



Številka pogodbe naročnika: JPE-VOD-75/22

Številka pogodbe izvajalca: \_\_\_\_\_

energetika ljubljana  
PREJETO

**POGODBA**  
**za izdelavo idejne študije energijske izrabe odpadkov v Ljubljani** 05-07-2022

ki jo skleneta

**NAROČNIK:** **JAVNO PODJETJE ENERGETIKA LJUBLJANA d.o.o.**, Verovškova ulica 62, 1000 Ljubljana, ki ga zastopa direktor Samo Lozej (v nadaljevanju: naročnik)

identifikacijska številka za DDV: SI23034033  
matična številka: 5226406000

in

**IZVAJALEC:** **DI Dr. Roland Pomberger**, Flutergasse 35, 8790 Eisenerz, Austria, ki ga zastopa Dr. Roland Pomberger (v nadaljevanju: izvajalec)

identifikacijska številka za DDV: ATU60237826

## I. UVODNO DOLOČILO

### 1. člen

Pogodbeni stranki uvodoma sporazumno ugotavljata, da je JAVNI HOLDING Ljubljana, d.o.o., Verovškova ulica 70, Ljubljana, na podlagi pooblastila naročnika izvedel postopek oddaje javnega naročila št. JPE-VOD-75/22 po postopku s pogajanjem brez predhodne objave, v skladu s tretjo alinejo c. točke prvega odstavka 46. člena Zakona o javnem naročanju (Ur. l. RS, št. 91/15 s spremembami; v nadaljnjem besedilu: ZJN-3), z namenom sklenitve pogodbe za »Izdelava idejne študije energijske izrabe odpadkov v Ljubljani«, v katerem je naročnik izvajalca izbral na podlagi ekonomsko najugodnejše ponudbe in na podlagi pogojev, opredeljenih v razpisni dokumentaciji naročnika št. JPE-VOD-75/22, in sicer za obdobje od datuma podpisa pogodbe s strani obeh pogodbenih strank do izpolnitve dogovorjenih obveznosti iz pogodbe.

S to pogodbo se naročnik in izvajalec dogovorita o pogojih izvajanja predmeta pogodbe.

## II. PREDMET POGODBE

### 2. člen

Predmet pogodbe je izdelava idejne študije energijske izrabe odpadkov v Ljubljani (v nadaljevanju: storitev ali tudi pogodbeno dela ali projekt), v skladu s tehnično specifikacijo, kot je to opredeljeno v dokumentaciji v zvezi z oddajo javnega naročila št. JPE-VOD-75/22 (v nadaljevanju: razpisna dokumentacija), na podlagi prijave izvajalca št. 11/2022 z dne 2. 5. 2022 (v nadaljevanju: prijava), na podlagi končne ponudbe izvajalca št. 12/2022 z dne 19. 5. 2022, ki je priloga št. 1 te pogodbe (v nadaljevanju: končna ponudba) ter v skladu z vsebino zahtev javnega naročila št. JPE-VOD-75/22, in sicer vse po pravih stroke, s skrbnostjo dobrega

strokovnjaka ter v skladu s to pogodbo.

Pogodbena dela so podrobno opredeljena v Projektni nalogi, ki je priloga št. 2 te pogodbe.

Pogodbena dela se bodo izvedla v treh (3) fazah:

- I. faza: postavitve osnovnega koncepta procesov mehanske predelave in skladiščenja odpadkov, energijske izrabe odpadkov ter stabilizacije produktov energijske izrabe odpadkov v objektu za energijsko izrabo odpadkov (v nadaljevanju: OEIO),
- II. faza: postavitve osnutka inženirskih rešitev procesov mehanske predelave in skladiščenja odpadkov, energijske izrabe odpadkov ter stabilizacije produktov energijske izrabe odpadkov v OEIO,
- III. faza: postavitve končnih inženirskih rešitev procesov mehanske predelave in skladiščenja odpadkov, energijske izrabe odpadkov ter stabilizacije produktov energijske izrabe odpadkov v OEIO.

Pogodbene stranki sta sporazumni, da ima naročnik pravico po zaključku in potrditvi I. ali po zaključku in potrditvi II. faze projekta, pod pogojem, da je poravnal vse zapadle obveznosti do izvajalca, obvestiti izvajalca, da se projekt zaključi ter da predmetna pogodba preneha veljati. V tem primeru izvajalec ni upravičen do plačila po tej pogodbi za neizvedene posamezne faze projekta, hkrati pa se s podpisom te pogodbe tudi odpoveduje vsem morebitnim zahtevkom, ki bi izhajali iz tega naslova.

### 3. člen

Izvajalec potrjuje in jamči, da je pridobil vse podatke, ki se nanašajo na predmet pogodbe, ki bi lahko vplivali na pogodbeno vrednost ali razčlenitev pogodbene vrednosti, ali na njegove pravice in obveznosti po tej pogodbi. Izvajalec se izrecno odpoveduje vsem zahtevkom do naročnika, ki bi izvirali iz njegove morebitne neseznanjenosti s pogoji po tej pogodbi.

Izvajalec izjavlja, da so mu razumljivi in jasni pogoji in okoliščine za pravilno izvedbo pogodbenih obveznosti.

## III. POGODBENA VREDNOST

### 4. člen

Pogodbena vrednost pogodbenih del iz 2. člena te pogodbe je določena na podlagi končne ponudbe in znaša na dan sklenitve te pogodbe v neto vrednosti:

Faze	Storitev	Enota mere	Vrednost v EUR brez DDV
I.)	postavitve osnovnega koncepta procesov mehanske predelave in skladiščenja odpadkov, energijske izrabe odpadkov ter stabilizacije produktov energijske izrabe odpadkov v OEIO	komplet	119.000,00
II.)	postavitve osnutka inženirskih rešitev procesov mehanske predelave in skladiščenja odpadkov, energijske izrabe odpadkov ter stabilizacije produktov energijske izrabe odpadkov v OEIO	komplet	192.500,00
III.)	postavitve končnih inženirskih rešitev procesov mehanske predelave in skladiščenja odpadkov, energijske izrabe odpadkov ter stabilizacije produktov energijske izrabe odpadkov v OEIO	komplet	115.500,00
<b>Skupna pogodbena vrednost v EUR brez DDV (I.-III.)</b>			<b>427.000,00</b>

pri čemer je pogodbena cena pogodbenih del, navedena v posameznih postavkah končne ponudbe, fiksna ves čas veljavnosti pogodbe, razen v primeru znižanja cen.

Pogodbena vrednost ne vključuje davka na dodano vrednost (DDV). DDV obračuna izvajalec v skladu z vsakokratno veljavno zakonodajo v Republiki Sloveniji.

V pogodbenih cenah, navedenih v posameznih postavkah končne ponudbe, so upoštevani vsi materialni in

nematerialni stroški, potrebni za kvalitetno in pravočasno izvedbo predmeta pogodbe, vključno s stroški dela, potnimi stroški, nastanitvenimi stroški, stroški materiala, opreme, pripomočkov in delovne sile, stroški izdelave ponudbene dokumentacije, stroški priprave pisnih poročil, stroški svetovanja, stroški za vsa ostala dela in naloge, ki so v pogodbi opredeljena kot obveznosti izvajalca, kot tudi vsi ostali stroški, ki bodo izvajalcu nastali pri izpolnjevanju ostalih pogodbenih obveznosti.

#### **IV. NAČIN OBRAČUNA IN PLAČILA**

##### 5. člen

Izvajalec bo za vsako posamezno fazo izvedenih pogodbenih del izstavil natančno specificiran račun za opravljena pogodbeno dela, v roku 5 (petih) koledarskih dni po podpisu posameznega zapisnika o izvedenih pogodbenih delih posamezne faze, s strani obeh pogodbenih strank oz. njunih predstavnikov.

Izvajalec je dolžan skupaj s specificiranim računom predložiti naročniku tudi posamezni zapisnik o izvedenih pogodbenih delih posamezne faze, ki je obvezna priloga k računu, podpisan s strani obeh pogodbenih strank oziroma njunih predstavnikov.

