
PARTNERSHIP (CONCESSION) AGREEMENT

No. *[number of the Agreement]*

by and between

*[Name of the Awarding Authority], [if applicable Name
of the Assignor,] [Name of the Investor]*

and *[name of the Concessionaire]*

regarding the awarding and performance of the
Concession for implementation of the Project *[Name of the
Project]*

[day] [month] [year]

[Place]

Colour explanation: *Blue* – comments or explanations, which are to be deleted;
Green – alternative provisions, which do not need to be changed;
Red – the information to be entered.

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I. INTRODUCTION

[The Awarding Authority], the address *[address]*, legal entity registration number *[legal entity registration number]*, represented by *[title and full name of the representative]*, acting in accordance with the *[basis for representation (Articles of Association, resolution of the Awarding Authority, etc.)]*, which is the Awarding Authority in the sense of Part 7 of Article 2 of the Law on Concessions (hereinafter referred to as the **Awarding Authority**);

[If the Concessionaire is provided property, controlled and/or used not by the Awarding Authority [name of the Assignor], the address [address, legal entity registration number], represented by [title and full name of the representative], acting in accordance with the [basis for representation (Articles of Association, resolution, etc.)], (hereinafter referred to as the Assignor);]

and

[name of the Investor], *[the legal form]*, incorporated and acting according to the laws of *[the country]*, the address *[address]*, legal entity registration number *[legal entity registration number]*, represented by *[title and full name of the representative]*, acting in accordance with the *[basis for representation]*, whose Offer won the Tender (hereinafter referred to as **the Investor**);

[name of the Concessionaire], *[the legal form]*, incorporated and acting according to the laws of *[the country]*, the address *[address]*, legal entity registration number *[legal entity registration number]*, represented by *[title and full name of the representative]*, acting in accordance with the *[basis for representation]* (hereinafter referred to as **the Concessionaire**),

hereinafter the Awarding Authority, *[if applicable the Assignor,]* the Investor and the Concessionaire shall individually be referred to as **Party**, and collectively – as **the Parties**;

WHEREAS:

- A. The Awarding Authority reaches for awarding the concession for *[brief description of the subject of concession]* to the Concessionaire, able to ensure uninterrupted provision of quality and efficient services at lowest cost, by using the public and private partnership model and ensuring the largest social and economic benefit;
- B. *[The legal basis (legal acts), by which the Awarding Authority is empowered to award the concession for implementing the PPP project];*
- C. The Awarding Authority, in accordance to the Law on Concessions of the Republic of Lithuania, has prepared, approved and on *[date]* announced the tender for awarding the concession for implementing the investment project *[name of the Project]* in the Information Supplement No. *[number]* *[in case the announcement is also performed in other media - [date] in the daily [name of the daily], and on [date] at the webpage of the Awarding Authority [address]];*

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- D. The Investor has expressed its interest in participation in the Tender and provided a comprehensive binding offer and the Awarding Authority, upon, according to the established procedure, completing the procedures of services concession awarding tender and after evaluating all the received offers, recognized the Investor as the winner of the Tender;
- E. The Investor, in accordance with the Conditions of Tender, on *[state the date of incorporation or establishment of the Concessionaire]*, has incorporated the Concessionaire for performance of the obligations under the Partnership (Concession) Agreement;
- F. For the purposes of the Partnership (Concession) Agreement, the Awarding Authority agrees to transfer the Property, controlled and/or used by the Awarding Authority *[if applicable – and/or by the Assignor]* *[state the rights of such control and/or use]*, foreseen for the Concessionaire, incorporated by the Investor or established for the purpose of implementation of the Project under this Partnership (Concession) Agreement and necessary for performance of the Concessionaire's obligations under the Partnership (Concession) Agreement and the Concessionaire, on the conditions and to the extent, foreseen in the Partnership (Concession) Agreement, agrees to accept such Property or the rights and responsibilities, related with the Property, arising from the agreements, concluded by the Awarding Authority *[if applicable – and/or by the Assignor]*, undertake all the rights and obligations of the Concessionaire, foreseen in the Partnership (Concession) Agreement and holds the necessary financial resources, knowledge, experience and qualified personnel, necessary in order to implement the above;
- G. The Parties reach to implement the objective *[state the objective]*.

The Awarding Authority *[if applicable – and the Assignor]*, from one side and the Investor and the Concessionaire, from the other side, for the purpose of undertaking the contractual obligations, have, in good will, concluded this Partnership (Concession) Agreement (hereinafter referred to as **the Agreement**):

II. CONCEPTS AND THEIR DEFINITIONS

1. Concepts, used in the Agreement, and their definitions

- 1.1. The Concepts, presented in initial capital letters in this Agreement, its annexes and amendments and/or supplements, as well as in other documents, related with this Agreement and its implementation, shall have the following definitions, except for the cases, where they are expressly stated otherwise in the corresponding documents:

Case of exemption the cases, in which the basis for termination of the Agreement, foreseen under Paragraph 40 and the liability under Paragraph 48 shall not be applicable to the Concessionaire;

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Works	all works determined in accordance with the Tender conditions and the Offer and to be performed by the Concessionaire, including and related to: a) Renewal of the Assigned property; b) Creation of New property;
Work plan	technical, engineering and organizational solution determined by the Concessionaire, comprising actions and the sequence of actions;
Business day	the days, on which banks execute their activities in the Republic of Lithuania, except Saturdays and Sundays and other official holidays;
Insurance agreements	the insurance agreements, foreseen in Annex 7;
EU	the European Union;
Essential amendment of legal acts	amendment of special legal acts, having an adverse effect on the Parties' rights and obligations hereunder. No Essential amendment of the legal acts shall be considered in the cases when a prudent business entity, providing services, similar to those, provided under the Agreement, referring to the national draft legal acts, activity strategies, plans or similar EU documents, on the date of entering into the Agreement, could have possibly foreseen amendments of such legal acts and: a) Such documents were publicly announced prior to execution of the Agreement; b) The provisions and plans, provided in these documents, in their essence, are similar or essentially have the same effect as an Essential amendment of legal acts;
Funder	the subject, providing the funding to the Concessionaire, foreseen in the Financial activity model, necessary in order to be able to

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appropriately perform the obligations hereunder and with whom the Awarding Authority may conclude the Direct Agreement;

Financial activity model

the financial activity model, prepared according to Annex “Requirements to the financial activity model” to the Conditions of Tender, provided in Annex 1 hereto, provided together with the Offer and stating the structure and conditions of financing of the Concessionaire’s activities, financially/economically, technically and socially substantiated aims of funding and providing evaluation of the return on investment as well as other efficiency indicators;

Good business practice

performance of activities in observance of the standards, methods, practices, procedures, not in conflict with the applicable legal acts and the level of care, which may be expected from qualified and experienced entities, engaged in similar activities in the same or similar conditions;

Information Supplement

the Information Supplement to the Official Gazette “Valstybės žinios” of the Republic of Lithuania

Investor

[the name and legal requisites of the participant/participants, with which the Awarding Authority is going to conclude the Partnership (Concession) Agreement], whose Offer won the Tender and with whose Concessionaire the Agreement is concluded and the persons, who replace the above in the cases foreseen in the Agreement;

Investment

the mandatory investment into the Property, used for performance of the Works and provision of the Services or other investment, necessary for proper performance of the works and provision of the Services, stated in Annex 2 hereto;

Return on

any income, receivable by the Investor from

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investment	the Concessionaire (dividends, interest, amounts payable in case the Concessionaire's capital is reduced or the economic benefit, received in any other form);
Rate of return on investment	the internal rate of return, in case of which the current value of the flows of return, receivable by the Investor from the Concessionaire, is equalled to zero and which is calculated according to the procedure, established in the Financial Activity Model;
Law on Investments	the Law on Investments of the Republic of Lithuania;
Early conditions for entering into effect of the Agreement	the conditions, foreseen in Annex 5 to the Agreement, the performance of which is necessary for full entering into effect of the Agreement;
Installation works	activities, related to installation of furniture and equipment, which cannot be done without formalisation of the construction completion of Property or of its part;
Major repairs	the type of construction, which aim is to transform the building (change primary constructions of the building without changing the building's external dimensions - length, width, height and so on);
Commission	the Tender Commission, performing the Tender procedures, formed by Order No. <i>[number]</i> of the Head of the Awarding Authority of <i>[date]</i> ;
Compensation event	the event, the risk of which according to the Agreement and the matrix of distribution of risks between the parties, is exclusively or partially borne by the Awarding Authority and the negative consequences of which must be fully or in part compensated to the Concessionaire according to the procedure,

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established in the Agreement and with regard to which the time periods for implementation of the Concessionaire's obligations, established in the Agreement, may be extended;

Concessionaire

the economic entity, incorporated or established by the Investor for the purpose of implementing the Project in accordance with Part 1 of Article 16 of the Law on Concessions, which shall become a party to the Agreement and perform the activities under the Agreement and which, at the moment of entering into the Agreement, must:

- [*recommended* have the legal form of a private limited liability company; and]
- Be owned only by the Investor (i.e. 100 per cent of the shares); and
- Be intended only for performing the activities, intended for implementation of the Project; and
- Have no debts of other liabilities, not related with performance of the Agreement; and
- Apply the valid business accounting standards;
- [*if applicable* be a registered VAT payer.]

The Concessionaire must be incorporated or established by the Investor before signing the Agreement;

Law on Concessions

the Law on Concessions of the Republic of Lithuania;

Tender

tender for awarding the concession for implementing the investment project [*name of the Project*], announced by the Awarding Authority, in accordance with the Law on Concessions and the Law on Investments on [*date*] in the Information Supplement No. [*number*] [*in case the announcement is also performed in other media - [date] in the daily [name of the daily], and on [date] at the*

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	webpage of the Awarding Authority [address]]];
<i>[if applicable]</i> Benchmarking	the procedure, aimed at comparing the prices and other parameters of the provided services with those of similar services, provided by the market leaders;]
Fee	the lease fee for the Assigned Property, paid by the Concessionaire to the Awarding Authority or another fee, foreseen hereunder;
New property	the property which is needed to provide services and is determined in the Specifications, in the Model of financial activity or in the Offer; it is a property acquired by the Concessionaire for the right of the possession, the use and/or the disposal after the day when the Agreement enters into force in full on a basis of any transaction (with the exception of Assigned Property [and lands, if applicable]);
Lease agreements	the agreements, foreseen in Annex 6 hereto, by which the Property and the rights and obligations under the agreements, related to the Property, shall be assigned to the Concessionaire for control and use on the basis of lease;
Additional investment	any other Concessionaire's investment into the Property, used for provision of Services, not specified in Annex 2 to the Agreement. Such investment is not mandatory;
Ordinary repairs	refers to the type of construction, which aim is to renew the building without reconstruction or major repairs;
Offer	comprehensive and binding offer, provided during the Tender, clarified considering the conditions, agreed upon during the Tender negotiating procedure and attached as Annex 2 to the Agreement;
Services	the services, provided by the Concessionaire according to the Conditions, the Offer and the

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	Agreement [<i>list the services, provided under the Agreement</i>];
Service provision plan	the technical, engineering and organizational solution, provided by the Concessionaire and covering the Service provision activities and their succession;
Commencement of provision of services	the day of operation of the Property (or a part thereof), starting with which the Concessionaire commences providing the Services in the corresponding part of the Property;
Assigned Property	the movable and immovable property, necessary for performance of the Works and provision of the Services, assigned by the Awarding Authority [<i>if applicable – and/or by the Assignor</i>] to the Concessionaire for control and use according to the Lease Agreements [<i>if applicable, except the Plot of Land.</i>] The comprehensive list of the Assigned Property is attached as an annex to the corresponding Lease Agreement and shall be held an integral part thereof;
[<i>if any the Assignor</i>	<i>the entity, directly or indirectly controlled by the state or a municipality, whose property, controlled and/or used by title of ownership or trust, is assigned to the Concessionaire for performing the Agreement;]</i>
Obligations performance security	the obligations performance security, specified in Paragraph 32.1 of the Agreement, used for securing the performance of the Concessionaire's obligations under the Agreement;
Project	the investment project [<i>name of the project</i>], implemented by the Awarding Authority by way of concession, described in the Conditions of Tender;
Repairs	ordinary and major repairs;

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<i>[if applicable]</i> Market testing	the examination of the market of the examined services, performed by the Concessionaire according to the procedure, provided in Paragraph 25 of the Agreement;
<i>[if applicable]</i> Market testing date	<i>[date]</i> of <i>[month]</i> of <i>[number]</i> year (calculating from the date of commencement of provision of Services);
Amendment of the special legal acts	<p>amendment of any legal acts, relating only to regulation of performance of the Works and provision of the Services or the rights and obligations of the Concessionaire’s shareholders, arising from the Concessionaire’s activities, as well as amendments of legal acts, the provisions of which are directly applicable to:</p> <ul style="list-style-type: none">a) The Works or the Services, listed in the Agreement;b) The Concessionaire;c) The entities, implementing the Project; <p>For clarity, such amendments of legal acts, which are general, not discriminating the Concessionaire and applicable to a wide range of entities (for instance, amendments of legal acts, regulating profit and value added tax, etc.) shall not be held amendments of special legal acts;</p>
Specifications	the annex “Specifications” to the Conditions, provided in Annex 1 to the Agreement, establishing the requirements and indicators, which the Works and the Services must satisfy;
Sub-suppliers	the economic entities, stated in the Offer, or other entities, replacing the latter according to the procedure, established in the Agreement or new economic entities, performing the Works or providing the Services, for performance or provision of which the Concessionaire is responsible and to whom the Concessionaire pays remuneration for performance or provision of the said Works or Services;

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Related Person

- a) A related company;
- b) Members of the related company's supervision and management bodies;
- c) A spouse of a member of the Investor's or Related person's supervision and management bodies, his/her closest relatives, as well as persons, connected by in-law relations up to the second degree inclusive;
- d) companies, related with the persons, mentioned in paragraph c) and members of such companies' supervision and management bodies;

Related Company

any company, economic partnership, limited liability company, fund or another entity (legal or not legal), controlled by the Concessionaire directly or indirectly or who itself directly or indirectly controls the Concessionaire, or who is, together with the Concessionaire, directly or indirectly controlled by another entity, holding the title of ownership, a share of capital or implementing the requirements of the legal acts, applicable to such controlled entity. An entity shall be considered in control of other companies, if such entity, directly or indirectly:

- a) holds more than a half of shares or other securities, issued by such controlled company; or
- b) has all the votes, granted by the shares or other securities, issued by the controlled company; or
- c) has the possibility to appoint or elect more than a half of members of the management or another body of such controlled company (except the shareholders' meeting); or
- d) has entered into an agreement, according to which the controlled company is obliged to implement the controlling company's decisions and instructions; or
- e) has the title of ownership to no less than one half of the property, profit or residual

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liability of the controlled company.

