

APPENDIX 1: GENERAL TERMS AND CONDITIONS

GasEner, SRL

1. Definitions

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- 1.1. "Client" means the Party named in the Contract for the benefit of which the Services are provided;
- 1.2. "Contract" means the agreement between the Parties consisting of the present
- 1.3. "General Terms and Conditions", the Special Conditions and/or the Consultant's Proposal together with their annexes, if any;
- 1.4. "Consultant" means GasEner, SRL., (Avenue Sarasota 41, Suite 303, Santo Domingo 10111, Dominican Republic) and its legal successors and permitted assignees;
- 1.5. "Cost of the Works" means either the final total cost for the carrying out of the Works or the estimated cost when the final cost is not available at the time of the termination of the Contract;
- 1.6. "Day" means a day (other than a Saturday or Sunday) on which banks are open for business in Santo Domingo, Dominican Republic;
- 1.7. "Deliverables" means the Materials to be delivered to the Client for the performance of the Services on paper or by electronic means;
- 1.8. "Intellectual Property Rights" means any and all rights, titles and interests in and to any and all (i) patents, utility models, designs (whether registered or unregistered), trademarks and trade and business names, copyrights (including copyrights in programs), software rights, domain names, databases, moral rights, trade secrets, confidentiality and other proprietary rights including all rights to know-how and other technical or confidential information, rights in the nature of unfair competition rights, rights to sue in passing off; all of the foregoing whether registered or not, whether perfected or not; (ii) the benefit of all registrations and applications to register any of the foregoing; (iii) any and all other rights similar or analogous to any of the foregoing whether arising or granted in any jurisdiction.
- 1.9. "Hourly Basis" means that the fee is calculated on the time actually spent by the Consultant on a given matter (including but not limited to the time spent on travel abroad and from the Consultant offices to the Project Site(s), time spent for participation to meetings related to the Services, etc.) on the basis of the Hourly Rate.
- 1.10. "Hourly Rate" means, the rates specified in the Special Condition or the Consultant's proposal.
- 1.11. "Loss" means any direct damage actually suffered by a Party to the exclusion of any special, indirect or consequential damages, such as, a loss of profit, goodwill or business.
- 1.12. "Lump Sum Fee" means a firm fee which is fixed for the period of time defined in the Contract subject to modification according to the Contract;
- 1.13. "Materials" means any and all of the Services, Deliverables or any other design, report, model, method of calculation, database, data included in a database, architecture of a database, prototype, project technical specifications, manual, software and original work developed in conjunction with the foregoing, preparations, creation, study, research, experiment, invention, estimates, working methods, drawings, memos, calculation sheets or other work;
- 1.14. "Party" means the Client or the Consultant;
- 1.15. "Parties" means the Client and the Consultant;
- 1.16. "Percentage of Investment" means that the fee is based on a percentage of the Cost of the Works;
- 1.17. "Project" means the project of the Client for which the Services are to be provided;
- 1.18. "Project Site" means the place(s), other than the Consultant's offices, where the Project is to be realized or where the Services are to be supplied;
- 1.19. "Proposal" means the document(s) detailing the Services, the financial conditions, the time schedule as well as any other conditions proposed by the Consultant;
- 1.20. "Public Authority" means any administrative or judicial body with the necessary jurisdiction and coercive powers under a law applicable to a relevant Project Site;
- 1.21. "Quantities Basis" means that the fee is calculated on the basis of predefined unit rates or prices applied to the actual quantities or a combination thereof;

- 1.22. "Remuneration" means either a Lump Sum Fee, a Percentage of Investment, an Hourly Basis or a Quantities Basis;
- 1.23. "Services" means the services defined in the Contract to be performed by the Consultant;
- 1.24. "Special Conditions" means any possible additional conditions and/or derogations from the present General Terms and Conditions as agreed by the Parties in writing;
- 1.25. "Third Party" means any person or entity other than the Client or the Consultant as the context requires;
- 1.26. "Works" means all the works to be carried for the completion of the Project under the contract(s) that the Client has concluded with Third Parties after having duly reviewed and negotiated their terms and conditions.

2. Applicability

Unless otherwise agreed in writing by the Consultant, these General Terms and Conditions shall apply, to the exclusion of anything other than the Special Conditions and/or the Proposal (if any), to all Services and/or Materials provided by the Consultant to the Client.

Unless otherwise agreed in writing by the Consultant, the general terms and conditions of the Client transmitted before or after the conclusion of the Contract shall never apply, not even in conjunction with these General Terms and Conditions.

No departure or derogation from these General Terms and Conditions is admitted unless it is expressly agreed in writing in the Special Conditions or the Proposal. Such deviation or derogation is in any event only applicable to the specific quotations, deliveries and services in respect of which it has been expressly agreed upon.

3. Contractual documents

The present General Terms and Conditions apply to all Services performed by the Consultant.

The Contract consists of the following documents listed in decreasing order of precedence:

- 3.1. The Special Conditions;
- 3.2. The Proposal and its annexes; and,
- 3.3. The present General Terms and Conditions.
- 3.4. The general conditions of the Client are not part of the Contract.

The Contract contains the entire agreement of the Parties with regard to the object to which it refers and contains everything the Parties have negotiated and agreed upon within the framework of the Contract. It replaces and annuls any agreement, communication, offer or correspondence, oral or written, previously exchanged or concluded between the Parties and referring to the same object. In case of discrepancies, ambiguity, or if any conflict should arise between the contractual documents listed above, the above order of precedence shall be applied.

