**HEADS OF TERMS**

**FOR**

**LICENCE AND BASIC ENGINEERING AGREEMENT**

**RELATED TO**

**STEAM GENERATION USING REFINERY WASTE HEAT, INDUSTRIAL HEAT PUMP AND COMPRESSORS (MVR) TECHNOLOGY**

These Heads of Terms set out the principal terms and conditions required by Public Company ORLEN Lietuva (hereinafter – the Owner) for the licence and basic engineering agreement (“**Agreement**”) related to Steam generation using Refinery waste heat, industrial heat pump and compressors (MVR) (“**Licensed Technology**” – including proprietary equipment and catalysts/adsorbents (if any)) that the Owner contemplates to apply in Steam Production Unit (“**Unit**”). The Unit will be built by an EPC contractor selected by the Owner in a dedicated tender as a part of Steam generation using Refinery waste heat, industrial heat pump and compressors (MVR) (“**Project**”).

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| **Heads of Terms** |
| **Definitions:**  **“Technical Information”** means any information, and know-how, including but not limited to Basic Design Package, process design package, data, plans, specifications, flow sheets, drawings, including but not limited to, instructions, technical assistance services and similar information contained within, or relating to design specifications, applicable to the Licensed Technology, which is owned or validly licensed by Licensor and which is necessary for the engineering, procurement, construction commissioning, start-up, testing, maintenance and/or operation of the Unit (or any part thereof), as well as subject matter of patent rights; |
| 1. **Subject of the Agreement** |
| * 1. The Agreement shall cover all Licensor’s services necessary for the Owner to execute and operate the Unit, in particular:   2. basic engineering services, including the delivery of basic design package (“**Basic Design Package**”);   3. granting of licence (“**Licence**”) – not applicable;   4. providing engineering and technical services during the execution phase (EPC) of the Project (including detailed designs reviews, participation in HAZOP and 3D-Model sessions, trainings, on-site services from mechanical completion until successful performance tests, on-going consultations); and   5. providing additional advisory services after PAC of the Unit (only if requested by the Owner; such services may be subject of a separate agreement).   6. Not applicable   7. The Agreement shall provide for a clear change order procedure upon which the Owner will be entitled to order changes to the scope of services. |
| 1. **Agreement structure** |
| * 1. The Owner prefers the Agreement to be a single contract, however, the split into several contracts (e.g. licence agreement, engineering agreement, and technical services agreement) is also allowed. In the latter case, however, there shall be a side agreement connecting the separated contracts. |
| 1. **Licence grant – not applicable** |
| * 1. Licence shall be non-exclusive, irrevocable and perpetual.   2. Licence shall be effective from the Agreement date.   3. Licence shall cover the right to use the Technical Information and all underlying intellectual property rights for the purpose of ("**Purposes**”):   4. designing, engineering, construction, putting into operation, operation, maintenance, overhaul and repair of the Unit;   5. reconstruction, modification, extension and revamping of the Unit;   6. application, implementation, use of the Licensed Technology in the Unit;   7. manufacturing, using and selling, offering for sale, exporting and putting on the market the products produced in the Unit in the whole world without any restrictions, whether temporal, quantitative or other, by the Owner itself or through third parties;   8. conducting research activities concerning the Unit.   9. The Licence shall also cover Licensor's improvements disclosed to the Owner and additional paid-up capacity (once fully paid) as well as the Owner’s right to use Licensor’s proprietary equipment and catalysts (if any).   10. The Owner shall have the right to allow the EPC contractor, other contractors and/or suppliers (including scientific or educational institutions) to use the Licence to the extent necessary to perform any activities mentioned in article 3.3 above. |
| 1. **Copyrights – not applicable** |
| * 1. The Licensor shall warrant that it will hold a valid right to use any copyrightable item provided to the Owner under the Agreement, and the right to extend that right to the Owner.   2. The Licensor shall grant the Owner a non-exclusive, irrevocable, perpetual right (licence), without any limitations in time and territory (within the whole world), to use any copyrightable item provided to the Owner under the Agreement for the Purposes, including but not limited to the following fields of exploitation: storing, registering and multiplying on any carriers (including media storage) and in any format, reproducing in any number of copies, printing, distributing copies, displaying, introducing to an IT network and making it available there for simultaneous use by an unlimited number of users, use in court or administrative proceedings, exhibiting, displaying or otherwise making available to third parties, use for carrying out further works, including research, structural, construction, technological and other works related to the business activity of the Owner.   3. The licence shall be granted with the effect from the delivery to the Owner of each copyrightable item, in particular each part of Basic Design Package.   4. The Owner shall have the right to allow the EPC contractor, other contractors and/or suppliers to use any copyrightable item provided to the Owner under the Agreement for the Purposes.   5. The Licensor shall warrant that no personal (moral) rights will be exercised against the Owner, its EPC contractor, other contractors and/or suppliers, as a result of the use of any copyrightable item provided to the Owner under the Agreement.   6. For the avoidance of doubt, the Licensor shall expressly agree that the Owner is allowed to use, dispose of and consent to use any potential derivative works which may be created by the Owner, its EPC contractor, other contractors and/or suppliers in connection with the Purposes.   4.7. The ownership of the carriers on which each copyrightable item is fixed or recorded passes to the Owner for no additional remuneration upon the delivery of each such carrier to the Owner. |
| 1. **Remuneration** |