V primeru, da izstavljeni račun ni pravilen, ga naročnik zavrne z obrazložitvijo, izvajalec pa je dolžan izstaviti nov, popravljen račun v roku treh (3) dni od zavrnitve, v katerem bo izkazana pravilna vrednost opravljenih pogodbenih del.

Naročnik se obvezuje, da bo izstavljeni račun poravnal izvajalcu v roku tridesetih (30) koledarskih dni, šteto od dneva izstavitve pravilnega računa za opravljena pogodbeno dela, na poslovni račun izvajalca IBAN: AT881 4000 8151 0508 572, odprt pri banki BAWAG P.S.K. (SWIFT: BAWAATWW) oz. podizvajalca. V primeru spremembe poslovnega računa izvajalca, navedenega v tem členu, mora izvajalec takoj pisno obvestiti naročnika o spremembi.

V primeru zamude s plačilom je izvajalec upravičen zaračunati naročniku zakonite zamudne obresti.

#### **V. PODIZVAJALCI**

##### 6. člen

Izvajalec ob predložitvi ponudbe in ob sklenitvi te pogodbe nima prijavljenih podizvajalcev za izvedbo predmeta pogodbe.

Izvajalec mora med izvajanjem pogodbe naročnika obvestiti o morebitnih spremembah informacij iz drugega odstavka 94. člena ZJN-3 in poslati informacije o novih podizvajalcih, ki jih namerava naknadno vključiti v izvajanje takšnih del, in sicer najkasneje v petih (5) dneh po spremembi. V primeru vključitve novih podizvajalcev mora izvajalec skupaj z obvestilom posredovati tudi podatke in dokumente iz druge, tretje in četrte alineje drugega odstavka 94. člena ZJN-3.

Naročnik bo zavrnil vsakega podizvajalca, če zanj obstajajo razlogi za izključitev iz točke 3.1. razpisne dokumentacije. Naročnik lahko zavrne predlog za zamenjavo podizvajalca oziroma vključitev novega podizvajalca tudi, če bi to lahko vplivalo na nemoteno izvajanje ali dokončanje pogodbenih del in če novi podizvajalec ne izpolnjuje pogojev, ki jih je postavil naročnik v dokumentaciji v zvezi z oddajo javnega naročila. Naročnik mora o morebitni zavrnitvi novega podizvajalca obvestiti izvajalca najpozneje v desetih (10) dneh od prejema predloga.

Izvajalec v razmerju do naročnika v celoti odgovarja za dobro izvedbo pogodbenih obveznosti, ne glede na število podizvajalcev.

#### **VI. TERMINSKI PLAN IN ROK IZVEDBE**

##### 7. člen

Izvajalec bo dela po tej pogodbi opravil v naslednjih rokih po posameznih fazah, pri čemer rok izvedbe I. faze prične teči z dnem sklenitve te pogodbe:

Faza	FAZA IDEJNE ŠTUDIJE	Rok izvedbe (mesec)
I.	Postavitev osnovnega koncepta procesov mehanske predelave in skladiščenja odpadkov, energijske izrabe odpadkov ter stabilizacije produktov energijske izrabe odpadkov v OEIO	3 (tri) mesece od sklenitve pogodbe
II.	Postavitev osnutka inženirskih rešitev procesov mehanske predelave in skladiščenja odpadkov, energijske izrabe odpadkov ter stabilizacije produktov energijske izrabe odpadkov v OEIO	6 (šest) mesecev od potrditve I. faze in izstavitve pisnega naročila s strani naročnika
III.	Postavitev končnih inženirskih rešitev procesov mehanske predelave in skladiščenja odpadkov, energijske izrabe odpadkov ter stabilizacije produktov energijske izrabe odpadkov v OEIO	3 (tri) mesece od potrditve II. faze in izstavitve pisnega naročila s strani naročnika

Faze si sledijo zaporedno. Rok izvedbe posamezne faze je podan v mesecih, pri čemer se rok izvedbe posamezne faze lahko po dogovoru med naročnikom in izvajalcem skrajša ali podaljša. V primeru spremembe roka izvedbe, bosta naročnik in izvajalec sklenila aneks k pogodbi.

Natančneje so posamezne faze opredeljene v 3. poglavju Projektne naloge, ki je sestavni del in priloga št. 2 te pogodbe.

Konec vsake faze predstavlja s strani predstavnika naročnika in predstavnika izvajalca podpisan zapisnik o izvedenih pogodbenih delih posamezne faze. Naročnik bo začetek naslednje faze potrdil s pisnim naročilom. Naročnik si pridržuje pravico, da v dogovoru z izvajalcem poveča ali zmanjša obseg naročenih del ter ga prilagodi dejanskim potrebam naročnika.

Naročnik mora za začetek posamezne faze izvedbe del izvajalcu predati vse potrebne podatke za izvedbo posamezne faze izvedbe pogodbenih del. Po predaji vseh potrebnih podatkov za izvedbo posamezne faze izvedbe del s strani naročnika, pogodbeni stranki podpišeta zapisnik o predaji vseh potrebnih podatkov za izvedbo posamezne faze izvedbe del. Zapisnik mora biti podpisan s strani obeh pogodbenih strank oz. njihovih predstavnikov.

## VII. DOKUMENTACIJA IN DELOVNI SESTANKI/DELAVNICE TER POTRDITEV FAZE

### 8. člen

Izvajalec mora o izvedenih pogodbenih delih za vsako posamezno fazo pripraviti pisno poročilo s spremno dokumentacijo v slovenskem ali angleškem jeziku, ki ga mora posredovati naročniku v elektronski obliki. Vse besedilne datoteke morajo biti pripravljene in izročene v pdf. formatu, vse grafične priloge morajo biti pripravljene in izročene v DWG (oziroma kompatibilni - PHASE-file) in pdf. formatu.

Naročnik bo po prejemu posameznega pisnega poročila sklical delovni sestanek oz. delavnico med izvajalcem in naročnikom. Datum delavnice se pisno (po e-pošti) dogovori med naročnikom in izvajalcem. Delavnice lahko potekajo virtualno ali z neposredno prisotnostjo izvajalca na lokaciji naročnika, Toplarniška ulica 19, Ljubljana. Izvajalec mora poročilo podrobno predstaviti naročniku na skupnih delavnicah.

Naročnik bo pogodbeni dela posamezne faze pregledal in pisno potrdil na skupnih delavnicah, oziroma podal utemeljene zahteve za dopolnitve. Posamezna faza se dokončno potrdi s obojestranskim podpisom zapisnika o izvedenih pogodbenih delih za posamezno fazo.

Izvajalec lahko začne z izvajanjem naslednje faze projekta po potrditvi predhodne faze ter pisnem naročilu s strani naročnika, da se nadaljuje z naslednjo fazo.

Po zaključeni III. fazi mora izvajalec za vsakega od 3 (treh) obratov energijske izrabe odpadkov v Ljubljani, tj. RCERO, OEIO in stabilizacijo produktov OEIO, zbrati vso pripadajočo projektno dokumentacijo in jo predati naročniku kot 3 (tri) ločene projektne mape v elektronski obliki. Vse besedilne datoteke morajo biti pripravljene in izročene v pdf. formatu, vse grafične priloge morajo biti pripravljene in izročene v DWG

oziroma za 3D-oblike kot PHASE-file in pdf. formatu.

Izvajalec mora vse 3 (tri) projektne mape tudi natisniti in jih predati naročniku v šestih (6) izvodih. Projektne mape morajo biti pripravljene v slovenskem ali angleškem jeziku. Risbe v projektnih mapah morajo biti praviloma izdelane v merilu M 1:100 ali M 1:200, oziroma po dogovoru z naročnikom v kakem drugem standardnem merilu.

Vsa predana pisna dokumentacija ne sme nositi znaka avtorske zaščite (copyright) oz. vsebinsko enakovrednega teksta (določila) in postane last naročnika, ki lahko z njo prosto razpolaga, kot to urejajo določila 14. člena te pogodbe.

