or fail to assume the rights and obligations under the Contract in full except for permitted changes to the Contract, the Employer may enter into a contract in the order of the tender ranking with the second or the next participant in the Procurement Procedure in the order of the tender ranking in accordance with the rules specified under this Article 34 herein.

34.5 In the event of the Contract termination in accordance with Article 32 herein or in accordance with the PPA and/or OZ, the Employer is entitled to conclude a contract with the second participant in the order of the tender ranking in the Procurement Procedure which preceded the conclusion of the Contract. The Employer will not conduct a new tender evaluation but will make use of the tender ranking in the Procurement Procedure. However, the Employer shall evaluate compliance with the terms and conditions of the participation, unless he did so in the Procurement Procedure in order to establish whether mandatory reasons for excluding a participant from the Procurement Procedure in accordance with the provisions of Section 48 of the PPA are not met (hereinafter referred to as "**reasons for which a contract with the second-ranked participant could not be concluded**"). If there are reasons for which the contract with the second-ranked participant in the Procurement Procedure, which preceded the conclusion of the Contract, cannot be concluded, the Employer may contact the contractor who ranked third. The second-ranked, or the next-ranked participant shall meet the terms and conditions for concluding the contract in accordance with the Employer's Requirements.

34.6 In the event that the Contractor has partially implemented the Contract Object and the termination of the Contract does not affect this part of the provided performance, the contract with the second-ranked or the next-ranked participant will be concluded solely for the remaining part of the Contract Object, if such a part is separable and the adequate price may be derived from the participant's tender. The costs required to complete the Contract Object shall be estimated by an independent expert appointed by the Employer from the list of court-certified experts. The parts of the Contract Object implemented by the original contractor shall be kept in the wording of the new contract and the new contract will stipulate whether they:

34.6.1 were completed and handed over by the Contractor, or

34.6.2 were processed or partially implemented, including the scope to which they were processed or implemented; or

34.6.3 were not performed.

This procedure will define the remaining scope of the Contract Object so as to comply with the scope of work to be performed to complete the Contract Object. Such a change is a permitted change to the contract.

34.7 The procedure under this article is the Employer's right, not its obligation, and it cannot be legally enforced.

## **35 PROTECTION OF INFORMATION**

35.1 The Parties shall maintain confidentiality of the Contract, including all its appendices. The Parties shall also maintain confidentiality in relation to the information they learn during the implementation of the Contract Object and which is related to the subject of the Employer's business.

35.2 The provisions of the preceding article shall not apply to the disclosure of:

35.2.1 information to such persons and to the extent necessary to perform obligations arising from this Contract;

35.2.2 information that is in public domain, unless disclosed as a result of a breach of obligations under this Contract;

35.2.3 information if required by Legal Regulations.

35.3 If personal data is processed in the sense of Act No. 110/2019 Sb., on the processing of personal data, as amended, during the performance of the Contract, the Contractor shall comply with all obligations arising from this Act and in the event that a consent of the data subject is required, the Contractor shall seek such a consent so as to provide such personal data to the Employer. For the avoidance of doubt, it is understood that a breach of Legal Regulations in relation to personal data processing by the Contractor shall be considered as a breach of this Contract.

## **36 DISPUTE ADJUDICATION**

36.1 If the Contract, appendixes hereto or any potential amendments hereto includes an ambiguous concept or unclear provision, the Parties shall enter into negotiations in good faith with a view to reaching an agreement.

36.2 In the event of any dispute or disagreement between the Employer and the Contractor, arising out of or in connection with the Contract, the Parties undertake to make every effort to resolve such disputes by amicable settlement at the level of the representatives of the Parties referred to under Article 8 herein.

36.3 If the event that the Parties fail to resolve the disputes by a mutual agreement at the level of the representatives of the Parties within 28 days from the date of initiating the negotiations in accordance with Article 3436.2 herein, each Party is entitled to submit a written notice to the other Party. Such a notice

shall specify that a dispute exists, reasons for it and a proposal for resolving the dispute.

