



Call for Tenders No. NGAPD-2006

Scope: «Kardia Mine Pumped Hydro Storage: Early Technology Provider Involvement for Design, Supply, Erection and Commissioning of Pump, Turbine, Generator and Auxiliary Systems»

ANNEX VI

COLLABORATION ENGAGEMENT AGREEMENT

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COLLABORATION ENGAGEMENT AGREEMENT

THIS COLLABORATION ENGAGEMENT is dated _____

BETWEEN:

PPC (the Employer); and

_____ (the "Early Engineering Contractor")

each a **Party** and together the **Parties**.

IT IS AGREED as follows:

1 INTERPRETATION

1.1 In this Agreement:

Affiliates means any subsidiary or holding company of either **Party** or a subsidiary of the holding company of such company

Base Price: means the starting point for the value of the Lot 1 Contract, which will be equal to [*The Offered Price minus any commercial discount*] plus [*The total price of the Options selected by PPC*].

Early Engineering Contract: means the contract between the **Employer** and the **Early Engineering Contractor** to advance the project's design and contribute to the preparation of the Employer's Requirements towards finalization of the **Lot 1 Contract** under the FIDIC Yellow Book and tendering the **Lot 2 Contract**.

Exclusivity Period means the period starting on the date of this **Agreement** and ending on the earlier of (i) the day falling fifteen (15) months after the date of this **Agreement** (or any longer period agreed in writing between the **Parties**) and (ii) termination of this **Agreement**

Heads of Terms means the key terms that the **Lot 1 Contract** will be based on, detailed in **Annex 1**

Information means any information of whatever nature relating to the **Project** or the **Process** supplied either prior to or after the date of this **Agreement** by a **Party** or its **Affiliates** or **Representatives** to the other **Party** in writing, orally or otherwise together with any reports or other documents prepared by either **Party** or on either **Party's** behalf which contain or otherwise reflect any such information

Insolvent means being unable to pay debts as they fall due, becoming bankrupt, going into liquidation (either voluntary or compulsory unless as part of a bona fide scheme of reconstruction or amalgamation), being dissolved, compounding with its creditors or having a liquidator, supervisor, receiver, administrative receiver, administrator, compulsory manager, trustee or other similar officer appointed for the whole or any part of its assets or the taking of any corporate action, legal proceedings or other procedure or step (including the making of an application, the presentation of a petition, the filing or service of a notice or the passing of a resolution) in relation to dissolution, liquidation, provisional liquidation, administration, administrative receivership or receivership, or any local equivalent of any of the foregoing

Initial Lot 1 Scope: engineering, procurement/fabrication, erection and commissioning and all other services and works relevant to the pump, turbine, generator and relevant auxiliaries of the **Kardia PHS**, including all underlying assumptions, as further detailed in Annex 2, Appendix 1 [Technical part of RFQ]

Lot 1 Scope: will be the **Initial Lot 1 Scope** appropriately adjusted, due to any evolution in the design, specifications, division of works and battery limits that will have been agreed by both **Parties** at the end of the **Early Engineering Agreement**

Lot 1 Contract: means the binding engineering, procurement and construction agreement that will be based on the Heads of Terms to be entered into between the **Employer** and the **Early Engineering Contractor**, for the **Lot 1 Scope** of the **Kardia PHS**

Lot 1 Contract Value: means the price that will be mutually agreed for **Lot 1 Contract**, which will include an indexation mechanism in respect of certain elements of the price in order to capture cost increases in respect of such elements

Lot 2 Scope: means the earthworks, architectural, civil works and electromechanical balance of plant of the **Kardia PHS**

Lot 2 Contract: means the engineering, procurement and construction contract for **Lot 2 Scope** to be entered into between the **Employer** and an EPC contractor

Kardia PHS means the proposed pumped hydro storage plant that meets the technical specifications detailed in Annex 2, Appendix 1 [Technical part of RFQ]

Project means the development of the **Kardia PHS** and associated infrastructure.

Representatives means, with respect to a **Party** and its **Affiliates**, its' employees, directors, offices, consultants, contractors, subcontractors, agents and professional advisers.

