

**GENERAL PURCHASING AND PROCUREMENT CONDITIONS  
BILBAO EXHIBITION CENTRE SOLAR, S.L., M.P. (BEC SOLAR)**

## **GENERAL PURCHASING AND PROCUREMENT CONDITIONS** **BILBAO EXHIBITION CENTRE SOLAR, S.L., M.P.**

### **I. PURPOSE**

The purpose of these General Purchasing and Procurement Conditions of BILBAO EXHIBITION CENTRE SOLAR, S.L., M.P. (hereinafter referred to as **BEC SOLAR**) is to regulate the legal and contractual relationship to be entered into between BEC SOLAR and its contractors in any purchase and procurement by BEC SOLAR of works, services and supplies.

### **II. SCOPE OF APPLICATION**

These BEC SOLAR General Purchasing and Procurement Conditions apply to all purchases and procurements made by BEC SOLAR with third parties, whose estimated value is not equal to greater than:

- a. Works: €40,000 (not including VAT).
- b. Services and supplies: €15,000 (not including VAT).

### **III. DEFINITIONS**

General Purchasing and Procurement Conditions: Set of legal and contractual conditions regulating the provision of services, execution of works and delivery of supplies by third parties to BEC SOLAR.

Order/contract: Document issued by BEC SOLAR and accepted and signed by the contractor whereby the procurement of the works, services or supplies is entered into.

Special Conditions: Set of unique documents or informative texts that form part of the Contract Documents and which include the special conditions and specifications established for the work, service or supply to be procured. Said special conditions modify or complement these General Purchasing and Procurement Conditions.

Contract Documents: Set of documents making up the order/contract. In addition to the order/contract itself, the Contract Documents shall comprise all appendices thereto and any other documents that modify same or are developed thereby or which are prepared or drawn up in accordance with the terms of the order/contract.

Contractor: Body corporate fulfilling the requirements on fitness to enter contracts with the Public Sector established in current legislation, which is awarded the contract for the works, services or supplies procured by BEC SOLAR.

Works: A work shall be as defined in Art. 13 of the Public Sector Procurement Act (Act 9/2017, of 8 November 2017).

Services: A service shall be as defined in Art. 17 of the Public Sector Procurement Act (Act 9/2017, of 8 November 2017).

Supplies: A supply shall be as defined in Art. 16 of the Public Sector Procurement Act (Act 9/2017, of 8 November 2017).

#### **IV. LEGAL SYSTEM**

All purchases and procurements of works, services and supplies made by BEC SOLAR with third parties by virtue of these General Conditions, shall be regulated in order of prevalence, by the following documents:

- a. By the Special Conditions and the Contract Documents.
- b. By these General Purchasing and Procurement Conditions.
- c. By the technical/economic tender (hereafter, the “**Tender**”) submitted by the contractor.
- d. By the Public Sector Procurement Act (Act 9/2017, of 8 November 2017”) (“**PSPA**”).
- e. By the General Regulation of the Government Procurement Act (“**GRGPA**”), provided it does not conflict with the terms of the PSPA.
- f. By Decree 116/2016, of 27 July 2016, on the procurement regime of the public sector of the Autonomous Community of the Basque Country, provided it does not conflict with the terms of the PSPA.
- g. By Royal Decree 817/2009, of 8 May 2009, partially developing the Public Sector Procurement Act (Act 30/2007 of 30 October 2007).
- h. By the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.
- i. By Organic Law 3/2018, of 5 December 2018, on Personal Data Protection and Guarantee of Digital Rights.
- j. By any other provisions regulating procurement in the ambit of the European Union, of the Spanish State or of the Autonomous Community of the Basque Country that may be applicable.
- k. The regulations of private law shall be applicable to resolve any issues related to the effects and termination of the contract.

Likewise, any purchases and procurements made by BEC SOLAR by virtue of these General Conditions shall be deemed to be private contracts.

#### **V. SELECTION OF THE CONTRACTOR**

BEC SOLAR may, before the contract has been awarded, decline to award the contract on grounds duly justified in the file, or desist from the awarding procedure in the event that there has occurred an irremediable infringement of the rules on preparation of the contract or the rules regulating the awarding procedure.

#### **VI. INFORMATION ON MATTERS CONCERNING TAX, THE ENVIRONMENT, GENDER EQUALITY, PROTECTION OF EMPLOYMENT, WORKING CONDITIONS, OCCUPATIONAL RISK PREVENTION AND SOCIAL/LABOUR INCLUSION OF PERSONS WITH DISABILITIES, REQUIREMENT TO HIRE A SPECIFIC NUMBER OR PERCENTAGE OF PERSONS WITH DISABILITIES, DATA PROTECTION AND DEFENSE OF COMPETITION**

Information can be obtained from the following bodies on current obligations and

provisions in the stated areas:

- Gender equality: EMAKUNDE, The Basque Institute of Women, an autonomous body.
- Tax Issues: "Foral" (Regional) Revenue Commissioners of the Historical Territories of Alava, Bizkaia and Gipuzkoa and of the Community of Navarre, and State Agency of Tax Administration.
- Environmental protection: IHOBE, S.A. Publicly owned Environmental Management Company.
- Employment protection, working conditions, occupational risk prevention: Corresponding Directorate of of the Department or Departments responsible for Labor and Employment and Basque Institute of Health and Safety in the Workplace, OSALAN.
- Social/labour inclusion of persons with disabilities and obligation to hire a specific number/percentage of persons with disabilities: LANBIDE- Basque Employment Service (autonomous body).
- Data protection: Basque Data Protection Authority.

## **VII. CONTRACT PURCHASING AND PROCUREMENT CONDITIONS**

### **1. ORDER/CONTRACT PRICE INVOICING, PAYMENT AND PRICE ADJUSTMENT**

#### **1.1 Order/Contract price**

The order/contract price shall be that stated in the award thereof and shall include VAT as a separate item.

The order/contract price is deemed to include all other taxes, rates and fees of any kind that may apply, as well as all costs resulting to the contractor as a consequence of fulfilment of the obligations set out in the Special Clauses and in the tender submitted by the contractor (general and financial expenses, profits, insurance, transport and displacement, fees of technical staff in their charge, visas/endorsements, etc.).

In short, all expenses necessary for the correct execution, as set out in the Special Conditions and in the tender presented by the contractor, shall be met by the contractor, and therefore shall not be payable by BEC SOLAR.

#### **1.2 Invoicing and Payment of the Price**

The contractor shall be entitled to the payment of the provisions effectively made, following receipt of approval of the work by BEC SOLAR, and the delivery of the corresponding invoice, accompanied by all necessary documentation for its approval.

The various payments of the price shall be as established in the Special Conditions or otherwise shall be made entirely upon completion of the work and following the corresponding receipt of approval thereof by BEC SOLAR; under no circumstances shall any payment be made until such time as the entered order/contract has been concluded.

Payment of the Price shall be made within a period of 30 calendar days from correct issuing by the Awardee and correct delivery to BEC SOLAR of the corresponding invoice and acceptance thereof by BEC SOLAR.

The contractor shall not be entitled to payment for any improvements to or deviations from the scope of the supply or work performed without explicit authorisation from BEC SOLAR.

BEC SOLAR reserves the right to deduct from the price any penalties imposed by BEC SOLAR upon the contractor in accordance with the provisions herein.

### **1.3 Price Adjustment**

As established in the Special Conditions.

## **2. EXECUTION PERIOD.**

The execution period and the interim periods necessary to ensure staggered (step-by-step) fulfilment of the contract, shall be as deduced from the Special Conditions, from the contractor's Tender or shall be as established in approval of the Work Programme by BEC SOLAR.

Should the possibility of a reduction in the total period of execution of the work be provided for or should partial (interim) periods or the allocation of activities be provided for, compliance therewith shall be binding if so tendered or established, respectively.

## **3. ACCEPTANCE AND SCOPE OF THE ORDER/CONTRACT.**

For all purposes, an order/contract shall be considered to be binding for the parties from the moment of its being signed by their legally authorised representatives, thus implying full acceptance of the contents of all its component documents and appendices.

With its signature, the legal representative guarantees that the contractor:

1. Has full capacity to operate and has any business or professional authorisation which may be required for performance of the service provisions that constitute the purpose of the contract
2. Is not involved in any legal or administrative proceedings that might constitute an economic or technical obstacle or impediment or an impediment to its fulfilment of the legal obligations and commitments contained in the contract, nor falls under any of the grounds for prohibition, incapacity or incompatibility to contract set out in Article 71 of the PSPA.
3. Has the economic and financial, technical, professional and operative capacity to perform the object of the order/contract.
4. Has and can provide all human and technical resources necessary to entirely fulfil the purpose of the contract.
5. That from the signing of the contract, it accepts same in its entirety and that it declares that it understands how and where the contract must be performed, having received all the necessary information with regard to the purpose of the contract.