Unless otherwise specified in the Proposal, the Proposal remains valid during a period of forty (40) Days as from the date of its issuing.

The Contract shall be deemed to be perfected without reservation by the Client at the earliest of the following dates:

- When the Client returns the Proposal (and as the case may be the Special Conditions) duly signed for acceptance; or,
- When the Client instructs the Consultant to initiate the performance of the Services offered in the Proposal

4. Commencement and completion of the Services

4.1. Commencement

The supply of the Services shall start within ten (10) Days after the conclusion of the Contract, unless otherwise agreed in writing

4.2. Completion

- 4.2.1. Subject to Clause of "Project Closing" in the Offer, the Services shall be considered complete, at the latest, upon the acceptance of the Consultant's Deliverables by the Client.

4.2.2. To the extent that the Services include the supervision of Works performed by Third Parties, such supervision tasks shall be deemed completed on the earliest of the following dates:

- 4.2.2.1. the completion date of the supervised Works such as provided for in the Contract; or,
- 4.2.2.2. the completion date of the supervised Works such as initially provided for in the contracts for the Works; or,
- 4.2.2.3. the date of provisional acceptance of the supervised Works.

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For the purpose of this Clause 4.2, Works will be deemed to have reached a condition of provisional acceptance when they have been completed in accordance with:

- The specifications agreed between the Client and the Third Party in charge of the performance of the Works and communicated to the Consultant on or before the issuing of the Proposal; and,
- The additional specifications agreed between the Client and the Third Party in charge of the performance of the Works that have been accepted or approved in writing by the Consultant.

Within the framework this Clause 4.2 and without prejudice to the right and obligations of the Client toward Third Parties, minor defects that do not prevent the utilization of the affected areas in accordance with their normal use may not be relied upon by the Client in order to claim that the Works have not reached a condition of provisional acceptance.

4.2.3. If parts of the Works to be performed or supervised are independent from one another, the rule specified in Clause 4.2 shall apply separately and independently in respect of each distinct portion of the Services and not in a global way, each portion of the Services being deemed completed as soon as one of the events referred to under Clauses 4.2.2 and dependents has occurred in respect of the relevant portion of the Works.

5. Obligations of the Parties

5.1. Obligations of the Consultant

5.1.1. The Services shall be performed pursuant to the Contract, at the place indicated therein. When no place is specified, the Services shall be performed at the Consultant's offices.

5.1.2. The Services provided by the Consultant to the Client shall be performed with the degree of skill, diligence, prudence and operating practice which would reasonably and ordinarily be expected from an international engineering company engaged in the same type of undertaking under similar circumstances. It is agreed that these Services shall be delivered on the basis of an obligation of means and that the responsibility of the Consultant shall be determined by such qualification.

In particular, the Consultant undertakes to:

- 5.1.2.1. deliver the Services explicitly defined in the Contract, it being understood that there are no implied services;
- 5.1.2.2. use its reasonable efforts to comply with the agreed indicative time schedule;
- 5.1.2.3. cooperate, to the extent agreed in the Contract, with any other contractors of the Client and shall, if so requested by the Client, schedule its performance of the Services in cooperation with them, to facilitate the overall requirements of the Project;
- 5.1.2.4. comply at any time during the performance of the Contract with all mandatory laws and regulations applicable to the supply of the Services. Unless the Contract expressly provides that a law different from the law of the jurisdiction where the Consultant's offices are located is to be taken into account, the Consultant is only bound to ensure of the compliance of the Services with mandatory laws and regulations applicable in the jurisdiction where the Consultant's offices are located. If the Consultant is to ensure compliance with another set of laws and regulations, it is the Client's responsibility to fully inform the Consultant about those local laws, norms and regulations and ensure that any query or question that the Consultant may reasonably raise regarding those local laws, norms and regulations is answered without delay;
- 5.1.2.5. maintain, for the duration of the Contract, all the required engineering licenses and insurance coverage required under the Contract;

5.1.2.6. assign the required personnel to the performance of the Services, it being understood that the Consultant shall have the right to substitute such personnel as it sees fit, provided, however, that the replacing personnel is suited for the performance of the Services.

5.1.3. Unless otherwise specified in the Contract, the Consultant does not give the Client any implied guarantee other than those that are specified in this Clause 5.1.2 or mandatory under the laws, norms and regulations that are applicable to the supply of the Services pursuant to Clause 5.1.2.

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5.2. Obligations of the Client

The Client shall comply with all its obligations under the Contract professionally, in a timely manner and in good faith.

5.2.1. Access to the Project Site(s)

If required for the performance of the Services, the Client shall grant the Consultant unrestricted access to the Project Site(s) and shall arrange free of charge for the Consultant the entry of its personnel into the country where the Project Site(s) is (are) located.

Unless expressly otherwise stated, the Client shall provide at no cost to the Consultant, for the use of the Consultant's and its subcontractor's personnel, during their presence at any Project Site, adequate office space, office furniture, local telephone service, Internet access, typing services and authorized international telephone and fax as well as, upon request, interpreter services to ensure effective communications. In the event that the proper performance of the Services requires that the Consultant be granted access to facilities or property owned or occupied by Third Parties, the Client shall liaise with such Third Parties and provide such access for the Consultant.

5.2.2. Information

The Client shall in due time provide to the Consultant free of charge all required or requested information that is necessary for the proper performance of the Services.

For the avoidance of doubt, any modification to any Client's contract with Third Parties having an impact on the Services of the Consultant shall be communicated to the Consultant in order to allow the Consultant to comply with his obligations under the Contract. If any modification to any contract between the Client and a Third Party amends or impacts the Services of the Consultant, the Consultant will be entitled to request a variation in accordance with Clause 7 of these General Terms and Conditions.