## **VIII. VIŠJA SILA**

### **9. člen**

Izvajalec ni odgovoren za delno ali celotno neizpolnjevanje obveznosti, če je to posledica višje sile.

Kot višja sila se razumejo vse okoliščine izjemnega značaja, ki so se pojavile po sklenitvi pogodbe in jih sodna praksa priznava za višjo silo. Če so pogodbeni dela delno ali v celoti motena oziroma preprečena, je izvajalec o tem dolžan nemudoma obvestiti naročnika. Prav tako ga je dolžan sproti obveščati o prenehanju takih okoliščin. Pogodbeni roki se podaljšajo za čas trajanja višje sile. Na zahtevo naročnika je izvajalec dolžan dokazati obstoj višje sile.

Pomanjkanje delovne sile ali materiala pri izvajalcu ali pri njegovih podizvajalcih se ne šteje za višjo silo, razen, če ni posledica le-te.

## **IX. OBVEZNOSTI POGODBENIH STRANK**

### **10. člen**

V okviru izpolnjevanja svojih obveznosti po tej pogodbi je dolžan izvajalec:

- upoštevati tehnično specifikacijo naročnika in pogodbene obveznosti izvesti skladno z zahtevami naročnika iz razpisne dokumentacije;
- poskrbeti, da so pogodbeni dela izvedena in dokumentirana po predpisih, standardih in normativih;
- izvesti prevzeta pogodbeni dela strokovno pravilno, vestno in kvalitetno, v skladu z vsemi veljavnimi predpisi, standardi in uzancami, ob tesnem sodelovanju z naročnikom (skrbnost dobrega strokovnjaka);
- zagotavljati vse potrebno, da bo lahko izpolnjeval vse svoje obveznosti po tej pogodbi;
- izvesti pogodbeni dela z delavci, strokovno usposobljenimi za opravljanje tovrstnih storitev;
- izvesti pogodbeni dela z delavci, ki imajo veljavna spričevala o opravljenem zdravniškem pregledu;
- obveščati naročnika o tekoči problematiki in nastalih situacijah, ki bi lahko vplivale na izvršitev pogodbenih obveznosti.

Izvajalec odgovarja za neposredno škodo, ki nastane naročniku in tretjim osebam in izvira iz njegovega dela in njegovih obveznosti po tej pogodbi.

### **11. člen**

V okviru izpolnjevanja svojih obveznosti po tej pogodbi je dolžan naročnik:

- z izvajalcem sodelovati, mu nuditi potrebno pomoč in dajati ustrezna navodila;
- takoj obvestiti izvajalca o nastalih okoliščinah, ki bi lahko vplivale na izpolnitev naročnikovih pogodbenih obveznosti;
- poravnati obveznosti do izvajalca in njegovih podizvajalcev.

Naročnik se tudi obvezuje, da bo pripravil in predal izvajalcu:

- a) načrte obeh lokacij v DWG obliki, vključno z načrti razpoložljive infrastrukture: cestne povezave, vodovod, kanalizacija, zemeljski plin, električna energija, vročevod, parovod;
- b) podatke o razpoložljivih količinah in sestavi mehansko in biološko predelanih odpadkov, ki bodo služili kot gorivo;
- c) druge razpoložljive podatke, ki jih bo potreboval izvajalec za uspešno izvedbo pogodbenih del.

Vse dodatne podatke bo naročnik posredoval izvajalcu na podlagi pisne ali ustne zahteve izvajalca in lastne presoje o nujnosti zahtevanih podatkov za dokončanje obveznosti po tej pogodbi.

Pogodbeni stranki se obvezujeta ravnati kot dobra gospodarstvenika in storiti vse, kar je potrebno za izvršitev pogodbe.

## **X. POGODBENA KAZEN**

### 12. člen

V kolikor izvajalec po svoji krivdi ne izpolni svojih pogodbenih obveznosti v roku, opredeljenem v 7. členu te pogodbe in neizpolnitev ni posledica višje sile, kot je zapisano v 9. členu te pogodbe, je naročnik upravičen obračunati pogodbeno kazen v višini nič cela petindvajset odstotka (0,25 %) pogodbene vrednosti brez DDV za posamezno fazo izvedbe del za vsak dan zamude, pri čemer sme pogodbeno kazen znašati največ 10% (deset odstotkov) celotne pogodbene vrednosti brez DDV.

V kolikor pogodbeno kazen preseže deset odstotkov (10 %) celotne pogodbene vrednosti brez DDV lahko naročnik odstopi od pogodbe.

### 13. člen

Naročnik si pridrži pravico uveljaviti pogodbeno kazen pri plačilu računa, čeprav ob zamudi izvajalca na to ni posebej opozoril, niti pisno obvestil.

Če zaradi zamude izvedbe pogodbenih obveznosti nastaja pri naročniku dodatna škoda, je naročnik upravičen do povrnitve nastale škode s strani izvajalca.

Naročnik in izvajalec soglašata, da pravica zaračunati pogodbeno kazen ni pogojena z nastankom škode pri naročniku. Za povračilo tako nastale škode bo naročnik škodo uveljavljal tudi po splošnih načelih odškodninske odgovornosti, neodvisno od uveljavljanja pogodbene kazni.

## **XI. LASTNIŠTVO IN AVTORSTVO DOKUMENTACIJE**

### 14. člen

Ob primopredaji posamezne dokumentacije izvajalec na naročnika prenese vse materialne avtorske pravice na dokumentaciji, zlasti pravice do reproduciranja, distribuiranja, javnega izvajanja, prenašanja in prikazovanja, dajanja na voljo javnosti, predelave, uporabe dela v predelani obliki, dostopa in izročitve, zadrži pa moralne avtorske pravice, brez dodatnih finančnih obveznosti naročnika. Dokumentacija, ki jo prejme naročnik, postane oziroma je last naročnika.

## **XII. PREDSTAVNIKA POGODBENIH STRANK**

### 15. člen

Predstavniki naročnika, ki bo urejal vsa vprašanja, ki bodo nastala v zvezi z izvajanjem te pogodbe, je g. Gregor Golja, telefon: +386 1 587 53 22, e-pošta: gregor.golja@energetika.si, v njegovi odsotnosti pa ga zamenjuje g. Marko Agrež, telefon: +386 1 58 75 246, e-pošta: marko.agrez@energetika.si.

Predstavniki izvajalca, ki bo urejal vsa vprašanja, ki bodo nastala v zvezi z izvajanjem te pogodbe, je, DI Dr. Roland Pomberger, telefon: +43 676 845 386 700, e-pošta: roland.pomberger@unileoben.ac.at.

Predstavniki naročnika zastopa naročnika v vseh vprašanjih, ki se nanašajo na izvedbo del po tej pogodbi. Predstavniki naročnika sodeluje s predstavnikom izvajalca ves čas veljavnosti pogodbe in mu nudi vse potrebne podatke, ki jih je na podlagi obveznosti po tej pogodbi dolžan dati.

Predstavniki izvajalca zastopa izvajalca v vseh vprašanjih, ki se nanašajo na izvedbo del po tej pogodbi. Predstavniki izvajalca je dolžan neposredno sodelovati s predstavnikom naročnika ves čas veljavnosti pogodbe.

Pogodbeni stranki sta se dolžni medsebojno obvestiti o zamenjavi svojih predstavnikov, in sicer pisno, z navedbo datuma primopredaje poslov. Pisno obvestilo o tem mora prejeti naročnik oziroma izvajalec najkasneje v treh (3) koledarskih dneh pred navedenim dnevom primopredaje poslov.

### XIII. ODPOVED POGODBE IN ODSTOP OD POGODBE

#### 16. člen

Vsaka pogodbeni stranka ima pravico odpovedati pogodbo z 1 (eno) mesečnim odpovednim rokom, če se okoliščine po sklenitvi pogodbe spremenijo tako, da sklenjena pogodba ne izraža več prave volje pogodbene stranke in pod pogojem, da so med strankama pogodbe poravnane vse zapadle obveznosti. Odpovedni rok teče od dneva prejema pisne odpovedi, ki mora biti drugi pogodbeni stranki poslana s priporočeno pošto pošiljko.