| * 1. The remuneration of the Licensor shall comprise:, Engineering Fee and Service Fee.   2. Licence Fee – not applicable:  1. lump-sum remuneration; 2. production up to 110% of design capacity (initial paid-up capacity) shall not be subject to additional remuneration; 3. production in excess of the initial paid-up capacity shall be subject to additional remuneration the payment of which increases the right to produce products above the initial paid-up capacity during the whole period of the Licence (additional paid-up capacity); 4. no running royalties; 5. no escalation; 6. License Fee shall be payable in the following portions:    1. 25% of the Licence Fee - after the Basic Design Package is delivered to the Owner and a Handover Acceptance Statement is signed confirming that the Basic Design Package is complete and in compliance with the Agreement (final version accepted by the Owner);    2. 15% of the Licence Fee – after signing of the EPC contract;    3. 50% of the Licence Fee - after carrying out the performance tests and signing a protocol evidencing the successful completion of such tests;    4. 10% of the Licence Fee - after the lapse of the Performance Standard Period and signing a protocol evidencing that the Performance Guarantees have been maintained throughout this period.    5. Engineering Fee: 7. lump-sum remuneration; 8. no escalation; 9. shall cover the following services during the BDP phase of the Project:    1. kick-off meeting;    2. PFD and P&ID review meetings;    3. preparation and delivery of Basic Design Package; and    4. other services which may be required till BDP delivery according to scope of work 10. shall also cover the following services during the execution phase (EPC) of the Project:     1. services related to engineering (such as mandatory reviews of detailed design documentation);     2. trainings .   Such services (article 5.3 d)) shall be priced separately. Remuneration for performance of such services shall not exceed value of last payment of Engineering Fee to be paid after carrying out Performance Tests.   1. no portion of Engineering Fee paid upon Agreement date and/or Kick-Off-Meeting; 2. Engineering Fee shall be payable in the following portions:    1. 20% of the Engineering Fee - after the Owner receives the PFD (including H&MB) and a protocol is signed confirming that the PFD is complete and in compliance with the Agreement;    2. 20% of the Engineering Fee - after the Owner receives the P&ID and a protocol is signed confirming that the P&ID is complete and in compliance with the Agreement    3. 30% of the Engineering Fee - after the Basic Design Package is delivered to the Owner and a protocol is signed confirming that the Basic Design Package is complete and in compliance with the Agreement (rev 0);    4. 20% of the Engineering Fee - after the Basic Design Package is delivered to the Owner and a protocol is signed confirming that the Basic Design Package is complete and in compliance with the Agreement (final version accepted by the Owner);    5. 10% of the Engineering Fee - after carrying out the performance tests and signing a protocol evidencing the successful completion of such tests.    6. Service Fee: 3. shall cover services during the execution phase (EPC) of the Project (except for the services already covered by the Engineering Fee); 4. reimbursable scheme based on daily/hourly rates as per man-days/hours actually performed; 5. invoiced on a monthly basis based on timesheets approved by the Owner;    1. Payment terms: 6. the invoices issued by Licensor shall be paid within 90 calendar days after execution of relevant scope of work and receiving the invoice including required supporting documents. 7. the Owner will not provide financial instruments to secure its payment obligations.    1. Invoice must be prepared on the basis of approved Work Handover & Acceptance Statement and, transferred to the Owner for payment as soon as possible, however always within 1 (one) business day from the date of approval of the respective Handover & Acceptance Statement. Where the invoice is presented to the Owner before the approval of the Work Handover & Acceptance Statement by the Parties, the term of payment under such invoice shall commence on the date of approval of the Handover & Acceptance Statement.    2. The Licensor shall present invoices for approval by the Owner in the form satisfactory to the Owner enclosed with all supporting documentation. Any costs associated with the submission of appropriate invoice shall be for the Licensor’s account.    3. In addition to the information required by the general VAT invoicing procedure, all invoices must contain the following details: 8. Owner’s name and registered office address; 9. Owner’s company code (166451720) and VAT number (LT 664517219); 10. Licensor’s name and registered office address; 11. Licensor’s bank details; 12. Licensor’s VAT number, company code or any other identification number; 13. Invoice issue date, series and number; 14. Agreement number; 15. Order number; 16. Number of the Work Handover & Statement approved by the Parties; 17. Owner's project number (if applicable); 18. General name of Works and description of performed Works; 19. Work completion date; 20. Total invoiced amount, exclusive of VAT; 21. VAT rate and VAT amount in the national currency; 22. For purchases of services (Works) from companies registered in EU which are exempt from VAT or subject to 0 % VAT rate or where the Owner has the duty to calculate (deduct) and pay VAT, the invoice must include a reference to the respective provisions of the European Council Directive 2006/112/EEC or to any other grounds for exemption from VAT or 0 % VAT rate.   5.10. The Parties agree and do not object that all invoices for the Works performed under this agreement shall be issued in electronic format and sent to the Owner. Such invoices shall be considered original and hard-copy invoices shall not be sent, unless requested separately in writing. In case of change in the invoice delivery address, the Party whose address has changed must give the other Party at least 5 (five) days' prior written notice. The Parties shall continue handling invoices in a due manner as prescribed by relevant laws, and ensure the authenticity, integrity and legibility of electronic invoices.  5.11. When making payments under the Agreement each Party shall cover its own banking charges. |
| 1. **Improvements** |