5.2.3. Acceptance of Deliverables and Materials

The Client shall approve in a timely manner all Services, in particular Deliverables and Materials submitted by the Consultant in a timely manner. In the absence of such approval or justification or evidenced refusal within ten (10) Days after their submission, the Deliverables and Materials shall be deemed to be accepted without reservation by the Client.

5.2.4. Contact with authorities and permits

The Client shall be responsible at its own expense for all contacts and dealings with the regulatory or government agencies of the country where the Services are to be performed in obtaining and maintaining any required regulatory or governmental authorizations, licenses and permits, including, if necessary, those required for the Consultant to carry out its mission at any Project Site.

In the event that any required regulatory or governmental authorizations, licenses and permits (other than those required under the law of the jurisdiction where Consultant's offices are located) are applied for by the Consultant in person, the Client shall reimburse the Consultant all reasonable costs incurred in that process upon presentation of the relevant evidencing documents.

6. Remuneration, invoicing and payment

6.1. Remuneration

6.1.1. General

The Remuneration of the Services shall be expressed and paid in United States of America Dollars and in accordance with the Contract.

Where the Remuneration is calculated on an Hourly Basis, the Consultant remains entitled to invoice and be paid for any hour performed beyond the initially estimated cap.

When the Client requires the Consultant to provide Services on a banking day but outside normal working hours at the relevant Project Site, the Remuneration shall be increased by 50% of the relevant Hourly Rate for each member of the Consultant staff that is called upon to work outside normal business hours.

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When the Client requires the Consultant to provide Services on a day that is a bank holiday at the relevant Project Site, the Remuneration shall be increased by 100% of the relevant Hourly rate for each member of the Consultant staff that is called upon.

Therefore:

- If the Remuneration is calculated on an Hourly Basis, hours of performance outside normal business hours will be charged at 150% of the relevant Hourly Rate while those that have taken place on a bank holiday at the relevant Project Site will be charged at twice the Hourly Rate; and,
- If the Remuneration is calculated on any other basis than an Hourly Basis, hours of performance outside normal business hours will be charged, and added to the Remuneration, at 50% of the relevant Hourly Rate while those that have taken place on a bank holiday at the relevant Project Site will be charged at 100% of Hourly Rate.

6.1.2. Expenses

Unless explicitly stated in the Special Conditions, the Remuneration does not include the expenses detailed hereunder. Such expenses include but are not limited to the costs for travel and stay abroad, costs for translation, delivery of packages, fees of subcontractors appointed with the approval of the Client, costs for the publication and announcement of tenders on behalf of the Client.

The evidenced expenses directly related to the execution of the Services are paid to the Consultant at cost plus a ten percent (10%) management fee.

6.1.3. Taxes

All amounts expressed as payable by the Client to the Consultant shall be considered to be exclusive of any payable tax, duty, charge and VAT. The Client shall be responsible and shall directly pay any tax, duty and any other imposition due under any applicable laws.

All amount due to the Consultant shall be made in full without any deduction or withholding in respect of any tax, duty, withholding tax, charge, value-added tax or similar taxes or charges unless the deduction or withholding is required by any legal requirements, in which case Client, unless the deduction or withholding has become mandatory exclusively as a result of the Consultant's negligence, shall increase the amounts payable to the Consultant in such manner that the net amounts received by the Consultant shall be equal to the amounts originally payable to the Consultant, had no such deductions or withholdings been made. In any event, the Client shall, at the Consultant's first request and no later than five (5) business days after such request has been made, provide the Consultant with evidence that any applicable deduction or withholding made has actually been transferred to the relevant tax authority. The evidence to be so provided to the Consultant by the Client will meet all conditions required under standard accounting rules applicable to the Consultant and all requirements set by competent tax authorities so that the Consultant is always in a position to demonstrate that the deduction or withholding has been made in accordance with all applicable laws.

6.1.4. Remuneration revision

Each amount due under the Contract is, when due, subject to adjustment to reflect increases or decreases in labor indices in accordance with the following formula:

$$P = (0.20 * P_o) + (0.80 * P_o * S/S_o)$$

Where:

- 6.1.5. P_o = the value of each payment due to Consultant under the Contract;
- 6.1.6. P = the value of each payment after revision;
- 6.1.7. S_o = the Consultant's level reference consulting fees, including social security contributions, as paid by the World Bank for Quality Bases Selections (QBS) (see: http://siteresources.worldbank.org/INTPROCUREMENT/Resources/Consultant_GLs_English_Final_Jan2011_Revised_July1_2014.pdf) and valid for the year of reference set forth in the Special Conditions; should this index no longer be available at the time of invoicing, a provisional index as close as possible shall be applied by the Consultant.
- 6.1.8. S = same index as S_o but in effect during the month of invoicing.

6.2. Invoicing and payment

Expenses shall be invoiced monthly and – in the event that no installments were agreed in the Contract – the Remuneration shall also be invoiced on a monthly basis.

Unless explicitly agreed in writing, the invoices are payable ten (10) calendar days after their date of issuance. An invoice that has not been disputed within ten (10) Days after its issuance shall be deemed to have been approved without reservation by the Client. Interest shall accrue automatically (without any formal notice to pay being required) on any amount remaining unpaid to the Consultant after its due date. Such interest shall be calculated:

- on a daily basis; and,
- at the LIBOR (one month) rate in force on each day of delay increased by two hundred base points (provided that the rate applied cannot be lower than 7%) and divided by three hundred and sixty (360).