The list of related companies is attached to the Agreement as Annex 8 and must be continually updated in case of change of any data, stated therein;

Agreement

this Agreement between *[the name of the Awarding Authority]* *[if applicable]*, and the *Assignor* and *[name of the Investor]* and *[name of the Concessionaire]*, concluded for the purpose of implementing the public-private partnership project for implementation of the Project, as provided in the Law on Concessions;

Awarding Authority

[name of the Awarding Authority], which, according to its competence and authorizations, established by the legal acts of the Republic of Lithuania, is responsible for the corresponding functions and areas of activities, which can be implemented and ensured by awarding concessions according to the Conditions and the Agreement;

Direct agreement

the agreement between the Funder and the Awarding Authority, by which the Awarding Authority undertakes to the Funder (or the entity, appointed by the Funder) to, on the conditions, established by the agreement, use the right of step-in for the purpose of performing the Agreement instead of the Concessionaire;

Property

the Assigned Property and the New Property *[if applicable]*, also the *Plot of Land*;

Activity reports

regular reports or any other source of information, document or data, developed, prepared or drafted in observance of the Agreement and the activity monitoring programme, as it is defined in the Specifications;

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[if applicable Plot of Land] *[specify the plot of land or a part thereof and its characteristics];*

[if applicable Plot Lease Agreement] *the agreement for lease of the Plot of Land, assigned for the Project implementation purposes, concluded by and between the Concessionaire and [state the entity, with which, in accordance with the Law on Land of the Republic of Lithuania and the requirements, provided by the legal acts, related to the Law on Land, the agreement for lease of land, belonging to the state and/or municipalities, must be concluded].*

1.2. In case the context of use of the concept does not stipulate otherwise:

1.2.1. The words, used in masculine gender also include the words, used in feminine and vice versa;

1.2.2. The words, used in singular also include the words, used in plural and vice versa;

1.2.3. References to articles, paragraphs, tables or annexes mean references to the articles, paragraphs, tables of or annexes to the Agreement, except the cases where it is expressly stated otherwise;

1.2.4. References to the Agreement also mean references to its annexes;

1.2.5. “Execution” of the Agreement or any other document means that the Agreement or such document was signed by all the parties to the Agreement or the document;

1.2.6. Any reference to legal acts shall be construed as the reference to the editions of the legal acts, in effect at the time of implementation of the Agreement, except the cases where it is expressly stated otherwise;

1.2.7. Headings of paragraphs and other provisions are provided for convenience only and shall not have any effect on interpretation of the Agreement.

1.3. The annexes shall be held integral parts of the Agreement. The Parties’ obligations under the Agreement or disagreements as regards any contradictions or discrepancies, found in the Agreement documents, shall be interpreted in accordance with the following priority of documents:

1.3.1. Direct agreement with the Funder;

1.3.2. The Agreement;

1.3.3. The annexes to the Agreement and the Conditions:

- a) Specifications;
- b) Financial Activity Model;
- c) Monitoring and deduction mechanism procedure;
- d) The matrix of distribution of risks between the Parties;
- e) Other Conditions of Tender;
- f) Other parts of the Offer;

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- g) List of mandatory insurance agreements;
- h) Lease agreements;
- i) Other annexes to the Agreement.

III. SUBJECT AND AIM OF THE AGREEMENT

2. Subject and aim of the Agreement

- 2.1. The Concessionaire shall, according to the procedures, established in the Agreement and in observance of the established requirements, perform the Works, provide the Services, undertake the relating risk, as it is foreseen in the Agreement, appropriately control and use the Property and, upon expiry of the Agreement, return the Property (if not provided otherwise in the Agreement) to the Awarding Authority [*if applicable – and/or to the Assignor*] according to the procedure, established in the normative legal acts, duly perform other of its obligations under the Agreement, not abuse the rights, acquired under the Agreement and the Awarding Authority shall award to the Concessionaire the right to perform the Works, provide the Services and perform economic and commercial activities, as well as to ensure the compliance of the condition of the Assigned Property with the requirements, established to the corresponding services and shall also, according to the procedure, established by the Agreement, award to the Concessionaire the right to control and use the Assigned Property, undertake the risk, identified in the Agreement and appropriately perform other of its obligations under the Agreement.
- 2.2. The principal aim of the Agreement is to ensure uninterrupted performance of quality works and provision of quality Services and, throughout the period of validity of the Agreement, reach for efficiency of the Services, improvement of quality and rational use of the Property.

IV. TIME PERIOD OF VALIDITY AND PERFORMANCE OF THE AGREEMENT

3. Entering into effect

- 3.1. The Agreement shall fully enter into effect on the following Business day after all the advance conditions for entering into effect of the Agreement, foreseen in Annex 5 to the Agreement, are fulfilled. The advance conditions for entering into effect of the Agreement must be fulfilled not later than within [*state the time period, recommended time period – 60 (sixty) days*] after the date of signing the Agreement, except for the cases where the Parties agree on an extension of the time period for fulfilling the advance conditions for entering into effect of the Agreement.
- 3.2. The advance conditions for entering into effect of the Agreement shall be considered fulfilled, when the fulfillment is confirmed by the Awarding Authority in writing not later than within [*state the time period, recommended time period – 5 (five) Business days*] as of the moment of receipt of all information on fulfillment of the advance conditions for entering into effect of the Agreement, or the Awarding Authority, within the said period, must state to the Concessionaire its refusal to confirm the fulfillment of the advance conditions for entering into effect of the Agreement.

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- 3.3. In case, due to objective reasons, independent of the Parties, the Agreement does not fully enter into effect till the expiry of the term, stated in Paragraph 3.1, the Parties, by mutual written agreement, may extend the time period for full entering into effect of the Agreement, however for no longer than *[state the time period, recommended period – 90 (ninety) days]*.
- 3.4. For the purpose of implementing the advance conditions for entering into effect of the Agreement and properly preparing for performance of their contractual obligations, the Awarding Authority, *[if applicable – and the Assignor,]* the Investor and the Concessionaire, throughout the time period till the full entering into effect of the Agreement, shall collaborate, cooperate and make the maximum efforts, including the cooperation for obtaining the necessary licenses, permits, consents, certificates and other documents, as foreseen in Paragraph 14.
- 3.5. In case the Agreement does not fully enter into effect till the deadline, stated in Paragraph 3, and in case the said time period is extended and the Agreement does not enter into effect notwithstanding the extension of the time period of entering into effect of the Agreement, stated in Paragraph 3.3, the Agreement shall be held expired and the following consequences of expiry of the Agreement shall emerge:
- 3.5.1. In case the Agreement does not fully enter into effect due to reasons, within control of or due to the fault or risks of the Concessionaire and/or the Investor, attributed to them hereunder: the Awarding Authority shall have the right to request from the Concessionaire and the Investor to collectively pay the fine of the amount of *[state the amount – for instance: 100 000 (one hundred thousand)]* euro, which shall be considered the final damages of the Awarding Authority, agreed by the Parties in advance;
- 3.5.2. In case the Agreement does not fully enter into effect due to reasons, within control of or due to the fault or risks of the Awarding Authority, attributed to it hereunder: the Concessionaire and the Investor shall have the right to request from the Awarding Authority to pay the fine of the amount of *[state the amount – for instance: 100 000 (one hundred thousand)]* euro, which shall be considered the final damages of the Concessionaire and the Investor, agreed by the Parties in advance;
- 3.5.3. In case the Agreement does not fully enter into effect due to reasons, not within control of or not due to the fault or risks of the Parties, attributed to them hereunder, the Parties shall apply full restitution and return to each other everything that was received from each other under this Agreement, however the Parties are not required to indemnify to each other any costs, expenses, damages/loss and are not required to pay any forfeit.

In any case of non-entering into effect of the Agreement, stated in Paragraph 3.4, the Parties shall apply full restitution and return to each other everything that was received from each other under this Agreement.

4. Beginning and end of work performance

- 4.1. Works must begin not later than indicated in the Work plan presented in the Offer.
- 4.2. The time period by which works will begin can be extended by written agreement between Awarding Authority and the Concessionaire only under the following conditions, when works cannot be started or continued due to:

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4.2.1. Force majeure circumstances, as defined in Paragraph 43.1 of the Agreement; or

4.2.2. Exemption case; or

4.2.3. Compensation event.

4.3. Works must be completed not later than indicated in the Work plan presented in the Offer. Completion of works may be extended for a period, for which the beginning of works or its performance was delayed on the grounds specified in Paragraph 4.2 of the Agreement.

5. Commencement and duration of provision of the Services

5.1. The Services in the corresponding part of the Property must be commenced to be provided in full, as it is foreseen in the Services provision plan, not later than within *[state the time period, recommended period – 30 (thirty) days]* as of the date of full entering into effect of the Agreement and shall be provided till expiry of the Agreement. The Services in the New property or its part must be commenced to be provided in full, as it is foreseen in the Services provision plan, no later than *[state the time period, recommended period - 30 (thirty) days]* from the beginning of maintenance of New property or its part, as provided in articles 11.2.8, 11.2.10 of the Agreement, and shall be provided till expiry of the Agreement.

5.2. The time of commencement of provision of the Services, established in Paragraph 5.1, may be extended by a written agreement between the Parties, however for a time period no longer than *[state the time period, recommended period – 60 (sixty) days]* and only in case of the following conditions, due to which the Services cannot be provided:

5.2.1. Force majeure circumstances, as they are defined in Paragraph 43 of the Agreement; or

5.2.2. Fault of the Awarding Authority; or

5.2.3. Exemption case; or

5.2.4. Compensation event.

5.3. In case the Parties agree to postpone the time of commencement of provision of the Services, the period of validity of the Agreement shall not be changed.

5.4. The Services shall be provided according to the procedure and in phases, stated in the Specifications, the Offer and in the Agreement.

6. Time period of validity of the Agreement

6.1. This Agreement shall remain in effect for *[state the time period]* years as of the moment of entering into effect. The moment of entering into effect of the Agreement is defined in Paragraph 3.1.

6.2. Including all the possible extensions of the time period of validity of the Agreement, the Agreement may not remain in effect longer than 25 (twenty-five) years as of the date of its full entering into effect.

V. REPRESENTATIONS AND GUARANTEES BY THE PARTIES

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7. Representations and guarantees by the Awarding Authority [if applicable – and by the Assignor]

- 7.1. The Awarding Authority [if applicable – and the Assignor] correspondingly represent and guarantee:
 - 7.1.1. The Awarding Authority [if applicable – and the Assignor] has performed the necessary actions and obtained the official licenses and/or permits, necessary in order to be able to conclude the Agreement and perform the obligations under it. The Agreement creates to the Awarding Authority [if applicable – and to the Assignor] legal and valid obligations under the provisions of the Agreement, which may be enforced against the Awarding Authority [if applicable – and the Assignor];
 - 7.1.2. The Awarding Authority shall, according to its competence and authorizations, established by the legal acts of the Republic of Lithuania, valid on the day of conclusion of the Agreement, be responsible for the corresponding functions and areas of activities, implemented and ensured when concluding the Agreement, therefore the Awarding Authority is an awarding authority in the sense, defined in the Law on Concessions;
 - 7.1.3. The Awarding Authority [if applicable – and the Assignor] have provided to the Investor and the Concessionaire all the essential and, to their knowledge, correct information, required by the Concessionaire, relating to the Assigned Property [if applicable to the Plot of Land] and to the contractual obligations of the Awarding Authority [if applicable – and the Assignor]. The provided information is correct as of the day of concluding of the Agreement, except the possible changes of the condition of the Assigned Property as the result of usual economic operation, which come into existence during the time period between the date of provision of information and the date of signing the Agreement. There are no concealed facts, able to have an essential effect on execution of the Agreement and performance of the foreseen obligations;
 - 7.1.4. When concluding and performing the Agreement, the Awarding Authority [if applicable – and the Assignor] does not violate any essential agreements or obligations, to which the Awarding Authority [if applicable – and the Assignor] is a party, there are no pending decisions, rulings, verdicts or resolutions of court (or arbitration), as well as no requirements, applicable under the laws and other legal acts in regard to the Awarding Authority [if applicable – and the Assignor];
 - 7.1.5. The Awarding Authority [if applicable – and the Assignor] has the right to transfer the Assigned Property to the Concessionaire for control and use by title of ownership, according to the procedure and conditions, established in the Agreement. The Assigned Property is not transferred to other parties, is not mortgaged or arrested;
 - 7.1.6. The Awarding Authority [if applicable – and the Assignor] has not received any notifications or citations to court or arbitration and there are no litigations, arbitration or other legal proceedings against the Awarding Authority [if applicable – and the Assignor], and there are no litigations, arbitration or other legal proceedings, initiated by the Awarding Authority [if applicable – and the Assignor] against another party, which might have an essential adverse effect on

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the financial standing of the Awarding Authority [*if applicable* – and the Assignor] and/or its possibilities to perform its obligations under the Agreement;

- 7.1.7. The Assigned Property is not on the list of objects to be privatized;
- 7.1.8. [*if applicable* The Plot of Land is not on the list of objects to be privatized, there are no persons, having the right to restore their rights of ownership to the Plot of Land according to the Law on the restoration of the rights of ownership of citizens to the existing real property of the Republic of Lithuania and there are no restrictions, which would prevent the Concessionaire from concluding the lease agreement for the Plot of Land or use the Plot for the purposes and according to the procedure, established in the Agreement;]
- 7.1.9. Representatives of the Awarding Authority [*if applicable* – and the Assignor] hold all the authorizations, necessary in order to be able to conclude the Agreement.
- 7.2. Except the cases, where Paragraph 7.1 of the Agreement expressly states otherwise, the representations and guarantees of the Awarding Authority [*if applicable* – and the Assignor], established in Paragraph 7.1, shall be valid to full extent as of the moment of executing the Agreement.
- 7.3. The Awarding Authority [*if applicable* – and the Assignor] undertakes to immediately notify the Concessionaire on any events or circumstances, due to which any of the representations or guarantees of the Awarding Authority [*if applicable* – and the Assignor] will become incorrect or might become incorrect in the future.
- 7.4. The Awarding Authority [*if applicable* – and the Assignor] understands that the information, collected by the Investor and the Concessionaire, stated in Paragraph 8.1.10, is limited to the information, provided by the Awarding Authority [*if applicable* – and the Assignor] during the Tender and other information, announced before the provision of comprehensive binding offers, with which any entity was able to get familiarized with no restrictions.
- 7.5. The Awarding Authority [*if applicable* – and the Assignor] understands that the Investor and the Concessionaire conclude the Agreement in confidence of the representations and guarantees of the Awarding Authority [*if applicable* – and the Assignor] and the information, provided to the Investor and the Concessionaire.

