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| **COnsortium agreement** |

A consortium agreement is an agreement that defines the framework between the parties in relation to preparation of the tender offer and the subsequent completion of the project.

The agreement defines the administrative framework of the consortium members and the division of project works among the parties.

This template should be used taking into consideration that it should be adjusted to the specific project and the parties. In particular, it should be assessed whether the tender process or the contract with the client has been structured in such a way that the agreement should take into consideration other issues than may be regulated in this draft.

***Important Information***

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This Consortium Agreement (hereinafter “Agreement”) is made on the ¦[date]| between

¦[Name]**|**

¦[Address]|

¦[City]|

[Country]

[Business Registration No.]

(hereinafter (“[●]”)

and

[Name]

[Address]

[City]

[Country]

[Business Registration No.]

(hereinafter (“[●]”)

(collectively the “Parties” and individually the “Party”)

WHEREAS

(A) [●] [develops/manufactures/markets] [●];

(B) [●] [develops/manufactures/markets] [●];

(C) [●] and [●] have entered into a [NDA/LoI/MoU/Co-operation agreement(s) on [date] concerning the Project [include description of Project];

(E) the Parties wish to jointly prepare and submit a tender offer to the Client concerning the Project;

(F) the Parties – as a consequence of the above – wish to enter into this Agreement covering the framework of the cooperation between the Parties in order to jointly fulfill all necessary obligations towards the Client concerning the Project;

NOW THEREFORE THE PARTIES HAVE AGREED AS FOLLOWS:

# DEFINITIONS

## ¦As used in this Agreement, the following terms shall have the following meaning:

## “Agreement” means this Consortium Agreement, including exhibits, as may be amended from time to time in accordance with clause 19.1

## “Client” means [client name, registration no. and address] for whom the Project is to be completed.

## “Consortium” means all the Parties to the Agreement.

## “Consortium Leader” means [consortium leader name].

## “Consortium Meeting” means the ultimate decision-making authority of the Consortium.

## “Effective Date" shall mean the last date of signature of both of the Parties.

## “Final Project Matrix” means exhibit 4.3 containing the final allocation among the Parties of all Project Works necessary for the completion of the Project in accordance with the tender material and/or the Project Contract.

## “Preliminary Project Matrix” means exhibit 4.2 containing the preliminary allocation of tasks among the Parties used for, i.a., the preparation of pre-qualification requests.

## “Project" means [insert description of project] concerning the delivery of [equipment, materials, work-force and know-how by the Parties (and possibly other sub-contractors) within areas such as [include description of relevant areas] to [●] as further outlined in Exhibit [●].

## “Project Contract” means the Consortium’s contract with the Client concerning the completion of the Project.

## “Project Sum” means the total sum to be paid by the Client to the Consortium for the completion of the Project.

## “Project Works” means the works, services, materials, deliveries etc. necessary for the completion of the Project – or part of the Project dependent on the context – in accordance with the tender material and/or the Project Contract

## “Project Schedule” means the time schedule for the completion of the Project Works.

# the consortium leader

## The Consortium consists of the Parties to the Agreement and [party name] has been chosen by the Parties to be the Consortium Leader as per the Effective Date of the Agreement. The Consortium Leader can only be substituted with the consent of the Consortium as a whole and the Client.

## The Consortium Leader shall represent the Consortium towards the Client, carry out the decisions made by the Consortium and perform the tasks that may be left to the Consortium Leader by the Consortium during the Project.

## The Consortium Leader shall act in good faith, carry out decisions and perform tasks to the best of its ability and with the interests of the Consortium in mind.

## As of the Effective Date, the Consortium Leader has been tasked with the following administrative tasks:

#### Prepare a tender offer to be submitted to the Client in accordance with the applicable tender rules and regulations.

#### Organize, call and conduct Consortium Meetings.

#### Handle questions, objections, complaints and general communication from/to the Client concerning the Project and/or the Consortium.

#### Update the Consortium of the status of the Project and any other tasks that may have been left to the Consortium Leader.

### The tasks above shall in no way be construed as a limitation of the rights or obligations for the individual Parties, and each Party is obligated to duly and timely perform such actions that are necessary for the Consortium Leader to fulfill its obligations internally in the Consortium and/or externally towards the Client or other third parties.

### The Consortium Leader cannot further obligate the Consortium or the other Parties financially or in any other way that presumes consent from the Consortium or the Party in question.