Pogodbeni stranki se v času odpovedi medsebojnega razmerja po pogodbi obvezujeta izvajati svoje obveznosti do izteka odpovednega roka, pri čemer se naročnik in izvajalec lahko pisno sporazumeta za drugačen odpovedni rok.

#### 17. člen

Naročnik lahko odstopi od pogodbe, z obvestilom, poslanim izvajalcu s priporočeno pošiljko po pošti, brez obveznosti do izvajalca, če izvajalec:

- ne začne z izvedbo pogodbeno dogovorjenih del v pogodbenem roku, niti v naknadnem roku, ki mu ga določi naročnik,
- ne dosega pogodbeno dogovorjene kvalitete in te ne vzpostavi niti v naknadnem roku, ki mu ga določi naročnik,
- ne izpolnjuje ali nepravilno izpolnjuje svoje obveznosti tudi po naknadno določenem roku s strani naročnika,
- neredno poravnava obveznosti do svojih zaposlenih,
- poviša cene v času veljavnosti pogodbe,
- preda izvedbo pogodbenih obveznosti tretji osebi brez predhodnega pisnega soglasja naročnika,
- prekine z izvedbo pogodbenih obveznosti brez predhodnega pisnega soglasja naročnika.

#### 18. člen

Med veljavnostjo pogodbe lahko naročnik, ne glede na določbe zakona, ki ureja obligacijska razmerja, odstopi od pogodbe tudi v primerih iz 96. člena ZJN-3.

#### 19. člen

Izvajalec ima pravico do odstopa od te pogodbe v primeru kršenja določil pogodbe s strani naročnika. V tem primeru pogodba preneha veljati, ko naročnik prejme pisno obvestilo o odstopu od pogodbe z navedbo razloga za odstop s priporočeno pošiljko po pošti.

#### 20. člen

Ta pogodba je sklenjena pod razveznim pogojem, ki se uresniči v primeru izpolnitve ene od naslednjih okoliščin:

- če bo naročnik seznanjen, da je sodišče s pravnomočno odločitvijo ugotovilo kršitev obveznosti delovne, okoljske ali socialne zakonodaje s strani izvajalca ali podizvajalca ali
- če bo naročnik seznanjen, da je pristojni državni organ pri izvajalcu ali podizvajalcu v času izvajanja pogodbe ugotovil najmanj dve kršitvi v zvezi s:
  - plačilom za delo,
  - delovnim časom,
  - počitki,
  - opravljanjem dela na podlagi pogodb civilnega prava kljub obstoju elementov delovnega razmerja ali v zvezi z zaposlovanjem na črno

in za kateri mu je bila s pravnomočno odločitvijo ali več pravnomočnimi odločitvami izrečena globa za prekršek, in pod pogojem, da je od seznanitve s kršitvijo in do izteka veljavnosti pogodbe še najmanj šest mesecev oziroma če izvajalec nastopa s podizvajalcem pa tudi, če zaradi ugotovljene kršitve pri podizvajalcu izvajalec ne nadomesti ali zamenja tega podizvajalca, na način določen v skladu s 94. členom ZJN-3 in

določili te pogodbe v roku 30 (trideset) dni od seznanitve s kršitvijo.

V primeru izpolnitve okoliščine in pogojev iz prejšnjega odstavka se šteje, da je pogodba razvezana z dnem sklenitve nove pogodbe o izvedbi javnega naročila za predmetno naročilo. O datumu sklenitve nove pogodbe bo naročnik obvestil izvajalca.

Če naročnik v roku 30 (trideset) dni od seznanitve s kršitvijo ne začne novega postopka javnega naročila, se šteje, da je pogodba razvezana 30. (trideseti) dan od seznanitve s kršitvijo.

#### **XIV. SESTAVNI DELI POGODBE**

##### 21. člen

Pri tolmačenju te pogodbe in reševanju morebitnih sporov se, poleg pogodbe ter zakona, ki ureja obligacijska razmerja, upošteva še:

- razpisna dokumentacija, št. JPE-VOD-75/22,
- prijava izvajalca št. 11/2022 z dne 2. 5. 2022,
- končna ponudba izvajalca št. 12/2022 z dne 19. 5. 2022, ki je priloga št. 1 te pogodbe,
- Projektna naloga, ki je priloga št. 2 te pogodbe,
- ostala relevantna dokumentacija.

Pogodbeni stranki sta sporazumni, da je dokumentacija iz prejšnjega odstavka tega člena sestavni del pogodbe.

V primeru, če si vsebina zgoraj navedenih dokumentov nasprotuje in če volja pogodbenih strank ni jasno izražena, za razlago volje obeh strank pogodbe najprej veljajo določila te pogodbe, nato razpisna dokumentacija, na podlagi katere je bila sklenjena ta pogodba, potem pa dokumenti v vrstnem redu, kot si sledijo v tem členu.

##### 22. člen

Vsa strokovna/tehnična dokumentacija in priloge te pogodbe, ki jo izvajalec na podlagi te pogodbe izroči naročniku, postane last naročnika.

#### **XV. PROTIKORUPCIJSKA KLAVZULA**

##### 23. člen

V primeru, da se ugotovi, da je pri izvedbi javnega naročila, na podlagi katerega je sklenjena ta pogodba ali pri izvajanju te pogodbe kdo v imenu ali na račun izvajalca, predstavniku ali posredniku naročnika ali drugega organa ali organizacije iz javnega sektorja obljubil, ponudil ali dal kakšno nedovoljeno korist za pridobitev tega posla ali za sklenitev tega posla pod ugodnejšimi pogoji ali za opustitev dolžnega nadzora nad izvajanjem obveznosti pogodbe ali za drugo ravnanje ali opustitev, s katerim je naročniku ali organu ali organizaciji iz javnega sektorja povzročena škoda ali je omogočena pridobitev nedovoljene koristi predstavniku naročnika, predstavniku organa, posredniku organa ali organizacije iz javnega sektorja, izvajalcu ali njegovemu predstavniku, zastopniku, posredniku, je ta pogodba nična.

Naročnik bo v primeru ugotovitve o domnevnem obstoju dejanskega stanja iz prvega odstavka tega člena ali obvestila Komisije za preprečevanje korupcije Republike Slovenije ali drugih organov, glede njegovega domnevnega nastanka, pričel z ugotavljanjem pogojev ničnosti pogodbe iz prejšnjega odstavka tega člena oziroma z drugimi ukrepi v skladu s predpisi Republike Slovenije.

#### **XVI. ODPSTOP OZIROMA CESIJA DENARNIH TERJATEV**

##### 24. člen

Pogodbeni stranki se zavezujeta, da po tej pogodbi velja prepoved odstopa oziroma cesije denarnih terjatev, ki izvirajo iz predmetne pogodbe, drugim pravnim ali fizičnim osebam, razen bankam. V primeru odstopa denarne terjatve drugim pravnim ali fizičnim osebam, razen bankam, odstop nima pravnega učinka.

## **XVII. REŠEVANJE SPOROV**

### 25. člen

Morebitne spore, ki bi nastali v zvezi z izvajanjem te pogodbe, bosta stranki skušali rešiti sporazumno.

Če spora ne bo možno rešiti sporazumno, lahko vsaka pogodbeni stranka sproži postopek za rešitev spora pri stvarno pristojnem sodišču v Ljubljani.

## **XVIII. OSTALE DOLOČBE**

### 26. člen

Ta pogodba v celoti zavezuje tudi morebitne vsakokratne pravne naslednike vsake od pogodbenih strank, kar velja zlasti tudi v primeru organizacijsko – statusnih ter lastninskih sprememb.

### 27. člen

Morebitne spremembe ali dopolnitve pogodbe so veljavne le, če jih pogodbeni stranki skleneta v obliki pisnega aneksa k tej pogodbi, ki ga podpišeta obe stranki pogodbe.