| * 1. The Owner will have the right to make improvements to the Licensed Technology and will be free to apply the Owner’s improvements in relation to the Unit.   2. The rights to improvements developed by the Owner or for the Owner by its employees or contractors (other than the Licensor) shall vest in the Owner. The Licensor will be granted a licence to use the Owner’s Improvements. No guarantee, however, will be given and no representation will be made by the Owner in relation to the Owner’s improvements.   3. For a period of 10 years after the Agreement date, but not less often than once each calendar year, representatives of the Licensor and the Owner shall exchange information concerning improvements developed.   4. The Licensor shall provide the Owner as soon as reasonably practicable, however not later than 6 months after completion of works on any improvement, with all information regarding such improvement.   5. All the Licensor's improvements disclosed to the Owner will become a part of the Technical Information and the Owner will have the same rights, licences and obligations with respect thereto as are granted to the Owner under the terms of the Licence (including the right to make further improvements).   6. The Owner will be entitled but not obliged to implement the Licensor’s improvements.   7. The Owner’s improvements shall be considered confidential information and the Licensor shall not disclose it to third parties except to those of its licensees which have agreed to disclose improvements for the benefit of the Licensor and the Owner and which have undertaken a written obligation of confidentiality.   8. The provisions regarding payment for improvements shall be reciprocal. If improvements require additional fee, the payments terms as per article 5.5 and 5.6 shall apply. |
| 1. **Representations and warranties** |
| * 1. The Agreement shall contain standard representations and warranties typical for transactions related to License and Basic Design.   2. Additionally, the Licensor shall represent and warrant to the Owner that:  1. no claim is being assessed and no litigation, arbitration or administrative proceedings are in progress, pending or threatened against it or any of its assets, including but not limited to the Technical Information and underlying intellectual property rights, that will or might have an adverse effect on the ability of the Licensor to perform any of its obligations under the Agreement; 2. it is not the subject of any other obligation, compliance with which will or is likely to have an adverse effect on the ability of the Licensor to perform any of its obligations under the Agreement; 3. no proceedings or other steps have been taken and not discharged (nor threatened) for its winding-up or dissolution, or for the appointment of a receiver, administrative receiver, administrator, liquidator, trustee or similar officer in relation to any of its assets or revenues; 4. the Licensor has all rights, power and authority to grant the Licence and other rights in relation to the Technical Information and underlying intellectual property rights to the Owner, as well as to grant the right to perform the copyrights under the Agreement; 5. the Technical Information and underlying intellectual property rights, as well as the title to any part of the works vested in the Owner under the Agreement, are free and clear, and remain free, from any pledge, mortgage, easement, lien, charge, security or interest, and any and all other rights of third parties, and any and all encumbrances of any kind; 6. performance of the rights granted under the Agreement, in particular the Technical Information and underlying intellectual rights, and the use of the Technical Information and of the copyrightable items covered by the copyrights, in accordance with the Agreement does and will not violate any patent or other intellectual property rights of third parties; 7. the Technical Information disclosed and provided to the Owner pursuant to the Agreement is sufficiently complete and correct to (i) permit a competent EPC contractor to design, engineer, procure, construct, assemble, commission and complete the Unit and put it into operation, (ii) permit the Owner to operate and maintain the Unit, as well as to manufacture and commercialise the products; and 8. no patent rights (or other exclusive intellectual property rights) and proprietary technical information other than the Technical Information and underlying intellectual property rights are necessary for the designing, engineering, construction, putting into operation, operation and maintenance of the Unit, application, implementation, use of the Licensed Technology in the Unit as well as for manufacturing the products produced therein using and selling, offering for sale, exporting and putting on the market the products produced in the Unit. |
| 1. **Defence of suits and indemnification** |
| * 1. The Licensor will indemnify, keep indemnified, hold harmless and keep held harmless the Owner from and against any and all suits, losses and liabilities that may be brought against the Owner, or the Owner may incur, or for which the Owner may become liable, or which it may be required to repair, arising out of or resulting from any claim that the Technical Information, underlying intellectual property rights, or any use of them by or on behalf of the Owner for the purposes of and/or within the limits of grants under the Agreement, infringes the intellectual property rights of any third party (the “**IP Claim**”).   2. In the event of an IP Claim the Licensor will:   3. settle, at its own expense, any suit, action, proceedings and/or cause of action brought against the Owner for such an infringement of any intellectual property right owned and/or controlled by a third party; and   4. repair or redress every loss or damage, and in particular cover all the costs and expenses, including the reasonable costs of legal counsel, which the Owner incurred as a result of the IP Claim.   5. If, in connection with an IP Claim, the Owner is or will be prevented from operating or maintaining the Unit, then the Licensor will procure for the Owner the rights necessary to avoid the IP Claim. If the Licensor is unable to procure the rights necessary to avoid the IP Claim, then the Licensor will determine an alternative configuration in the design to avoid the IP Claim, provide revised engineering design specifications for such alternative design, and cover the Owner's reasonable and documented costs of implementing such alternative configuration, in each case so that the intellectual property rights of any third party are no longer infringed (but not so as to adversely affect the functionality, performance or fitness for purpose of the Unit).   6. The defence of suits and indemnification shall not be limited in time. |
| 1. **Performance Guarantees, Performance Tests** |