Partial payment by the Client shall be deducted from the accrued interests first, the remainder, if any, shall be deducted from the main sum. In case of a dispute over the amounts to be paid, the Client shall pay the undisputed amount. The disputed portion of the invoice may be withheld until resolution of the matter but shall bear interest as from the due date of the payment.

7. Variations

7.1. Client

The Client shall be entitled to request any variation to the Services as defined in the Special Conditions following the procedure set forth in Clause 7.3.2.1

7.2. Consultant

The Consultant shall be entitled to request a variation in the cases mentioned here below, except when the variation to the Services is exclusively the result of negligence or breach by the Consultant of its obligations:

- 7.2.1. where the Services, have to be modified in order to include additional services needed for the purpose of the Project or resulting from negligent acts, omissions or breaches by the Client or a Third Party;
- 7.2.2. where the Services require a modification as a result of an amendment of a contract between the Client and a Third Party, to the extent that it adversely affects the supply of the Services by the Consultant or makes such supply more expensive;
- 7.2.3. where the information provided by the Client is modified and such modification impacts the Services;
- 7.2.4. when the time schedule or the budget of the Project is modified at the request of the Client for any reasons other than the Consultant's negligence or breach of contract;
- 7.2.5. where the Consultant is entitled to request a variation pursuant to Clause 12 of these General Terms and Condition;
- 7.2.6. where the Consultant is entitled to request a variation pursuant to Clause 18 of these General Terms and Conditions;
- 7.2.7. where the Consultant is entitled to request a variation pursuant to Clause 19 of these General Terms and Conditions;
- 7.2.8. where the Consultant is required to take part in any way in any judicial, arbitral, expertise or administrative proceedings in connection with the Project and/or the Service except if the final

outcome of those proceedings is the recognition of the Consultant's liability towards the Client under the Contract; or,

7.2.9. without prejudice to the above, if any event or circumstance other than the Consultant's own breach of contract or negligence that has occurred after the issuing of the Proposal requires the implementation of a variation.

7.3. Procedure

7.3.1. Preliminary studies

If the variation has been requested by the Client pursuant to Clause 7.1 and if the preparation of the assessment of the impact of the requested variation requires the Consultant to carry out searches, tests, investigations and/or to take any other reasonable prior measures, the Consultant shall first submit as soon as reasonably possible to the Client an estimate of the costs and fees that will have to be borne by the Client for the study of the variation and of the time necessary to perform the required preliminary tasks. Within ten (10) Days as from the submission of those estimates, the Client shall notify its decision to go ahead with the study of the variation. In the absence of any notification by the Client within the allocated ten (10)-Day time period allocated to do so, the Client shall be deemed to have approved the estimates provided by the Consultant and to have instructed it to initiate the carrying out of the preliminary tasks identified in the Consultant submission.

If the variation is requested by the Consultant pursuant to Clause 7.2, the costs and fees for preliminary searches, tests, investigations and/or other reasonable prior measures will be duly taken into account in the assessment of the impact of the variation on the Remuneration and/or time schedule for the supply of the Services.

7.3.2. Request for variation

If a variation is requested by one of the Parties, the Consultant shall, subject to Clause 7.3.1, prepare a proposal of variation covering the modified Services and any impact on the Remuneration and/or time schedule.

7.3.2.1. Variation requested by the Client

After submission of the proposal of variation, the Parties shall agree in good faith on the modification to the Services, Remuneration, time schedule and/or any other relevant contractual conditions. If the Client has not objected to the proposal of variation within ten (10) Days as from its submission by the Consultant or if it has instructed the Consultant to start performing the additional services described in the proposal of variation, it will be deemed to have approved the latter without reservation and the proposal of variation submitted by the Consultant shall become part of and modify the Contract.

If the Client has not disputed the adjustment to be made to the time schedule and the scope of Services as a result of the variation, but has only objected to the impact on the Remuneration calculated by the Consultant, the Consultant shall be entitled to elect at its own discretion to either:

7.3.2.1.1. postpone or suspend the performance of the additional services (or as the case may be of Services replaced or influenced by such additional services) until an agreement has been reached on the impact on the Remuneration resulting from the variation; or,

7.3.2.1.2. start the performance of the additional services while being entitled:

7.3.2.1.2.1. to be paid for the time spent on the preparation and implementation of the variation on an Hourly Basis; and,

7.3.2.1.2.2. to be reimbursed all reasonable expenses incurred for the same.

7.3.2.2. Variation requested by the Consultant

If the Client has not objected to the proposal of variation within ten (10) Days as from its submission by the Consultant or, provided that the Client knew or should have reasonably known that such performance had started, the start of performance of the additional the services described in the proposal of variation (whichever is the earlier), it will be deemed to have approved the latter without reservation and the proposal of variation submitted by the Consultant shall become part of and modify the Contract.

8. Urgent additional services

In the event that additional services are to be supplied by the Consultant as a matter of emergency in which the procedure specified in Clause 7.3 cannot be complied within practice, the Consultant shall do all reasonable efforts to supply those as soon as possible as from the moment when they have been requested by the Client or when they have appeared to be required or useful. For such urgent services, the Consultant shall, unless the same services later become the object of a variation under Clause 7, be paid for the time spent on such urgent matter on an Hourly Basis and that it will be reimbursed all reasonable expenses incurred in the process.