Če katerikoli od določil pogodbe je ali postane neveljavno, to ne vpliva na ostala določila pogodbe. Neveljavno določilo se nadomesti z veljavnim, ki mora čim bolj ustrezati namenu, ki sta ga želeli doseči stranki pogodbe z neveljavnim določilom.

Pogodbeni stranki sta sporazumni, da se katerikoli rok iz te pogodbe, če se le-ta izteče na soboto, nedeljo, praznik ali drug dela prosti dan po zakonu, prenese na prvi naslednji delovni dan.

Izvajalec s podpisom te pogodbe jamči, da mu je poznan predmet pogodbe in vsi riziki, ki bodo spremljali izvedbo, da je seznanjen z razpisnimi zahtevami in s tehnično dokumentacijo, ter da so mu razumljivi in jasni pogoji in okoliščine za pravilno izvedbo pogodbenih obveznosti.

### 28. člen

Vsebina te pogodbe kot tudi dokumentacija, ki je njen sestavni del oziroma se nanaša na to pogodbo in njeno izvajanje se šteje za poslovno skrivnost, razen podatkov oz. informacij, ki v skladu z veljavnimi predpisi štejejo za javne.

### 29. člen

Za urejanje razmerij, ki niso urejena s to pogodbo, se uporabljajo določila zakona, ki ureja obligacijska razmerja.

### 30. člen

Priloge so neločljivi sestavni del te pogodbe.

### 31. člen

Pogodba je sklenjena in začne veljati z dnem podpisa s strani obeh pogodbenih strank ter velja do izpolnitve dogovorjenih obveznosti po tej pogodbi, pri čemer lahko naročnik, v skladu s četrtem odstavkom 2. člena te pogodbe, po zaključku in potrditvi I. faze ali po zaključku in potrditvi II. faze projekta obvesti izvajalca, da se projekt zaključi ter pogodba preneha veljati.

Pogodba se sklone in podpiše v slovenskem in angleškem jeziku. V primeru nejasnosti (neskladja) med obema jezikovnima verzijama pogodbe, se za njeno jezikovno razlago uporablja slovenski jezik. V primeru prilog k pogodbi, se za njihovo jezikovno razlago uporablja jezik, v katerem je priloga. V kolikor je naročnik zahteval prevod dokumenta ponudbe, pripravljen s strani sodno zapriseženega tolmača za slovenski jezik, se v primeru nejasnosti (neskladja) med obema jezikovnima verzijama dokumenta, za njegovo razlago uporablja slovenski jezik.

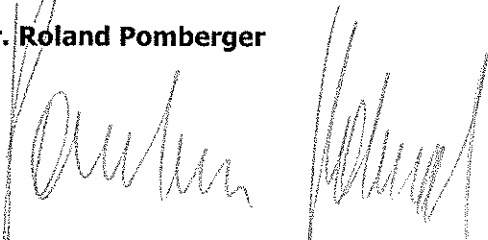
32. člen

Pogodba je sestavljena in podpisana v treh (3) enakih izvodih, od katerih prejme naročnik dva (2) in izvajalec en (1) izvod.

Eisenerz, dne 27.6.2022

IZVAJALEC:

**DI Dr. Roland Pomberger**



Priloga:

- Priloga št. 1: Končna ponudba izvajalca št. 12/2022 z dne 19. 5. 2022,
- Priloga št. 2: Projektna naloga - Idejna študija energijske izrabe odpadkov v Ljubljani

Ljubljana, dne 20. 6. 2022

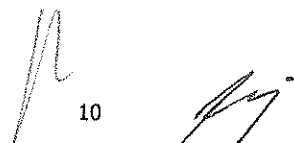
NAROČNIK:

JAVNO PODJETJE ENERGETIKA  
LJUBLJANA d.o.o.

Direktor:

**Samo Lozej**  *energetika ljubljana*

Energetika Ljubljana, d.o.o. 6/1  
Verovškova ulica 62, 1000 Ljubljana



**Number of the Contracting Entity's contract: JPE-VOD-75/22**

**Number of the Contractor's contract: \_\_\_\_\_**

**CONTRACT**  
**for the production of a preliminary study for waste-to-energy utilisation in Ljubljana**

concluded by and between

**CONTRACTING ENTITY: JAVNO PODJETJE ENERGETIKA LJUBLJANA d.o.o.**, Verovškova ulica 62, 1000 Ljubljana, represented by Samo Lozej, Director (hereinafter "Contracting Entity")

VAT ID No.: SI23034033  
registration number: 5226406000

and

**CONTRACTOR: DI Dr. Roland Pomberger**, Flutergasse 35, 8790 Eisenerz, Austria, represented by: Dr. Roland Pomberger (hereinafter referred to as "Contractor")

VAT ID No.: ATU60237826

**I. PRELIMINARY PROVISION**

Article 1

The Contracting Parties initially find that JAVNI HOLDING Ljubljana d.o.o., Verovškova ulica 70, Ljubljana, has conducted, under the delegation of the Contracting Entity, a procedure to award public contract No. JPE-VOD-75/22 under a negotiated procedure without prior publication pursuant to indent 3 of point (c) of paragraph 1 of Article 46 of the Public Procurement Act (Official Gazette of the Republic of Slovenia, No. 91/15 with amendments; hereinafter "ZJN-3") with the aim of concluding a contract for the "Production of a preliminary study for waste-to-energy utilisation in Ljubljana", in which the Contracting Entity selected the Contractor based on the most economically advantageous tender and based on the conditions laid down in the Contracting Entity's Tender Documents No. JPE-VOD-75/22, i.e. for the period from the signing of the contract by both Contracting Parties to the completion of the agreed obligations as referred to in the contract.

With this Contract, the Contracting Entity and the Contractor shall agree on the terms and conditions for the execution of the subject of the Contract.

**II. SUBJECT OF THE CONTRACT**

Article 2

The subject of the contract is the production of a preliminary study for waste-to-energy utilisation in Ljubljana (hereinafter "Service" or "Contractual Works" or "Project") pursuant to the technical specifications as laid down in the documents related to the award of public contract No. JPE-VOD-75/22 (hereinafter "Tender Documents"), based on the Contractor's application No. 11/2022 dated 2. 5. 2022 (hereinafter

"Application"), based on the Contractor's final tender No. 12/2022 dated 19. 5. 2022, which forms Annex No. 1 to this Contract (hereinafter "Final Tender") and pursuant to the content of the requirements laid down for public contract No. JPE-VOD-75/22, i.e. all in accordance with the rules of the profession, with due care and diligence and in line with this Contract.

The Contractual Works are defined in detail in the Terms of Reference, which forms Annex No. 2 to this Contract.

The Contractual Works will be carried out in three (3) stages:

- Stage I: establishment of the basic concept for the mechanical treatment and storage of waste, energy recovery from waste and stabilisation of products deriving from energy recovery from waste at the waste-to-energy plant (hereinafter "WtE Plant"),
- Stage II: establishment of draft engineering solutions for the processes of mechanical treatment and storage of waste, energy recovery from waste and stabilisation of products deriving from energy recovery from waste at the WtE Plant,
- Stage III: establishment of final engineering solutions for the processes of mechanical treatment and storage of waste, energy recovery from waste and stabilisation of products deriving from energy recovery from waste at the WtE Plant.

The Contracting Parties shall agree that the Contracting Entity has the right to inform the Contractor after the completion and confirmation of stage I or II of the Project, provided it has settled all due liabilities to the Contractor, that the Project is to be completed and that the relevant Contract shall cease. In such case, the Contractor shall not be entitled to payment hereunder for the non-performed individual stages of the Project and shall waive all claims deriving therefrom by signing this Contract.

#### Article 3

The Contractor confirms and guarantees that it has obtained all data referring to the subject of the Contract that may affect the contract price or the breakdown of the contract value or its rights and obligations under this Contract. The Contractor expressly waives all claims against the Contracting Entity that may derive from its possible lack of knowledge of the terms hereunder.

The Contractor declares that it understands and comprehends the terms and conditions for the proper implementation of the contractual obligations.