| * 1. The Licensor shall warrant and undertake that the Unit will meet the performance guarantees specified in the Agreement (“**Performance Guarantees**”). The Performance Guarantees shall (based on their levels and/or nature) be divided into:   2. minimum Performance Guarantees the nonachievement of which will result in make good obligation (mandatory fix-it) of the Licensor; and   3. other Performance Guarantees the nonachievement of which will result in the Owner’s right to charge liquidated damages.   4. The achievement of the Performance Guarantees shall be examined during the performance test(s) ("**Performance Test(s)**”) carried out in accordance with the rules specified in the Agreement provided that:   5. the only condition required for the Performance Guarantees to be valid will be the conformity of the Unit with the Basic Design Package with the exception of deviations which are:      1. approved in writing by the Licensor;      2. required by applicable laws and/or permits, consents and authorizations issued by the competent authorities;      3. permitted alternatives or substitutions set out in the Basic Design Package; or      4. constitute deviations in valve and/or piping specifications, provided that the pressure, temperature and materials of construction requirements set out in the Basic Design Package are met.   6. Performance Test(s) will be conducted following the Owner’s notice of readiness to carry them out at the time mutually agreed by the parties;   7. Performance Test(s) will be conducted over a continuous period of 72 hours;   8. if all Performance Guarantees have been met, then the Parties will sign relevant Performance Test protocol; and   g) if, at the conclusion of the Performance Test(s), the results obtained indicate that the Unit did not and/or will not be able to meet the Performance Guarantees, then, as soon as reasonably practicable, however not later than 2 months after the failure of the Performance Test(s), the Licensor will provide the Owner with its assessment of the reason(s) for not being able to meet the Performance Guarantees and the rectification plan (including the schedule of works to be performed), unless agreed otherwise with the Owner. |
| 1. **Remedies** |
| * 1. Late delivery of the Basic Design Package   Late delivery of the Basic Design Package shall be subject to liquidated damages in the amount of [●]% of the Engineering Fee for each full week of delay (no grace period allowed). The total aggregate amount of the liquidated damages shall not exceed [●]% of the Engineering Fee. Payment of the liquidated damages shall not relieve the Licensor from its obligation to deliver the Basic Design Package. If the delay exceeds [●], the Owner may terminate the Agreement for Licensor’s default.   * 1. Failure to meet minimum Performance Guarantees (make good obligation/mandatory fix-it)   If the minimum Performance Guarantees are not met during first and/or second Performance Test, and if such failure is due to reasons attributable to the Licensor, then, in consultation with the Owner, the Licensor will recommend changes, corrections, modifications or additions to, or in the operation of, the Unit which it believes are necessary to meet the minimum Performance Guarantees. The Licensor will bear the costs of:   1. reperformance or re-engineering of the Basic Design Package and/or detailed engineering (without limitations of liability); and 2. services, equipment and installation necessary to implement such changes (up to 50% of the sum of the Engineering Fee and the Licence Fee).   After implementing the changes, corrections, modifications or additions as requested by the Licensor, the Owner will notify the Licensor about its readiness to carry out the Performance Test(s) again during a period of three hundred and sixty (360) days after the Owner receives the Licensor’s rectification plan, or as soon as practically possible in case the implementation of the Licensor’s rectification plan was not possible within the deadline above.  If the minimum Performance Guarantees are not met during third Performance Test, and if such failure is due to reasons attributable to the Licensor, then the Owner may, at its sole discretion:   1. require the Licensor to recommend further changes, corrections, modifications or additions to, or in the operation of, to the Unit in order to meet the minimum Performance Guarantees (the above rules pertaining to rectification plan apply accordingly); or 2. terminate the Agreement.    1. Failure to meet Performance Guarantees other than minimum Performance Guarantees (the Owner’s right to charge liquidated damages)   If the minimum Performance Guarantees are met, but the other Performance Guarantees are not met during the Performance Test(s), and if such failure is due to reasons attributable to the Licensor, then:   1. in the event of first and/or second Performance Test, at the Owner’s discretion, the Licensor will:    * 1. recommend changes, corrections, modifications or additions to, or in the operation of, the Unit which it believes are necessary to meet all the Performance Guarantees, and bear the costs of:         1. reperformance or re-engineering of the Basic Design Package and/or detailed engineering (without limitations of liability); and         2. services, equipment and installation necessary to implement such changes (up to 40% of the sum of the Engineering Fee and the Licence Fee); or      2. pay liquidated damages. 2. in the event of third Performance Test, the Licensor will pay liquidated damages. |
| 1. **Performance Standard Period** |
| * 1. The Owner requires that some specific Performance Guarantees (depending on the Licensed Technology) shall be maintained during 24 months from PAC of the Unit (“**Performance Standard Period**”).   2. During Performance Standard Period Licensor shall provide, to the Owner, its representatives to investigate any problems that the Owner may encounter during the operation of the Unit. In case the problems are caused due to the Licensor fault then presence of Licensor`s representatives will be at no costs to the Owner.   3. If, throughout Performance Standard Period, the Owner encounters difficulties in maintaining the Performance Guarantees, the Owner may request conducting additional Performance Test(s). Notwithstanding the foregoing, additional Performance Test(s) shall be conducted at the end of Performance Standard Period in order to verify whether Performance Guarantees are maintained.   4. If the above mentioned additional Performance Test(s) show that the Performance Guarantees are not maintained, and if such failure is due to reasons attributable to the Licensor, then, in consultation with the Owner, the Licensor will recommend changes, corrections, modifications or additions to, or in the operation of, the Unit which it believes are necessary to maintain the Performance Guarantees. For this purpose, the Licensor as soon as reasonably practicable, however not later than 2 months after the failure of the Performance Test(s) will provide the Owner with its assessment of the reason(s) for not being able to maintain the Performance Guarantees and the rectification plan (including the schedule of works to be performed). The Licensor will bear the costs of:  1. reperformance or re-engineering of the Basic Design Package and/or detailed engineering (without limitations of liability); and 2. services, equipment and installation necessary to implement such changes (up to 30% of the sum of the Engineering Fee and the Licence Fee).   