The order/contract, once issued by BEC SOLAR, shall be sent to the contractor for its acceptance, which must return a copy signed by its legally authorised representative within fifteen (15) calendar days of the date of reception thereof.

The scope of the work that the contractor must provide shall be strictly that established in the order/contract, the Special Conditions, the Tender and the Specifications, and in

the documents attached thereto, and must strictly follow all the rules and regulations established by applicable legislation.

In cases in which the contractor creates a temporary association of companies [joint venture] or other institution with a legal personality other than that of its component parts, any liability that may derive from the order/contract shall be assumed jointly and severally by all individuals or companies involved in the joint company or entity.

#### **4. OBLIGATIONS OF BEC SOLAR**

The following are the OBLIGATIONS OF BEC SOLAR:

- To pay for the goods, works and/or services procured, at the prices and under the conditions stipulated in the contract documents.
- To designate a representative, pursuant to the terms of Clause 15, who shall act and shall be responsible to the contractor for performance and execution of the order/contract.
- To furnish the contractor with the necessary documentation to perform the scope of the work contracted.
- To furnish the contractor with the documentation required by the procedure on coordination of business activities stated in RD 171/2004 when the scope of supply is performed in BEC SOLAR's premises.

#### **5. PERFORMANCE OF THE CONTRACT.**

- a) The contract shall be performed as established in the Special Conditions, these General Purchasing and Procurement Conditions, the tender presented by the Contractor, and in accordance with the instructions given for its interpretation to the contractor by the Person Responsible for the Contract designated by BEC SOLAR.
- b) The contract shall be performed at the responsibility of the Contractor and in accordance with the terms of the Contract Documents.
- c) The contractor shall be responsible for the technical quality of the work performed and the provision and services carried out, as well as for any consequences arising for BEC SOLAR or for third parties from any omissions, errors, unsuitable methods or incorrect conclusions in the performance of the contract.
- d) Similarly the contractor shall perform the work contracted:
  - i- With due diligence and in accordance with common industrial and commercial practise.
  - ii- Pursuant to all current legislation that may apply to the order and in particular (without being limited to) environmental regulations.
  - iii- Pursuant to the requirements of quality, design and directives established by the quality control bodies for the systems or products included in the order.
- e) The contractor undertakes to furnish any supplementary information and technical assistance necessary for the correct use of the result of the order (documents and all types of information).

- e) The contractor shall be liable for proper application of the contract, and shall assume at its own expense the risk of damage to the material and to personnel and third parties during execution of the work.
- g) The contractor is bound to maintain confidentiality with regard to any information and antecedents, not in the public domain or of common knowledge, related to the purpose of the contract, of which it has gained knowledge during said process, either during the term of the contract or after the termination thereof.
- h) The performance by the contractor of any work that is not defined in the Contract Documents or that has not been previously authorised by the Person Responsible for the Contract shall not be remunerated.
- i) In contracts of work and supply, upon completion of same, a formal act of acceptance of the work that forms the object of the contract shall be held. Any guarantee period established in the Special Conditions and/or in the Tender shall begin to be computed from that time.

#### **6. WORKS CONTRACTS: HEALTH AND SAFETY. CERTIFICATE OF READINESS.**

In works contracts:

- a) Within a maximum period of ten (10) working days, from the signing of the order, and always prior to the execution of the work, the contractor must submit to BEC SOLAR for review and certification by the safety and health coordinator, all documents referred to in Clause 11.1 of these Conditions, regarding compliance with the obligations on occupational risk prevention set out in said clause.

The safety and health coordinator shall give notice of whether his/her approval is granted and if approval is not given, shall indicate any items to be corrected or documents to be submitted, for which purpose a period shall be granted in keeping with the significance of the defects, which shall in no case exceed five (5) working days.

If by reason of the contractor's failure to comply with the stated periods, it should not prove possible to begin the works, the contractor may not claim any extension of period for this reason and said non-compliance shall give grounds for the penalties established in Clause 9 hereof.

In all cases, under no circumstance may the work commence without prior approval and certification by the health and safety coordinator of the safety plan and of compliance with the obligations on occupational risk prevention.

- b) Execution of the contract shall begin from the moment the certificate confirming readiness is signed. Readiness shall be verified within a maximum period of fifteen (15) days from the date of formalisation of the order. The contractor shall receive sufficient notice of the date and time on which readiness is to be verified.

The certificate of verification of readiness shall indicate compliance/non-compliance with the contract documents of the project with particular and explicit reference to any items that might affect fulfilment of the contract.

Work may not commence without the certificate of verification of readiness having been issued. When reservations are expressed therein that are deemed to be well-founded, commencement shall be suspended or definitive suspension shall be agreed.

## **7. AMENDMENTS TO THE CONTRACT.**

Once the contract has been finalised, BEC SOLAR may only amend it by reason of public interest, in the circumstances set out in the Special Conditions and in Article 205 of the PSPA. Reasons of public interest shall be deemed to be those whose purpose is to achieve the objective of budgetary stability and which are carried out during the corresponding budgetary year.

In all cases, the amendment shall be entered into in accordance with the provisions of Article 153 of the PSPA and shall be published in accordance with Articles 63 and 207 of the PSPA.

Amendments agreed pursuant to this clause shall be binding upon the contractor.

## **8. WARRANTY PERIOD.**

- a) Upon completion of the contract, BEC SOLAR shall draw up a formal acceptance report of the work that forms the purpose of the contract. Any warranty period shall start to be computed from that time, if so established in the Special Conditions and/or in the Tender.
- b) The duration of the warranty shall be as established in the Special Conditions and/or in the Tender. If no warranty criteria are established in the Special Conditions, as a general rule a warranty period of 24 months shall apply, from the date of final acceptance.
- c) During the warranty period, all replacements of material or repairs that must be carried out due to non-compliance with the contractual quality conditions must be paid for by the Contractor.
- d) The warranty period shall remain suspended during such time as the replacement or repair is being performed and said replacement or repair shall in turn be guaranteed, from its completion, for the same period as that established in the original warranty.
- e) Failure by the contractor to comply with the warranty shall be grounds for BEC SOLAR to withhold any outstanding payments, redeem any bank guarantees and terminate the contract, with the contractor being liable to pay all corresponding compensation for damages and prejudicial consequences caused.
- f) On completion of the guarantee period, if BEC SOLAR has not made known to the Contractor the existence of repairs, errors or defects in the provision of the service or work that forms the subject matter of the Contract, the contract shall be terminated and the Contractor's responsibility shall come to an end, except in the case of hidden defects, in which case the Contractor shall be responsible even if the guarantee period has expired.

**9. DEADLINES AND PENALTIES FOR DELAY.**

- a) The contractor is bound to fulfil the contract within the periods, total and partial, established for its execution in the Special Conditions, in the Tender and in the Work Plan agreed.
- b) Designation of the Contractor as being in default with regard to any delivery period shall not require prior notice from BEC SOLAR. Imposition of any penalties arising from said delays may apply automatically.
- c) If upon completion of the term of the final period or maturity of any of the interim periods established, the contractor is in default for reasons attributable to it, BEC SOLAR may impose upon the contractor a daily penalty of 3 euros for every 1,000 euros of the contract price, not including VAT.

The amount of the penalties shall not exclude any compensation to which BEC SOLAR may be entitled for any damages and prejudicial consequences arising out of delay by the awardee, nor BEC SOLAR's entitlement to commence termination of the contract.

- d) For the imposition of this type of penalty, a procedure shall be followed necessarily including a process of appeal by the contractor.

**10. DEFECTIVE COMPLIANCE OR PARTIAL BREACH OF CONTRACT BY THE CONTRACTOR.**

BEC SOLAR shall determine whether the service provision made by the contractor is in accordance with the terms of the Special Conditions and the tender submitted, and if applicable shall demand performance of the contracted service provision and correction of any defects observed upon reception within the corresponding period, which may not exceed ten (10) working days in works contracts and five (5) working days in contracts for services and supplies.

Should the work performed not be in accordance with the service provisions contracted, as a result of flaws, deficiencies or defects attributable to the contractor, BEC SOLAR may reject said works and shall be exempted from its obligation to pay, and may opt to terminate the contract, with the contractor paying a penalty of 20% of the price finally agreed.

