

**DATED**

**2020**

**SUB-CONTRACT FOR SERVICES PURSUANT TO A BIOGAS PURCHASING AGREEMENT**

**BETWEEN**

**BIO DYNAMIC (UK) LIMITED**

**AND**

**BD GAS PERMITS LTD**

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This agreement is dated

2020

## **Parties**

- (1) **BIO DYNAMIC (UK) LIMITED** incorporated and registered in England and Wales with company number 08574661 whose registered office is at 7 Park Lane Business Centre Basford Nottingham NG6 0DW (**Main Contractor**)
- (2) **BD GAS PERMITS LIMITED** incorporated and registered in England and Wales with company number 12950093 whose registered office is at 7 Park Lane Business Centre, Basford, Nottingham. NG6 0DW (**Subcontractor**)

## **BACKGROUND**

- (A) The Main Contractor has entered into an agreement (the Main Contract, as defined in clause 1.1) under which the Main Contractor has effective control over Air Liquide's operations at the Main Contractor's Site including via the supply of biogas to Air Liquide.
- (B) Pursuant to the terms of this agreement, the Subcontractor agrees to perform all of the obligations specified in the Main Contract, on a "back-to-back" basis with the Main Contractor, in accordance with the provisions set out below.

## **Agreed terms**

### **1. Interpretation**

The following definitions and rules of interpretation apply in this agreement.

#### **1.1 Definitions:**

**Air Liquide:** Air Liquide Advanced Business and Technologies UK Limited.

**day:** a period of 24 consecutive hours ending at 12.00 midnight.

**Environment:** the natural and man-made environment including all or any of the following media, namely air, water and land (including air within buildings and other natural or man-made structures above or below the ground) and any living organisms (including man) or systems supported by those media.

**Environmental Law:** all applicable laws, statutes, secondary legislation, bye-laws, common law, directives, treaties and other measures, judgments and decisions of any court or tribunal, and legally binding codes of practice and guidance notes (as amended from time to time) in so far as they relate to the protection of the Environment.

**Environmental Permit:** any permit issued by the Environment Agency in relation to the Main Contractor's Site.

**Main Contract:** the Biogas Purchasing Agreement between (1) Air Liquide and (2) the Main Contractor dated 11 June 2020.

**Main Contractor's Site:** the site located at Colwick Industrial Estate, Unit 1 Private Road 4 Colwick Industrial Estate, Nottingham NG4 2JT, including the whole of the land registered at HM Land Registry under title numbers NT351982, NT203339 and NT292961.

- 1.2 Clause and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 Except as provided expressly in this clause 1 of this agreement, terms as defined in the Main Contract shall have the same meaning when used in this agreement.
- 1.4 Except as provided expressly in this agreement, the rules of interpretation in the Main Contract shall apply to this agreement.
- 1.5 For the purposes of this agreement, and unless the context otherwise requires, references in the Main Contract to "this Agreement" shall be to the Main Contract.
- 1.6 In this agreement:
  - (a) any reference to a "clause" is, unless the context otherwise requires, a reference to a clause in this agreement, excluding a clause in the Main Contract; and
  - (b) any reference to a "Main Contract clause" or "Main Contract Schedule" is, unless the context otherwise requires, a reference to a clause or schedule in the Main Contract.

## **2. Effective Date**

This agreement shall have legal effect from the date on which it is signed on behalf of both parties (**Effective Date**).

## **3. Obligations of the Back-to-back agreement**

- 3.1 As soon as this clause becomes effective under clause 2 above, the Subcontractor shall:
  - (a) discharge in full all the duties imposed upon the Main Contractor in the Main Contract and the Subcontractor shall have in full all the rights, privileges, options and protections that the Main Contractor has in the Main Contract except as further provided in this agreement;
  - (b) fulfil its obligations under the Main Contract in sufficient time to enable the Main Contractor to comply with all of its obligations with regard to timings under the Main Contract; and

- (c) comply in full and in a timely manner with the terms of any Environmental Permit(s) (including but not limited to any conditions attaching to such Environmental Permit(s)) which it holds in relation to the Site and with all applicable Environmental Laws.

3.2 Except as further provided in this agreement, the Main Contract shall be used to determine the respective rights and duties of the Main Contractor and the Subcontractor under this agreement except that wherever in the Main Contract there is a reference to the Main Contractor or a term referring to the Main Contractor, for the purposes of this agreement there shall be substituted a reference to the Subcontractor or a term referring to the Subcontractor.

#### **4. Indemnity from Subcontractor and disputes**

4.1 The Subcontractor shall indemnify the Main Contractor against all losses, claims, demands, costs and expenses incurred or suffered by the Main Contractor including all claims for liquidated damages by Air Liquide under the Main Contract. Notwithstanding clause 7, liability under this clause 4.1 shall be unlimited.

4.2 The Main Contractor shall give to the Subcontractor notice in writing as soon as possible after it becomes aware of any dispute between the Main Contractor and Air Liquide arising out of the Main Contract.