After implementing the changes, corrections, modifications or additions as requested by the Licensor, the Owner will notify the Licensor about its readiness to carry out additional Performance Test(s) again during a period of three hundred and sixty (360) days after the Owner receives the Licensor’s rectification plan, or as soon as practically possible in case the implementation of the Licensor’s rectification plan was not possible within the deadline above.  If the Performance Guarantees are still not maintained, and if such failure is due to reasons attributable to the Licensor, then the Owner may require the Licensor to recommend further changes, corrections, modifications or additions to, or in the operation of, to the Unit in order to maintain the Performance Guarantees (the above rules pertaining to rectification plan apply accordingly).  The above procedure applies until the Performance Guarantees are maintained, unless the Owner instructs otherwise. |
| 1. **Termination** |
| * 1. The Owner shall have the right to terminate the Agreement at any time, at its full discretion, without stating any reasons by giving a notice to the Licensor to that extent (“**Termination for Convenience**”). In this case:  1. the Agreement terminates on the date falling 21 days after the date on which the Licensor receives the notice; 2. the Licensor will be paid all the amounts that became due and payable by the termination date; 3. the Owner will have no rights to use the Licence unless, at the Owner’s option, it will pay the remaining portions of the Licence Fee; 4. the Owner, upon request, will return Licensor’s documentation to the Licensor (unless the Owner retains its rights to use the License as per point c); and 5. Licensor, upon request, will return the Owner’s documentation to the Owner.    1. The Owner shall also have the right to terminate the Agreement for the Licensor’s default in the following events (“**Termination for Default**”): 6. a failure by the Licensor to comply with any applicable laws, permits, consents or authorisations issued by the competent authorities; 7. a breach of a representation and/or a warranty made or given by the Licensor in the Agreement; 8. a failure by the Licensor to remedy a breach of its material obligations under the Agreement notified to the Licensor by the Owner, and not remedied within additional time limit specified by the Owner which cannot be less than 21 days; 9. a failure by the Licensor to remedy the failure to meet minimum Performance Guarantees (make good obligation/mandatory fix-it) in accordance with the Agreement; 10. an insolvency event suffered by the Licensor, i.e. one or more of the following events occurs;     1. any order by a court that the Licensor will be wound up, or a resolution is adopted on a voluntary winding-up of the Licensor;     2. any receiver, administrator or examiner is appointed in respect of the Licensor under insolvency procedure; or     3. any voluntary arrangement is made for a composition of debts under insolvency procedure, or a scheme of arrangement is approved under any applicable insolvency legislation in respect of the Licensor. 11. the Licensor subcontracts part of the services under the Agreement or assigns the Agreement without the required prior written consent of the Owner; or 12. in the event that the freedom-to operate research conducted under the diligence of the Owner by professional patent attorneys shows that, in contradiction to the Licensor’s representations, the use of the Technical Information would infringe third parties’ rights.     1. In the event of a Termination for Default, the Owner may at its discretion: 13. continue the Project, and in this case:     1. the Owner shall pay the Licensor all the amounts that became due by the termination date;     2. the Owner will retain the Licence and rights granted under the Agreement and for the avoidance of doubt, such retention will also cover all improvements which by the date of termination have been disclosed to the Owner in accordance with the Agreement (upon payment of the remaining portion of the Licence Fee); and     3. the Owner will be entitled to claim compensation for losses incurred as a result of the termination. 14. discontinue the Project, and in this case: 15. the Owner will not retain the right to use the Licence under the Agreement; 16. the Licensor will reimburse the Owner for the paid portions of the Licence Fee and Engineering Fee; and 17. the Owner will be entitled to claim compensation for losses incurred as a result of the termination.     1. The Licensor’s right to terminate the Agreement for the Owner’s default shall be strictly limited to the following instance: 18. the Owner is late with the payment of any undisputed amounts due to the Licensor in accordance with the Agreement for at least seventy five (75) days, and fails to make such payment within an additional time limit of not less than one (1) month set by a Licensor’s written notice delivered to the Owner; 19. the Owner’s use of the Licence substantially outside of the scope permitted under the Agreement, not remedied within a period of ninety (90) days following receipt of the Licensor’s notice to remedy, specifying the type and nature of the Owner’s default.     1. In the event of termination of the Agreement by Licensor for the Owner’s default (as per article 12.4 above), the Owner will have the option of: 20. retaining the licence and rights granted under the Agreement upon payment of the remaining portions of the License Fee/Engineering Fee (if not fully paid at the date of termination). For the avoidance of doubt, such retention will also cover all improvements which by the date of termination have been disclosed to the Owner in accordance with the Agreement; or   b) not retaining the licence and rights granted under the Agreement and paying only the portions of the License Fee/Engineering Fee that accrued and became due and payable to Licensor before the date of termination in full settlement of the Licensor’s claims in relation to the early termination of the Agreement. |
| 1. **Total liability** |