## The Consortium Leader can receive – but cannot on behalf of the Consortium accept – notifications of default, including notifications due to delays or defects in the Project from the Client.

## The Consortium Leader cannot enter into agreements with the Client if such agreements deviate from the Project Contract to the detriment of the Consortium.

## If the Consortium is awarded the Project and enters into the Project Contract with the Client, the Consortium Leader is entitled to receive a fee of [●] % of the Project Sum, which is to be paid jointly by the other Parties on a monthly basis pro rata in accordance with the Parties relative part of the Project Sum, cf. the Final Project Matrix and the payment plan, exhibit 2.7.

## If the Consortium does not enter into the Project Contract or is not awarded the Project, the Consortium Leader is entitled to claim a reasonable amount from the Consortium to cover the Consortium Leaders expenses. Such an amount shall be divided in accordance with the anticipated division of the Project Sum among the Parties.

## In the event of substitution of the Consortium Leader, the amounts to be paid under clause 2.7 or 2.8 shall be allocated among the different consortium leaders in accordance with their respective time periods as acting Consortium Leader.

# consortium meetings and decision process

## The Parties cannot obligate or in any other way act on behalf of the Consortium without prior, written authorization from the Consortium.

## Decisions regarding the Consortium are made by the Parties in Consortium Meetings to the extent such decisions are outside of the purview of the Consortium Leader according to the Agreement and/or subsequent transfer of authority by the Consortium to the Consortium Leader.

## Decisions must be made unanimously by the attending Parties at the Consortium Meetings. The Consortium Meeting has quorum if at least [●] % of the Project Sum is represented by the attending Parties. Decisions that increase the obligations of a Party or the Consortium cannot be made without consent from the affected Parties.

## If a quorum is not reached the Consortium Leader may call an extraordinary Consortium Meeting where decisions can be made unanimously by the attending Parties regardless of the represented Project Sum.

## Consortium Meetings are held as needed, and at least every [●] week(s). The Consortium Leader calls the Parties to Consortium Meetings in writing with a notice of [●] days.

## The Consortium Leader chairs the Consortium Meetings and distributes minutes within [●] days from the meeting. If no objections are received within [●] days after the distribution, the minutes shall be deemed as accepted by the Parties.

# tender process

## The Consortium Leader organizes and prepares a request for prequalification (if necessary) on behalf of the Consortium based on information and material received from the Parties.

## Based on the preliminary project description, the Consortium has divided the prequalification tasks among the Parties as defined in the Preliminary Project Matrix, **exhibit 4.2**. The Consortium Leader shall update the Preliminary Project Matrix as needed in accordance with Consortium decisions.

## Based on the tender material supplied by the Client and the preliminary project description, the Consortium has divided the Project among the Parties as defined in the Final Project Matrix, **exhibit 4.3**. The Consortium Leader shall ensure that all Project Works are covered on a topical basis by the Final Project Matrix, but is not responsible for the content or quality of the individual Parties’ calculations and descriptions etc. of their respective parts of the Project.

## In accordance with the Final Project Matrix and no later than [●] days before the tender submissions deadline, each Party shall prepare and submit to the Consortium Leader

#### all information, documentation, materials etc. necessary for the Consortium Leader’s preparation of the tender offer. The Parties shall supply the Consortium Leader with such information, documentation, materials etc. in a form and manner defined by the Consortium Leader,

#### a time schedule for the performance of the Project Works in question along with a detailed description of the work process, including any relevant assumptions and/or conditions,

#### a total price for the Project Works in questions and a specification in lump sums and/or unit prices as defined by the tender material, including any relevant assumptions and/or conditions.

## Each Party shall include all Project Works, services, materials, deliveries, risks and responsibilities related to their respective part of the Project in their respective offers submitted to the Consortium Leader.

## The Consortium shall jointly consider, evaluate and value shared risks and responsibilities not covered by any one Party’s part of the Project, and consider and value necessary joint insurance coverage for the Project.

## The sum of all the Parties’ respective offers with the addition of the joint valuation of the shared risks, responsibilities and insurances constitutes the Project Sum to be submitted in the tender offer to the Client.

## The Consortium Leader shall ensure that the tender offer conforms to the requirements of the tender rules and regulations and shall obtain final approval of the final tender offer from each of the Parties prior to submission.