8. Representations and guarantees by the Concessionaire and the Investor

- 8.1. The Concessionaire and the Investor represent and guarantee the following:
- 8.1.1. The Concessionaire and the Investor are legal entities, duly incorporated and legally acting according to the legal acts of [*specify the state or states*], holding all the rights and authorizations and having completed all the actions, necessary to be able to enter into the Agreement and execute their rights and obligations under the Agreement;
- 8.1.2. 100 % of the Concessionaire's shares are and will be owned by the Investor, except the cases, where transfer of shares is expressly allowed under the Agreement. The Concessionaire is not engaged in any other activities, not related to performance of its obligations under the Agreement and shall not, without a

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- prior written consent by the Awarding Authority, engage in any other activities throughout the period of the Agreement;
- 8.1.3. The Concessionaire must and can, within the reasonable period after the execution of the Agreement, acquire the right to engage in the economic activities, necessary in order to be able to perform the Agreement;
 - 8.1.4. The Investor and the Concessionaire, as well as the employees, duly authorized by the Concessionaire, its managers and shareholders have performed all the actions and obtained all the permits, necessary in order to be able to conclude the Agreement and perform the undertaken obligations. The Agreement creates to the Concessionaire and the Investor legitimate and valid obligations, which may be enforced against them according to the provisions of the Agreement;
 - 8.1.5. When concluding and performing the Agreement, the Concessionaire and the Investor do not violate any essential agreements or obligations, to which they are parties and any decision, ruling, verdict or resolution by court (or arbitration), as well as any requirements, provided by the applicable laws or other legal acts, applied to the Concessionaire and the Investor;
 - 8.1.6. The Concessionaire and the Investor have not received any notifications or citations to court or arbitration and there are no litigations, arbitration or other legal proceedings against the Concessionaire and the Investor, and there are no litigations, arbitration or other legal proceedings, initiated by the Concessionaire and the Investor against another party, which might have an essential adverse effect on the financial standing and/or business of the Concessionaire and the Investor and/or their possibilities to perform their obligations under the Agreement, on which the Awarding Authority is not notified in writing;
 - 8.1.7. The Concessionaire and the Investor, when providing their offer, were fully and unconditionally compliant and, when entering into the Agreement, are compliant and throughout the period of the Agreement shall be compliant with all the requirements, established to them in the Conditions of Tender, taking into consideration the non-completed part of the Agreement;
 - 8.1.8. The Concessionaire and the Investor conclude the Agreement, having a long-term (not shorter than the period of the Agreement) real business interest to ensure the perform of the Works and the provision of the Services and receive profit from such activities;
 - 8.1.9. All the information, provided by the Concessionaire and/or the Investor during the Tender, including the information on its activities, experience, knowledge and availability of qualified staff, financial standing, contractual obligations, shareholders and Related companies is correct, comprehensive and reflecting the real situation;
 - 8.1.10. The Concessionaire and the Investor have collected all, in their opinion, necessary and sufficient information, necessary in order to be able to perform their obligations under the Agreement;
 - 8.1.11. The Concessionaire and the Investor confirm that they had a possibility to get familiarized with all the documents, provided to them, as well as with publicly available documents and information, on the basis of which the Investor and the Concessionaire had the possibility to independently make conclusions on the

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Parties' rights and obligations under the Agreement and make decisions on their participation in the Tender. The Concessionaire and the Investor accept all responsibility as regards the obligations hereunder and evaluation of the risks, relating to such obligations;

- 8.1.12. The Concessionaire and the Investor are not aware of any circumstances, which could possibly prevent them from proper performance of their obligations under the Agreement;
- 8.1.13. Representatives of the Concessionaire and the Investor hold all authorizations, necessary in order to be able to conclude the Agreement.
- 8.2. Except the cases, where it is expressly stated otherwise in Paragraph 8.1, the representations and guarantees by the Concessionaire and the Investor, established in Paragraph 8.1, are valid to full extent as of the moment of conclusion of the Agreement.
- 8.3. The Concessionaire and the Investor must immediately notify the Awarding Authority on any events or circumstances, due to which any of their representations or guarantees will become incorrect or may become incorrect in the future.
- 8.4. The Concessionaire and the Investor understand that the Awarding Authority [*if available* – and the Assignor] conclude the Agreement in confidence of the representations and guarantees of the Concessionaire and the Investor and the information, provided by the Concessionaire and the Investor to the Awarding Authority. The Awarding Authority [*if available* – and the Assignor] have not performed any independent investigation as regards the correctness and accuracy of the representations and guarantees of the Concessionaire and the Investor.

VI. ASSIGNMENT AND RETURN OF THE PROPERTY

9. Assigned Property [*if applicable* – the Plot of Land] and the agreements

- 9.1. The Lease agreements [*if applicable* – Land plot lease agreement] shall enter into effect and the Assigned Property [*if applicable* – Land plot] shall be leased to the Concessionaire when performing the advance conditions of entering into effect of the Agreement. The rights and obligations under the Lease agreements [*if applicable* – Land plot lease agreement] shall be considered assigned as of the moment of entering into effect of the Lease agreements [*if applicable* – Land plot lease agreement].
- 9.2. The expiry of the Lease agreements [*if applicable* – Land plot lease agreement] shall coincide with the expiry of the Agreement, in case no earlier expiry of Lease agreements is foreseen therein [*if applicable* – Land plot lease agreement]. The Concessionaire and the Investor, at their risk and expense must take all the reasonable actions in order for the rights and obligations under the Lease agreement [*if applicable* – Land plot lease agreement], upon expiry of the Agreement, to be transferred to the Awarding Authority or to the entity, indicated by the Awarding Authority in advance in writing.
- 9.3. The Awarding Authority [*if applicable* – and the Assignor] undertake to, within [*state the time period, recommended period* – 3 (three) Business days] after the entering into effect of the Lease agreements, provide to the Concessionaire the

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documents, proving the right of ownership / trust to the Property, assigned under the Agreements.

- 9.4. *[if applicable Not later than within [state the time period, recommended period – 5 (five) Business days] as of the moment of entering into effect of the Lease agreements on control and use of the immovable property, the Concessionaire must apply to the [state the responsible institution] regarding concluding the agreement for lease of the Plot of Land, assigned to the transferred immovable property. When applying, it is necessary to state that the Land plot lease agreement shall expire upon expiry of the time period of control and use of the assigned immovable property.]* The Concessionaire has the right to perform works, specified in the Offer, the Specifications and the Agreement, in the Land plot.]
- 9.5. The Awarding Authority *[if applicable – and the Assignor]*, within the limits of its competence, shall perform all the actions and make each and every effort in order to have all the necessary decisions made and obtain all the licenses and permits, necessary in order to be able to transfer the Assigned Property, mentioned in Paragraph 9 *[if applicable – the Plot of Land]* to the Concessionaire.
- 9.6. The Awarding Authority *[if applicable – and the Assignor]* shall not require any additional payments for the Assigned Property *[if applicable – the Plot of Land]*, relating to the control and use of the Assigned Property *[if applicable – the Plot of Land]*, except the payments and rent, foreseen in the Monitoring and deduction mechanism, provided in Annex 3 to the Agreement, which must be paid by the owner/leaseholder of the property under the requirements, provided by the applicable legal acts.
- 9.7. *[if applicable – the Awarding Authority [if applicable – and the Assignor] undertakes to, within the limits of its competence, make each and every effort in order for the Concessionaire to be released from the obligation to pay the Property lease fee.]*

10. Rights and responsibilities of the Concessionaire when controlling and using the Assigned Property *[if applicable – the Plot of Land]* and when performing the Lease agreements *[if applicable – Land plot lease agreement]*

- 10.1. The Concessionaire shall control and use the Property, assigned when performing the Agreement *[if applicable – the Plot of Land]* according to the right of lease, i.e. no property rights shall be assigned.
- 10.2. All actions, relating to registering the changed data of the Assigned Property *[if applicable – the Plot of Land]* with the Register of real estate (including covering the relating costs) shall be performed by the Concessionaire, by providing all the necessary information and authorizations to the Awarding Authority *[if applicable – and to the Assignor]*.
- 10.3. *[if applicable within [state the time period, recommended period – 5 (five) Business days] after the formalization of construction completion established by law, the Concessionaire undertakes to submit all necessary documents to the Real Estate Register for registration of renewed Assigned property to replace the updated register data, and within [state the time period, recommended period - 15*

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(fifteen) days] after registration of updated register data in the Real Estate Register, the Concessionaire undertakes to sign the amendment of the Lease agreement(s), related to the registry data of the Assigned property, with the Awarding Authority, and also to register the amendment in the Real Estate Register.

- 10.4. The Concessionaire undertakes to ensure that throughout the period of the Lease agreements [*if applicable* – Land plot lease agreement] the Assigned Property [*if applicable* – the Plot of Land] is used according to its purpose and the conditions of the Agreement and the rights and obligations according to the agreements, relating to the Assigned Property [*if applicable* – the Plot of Land], transferred to the Concessionaire, are executed in observance of the requirements, provided in the agreements. The Concessionaire shall be responsible for the appropriate performance of the obligations under the Lease agreements [*if applicable* – Land plot lease agreement] as of the moment of their assignment, stated in Paragraph 9.1.
- 10.5. The Concessionaire shall be responsible for the control and use of the Assigned Property [*if applicable* – the Plot of Land] without violation of the legal acts of the Republic of Lithuania, including those regulating environmental protection and hygiene norms.
- 10.6. The Assigned Property [*if applicable* – the Plot of Land], at the advance written consent by the Awarding Authority, may be used for other purposes, to the extent such use does not hinder efficient and quality provision of the Services and assurance of compliance of the Services to the requirements, provided by the applicable legal acts, the Agreement and its annexes. By the requirement of the Awarding Authority the use of the Assigned Property [*if applicable* – the Plot of Land] for other purposes must be discontinued in case such requirement is provided not later than [*state the time period, recommended period* – 15 (fifteen) days] before the requested date of termination. In case the use of the Assigned Property [*if applicable* – the Plot of Land] for other purposes, different than implementation of the Agreement hinders to duly perform the Agreement, at the requirement of the Awarding Authority such use must be discontinued outright upon receiving the request. The disputes as regards the soundness of the requirements, foreseen in Paragraph 10.6, shall be resolved by the Commission, specified in Paragraph 53.
- 10.7. In case the Concessionaire, on the basis, stated in Paragraph 10.6, uses the Assigned Property [*if applicable* – the Plot of Land] for other purposes, the Concessionaire must ensure that such Assigned Property [*if applicable* – the Plot of Land] is free of any burdens at the moment of expiry of the Agreement.
- 10.8. In case the Assigned Property is worn or can no longer be used according to its primary purpose, the Concessionaire must repair such property or replace it with similar or better property, answering the same purpose and utilize or provide the unfit Assigned Property for recycling at its own expense. The Awarding Authority undertakes to make all the necessary decisions, necessary for the Concessionaire to be able to perform its obligations under Paragraph 10.8.
- 10.9. During the time period of validity of the Agreement the Concessionaire has the right to apply to the Awarding Authority [*if applicable* – and/or to the Assignor]

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with the request to terminate/modify the Lease agreements [*if applicable* – Land plot lease agreement] and accept back the Assigned Property [*if applicable* – Plot of land], which had become not needed by the Concessionaire for the Work performance or the Services provision purposes. The Awarding Authority must provide a motivated decision as regards such request not later than within [*state the time period, recommended period – 30 (thirty) days*] as of the moment of receipt of the Concessionaire's request, however the Awarding Authority does not necessarily have to satisfy the Concessionaire's request.

11. Result of works. The creation of the New property. Rights and responsibilities of the Concessionaire when controlling and using the New property

11.1. The Concessionaire must obtain or create New property, necessary to provide services, while complying with the deadlines, Specifications and Offer requirements. The New Property is created by performing the tasks or/and by purchase.

11.2. The New Property is created as a Work result within the order explained hereinafter:

11.2.1. The Concessionaire presents prepared Work execution projects, plans and other materials necessary for such works according to requirements of the legal acts, to the Awarding Authority no later than in [*state the time period, recommended period – 15 (fifteen) days*] before starting the respective Works. The Awarding Authority performs a preliminary evaluation of these materials on their concordance with The Specifications, the Offer and other requirements, defined in the Agreement, and in no later than [*state the time period, recommended period – 30 (thirty) days*] since receiving the materials informs the Concessionaire within the written form about the positive evaluation, or provides a motivated negative evaluation. The positive or negative evaluation by the Awarding Authority does not produce any direct subsequence to any of the Parties, and cannot be used for making decisions about the concordance of performed Works with the Specifications and the Offer requirements, as this will be done within the procedures provided in the article 11.2.

11.2.2. The Works must be performed while following Good business practice, seeking the highest quality and efficiency and in compliance with all requirements of legal acts for the Works, including the requirements of environmental protection.

11.2.3. After finishing the Works (except the Installation works), the Concessionaire informs the Awarding Authority. The Awarding Authority examines the Works in [*state the time period, recommended period – 30 (thirty) days*] within receiving the message about the Work termination, so that any possible inadequacies to the Specifications and the Offer could be found.

11.2.4. If the Works (except the Installation works) meet the requirements, the Awarding Authority issues a written confirmation and the rest of necessary documents in [*state the time period, recommended period – 5 (five) Business days*] since completing the examination. On the grounds of these documents, the Concessionaire organizes the execution of Work completion in course of legal acts, and commences the Installation works.

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- 11.2.5. If the Works (except the Installation works) do not meet the fundamental requirements, and therefore the Services cannot be provided, or cannot be provided in accordance with the Specifications and the Offer, the Awarding Authority has the right to reject to issue the confirmation, indicated in the article 11.2.4, if a motivation is provided. In such case, the fundamental inadequacies are registered within a written act, signed by representatives of the Awarding Authority and the Concessionaire, and this act becomes an integral part of the Agreement. The confirmation of the Works (except the Installation works) meeting the Specifications and the Offer requirements will be issued when the Concessionaire corrects the fundamental inadequacies.
- 11.2.6. If the Awarding Authority identifies any non-fundamental inadequacies to the Specifications and the Offer (except the Installation works), which essentially do not obstruct the providing of the Services, these inadequacies are registered in the act that confirms meeting the Specifications and the Offer. The Concessionaire must correct such non-fundamental inadequacies in a sensible period of time that is indicated, and must also begin the Installation works at the same time.
- 11.2.7. The Concessionaire informs the Awarding Authority about the finished Installation works. The Awarding Authority examines the Installation works in *[state the time period, recommended period – 15 (fifteen) days]* after receiving the message about the finished Installation works, so that any possible inadequacies to the Specifications and the Offer could be found.
- 11.2.8. If the Installation works meet the requirements, the Awarding Authority issues a written confirmation in *[state the time period, recommended period – 3 (three) Business days]* after completing the examination. The moment of issue of this confirmation is considered to be the start of New Property exploitation.
- 11.2.9. If the Installation works do not meet the fundamental requirements, and therefore the Services cannot be provided properly, the Awarding Authority has the right to reject to issue the confirmation, if a motivation is provided. In such case, the fundamental inadequacies are registered within a written act, signed by representatives of the Awarding Authority and the Concessionaire, and this act becomes an integral part of the Agreement. The confirmation of the Installation Works meeting the Specifications and the Offer requirements will be issued when the Concessionaire corrects the fundamental inadequacies.
- 11.2.10. If the Awarding Authority identifies any non-fundamental inadequacies to the Specifications and the Offer, which do not prevent the Concessionaire from finishing the Installation works of the New Property and starting to provide Services, these inadequacies are registered in the act that confirms meeting the Specifications and the Offer, and the signing of this act is considered to be the start of New Property exploitation. The Concessionaire must correct such non-fundamental inadequacies in a period of time that is stated in the act of confirmation.
- 11.2.11. During the Works, the Awarding Authority and all its commissioned people have the right to enter the Working site and examine how the Works are performed. The Concessionaire must provide all sensible possibilities for the Awarding Authority and its commissioned people to examine the Work performance.