Tractebel: means the consultant that has been contracted by the **Employer** to perform the feasibility study and prepare the technical specifications of the **Kardia PHS**, that will work together with the **Early Engineering Contractor** and the **Employer** to further develop the design and specifications for **Lot 1 Scope** and to prepare the necessary design, specifications, quantities and drawings that will allow a tender for **Lot 2 Contract** to be issued.

Process means the negotiation of the **Lot 1 Contract** between the **Employer** and the **Early Engineering Contractor** (or any of their **Affiliates**), and the agreement on the final draft of **Lot 1 Contract** including all technical and commercial schedules.

1.2 The headings in this **Agreement** do not affect its interpretation.

2 THE STATUS OF THIS AGREEMENT AND THE LOT 1 CONTRACT

2.1 On the date on which the **Lot 1 Contract** is executed by both **Parties**, the terms of the Lot 1 Contract will automatically supersede this **Agreement** and this **Agreement** will cease to have any further effect and both **Parties** hereby waive all rights to claim against the other in connection with any actual or contingent liabilities under this **Agreement** which exist at the date of such cessation.

2.2 The **Parties** agree to use the **Heads of Terms** as the starting point for the **Process**.

2.3 Following completion of the **Early Engineering Contract** and subject to clause 6.3, the **Parties** hereby agree to work together in good faith to conclude the **Process** and sign the

Lot 1 Contract, as soon as reasonably practical but in any event within the **Exclusivity Period**.

3 EMPLOYER'S OBLIGATIONS

- 3.1 During the **Exclusivity Period** the **Employer** must not solicit or otherwise encourage an offer for, or negotiate terms relating to, the **Process** or enter into the **Process** with anyone other than the **Early Engineering Contractor** or any of its **Affiliates**.
- 3.2 During the **Exclusivity Period**, the **Employer** will use reasonable endeavours to:
- Ensure that **Tractebel** collaborates with the **Early Engineering Contractor** and timely and diligently performs the feasibility study and prepares the technical specifications of the **Kardia PHS**.
 - Prepare and launch a tender for **Lot 2** and nominate a preferred bidder for the **Lot 2 Contract**.

4 CONTRACTOR'S OBLIGATIONS

- 4.1 The **Early Engineering Contractor** agrees to assist the **Employer** in good faith in the development of the **Project** during the **Exclusivity Period** in all activities which may require its input, including but not limited to the fulfilment of the **Early Engineering Contractor's** obligations under the **Early Engineering Agreement**.
- 4.2 The **Early Engineering Contractor** commits that the **Lot 1 Contract Value**, will not be higher than the **Base Price**, minus the value of the **Early Engineering Contract**, as reasonably adapted due to:
- agreed differences between the **Initial Lot 1 Scope** and the **Lot 1 Scope**
 - mutually agreed between the **Parties** deviations from the **Heads of Terms**
 - the indexation mechanism, based on the mutually agreed revision formula in Annex 1. The Reference Date for the price adjustment indices will be the date of submission of the Offer.
- 4.3 The **Early Engineering Contractor** commits to finalize the **Process** and, upon agreement of all relevant particulars, to sign the **Lot 1 Contract**, as soon as reasonably practical after the completion of the **Early Engineering Contract**, or at such time as requested by the **Employer** after such completion and in any case within the **Exclusivity Period**.

5 CONFIDENTIALITY OBLIGATIONS

- 5.1 The **Employer** and the **Early Engineering Contractor** acknowledge that the **Information** is confidential, and each **Party** receives the **Information** under a duty of confidentiality to the other **Party** and for the exclusive purpose of discussions and negotiations about the **Process** and, in the case of the **Employer**, for the development, procurement, financing and implementation of the **Project**, including the **Lot 2 Contract** (the "Intended Purpose").
- 5.2 Each **Party** must:
- keep confidential and not, directly or indirectly, disclose to any person, other than as permitted under paragraph (d), each **Party's** interest in, and its discussions and negotiations with the other **Party** in connection with, the **Intended Purpose**;
 - keep all **Information** confidential and not disclose any **Information** to any person, other than as permitted under paragraph (d);
 - use the **Information** solely for the **Intended Purpose** and not for any other purpose;
 - without the other **Party's** prior written consent, not disclose any **Information** to any person other than:
 - to its **Representatives** who, in each case, need to know the **Information** for the purpose of negotiating, advising on, or financing the **Process**;