| * 1. The Licensor's total liability in contract arising by reason of or in connection with the Agreement will, to the extent permitted by the applicable law, not exceed an aggregate total amount equal to the sum of 100% of the License Fee and 100% of the Engineering Fee.   2. The above liability limitation as per article 13.1 and any other contained in the Agreement will not limit or exclude the Licensor’s liability in the case of:  1. gross negligence or willful misconduct of the Licensor; 2. fraud or fraudulent misrepresentation; 3. any claims for death or personal injury if such are result of the Licensor’s negligence; 4. reperformance or re-engineering of the Basic Design Package under the Warranty; 5. infringement of third-party intellectual property rights (IP Claims); 6. the costs of reperformance or re-engineering of the Basic Design Package and detailed engineering, which have to be implemented to enable the Unit to meet the Performance Guarantees, unless incurred due to reasons for which the Licensor is not responsible; 7. any other categories of liability which cannot be limited or excluded by applicable law; 8. compensation of the the Owner from the insurance procured by the Licensor under the Agreement.    1. The Owner’s total aggregate liability for all reasons that may result from or arise by reason of or in connection with the Agreement will, to the extent permitted by the applicable law, not exceed an aggregate total amount equal to the sum of 100% of the License Fee and 100% of the Engineering Fee.    2. The above liability limitation as per article 13.3 and any other contained in the Agreement will not limit or exclude the Owner’s liability in the case of: 9. gross negligence or willful misconduct of the Owner; 10. fraud or fraudulent misrepresentation; 11. any claims for death or personal injury if such are result of the Owner’s negligence; 12. any other categories of liability which cannot be limited or excluded by applicable law; 13. payment of Licensor’s remuneration.     1. Subject to liability limitation carve-outs (articles 13.2 and 13.4 above) and with the exception for amounts of losses indemnified with the payment of liquidated damages, neither party will be liable to the other party under or in connection with the Agreement, whether in contract, tort (including negligence), strict liability or any other cause of action, for any loss of future margin, loss of anticipated profits, loss of use, opportunity, revenue, financing or business interruption, or for any indirect or consequential loss or damage that may be suffered by the other party in connection with or arising out of the Agreement.     2. Any insurance required by the Agreement or maintained by either party on its own behalf are not intended to and shall not in any manner limit the liabilities and obligations of one party to the other party arising from the performance or non-performance of the obligations under the Agreement. Any amount that is recovered under an insurance policy to meet any liability of the Licensor under the Agreement (and any amount that would have been recovered but for the Licensor’s breach of any requirement that proved necessary to receive insurance proceeds) will not count towards (and will not exhaust) the Licensor’s total limit of liability. |
| 1. **Warranty** |
| The Licensor shall warrant that the services and documentation, including the Basic Design Package, to be provided by Licensor under the Agreement will be fully compliant with the Agreement, will be free from defects, will be performed with the level of skill and care according to good industry practice, and that the Basic Design Package will be sufficiently complete and correct for an EPC contractor experienced in the petroleum refining, petrochemical and gas processing industries:   1. to prepare the detailed design for the Unit; 2. for the procurement of equipment and materials for the Unit; and 3. for construction, start up and operation of the Unit   in accordance with the design basis agreed by the parties under the Agreement (“**Warranty**”).   * 1. The Warranty shall be valid until two (2) years after the start-up of the Unit, but in no event longer than eight (8) years after the date of the Agreement (“**Warranty Period**”).   2. If a breach of the Warranty occurs, and the Owner notifies the Licensor thereof within the Warranty Period, the Licensor shall re-perform the portion of the services (including reperforming or re-engineering the Basic Design Package, if required) for which a breach has occurred, at Licensor’s expenses and risk, within reasonable time to be agreed by the parties. |
| 1. **Documentation review and acceptance** |
| * 1. The Owner shall have the right to review and submit its comments to any portion of the documentation provided by the Licensor under the Agreement.   2. The Agreement shall set forth an acceptance procedure that would enable the Owner to confirm that the Basic Design Package is complete and in compliance with the Agreement. |
| 1. **Subcontracting** |
| * 1. The Licensor may not entrust any part of the work under the Agreement to subcontractors without prior written consent of the Owner.   2. The Licensor shall remain fully liable for the actions and omissions of the persons and parties used by it to perform its obligations resulting from the Agreement as for its own actions and omissions. |
| 1. **Cooperation with the EPC contractor** |
| * 1. The Agreement shall:  1. allow for a novation thereof (in whole or in parts) to the EPC contractor (to the extent of: proprietary equipment/catalyst/adsorbents; Performance Guarantees and remedies for failure to achieve them);   b) provide for a possibility to execute a tripartite agreement with the EPC contractor regulating the coordination of interfaces between the Licensor and the EPC contractor resulting from the Agreement and the EPC contract. |
| 1. **Confidentiality** |
| * 1. The Agreement shall allow the Owner to disclose portions of Licensor’s Technical Information (in whole or in parts), without the Licensor’s consent, to its affiliates and third parties such as the EPC contractor, other contractors and/or suppliers (including PMC, advisors, scientific or educational institutions) in connection with the Project and/or Purposes.   18.2. Licensor is obliged to conclude relevant NDA(s) directly with preselected EPC bidders promptly after being notified by the Owner of their selection. Copy of such NDA shall be immediately provided to the Owner. For avoidance of doubt, Licensor is also obliged to address all further NDA(s) to be concluded with the potential vendors and subcontractors of EPC bidders. |
| 1. **Assignment/transfer of the Agreement** |
| * 1. The Licensor may not assign or transfer any rights or obligations under the Agreement without the Owner’s prior written consent.   2. The Owner shall be entitled to assign or transfer any rights or obligations under the Agreement to its affiliates and/or any future acquirer of the Project without the Licensor’s consent. |
| 1. **Governing law** |