4.3 The Subcontractor shall deal with any disputes that arise between the Main Contractor and Air Liquide arising out of the Main Contract and shall control and pay in full for any litigation, arbitration, mediation, adjudication, expert determination or other dispute settlement procedure in which the Main Contractor might be involved as a result of entering into this agreement and the Main Contract, provided that the Main Contractor gives to the Subcontractor written notice as required by clause 4.2 above, whereupon the Subcontractor shall be deemed to have sole authority to manage and settle such dispute.

4.4 The Subcontractor shall pay the Main Contractor any amounts due to the Main Contractor within 30 days of date of invoice, unless otherwise stated in this agreement.

#### **5. Fees, charges and expenses**

5.1 The Main Contractor shall pay to the Subcontractor as full consideration for the performance by the Subcontractor of its duties under this agreement such amounts as are agreed between the parties from time-to-time.

5.2 The Main Contractor may at any time and at its option, without notice to the Subcontractor, set off any liability of the Subcontractor to the Main Contractor (including any amounts due under clause 4 above) against any liability of the Main Contractor to the Subcontractor, whether either liability is present or future, liquidated or unliquidated, and whether or not either liability arises under this agreement. Any exercise by the Main Contractor of its rights under this clause shall not limit or affect any other rights or remedies available to it under this agreement or otherwise.

## **6. Compliance with laws and policies**

Each party shall at its own expense comply with all laws and regulations relating to its activities under this agreement, as they may change from time to time, and with any conditions binding on it in any applicable licences, registrations, permits and approvals.

## **7. Limitation of liability**

7.1 Nothing in this agreement shall limit or exclude the liability of either party for:

- (a) death or personal injury caused by its negligence, or the negligence of its employees, agents or subcontractors (as applicable);
- (b) fraud or fraudulent misrepresentation; and
- (c) any matter for which it would be unlawful to exclude or restrict liability.

7.2 Subject to clause 7.1:

- (a) the Main Contractor shall not under any circumstances whatever be liable to the Subcontractor, whether in contract, tort (including negligence), equity (including restitution), breach of statutory duty, or otherwise, for:
  - (i) any loss of profit, sales, revenue, or business;
  - (i) loss of anticipated savings;
  - (ii) loss of or damage to goodwill;
  - (iii) loss of agreements or contracts;
  - (iv) loss of use or corruption of software, data or information;
  - (v) any loss arising out of the lawful termination of this agreement or any decision not to renew its term; or
  - (vi) any *ex gratia* payment or sum paid in settlement of a claim paid by one party without the prior written approval of the other; and
- (b) the Main Contractor's liability to the Subcontractor shall be limited to the amounts actually paid to the Subcontractor under this agreement.

7.3 The Main Contractor shall not be responsible to the Subcontractor for any failure to perform its obligations under this agreement where there is a corresponding failure by the Air Liquide to perform its obligations under the Main Contract.

## **8. Commencement and duration**

This agreement shall be effective from the Effective Date and shall continue in force until the parties have discharged all their obligations under it, unless:

- (a) the Main Contract is terminated for any reason, in which case this agreement shall terminate immediately and automatically, without further action being necessary by the parties, and subject to all the rights of the parties accrued up to the date of termination; or
- (b) this agreement is terminated by one of the parties under clause 9.1.

## **9. Termination**

9.1 Without prejudice to any rights that have accrued under this agreement or any of its rights or remedies, either party may at any time terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any material term of this agreement and (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so;
- (c) the other party repeatedly breaches any of the terms of this agreement in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the terms of this agreement;
- (d) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (e) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than (being a company) for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- (g) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (h) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed over the other party (being a company);
- (i) the holder of a qualifying floating charge over the assets of that other party (being a company) has become entitled to appoint or has appointed an administrative receiver;

- (j) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (k) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days;
- (l) any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 9.1(d) to clause 9.1(k) (inclusive); or
- (m) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

9.2 The Main Contractor may terminate this agreement at any time with immediate effect if there is a change of control of the Subcontractor (within the meaning of section 1124 of the Corporation Tax Act 2010).

9.3 The Main Contractor may terminate this agreement at any time upon 7 days' notice in writing to the Subcontractor.

## **10. Further assurance**

Each party shall use all reasonable endeavours to procure that any necessary third party shall promptly execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this agreement.

## **11. Counterparts**

11.1 This agreement may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

11.2 No counterpart shall be effective until each party has provided to the other at least one executed counterpart.

## **12. Third party rights**

No one other than a party to this agreement, shall have any right to enforce any of its terms.

## **13. No partnership or agency**

13.1 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.



13.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

**14. Conflict**

If there is any conflict between the Main Contract clauses or Main Contract Schedules and the other clauses of this agreement, the other clauses of this agreement shall take precedence.

**15. Governing law**

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**16. Jurisdiction**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Signed by

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for and on behalf of **BIO DYNAMIC  
(UK) LIMITED**

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Director

Signed by

\_\_\_\_\_  
for and on behalf of **[BD GAS PERMITS  
LIMITED**

.....

Director