The amount of the penalties does not exclude any compensation to which BEC SOLAR might be entitled for damages and prejudicial consequences caused by the contractor's non-compliance.

**11. CONTRACTOR'S OBLIGATIONS.****11.1 Occupational risk prevention**

The contractor shall comply with and ensure compliance by its staff and subcontractors with the obligations imposed by Labour Law, including the applicable Collective Labour Agreement and especially all obligations pursuant to the Prevention of Occupational Hazards Act (Act 31/1995 of 8 November 1995), and all its secondary legislation, particularly including Article 24 of said Prevention of Occupational Hazards Act and Royal Decree 1627/1997, of October 24, establishing minimum health and safety provisions for construction works.

In works contracts in which by their own characteristics it is considered appropriate or established in law, the contractor must furnish the following documents or any other that the safety coordinator deems necessary, for his/her subsequent review and approval:

- o Updated RNT and RLC forms, in accordance with the required months.
- o List of employees intervening on site (first and last names, National ID number and specific job they perform).
- o Health and safety plan of the site whose execution and cost shall be at the account of the contractor.  
Depending on the characteristics of the project, if a PSS is not required, the Preventive Management Document for the Project (DGPO) will be submitted. This document includes preventive planning, risk assessment, and measures to avoid or minimize occupational risks.
- o Photocopy of the contract with a preventative institution or in the absence of same, document accrediting the company's own preventative organization.
- o Document accrediting that all employees on the site have received sufficient training and information on workplace hazards.
- o Authorisation of Registered Premises.
- o Entry in the Register of Accredited Companies.
- o Log book.
- o Subcontracting Book.
- o Work Accident Mutual Insurance.
- o Document accrediting receipt of PPE.
- o Name of the preventative personnel designated for the work that will be present at all times.
- o Medical certificates demonstrating the fitness of each worker for his or her specific post.
- o List of machinery used with CE marking or document of adequacy.
- o Names of personnel authorised to handle the machinery on site and accreditation to prove it.

#### **11.2 Minimum labour and social obligations of contractors.**

- a) The contract is subject to compliance with current provisions of law, regulations and conventions applicable in the area of labour matters, social security and health and safety at work in accordance with Act 3/2016, of 7 April 2016, for the inclusion of certain social clauses in public procurement (published in the Official Gazette of the Basque Country (BOPV) No. 71 of 15 April 2016).

Therefore, with regard to the personnel it employs in performing the work awarded, the contractor is bound to comply strictly with legal requirements in labour matters, social security, social inclusion of people with disabilities and prevention of occupational hazards and, with regard to the latter, social training and undertakes to ensure that any subcontracted company complies with current labour legislation with regard to its workers.

- b) The contractor shall be obliged to ensure that the work, in its own company and with any companies it subcontracts—where applicable—is performed in acceptable conditions; the pay agreement for the industry of which it forms part shall be of application, especially with regard to the subrogation of the personnel. In this regard, before the contract is awarded, the contractor shall be obliged to state which collective labour agreement shall apply to employees carrying out the activity that forms the purpose of the contract and its obligation to furnish BEC

SOLAR with any information it may request on the working conditions which will effectively be applied to those workers.

- c) Throughout the entire performance of the contract, the contractor must pay the salary established in the applicable collective labour agreement, in accordance with the professional category of the employee. In no case may the salary paid be lower than said amount.
- d) The contractor expressly acknowledges that it has the knowledge, capacity, resources and means necessary to fulfil and ensure the fulfilment of all applicable provisions and rules for performance of the Contract in matters of Hygiene, Safety and the Environment and shall hold BEC SOLAR harmless for any claim brought against it resulting from incidents arising with regard to said issues during performance of the Contract.
- e) The contractor must provide all its personnel with appropriate approved personal protection equipment (PPE) in accordance with the Plan for Prevention of Occupational Hazards resulting from the risk analysis made for the work that forms the purpose of the Contract and ensure that said personnel have received the necessary training in the use of said equipment.
- f) The contractor must, upon being required to do so by BEC SOLAR, present all documentation that accredits fulfilment of those obligations that must or can be documented.
- g) The personnel assigned to the work shall answer exclusively to the contractor, which shall have all the entitlements and duties inherent to its position as their employer.
- h) BEC SOLAR does not acquire, by virtue of the signing of the contract, any of the labour and social obligations that correspond to the contractor by law or regulation with regard to its personnel. The contractor, in all events, undertakes to hold BEC SOLAR harmless with regard to any claim brought by its personnel or by third parties with regard to compliance with these obligations.
- i) In general, the contractor shall be responsible for any obligations imposed on it in its condition as employer, as well as for compliance with any rules regulating and developing labour relations or of any other kind, existing between it or between its subcontractors, and their employees. It may not pass on to BEC SOLAR any fine, sanction or any other type of liability imposed upon it as a result of non-compliance with any of said rules.

In all events, the contractor shall compensate BEC SOLAR for any amount that it is obliged to pay for non-compliance by the contractor of the obligations established in this document, even if it is imposed upon it by a judicial or administrative ruling.

- j) Upon termination of the contract, under no circumstances may the persons who have carried out the work that forms the purpose of the contract be considered to be taken on as BEC SOLAR staff.
- k) All costs incurred for performance of the contract shall correspond to the contractor, and shall be met by it.

- l) Failure to submit or unjustified delays in the submission of documentation requested by BEC SOLAR, non-compliance with the terms of this clause or of Act 3/2016, of 7 of April, for the inclusion of certain social clauses in public procurement (published in the Official Gazette of the Basque Country (BOPV) No. 71 of 15 April, 2016) by the contractor, shall constitute a breach of contractual obligations and shall entitle BEC SOLAR in such circumstances; to impose the penalties for defective compliance established herein; to begin a procedure to call for a prohibition on contracting the businessperson; and, if applicable, to terminate the Contract in accordance with the provisions of this document.

### **11.3 Obligations in environmental matters.**

The contractor shall prevent its operations or those of its subcontractors from having a negative impact on the natural environment or on animal and plant life, and shall take the necessary measures to eliminate or minimise any incident that might arise during such operations.

The Contractor shall carry out the work in compliance with all laws, regulations and recommendations laid down by the public authorities with powers in environmental matters and in strict observance of all additional rules BEC SOLAR might establish, and shall have sole liability for non-observance of same.

The Contractor shall take responsibility for knowing, circulating and training its personnel in the environmental responsibility it acquires for fulfilment of its contractual obligations with BEC SOLAR.

### **11.4 Third Party Licenses.**

Independently of any contracts and steps BEC SOLAR deems necessary to take on itself, the contractor may take out as many permits and licences as it requires for correct performance of the work from individuals, associations, companies and official bodies. Any possible cost that might arise from the obtention of these licenses shall be met exclusively by the contractor.

## **12. INSURANCE.**

- (i) *In service and supply contracts*, the contractor shall take out and maintain the following insurance policies:

Professional Civil Liability Insurance: Covering any errors and omissions that might be made by professionals, (lawyers, engineers, surveyors, etc.) providing their services for BEC SOLAR in the performance of their work or in the exercise of their functions.

Said policy must be taken out with an insurer of recognised prestige, and must have a compensation limit of no less than 300,000 euros.

- (ii) *In works contracts, and in contracts for services and supplies when thus specified in the Special Conditions*, the contractor shall take out and maintain the following insurance policies:

Civil Liability Insurance: taken out with a broad scope, covering any liabilities that might arise from material and personal damage and consequential harm caused to third parties, explicitly including as such the contractor's own personnel, its subcontractors and suppliers, and BEC SOLAR's personnel and goods, as a

consequence of the execution of the works, and which are attributable to the contractor, its personnel or any natural or legal person intervening in performance of the contract.

Said insurance must include coverage for general civil liability, employer's liability (occupational accidents), product liability and post-work liability, with a minimum limit per accident of 300,000 euros.

For Employer's Civil Liability, a minimum of 150,000 euros per victim must be covered. In the event that the scope of the work includes the transport of goods or equipment by the contractor, coverage of any civil liability deriving from said transport must also be covered.

Vehicle Insurance: Mandatory and Voluntary Civil Liability for all own and rented vehicles used on site and which are subject to the Motor Traffic Civil Liability and Insurance Act [*Ley de Responsabilidad Civil y Seguro en la Circulación de Vehículos de Motor*] and any other mobile elements for which said insurance is required under current legislation (forklift trucks and similar, etc.).

Personal Insurance: Any insurance against occupational accidents or social security coverage which may be required pursuant to labour law and/or the Collective Labour Agreement applying to the personnel used by the contractor or other commitments held by the company with its employees.