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11.2.12. The Concessionaire is in all senses responsible that the Works and their results meet the requirements of the Specifications, the Offer and the legal acts, no matter whether the Awarding Authority or its commissioned people confirm that the Works meet the requirements or not.

11.2.13. The Concessionaire must personally obtain all agreements and permits which are legally necessary to use the Work results for their purpose, and must provide the Awarding Authority with copies of such agreements and permits. In cases when, according to the legal acts requirements for proper use, administering and/or disposal of Work results, the Awarding Authority must have originals of agreements and permits, indicated in article 11.2.13, The Concessionaire must provide the Awarding Authority with these originals.

11.2.14 In case where the Parties disagree about the defects of Works or their parts, and the Parties do not manage to resolve the argument in *[state the time period, recommended period – 15 (fifteen) days]* within a mutual negotiation, or the negotiation does not commence, a committee decides whether or not such defects of Works or their parts are present. The committee consists of 3 (three) experts who have the right qualifications in the field in which the argument about the Works occurred. Each Party appoints one expert to the committee in no more than 15 (fifteen) days after the Parties agree to assign the solution of the argument to a committee of experts. The two (2) experts, assigned by the Parties, must assign the third expert. A Party cannot assign its own employee, ex-employee and / or people who are related to the Party by an agreement or any other obligatory relation of subordination (with an exception of a relation that occurred as a result of assigning an expert). If the experts, assigned by the Parties, do not agree on assigning the third expert in *[state the time period, recommended period – 15 (fifteen) days]* since their own assignment, in that case both Parties request the third expert to be assigned by *[determine an independent subject who is able to assign a qualified expert]*. The expenses, related with assigning the expert committee and their services, are covered by the Party which the expert committee recognizes to have been wrong. If the expert committee decides that both Parties are wrong (at any aspect or level), the two Parties cover the committee expenses in equal parts, no matter the aspect or / and level in which the Party has been recognized to have been wrong. If the third expert is not assigned in *[state the time period, recommended period – 30 (thirty) days]* after both Parties assign their experts to the committee, and the two Parties do not agree otherwise, in that case the argument or disagreement about the defects of Works or their parts is being solved according to the provisions of the article 55 of the Agreement, on demand of any of the two Parties.

11.3. *[If the New Property belongs to the Concessionaire within the ownership rights during the Agreement validity period, the New Property will belong to the Concessionaire during the Agreement validity period within the ownership rights. If the New Property will not belong to the Concessionaire within the ownership rights during the Agreement validity period, the Concessionaire will administer and exploit the New Property within the rights of lease, and the ownership rights will be given to [determine the subject to whom the New Property will belong within the rights of ownership]].* All actions related to registering the New Property (if the registering is necessary according to the legal acts), including the

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related expenses, must be performed by the Concessionaire, and the Awarding Authority must grant all the necessary information and commissions.

- 11.4. The Concessionaire is responsible for exploiting and administering the New Property without violating Specifications, Offer and legal acts of the Republic of Lithuania, including the legal acts that regulate environmental protection, occupational safety and compliance with hygiene standards.
- 11.5. The Concessionaire can exploit the New Property for other purposes, if the Awarding Authority provides a written agreement beforehand, and such exploit does not obstruct efficient and good quality Service providing, or does not prevent the Services from complying with legal acts and Agreement requirements. On demand by the Awarding Authority, the New Property exploit for other purposes must be terminated, if such demand is given no later than *[state the time period, recommended period – 15 (fifteen) days]* before the required termination date. In case when the exploit of the New Property for other purposes than stated in Agreement interferes with proper exercise of the Agreement, such exploit must be terminated immediately after receiving the demand from the Awarding Authority. All arguments related to legitimacy of requirements, provided in article 11.5 of the Agreement, are solved by the committee, indicated in the article 53 of the Agreement.

12. Return of the Property

- 12.1. After the expiry of the Lease agreements *[if applicable – Land plot lease agreement]*, also when returning the Assigned Property *[if applicable – Plot of land]* in the case, foreseen in Paragraph 10.9, the Concessionaire shall return the Assigned Property to the Awarding Authority *[if applicable – to the Assignor]* according to the procedure, prescribed by the applicable legal acts.
- 12.2. After the expiry or termination of the Agreement, *[if during the time period of validity of the Agreement the New property was in the ownership of Concessionaire The Concessionaire is obliged by law to transfer the ownership of the New property to the Awarding Authority / or The new property remains in the ownership of the Concessionaire. If during the time period of validity of the Agreement the Concessionaire owned and used the New property by the Lease right The Concessionaire is obliged by law to return the New property to the Awarding Authority.]*
- 12.3. The parties agree that when returning the Property must be compliant with the requirements, established in Annex **Error! Reference source not found.**
- 12.4. The returning and transfer of the Property shall be arranged by the experts' commission, formed by the Concessionaire and the Awarding Authority, which shall include two experts, appointed by each Party. The said two experts shall choose the third independent expert. The experts' commission must be formed at the latest *[state the time period, the recommended period – 6 (six) months]* before the expiry of the Agreement. The formation of the experts' commission shall be initiated by the Concessionaire without violating the terms, stated in Paragraph 12.4. The experts' commission, not later than within *[state the time period, recommended period – 3 (three) months]* as of the moment of returning the Property, must inspect the condition of the Property and compliance with the requirements, provided in Paragraph 12 and provide motivated conclusions.

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Referring to the conclusions of the inspections, the Awarding Authority shall, within [*state the time period, recommended period – 30 (thirty) days*] confirm the compliance of the returned property with the raised requirements, or provide a well substantiated refusal, stating the specific incompliance. In case the inspection of the condition of the Property is performed during the cold season of the year, the inspection period may be extended till the moment when the condition of the Property may be physically inspected.

12.5. The Concessionaire must return and transfer the Property, compliant with the requirements, stated in the Agreement and annexes hereto against the Statement of transfer and acceptance (return), signed by the Parties, to the Awarding Authority [*if applicable – and/or to the Assignor*] according to the procedure, prescribed by the applicable legal acts, on the date, following the date of expiry or early termination of the Agreement. The deficiencies, established by the Commission, which are not rectified, must be stated in the Statement of transfer and acceptance (return). The Statement must also state the time period, within which all the identified deficiencies must be rectified.

12.6. In case the returned Property fails to comply with the requirements, stated in Paragraph 12, the Concessionaire must, within a reasonable time period, stated by the Awarding Authority, rectify such deficiencies in the way, chosen by the Concessionaire: by repairing such property, replacing it by other equal property, indemnifying the Awarding Authority the substantiated cost of repairing the property or replacement by other equal property or by covering the difference between the required value of the returned Assigned Property and the actual established value of the Property. The Concessionaire's liability when performing the Awarding Authority's requirements as regards the rectification of the deficiencies of the Assigned Property shall not be limited.

VII. THE PARTIES' OBLIGATIONS

13. Transfer and storage of documents

13.1. The Parties shall furnish to each other all the documents, necessary for performance of the Agreement, held by the Parties till the 15th (fifteenth) day as of the date of signing the Agreement.

13.2. The Concessionaire shall keep all the financial documents and agreements, relating to performance of the obligations under the Agreement, for a time period not shorter than till the expiry of the Agreement and for 2 (two) years after the expiry of the Agreement. In case the Concessionaire is liquidated after the expiry of the Agreement, the documents, mentioned in this Paragraph 13.2, shall be transferred to the Investor.

13.3. After the expiry of the Agreement, the Concessionaire shall, at its own cost, ensure the appropriate transfer of its documents, relating to performance of the obligations under the Agreement to the Awarding Authority or the institutions/persons, stated by the Awarding Authority. In any case, such documents shall be transferred to the Awarding Authority not later than till the moment of signing of the Statement of transfer and acceptance (return) of the Property.

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14. Obligations of the Awarding Authority

- 14.1. The Awarding Authority shall perform its obligations under the Agreement in due time and cooperate with the Concessionaire for the purpose of resolving the issues, relating to performance of the Agreement as actively as possible.
- 14.2. The Awarding Authority shall ensure that, when the Awarding Authority or the persons, authorized by the Awarding Authority use the rights, provided to the Awarding Authority under the Agreement, the Concessionaire's activities and performance of the Agreement are hindered in the smallest extent possible.
- 14.3. At the Concessionaire's request, the Awarding Authority shall, according to its competence, make all the efforts in order to ensure the issuance of all the licenses and permits, necessary for the Concessionaire in order to implement all the rights and obligations, foreseen in the Agreement, in case the Concessionaire's rights to obtain such permits and licenses are foreseen by the applicable legal acts or the Agreement and the Awarding Authority has received all the necessary information and documents.
- 14.4. In case the issuance of the permits and licenses, necessary for performance of the Agreement, is not within the competence of the Awarding Authority, but other state/municipal institutions, the Awarding Authority, at the Concessionaire's request and within the limits of its competence, shall make each and every effort (mediate, provide additional information, give consents or authorizations, etc.) in order to obtain the necessary licenses and permits. This provision is applicable only with regard to the permits and licenses, which are necessary in order to commence the provision of Services, however not renewal of such licenses and/or permits.
- 14.5. At the Concessionaire's request the Awarding Authority shall provide all the information, which may be necessary in order to obtain the permits and licenses, necessary for performance of the Agreement.
- 14.6. In the cases, foreseen in the Agreement, when the Awarding Authority issues authorizations to the Concessionaire, the Awarding Authority must issue such authorizations within the established time period. In case no time period for issuance of the authorization is established, the Awarding Authority must issue such authorization within a reasonable time period. In case the Awarding Authority's refuses to issue the authorization, such refusal must be properly substantiated.

15. Obligations of the Concessionaire

- 15.1. The Concessionaire undertakes to, efficiently and in due time and quality, perform the Works and provide the Services and actively cooperate with the Awarding Authority and the persons, appointed by the Awarding Authority on all the issues relating to the performance of the Agreement.
- 15.2. The Concessionaire shall, at its own cost and risk, ensure that both the Concessionaire and the persons performing the Works and providing the Services hold the licenses, permits (including planning and building authorisations), certificates, authorizations and references, necessary in order to be able to perform the Agreement, throughout the period of validity of the Agreement or throughout the period of performance of the Works and provision of the Services, for

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performance (provision) of which the Concessionaire needs to have the specified documents, and observe and perform the conditions, stated in such documents. The Concessionaire shall not be allowed to refer to the absence of such documents when attempting to avoid amenability for the failure to duly perform its obligations hereunder and shall be fully liable for the resulting consequences due to the absence or delayed receipt of such documents.

15.3. The Concessionaire shall ensure that the Concessionaire and/or Sub-suppliers, throughout the period of the Agreement have the necessary number of qualified employees, needed for proper performance of their obligations hereunder.

15.4. The Concessionaire shall observe all the conditions, provided in all the issued licenses, certificates and permits and make each and every effort in order to ensure observance of the said conditions by the Concessionaire's staff or Sub-suppliers, providing the Services.

15.5. The Concessionaire undertakes to observe the requirements, provided by the environmental protection regulating legal acts. The investment, relating to implementation of such requirements, shall be performed and the corresponding risk shall be undertaken by the Concessionaire.

15.6. The Concessionaire shall, at its own cost, handle its bookkeeping in observance of the Law on the Principles of Accounting of the Republic of Lithuania and other legal acts of the Republic of Lithuania and the EU.

15.7. The Concessionaire shall be exclusively responsible that its obligations hereunder are performed:

15.7.1. Without violation of the requirements, provided by the applicable legal acts, as well as the conditions of issuance of permits and licenses and abstaining from the actions, which could become an obstacle for a later issuance and/or renewal of the necessary licenses and permits;

15.7.2. Without violation of the provisions of the Agreement;

15.7.3. In observance of the Financial Activity Model;

15.7.4. In accordance with the Good Business Practice;

15.7.5. Without violation of the Conditions of Tender and the obligations, provided in the Offer, except the cases, when the obligations are modified in the cases, foreseen in the Agreement;

15.7.6. In observance of the requirements, provided in the Insurance agreements.

15.8. The Concessionaire undertakes not to, during the period of validity of the Agreement, without a prior authorization by the Awarding Authority, make any decisions and not perform reorganization, sell a significant share of its property and not undertake essential financial liabilities. For the purposes of Paragraph 15.8, a significant share of the Concessionaire's property shall be considered the *[state what shall be considered a significant share of the Concessionaire's property]*. Essential financial liabilities shall be considered the *[state the financial liabilities, which shall be considered essential]*, the total value of which exceeds *[state the limit]*, or, according to which the payments exceed *[state the limit]* within a fiscal year. However the financial liabilities, according to the

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arrangements with the Funder, foreseen in the Financial Activity Model, shall not be considered essential in the sense of Paragraph 15.8.

- 15.9. The Concessionaire and the Investor undertake to notify the Awarding Authority on any lawsuits, raised in any court or arbitration, in which the Concessionaire participates in any status and which are aimed at resolving disputes and/or issues, arising from and / or related with the provision of the Services, not later than [*state the time period, recommended period – 15 (fifteen) days*] as of the moment of commencement of such participation or becoming aware of such participation.
- 15.10. The Concessionaire shall perform its obligations under the Agreement at its own risk and expense and without any financial support by the Awarding Authority, except for the cases, where it expressly stated otherwise.
- 15.11. After the Agreement is terminated or expired, the Concessionaire shall unconditionally and as soon as possible, return to the Awarding Authority or to the entities, specified by the Awarding Authority all the Property, foreseen to be returned by the Agreement, as well as all the rights and authorizations, relating to the returned Property or provided Services, including the agreements, relating to the performance of the Agreement, which, in the cases, allowed for hereunder, do not expire together with the Agreement. For this purpose the Concessionaire shall, at its own cost, take all the necessary actions, including the transfer of the Property, its rights or obligations or renewal of the necessary agreements.
- 15.12. The Concessionaire, during the period of the Agreement, shall, each year, pay the Charge of the size, established in the Monitoring and deduction mechanism, provided in Annex 3 to the Agreement.

16. Sharing the risks

- 16.1. The Parties shall share the risks, relating with their obligations, established by the Agreement, according to the procedure, established in this Agreement and its annexes, including the matrix of sharing the risks between the Parties, provided in Annex 4 to the Agreement.