### III. CONTRACT VALUE

#### Article 4

The contract value for the Contractual Works referred to in Article 2 hereunder is specified on the basis of the Final Tender and shall amount as at the date of the conclusion of this Contract to the net value of:

<b>Stages</b>	<b>Service</b>	<b>Measurement unit</b>	<b>Value in €, excluding VAT</b>
<b>I.)</b>	Establishment of the basic concept for the mechanical treatment and storage of waste, energy recovery from waste and stabilisation of products deriving from energy recovery from waste at the WtE Plant	package	<b>119,000.00</b>
<b>II.)</b>	Establishment of draft engineering solutions for the processes of mechanical treatment and storage of waste, energy recovery from waste and stabilisation of products deriving from energy recovery from waste at the WtE Plant	package	<b>192,500.00</b>
<b>III.)</b>	Establishment of final engineering solutions for the processes of mechanical treatment and storage of waste, energy recovery from waste and stabilisation of products deriving from energy recovery from waste at the WtE Plant	package	<b>115,500.00</b>
<b>Total contract value in €, excluding VAT (I-III)</b>			<b>427,000.00</b>

whereby the contract price for the Contractual Works indicated in individual items of the Final Tender shall

be fixed throughout the term of the Contract, unless the price is decreased.

The contract price does not include value-added tax (VAT). VAT shall be charged by the Contractor pursuant to the legislation applicable in the Republic of Slovenia at the time.

The contract prices indicated in the individual items of the Final Tender shall take into account all material and non-material costs necessary for the quality and timely execution of the subject of the Contract, including labour costs, travel costs, accommodation costs, costs of material, equipment, tools and labour force, costs of tender preparation, cost of written reports, consultancy costs, the cost of all other works and tasks defined in the contract as the Contractor's obligations, and all other costs incurred by the Contractor during the completion of other contractual obligations.

#### **IV. BILLING AND PAYMENT METHOD**

##### Article 5

The Contractor will issue a precisely specified invoice for each stage of performed Contractual Works, i.e. for the Contractual Works performed, within 5 (five) calendar days of the signing of each record of the Contractual Works performed in each stage by both Contracting Parties or their representatives.

The Contractor shall be obliged to submit to the Contracting Entity together with the specified invoice each record of the Contractual Works performed in each stage, which shall constitute an appendix to the invoice, signed by both Contracting Parties or their representatives.

If an issued invoice is incorrect, the Contracting Entity shall reject it with a statement of grounds and the Contractor shall be obliged to issue a new amended invoice within three (3) days of the rejection, showing the proper value of the Contractual Works performed.

The Contracting Entity undertakes to settle the issued invoice within thirty (30) calendar days, counting from the date of issuance of a proper invoice for the Contractual Works performed, to the business account of the Contractor, IBAN: AT881 4000 8151 0508 572, opened with the bank BAWAG P.S.K. (SWIFT: BAWAATWW) or of the Subcontractor. If the Contractor's account indicated in this Article is changed, the Contractor shall be required to inform the Contracting Entity of the change immediately in writing.

In the event of late payment, the Contractor shall be entitled to charge legal default interest to the Contracting Entity.

#### **V. SUBCONTRACTORS**

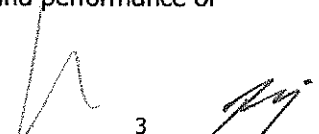
##### Article 6

Upon the submission of the tender and upon the conclusion of this Contract, the Contractor has no notified subcontractor for the execution of the subject of this Contract.

During the implementation of the Contract, the Contractor is required to inform the Contracting Entity of any changes to the information referred to in paragraph 2 of Article 94 of the Public Procurement Act and to send information about new subcontractors that it intends to include subsequently in the execution of such works, i.e. no later than within five (5) days of the change. If new subcontractors are included, the Contractor is also required to send the data and documents indicated in indents 2, 3 and 4 of paragraph 2 of Article 94 of the Public Procurement Act along with the notice.

The Contracting Entity will reject every subcontractor if there are grounds for exclusion as per point 3.1 of the Tender Documents. The Contracting Entity may also reject a proposal for the change of a subcontractor or inclusion of a new subcontractor if that could affect undisturbed execution or completion of the Contractual Works and if the new subcontractor fails to meet the requirements laid down by the Contracting Entity in the documents relating to the award of the public contract. The Contracting Entity is required to inform the Contractor of any rejection of a new subcontractor within ten (10) days of receiving the proposal.

In relation to the Contracting Entity, the Contractor shall be fully responsible for the sound performance of contractual obligations irrespective of the number of subcontractors.



## VI. TIME SCHEDULE AND PERIOD OF EXECUTION

### Article 7

The Contractor will perform the works hereunder within the following periods by individual stage, whereby the period for stage I shall start running on the day this Contract is concluded:

Stage	STAGE OF PRELIMINARY STUDY	Period of execution (month)
I.	Establishment of the basic concept for the mechanical treatment and storage of waste, energy recovery from waste and stabilisation of products deriving from energy recovery from waste at the WtE Plant	3 (three) months following the conclusion of the Contract
II.	Establishment of draft engineering solutions for the processes of mechanical treatment and storage of waste, energy recovery from waste and stabilisation of products deriving from energy recovery from waste at the WtE Plant	6 (six) months following the confirmation of stage I and issuance of a written order by the Contracting Entity
III.	Establishment of final engineering solutions for the processes of mechanical treatment and storage of waste, energy recovery from waste and stabilisation of products deriving from energy recovery from waste at the WtE Plant	3 (three) months following the confirmation of stage II and issuance of a written order by the Contracting Entity

The stages shall be sequential. The period for the execution of each stage is provided in months, whereby the period for the execution of each stage may be shortened or extended by way of an agreement between the Contracting Entity and the Contractor. If the period for execution is changed, the Contracting Entity and the Contractor will conclude an annex to the Contract.

Individual stages are defined in detail in Chapter 3 of the Terms of Reference, which constitutes a component part and Annex No. 2 to this Contract.

The end of each stage shall be a record of Contractual Works performed in each stage that is signed by the representative of the Contracting Entity and the representative of the Contractor. The Contracting Entity will confirm the start of the next stage by way of a written order.

The Contracting Entity reserves the right to increase or decrease the scope of the works procured in agreement with the Contractor and adjust it to its actual needs.

To commence each stage of the execution of works, the Contracting Entity shall be required to hand over to the Contractor all necessary data for the execution of each stage of the Contractual Works. Following the handover of all necessary data for the execution of each stage of the works by the Contracting Entity, the Contracting Parties shall sign a record of the handover of all necessary data for the execution of each stage of the works. The record is to be signed by both Contracting Parties or their representatives.

## VII. DOCUMENTS, STAFF MEETINGS/WORKSHOPS AND STAGE CONFIRMATION

### Article 8

The Contractor is required to prepare a written report on the Contractual Works performed in each stage with accompanying documentation in Slovenian or English, which is to be sent to the Contracting Entity in electronic form. All textual files are to be prepared and handed over in .pdf format, while all graphic enclosures are to be prepared in DWG (or compatible PHASE file) and .pdf format.

After receiving each written report, the Contracting Entity will convene a staff meeting or workshop between the Contractor and Contracting Entity. The date of the meeting is to be agreed in writing (by email) between the Contracting Entity and Contractor. Meetings may be held online or with the physical presence of the Contractor at the Contracting Entity's location in Toplarniška ulica 19, Ljubljana. The Contractor is required to present the report in detail to the Contracting Entity at joint workshops.

The Contracting Entity will inspect the Contractual Works of a particular stage and confirm them at joint workshops or give reasoned requests for supplementations. A particular stage shall be confirmed as final with the signing of the record on the Contractual Works performed for each stage by both Parties.

The Contractor may commence the next stage of the Project after the previous stage has been confirmed and the Contracting Entity has placed a written order to continue with the next stage.