| * 1. Any rights and obligations of the Parties not mentioned herein as well as any other mutual relations arising out of this Agreement shall be governed by laws of the Republic of Lithuania and other legal acts. The Parties agree not to apply the United Nations Convention on Contracts for the International Sale of Goods (Vienna, 1980). |
| 1. **Dispute resolution** |
| * 1. All disagreements and disputes arising out of or related to the Agreement shall be settled by mutual negotiations and, in case of failure to reach an agreement within a period of 30 (thirty) calendar days, the disputes and disagreements shall be referred to:      1. District Court of Vilnius City (or Vilnius Regional Court when pursuant to legal acts the case is subject to examination by Regional Court as the court of first instance) as prescribed by the law of the Republic of Lithuania, when the Contractor is an entity of the Republic of Lithuania, and the dispute amount does not exceed EUR 200'000 (two hundred thousand Euro).      2. Vilnius Court of Commercial Arbitration as prescribed by its rules when (i) Contractor is an entity of the Republic of Lithuania and amount in dispute exceeds EUR 200'000 (two hundred thousand Euro); or (ii) Contractor is a foreign entity. The number of arbitrators shall be 3 (three). The venue of arbitration proceedings shall be Vilnius, Republic of Lithuania. Substantive law of the Republic of Lithuania shall apply to disputes. The language of arbitration proceedings shall be Lithuanian with translation into English, if necessary. All procedural documents shall be sent to the email addresses of the Parties indicated in STC.   21.2. For the purpose of this Article, entity of the Republic of Lithuania shall be an entity/person with its office or place of residence registered in the Republic of Lithuania. |
| 1. **Taxes** |
| * 1. The Remuneration covers all taxes, fees, custom duties and other expenses imposed outside the Republic of Lithuania on the performance of any services and activities under this Agreement as well as on Licensor’s income.   2. The place of provision of the services specified in the Agreement for VAT is deemed to be the territory of Lithuania (according to Art. 44 of the Council Directive 2006/112/EC). Therefore, the Licensor in respect of such services shall be issuing invoices without any VAT with an annotation: "The reverse charge procedure". The Owner declares to be a taxable person in the meaning of VAT regulations, registered for these purposes under the VAT identification number LT664517219.   3. Licensor hereby confirms that its place of tax residency in the meaning of Double Tax Treaty between the Governments of Lithuania and \_\_\_\_\_\_\_\_\_ (‘DTT’) is located in \_\_\_\_\_\_\_\_\_. During the term of this Agreement Licensor is obliged to provide the Owner with an original of its current certificates of tax residency. Licensor shall promptly, not later than 7 days before the day of the first payment, provide the Owner with an original of its current certificate of tax residency. In addition, Licensor shall ensure that the Owner has been provided in advance of each next payment with the original of Licensor’s current certificate of tax residency. For the purposes of this Agreement the term ‘current certificate of tax residency’ shall be understood as tax residency certificate issued for Licensor by appropriate tax authority of its country:   a) less than twelve (12) months before respective payment date if the certificate does not contain the term of its validity or  b) which contains the term of its validity covering respective payment date.   * 1. If Licensor receives from the Owner income, which, in accordance with the applicable regulations, are subject to withholding taxation (*withholding tax*, WHT) in Lithuania (interest, dividends, royalties, etc.), Licensor shall distinguish such amounts of income from fee and shall indicate them in the invoice separately. In such cases Owner shall have the right to deduct from the payable amounts withholding taxes payable in Lithuania according to the applicable legislation.   2. Licensor shall immediately inform the Owner about any change of its data contained in its tax residency certificate(s) already possessed by the Owner (i.e. Licensor's name or country of its tax residency). In case of such change Licensor shall before the next payment date provide the Owner with the original of its current certificate of tax residency containing changed data. Provisions refers to failure by the Owner providing such certificate shall apply respectively.   3. Licensor hereby represents that:   a) it does not benefit from the exemption from income tax on the entirety of its income regardless of where it is earned,  b) it is the beneficial owner of any payments which are paid to it by the Owner under the Contract, which means that:   * it obtains receivables for its own benefit, including deciding independently about its purpose and bears the economic risk of loss of this receivable or part of it, * it is not an intermediary, representative, trustee or other entity legally or actually obliged to transfer all or part of the receivables to another entity, * it conducts a real business activity in the country of its seat and the receivables received are generated in connection with this business activity.   1. If any of Licensor's statements indicated above turns out to be false, Licensor shall reimburse the Owner of any costs incurred by the Owner or its representatives for Lithuanian tax authorities as a consequence of reliance on such statement.   2. Licensor shall cooperate with the Owner in order to help the Owner to fulfil the Lithuanian tax law requirements on which the right for using DTT decreased tax rates or tax exemption depend.   3. The Owner will furnish to Licensor confirmation of payment of tax paid by the Owner on behalf of Licensor based on the DDT: * annually by providing a copy of the certificate identifying that the appropriate tax relating to Licensor has been paid, * on Licensor’s written request – promptly after such payment by providing a copy of the certificate identifying that the appropriate tax relating to Licensor has been paid.   1. Any personal income taxes associated with Licensor's personnel shall be borne by Licensor. |
| 1. **Insurance** |