17. Investments and investing procedure

- 17.1. The Concessionaire shall execute the investment into the Property and assurance of quality provision of the Services of the amount no smaller than that stated in the Financial Activity Model, in observance of the deadlines, stated in the Services provision plan and in the Specifications.
- 17.2. The Concessionaire shall ensure that the Property and the Services, not later than starting from the moment, foreseen in Paragraph 3.1, taking into consideration the possible extensions of deadlines according to Paragraphs 4.5 throughout the remaining time period of the Agreement, shall be compliant with the requirements, provided by the applicable legal acts, the Agreement, the Specifications and the Offer. The Concessionaire shall implement the said obligation independently by finding and using the necessary funds and choosing the necessary methods and tools. The Concessionaire shall have the right to change the sources and conditions of funding, specified in the Financial Activity Model, in case such changes increase the return on investment in regard to the risk, undertaken by any of the Parties and does not increase the liabilities of the Awarding Authority, including the obligations in cases of termination of the Agreement where there is no default

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on behalf of the Awarding Authority. Such change of sources of funding shall require an advance written authorization by the Awarding Authority, which the Awarding Authority may not unreasonably withhold. Such authorization or motivated refusal to provide the authorization shall be furnished by the Awarding Authority within [*state the time period, recommended period – 15 (fifteen) days*] as of the moment of provision of the request, accompanied with all the information and documents, substantiating request, to the Awarding Authority. For the purpose of Paragraph 17.2, a change of the return on investment shall be the difference of the current values of the income flows, constituting the return on investment before the change of the sources or conditions of funding and after such change. The rate of return on investment, stated in the Financial Activity Model when providing the Offer shall be used as the discount rate for calculating the value of the current cash flows.

17.3. In case the sources of funding, stated in the Financial Activity Model or the conditions of received funding are changed in the case, described in Paragraph 17.2 and this results in an increase of the return on investment, the amounts, payable to the Awarding Authority under Paragraph 24 shall be increased by [*state the size, recommended size – 50 (fifty)*] per cent of such increase.

17.4. The Concessionaire, upon receiving the advance written authorization by the Awarding Authority, shall have the right to change the investments, stated in the Financial Activity Model by other investment or postpone or put forward the time periods for execution of the Investments, in case the same or bigger value, received by the Service users of the Awarding Authority for the payment to the Concessionaire is ensured. The Awarding Authority must provide such authorization or a motivated refusal to provide the authorization within [*state the time period, recommended period – 15 (fifteen) days*] as of the moment of provision of the request, accompanied by all the substantiating information, to the Awarding Authority.

18. Supplementary works and services

18.1. By instruction of the Awarding Authority, the additional works and services, not foreseen in the Agreement and its annexes, may be provided and paid for only upon providing a concession in their regard according to the procedure, provided in the Law on Concessions.

18.2. The investor, when preparing its Offer, had to, in advance, foresee and evaluate all the works, services and actions, necessary in order to be able to perform all the obligations and reach all the results, provided in the Agreement and reflect such evaluation in the Financial Activity Model.

18.3. In case of the need for supplementary works or services, which are not foreseen under the Agreement and annexes thereof and the risk of which, according to the matrix of sharing the risks between the Parties, is fully or partially undertaken by the Concessionaire (for instance, when the requirements to the Works or Services, stated in the Specification, are changed due to the change of the requirements, provided in the applicable legal acts), and which are directly related with the Works or Services, foreseen hereunder and necessary to be provided in order to perform the Agreement, such works and services may be performed and paid for only in case the works and services are coordinated with the Awarding Authority in written form and in case provision of such supplementary works and services

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results in increase of the Concessionaire's investments (in case of Works) or costs (in case of Services), taking into consideration the savings, resulting from the part of the Services, no longer needed to be provided due to provision of the supplementary services.

- 18.4. Provision of additional works and (or) services may be initiated both by the Awarding Authority and by the Concessionaire.
- 18.5. In order to coordinate the supplementary works or services, the Awarding Authority is provided a motivated offer, stating the necessity for supplementary works or services, substantiated by experts' conclusions. The Awarding Authority must immediately initiate provision of additional concession regarding such supplementary works or services, according to the procedure, foreseen in the Law on Concessions, in case, after receiving a motivated explanation of construction project manager, the project (or part of it) manager, construction manager, special construction manager (or other competent specialist), or in case of services – motivated explanations of the person, authorized by the Concessionaire on the need for the supplementary works or services and whether it was possible to foresee the necessity for such works or services and, not later than within [*state the time period, recommended period – 30 (thirty) days*] as of the day of receipt of all necessary documents, substantiating the necessity for the supplementary works or services and after examining the said documents, it is established that such works or services are necessary for appropriate performance of the Agreement.
- 18.6. During the conclusion of the concession agreement on a basis of Paragraph 18.5 of the Agreement, supplementary works or services are documented, indicating the supplementary works or services, units, quantities, arguments as regards the necessity of additional works or services, technical solutions (drawings, etc.) (in case of works) or specifications (in case of services) with experts' signatures and substantiation of the set prices or tariffs. In the agreement provided in Paragraph 18.6 of the Agreement, the extension of the time period (if required), related to performance of supplementary works or services must also be resolved. Supplementary works or services can be started immediately after the additional concession agreement comes into force.
- 18.7. In case, within the time period, established in Paragraph 18.5, the Awarding Authority does not provide a motivated reply as regards its consent to provide supplementary services, it shall be held that the Awarding Authority refuses to award the concession for the supplementary services.
- 18.8. The costs of performance of supplementary works or provision of supplementary services must be calculated according to the Methodology of setting the prices of public purchase and sales agreement and the pricing rules, approved by Order No. 1S-21 of the Director of the Public Procurement Office of 25 February 2003 (or another edition of the said Methodology or another methodology, replacing the said Methodology, valid during the execution or performance of the Agreement), according to the average market price, which shall be set by choice after evaluating the prices of no less than 3 (three) other economic entities, operating on the market and calculating the average price, except for the cases where there are less than three such entities on the market, in which case the prices of works or services, provided by all the economic entities, operating on the market, shall be evaluated and the average price shall be derived. The Parties shall identify the economic entities, whose prices shall be evaluated and set the number of such economic entities by mutual agreement. In case no mutual agreement is reached

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within [*state the time period, recommended period – 15 (fifteen) days*] as of the moment of provision of the offer to provide supplementary services, each Party shall provide for evaluation the prices of 2 (two) economic entities, not related with them and the average of the said prices shall be derived.

19. Provision of services

- 19.1. The Concessionaire shall, from the commencement of provision of the Services, ensure the possibility for the users to use the Services in an uninterrupted manner and ensure non-discriminating conditions in line with the Offer and the Specifications.
- 19.2. The Concessionaire shall ensure that the character, amount and quality of the provided Services shall continuously and utterly be compliant with the requirements, provided by the applicable legal acts, the Agreement, the Specifications and the Offer. In case of any dispute as regards the compliance of the Services with the specified documents, such disputes shall be resolved by the experts' commission, formed from the competent experts for evaluating the compliance of the corresponding Services to the stated documents, according to the procedure and conditions, established in Paragraph 12.4.
- 19.3. The Concessionaire shall provide the Services at the location of the Assigned Property, with the exception of the cases, foreseen herein or the Services, which, according to the Specifications, the Offer or their very nature, must be provided at another location.
- 19.4. The requirements for provision of the Services may be deviated from only in cases and to the extent, stated in the Specifications. The permitted uninterrupted and total duration of each of such deviations is stated in the Specifications.

20. Sub-suppliers

- 20.1. The Concessionaire may, for the performance of Works or provision of Services, with the exception of the case, stated in Paragraph 20.5, employ only the Sub-suppliers, compliant with the criteria for advance selection of Sub-suppliers, provided in Annex [*state the number of the annex*] to the Conditions, provided in Annex 0 and upon receiving the advance consent from the Awarding Authority, which may not be unreasonably withheld.
- 20.2. The Sub-suppliers, when performing the Works and providing the Services, must observe the same requirements, which are raised to the Concessionaire as regards the corresponding Works and Services, provided under the Agreement.
- 20.3. Sub-suppliers may be replaced by other economic entities in the following cases:
- 20.3.1. The replacement entities [*in case the Sub-suppliers' capacities were taken into consideration when selecting the winner of the Tender ensure the resources and capacities, not poorer than those, provided by the replacement Sub-suppliers, necessary in order to be able to perform the remaining part of the Agreement*] are compliant with the requirements, raised for the Sub-suppliers in the Conditions; and
- 20.3.2. The Concessionaire receives an advance written authorization by the Awarding Authority, which may not be unreasonably withheld.

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- 20.4. After concluding the agreement with the Sub-supplier, the Concessionaire shall, not later than within *[state the time period, recommended time period – 3 (three) Business days]* as of the moment of concluding the agreement, provide a copy of the agreement to the Awarding Authority.
- 20.5. Notwithstanding Paragraph 20.1, the Concessionaire shall have the right to hire a new Sub-supplier, which is not compliant with the requirements, provided in Paragraph 20.1 and with no advance written authorization by the Awarding Authority, in case the total value of the works and services, provided by such Sub-supplier, does not exceed *[state the amount]*.
- 20.6. The agreements with the Sub-suppliers must be concluded in observance of the principles of transparency and arm's length and according to the Good business practice. The agreements must be valid for a time period, no longer than till the termination or expiry of the Agreement, or it shall be allowed to unilaterally terminate the agreements with no negative consequences not later than *[state the time period, recommended period – 30 (thirty) days]* till the requested date of termination.
- 20.7. Independently of the fact whether the Works are performed and Services are provided by the Concessionaire or by the Sub-supplier, the Concessionaire shall be responsible for the proper performance of the Works and provision of the Services and their compliance with the requirements, provided by the Specifications and the Offer.

21. Coordinating actions with the Awarding Authority

- 21.1. The Concessionaire shall coordinate the following with the Awarding Authority:
- 21.1.1. In the case, foreseen in Paragraph 10.5 – the conditions of the agreements, relating with usage of the Property for the purposes, other than those, established in the Agreement;
- 21.1.2. In the case, foreseen in Paragraph 17.2 – the conditions of changing the sources of funding, foreseen in the Financial Activity Model;
- 21.1.3. In the case, foreseen in Paragraph 17.4 – changing the Investment by other investment or the time periods of execution of Investment;
- 21.1.4. Candidacies of the persons, whose competence, during the Tender, was used for substantiation by the Concessionaire of its compliance with the advance selection criteria;
- 21.1.5. Candidacies of the experts, stated in Paragraph 28.1;
- 21.1.6. Candidacies of the Concessionaire's auditor;
- 21.2. In all cases the Concessionaire must obtain the advance written authorization of the Awarding Authority as regards the following:
- 21.2.1. Utilization or recycling of the Assigned Property, as foreseen in Paragraph 10.8;
- 21.2.2. Changing the sources of funding, as foreseen in Paragraph 17.2;
- 21.2.3. Changing the Financial Activity Model, as foreseen in Paragraph 17.4;
- 21.2.4. Replacing the Sub-suppliers, as foreseen in Paragraph 20 (with the exception of the case, established in Paragraph 20.5);

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- 21.2.5. Ensuring the performance of the transactions, foreseen in Paragraph 33, related with the Concessionaire's obligations to third parties;
- 21.2.6. Failure to conclude temporary Insurance agreements in the case, foreseen in Paragraph 34.5;
- 21.2.7. Use of the payments for loss of the Property, received according to the Insurance agreements, for recovering property, other than stated in Paragraph 34.8;
- 21.2.8. Any transactions between the Concessionaire and the Related persons;
- 21.2.9. Other transactions, on the basis of which the Concessionaire undertakes its obligations, the amount of which during the current fiscal year exceeds EUR *[state the amount]* (w/o the VAT) or the total amount of the agreement exceeds EUR *[state the amount]* (w/o the VAT). Where it is impossible to identify the said values in advance, the authorization by the Awarding Authority shall be necessary in the following cases:
- a) the time period of the agreements is longer than *[state the time period]* or than the time period of the Agreement; or
 - b) the agreements are concluded for an indefinite period, except the cases where (1) the agreements foresee possibility of unilateral termination, by notifying the other party not later than *[state the time period, recommended period – 30 (thirty) days]* in advance and (2) in case the agreement is terminated in the said manner, the Concessionaire is free of the obligation to cover the losses or pay any forfeit;
- 21.2.10. The Concessionaire must obtain the advance written authorization from the Awarding Authority as regards the transfer of the Concessionaire's shares, as foreseen in Paragraph 29.3 of the Agreement.
- 21.3. The transactions, entered into in violation of the requirements, provided in Paragraph 21.2, to obtain the authorization by the Awarding Authority, shall be held null and void. The Awarding Authority shall have the right to require covering the losses.
- 21.4. The Awarding Authority shall express its consent or motivated refusal to issue its authorization to enter into the transactions, mentioned in Paragraph 21.2 not later than within *[state the time period, recommended period – 15 (fifteen) days]* as of the date of application by the Concessionaire. In case the Awarding Authority, within the established time period, does not provide any comments or objections, it shall be considered that the Awarding Authority agrees with the proposed actions. In case the Awarding Authority grants its authorization to enter into the stated transactions, such transactions must be entered into on the market conditions, in observance of the arm's length principle. The Concessionaire shall notify the Awarding Authority on entering into the transaction immediately, however no later than within *[state the time period, recommended period – 3 (three) days]*, by providing copies of the agreement and/or other relating documents.

VIII. EXEMPTION CASES AND COMPENSATION EVENTS

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22. Exemption cases

22.1. The following situations shall be considered exemption cases, in which the Concessionaire shall have the right to temporarily suspend the performance of the Works and / or the provision of the Services:

22.1.1. It is impossible to perform the Works and / or provide the Services due to the non-performance of the contractual obligations by the Awarding Authority;

22.1.2. The Concessionaire is fully or partially unable to perform the Works and / or provide the Services due to an essential violation of the applicable legal acts.

22.2. In case, on the grounds, established in Paragraph 22.1 of the Agreement, the performance of the Works and / or the provision of the Services is fully or partially suspended, the Concessionaire shall:

22.2.1. In advance, not later than before [*state the time period, recommended period – 3 (three) Business days*], or, in case it is not possible, outright when such possibility emerges, notify the Awarding Authority on the issue and substantiate the reasons for such suspension;

22.2.2. Within [*state the time period, recommended period – 15 (fifteen) Business days*] as of the moment of provision of the request to apply the Exemption case and provide to the Awarding Authority all the information, relating to the Exemption case, including:

22.2.2.1. detailed description of the Exemption case, including its character, the date of occurrence and its duration;

22.2.2.2. The obligations, as regards the effect of the Exemption case on the Concessionaire's possibilities to perform the obligations, established in this Agreement, stating the specific obligations, which cannot be performed;

22.2.2.3. Description of the measures, planned to be taken by the Concessionaire in order to mitigate the consequences of the Exemption case;

22.2.3. Take all the reasonably available measures in order to recommence performance of the Works and provision of the Services to the full extent as soon as possible;

22.2.4. Take the reasonable actions in order to ensure the security of the Property.

22.3. In case the Exemption case arises from the performance of the advance conditions for entering into effect of the Agreement or before the commencement of performance of the Works, provision of the Services, the time periods for entering into effect of the Agreement, established in Paragraph 3 and the time periods for commencement of performance of the Works, established in Paragraph 4, or provision of the Services, established in Paragraph 5, shall be correspondingly extended for the time period of the Exemption case, however the total time period of the Agreement shall not be extended.