- 36.4 If the dispute is not settled in accordance with the previous article within 42 days from the date of submission of the written notice to the other Party in accordance with Article 3436.3 herein, the relevant Party is entitled to initiate proceedings before a court competent to adjudicate such a dispute. The Parties agree that the court with subject-matter and territorial jurisdiction shall be the court in accordance with the Employer's registered office. The Parties also agree that valid and effective regulations under the system of law of the Czech Republic shall be applied to court proceedings in accordance with the previous sentence herein. The subject-matter and territorial jurisdiction of the court and the rules of procedure for such proceedings shall also be agreed in the event that the Parties do not proceed in accordance with Sections 3436.2 and 3436.3 herein.
- 36.5 The provisions under Article 36 are without prejudice to the rights of the Parties under the Legal Regulations.

### **37 DELIVERABLES**

- 37.1 All documents to be delivered under this Agreement or in connection with it by one of the Parties to the other Party shall be delivered in one of the following manners:
- 37.1.1 data box;
  - 37.1.2 submission of the document in person;
  - 37.1.3 e-mail with a guaranteed electronic signature; or
  - 37.1.4 delivery by post or courier;
- and also in accordance with Appendix B5 Requirements for Correspondence and Meetings
- 37.2 The documents shall be delivered to the Employer to persons and to the address in accordance with Appendix B5 Requirements for Correspondence and Meetings
- 37.3 The documents shall be delivered to the Contractor to the persons and to the address below:

Address [TO BE COMPLETED BY THE CONTRACTOR]  
E-mail: [TO BE COMPLETED BY THE CONTRACTOR]  
Attention of: [TO BE COMPLETED BY THE CONTRACTOR]

Address [TO BE COMPLETED BY THE CONTRACTOR]  
E-mail: [TO BE COMPLETED BY THE CONTRACTOR]  
Attention of: [TO BE COMPLETED BY THE CONTRACTOR]

- 37.4 Any document shall be considered delivered:
- 37.4.1 if delivered by a Party via a data box, upon logging into the data box by the other Party after the delivery or at 10 a.m. on the next business day after the delivery to the data box of the Party, whichever occurs earlier;
  - 37.4.2 if delivered in person, once the addressee's representative (the other Party) confirms receipt of the document or, as the case may be, once the addressee's representative rejects the delivery;
  - 37.4.3 if delivered by e-mail with a guaranteed electronic signature, once the e-mail was sent to the e-mail address of the other Party, and if the e-mail was not sent on a business day or was sent after 4 p.m, it shall be considered delivered at 10 a.m. on the following business day;
  - 37.4.4 if delivered by post or courier service, once the representative of the other Party accepted the delivery, or once representative rejects the delivery.
- 37.5 Both parties are entitled to change the delivery details; in such a case, the other Party is obliged to deliver in accordance with the new delivery details starting from the day following the first business day when the change was announced to the Party.

### **38 FINAL PROVISIONS**

- 38.1 The Contract represent the full agreement of the Parties regarding the subject of performance of under this Contract. This Contract shall supersede all previous arrangements between the Parties, made orally or in writing, regarding the subject of performance under this Contract. Each Party declares that when executing this Contract, it did not rely on any assurances made by the other Party or any third party, with the exception of those assurances expressly specified in the Contract.
- 38.2 In the event of a conflict of the provisions herein with the provisions under any other agreement between the Parties regardless of whether concluded before or after the date of executing this Contract, this Agreement shall always take precedence over any agreement, unless the Parties expressly agree otherwise in writing.
- 38.3 This Contract is concluded in accordance with Section 2586 et seq. of the OZ. For the avoidance of doubt, it is understood that if the context of this Contract so requires, the Parties intended to derogate or completely exclude the relevant directory provisions of the OZ.
- 38.4 This Contract may only be amended by written amendments signed by both Parties. For the purposes of this Contract, the written form means only a document in paper form drawn up under the terms and conditions specified under Section 561 of the Civil Code with signatures of persons acting on behalf

of the Parties. The possibility of concluding the Contract and/or amendments hereto in the form in accordance with Section 562 of the Civil Code is excluded.