Other mandatory and/or compulsory insurance policies pursuant to applicable legislation.

- a) Before beginning performance of the contract, the contractor must send accreditation (by means of the corresponding certification from the insurer) of the validity, scope of coverage and suitability of the corresponding insurance policy to the conditions set out herein and undertakes to extend the cover thereof if BEC SOLAR judges this to be necessary.
- b) Should the contractor fail to obtain and/or maintain the insurance policies established herein, or should it fail to provide the corresponding certificates of life of the insurance, with proof of payment thereof, within the thirty (30) calendar days following the entry into force of the contract or from the date on which said insurance is demanded by BEC SOLAR, BEC SOLAR shall be entitled to seek a similar insurance coverage, whose costs shall be charged to the contractor and deducted as appropriate from any sum owed by BEC SOLAR to the contractor.
- c) Any demands in the matter of Insurance established for the Contractor, must be transferred by it suitably and proportionally to their risk to all Subcontractors it contracts for performance of the contract and the Contractor shall be liable to BEC SOLAR or the corresponding party for any failure that may occur in this regard.
- d) The Contractor must notify BEC SOLAR of any amendment, renovation or cancellation of the policies indicated in the previous sections. Likewise, when required to do so, it shall also submit a copy of the insurance contracts and the receipt attesting payment of the premium.

Failure to submit the corresponding accreditation or complementary documentation required shall be deemed to comprise a breach of contract.

- e) The risks, obligations and liabilities established corresponding to the contractor shall not be limited by the taking out of the insurance policy referred to in this clause. Consequently, the amount of the obligations and liabilities arising from assumption of such risks may not be reduced by the amount of the aforesaid insurance policy or through lack of sufficient contracting or coverage thereof to the harm of BEC SOLAR or third parties.
- f) The cost of all insurance specified in this section shall be met by the contractor.

### **13. OWNERSHIP OF THE WORK PERFORMED. PROCESSING OF PERSONAL INFORMATION. CONFIDENTIALITY.**

#### **13.1 Ownership of the work performed.**

The service received and the rights inherent to the work performed, together with the intellectual, industrial and commercial property thereof shall be the property of BEC SOLAR. BEC SOLAR reserves to itself the use thereof. It may not be the subject of marketing, reproduction or any other use not expressly authorised by BEC SOLAR, and BEC SOLAR may consequently demand at any time that the documents or materials forming it, with all their antecedents, data or procedures, be handed over to it.

Service contracts whose purpose is the development and final delivery to BEC SOLAR of products liable to be protected by an intellectual or industrial property right shall entail the assignment thereof to BEC SOLAR.

Proven information that the contractor has handed over without consent from BEC SOLAR, all or part of the work to third parties, in matters forming the purpose of the Contract shall be grounds for termination of the contract. This grounds for termination shall be considered for all purposes as breach of the contract through the fault of the contractor.

#### **13.2 Processing of personal data.**

Processing of personal data shall be deemed to comprise any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction that affect any information concerning identified or identifiable natural persons.

**A)** In the case of a service contract involving processing by the contractor (for these purposes, the “**Processor**”) or subcontractor of personal data on behalf of BEC SOLAR (for these purposes, the “**Controller**”), as indicated in **APPENDIX I**, the following shall apply:

1. Under the contract, the Processor is authorised to process, on the Controller's behalf, the personal data required to perform the services contracted by the Controller. Said processing shall be performed, as applicable:

- In the premises and on the information systems of the Processor.
- In the premises and on the information systems of the Controller.

- By remote access to the Controller's systems.

Possible processing to be performed:

|               |     |                            |     |
|---------------|-----|----------------------------|-----|
| Collection    | Yes | Recording                  | Yes |
| Structuring   | Yes | Alteration                 | Yes |
| Storage       | Yes | Retrieval                  | Yes |
| Consultation  | Yes | Disclosure by transmission | Yes |
| Dissemination | Yes | Combination                | Yes |
| Alignment     | Yes | Restriction                | Yes |
| Erasure       | Yes | Destruction                | Yes |
| Communication | Yes |                            |     |

2. For the purposes of performing the contract services, the Controller may provide the Processor with the following data categories:

Identifying data:

|                                            |     |                                        |     |
|--------------------------------------------|-----|----------------------------------------|-----|
| Data on personal characteristics           | Yes | Written/digital signature              | Yes |
| VAT number                                 | Yes | Electronic signature                   | Yes |
| First and last names                       | Yes | Data on social circumstances           | Yes |
| Address                                    | Yes | Academic and professional data         | Yes |
| Telephone Number                           | Yes | Data on employment details             | Yes |
| Social Security Number                     | Yes | Data on commercial information         | Yes |
| Image/voice                                | Yes | Economic, financial and insurance data | Yes |
| Data on transactions of goods and services | Yes |                                        |     |

The groups of data subjects whose data may be processed are:

|                    |     |                        |     |
|--------------------|-----|------------------------|-----|
| Employees          | Yes | Customers and users    | Yes |
| Suppliers          | Yes | Associates or partners | Yes |
| Owners and lessees | Yes | Contacts               | Yes |
| Students           | Yes | Legal representatives  | Yes |
| Applicants         | Yes | Public positions       | Yes |

3. The Processor and all its employees shall undertake:

1. To use the personal data processed, or which is collected for inclusion, only for the purpose for which it has been commissioned. In no case may it use the data for its own purposes.
2. To process the data in accordance with the Controller's instructions.
3. To inform the Controller immediately if it considers that any of the instructions infringe any provision on data protection of the Union or of the Member states.
4. To keep a record of all categories of processing activities made on the controller's behalf, containing:

- The name and contact details of the Processor and the Controller on behalf of which it is acting, and, where applicable, of the Controller's or the Processor's representative, and the data protection officer (DPO).
  - The categories of processing carried out on the Controller's behalf.
  - Where applicable, the fact that the controller intends to transfer personal data to a third country or international organisation, including identification of that third country or international organisation and, in the case of the transfers referred to in the second subparagraph of Article 49(1) of the GDPR, the documentation of suitable safeguards.
  - A general description of the technical and organisational security measures with regard to:
    - The pseudonymisation and encryption of personal data.
    - The ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services.
    - The ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident.
    - The process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
5. Not to disclose the data to third parties, unless it has the explicit authorisation of the Controller, in legally admissible circumstances.

The Processor may disclose the data to other processors of the same Controller, as per the Controller's instructions. In such cases, the Controller shall previously identify in writing the organisation to which the data is to be disclosed, the specific data to be disclosed and the security measures to be applied for the making of said disclosure.

Should the processor need to transfer personal data to a third country or an international organisation, pursuant to Union or Member State law to which the processor is subject, it shall inform the Controller of that legal requirement before processing, unless that law prohibits the disclosure of such information on grounds of major public interest.

6. Subcontracting:
- (i) If subcontracting of all or part of the performance of the contract is prohibited:

Not to subcontract any of the services that form the purpose of the contract involving the processing of personal data, except for the auxiliary services necessary for the normal functioning of the Processor's services.
  - (ii) If subcontracting of all or part of the execution of the contract is permitted:

To identify any subcontracting it intends to enter into using the form enclosed as **APPENDIX II**.

For subcontracting with other subcontractors not identified initially in its proposal, the Processor must give written notice to the Controller, clearly and unequivocally identifying the subcontractor and its contact details.

The subcontractor, which shall also be classed a processor, is likewise obliged to comply with the obligations established herein upon the Processor and the instructions given by the Controller. It is the responsibility of the initial Processor to regulate the new relationship, in such a way that the new processor is subject to the same conditions with the same formal requirements as it, with regard to the suitable processing of personal data and the safeguarding of the rights of the data subjects. In the event of non-compliance by the sub-processor, the initial Processor shall assume all liability of any kind with regard to the performance of the obligations.

7. To maintain the obligation of secrecy with regard to any personal data to which it has access by virtue of the commission, as well as any data resulting from its processing, regardless of the medium on which it was obtained, including after completion of the purpose of the contract.
8. To ensure that any persons authorised to process personal data undertake, expressly and in writing, to respect the confidentiality and the obligation of secrecy as established in Clause 13.3.
9. To keep and make available to the Controller the documentation accrediting compliance with the obligation set out in the previous section.
10. To ensure that persons authorised to process personal data receive the necessary training in personal data protection.
11. To assist the Controller in responding to data subjects exercising their rights:
  - To access, rectification, erasure and objection.
  - To restriction on processing.
  - To data portability.
  - Not to be subject to automated individual decision-making (including profiling).
12. Attention to the exercise of rights. Whenever data subjects apply to the Processor to exercise their right to access, rectification, erasure, objection, restriction of processing, data portability and not to be subject to automated individual decision-making, the Processor must notify the Controller of this circumstance by e-mail at [dpd@eve.eus](mailto:dpd@eve.eus). Notice must be given immediately and no later than the working day following the day on which the request is received, accompanied, where applicable, by any other information that may be relevant for resolving the request.
13. Right to information. It is the responsibility of the Controller to facilitate the right to information when the data is collected. The Processor is absolved from said obligation.
14. Notification of personal data breaches or security breaches.