22.4. In an Exemption case the amenability, foreseen in Paragraph 48 and the basis for termination of the Agreement, foreseen in Paragraph 40, shall not be applicable with regard to the Concessionaire.

22.5. Any disagreements between the Parties as regards an Exemption case shall be resolved according to the disputes resolution procedure, established in this Agreement.

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23. Compensation events

- 23.1. The Concessionaire's losses, arising due a Compensation event, shall be covered according to the share of risk, undertaken by the Awarding Authority.
- 23.2. In case of a Compensation event, the Concessionaire must immediately, but not later than within *[state the time period, recommended period – 15 (fifteen) days]* as of the moment of becoming aware of the Compensation event, notify the Awarding Authority on the issue. Such notification must be accompanied by all the information on the Compensation event, evidencing its effect on the size of the Investment, stated in the Financial Activity model or the terms, established in the Agreement, the Specifications, the Offer or other terms, agreed upon by and between the Parties.
- 23.3. The Awarding Authority, within *[state the time period, recommended – 15 (fifteen) days]* as of the date of receipt of the documents, evidencing the loss insured and its size or the necessity to extent the established deadlines, shall make a motivated decision as regards confirmation of the Compensation event or a motivated refusal to do so.
- 23.4. After the Compensation event is confirmed, the Concessionaire shall be indemnified (fully or in part, depending on whether the Awarding Authority has assumed all the risk or only a certain share thereof):
- 23.4.1. In case the Investment into the Property increases as the result of a Compensation event, the Concessionaire shall be indemnified for such increase of Investment, allowing for ensuring an unchanged return on investment;
- 23.4.2. In case the Compensation event results in an increase of the Concessionaire's costs, relating to the provision of the Services, the Concessionaire shall be indemnified for the necessary increase of such costs, allowing for ensuring an unchanged return on investment;
- 23.4.3. *[if applicable – in case a Compensation event results in a reduction of the substantiated earnings of the Concessionaire, relating with the provision of the Services, the Concessionaire shall be indemnified for such reduction of the income, allowing for ensuring an unchanged return of investment.]*
- 23.5. The compensation, provided for in Paragraph 23.4, shall be calculated and paid in accordance with the Monitoring and deduction mechanism, provided in Annex 3 to the Agreement.
- 23.6. After the Compensation event is confirmed, the time periods for entering into effect of the Agreement, established in Paragraph 3 or the time periods for commencement of performance of the Works, established in Paragraph 4, or provision of the Services, established in Paragraph 5, or other time periods, foreseen in the Agreement, the Specifications and the Offer or other time periods, agreed upon between the Parties, shall be extended for the time period, necessary in order to rectify the consequences of the Compensation event.
- 23.7. In case the Concessionaire provides its notification on the Compensation event without observance of the time period, established in Paragraph 23.2, no compensation shall be paid for the time period of such delay and, in case of extension, such period shall be included into the extended time period.

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Red – the information to be entered.

- 23.8. After the Concessionaire executes its right as regards performance of supplementary works and provision of supplementary services and payment for such supplementary services according to the procedure, established by the Monitoring and deduction mechanism, provided in Annex 3 to the Agreement, no additional compensation shall be paid to the Concessionaire as regards the same aspect according to the procedure, established in Paragraph 23 and the Concessionaire shall have no right to require payment of such compensations.
- 23.9. Any disputes between the Parties as regards the presence of a Compensation event, the amount and procedure of payment of compensation and extension of the time periods shall be resolved according to the disputes resolution procedure, established in Paragraph 55.
- 23.10. In case of Compensation event, the liability, foreseen under Paragraph 48 and the basis for termination of the Agreement, provided in Paragraph 40, shall not be applicable with regard to the Concessionaire.

IX. PAYMENTS

24. Payments and their procedure

24.1. The Concessionaire for the provision of the Services gets remunerated by accepting the fees from the consumers of the Services determined by the *[specify the sum of the fee (which at the discretion of the Concessionaire, according to the approved fee rates or by other means) the Concessionaire is entitled to and who it is determined by]*. The amount of remuneration may be changed only in accordance with the *[when remuneration adjustment requirements are annexed requirements laid down within the Mechanism of Monitoring and Deductions provided in Annex 3 of the Agreement / when remuneration adjustment requirements are laid down within the text of the Agreement, with the following requirements:*

24.1.1. *[specify the requirements for the remuneration adjustment];*

24.1.2. *[. . .];*

The consumers cannot be charged any other fees, unless the Agreement clearly states the contrary.

24.2. In cases where the Concessionaire is authorized to use the Property for other activities than those necessary for the completion of the Agreement, the Concessionaire has the right to determine the size of revenue for such use at its own discretion, unless the Property is used in the activities of the Related Persons - in which case, the transactions upon the use of the Property must be concluded in line with the arm's length principle.

24.3. Provided the amount of remuneration referred to in Paragraph 24.1 of the Agreement is reduced in breach of the requirements set out herein due to the factors depending on the Awarding Authority or its assigned risk, such reduction shall be considered an event of Compensation and remunerated pursuant to the Compensation procedure.

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- 24.4. *[If applicable* For the right to provide Services and get paid the amount referred to above in Paragraph 24 of the Agreement awarded to the Concessionaire the Awarding Authority receives a Fee from the Concessionaire determined in accordance with the Mechanism of Monitoring and Deductions referred to in the Annex 3 of the Agreement.]
- 24.5. *[If the Assigned Property is not subject to remuneration* the Concessionaire shall not remunerate for the Assigned Property / *if the Assigned Property or a part of it is subject to remuneration* the Concessionaire shall undertake for the Assigned Property under *[indicate Lease Agreements under which the Concessionaire must pay for the property received]* *[if a fixed amount is to be paid* to pay a remuneration of *[the amount]* euros *[specify when and how it must be paid]*. / *if it is required to pay periodically* starting with the date of entry into force of the Agreement to pay the Awarding Authority *[specify the amounts to be paid and methods of payment]*.]
- 24.6. The Awarding Authority *[choose* does not remunerate / *or remunerate* the Concessionaire for the returned New Property separately in accordance with the Mechanism of Monitoring and Deductions referred to in the Annex 3 of the Agreement.]
- 24.7. *[Provided the Awarding Authority pays the Fee to the Concessionaire,* the sums of the remuneration paid to the Concessionaire shall be reduced or increased in the cases and by the amounts stipulated in accordance with the Mechanism of Monitoring and Deductions referred to in the Annex 3 of the Agreement.]
- 24.8. *[Provided the Concessionaire pays to the Awarding Authority* Payments made under Paragraph 24.4 of the Agreement to the Awarding Authority for the right awarded to the Concessionaire to provide Services and receive remuneration for that shall be reduced or increased in the cases and by the amounts that stipulated in accordance with the Mechanism of Monitoring and Deductions referred to in the Annex 3 of the Agreement.]
- 24.9. Payments made by one Party to the other shall not be deducted by any taxes, fees or any kind of other charges with the exception of default interests, fines, losses or contractual penalties payable under the Agreement or amounts payable to one Party by the other in accordance with Paragraph 24 of this Agreement, the payment term of which has already expired, and the Awarding Authority's costs concerning Insurance agreements as indicated in Paragraph 34.4.
- 24.10. *[If the procedure of payment adjustment due to the changed tax rates is specified in the Mechanism of Monitoring and Deductions provided for in Annex 3 of the Agreement* The amount payable for the Services shall be changed due to the replacement of tax legislation in accordance with the Mechanism of Monitoring and Deductions referred to in the Annex 3 of the Agreement. /*if the procedure of payment adjustment due to the changed tax rates is specified within the text of the Agreement* Changes in the value-added tax rate shall accordingly modify the amount of payments made by one Party to the other under the Agreement, which are subject to changed rate of the value-added tax.
- 24.11. Changes of other taxes than those specified in Paragraph 24.10 shall not affect payments between the Parties./*or* The amount of mutual payments of the Parties shall also be modified due to *[specify other taxes, the change in rates of which*

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affects the payments] tax change. The modifications are made in the following order:

24.11.1. *[specify the tax] – [specify the payment and how it will be modified due to the change in tax rate];*

24.11.2. *[. . .].*

The amount of payments modified on the basis of Paragraph 24.11 of this Agreement shall be applied since the date the relevant tax rate change takes effect.]

24.12. All payments made by the Awarding Authority or the Concessionaire under the Agreement are annually indexed in accordance with the Mechanism of Monitoring and Deductions referred to in the Annex 3 of the Agreement. The indexed payment amount is applicable from *[specify the date from which indexed payments shall be applied]*.

24.13. All payments under Paragraph 24 of this Agreement must be made in accordance with the Mechanism of Monitoring and Deductions referred to in the Annex 3 of the Agreement.

24.14. All payments shall be settled and made in euros.

24.15. All costs associated with the compliance of respective Party's obligations under the Agreement, shall fall to the respective Party and shall not be compensated at the expense of other Parties, unless the Agreement expressly provides otherwise.

25. *[if applicable* Market Testing and Benchmarking

25.1. *The Concessionaire undertakes, at least 6 (six) months prior to the date of the relevant Market Testing or a written reasoned claim of the Awarding Authority, to conduct the Market Testing/Benchmarking at its own expense, organize its performance in respect of the types of services indicated by the Awarding Authority under the following terms and conditions:*

25.1.1. *The Awarding Authority upon its decision and at its own expense may assign the execution of the Market Testing/Benchmarking to the independent professionals. The Awarding Authority may also decide to assign the execution of the Market Testing/Benchmarking to the independent professionals in case there are any doubts concerning validity and/or reliability of results of the Value Verification carried out by the Concessionaire. Provided in the present case the results of the Market Testing/Benchmarking executed/organized by the Concessionaire prove to be valid and reliable, the testing costs of the Awarding Authority shall not be compensated. However, in case the testing proves the results of the Market Testing/Benchmarking provided by the Concessionaire to be invalid and/or unreliable, all the expenses incurred by the Awarding Authority shall be covered by the Concessionaire not later than *[specify the time period,, recommended period – 30 (thirty) days]* after submission of Awarding Authority's claim to the Concessionaire;*

25.1.2. *The Concessionaire must execute the Market Testing/Benchmarking not later than 3 (three) months after the previous Market Testing or the date of a written reasoned claim submitted by the Awarding Authority. Prior to conducting the Market Testing/Benchmarking the Parties shall agree upon an effective and*

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transparent methodology of the Market Testing/Benchmarking that must be followed during its performance. If no agreement is reached on the conformity of the Market Testing/Benchmarking methodology, it shall be prepared and approved by the Commission referred to in Paragraph 53 of the Agreement;

- 25.1.3. In case more efficient methods and/or techniques of operation are discovered and/or more effective potential Sub-suppliers of service similar to the Service are found based on the results of the Market Testing/Benchmarking, the Awarding Authority may propose the Concessionaire to implement and/or use them, thus improving the fulfillment of obligations stipulated in the Agreement (e.g. by reducing operating costs, improving Service quality, etc.). The Concessionaire is entitled the right to disagree to implement new more efficient operation methods and techniques and/or use more effective potential sub-suppliers only if due to such modifications he would suffer negative consequences - increase in investments, increase in the costs of Service provision, or other losses, which would not be covered by the benefits obtained through implementation of this modification. The benefits of the modifications shall be allocated between the Parties in accordance with the Mechanism of Monitoring and Deductions referred to in the Annex 3 of the Agreement.

X. CONTROL OF PERFORMANCE OF OBLIGATIONS

26. The Awarding Authority's right to control

- 26.1. The Awarding Authority is entitled with a right to control the Concessionaire's compliance with the obligations under the Agreement, including the right by means of its own choice to inspect:
- 26.1.1. Concessionaire's Work performance in accordance with Paragraph 11.2 of the Agreement;
- 26.1.2. Assets and fulfillment of all the obligations of the Concessionaire under the Agreement;
- 26.1.3. Conformity of Services provided by the Concessionaire with the requirements laid down in the Agreement and its annexes.
- 26.2. In the meantime the Awarding Authority is exercising its rights to inspect and control the activities of the Concessionaire, the Concessionaire is required to fully cooperate with the Awarding Authority or its authorized representatives, and to allow them access to the documents, inspect the premises/location of activities related to the execution of Works and provision of Services, and to provide all requested information concerning fulfillment of the obligations under the Agreement.
- 26.3. The rights of the Awarding Authority to control the activities of the Concessionaire as provided in Paragraph 26 of the Agreement shall not affect other provisions of the Agreement, which allow the Awarding Authority to use identical or similar control rights.
- 26.4. Nothing in the Agreement shall be interpreted as exempting the Concessionaire from liability for the infringements identified and penalties imposed by state authorities, or for any damage caused to third parties.

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27. Provision of Information

27.1. The Concessionaire shall provide information to the Awarding Authority and allow exercising control over its activities related to the implementation of rights and obligations under the Agreement. Not later than by the terms specified below the Concessionaire shall submit to the Awarding Authority the following information:

No.	Information	Term
1.	Concessionaire’s audited financial statements and annual activity reports	Not later than <i>[specify the time period, recommended period – 130 (one hundred and thirty) days]</i> after the end of each financial year
2.	Report of inspection provided in Paragraph 28 of the Agreement concerning compliance with contractual requirements laid down in Paragraph 19.2	Not later than <i>[specify the time period, recommended period – 30 (thirty) days]</i> after reception of Awarding Authority’s written requirement to perform an inspection procedure.
3.	Reports on financial business model implementation, which contain information about the investments made and works completed, together with the concluded contracts, signed acts of work acceptance, received and paid invoices, as well as other information and documents required by the Awarding Authority	Not later than <i>[specify the time period, recommended period – 20 (twenty) days]</i> after each quarter of financial year
4.	Contracts with sub-suppliers	Within the terms provided in the Agreement
5.	Insurance agreements referred to in Paragraph 34 of the Agreement	Within the terms provided in the Agreement
6.	Agreements of the Concessionaire referred to in Paragraphs 20.1-20.6 and 21.2.8-21.2.8 of the Agreement	Within the terms provided in the Agreement
7.	Other information and/or documents required by the Awarding Authority, if they have or may have an impact on the fulfillment of obligations under the Agreement	Within a reasonable term specified in the Awarding Authority’s request

28. Verification of the Services provided

28.1. In cases referred to in the specifications or upon motivated request of the Awarding Authority, the Concessionaire is required at its own expense and with the help of independent financial, technical and legal experts, to perform inspection of compliance with the requirements stipulated in Paragraph 19.2 of the Agreement and provide its report to the Awarding Authority. If any cases of non-compliance to the requirements stipulated in Paragraph 19.2 of the Agreement are found, the Concessionaire is additionally required to provide the Awarding Authority with the reasoning.