The circumstance that the Consultant would accept or perform urgent services shall never amount to or be construed as a waiver by the Consultant to request that a proper variation to the Contract is made under Clause 7.1, it being understood that, if the Client has requested the supply of additional urgent services, Clause 7.3.1 shall not be applicable to the relevant variation.

9. Consultant's liability

9.1. General

The Consultant shall be liable exclusively for the proper performance of the Services, including re-performance and making good, if required, in accordance with the terms and conditions of the Contract.

In particular, the Consultant does not assume any obligation to verify and/or monitor the Works or services realized by Third Parties except to the extent that such control is expressly included in the Services.

In case of a breach of any provision of the Contract by the Consultant, the Client shall have no rights and remedies other than those that are expressly provided for in the Contract. Accordingly, except in the case of fraud or intentional misrepresentations or misconduct, the Client waives to the fullest extent permitted by law all rights and remedies that it may have under applicable law in respect of any breach of any provision of the Contract.

9.2. Time limitation

Claims by the Client regarding the compliance of the Services with the Contract must be notified to the Consultant in accordance with Clause 23 at the latest:

- 9.2.1. for errors and non-compliances that are apparent upon submission of the relevant Materials, within ten (10) Days as from the submission of those Materials;
- 9.2.2. for errors and non-compliances that were not apparent upon submission of the relevant Material, on the earliest of the following dates:
 - 9.2.2.1. ten (10) Days as from the discovery of the alleged error and noncompliance or the moment when the Client should have reasonably become aware of the existence of the same; or,
 - 9.2.2.2. six (6) months after the completion of the Services or the termination of the Contract, whichever occurs first.

9.3. Maximum Liability

- 9.3.1. If the Client's claim had been made in due time and if the Client establishes that the Consultant is, on any basis, liable towards it, the Consultant's liability shall be, without prejudice to Clause 9.4 limited to either:
 - 9.3.1.1. bringing about all the necessary modification to the Services to achieve compliance with the Contract, it being understood that the Consultant shall not be required to incur costs in excess of one hundred percent (100%) of the part of Remuneration due in respect of the Services that have been found deficient to do so; or,
 - 9.3.1.2. Indemnifying the Client up to the amount of the Loss suffered, it being understood that, notwithstanding any other provision of these General Terms and Conditions that the aggregate amount of damages that could be claimed from the Consultant shall never exceed twenty percent (20%) of the Remuneration.
- 9.3.2. The choice between the remedies specified under Clause 9.3.1.1 and 9.3.1.2 shall be made by the Consultant at its own discretion.
- 9.3.3. The remedies specified under Clause 9.3.1.1 and 9.3.1.2 are mutually exclusive.

9.3.4. To the extent that the Consultant has remedied its breach and/or liability in accordance with Clause 9.3.1.1 or Clause 9.3.1.2, the Client shall indemnify and hold it harmless from any claim made by any Third Party in connection with the Contract and/or the events that lead to the application of Clause 9.3.1.1 or Clause 9.3.1.2.

9.4. Willful misconduct and gross negligence

The limitations set out in Clause 9.3 shall not (contrary to those included in Clause 9.2) apply in case the defect in the Services has been caused by the Consultant's gross negligence, i.e. by an act or omission that no person having the same level of expertise as the Consultant would have committed on the basis of the information that had actually been made available to the Consultant before such act or omission took place. The limitations set out in Clauses 9.2 and 9.3 shall not apply in case the defect in the Services has been caused by the Consultant's willful misconduct.

10. Insurance

10.1. Consultant's insurance

The Consultant shall take out and maintain during the performance of the Services:

- 10.1.1. For services other than consulting: third party liability insurance (covering bodily injury and/or physical damage) for a minimum amount of one million dollars (US\$1,000,000.00) per occurrence and per year;
- 10.1.2. professional liability insurance for a minimum amount of one million dollars (US\$1,000,000.00) per occurrence and per year;
- 10.1.3. statutory workmen's compensation coverage to include all activities to comply fully with all applicable laws and with contracts concluded between the Consultant and its employees, up to the limit required by applicable law.

10.2. Client's insurance

The Client will take out and maintain for a time period expiring at the earliest one (1) year following the completion or irrevocable cancellation of the Works:

- 10.2.1. For services other than consulting: third party liability insurance for an amount of not less than one million dollars (US\$1,000,000.00) per occurrence; in which the Consultant shall be named as additional insured, as from the beginning of the Services;
- 10.2.2. statutory workmen's compensation coverage to include all activities to comply fully with all applicable laws and with contracts concluded between the Client and its employees, up to the limit required by applicable law; and,
- 10.2.3. Construction all risks (CAR) insurance, decennial liability and marine cargo insurance, in which the Consultant shall be named as additional insured as from the beginning of the Works, if applicable

10.3. General provisions

Upon first request, each Party shall provide the other with recent insurance certificates evidencing that the required insurance policies are in place.

11. Suspension

11.1. Client's suspension right

The Client shall be entitled at any time and for any reason to suspend the Services to be performed or part thereof with ten (10) Days prior written notice. In this case, the Consultant shall be entitled:

- 11.1.1. to immediately invoice any outstanding fees and expenses for the Services performed prior and up to the effective date of the suspension, irrespective of the invoicing date previously agreed in the Contract;
- 11.1.2. to be immediately reimbursed for the evidenced mobilization and demobilizations costs, directly incurred by the Consultant resulting from such suspension; and
- 11.1.3. to request a variation in accordance with Clause 7.2 to reflect any future impact (in terms of time and costs) of such suspension on the performance of the Services.