| * 1. The Licensor undertakes to hold a valid and paid third-party liability insurance (tort and contract) :   1) third-party liability insurance with guaranteed sum of at least EUR ….million per occurence, expanded to cover (at least 10% of BDP Fee but not less than 2.000.000,00 USD):  a) third-party liability for damages to the environment with guaranteed sum of at least EUR …… (to be proposed by Bidder) million per occurence (if there is a risk of damage to the environment),  b) third-party liability for damages caused by subcontractors with guaranteed sum of at least EUR….. per occurence (if the Licensor uses the services of subcontractors) – up to the full amount of clause 23.1 paragraph 1,  c)  the employer's third-party liability with guaranteed sum of at least EUR ……. (to be proposed by Bidder) per occurence,  2) the designer's third-party liability (at least 10% of BDP Fee)  The policy may be issued in a currency other than indicated above (basic currency), but the amount needs to be equivalent to the basic currency amount. |
| 1. **Personal data protection** |
| 24.1. The Parties hereby represent and warrant to each other that in performance of the present Agreement and discharge of their obligations assumed hereunder they are in strict compliance with all requirements of the applicable legislation of the European Union and the Republic of Lithuania regulating personal data protection.  24.2. The Parties hereby represent that in performance of the present Agreement none of them as the controller shall transfer the data to the other Party as a processor or joint data controller, whereas in case of any need to process or jointly control any personal data controlled by the other Party, the Parties shall conclude a separate agreement on personal data processing or joint control.  24.3. Business contacts, contacts of contractors, their full names, email addresses and phone numbers exchanged between the Parties for the performance of this Agreement shall be processed by each Party exclusively for the purposes of the performance/administration of the Agreement observing the requirements set forth in the General Data Protection Regulation (EU) 2016/679 (GDPR) and Law of the Republic of Lithuania on Legal Protection of Personal Data. |
| 1. **Anti–corruption provisions** |
| 25.1. Each of the Parties, including their affiliates and representative offices, confirms that in performance of the present Contract it shall exercise due diligence and shall comply with all legal provisions of the European Union and the Republic of Lithuania binding on the Parties within the scope of preventing corruption.  25.2. Each Party declares that it has implemented procedures for corruption prevention and conflict of interest management.  25.3. Each of the Parties certifies that acting in connection with performance hereof, whether directly or through any business entity controlled by or affiliated with the Parties, it shall comply with all requirements and internal regulations applicable to the Parties as regards standards of ethical conduct, prevention of corruption, settlement of transactions, costs and expenses in compliance with the law, conflict of interests, giving and accepting gifts, anonymous reporting, and clarification of irregularities.  25.4. The Parties ensure that in conclusion and performance of the present Contract none of them or their owners, shareholders, stockholders, members of the management board, directors and other staff members, subcontractors or other persons acting on their behalf have/has not made, proposed, promised, authorized to make and shall not make, propose, promise, or authorize to make any payment or another transfer constituting a financial or any other benefit directly or indirectly to any of the following:   1. any member of the management board, director or other staff member or agent of a given Party or of any business entity controlled by or affiliated with the Parties, 2. a public official understood as a natural person performing a public function within the meaning given to this term in the legal system of a country in which the present Contract is performed or in which the registered offices of the Parties or any business entity controlled by or affiliated with the Parties are located; 3. any political party, member of a political party or a candidate for a post in a state office; 4. any agent or intermediary in exchange for payment to anyone of the persons mentioned in (i)-(iii) above;   any other natural person or legal entity, whether directly or through any business entity controlled by or affiliated with the Parties, in order to obtain their decision or actions which may result in any privilege inconsistent with the law or for any other improper purpose, if such action breaches or would be in breach of the legislative of the European Union and the Republic of Lithuania within the scope of prevention of corruption.  25.5. The Parties undertake to immediately inform each other in writing about the cases of breaching provisions of the Anti-Corruption Clause. At the written request of any Party, the other Party undertakes to provide information and answers to reasonable questions of the other Party related to the performance of the Contract within the scope of the Anti-Corruption Clause.  25.6. Each of the Parties confirm that in performance of this Contract it shall enable each person acting in good faith to report breaches on an anonymous basis by e-mail [anonim@orlenlietuva.lt](mailto:anonim@orlenlietuva.lt) or by phone +370-800-90008.  25.7. In case of suspicions of corrupt actions made in connection with the present Contract or its performance by any representatives of the Parties, the Parties shall cooperate in good faith for examining the circumstances of such cases.  25.8. The Party confirms that it has read and will abide by the Rules of Gift Giving and Acceptance of the Public Company ORLEN Lietuva, which are available on the website: <https://www.orlenlietuva.lt/EN/ForBusiness/DocumentsForContractors/Pages/default.aspx> |
| 1. **Implementation of international restrictive measures and sanctions** |
| 26.1. The Parties hereby represent that the Agreement will be performed without prejudice to the regulations of the United Nations, the United States of America, the European Union and the Republic of Lithuania governing the implementation of international restrictive measures and sanctions.  26.2. Failure to comply with the provision set forth in Par. 26.1 above shall be deemed to be the material breach of the Agreement |
| 1. **Changes in financial position of business partners** |
| 27.1. The Licensor shall immediately, but no later than within 72 hours, notify the Owner in writing of any material changes in its financial position which may affect the Agreement performance as well as of any national or international sanctions imposed on the Licensor or its shareholders, or members of the Board or managers (or Supervisory Board if there is such). |
| 1. **Internal rules of the Owner** |
| * 1. The Licensor shall comply with internal rules of the Owner available on   http://www.orlenlietuva.lt/EN/ForBusiness/DocumentsForContractors/Pages/default.aspx   * 1. Information note regarding Public Company ORLEN Lietuva information disclosure requirements (MAR) |