28.2. Inspection (full or partial) of the Concessionaire activity’s compliance with the requirements laid down in Paragraph 19.2 of the Agreement can be also performed by the Awarding Authority, in presence of at least one of the following grounds:

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- 28.2.1. The report of compliance to the requirements laid down in Paragraph 19.2 of the Agreement presented by the Concessionaire is incomplete or contradictory;
 - 28.2.2. The Awarding Authority possesses information about potential breaches of requirements referred to in Paragraph 19.2 of the Agreement;
 - 28.2.3. State and/or municipal authority initiates inspections or investigations in respect of the Concessionaire's activities and issue penalties;
 - 28.2.4. Potential periodic inspections are provided for in the Specifications;
 - 28.2.5. The terms for Service requirement implementation provided for in the Specifications expire.
- 28.3. The Awarding Authority may perform inspection on its own or with the help of independent financial, technical and legal professionals. In the case of any breaches of the requirements laid down in Paragraph 19.2, the Awarding Authority may require the Concessionaire to cover the costs of such inspection.

XI. TRANSFER OF RIGHTS AND OBLIGATIONS

29. Transfer of rights and obligations

- 29.1. Without the prior consent of the other Party, the Awarding Authority is not entitled to assign its rights or obligations under the Agreement, unless imperatively required by the laws of the Republic of Lithuania and the EU legislation. In the latter case, the Awarding Authority is obliged to ensure that the Concessionaire does not suffer any damage and its legitimate expectations are not violated.
- 29.2. With the prior consent of the Awarding Authority the Concessionaire shall be entitled to assign its rights and obligations under the Agreement only to its department or another company which is a subsidiary company of the Concessionaire and the Concessionaire can directly influence it. *[if applicable, as defined in Paragraph 5 of the Law on Companies of the Republic of Lithuania]* In this case the Concessionaire shall provide the same assurance in advance for the proper fulfillment of obligations by the company adopting contractual rights and obligations. The entity adopting rights and obligations is required to provide the same assurance of fulfillment of obligations as does the Concessionaire. The assurance of obligation fulfillment provided by the Concessionaire shall be returned, but the Concessionaire remains jointly liable for the proper performance of the Agreement. After fulfillment of all these conditions, the entity having adopted the Concessionaire's rights and obligations continues to be the Concessionaire in terms of this Agreement.
- 29.3. The Concessionaire, except for the cases specified in Paragraph 31.2 and 33.2 of the Agreement, shall not be entitled to assign its contractual rights and obligations, but has the right to dispose of a part of its shares. The Concessionaire's part of shares can be transferred only with the prior written consent of the Awarding Authority, which shall be issued immediately provided the following conditions are satisfied:
- 29.3.1. Services are fully commenced; and
 - 29.3.2. It is ensured that for the period of the Agreement the investor will retain control over the Concessionaire in terms of the Law on Concessions.

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30. Temporary transfer of the Concessionaire's obligations

- 30.1. Should there be any exceptional circumstances due to which the Concessionaire (or Sub-contractors) cannot ensure a continuous and effective Work performance and/or Service provision, because it fails to fulfill any of its duties under the Agreement, the Awarding Authority has the right to provisionally, up to *[specify the time period, recommended period – 90 (ninety) days]*, take over and/or assign the implementation of such obligation or implementation of all obligations to the third parties, provided they cannot be implemented otherwise. The rights of the Awarding Authority referred to in Paragraph 30.1 of the Agreement shall not affect its other contractual rights.
- 30.2. Pursuant to Paragraph 30.1 of the Agreement the Concessionaire's obligations must be assigned to another entity with the written instruction of the Awarding Authority. In this case, the entity specified by the Awarding Authority shall be assigned all rights and obligations of the Concessionaire necessary for proper implementation of the assigned obligations, including the rights stemming from the Concessionaire's contracts with third parties. The Concessionaire must ensure proper assignment of Work completion and/or Service provision and immediately and properly execute the powers as well as perform other necessary actions.
- 30.3. In terms of Paragraph 30 of the Agreement the exceptional circumstances refer to:
- 30.3.1. fundamental breaches of the Agreement, as defined by Paragraphs 40.2 and 41.2, not eliminated within the specified term;
- 30.3.2. actual threat of severe damage exposed to the environment, public health and safety of persons or property which, under honest opinion of the Awarding Authority, the Concessionaire is unable to prevent;
- 30.3.3. Force Majeure, referred to in Paragraph 43 of the Agreement, due to which the Concessionaire fails to fulfill its obligations lasts longer than *[specify the time period, recommended period – 15 (fifteen) days]* and there is a reasonable basis to believe that the Concessionaire will not be able to continue to properly perform its obligations, however, the Awarding Authority or a third party may ensure fulfillment of the obligations;
- 30.3.4. Essential amendment of legal acts.
- 30.4. Fulfillment of the obligations assigned under Paragraph 30.1 of the Agreement is subject to the responsibility of the entity to which the relevant obligations are assigned. This entity is given all the information concerning fulfillment of the assigned obligations under the Agreement and this is not considered to be a violation of the protection of any Party's confidential information. *[If the Awarding Authority pays a Charge to the Concessionaire For the period during which the obligations under the Agreement are assigned to another entity the Concessionaire:*
- 30.4.1. *shall be paid the amount of payments to cover the obligations of the Concessionaire to the funders and 50 (fifty) percent of the income of the previous month, provided the exceptional circumstances were caused by the fault of the Awarding Authority;*
- 30.4.2. *shall not be paid any payments, provided the exceptional circumstances were caused by the fault of the Concessionaire;*

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30.4.3. shall be paid the amount of payments which would cover the obligations of the Concessionaire to the funders and part of the Concessionaire's expenses necessary for the period, but would not ensure any profit, provided the exceptional circumstances arose in the absence of either Party's fault or due to their equal fault.

The exact amount of payments in cases referred to in Paragraph 30.4 is approved by the commission provided for in Paragraph 53 of the Agreement.

30.5. At the end of the circumstances, due to which the corresponding obligation of the Concessionaire has been assigned or adopted, the provisionally assigned rights shall immediately be returned and the Agreement shall be carried out in the usual manner.

30.6. A provisional assignment of the Concessionaire's obligations shall not preclude termination of the Agreement in accordance with Chapter XVI.

31. Step-in possibility

31.1. The investor is entitled to exercise the Step-In right stipulated in Direct Agreement, in accordance with the requirements and order set out herein, as well as other rights of the Funder provided for in the Direct Agreement. The Awarding Authority is not allowed to take actions contrary to the Direct Agreement.

31.2. If the investor or the Concessionaire fail to comply with or do not perform their obligations under the Agreement, and this is considered to be a fundamental breach of the Agreement, the Investor, after obtaining prior written consent of the Awarding Authority and in accordance with Paragraph 33.2 of the Agreement and the conditions laid down in the Direct Agreement, shall be entitled to appoint another entity to execute the Agreement instead of the Concessionaire and fulfill the obligations of the Concessionaire to the Funder.

XII. SECURING THE IMPLEMENTATION OF OBLIGATIONS TO THE AWARDING AUTHORITY AND THIRD PARTIES

32. Securing the implementation of obligations

32.1. The Concessionaire must provide Implementation Assurance for Obligations, which during the period of providing Services is [specify the size, recommended size – 3 (three)] percent of the annual income of the Concessionaire, calculated in accordance with the determined Regulation in the mechanism for monitoring and deduction which is provided in the Annex of the Agreement;

32.2. Implementation Assurance for Obligations provided by the Concessionaire may be valid for less time than the term of Implementation Assurance for Obligations indicated in Tender Conditions which is provided in Annex 1 of the Agreement , but not for less than [specify the time period, recommended period – 3 (three) years]. In this case, the Concessionaire is required to provide a new equivalent Implementation Assurance for Obligations to Awarding Authority no longer than [specify the time period, recommended period – 15 (fifteen) days] before the expiry of the provided assurance. The Awarding Authority must confirm if Assurance is appropriate and equal no longer than [specify the time period,

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recommended period – 3 Business days] after receiving the assurance (or the inquiry about its appropriateness).

32.3. When the agreement expires or ensured obligations are implemented, the Awarding Authority refunds Implementation Assurance for the Agreement which was granted for it no longer than **[specify the time period, recommended period – 7 (seven) days]**.

33. Securing the implementation of obligations to third parties

33.1. Ensuring the implementation for his/her obligations or in other cases, the Concessionaire has the right to pledge their future income, obtained under the Agreement, and to transfer the request rights, which are related to the Agreement, to the Financier. In order to ensure the implementation of his/her obligations with his/her property, other ways of implementation for obligations, which is determined by the law, and for other persons the Concessionaire may only with the prior written consent of the Awarding Authority.

33.2. Shares of the Concessionaire shares or the rights, provided by these shares, may be pledged to the Financier with prior notification to the Awarding Authority by signing the Agreement between the Financier, Awarding Authority, Investor and Concessionaire. This arrangement shall state that for the recovery of shares of the Concessionaire is only possible by transferring them together with the rights and obligations of the Concessionaire under the Agreement. In this case the successor entities must comply with the pre-selection criteria required by a tender winner in relation to the implementation of the rest part of the Agreement. In the Agreement, the Financier is also required to provide an unconditional and irrevocable undertaking that he/she will inform the Awarding Authority about its intention to take advantage of the right to recover the pledged shares of the Concessionaire in written form. When the Financier used a pledge which is prescribed in Paragraph 33.2 of this Agreement and when the situation which is prescribed in Paragraph 40.1 of the Agreement occurred, the term indicated in that paragraph shall begin to run again.

33.3. Awarding Authority shall cooperate and not refuse without a significant reason to issue permits or approvals which will be necessary for the development of tools for the assurance of the Concessionaire obligations to the Financier, and which do not infringe the interests of Awarding Authority and do not contradict the law. The refusal of the Awarding Authority to issue permits or approvals must be motivated.

XIII. INSURANCE

34. Insurance and use of insurance pays

34.1. The Concessionaire shall sign Insurance agreements which are indicated in the Annex 7 of the Agreement and/or required by law at his/her own expense and risk for his/her own benefit, not less than the sum which is specified in Annex 7 of the Agreement and / or required by law and in accordance to terms, specified in the Annex 7. If the specified sum of insurance is larger than the sum of insurance which is required by law, the sum which is specified in the Annex 7 is applied. Insurance agreements have been enforced by implementing Preliminary conditions of the Agreement commencement. The Concessionaire must have valid Insurance

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agreements that is required to create by legislation during the whole period of full validity of the Agreement.

- 34.2. The Concessionaire shall submit the projects of the Insurance agreement for approval of the Awarding Authority before at least [specify the time period, recommended period – 30 (thirty) days] until the creation, renewal, emendation, expiry or modification of the Insurance agreement. The Awarding Authority shall provide his/her approval or motivated refusal to agree with the insurer, selected by the Concessionaire, or with conditions of the Insurance agreement to the Concessionaire no longer than [specify the time period, recommended period – 15 (fifteen) days] after receiving the projects of the Insurance agreements. In that case, if the Awarding Authority does not respond in time, it is considered that the Awarding Authority agrees with the projects of the Insurance agreements which were submitted.
- 34.3. Concessionaire shall submit the Awarding Authority copies or other documents evidencing the creation of the Insurance agreements and documents which verify that payments are paid no later than [specify the time period, recommended period – three (3) Business days] after the creation of the Insurance agreements. In that case, if the insurance payments are not paid at the same time as the Insurance agreements are created, the documents which verify the payment should be submitted to the Awarding Authority no later than [specify the time period, recommended period – three (3) Business days] after the payment.
- 34.4. If the Concessionaire fails to implement his/her obligation to create the Insurance agreements which are provided in Annex 7 of the Agreement, the Awarding Authority may form these agreements at the expense of the Concessionaire.
- 34.5. Insurance agreements may be not created only when the Insurance agreement is not possible to be created because of the situation in the insurance market, or when the costs of such insurance agreement exceed [specify the limit]. The existence of the conditions which are indicated in the Paragraph 34.5 of this Agreement should be proven by the Party relying on them and to get the approval of the other Party.
- 34.6. The Parties shall take all appropriate actions or refrain from certain actions, if because of these actions and / or inactions insurer would get the right to terminate the Insurance agreements, suspend their validity or in the event of damage the Concessionaire refuse to pay insurance payments or pay much less due to the fact that the damage has been recognized as an uninsured event because of the actions and / or inactions of the Parties.
- 34.7. The occurrence of an insured event when the Property was damaged or perished, the Concessionaire appoints the funds which are received as an insurance compensation for the perished property appoints to the reconstruction / replacement with the equivalent Property.
- 34.8. If it is not possible or appropriate to restore / replace the Property with an equivalent Property, the insurance payment shall be used to pay damages. If the insurance payment is not enough to compensate the losses, the rest part should be paid off by the Party which is responsible for the insured event. If the whole insurance payment is not consumed by paying off losses or restoring / replacing the Property with the equivalent property, the residual is used under the procedure

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for the Mechanism of the Monitoring and Deduction which is indicated in the Annex 3 of this Agreement.

- 34.9. The Concessionaire has the right to use received insurance payments not only for the rehabilitation of property if a different use of funds would provide greater economic and social benefits and the approval for that way of funds use is received by the Awarding Authority.
- 34.10. Signing agreements with Sub-suppliers, the Concessionaire must ensure that Sub-suppliers would insure and have their civil liability insurance for damage which is caused to third parties and their property for the whole term of the agreement. The sum of this insurance shall be not less than **[indicate the sum]** euro.
- 34.11. Subcontractors may not have the required protection of insurance if the Insurance agreements Protection of the Concessionaire is valid for the damage by the action or inaction of the Sub-suppliers.
- 34.12. The implementation of the obligations or failure to meet them which are indicated in the Paragraph 34 of the Agreement does not release the Concessionaire from the implementation of his/her obligations under the Agreement and responsibility.

XIV. INTELLECTUAL PROPERTY

35. The obligation to comply with the requirements of the protection of Intellectual Property

35.1. Parties must meet the requirements of the intellectual property protection.

36. Licenses, awarded by the Concessionaire

- 36.1. When the Agreement expires, the Concessionaire provides to the Awarding Authority the transferable, royalty-free and non-exclusive license of indefinite duration (which grants the right to grant sub-licenses) to use all intellectual property rights that are granted to the Concessionaire and which are necessary for the Provision of Services and for the Management and Maintenance of the Property.
- 36.2. If any intellectual property rights, which are needed for the Provision of Services and for the Management and Maintenance of the Property, are owned by third parties when the Agreement expires, the Concessionaire is required to take all reasonable tools at his/her expenses for the benefit of the Awarding Authority to acquire a part of such intellectual property rights which would be sufficient for the Provision of Services and for the Management and Maintenance of the Property.
- 36.3. Concessionaire must compensate all the losses for the Awarding Authority which arise from any infringement of intellectual property rights which is associated with the Provision of Services and Management and Maintenance of the Property.