11.2. The Consultant's suspension right

The Consultant shall be entitled to suspend its obligations under the Contract, in case of default of payment by the Client or for any other material reason other than the Consultant's own negligence preventing the Consultant from performing its Services by giving ten (10) Days prior written notice.

The Consultant shall be entitled to suspend its obligations under the Contract immediately, if the Consultant considers the health, safety or security of its personnel cannot be guaranteed.

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Following such a suspension, the Consultant shall be entitled to request a variation under Clause 7.2 for the delays and costs caused by such suspension.

12. Termination

12.1. Termination by the Client

12.1.1. Termination for convenience

The Client may, at any time, terminate the Contract for any reason whatsoever by giving thirty (30) Days prior written notice to the Consultant specifying the effective date of such termination.

When the Client terminates the Contract for convenience, the Client shall pay the Consultant upon receipt of the invoice:

- 12.1.1.1. the part of Remuneration and expenses corresponding to the Services performed up to the effective date of termination;
- 12.1.1.2. all the direct and documented expenses and damages incurred by the Consultant as a result of such early termination, including demobilization costs;
- 12.1.1.3. an amount corresponding to ten percent (10%) of the Remuneration agreed for the Services still to be performed as compensation for the early termination.
- 12.1.1.4. Upon receipt of the payment of all pending invoices, the Consultant shall transmit all Deliverables prepared or in preparation to the Client as they are at the date of termination without taking any responsibility or liability for documents not approved by the Client before the termination. Any termination by the Client which is not a termination for default shall be considered as a termination for convenience.

12.1.2. Termination for default

The Client is entitled to terminate the Contract for default exclusively in the two following cases:

- 12.1.2.1. if the Client demonstrates that:
 - 12.1.2.1.1. a material breach of the Consultant's obligations under the Contract has been committed; and,
 - 12.1.2.1.2. the material breach so denounced has not remedied within fifteen (15) Days after the receipt a written notice from the Client; or
- 12.1.2.2. with immediate effect and without any prior notice being required, if the Consultant becomes insolvent or has a receiving order or administration order made against it or carries on business under a receiver, administrator, trustee or manager for the benefit of its creditors.

12.2. Termination by the Consultant

The Consultant is entitled to terminate the Contract with immediate effect:

- 12.2.1. if the Client commits a breach of any of its obligations under the Contract, which is not remedied within fifteen (15) Days after the receipt of a written notice identifying the breach;
- 12.2.2. if the Client commits a material breach of its obligations under the Contract;
- 12.2.3. if the Project is cancelled for any reason whatsoever; or
- 12.2.4. if the Services are suspended for any reason whatsoever other than the Consultant's breach of contract for a period of at least three (3) consecutive months or six (6) months in aggregate; or,
- 12.2.5. if the Client becomes:
 - 12.2.5.1. the object of a winding-up, bankruptcy, insolvency, receivership liquidation, or settlement procedure;

- 12.2.5.2. the object of a procedure for the cessation of payment or formal default for a bill of exchange; or
- 12.2.5.3. Insolvent or gives up all or a substantial portion of its assets.
- 12.2.6. When the Consultant terminates the Contract in accordance with Clause 12.2.1, the Client shall pay the Consultant upon receipt of the invoice:
 - 12.2.6.1. the part of Remuneration and expenses corresponding to the Services performed up to the effective date of the termination;
 - 12.2.6.2. an amount corresponding to the higher of:
 - 12.2.6.2.1. thirty percent (30%) of the Remuneration agreed for the Services still to be performed;
 - 12.2.6.2.2. ten percent (10%) of the Remuneration agreed for all Services.

13. Health safety and environment

Unless explicitly otherwise specified and exhaustively identified as such in the Proposal or Special Conditions, the Client shall remain solely responsible for the compliance with health, safety and environment regulations for all Services and Works performed outside the Consultant's office and shall organize regular safety meetings and manage access and security at the Project Site(s). In particular, the Client shall be responsible for the designation of the health and safety coordinator, and shall undertake to supervise, where applicable, the compliance with the health and safety rules by its personnel and any Third Party. The Client further undertakes to inform the Consultant in writing as soon as it has any knowledge of any actual or potential risks in connection with the foregoing and shall immediately take any measures necessary to further safeguard or restore health, safety, security or the environment. The Client shall further ensure that all relevant health, safety, security and environmental precautions are clearly spelled out in the relevant user manuals and documentation supplied to the Consultant. Furthermore, the Client shall inform the Consultant about the legislation in force regarding safety and well-being of workers at each Project Site and shall communicate to the latter, in the language that the Contract stipulates as regards documentation (and in the absence of such detail, in English or French), any Project Site regulations, procedures and instructions established by the Client. The Consultant undertakes to ensure that his personnel present at a Project Site attends the training sessions provided by the Client concerning the application of these Project Site regulations, procedures and instructions. In case the attendance to these sessions is not foreseen in the Contract, the Consultant shall be entitled to invoice the time spent by its personnel in these sessions at the Hourly Rate.

14. Intellectual property rights

14.1. Title and ownership

The intellectual property rights in and to any Materials, either pre-existing the supply of the Service and/or developed by or on behalf of the Consultant in connection with or in relation to the Services, shall be and remain the exclusive property of the Consultant. Unless expressly provided otherwise in writing in the Contract, no Clause or provision of the Contract implies or may be construed or interpreted as a right to use, a license or any other form of transfer (even in part) of such intellectual property rights to the Client.