After stage III is completed, the Contractor shall be required to collect all pertaining design documents for each of the three (3) waste-to-energy plants in Ljubljana, i.e. the Ljubljana Regional Waste Management Centre, the WtE Plant and product stabilisation at the WtE Plant, and hand them over to the Contracting Entity as 3 (three) separate project dossiers in electronic form. All textual files are to be prepared and handed over in .pdf format, while all graphic enclosures are to be prepared and handed over in DWG or PHASE file for 3D designs and in .pdf format.

The Contractor shall also be required to print all 3 (three) project dossiers and hand them over to the Contracting Entity in six (6) copies. The project dossiers are to be prepared in Slovenian or English. Drawings in the project dossiers are to be made as a rule at the scale (M) of 1 to 100 or 1 to 200 or in any other standard scale as agreed with the Contracting Entity.

All written documents handed over must not be marked copyright or, rather, contain identical text in terms of content (provision) and shall become the property of the Contracting Entity, which may freely dispose with them as laid down in the provisions of Article 14 hereunder.

## **VIII. FORCE MAJEURE**

### Article 9

The Contractor shall not be held liable, in part or in full, for failure to fulfil obligations if the latter is the result of force majeure.

Force majeure shall be deemed to be all circumstances of extreme character that took place after the conclusion of the Contract and are acknowledged by case law as force majeure. If the Contractual Works are partially or fully disrupted or disabled, the Contractor shall be obliged to inform the Contracting Entity thereof immediately. Furthermore, it shall be obliged to promptly inform the Contracting Entity of the cessation of such circumstances. The contractual periods shall be extended for the term of force majeure. At the request of the Contracting Entity, the Contractor shall be obliged to prove the existence of force majeure.

Labour shortage or lack of material at the Contractor's or its subcontractors' shall not be deemed to be force majeure, unless it results from it.

## **IX. THE OBLIGATIONS OF THE CONTRACTING PARTIES**

### Article 10

Within the scope of the fulfilment of its obligations hereunder, the Contractor shall be obliged to:

- take due account of the Contracting Entity's technical specifications and carry out the contractual obligations in line with the Contracting Entity's requirements as laid down in the Tender Documents;
- make sure that the Contractual Works are executed and documented as per the regulations, standards and norms;
- carry out the Contractual Works assumed with due care, quality and diligence pursuant to all applicable regulations, standards and practices in close cooperation with the Contracting Entity (diligence of a good expert);
- provide everything necessary to be able to fulfil all of its obligations under this Contract;
- carry out the Contractual Works with employees who are technically qualified to perform such services;
- carry out the Contractual Works with employees who have valid certificates of a passed medical examination;
- keep the Contracting Entity informed of current issues and situations that may affect the execution of contractual obligations.

The Contractor shall be held liable for direct damage incurred by the Contracting Entity or third parties and

arising from its work and obligations hereunder.

#### Article 11

Within the scope of the fulfilment of its obligations hereunder, the Contracting Entity shall be obliged to:

- cooperate with the Contractor, offer the necessary support and give relevant instructions;
- inform the Contractor immediately of any circumstances that might affect the fulfilment of the Contracting Entity's contractual obligations hereunder;
- settle liabilities to the Contractor and its subcontractors.

The Contracting Entity also undertakes to prepare and hand over to the Contractor:

- a) designs of both locations in DWG format, including the designs of available infrastructure: road links, water distribution system, sewerage system, natural gas, electricity, hot water system, steam pipeline;
- b) data on available quantities and composition of refuse derived fuel;
- c) other available data that will be needed by the Contractor for successful execution of the Contractual Works.

All additional data will be sent by the Contracting Entity to the Contractor based on the latter's written or oral request and its own discretion as to the necessity of requested data for the completion of the obligations hereunder.

The Contracting Parties undertake to act as prudent managers and do everything necessary to execute the Contract.

### **X. CONTRACTUAL PENALTY**

#### Article 12

If the Contractor fails to complete its contractual obligation within the period set in Article 7 hereunder at its own fault and such failure is not the result of force majeure as laid down in Article 9 hereunder, the Contracting Entity shall be entitled to charge a contractual penalty in the amount of zero point twenty-five percent (0.25 %) of the contract value excluding VAT for a particular stage of the works for each day of the delay, whereby the contractual penalty may amount to no more than 10% (ten percent) of the total contract value excluding VAT.

If the contractual penalty exceeds ten percent (10 %) of the total contract price excluding VAT, the Contracting Entity may withdraw from the Contract.

#### Article 13

The Contracting Entity reserves the right to enforce the contractual penalty in the payment of an invoice, although it made no special warning nor written notice of the delay to the Contractor.

If additional damage is incurred by the Contracting Entity due to a delay in the execution of contractual obligations, the Contracting Entity shall be entitled to indemnification for the incurred damage by the Contractor.

The Contracting Entity and the Contractor agree that the right to charge a contractual penalty shall not be conditioned upon the occurrence of damage at the Contracting Entity. Indemnification for the damage incurred in such a manner will also be enforced by the Contracting Entity under the general principles of tort liability, independently of the enforcement of the contractual penalty.

### **XI. DOCUMENTATION OWNERSHIP AND COPYRIGHTS**

#### Article 14

Upon the handover of the documentation, the Contractor shall transfer to the Contracting Entity all material copyrights to the documentation, particularly the right to reproduce, distribute, public performance, transfer and display, make available to the public, process, use the work in processed form, access and the right to transmit, while keeping moral copyrights without any additional financial liabilities on the part of the Contracting Entity. The documentation received by the Contracting Entity shall become or, rather, shall be

the property of the Contracting Entity.

## **XII. REPRESENTATIVES OF THE CONTRACTING PARTIES**

### Article 15

The representative on the part of the Contracting Entity who will arrange all issues arisen in relation to the performance of this Contract shall be Mr Gregor Golja, phone: +386 1 587 53 22, email: gregor.golja@energetika.si, and shall be replaced in his absence by Mr Marko Agrež, phone: +386 1 58 75 246, email: marko.agrez@energetika.si.

The representative on the part of the Contractor who will arrange all issues arisen in relation to the performance of this Contract shall be DI Dr. Roland Pomberger, phone: +43 676 845 386 700, email: roland.pomberger@unileoben.ac.at.

The Contracting Entity's representative shall represent the Contracting Entity in all matters referring to the execution of works hereunder. The Contracting Entity's representative shall cooperate with the Contractor's representative throughout the term of the Contract and shall provide them with all necessary information that they are obliged to provide based on the obligations hereunder.

The Contractor's representative shall represent the Contractor in all matters referring to the execution of the works hereunder. The Contractor's representative shall be obliged to cooperate directly with the Contracting Entity's representative throughout the term of the Contract.

The Contracting Parties shall be obliged to inform one another of the replacement of their representatives in writing indicating the date for the handover of affairs. The Contracting Entity or the Contractor must receive a written notification thereof within three (3) calendar days before the stated handover date.

## **XIII. CONTRACT CANCELLATION AND WITHDRAWAL FROM THE CONTRACT**

### Article 16

Either Contracting Party may cancel the Contract with a 1-month notice period if circumstances change after the conclusion of the Contract, so that they no longer reflect the true will of the Contracting Party and provided that all due liabilities have been settled between the Contracting Parties. The notice period shall start running on the day the written notice of cancellation is received, which must be sent to the other Contracting Party by registered mail.

During the notice period, the Contracting Parties undertake to carry out their obligations until the expiry of the notice period, whereby the Contracting Entity and the Contractor may agree in writing on a different notice period.

### Article 17

The Contracting Entity may withdraw from the Contract with a notice sent to the Contractor by registered post with no obligation to the Contractor if the Contractor:

- fails to commence the Contractual Works within the contractual deadline or any subsequent deadline as laid down by the Contracting Entity,
- fails to achieve the contractually agreed quality and also fails to provide it within the subsequent period as set by the Contracting Entity,
- fails to fulfil its obligations or fulfils them improperly, including after the period set subsequently by the Contracting Entity,
- settles liabilities to its employees irregularly,
- increases prices during the term of the Contract,
- hands over the execution of the contractual obligations to a third party without prior written consent by the Contracting Entity,
- ceases the execution of the contractual obligations without prior written consent by the Contracting Entity.