To notify the Controller of any personal data breach without undue delay, and in any case in no more than 72 hours of becoming aware of it, by e-mail to [dpd@eve.eus](mailto:dpd@eve.eus). Said notification must be accompanied by all relevant information for documentation and notification of the incident. No notification shall be necessary when the personal data breach is unlikely to result in a risk to the rights and freedoms of natural persons

The information that must be provided, must at minimum include the following, if available:

- Description of the nature of the personal data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of personal data records concerned.
- The name and contact details of the data protection officer, where one exists, or other contact point where more information can be obtained.
- Description of the likely consequences of the personal data breach.
- Description of the measures taken or proposed to be taken to address the personal data breach, including, where appropriate, measures to mitigate its possible adverse effects.
- Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.

The Processor shall provide support to the Controller when the latter must notify the Supervisory Authority and the data subjects of security breaches that may have been caused as a consequence of the data processing by the Processor.

15. To assist the Controller in making impact assessments with regard to data protection, when required.
16. To assist the Controller in lodging prior queries to the supervisory authority, when required.
17. To make available to the Controller all information required to demonstrate fulfilment of its obligations, and for the execution of any audits or inspections made by the Controller or any other auditor authorised thereby.
18. To adopt the necessary technical and organisational measures to ensure the security of the personal data and to prevent their unauthorised alteration, loss, processing or access. To these effects and in accordance with the terms of current legislation, it undertakes to comply with the security measures listed in **APPENDIX III**. Nevertheless, said security measures may be amended subsequent to signing of the contract for the purpose of adapting them to applicable data protection legislation at any time. For said purpose, the Parties shall sign the corresponding addenda.

In all cases, the Processor must introduce mechanisms for:

- Ensuring the ongoing confidentiality, integrity, availability and resilience of processing systems and services.
- Restoring availability and access to personal data in a timely manner in the event of a physical or technical incident.
- Regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- Pseudonymising and encrypting the personal data, where applicable.
- Appointing a data protection officer (DPO) when current legislation so requires and communicating the DPO's identity and contact information to the Controller.

4. The Processor undertakes, upon request by the Controller, to:

- a. Return the personal data to the Controller and, where applicable, the storage media on which they are recorded, once the service provision has been completed. Return shall entail complete erasure of the data on the computer equipment used by the Processor.  
Nonetheless, the Processor may store a copy, with the data duly blocked, whilst any liability may arise from the performance of its services.
- b. Deliver to any Processor designated by the Controller and notify in writing, the personal data and, where applicable, the storage media on which they are recorded, upon completion of the service provision. Delivery shall entail the complete erasure of the data on the computer equipment used by the Processor. Nonetheless, the Processor may store a copy, with the data duly blocked, whilst any liability may arise from the performance of its services.
- c. Destroy the data, once the service provision has been completed. Once destroyed, the Processor shall give written certification of its destruction. A destruction certificate is enclosed as **APPENDIX IV** which must be submitted to the Controller.

Nonetheless, the Processor may store a copy, with the data duly blocked, whilst any liability may arise from the performance of its services.

5. Should the Processor be in breach of current legislation on personal data protection and, specifically, should it infringe said legislation in determining the purposes and means of processing, it shall be held liable for the processing and shall be liable for any offences which it has personally committed. In such circumstances, when the ordinary courts recognise the data subject's right to compensation for the damage or injuries suffered to its goods or rights, payment of said compensation shall correspond to the Processor.

6. In compliance with the provisions of current legislation on personal data protection, the personal data of the parties referred to in the Contract and any arising from the relationship are to be processed by each of the parties (Data Controller and Data Processor).

7. The legal basis for data processing is the proper performance of the contract, the provision of said data being necessary, as otherwise it would be impossible to manage the contract relationship.

8. The data shall be stored for as long as the relationship persists and their erasure is not requested and in all cases in compliance with the applicable legal duration of liability.

9. Data shall not be assigned to third parties, unless a legal obligation exists so to do, nor are any international transfers of these data envisaged.

10. Data subjects may exercise their rights to access, rectification, erasure, portability and restriction or opposition by writing to the domiciles of each of the parties.

11. The Controller's Data Protection Officer may be contacted at the following e-mail address: [dpd@eve.eus](mailto:dpd@eve.eus) and the contractor's Data Protection Officer (if such as figure has been appointed) may be contacted at the address provided for said purpose.

12. Likewise, data subjects may lodge a complaint with the Supervisory Authorities (Autoridad Vasca de Protección de Datos (Basque Data Protection Authority) (AVPD) and Agencia Española de Protección de Datos (Spanish Data Protection Agency) (AEPD))

B) In the case of a service contract that does not entail access by the contractor or subcontractor to personal data, but which requires physical access to offices, premises and/or other properties of BEC SOLAR in which personal data are processed, as indicated in **APPENDIX I**, the following shall apply:

BEC SOLAR and the contractor shall be obliged to establish the conditions under which the contractor is to provide the service in accordance with current legislation on personal data protection and to determine the obligations associated with confidentiality that must be observed by the staff assigned by the contractor to the provision of its services at the facilities of the procurement body, where said position may involve physical access to the offices, premises and/or other properties in which the procurement body holds personal data. In this regard:

1. Access by the contractor's staff to any type of confidential information and specifically to personal data belonging to BEC SOLAR shall be prohibited. Notwithstanding, in the event that said staff should come to know any type of confidential information in the provision of the service, they undertake to keep secrecy with regard to same, not to disclose or publish it, directly or through third parties or companies, nor to make it available to third parties. This obligation of confidentiality is open-ended, and shall remain in force upon termination of the contract on any grounds.

The contractor undertakes to notify the staff under its charge and contracted by it of the obligations established herein and to ensure their compliance therewith. In all cases, BEC SOLAR shall provide the Awardee's staff working in its facilities with an information clause regarding processing of its data by the procurement body, which shall include a confidentiality agreement, under the terms described in this clause.

2. Should the contractor disclose the data or use it in breach of the stipulations of the Contract, it shall be liable for any actions in which it has been personally involved.

3. In compliance with the provisions of current legislation on personal data protection, BEC SOLAR and the contractor shall inform those involved that the personal data referred to in the Contract and any arising from the relationship, shall be processed by each of the parties.

4. The legal basis for the processing of the data is the proper performance of the contract entered into between the parties. The provision of said data is necessary since otherwise it would not be possible to manage the contract relationship.

5. The data shall be stored for as long as the relationship persists and their erasure is not requested and in all cases in compliance with applicable legal duration of liability.

6. Data shall not be assigned to third parties, unless a legal obligation exists so to do, nor are any international transfers of these data envisaged.

7. Data subjects may exercise their rights to access, rectification, erasure, portability and restriction or opposition by writing to the domiciles of each of the parties.

8. BEC SOLAR's Data Protection Officer may be contacted at the following e-mail address: [dpd@eve.eus](mailto:dpd@eve.eus) and the contractor's Data Protection Officer (if such as figure has been appointed) may be contacted at the address provided for said purpose.

9. Likewise, data subjects may lodge a claim with the Supervisory Authorities (Autoirdad Vasca de Protección de Datos (Basque Data Protection Authority) (AVPD) and Agencia Española de Protección de Datos (Spanish Data Protection Agency) (AEPD))

### **13.3 Confidentiality**

Confidential information shall be defined as comprising all personal, contractual, bank, technical and/or commercial information to which the awardee may have access or of which it may have knowledge for the purposes of providing the purpose of the contract.

The contractor undertakes to treat all confidential information as such and use it exclusively for the purposes set out in the Special Conditions and in this document, without disclosing it to third parties and without making it known publicly, nor making it public or accessible in any form.

The contractor undertakes to keep the strictest confidentiality with regard to said confidential information, advising its employees, associates and any person who, by virtue of their relationship with the awardee might have access to said information for proper fulfilment of the obligations contracted with BEC SOLAR, of said duty of confidentiality and secrecy and restricting access to confidential information to any executives and/or employees who are not assigned to the scope of the work.