14.2. License

Subject to full and timely payment of the Remuneration as provided in the Contract, the Consultant hereby grants to the Client a royalty-free and non-exclusive license to use the Materials and the content thereof (including any Deliverable) for the purpose of carrying out the Project, including without limitation for the purpose of design construction, completion, maintenance, funding, disposal, letting, fitting out, advertisement, reconstruction, reinstatement, modification, repair, sale, exhibits in public, films broadcast on a cable program service, illustrating the Project (by photographs or otherwise) for concluding deals. Such license includes the right to copy the Materials to the extent necessary for any such purpose.

For the avoidance of doubt, the above license to use the Materials does not include the right to modify or otherwise alter the Materials and is without prejudice to the moral rights of the Consultants to the Materials.

The license granted under this Clause 14.2 cannot be transferred or licensed by the Client, except with the specific prior written approval by the Consultant. Subject to specific prior written approval by the Consultant, any record of

the license shall be carried out by the Client, as the case may be, with the assistance of the Consultant and at the Client's sole expense.

14.3. Indemnification

The Consultant shall hold the Client harmless and indemnify the Client, in accordance with and within the limit of Clause 9, for any Loss incurred by the Client as a direct result of a final and enforceable award or decision rendered on an action and/or claim brought by a Third Party, establishing that the use of the Intellectual Property Rights licensed under Clause 14 breaches or infringes such Third Party's rights. The Consultant shall have sole control over the handling, litigating and/or settling of any such action and/or claim brought by a Third Party, for which it is liable.

In the event that the breach or infringement of the Third Party's rights is the result of:

- 14.3.1. the use by the Consultant of any documents and/or information of any nature, or to the performance by the Consultant of any instructions, that have been provided by the Client;
- 14.3.2. the modification to the Materials by the Client and/or the combination of the Materials by the Client with infringing elements; and/or
- 14.3.3. any (other) breach of the Contract by the Client,

The Consultant shall not be held liable in any way. In addition, the Client shall indemnify and keep the Consultant harmless from any claim brought by any Third Party in connection with the alleged breach or infringement of such Third Party's rights, and shall bear all procedural and legal costs relating thereto.

14.4. Use of know-how

Notwithstanding any other provision of these General Terms and Conditions, the Consultant and its personnel shall be free to use and employ their general skills, knowhow, and expertise, and to use, disclose, and employ any general ideas, concepts, knowhow, methods, techniques, or skills gained or learned in the framework of the Project, provided that they acquire and apply such information without disclosing any confidential or proprietary information of the Client and without any unauthorized use or disclosure relating to the Services rendered within the scope of the Contract.

15. Confidentiality

The Parties agree that all information received by either Party from the other Party pursuant to or in connection with the Contract, in any form or format, whether marked as confidential or not, shall be treated as and remain confidential information by the receiving Party. Each Party shall take all necessary measures to ensure that no accidental or unauthorized disclosure of the other Party's confidential information occurs and shall generally exert the same degree of due and diligent care as it applies with respect to its own confidential information, which standard shall in no instance be less than reasonable care.

The receiving Party shall notify the disclosing Party as soon as it becomes aware of a breach of this Clause 15 (including by one of its employees) and shall take all necessary measures to ensure that any actual disclosure or prohibited use of the confidential information ceases immediately. Each Party is prohibited from disclosing or divulging confidential information received from the other Party (which includes the terms of the Contract and its existence) without the express prior written consent of the other Party, except:

- 15.1. in case of disclosure to the receiving Party's employees, subcontractors, consultants and/or professional advisers, provided that they have a reasonable and demonstrable need to know the confidential information for the purpose of the Project and provided that they are bound by confidentiality obligations at least as stringent as, and substantially similar to, those set forth in the Contract;
- 15.2. in case the information had been received or was accessible to the receiving Party prior to its disclosure by the disclosing Party other than as a (consequence of a) breach of the Contract
- 15.3. in case the information was publicly known at the time of disclosure or has become publicly known after such disclosure other than as a (consequence of a) breach of the Contract;
- 15.4. in the case whereby one Party seeks damages or other legal remedies from the other at law or in arbitration, in so far as the use of such information is strictly necessary to the litigation or arbitration proceeding; and

15.5. in the case whereby and in so far as one or the other Party is legally obliged to provide a Public Authority with information. When required to do so by a Public Authority, a Party may disclose confidential information provided it has first:

15.5.1. provided the other Party with timely advance written notice of the information requested by such Public Authority and of its intent to so disclose;

15.5.2. minimized the amount of information to be disclosed so as to make such disclosure as benign as possible to the best interests of the other Party; and made every reasonable effort (which shall include participation by the Consultant in discussions with the Public Authority) to secure confidential treatment and minimization of the information to be disclosed.

15.6. This Clause 15 shall remain in force for the duration of the Contract, and for a period of three (3) years following its termination or expiry. Notwithstanding the above, the Client hereby grants the Consultant the right to mention, identify and/or describe the Services and/or the Project for reference purposes.

16. Assignment and Subcontracting

16.1. Assignment

The Parties shall not assign or transfer the Contract or any part of the Contract to a Third Party without the express prior written consent of the other, which shall not be unreasonably withheld. However, the Consultant shall be entitled to assign or transfer the Contract to another company of the GasEner Group. To the extent that the assignee has the same level of creditworthiness as the assignor, the assigning Party shall be fully discharged of all and any of its obligations under the Contract and shall not become the guarantor of the assignee in any way (including as a result of any joint or several liability).

16.2. Subcontracting

The Consultant shall be entitled to subcontract the Services or part thereof after prior written notice to the Client.