- II. to the extent required by law or by the regulations of a recognized stock exchange or any other regulatory body;
 - III. to any of its **Affiliates** directly involved in the Project; or
 - IV. **Information** which is already in the public domain or has otherwise come into the possession of the relevant **Party** other than as a result of a breach of this **Agreement** or disclosure by the other **Party**; or
 - V. in the case of the Employer, to any bidders, tenderers, contractors, consultants, lenders, insurers, authorities, or other persons to whom disclosure is reasonably required for the Intended Purpose.
- e. procure that each person to whom disclosure of **Information** is made as permitted under paragraph (d) is made aware (in advance of disclosure) of the **Confidentiality Obligations** of this **Agreement** and use all reasonable endeavours to procure that each such person adheres to those **Confidentiality Obligations**; and
 - f. on written request by either **Party** made at any time after the end of the **Exclusivity Period**, destroy promptly all **Information** without keeping any copies.

Notwithstanding Clause 5.2(f) above, either **Party** and its **Affiliates** and **Representatives** may retain the **Information** if required to do so by law, rule or regulation, including the rules of an applicable professional body, or its bona fide internal document retention policies, provided that any such **Information** is kept confidential in accordance with the terms of this **Agreement**.

6 STEPWISE BINDING NEGOTIATION MECHANISM FOR LOT 1 SCOPE

- 6.1 The **Parties** agree that negotiations regarding the **Lot 1 Scope** shall take place in distinct and sequential rounds, each following the progress and findings of the **Early Engineering Contract**. The scope elements agreed upon in each round shall be recorded in writing and signed by both **Parties**, becoming binding and irrevocable for all subsequent rounds and for the final **Lot 1 Contract**. The **Early Engineering Contractor** shall not be entitled to dispute or delay the incorporation of such scope elements into the final contract.
- 6.2 The **Early Engineering Contractor** shall not have the right to modify, revoke, or renegotiate any agreed scope elements from a previous round, unless expressly approved in writing by the **Employer**. Any deviation from a previously agreed scope must be (i) directly linked to findings of the **Early Engineering Contract**, and (b) approved solely at the **Employer's** discretion, without any obligation for **PPC** to accept proposed changes. The **Employer** shall have the right to reject any proposed modification if it considers that such modification (a) materially alters previously agreed terms, or (b) leads to an unjustified increase in cost or risk.
- 6.3 If the **Early Engineering Contractor** attempts to withdraw from, alter, or renegotiate an agreed scope element in subsequent rounds, the **Employer** shall have the right to immediately suspend further negotiations until compliance is restored.
- 6.4 If the **Early Engineering Contractor** persistently fails to comply with prior agreements on scope, the **Employer** shall have the right to (i) terminate negotiations unilaterally and exclude the **Early Engineering Contractor** from the final **Lot 1 Contract**; (ii) seek alternative procurement solutions for the relevant scope elements; (iii) recover costs associated with the breach, including expenses from the **Early Engineering Contract** and potential cost differentials from engaging an alternative contractor.

7 TERMINATION

- 7.1 Either **Party** may serve a notice of termination on the other **Party** on any of the grounds set out in clause 7.3, upon receipt of which this **Agreement** will automatically terminate with immediate effect and save clause 6.4 (iii) neither **Party** will be liable to the other for any costs and/or losses arising out of or in connection with such termination.