The contractor and the persons listed in the previous paragraph may not reproduce, alter, make public or disclose to third parties the confidential information provided by BEC SOLAR for the purposes of the service provision contracted.

The contractor may not copy or reproduce, without prior consent from BEC SOLAR, any element or document that has been delivered to it (comprising or containing, partly or in its entirety, confidential information), except in such cases in which the provision of the purpose of the contract so requires.

In accordance with the characteristics of the purpose of the contract, the contractor shall return, where applicable, said documents or elements, and any copies thereof, on request of the party providing them and no later than completion of the contracted service.

Without prejudice to the stipulations established in this clause, both parties may furnish the confidential information received from the other to third parties when so required by a court or other competent authority, or by the supervisory government authority, or in such cases in which the law establishes a right, obligation or requirement to disclose said information, always provided, where reasonably feasible, it gives the other party at least seven (7) calendar days' prior notice (without breaching a court order or order from a supervisory body).

Failure to comply with this obligation, and any liabilities for the contractor arising from current legislation, shall entitle BEC SOLAR to bring a claim against it for any damages and prejudicial consequences caused to it.

### **14. ASSIGNMENT AND SUBCONTRACTING.**

- a) In all matters regarding the requirements for assignment of the contract, the provisions of the PSPA shall apply. In all cases, any assignment of the contract must be previously and explicitly authorised by BEC SOLAR. The contract may not be assigned when the personal or technical qualities of the initial contractor have been the decisive grounds for awarding of the contract.
- b) Contractors considering subcontracting any part of the work that forms the subject of the procurement, must explicitly state the part of the contract they plan to subcontract, indicating the amount in relation to the contract price, the name or business profile defined with reference to the conditions of professional or

technical expertise of the subcontractors to whom its execution is to be entrusted and the technical conditions of execution of the subcontract.

The provisions established in the PSPA shall apply to any subcontracting the contractor intends to carry out. In all cases, any subcontracting shall be subject to compliance with the following requirements:

- (i) The contractor shall inform BEC SOLAR in advance in writing, of all of the subcontracts to be executed, indicating those parts of the Contract which are to be carried out by each subcontractor.
- (ii) Prior approval must be obtained from BEC SOLAR.

In the event that the contractor should contract partial execution of the contract with third parties, it shall assume full responsibility for execution of the contract before the procurement body in strict pursuance of this document and the Contract Documents, including compliance with all social and labour obligations.

The contractor must demonstrate compliance with the terms of payment agreed with the subcontractor or supplier, which must respect the limits established in Article 216 of the PSPA.

## **15. PERSON RESPONSIBLE FOR THE CONTRACT.**

Without prejudice to the functions of monitoring and ordinary execution of the contract by the procurement body, the work shall be supervised and inspected by the Person Responsible for the Contract who shall carry out the functions set out in Article 62 of the PSPA. Any change in the designation of the Person Responsible for the Contract shall be notified immediately in writing to the contractor.

## **16. SPECIAL EXECUTION CONDITIONS**

These special execution conditions and any that may be set out in the Special Conditions, must be fulfilled by both the contractor and by any subcontractors.

### **16.1 Language conditions.**

- In all relations between the contracting authority and the contractor, the Basque language shall normally be used. For the purposes of performance of the contract “normally be used” shall be defined as follows:
  - a) In verbal communications, personnel with knowledge of Basque who are addressing the contracting authority in the functions of performance of the contract shall initially express themselves in this language. Should the contracting authority address in Basque personnel assigned to the performance of the contract who do not have sufficient knowledge of this language, the company in charge of performance must immediately provide the resources or personnel with linguistic training in Basque necessary so that the relationship with the contracting authority arising from performance of the contract may be carried out in Basque.
  - b) Written communications shall be made in Basque and Spanish unless the issuer and receiver thereof chose to use Basque.
- When performance of the purpose of the contract includes the provision of services to the public or involves relations with third parties and the general public,

the language used in all verbal and written notification between the contractor and users or people with whom it has to deal in the performance of the contract shall be that chosen in each case by the user or third party.

When no option is expressly stated, notifications and communications of all types that the company in charge of performing the contract addresses to natural and legal persons shall be in the two official languages, including invoices and other trading documents, without prejudice to the fact that at any time a member of the public may exercise his or her right to a choice of language and can demand the use of a single one of the official languages.

In any case, the contractor must provide the material and humans resources necessary to enable attention, information and communication with the public receiving the service to be made at all times in Basque.

If by application of the law or of the corresponding clauses of the applicable collective labour agreement, the new awardee should have to subrogate in labour relations with the group of workers assigned to the terminated contract, and said group should not have the linguistic capacity to fulfil the requirements established in this regard in the contract clauses, the new contractor shall be obliged to cover any substitutions of subrogated personnel that may have to be made with personnel who meet the conditions regarding knowledge and use of the Basque language that be required under the contract in question.

- In contracts whose purpose is the performance of studies, reports, projects or other works of a similar nature, said documents must be submitted in both official languages, including the text and audio interfaces of the different software packages.

#### **16.2 Social and employment-related conditions.**

- The contractor/sub-contractor must: meet current provisions of law, regulations and conventions on matters related to labour, social security and occupational health and safety;
- comply with the provisions of Clause 11.2;
- throughout the entire performance of the contract pay the salary established in the applicable collective labour agreement, in accordance with the professional category of the employee. In no case may the salary paid be lower than said amount;
- offer institutional transparency with regard to all data arising from performance of the contract.

#### **16.3 Verification of payments to subcontractors and suppliers.**

- The contractor must: submit to the Person Responsible for the Contract, upon request, a detailed list of subcontractors and suppliers participating in the contract when their participation is agreed, together with the subcontracting or supply conditions of any that are directly related to the period of the payment;

- submit to the Person Responsible for the Contract, upon request, evidence of compliance with payments to subcontractors and suppliers described in the paragraph above once the provision has been completed within the payment periods legally established in Article 216 of the PSPA and Act 3/2004 of 29 December, establishing measures for combatting late payment in commercial transactions.

#### **16.4 In matters of gender equality.**

The awardee organisation must comply, inter alia, with the obligations listed below which are binding under the Gender Equality Act (Act 4/2005, of 18 February 2005, published in the Official Gazette of the Basque Country, 2 March, 2005) on private organisations that hire, agree or are beneficiaries of aid or grants from government authorities:

- To be governed by the principles of equal treatment, equal opportunities and respect for diversity and difference with regard to its employees (Art. 3)
- To integrate the gender perspective, positive action and elimination of sex-based roles and stereotypes in its actions (Art. 3)
- To seek balanced representation of women and men with suitable skills, competence and training in its executive and collegiate bodies (Art. 23)
- To prepare its statistics and studies with a gender perspective, gathering and submitting data with a breakdown by sex (Art. 16)
- To make non-sexist use of the language and images in any type of support (Art. 18.4)

#### **17. QUALITY CONTROL AND EXTERNAL INSPECTIONS**

The Contractor, applying its quality systems, shall perform all checks and inspections applicable to the scope of the supply. In the event that said scope should include equipment or materials subject to specific regulation (pressurised vessels, electrical materials, combustion equipment, etc.) BEC SOLAR may with its own or external resources verify the result of the inspections, whose reports shall go to form part of the Contract Documents and the final acceptance.

These inspections, where performed, shall not exempt the contractor from its responsibility to comply with the terms set out in the order/contract or with the legal requirements provided for.

#### **18. SUPPLY OF CHEMICALS**

Should the scope of supply cover the procurement, use or handling of chemicals, all such materials must be clearly identified, must comply with the REACH Regulation (Directive EC 1907/2006), must include their CAS/EU identification numbers and must contain their corresponding safety sheets.

The delivery, use or handling of any chemical that does not strictly comply with the above shall not be accepted.

#### **19. FINAL ACCEPTANCE OF THE WORK.**

The procedures and formalities for provisional acceptance, in works contracts, shall commence when the contractor notifies the Person Responsible for the Contract designated by BEC SOLAR:

- i- That the work has been completed in accordance with the technical specifications listed in the Special Conditions and in the tender submitted by the contractor.

- ii- That any defects that may have been encountered have been corrected.
- iii- That all documents required under current legislation are available.
- iv- That any temporary installations have been dismantled and removed and the site cleaned.

In a period of no more than fifteen (15) calendar days, the Person Responsible for the Contract shall examine the state of the site and shall verify that the work fulfils the technical rules and contract clauses on execution set out in the Special Conditions, in the tender and in the order/contract.

Should the inspection prove positive, the Person Responsible for the Contract shall issue a certificate of Final Acceptance in duplicate which shall be ratified by BEC SOLAR and the contractor. This acceptance shall be binding to start the warranty periods.