## Article 18

During the term of the Contract, the Contracting Entity may also, notwithstanding the provisions of the act governing contractual obligations, withdraw from the Contract in the cases referred to in Article 96 of the Public Procurement Act.

## Article 19

The Contractor shall have the right to withdraw from this Contract in the event of a violation of the provisions of the Contract by the Contracting Entity. In such case, the Contract shall cease when the Contracting Entity receives a written notice of withdrawal from the Contract with the statement of grounds for the withdrawal, sent by registered post.

## Article 20

This Contract is concluded under a resolute condition that is met if one of the following circumstances arises:

- if the Contracting Entity is informed that the court established a violation of obligations arising from labour, environmental or social law by the Contractor or subcontractor with a *res judicata* decision or
- if the Contracting Entity is informed that the competent national authority has established at least two violations by the Contractor or subcontractor during the performance of the Contract in relation to:
  - labour payments,
  - working hours,
  - rest,
  - performance of work based on civil contracts despite the existence of employment relationship elements or in relation to undeclared employment

and for which it was imposed a fine by one or more *res judicata* decisions, and provided that the violation is discovered at least six months before the expiry of the validity of the Contract, or if the Contractor acts with a subcontractor and fails to replace such a subcontractor due to a discovered subcontractor's violation, in the manner laid down in accordance with Article 94 of the Public Procurement Act and the provisions of this Contract within 30 (thirty) days of being informed of the violation.

If the circumstances and conditions referred to in the previous paragraph are met, the Contract shall be deemed to be cancelled as of the date of the conclusion of a new contract on the execution of the relevant works. The Contracting Entity will inform the Contractor of the date of the conclusion of a new contract.

If the Contracting Entity fails to initiate a new public procurement procedure within 30 (thirty) days of being informed of a violation, this Contract shall be deemed to be cancelled on the 30<sup>th</sup> (thirtieth) day following the notification of the violation.

## **XIV. COMPONENT PARTS OF THE CONTRACT**

### Article 21

The interpretation of this Contract and settlement of any disputes shall be subject to the Contract and the act governing contractual obligations as well as:

- Tender Documents No. JPE-VOD-75/22,
- the Contractor's application No. 11/2022 of 2. 5. 2022,
- the Contractor's Final Tender No. 12/2022 of 19. 5. 2022,
- Terms of Reference, which form Annex No. 2 to this Contract,
- other relevant documentation.

The Contracting Parties agree that the documentation referred to in the previous paragraph of this Article forms a component part of the Contract.

If the content of the above mentioned documents is contradicting and if the intent of the Contracting Parties is not clearly expressed, the interpretation of the intent of both Contracting Parties shall primarily be subject to the provisions of this Contract then to the Tender Documents based on which this Contract has been concluded, and then to the documents in the order indicated in this Article.

## Article 22

All expert/technical documents and annexes to this Contract that are handed over to the Contracting Entity by the Contractor based on this Contract shall become the property of the Contracting Entity.

## **XV. ANTI-CORRUPTION CLAUSE**

### Article 23

If it is established that, in the execution of the public contract based on which this Contract is concluded or in the performance of this Contract, anyone promised, offered or gave on behalf of or for the account of the Contractor any undue advantage to a representative or intermediary of the Contracting Entity or some other public sector body or organisation to obtain this contract or conclude this contract under more favourable terms and conditions or to omit due surveillance over the implementation of contractual obligations or any other action or omission that causes damage to the Contracting Entity or a public sector body or organisation or allows a representative of the Contracting Entity, a representative or intermediary of a public sector body or organisation, the Contractor or its representative, agent or intermediary to obtain undue advantage, this Contract shall be null and void.

In case of a finding of alleged existence of a factual situation as per paragraph 1 of this Article or a notice from the Slovenian Commission for the Prevention of Corruption or other bodies, the Contracting Entity will initiate procedures to establish the terms for the nullity of this Contract as per the previous paragraph of this Article or take other measures in line with the regulations applicable in the Republic of Slovenia.

## **XVI. ASSIGNMENT OF RECEIVABLES**

### Article 24

The Contracting Parties undertake not to assign or cede cash receivables deriving hereunder to other legal entities or natural persons other than banks. If a receivable is assigned to some other legal entity or natural person other than banks, the assignment shall have no legal effect.

## **XVII. SETTLEMENT OF DISPUTES**

### Article 25

The Parties will strive to resolve any disputes arisen in relation to the implementation of this Contract amicably.

If a dispute cannot be resolved amicably, either Contracting Party may bring the matter under dispute before the competent court of Ljubljana.

## **XVIII. OTHER PROVISIONS**

### Article 26

This Contract shall also be fully binding upon any legal successors of either Contracting Party, which particularly applies in the event of changes to the legal form of organisation and ownership.

### Article 27

Any amendments or supplements to the Contract shall be valid only if they are made in the form of a written annex to this Contract that is signed by both Parties to the Contract.

If any of the provisions of the Contract is or becomes invalid, this shall not affect the remaining provisions of the Contract. The invalid provision shall be replaced by a valid one that corresponds to the maximum degree with the purpose intended by the Parties to the Contract with the invalid provision.

The Contracting Parties agree that any deadline laid down hereunder that expires on a Saturday, Sunday, a holiday or any other non-working day under the law shall be transferred to the first working day that follows.

By signing this Contract, the Contractor warrants that it is aware of the subject of the Contract and all risks accompanying the execution, that it is aware of tender requirements and technical documents, and that it understands and comprehends the conditions and circumstances for proper execution of contractual obligations.

#### Article 28

The content of this Contract and the documents constituting its component parts or referring to this Contract and its performance shall be deemed to be a business secret, except for the data and information that is considered to be public pursuant to the applicable regulations.

#### Article 29

The settlement of relations that are not expressly regulated with this Contract shall be subject to the provisions of the act governing contractual obligations.

#### Article 30

The annexes constitute an integral part of this Contract.

#### Article 31

The Contract shall be concluded and becomes applicable on the day it is signed by both Contracting Parties and shall apply until the obligations agreed hereunder are fulfilled, whereby the Contracting Entity may inform the Contractor, pursuant to paragraph 4 of Article 2 of this Contract, following the execution and confirmation of stage I or following the confirmation of stage II of the Project that the project is to be completed and that the Contract shall cease.

The Contract shall be concluded and signed in the Slovenian and English languages. In case of uncertainty (inconsistencies) between the two language versions of the contract, the Slovenian language shall be used for its linguistic interpretation. In case of annexes to the Contract, their linguistic interpretation shall be subject to the language in which the annex is made. If the Contracting Entity requests the translation of a document in the tender that is prepared by a court-sworn interpreter for the Slovenian language, the Slovenian language shall be used for its interpretation in case of uncertainty (inconsistencies) between the two language versions of the document.

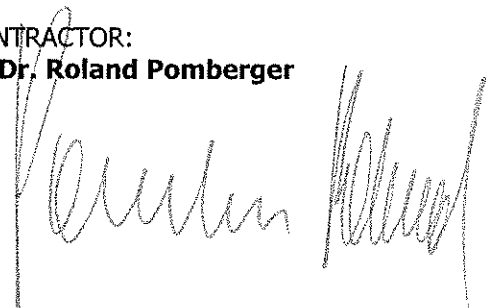
#### Article 32

The Contract is made and signed in three (3) identical copies, two (2) of which shall be received by the Contracting Entity and one (1) by the Contractor.

Eisenerz, 27.6.2022

CONTRACTOR:

**DI Dr. Roland Pomberger**



Ljubljana, 20 June 2022

CONTRACTING ENTITY:

JAVNO PODJETJE ENERGETIKA  
LJUBLJANA d.o.o.

Director:

**Samo Lozej** Energetika Ljubljana

Energetika Ljubljana, d.o.o. 6/1  
Tovarniška ulica 62, 1000 Ljubljana

Annex:

- Annex No. 1: The Contractor's Final Tender No. 12/2022 made in negotiations on 19 May 2022,
- Annex No. 2: Terms of Reference.