- 38.5 Nothing in this Contract is understood as a contract in favour of a third party. Therefore, no rights may be established by a third party under this Contract.
- 38.6 Unless specified otherwise herein, the Contractor assumes the risk of a change of circumstances in the sense of Section 1765 of the Civil Code, and will not claim resumption of negotiations concerning this Contract, even if there is a change of circumstances so significant that such a change results in gross disproportion in the rights and obligations of the Parties by disadvantaging one of the Parties through either a disproportionate increase in the cost of performance or a disproportionate decrease in the value of the subject of performance.
- 38.7 Unless specified otherwise herein, the Contractor may not assign any of its rights or claims under this Contract to any other person without a written consent of the Employer. The Contractor may not assign its contractual status (assign the Contract) to any third party. By way of derogation from this principal rule, it is agreed that:
- 38.7.1 if this Contract was concluded on the part of the Contractor by several suppliers, the partners of such a company may assign to each other their contractual position (assign the Contract) or part thereof if these companies meet the qualifications criteria required in the Procurement Procedure. The Contract shall be assigned upon submission of documents of the relevant company or companies and with a written consent of the Employer. The Employer undertakes not to refuse granting such a written consent without a material reason if the compliance with qualification criteria is documented.
- 38.8 The Contractor shall (as a guarantee for a possible entry of the Employer into the rights or the contractual position of the Contractor in relation to any Subcontractor, exclusively in the event of early termination of the Contract before Taking Over the Contract Object) make sure that the Subcontractors and/or a Subcontractor selected by the Employer to perform this Contract, have concluded contracts with the Employer, if so required by the Employer (in accordance with the procedure complying with the Legal Regulations, in particular the PPA), which will be identical (in terms of contractual arrangements, rights and obligations, payables and receivables) or more advantageous (for the Employer) than the contract in question or contracts between the Contractor and the Subcontractor and/or a written legal act made (in the event of the Employer's request and consent) by the Subcontractor with respect to and in favour of the Employer in order to ensure the exercise of a specific right, receivable or a claim by the Employer against such a Subcontractor (in the event of a breach of the Contractor's commitment or obligation towards the Employer under the Contract) in a form similar (in terms of contractual arrangements, rights and obligations, payables and receivables) or more advantageous (for the Employer) than the claim in question (right, receivable)

arising from the legal acts between the Contractor and the Subcontractor. The Contractor undertakes to perform its obligation arising from the previous sentence no later than 21 days from the date on which he receives the Employer's request for such a conclusion.

38.9 If any of the provisions herein is or becomes invalid, ineffective or unenforceable, this invalidity, ineffectiveness or unenforceability shall not affect other provisions herein. The Parties undertake to replace the invalid or unenforceable provision as soon as possible with another provision which will be valid and enforceable and which will be similar in content to the invalid or unenforceable provision.

38.10 This Contract is executed in Czech and English. In case of doubt, the Czech wording of the Contract, including appendices hereto, shall prevail. If the Contractor believes that there are discrepancies between the Czech and English versions, he shall request the Employer to explain such discrepancies. Each Party shall keep two copies of the Contract. The Contract shall be executed in electronic form with electronic signatures of both Parties.

38.11 The Parties are subject to Act No. 340/2015 Sb., on the Special Conditions for the Effectiveness of Certain Contracts, the Disclosure of such Contracts and the Register of Contracts (Act on the Register of Contracts), as amended. The Employer declares that, if required by the above Act, the contract will be published in the register of contracts and will meet the related obligations. The Contractor declares that it agrees with this procedure and will provide all cooperation necessary to enable the Employer to meet all its obligations related to the publishing of this Contract in the register of contracts. In particular, the Contractor shall indicate those part of this Contract which shall be made invisible under the conditions of the Act on the Register of Contracts. If stipulated so by the Act on the Register of Contracts in accordance with this article, this Contract shall take effect upon its publication in the Register of Contracts. Otherwise this Contract shall enter into force upon signature by both Parties.