On the contrary, should the Person Responsible for the Contract have observed deficiencies in the performance contracted, he/she shall make this known to the contractor, which shall have a maximum period of ten (10) working days to resolve said deficiencies.

If the deficiencies observed are resolved by the contractor within the said period, the Person Responsible for the Contract shall issue a certificate of Final Acceptance in duplicate which shall be ratified by BEC SOLAR and the contractor. This acceptance shall be binding to start the warranty periods.

If the problems arising from deficient performance are not resolved within the established period, BEC SOLAR may reject these works, and shall be exempt from the obligation of payment, and may opt to terminate the contract, with payment by the contractor of a penalty of 20% of the price finally agreed.

## **20. DELIVERY OF MATERIAL AND EQUIPMENT**

All materials and equipment to be purchased and procured must be transported and delivered properly protected and packaged in keeping with their nature. BEC SOLAR shall accept no additional cost for transport, insurance or packaging of protection not established in the Contract Documents.

## **21. CEMARKING**

All materials and equipment included or used in the scope of supply must bear CE markings to indicate that they are goods enjoying free movement in the European Economic Community. Any imported and extra-community materials or equipment shall be delivered with CE certificates of acceptance and conformity.

## **22. FORCE MAJEURE**

Neither BEC SOLAR nor the contractor may be held liable for non-compliance with its contractual obligations as a consequence of force majeure.

Causes of force majeure shall be deemed to include, without being restricted to, the following: Natural phenomena, wars, fire, explosion, popular revolt, acts by governments or agencies or any other cause of a similar nature, which is unavoidable and outside the control of the parties.

Stoppages arising from industrial conflicts between the contractor or its subcontractors shall not be expressly considered as force majeure.

All cases in which force majeure is invoked for non-fulfilment of the contractual obligations must be notified in writing by the contractor within a maximum period of seventy-two (72) hours from the occurrence of the event.

### **23. DIVISIBILITY OF THE CONTRACT**

Should any clause of the Contract or its application to any person or circumstance, be declared null and void for any reason, such circumstance shall affect only said provision, and all other provisions of the Contract shall remain in effect, said provision being considered not have been existed.

### **24. TERMINATION/RESOLUTION OF THE CONTRACT.**

In addition to the grounds set out in Articles 211 and 313 of the PSPA and any established in the Special Conditions, the following shall be grounds for termination of the contract:

- a) Obstruction of the managerial and supervisory powers of the contracting authority, pursuant to the provisions of Article 190 2) of the PSPA.
- b) Non-compliance with the contractor's obligation to respect confidential material.
- c) Application of penalties which, individually or jointly, exceed 20% of the contract price.
- d) Non-compliance with the remaining contractual obligations set out in the Special Administrative Specifications and Special Technical Specifications.

The occurrence of any of these grounds, in the terms established, shall entitle the procurement body to consider the contract terminated, with all compensation for damages and prejudicial consequences and other effects corresponding to it in accordance with the Contractual Documentation and applicable law. Further, it may opt for performance by substitution, making the unfulfilled obligations or continuing performance of the work on its own or through any persons or companies it may choose, at the contractor's expense.

### **25. COMPETENT JURISDICTION.**

The civil courts shall be the courts competent to hear any matters arising with regard to the effects and termination of the contract, except for the amendments to the contract cited in Article 27.1 b) and c) of the PSPA (in accordance with Article 27.2 of the PSPA). In this regard, the procurement body and the contractor voluntarily submit to the jurisdiction of the Courts and Tribunals of Bilbao, expressly waiving any other forum that might correspond to them.

# APPENDIX I

## List of service contracts with access to personal data

| Code Article | Description                                | CPV code   | CPV description                                                                               | Data Access |
|--------------|--------------------------------------------|------------|-----------------------------------------------------------------------------------------------|-------------|
| ITM0001      | Rental of Printers/Photocopiers            | 30000000-9 | Office and computing machinery, equipment and supplies except furniture and software packages | NO          |
| ITM0002      | Property rental                            | 70000000-1 | Real estate services                                                                          | NO          |
| ITM0003      | Vehicle rental                             | 34000000-7 | Transport equipment and auxiliary products to transportation                                  | NO          |
| ITM0004      | Miscellaneous rentals                      | 70000000-1 | Real estate services                                                                          | NO          |
| ITM0014      | Magazines                                  | 22000000-0 | Printed matter and related products                                                           | NO          |
| ITM0015      | Subscriptions                              | 22000000-0 | Printed matter and related products                                                           | NO          |
| ITM0018      | Gas Purchase Rights                        | 09000000-3 | Petroleum products, fuel, electricity and other sources of energy                             | NO          |
| ITM0019      | Travel agency services                     | 63000000-9 | Supporting and auxiliary transport services; travel agencies services                         | YES         |
| ITM0022      | Cleaning                                   | 90000000-7 | Sewage, refuse, cleaning, and environmental services                                          | NO          |
| ITM0026      | Provision of training                      | 80000000-4 | Education and training services                                                               | YES         |
| ITM0027      | Training under Collective Labour Agreement | 80000000-4 | Education and training services                                                               | YES         |
| ITM0028      | Comprehensive material damage insurance    | 66000000-0 | Financial and insurance services                                                              | NO          |
| ITM0029      | Civil Liability Insurance                  | 66000000-0 | Financial and insurance services                                                              | NO          |
| ITM0030      | Vehicle Insurance                          | 66000000-0 | Financial and insurance services                                                              | NO          |
| ITM0031      | Life and Accident Insurance                | 66000000-0 | Financial and insurance services                                                              | YES         |
| ITM0032      | Shipping Insurance                         | 66000000-0 | Financial and insurance services                                                              | NO          |
| ITM0033      | Miscellaneous Insurance                    | 66000000-0 | Financial and insurance services                                                              | YES         |
| ITM0035      | External Contract Staff                    | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security             | YES         |
| ITM0036      | Post and Telegraphs                        | 64000000-6 | Post and telecommunications services                                                          | YES         |
| ITM0037      | Courier service                            | 64000000-6 | Post and telecommunications services                                                          | YES         |
| ITM0038      | Translation                                | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security             | YES         |
| ITM0039      | Cleaning services                          | 90000000-7 | Sewage, refuse, cleaning, and environmental services                                          | NO          |
| ITM0041      | Transport, cargo handling services         | 60000000-8 | Transport services (excluding waste transport)                                                | YES         |
| ITM0042      | Advertising Campaigns                      | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security             | YES         |
| ITM0043      | Audio-visual Material                      | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security             | YES         |
| ITM0044      | Trade fairs and exhibitions                | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security             | YES         |
| ITM0045      | Symposia                                   | 80000000-4 | Education and training services                                                               | YES         |
| ITM0046      | Press advertising                          | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security             | YES         |
| ITM0048      | Other Advertising                          | 22000000-0 | Printed matter and related products                                                           | NO          |
| ITM0050      | Catering                                   | 55000000-0 | Hotel, restaurant and retail trade services                                                   | NO          |
| ITM0051      | Organisation of Conferences                | 80000000-4 | Education and training services                                                               | YES         |
| ITM0054      | Preventative maintenance                   | 50000000-5 | Repair and maintenance services                                                               | NO          |
| ITM0055      | Corrective Maintenance                     | 50000000-5 | Repair and maintenance services                                                               | NO          |
| ITM0065      | Organisational Assessments                 | 66000000-0 | Financial and insurance services                                                              | YES         |
| ITM0066      | Legal consultancy                          | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security             | YES         |
| ITM0067      | Account Auditing                           | 66000000-0 | Financial and insurance services                                                              | NO          |