17. Force majeure

Notwithstanding any provision to the contrary in the Contract, neither Party shall be liable for a delay or failure to fulfill its obligations under this Contract (except the Client's payment obligation) arising from any cause beyond its reasonable control or arising from collective labor disputes, acts of war or acts of God or similar which impact the performance of its obligations.

The Party impacted by a force majeure event shall have to notify it in writing without undue delay by giving a description and an estimation of the impact of the event on its obligations. The affected part of the Contract shall be deemed to be suspended for the duration of the force majeure event and the Consultant shall be entitled to request a variation in accordance with Clause 11.2.

18. Hardship

In case of exceptional circumstances independent of the will of the Consultant, beyond the Consultant's reasonable control and unforeseeable at the time of the signature of the Contract (or the start of the performance of the Services if it is earlier), which is not taken into account by the mechanism referred to in Clause 6.1.4 and which alters the relative rights and obligations under the Contract to the detriment of the Consultant by increasing the Consultant's contractual obligations by more than ten percent (10%) of the cost of performance by the Consultant of its obligations hereunder (including but not limited to increases in the costs of labor, evolution of the markets, change of law), the Consultant shall be entitled to demand an adaptation of the Remuneration and/or time schedule to reflect or restore the economic balance of the Contract in accordance with Clause 7.2.

19. Non-waiver

Unless otherwise expressly provided in the Contract, no failure or delay of a Party to exercise any right or remedy under the Contract shall be considered, or operate as, a waiver thereof, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or the exercise of any other right or remedy. The rights and remedies provided in the Contract are cumulative and not exclusive of any rights or remedies provided by law.

20. Non-solicitation

The Client shall not, during the course of the Contract and for a period of three (3) years as of the termination, for whatever reason, of the Contract and in any capacity (whether on its own behalf or on behalf of any Third Party or in any other capacity whatsoever):

- 20.1. offer employment to any employee, director or consultant of the Consultant, or employ or offer or conclude any contract for services with, or solicit or entice the employment or engagement of, or enter into partnership with; or
- 20.2. procure or assist any Third Party so to offer, employ, engage, solicit or entice any employee, director or consultant of the Consultant, working or having worked, in any way, on the Project if the Client knows or should have reasonably suspected that such person would commit a breach of its contract with the Consultant when accepting such offer or proposal. In case of breach by the Client of this non-solicitation obligation, the Client shall be liable for the payment of a lump sum equal to the total cost of two years' wages of the employee (including any and all benefits).

The Parties acknowledge that the provisions of this Clause are reasonable and necessary to protect the Consultant legitimate interests. However, if any of the provisions of this Clause are ever held to exceed the limitations in duration, geographic area or scope or other limitations imposed by applicable mandatory law, the Parties shall be deemed to have agreed on equivalent provisions which comply with the maximum permitted by the mandatory applicable law.

21. Ethics

The Consultant applies to itself and its subcontractors ethics rules which are available at <http://www.worldbank.org>.

These rules shall be an integral part of the obligations of the Consultant and its subcontractors.

22. Language

The language of the Contract and any notices, Materials, Deliverables or communications related to the performance of the Services shall be English or Spanish, as agreed with the Client.

23. Notices

Any notice with reference to the Contract shall be validly made with respect to each of the Parties when a registered letter is sent by mail, by delivery with acknowledgment of receipt, by airmail letter, by telex/fax or by electronic mail followed by a confirmation by airmail letter sent within five (5) Days to the addresses specified in the Special Conditions (or, in the absence of such precision, the registered office of the addressee on the date of the issuing of the Proposal) or to any other address subsequently notified. Any notice to be made under the Contract shall take effect as from the moment it is received by the other Party. Nevertheless, a notice sent by registered letter shall take effect as from the first Day following the day the letter is sent, or, if the addressee does not reside in the same country as sender, as from the fourth day following the day that it is sent.

Any change of address must be notified by registered letter, the new address being considered the official address for purposes of the Contract from the first Day following the sending of such notice letter or, if the addressee does not reside in the same country as sender, as from the fourth Day following the day that it is sent.

24. Severability

If one or more of the provisions of the Contract is declared to be invalid, illegal or unenforceable in any respect under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not in any way be affected. Each of the Parties shall use its best efforts to immediately and in good faith negotiate a legally valid replacement provision.

25. Applicable Law

The Contract shall be interpreted, governed and construed under the laws of the state of Florida as if executed and to be performed wholly within the state of Florida and without reference to that state's rules and principles governing the conflict of laws. All arbitration to be conducted in the city of Miami.

26. Arbitration

The Parties agree to first try to settle any dispute that may arise between them and undertake to use their best efforts to arrive at an amicable settlement. Any dispute which cannot be solved by the Parties representatives shall therefore first be submitted to the general management of the Parties upon written request by the most diligent Party. Within ten (10) Days after the receipt of a notice requesting such meeting, the general management of the Parties shall meet to settle the matter amicably. If, however, no settlement is reached within twenty (20) Days after notification of the dispute, upon written notice from either Party, said dispute shall be finally settled by arbitration in accordance with the Rules of Arbitration of the International Chamber of Commerce. The arbitration proceedings shall take place in Miami, United States of America, with three arbitrators and shall be conducted in the language of the Contract. Without prejudice to Clause 12, the performance of the Contract may be continued by the Consultant to the extent that the Client has paid all amounts in excess of the cap specified in Clause 9.3, have been paid in full and if the Client grants sufficient security for the payment of the balance of the Remuneration and interest that could be due to the Consultant in the event that the arbitral panel would find for the Consultant.