7.2 This **Agreement** may only be terminated in accordance with the express provisions of this clause 7.

7.3 The Employer may terminate at any time if:

- a. during the **Exclusivity Period**, it decides not to proceed with the **Project**
- b. the **Exclusivity Period** has expired and the **Process** has not completed
- c. during the **Exclusivity Period** the **Contractor** fails to comply with any of its obligations under Clause 4 and Clause 6
- d. The **Early Engineering Contractor** becomes **Insolvent**

The **Early Engineering Contractor** may terminate at any time if:

- a. the **Exclusivity Period** has expired and the **Process** has not completed.
- b. the **Employer** becomes **Insolvent**

7.4 Notwithstanding clause 7.1, the **Employer** is entitled to claim from the **Early Engineering Contractor** the entire value of the **Early Engineering Contract** if the **Employer** terminates this **Agreement** as a result of the **Early Engineering Contractor's** failure to comply with its obligations under 4.2 or 4.3.

7.5 Clauses 1, 5 and 9 to 12 inclusive of this **Agreement** remain in full force notwithstanding service of a termination notice. Clause 5 shall remain in force until the date falling five (5) years after the date of this **Agreement**. A termination notice does not affect the **Employer's** accrued rights in connection with any breach of this **Agreement** by the **Early Engineering Contractor**, or the **Early Engineering Contractor's** accrued rights in connection with any breach of this **Agreement** by the **Employer**, which may have occurred before the termination notice is served.

7.6 For the avoidance of doubt all of the rights in, and any materials produced in connection with, the works carried out under this **Agreement** shall belong to the **Employer**.

8 COSTS

8.1 Each **Party** at its exclusive risk shall bear its own costs related to this **Agreement**, unless otherwise mutually agreed in advance in writing.

9 CONSEQUENTIAL LOSS

9.1 No **Party** shall be liable to the other **Party** for any loss of profits, loss of revenue, loss of contract, loss of permit, loss of use, loss of goodwill, loss of opportunity (including where such losses are considered foreseeable or direct losses) or any other indirect, consequential or special loss or damage of any nature whatsoever. For the avoidance of doubt Employer's claims under clauses 6.4 (iii) and 7.4 do not fall under this clause 9.1 under any circumstances.

10 WARRANTIES

10.1 Each of the **Parties** warrants to the other that it has full power and authority to enter into this **Agreement** and carry out the actions contemplated under this **Agreement**, and that its entry into and performance under the terms of this **Agreement** will not infringe the rights of any third party or cause it to be in breach of any obligations to a third party.

11 GENERAL

11.1 None of the **Parties** shall be entitled to hold itself out as being the agent of the other **Party** for any purpose whatsoever without receiving the prior written consent of the other.

- 11.2 Nothing in this **Agreement** shall create a partnership between the **Parties**.
- 11.3 The **Employer** may assign, transfer, novate, or otherwise dispose of any or all of its rights and obligations under this **Agreement**, in whole or in part, without requiring the **Early Engineering Contractor's** consent, to (a) any Affiliate of the **Employer**; or (b) any financial institution, lender, or security agent providing debt financing, refinancing, or Project-related funding, including any trustee or nominee acting on their behalf. The **Early Engineering Contractor** shall, upon request by the **Employer**, execute all necessary documents and provide all reasonable cooperation to effect any such assignment, transfer, or novation, provided that such assignment does not materially increase the **Early Engineering Contractor's** obligations or liabilities under this **Agreement**.
- 11.4 The **Early Engineering Contractor** shall not assign, transfer, novate, or subcontract any of its rights or obligations under this **Agreement** without the prior written consent of the **Employer**, which shall not be unreasonably withheld.

12 GOVERNING LAW AND JURISDICTION

- 12.1 This **Agreement** and any non-contractual obligations arising out of or in connection with it shall be governed by and construed in accordance with laws of Greece.
- 12.2 The Greek courts have exclusive jurisdiction to settle any dispute arising out of or in connection with this **Agreement** (including a dispute relating to any non-contractual obligations arising out of or in connection with this **Agreement**) and the **Parties** submit to the exclusive jurisdiction of the Greek courts.
- 12.3 The **Parties** waive any objection to the Greek courts on grounds that they are an inconvenient or inappropriate forum to settle any such disputes.

This **Agreement** has been signed by the **Parties** (or their duly authorised representatives) on the date stated at the beginning of this **Agreement**.

SIGNATORIES

ANNEX 1
Heads of Terms

ANNEX 2
Early Engineering Contract