## The Consortium Leader shall participate in contract negotiations with the Client on behalf of the Consortium if necessary. Any changes to the tender offer must be approved by the affected Parties prior to acceptance by the Consortium Leader.

# project changes

## In the event of additional works requested/caused by the Client, the Consortium Leader shall allocate such works in accordance with the principles of the Final Project Matrix in such a way that the additional work is awarded to the Party who is responsible for the affected part of the Project. The Consortium Leader shall update the Final Project Matrix to reflect such changes.

## In the event that the Final Project Matrix does not include a necessary Project work and the cost related to such a work is not covered by the Client, the cost shall be divided among the Parties in accordance with their relative part of the Project, unless the omission is due to a fault by one of the Parties, in which instance the Party at fault shall bear the cost.

# planning and exchange of information

## Each Party is responsible for the planning of all Project Works in accordance with the allocation in the Final Project Matrix and shall without delay request any information, documentation etc. from the other Parties – through the Consortium Leader – that may be necessary for the planning and performance of the Project Works, including a deadline for submission of such information, documentation etc.

## The Parties must in a timely manner supply the Consortium Leader and/or the other Parties with all necessary information, documentation etc. that may be requested. The Parties shall without delay inform the Consortium Leader of any changes to previously delivered information, documentation etc. if such changes could affect the Consortium or the other Parties planning or performance of the Project Works.

## Costs due to faulty, delayed or omitted information, documentation etc. shall be borne by the Party responsible for supplying such information, documentation etc. if the fault, delay and/or omission can be attributed to the Party in question or to such circumstances for which the Party bears the risk.

# general obligations

## Each Party is obligated to cooperate loyally with the Consortium, the Consortium Leader and the other Parties in all matters related to the Consortium’s bid to win the Project and the subsequent completion of the Project, and is obligated to allocate the necessary resources at any given stage of the tender process and the subsequent completion of the Project.

## Each Party is obligated to perform all necessary Project Works in accordance with the allocation in the Final Project Matrix and any additional works that may be requested or otherwise be necessary, cf. clause 5. The obligation includes all necessary Project Works included in the Project Contract regardless if the works are specifically described in the Final Project Matrix.

## The Project Works must be completed in accordance with the Project Schedule, **exhibit 7.3**, and/or in accordance with any subsequently agreed changes to the Project Schedule. The Consortium Leader shall update the Project Schedule as necessary.

## Each Party is obligated to plan and perform their Project Works with due diligence and consideration of the Consortium and the other Parties in order to facilitate the efficient and timely completion of the Project.

## Any claim for additional payment or time extensions must be submitted to the Consortium Leader who shall submit the claim to the Client. In the event that such claim affects the other Parties’ rights or obligations under the Project Contract, the claim must be approved by the affected Parties.

### Regardless of any potential claim for additional payment or time extensions, the Parties are obligated to notify the Consortium Leader and the other Parties of any circumstances which may lead to delays, defects or other complications of the performance of the Project, including material delays, sub-contractor problems, liquidity problems, resource capacity problems etc.

# Costs and income

## Each Party shall bear the related costs of the Project Works in accordance with the Final Project Matrix unless otherwise agreed in the Agreement or subsequently agreed in an addendum to the Agreement.

## Costs that cannot be attributed to Project Works included in the Final Project Matrix are to be recognized as shared costs to the extent that such costs have been approved by the Consortium. Such costs are divided among the Parties in accordance with their relative part of the Project.

## Each Party shall bear its own costs related to preparing the necessary documents etc. for the tender process.

## Payments from the Client shall be paid to the Party responsible for the actual completion of the Project Works covered by the Payment.

# invoicing

## The Parties shall submit invoices directly to the Client with a copy to the Consortium Leader.

## Each Party is entitled to invoice the Client for Project Works performed by the Party, and obligated to invoice the Client in accordance with the terms and conditions in the Project Contract.

**----- [OR] -----**

## The Consortium Leader shall coordinate all invoicing to the Client and distribution of payments from the Client among the Parties.

## Each Party shall submit invoices – addressed to the Client – to the Consortium Leader, who shall submit the invoices to the Client and establish a joint account in the names of all the Parties for the receipt of payments from the Client.

## Upon the receipt of payment of an invoice, the Consortium Leader shall without delay distribute the payment among the relevant Parties.