|         |                                     |            |                                                                                   |     |
|---------|-------------------------------------|------------|-----------------------------------------------------------------------------------|-----|
| ITM0068 | Quality Auditing                    | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security | YES |
| ITM0069 | Notary services                     | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security | NO  |
| ITM0071 | Market Representative               | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security | NO  |
| ITM0072 | ORP services                        | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security | YES |
| ITM0073 | Drill machinery hire                | 31000000-6 | Electrical machinery, apparatus, equipment and consumables; lighting              | NO  |
| ITM0074 | Organisation of Training            | 80000000-4 | Education and training services                                                   | YES |
| ITM0075 | Engineering                         | 71000000-8 | Architectural, construction, engineering and inspection services                  | NO  |
| ITM0076 | Studies and analyses                | 71000000-8 | Architectural, construction, engineering and inspection services                  | YES |
| ITM0077 | Economic/financial/tax consultancy  | 66000000-0 | Financial and insurance services                                                  | YES |
| ITM0078 | Administrative Procedures           | 75000000-6 | Administration, defence and social security services                              | YES |
| ITM0079 | Technical Audits                    | 71000000-8 | Architectural, construction, engineering and inspection services                  | NO  |
| ITM0080 | Inspections                         | 71000000-8 | Architectural, construction, engineering and inspection services                  | YES |
| ITM0082 | IT Consultancy                      | 72000000-5 | IT services: consulting, software development, Internet and support               | YES |
| ITM0083 | Technical Consultancy               | 71000000-8 | Architectural, construction, engineering and inspection services                  | YES |
| ITM0084 | Management Consultancy              | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security | YES |
| ITM0085 | Miscellaneous Consultancy/ Services | 71000000-8 | Architectural, construction, engineering and inspection services                  | YES |
| ITM0086 | Topography work                     | 71000000-8 | Architectural, construction, engineering and inspection services                  | NO  |
| ITM0087 | Engineering services (SHE)          | 71000000-8 | Architectural, construction, engineering and inspection services                  | NO  |
| ITM0088 | Site management                     | 71000000-8 | Architectural, construction, engineering and inspection services                  | NO  |
| ITM0089 | Environmental consultancy (SHE)     | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security | NO  |
| ITM0090 | ORP Assessment/Consultancy (SHE)    | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security | YES |
| ITM0092 | Energy Efficiency Certificate.      | 71000000-8 | Architectural, construction, engineering and inspection services                  | NO  |
| ITM0093 | Water Treatment (BERCHIN)           | 90000000-7 | Sewage, refuse, cleaning, and environmental services                              | NO  |
| ITM0096 | Security Services                   | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security | YES |
| ITM0097 | Seismic surveying                   | 76000000-3 | Services related to the oil and gas industry                                      | NO  |
| ITM0102 | Health surveillance                 | 85000000-9 | Health and social work services                                                   | YES |
| ITM0103 | Remote measurement services         | 64000000-6 | Post and telecommunications services                                              | NO  |
| ITM0107 | Miscellaneous general services      | 98000000-3 | Other community, social and personal services                                     | YES |
| ITM0108 | Surveillance services               | 79000000-4 | Business services: law, marketing, consulting, recruitment, printing and security | YES |

**APPENDIX II**  
**Application for subcontracting for the purposes of personal data processing**

[...], [...] [...] 2[...]

**Mr/Ms.** *[legal representative of the Awardee]*, of legal age, with National ID number [...], acting in the name and on behalf of *[name of the Awardee company]*, with Tax Number [...], by virtue of a deed of attorney, issued before the Notary of the Illustrious College of [...] Mr/Ms. [...] dated [...] and bearing Protocol No. [...], (hereafter, the **Processor**)

**DECLARES**

**ONE.-** That on *[indicate the date of signing of the contract]*, *[indicate name of the procurement body]* (hereafter, the **Client**) and the Processor enter into a services provision agreement consisting of *[describe purpose of the contract]*; said services involve the processing, by the Processor, of personal data controlled by the Client.

**TWO.-** That during performance of the service by the Awardee it shall be necessary to subcontract part of the service performed on the following grounds: *[give details of the reasons requiring the service provider to subcontract its services]*

**THREE.-** That the subcontractor is *[identify the subcontractor (name, domicile and Tax Number)]* and shall be considered as a Processor, pursuant to current legislation on personal data protection.

**FOUR.-** That the processing of personal data by the subcontractor shall be in accordance with the instructions issued by the procurement body to the Awardee.

**FIVE.-** That the Awardee has entered into a Data Processing Contract with the subcontractor, under the terms established in current legislation on personal data protection.

For all of the above reasons, **IT REQUESTS** that this application be accepted for the purpose of duly complying with the provisions of Clause 13.3 of the General Purchasing and Procurement Conditions.

(Signature)

### APPENDIX III

#### Security measures for personal data processing

The security measures that the Awardee or Processor undertakes to introduce in the Data Processing described in Clause 13.2 are identified as follows:

- **Personnel.** To define the functions and obligations of the different users or user profiles. To disseminate among personnel the rules that affect them with regard to data processing and the consequences of failing to comply with same.
- **Access control.** To control the access permitted to each user (internal or external) in accordance with their assigned functions. To introduce mechanisms that prevent access to data or resources with rights other than those authorised.
- **Management of storage media.** To have in place a system of management of storage media that makes it possible to identify the type of information contained on the storage media and the authorised users thereof. This system must also include the measures introduced which must in all cases be designed to prevent alteration or loss of information and to prevent unauthorised access, both in their use in the Processor's facilities and in the transport and use outside said facilities and in the process of disposal thereof.
- **Inspections and audits.** To make regular reviews and audits of the security measures introduced to verify that they are functioning correctly.
- **Identification and authentication.** To introduce unequivocal and personalised user identification and authentication mechanisms. To create a procedure for the assignment, distribution and storage of passwords that will ensure their confidentiality and integrity. To store the passwords in unintelligible form. To change the passwords at least once every six months. To introduce mechanisms that restrict repeated unauthorised access attempts by information systems.
- **Back-up copies.** To establish procedures for the creation of back-up copies and data retrieval that allow the data to be retrieved or reconstructed at any time. Backup copies must be made daily. To verify the back-up procedure daily. To include regular test retrievals to validate the availability of the data in the event of contingencies.
- **Physical access.** To have in place a procedure to restrict and monitor access to the places housing the physical equipment that supports the information systems.
- **Management of copies on paper (hard copies).** To establish an archive procedure for documents on paper that facilitates their storage, consultation and location and that will ensure that data subjects can exercise their rights. To store all paper documents under lock and key and establish criteria for their custody during the consultation phase.

In the event that the contract identifies personal data that is classed as special data categories, the Processor additionally undertakes to adopt the following security measures:

- **To encrypt the information** on portable devices outside the facilities. The use of portable devices that do not allow for encryption is not permitted.
- To keep a **log of access to automated processing** showing: user, time, information accessed, type of access, authorised or denied. To include a review of the log in the regular inspections.
- **Management of storage media.** To have in place a procedure to log check-in and check-out of storage media that enables identification of the dates of sending and receipt, information

contained in the storage medium, user responsible, recipient and measures adopted for transport.

- Telecommunications. To encrypt the information sent over public or wireless networks.
- Management of copies on paper (hard copies). To establish mechanisms making it possible to identify access to documents on paper, when these are accessible by multiple users. To establish criteria and mechanisms for the making of copies, reproductions or transport of documents for the purposes of preventing unauthorised access.

**APPENDIX IV**  
**Destruction certificate for personal data processing**

[...], [...] [...] 2[...]

**Mr/Ms.** *[legal representative of the Awardee]*, of legal age, with National ID number [...], acting in the name and on behalf of *[name of the Awardee company]*, with Tax Number [...], by virtue of a deed of attorney, issued before the Notary of the Illustrious College of [...] Mr/Ms. [...] dated [...] and bearing Protocol No. [...], (hereafter, the **Processor**)

**DECLARES**

**ONE.-** That on *[indicate the date of signing of the contract]*, *[indicate name of the procurement body]* (hereafter, the **Client**) and the Processor entered into a services provision agreement consisting of *[describe purpose of the contract]*; services that involved the processing, by the Processor, of personal data controlled by the Client.

**TWO.-** That Clause [...] of the above referenced contract establishes the Processor's obligation to certify the destruction of the information upon completion of the service provision contracted.

**THREE.-** That on [...], the Parties have decided to conclude the term of the contract referenced in Declaration One of this document and, thus to terminate the provision of services leading to the data processing by the Processor, and that the Processor has issued the corresponding certificate of destruction.

And for the above reasons,

**HEREBY CERTIFIES**

**ONE.-** That it has proceeded to the destruction, in accordance with the Client's instructions, of all personal data subject to processing as part of the service provision, and any it may have collected or generated on its own behalf, together with any copies of same that may have been generated in either automated or non-automated form.

**SECOND.-** That the destruction procedure adopted ensures that retrieval of the data, and thus any unauthorised access to same, is not possible.

**THREE.-** That in order to comply with the Processor's obligation with regard to data storage pursuant to applicable national legislation and, where applicable, European Union law, it shall proceed to store all personal data strictly necessary to comply with any responsibilities arising from said processing or from the performance of its services and shall ensure that said data shall not be accessible during this period of time, and that, upon completion of the storage period, it shall be definitively destroyed using a procedure that ensures that the data cannot be retrieved.

In witness whereof, this document is signed by the Processor.

(Signature)