38.12 The following appendices form an integral part of the Contract:

38.12.1 PART II Contract Provisions

- II.a Contract Amendments
- II.b Contract termination and cost determination
- II.c Contractual penalties for non-compliance with values
- II.d Prices and Payment Conditions
- II.e Social responsibility requirements
- II.f Employer's Insurance
- II.g Contractor's Insurance
- II.h Guarantees
- II.i Contract Programme



- II.j Planning and Permitting

### 38.12.2 PART III Employers's Requirements

#### Scope of Work and Technical Requirements

- A1 Overall Scope of Works
- A2 Technical Specifications for Incinerator/Boiler
- A3 Technical Specifications for Flue Gas Treatment System
- A4 Technical Specifications for Turbine/Generator and Condensers
- A5 Technical Specifications for Auxiliary Equipment
- A6 Technical Specifications for Electrical Equipment
- A7 Technical Specifications for Control and Monitoring System (CMS)
- A8 General Technical Requirements for Process
- A9 Technical Specifications for Building
- A10 Spare and Wear parts
- A11 End of Assembly, Commissioning, and Testing
- A12 Training
- A13 Process and Design Data
- A14 Technical Conditions (frontpage)
  - A14.1 Welding and Inspection of Pressurized Parts
  - A14.2 Steel Constructions for Process
  - A14.3 Acoustic Noise and Vibrations
  - A14.4 Insulation and Cladding for Process
  - A14.5a Measurement Connections, Flue Gas/Air System
  - A14.5b Measurement Connections, Water/Steam System
  - A14.6 Instrumentation for Process
  - A14.7 Documentation
  - A14.8 Identification and Labelling of Components
  - A14.9 Pressure Vessels, Tanks and Piping
  - A14.10 Standard for Staircases and Galleries
  - A14.11 Fibre-Reinforced Plastic (FRP) and Plastic Welds
- A15 Concept Diagrams for Process (Cover Page)
  - A15.1 Concept Diagram, Incinerator/Boiler system

- A15.2 Concept Diagram, Flue Gas Treatment
- A15.3 Concept Diagram, Water/Steam Cycle and DH Connection
- A15.4 Concept Diagram, Waterflows
- A16 Concept Diagrams for Electrical System (Single line diagram)
- A17 Concept Diagram for Automation (CMS Topology)
- A18 Limits of Supply
- A19 District Heating
- A20 Procedure for Guarantee Tests
- A21 Option
- A22 Safety in Design

#### Administrative Requirements

- B1 Project Organisation
- B2 Requirements for Health, Safety, and Environment
- B3 Requirements for Planning and Reporting
- B4 Requirements for Notifications, Variations and Deviations
- B5 Requirements for Correspondence and Meetings
- B6 Site and Working Conditions
- B7 Requirements for Quality
- B8 Component numbering system (KKS)

#### Reviewable Project and Design Data

- C1 Reviewable Project and Design Data

#### Drawings

- D1 Drawings of project
- D2 Illustrations from 3D model
- D3 3D model of project
- D2 Site plan

#### External Interfaces

- E1 External Utilities Specifications
- E2 Quality of Water Flows
- E3 Specifications for Employers Consumables
- E4 Specifications for Employer's existing CCTV System

- E5 Single Line Diagram for Employer's Existing Plant
- E6 R2 Switchboard of Employer's Existing Plant
- E7 Waste hopper drawings for Existing Plant
- E8 Approved waste types for Employer's Existing Plant
- E9 Specifications for Employer's existing CEMS

Subcontractors

- F1 Subcontractors

38.12.3 PART IV Contractor's Tender

Contractor's Tender

- Contractor's Tender
- Copy of VAT Contractor's registration

**The Parties declare that they have read this Contract, they agree with its content and in witness whereof they attach their signatures.**

**Employer**

In [TO BE COMPLETED]  
on [TO BE COMPLETED]

**Contractor**

In [TO BE COMPLETED BY THE CONTRACTOR ]  
on [TO BE TO BE COMPLETED BY THE  
CONTRACTOR ]

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

[TO BE COMPLETED]

.....  
**[TO BE COMPLETED BY THE CONTRACTOR]**

[TO BE COMPLETED BY THE CONTRACTOR]