## In the event of partial payment by the Client the Consortium Leader shall distribute the payment among the relevant Parties in accordance with their relative part of the Project, unless the partial payment is due to circumstances attributable to one of more Parties, in which case deductions shall only be made in payments to such Parties.

## Each Party is entitled to submit invoices for Project Works performed by the Party, and obligated to submit invoices in accordance with the terms and conditions in the Project Contract.

# subcontractors

## The Parties are entitled to make use of subcontractors unless otherwise stipulated by the Project Contract.

## If a Party decides to make use of a subcontractor, the other Parties must be notified and the Party in question shall be liable for any defects and/or delays caused by the subcontractor.

# guarantees

## If required by the Project Contract, the Consortium shall issue such guarantees and/or make available such funds or other securities as may be necessary to guarantee the proper performance of the Project Works.

## The Consortium Leader shall coordinate such efforts and the costs related thereto shall be divided among the Parties in accordance with their relative part of the Project.

## If a guarantor demands security for the issuance of a guarantee, the Parties shall provide such security – whatever the form may be – in accordance with their relative part of the Project unless otherwise demanded by the guarantor. If the guarantor demands security not in accordance with the Parties relative parts of the Project, the Parties shall internally provide such securities towards each other in order to achieve the presumed division in accordance with their relative parts of the Project.

# liability

## Liability towards the Client and internal recourse.

### The Parties are liable towards the Client on a joint and several basis unless otherwise agreed with the Client in writing.

### The Parties are each responsible for and obligated to repair any defects or limit any delay regarding their part of the Project.

### Costs related to defects, delays or any other form of default towards the Client shall be covered by the Parties responsible, both in relations to costs incurred by the Client as well as costs incurred by the other Parties.

### Each Party shall notify the Other Parties if the Client has made a claim directly against the Party in question.

### No Party is entitled to enter into negotiations or accept any claims without prior consent from the other Parties.

### If the Parties cannot agree as to the division of liability among the Parties due to a claim from the Client, the costs related to the claim shall initially be divided among the Parties in accordance with their relative part of the Project, which shall be binding until such a time when agreement has been reached or the dispute has been resolved in accordance with clause 20.

### Costs incurred by the Parties due to the Clients default shall be divided among the Parties in accordance with their relative part of the Project.

## Liability towards other third parties

### If a third party suffers loss due to circumstances related to the fulfillment of the Project Contract, the responsible Party is liable towards such a third party on a several basis.

## Internal liability among the Parties

### The Parties are liable towards each other for loss due to circumstances related to the fulfillment of the Project Contract with the exception of indirect and consequential loss, including loss of income and earnings.

## The liability of the Consortium Leader

### The Consortium Leader is liable towards the other Parties for loss due to circumstances related to the Consortium Leader’s fulfillment of the duties of the Consortium Leader under this Agreement or subsequent decisions by the Consortium.

### The Consortium Leader’s liability related to the fulfillment of such duties is limited to [●] % of the Consortium Leader’s fee, cf. sections 2.7 and 2.8.

### In the event that such a loss exceeds the liability cap the remaining amount is divided among the Parties (including the Consortium Leader) in accordance with their relative part of the Project.

# default with the perfomance of work

## In the event that a Party fails to perform Project Works or is delayed in the performance of such works, the Consortium Leader shall notify the Party of such failure and give a deadline for rectification.

## Should the Party fail to rectify within the given deadline and this entails a risk of loss for the other Parties, they shall be entitled to perform such works as may be necessary in order to limit such risks and rectify the defaulting Party’s failure.

## If it is clear that the defaulting Party cannot rectify its failures within due time, the other Parties are entitled to perform such works as may be necessary to rectify the defaulting Party’s failure without prior notification.

## Costs are divided among the Parties in accordance with section 12.

# intellectual property

## This Agreement shall not in any way influence the Parties existing ownership of intellectual property. Any new intellectual property created during the term of this Agreement shall become the property of the Party that has created the work in question unless otherwise agreed in a separate agreement. Shared creations shall be the property of the Parties involved and such Parties shall attempt to finalize a formal ownership agreement within 6 months of creation.

## The Parties confer to each other a non-transferable and non-exclusive license of all intellectual property owned or controlled by the Parties that is necessary for the Parties completion of the Project Works assigned to them in accordance with the Final Project Matrix.

