​**I.      Business Secrets**

1. The Contractor [w zależności od tego, czego umowa dotyczy, zamiast "Contractor" może być: Service Provider (jeśli umowa o usługi), Mandatory (jeśli to umowa z osobą fizyczną)] agrees to maintain confidentiality of information provided directly or indirectly by the Ordering Party [zamiast "Ordering Party" może być też Customer albo Principal lub Employer (choć to ostatnie raczej w przypadku umowy z osobą fizyczną)] (in any form, i.e. in particular in oral, written, electronic form), as well as information obtained by the Contractor in any other way during mutual cooperation, inter alia in connection with conclusion and performance of this Contract [zamiast Contract może być Agreement], if such information relates directly or indirectly to the Ordering Party, companies of the Ordering Party's Group or their counterparts/contractors, including the contents hereof. The Parties agree that any technical, technological, organisational or other information of commercial value which, in whole or in part in a specific specification and collection of their elements, is not generally known to the persons usually dealing with a given type of information or that is not easily available to such persons, with regard to which the Ordering Party, being an entity authorised to use and dispose of it, has taken, while observing due diligence, actions aimed at maintaining its confidentiality, transmitted by the Ordering Party or on its behalf or otherwise obtained by the Contractor while negotiating, concluding and performing the Contract shall be treated as business secrets within the meaning of the Act of 16 April 1993 on combating unfair competition (hereinafter: "Business Secrets"), unless at the time of transfer, the transferor shall determine in writing or in electronic form different nature of such information from the specified above.
2. As commitment to maintain the confidentiality of information referred to in section 1 above, the Parties understand the prohibition to use, disclose and transfer such information in any manner and to any third party, except in case if:
   1. disclosure or use of the information is necessary for proper implementation of this Contract and in accordance herewith, or
   2. the information at the time of its disclosure was already publicly available and had been disclosed by the Ordering Party or with its consent or in manner other than through act or omission that was unlawful or contrary to any agreement, or
   3. the Contractor has been obliged to disclose information by a court or an authorised body or in the case of a legal obligation to disclose it, provided that the Contractor shall immediately inform the Ordering Party in writing of the disclosure obligation and its scope, as well as shall take into account as far as possible, the Ordering Party's recommendations regarding the disclosure, in particular as regards the request for exemption of transparency, legitimacy of filing a relevant appeal or other equivalent remedy and shall inform the court or the authorised body of the confidential nature of the transferred information, or
   4. the Ordering Party has expressed its written consent to Contractor's disclosure or use of information for a specific purpose, in manner indicated by the Ordering Party.
3. The Contractor shall undertake such safety measures and follow such procedures that will be appropriate and sufficient to ensure safe processing of Business Secrets, including compliant with the Contract and the provisions of law, to prevent any unauthorised use, transfer, disclosure or access to such information. The Contractor shall not, in particular, copy or fix the Business Secrets if it is not justified by its due performance hereof. The Contractor shall immediately notify the Customer of any violation of protection rules or unauthorised disclosure or use of the Business Secrets processed in connection with Contract execution.
4. The obligation to maintain confidentiality of the information referred to in section  1 above also extends to the Contractor's staff and other persons, including, in particular, auditors, consultants and subcontractors, to whom the Contractor shall disclose such information. The Contractor shall impose on the above mentioned persons, in writing, an obligation to protect the Business Secrets under at least the same terms and conditions as stipulated herein. The Contractor shall bear full responsibility for acts or omissions of persons who have been provided with access to the Business Secrets, including liability referred to in section  8.
5. At the request of the Ordering Party, the Contractor shall, within a period not longer than five days, send to the Ordering Party a list of persons and entities that have been provided by the Contractor with access to the Business Secrets. Failure to fulfil the obligation referred to in this section shall be considered as unauthorised disclosure of the Business Secrets resulting in liability referred to in section 8.
6. The obligation to maintain the confidentiality of information shall be binding throughout the term hereof, as well as for 10 years after its termination, expiry or cancellation or impairment of its legal effects. If, despite the lapse of the Business Secrets protection period, as indicated in the preceding sentence, the information continues to be protected based on the internal regulations or decisions of the Ordering Party or based on the specific provisions of the law, the Ordering Party shall notify the Contractor in writing of protection period extension for an additional period, indicated by the Ordering Party (but not more than 10 years), to which the Contractor hereby consents. The notification, referred to in the sentence above, shall take place before the expiry of the 10-year period of protection referred to in the first sentence of this section, no later than 10 working days before this obligation loses its force. The Parties agree that the liability described in this section shall apply regardless of the termination, expiry or cancellation or impairment of legal effects hereof.
7. Not later than 3 working days after the expiry of the protection period referred to in section 6 above, the Contractor and any persons to whom the Contractor has disclosed the Business Secrets shall return to the Ordering Party or destroy all materials composing the Business Secrets.
8. In the event of unauthorised use, transfer or disclosure by the Contractor of the Business Secrets, the Ordering Party shall be entitled to request the Contractor to pay a contractual penalty in the amount of PLN 100 000,00  (in words: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)[[1]](#footnote-1) for each case of unauthorised use, transfer or disclosure of the aforementioned information. Payment of the contractual penalty specified above shall not limit the right of the Ordering Party to claim from the Contractor compensation under the general principles, where the value of the incurred damage exceeds the penalty amount stipulated herein. This does not exclude in any way other sanctions and entitlements of the Ordering Party as provided by law, including the Act of 16 April 1993 on combating unfair competition.
9. Should it be necessary, in connection with performance hereof, to provide the Contractor with access to, or to transfer to the Contractor personal data within the meaning of the relevant legal acts on Personal Data Protection, before processing such data the Contractor shall be obliged to conclude with the Ordering Party an appropriate, separate agreement laying down principles and conditions for the protection and processing of such data.
10. Should it be necessary, throughout performance hereof, to provide the Contractor with access to, or transfer to the Contractor, in any form, information composing the Company Secrets of ORLEN S.A.,  understood as the sensitive type of the Business Secrets of the Ordering Party, which was subject to specific actions specified in internal acts of the Ordering Party in order to maintain its confidentiality, and whose use, transfer or disclosure to an unauthorised person significantly threatens or affects interests of the Ordering Party, the Contractor shall immediately conclude with the Ordering Party, before receiving and processing such information, an amendment to this Contract, compliant with the internal acts of the Ordering Party, which shall lay down the principles and conditions for the protection of the Company Secrets of ORLEN S.A.
11. For the avoidance of doubt, the Parties confirm that the Contractor, beside its obligations under this Contract, shall be also required to comply with additional requirements for the protection of certain types of information (e. g.  personal data, confidential information) resulting from applicable laws.
12. The Contractor is obliged to fulfil, on behalf of the Client as the Controller within the meaning of the applicable data protection laws, immediately but not later than 30 (thirty) days of the conclusion of this agreement with the Client, the information obligation towards natural persons employed by the Contractor or cooperating with the Contractor in the course of conclusion or performance of this agreement, including members of bodies, proxies, representative of the Contractor without regard to the legal grounds of the cooperation, whose personal data were made available to the Client by the Contractor in connection with the conclusion or performance of this agreement. The above obligation should be met by means of providing the persons with the information clause.

1. *Sugerowana minimalna wysokość kary. Ostateczną wysokość kary umownej ustala właściciel merytoryczny umowy w porozumieniu z Biurem Prawnym na podstawie zakresu i wartości przekazywanych informacji oraz ew. szkody dla PKN ORLEN S.A.* [↑](#footnote-ref-1)