# Confidentiality

## Each Party is only entitled to use confidential information received by the Party from the other Parties for the purpose of performing Project Works in accordance with the Final Project Matrix, and each Party shall ensure that such information is not communicated to any third party unless it is necessary for the performance of the Project Works.

## Confidential information includes all information of a technical, commercial nature, including designs, specifications, drawings etc., regardless of the form or format of the information, if the information has been received with a notice of confidentiality or if it is self-evident due to the circumstances that the information is to be treated as confidential.

## The confidentiality shall be upheld regardless of the termination of this Agreement and shall be in force for a period of [●] years after the dissolution of the Consortium.

## The confidentiality obligations shall not apply to information that is generally available to the public, obtained in good faith from a third party, independently developed by a Party or required to be disclosed by law.

# changes in the consortium members

## Changes in the Consortium require consent from all Parties.

## Upon submission of request for prequalification or the tender offer – whichever may apply – all changes in the Consortium require consent from the Client as well as the Parties.

# exit and termination

## Each Party is free to exit the Consortium before submission of request for prequalification or the tender offer – whichever may apply.

## If a Party exits the Consortium in order to place a competing bid with an alternative bidder – as a subcontractor, independently or in any other structure – for the Project, the Party shall compensate the other Parties for their lost costs related to the preparation of the tender offer and other reasonable costs related to the tender process.

## Upon submission of request for prequalification or the tender offer – whichever may apply – any Party’s exit from the Consortium requires consent from the Client as well as the Parties.

## In the event of material breach of the Agreement, the Consortium may choose to terminate the Agreement with respect to one or more of the Parties. Material breach shall be deemed to have occurred if a Party causes losses/costs for the other Parties in excess of [●] % of the Project sum or [●] % of one or more Parties part of the Project Sum. Material breach shall also be deemed to have occurred in the event of gross misconduct or any other event which may otherwise constitute material breach under Danish law.

## Termination of a Party requires the consent of the Client.

## Termination of a Party does not void the Agreement in any way, and the affected Project Works are divided among the remaining Parties after joint negotiations.

## The remaining Parties are entitled to use already delivered materials, machinery, facilities etc. – owned, rented or otherwise controlled by the terminated Party – for the purpose of completing the Project Works.

## The terminated Party is obligated to the best of its ability to assist the remaining Parties with the performance of the Project Works, including in connection with transfer of subcontractor and/or sub-supply agreements to the remaining Parties.

## The terminated Party is liable towards the remaining Parties and/or the Client for loss in accordance with the rules of Danish law and the provisions in section 12, although the limitation of liability in clause 12.3.1 does not apply if the terminated Party has acted with intent or gross negligence.

## The Agreement can be terminated as a whole in the event of termination of the Project Contract.

# Term

## The Agreement shall commence when signed by all Parties.

## The Agreement expires if

#### the Consortium fails to attain prequalification,

#### the Consortium does not enter into the Project Contract,

#### if a Party exits the Consortium prior to submission of the tender offer and this precludes the Consortium from being awarded the Project, or

#### when the Consortium has completed the Project Works and fulfilled all contractual obligations according to the Project Contract.

# amendments to the agreement

## All amendments to the Agreement must be in writing and must be agreed to by the Parties in a Consortium Meeting unless such changes are within the purview of the Consortium Leader according to the Agreement (e.g. updating exhibits as necessary).

# Governing LAW AND ARBITRATION

## This Agreement and any dispute arising out of or in connection with this Agreement, shall be governed by and construed in accordance with the laws of Denmark, excluding conflict of law principles.

## Any dispute between or by Parties arising out of or in connection with this Agreement shall be finally settled by arbitration in accordance with the rules of the Danish Institute of Arbitration (Danish Arbitration). The arbitration procedure shall take place in [●] and shall be carried out in the [English] language.

## The proceedings and any award shall be kept confidential by the Parties.

## The Parties are obligated to participate in arbitration and/or litigation before the civil courts if one Party is subpoenaed before such a venue and said Party wishes to seek recourse against one or more of the other Parties.

# SIGNATURES

## This Agreement is signed in [●] original copies, one for each of the Parties.

|  |  |  |
| --- | --- | --- |
| ¦[Place]|, on ¦[Date]|: |  | ¦[Place]|, on ¦[Date]|: |
| For ¦[●]|: |  | For ¦[●]|: |
|  |  |  |
|  |  |  |
|  |  |  |
| ¦[Name and Title]| |  | ¦[Name and Title]| |