37. Licenses, awarded by the Awarding Authority

- 37.1. The Awarding Authority provides to the Concessionaire the transferable, royalty-free and non-exclusive license (which grants the right to grant sub-licenses) to use all intellectual property rights which are owned by the Awarding Authority and are necessary for the project, construction, financing, Provision of Services or

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Management and Maintenance of the Property in order to implement the Agreement, during the whole period of the Agreement.

37.2. Awarding Authority must compensate all the losses for the Concessionaire which arise from any infringement of intellectual property rights, which is indicated in the Paragraph 37 of the Agreement

XV. AMENDING THE AGREEMENT

38. Cases of the amending the Agreement

38.1. The parties may agree on a Agreement, including its annexes and amendments only if such amendments do not contradict with the public interest, do not change the essential obligations, which are assumed under the Agreement (except cases which are allowed by the Agreement), and the distribution of risk between the parties.

38.2. Cases, when regulations of the Agreement may be changed, are the following:

38.2.1. if an Essential amendment of legal acts occurs;

38.2.2. if the value of the specific Agreement amendment can be expressed in monetary terms and the amendment does not exceed 10% of the Agreement value and the procurement thresholds, which are indicated in the EU legislation under the condition that such amendment of the Agreement does not change the nature of the Agreement. Being a number of these variations in a row, the value must be calculated according to the total value of such transfers;

38.2.3. if the following conditions are implemented:

38.2.3.1. a need to make an amendment due to circumstances which can not be foreseen by the Awarding Authority, the Investor or the Concessionaire who act in a proper and diligent way;

38.2.3.2. the amendment does not change the general nature of the Agreement;

38.2.3.3. the increase of the prices for the Works or Services does not exceed 50% of the initial value of the Agreement. Making a few changes in a row, this limit is applied to each value of the amendment.

38.3. Minor (technical) Agreement amendments may be made in all cases, but they can not contradict with the principles of equality, non-discrimination, mutual recognition, proportionality and transparency and with the purpose of the rational use of resources.

39. Amending the Agreement as the result of essential changes of the applicable legal acts or due to the circumstances, stated in Paragraphs 38.2.2 and 38.2.3

39.1. The cases of the Agreement amendment which are indicated in the Paragraphs 38.2 of the Agreement shall not relieve the Concessionaire from the obligation to implement his/her obligations under this Agreement, except the case when it is not possible to implement his/her obligations because of the Dismissal case or the Compensation event (by the duration of their term) and because of the cases when the implementation of such obligations would violate imperative requirements of legislation.

39.2. When an Essential amendment of legal acts occurs or due to circumstances, which are indicated in Paragraphs 38.2.2 and 38.2.3 of the Agreement, and which affect

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negatively the implementation of the rights and obligations of the Concessionaire under the Agreement, the Concessionaire is required to take all available tools to ensure that potential damage is minimized. If the Essential amendment of legal acts or circumstances which are indicated in Paragraphs 38.2.2 and 38.2.3 of the Agreement are favorable to the implementation of the rights and obligations of the Concessionaire under the Agreement, he/she must exert all efforts in order to achieve maximum economic and social benefits to the Awarding Authority and the end-users of Services by using new opportunities.

39.3. When an Essential amendment of legal acts occurs or due to circumstances, which are indicated in Paragraphs 38.2.2 and 38.2.3 of the Agreement, and in order to restore the economic balance or the balance of the rights and obligations of the Parties, which are consolidate in the Agreement, each Party shall have the right to request amendments to the provisions of the Agreement. Amending the provisions of the Agreement, the Parties shall maintain the same rights and obligations and / or economic balance, especially – the Return on Investment, which was before the Essential amendment of legal acts or before the rise of the circumstances which are indicated in Paragraphs 38.2.2 and 38.2.3 of the Agreement.

39.4. When the Essential amendment of legal acts occurs or the circumstances, which are indicated in Paragraphs 38.2.2 and 38.2.3, rise:

39.4.1. Either Party may submit a notification to the other Party by rounding the way the consequences of such the amendment can not be eliminated or mitigated without the Amendment of the Agreement Provisions;

39.4.2. During **[specify the time period, recommended period – 30 (thirty) days]** after receiving the notification, which is indicated above, Parties shall meet in order to agree on the Essential amendment of legal acts or on the recognition of the events occurrences which are indicated in Paragraphs 38.2.2 and 38.2.3 of the Agreement, on their impact on the rights and obligations of the parties which are arising from the Agreement the rights and obligations and on required amendment. If the Parties fail to agree on their effects or the necessary amendments in the provisions of the Agreement, during **[specify the time period, recommended period –60 (sixty) days]** after receiving the first notification, any of the Parties may initiate the settlement of the Agreement on the basis of the Paragraph 55 of the Agreement which indicates the dispute settlement procedure.

XVI. TERMINATION OF THE AGREEMENT

40. Basis for termination of the Agreement due to circumstances, depending on the Concessionaire or the Investor

40.1. The Awarding Authority has the right to unilaterally, without going to court or arbitration, to terminate the Agreement, when the Concessionaire or the Investor fails to fulfill or improperly fulfils the obligations under the Agreement and it is the essential violation of the Agreement, and the Awarding Authority had notified these Parties before of such non-performance or improper performance of the Agreement, but the defaulting Party or the Party, improperly performing the Agreement has not eliminated the essential violation of the Agreement in such a manner and in such a reasonable period, which were provided in such a notification, or it is impossible to eliminate such a violation or the elimination has no meaning any more. The period for the elimination of such violations cannot be

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set shorter than *[specify the time period, recommended period – 90 (ninety) days]* in case of the violation, related to the provision of the Services and *[specify the time period, recommended period – 120 (one hundred and twenty) days]*, in case of the violation, related to the performance of the Works.

40.2. The Parties agree that only the following violations will be considered to be the essential violations in respect to Paragraph 40.1 of the Agreement:

40.2.1. the validity date of the Agreement, provided in Paragraph 3.1 of the Agreement, is delayed more than *[specify the time period, recommended period – 60 (sixty) days]* or the validity term of the Agreement, in the case, specified in Paragraph 3.3 is not renewed. The Parties may not wait for the end of this term, if it is reasonable to decide that the Preconditions of the Agreement validity, specified in Paragraph 3 of the Agreement will not be fulfilled during this term. Paragraph 40.2.1 of the Agreement shall not apply, if the term is violated due to the fact that the Assigned Property is not transferred to the Concessionaire due to the circumstances, not depending on the Investor or the Concessionaire;

40.2.2. the Concessionaire has not begun to provide the Services at the full scope provided for more than *[specify the time period, recommended period – 60 (sixty) days]* from the term, specified in Paragraph 4 of the Agreement, with respect to its renewals.

40.2.3. the Concessionaire shall not submit to the Awarding Authority a new guarantee of the fulfillment of Obligations at the term, specified in Paragraph 32.1 of the Agreement;

40.2.4. the Concessionaire delays to make the Investments, provided in the Financial Business Model for more than *[specify the time period, recommended period – 60 (sixty) days]* and that hinders to ensure the Provision of the Services, specified in paragraph 19.2 of the Agreement;

40.2.5. the Concessionaire violates the statements and guarantees, specified in paragraph 8 of the Agreement;

40.2.6. the Concessionaire shall not interrupt the use of the Assigned Property for other aims, than the fulfillment of the Agreement, if the Awarding Authority requests so in accordance with the established procedure of Paragraph 10.6 of the Agreement;

40.2.7. if the deviations from the requirements, set in the Specifications of the Provisions of the Services, lasts longer than the terms, specified in Paragraph 19.4 of the Agreement;

40.2.8. the Concessionaire exceeds the maximum number of penalty points, imposed in accordance with the procedure, established in the Monitoring and Deduction Mechanism, specified in Annex 3 of the Agreement, allowed to be collected during a certain period in accordance to this procedure;

40.2.9. the Concessionaire or its managers, officials or employees are convicted by a court as guilty of making a criminal offence, related to inappropriate Provision of the Services (including such offences as a bribery and subornation). The Agreement termination on the basis of Paragraph 40.2.9 of the Agreement is impossible, if within *[specify the time period, recommended period – 120 (one hundred and twenty) days]* from the enactment of the judgment of criminal conviction (regardless of the possibility to bring an appeal or a cassation appeal), such a

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manager, official or an employee shall be dismissed from work in the Concessionaire's and the Associated companies;

40.2.10. the Concessionaire violates the obligations, specified in Paragraph 29.2 of the Agreement in respect of the transfer of its rights and obligations;

40.2.11. the validity of the Insurance agreements, specified in Annex 7 of the Agreement is expired or terminated and / or the minimum amount of insurance benefit, specified in this annex, cannot be reached by the concluded Insurance agreements;

40.2.12. without the receipt of the Awarding Authority's prior consent, specified in paragraph 33.1 of the Agreement, the Concessionaire had pledged or transferred its property rights or otherwise ensured the fulfillment of its obligations;

40.2.13. when fulfilling its obligations in accordance with Chapter 25.1.3 of the Agreement or other provisions of the Agreement, the Concessionaire provides to the Awarding Authority knowingly false or incomplete information, which is required in order to ensure the control of the fulfillment of the Agreement, carried out by the Awarding Authority.

40.3. In addition to the cases, provided in Paragraph 40.1 of the Agreement, the Awarding Authority has the right to (unilaterally) terminate the Agreement, without applying to the court or arbitration, if:

40.3.1. the liquidation, bankruptcy, insolvency, restructuring or analogous procedures are initiated to the Concessionaire, and the Awarding Authority has the reason to believe that the obligations under the Agreement will not be fulfilled in accordance with the requirements, established under the Agreement;

40.3.2. during the Tender or the concluding time of the Agreement, the Concessionaire submitted to the Awarding Authority false data, related to its financial condition and / or economic activity and / or any information, submitted to the Awarding Authority, and that was established after concluding the Agreement.

40.4. The Awarding Authority shall notify the other Party about the termination of the Agreement on the basis, specified in Paragraph 40.1 of the Agreement not later than *[specify the time period, recommended period – 60 (sixty) days]*, and in the cases, provided in Paragraph 40.3 of the Agreement – not later than before *[specify the time period, recommended period – 30 (thirty) days]*.

41. Basis for termination of the Agreement due to circumstances, depending on the Awarding Authority

41.1. The Concessionaire has the right to unilaterally, without going to the court or arbitration, to terminate the Agreement, when the Awarding Authority fails to fulfill or improperly fulfils the obligations under the Agreement, and this is the essential violation of the Agreement, and the Concessionaire had notified the Awarding Authority before about the failure to fulfill or the improper fulfillment of the Agreement, but the Awarding Authority failed to eliminate the essential violations of the Agreement in such a manner and during such a reasonable period, which had been provided in such a notification, or such a violation cannot be eliminated, or the elimination has no meaning. The period, established for the elimination of the Awarding Authority's violations cannot be shorter than *[specify the time period, recommended period – 60 (sixty) days]*.

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41.2. The Parties agree that only the following violations will be considered to be the essential violations of the Agreement:

41.2.1. the Awarding Authority is late for more than [*specify the time period, recommended period – 60 (sixty) days*] to pay to the Concessionaire any required payment under the Agreement;

41.2.2. the Awarding Authority violates the statements and guarantees, provided in Paragraph 7 of the Agreement.

41.3. The Concessionaire shall notify the Awarding Authority about the Agreement termination on the basis of Paragraph 41.1 of the Agreement, not later than before [*specify the time period, recommended period – 30 (thirty) days*].

42. Termination of the Agreement without any default on behalf of the Parties

42.1. The Parties have the right to unilaterally, without going to the court or arbitration, to terminate the agreement, when the fulfillment of the Agreement becomes impossible due to the circumstances, which could not be controlled by the Party, unilaterally terminating the Agreement or to reasonably foresee during the conclusion of the agreement, and could not prevent from the occurrence of these circumstances or their consequences, as specified in Paragraph 43 of the Agreement. In this case, each of the Parties has the right to terminate the Agreement, if due to such circumstances, the essential obligations under the Agreement could not be fulfilled longer than [*specify the time period, recommended period – 160 (one hundred and sixty) days*] in a row.

42.2. The Party, unilaterally terminating the Agreement, shall notify another Party about the termination of the Agreement on the basis, specified in Paragraph 42.1 of the Agreement not later than before [*specify the time period, recommended period – 60 (sixty) days*].

42.3. The Parties have the right to terminate the Agreement on the mutual agreement.

43. Force Majeure Circumstances

43.1. Force Majeure circumstances mean any event (for example, a war, rebellion, civil strike or unrest, embargo, fire, earthquake, hurricane, volcano eruption and other natural disasters), which cannot be reasonably controlled by the Party, that must fulfill a concrete obligation, and which could not be foreseen or avoided by this Party, and which makes it impossible to fully or partially to fulfill the above mentioned obligation of the Party. The lack of funds or the impossibility to fulfill financial obligations is not considered to be Force Majeure circumstances.

43.2. The Party's failure to fulfill obligations, provided in the Agreement, under the Force Majeure, is not considered to be the violation of the Agreement or default, and it is not subject to any sanctions, if the Party, which experienced the effect of Force Majeure circumstances, made all possible efforts to reduce the damage, caused by such circumstances or used all the necessary measures in order to fulfill its obligations under the Agreement. The Party which could not fulfill the obligations shall prove the circumstances, specified in Paragraph 43.2 of the Agreement.

43.3. In the event of Force Majeure, the party, which experienced its effect shall submit to other Parties a primary written notice about the occurrence of these

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circumstances and a brief description of their content not later than within [*specify the time period, recommended period – 3 (three) Business days*] from the moment of occurrence of the circumstances.

- 43.4. Not later than within [*specify the time period, recommended period – 5 (five) Business days*] after the submission of the primary notification, the Party, which experienced Force Majeure effect, shall submit a detailed written report to other Parties. It must contain all the information, related to disorders of the fulfillment of obligations under the Agreement, such as: Force Majeure effect on the Party's ability to fulfill its obligations under the Agreement, the dates of the emergence and the expected disappearance of Force Majeure and the period, necessary for the eliminating of the consequences, caused by these circumstances, etc.
- 43.5. At the end of Force Majeur, not later than within [*specify the time period, recommended period – 3 (three) days*], the Party, which experienced its effect, shall notify the other parties of the Agreement and shall indicate the date of the renewal of the fulfillment of its obligations.
- 43.6. The terms of the fulfillment of the respective obligations of the Party, which is unable to fulfill its obligations under the Agreement due to Force Majeure, shall be renewed as long as it is objectively necessary for the Force Majeure influence, but with regard to the maximum validity term of the Agreement, specified in Paragraph 6 of the Agreement.

44. Compensation in case of termination of the Agreement due to circumstances, depending on the Concessionaire or the Investor

- 44.1. If the Agreement is terminated on the basis, specified in Paragraph 40 of the Agreement due to the Concessionaire or the Investor's fault, the Awarding Authority pays to the Concessionaire only the compensation, which is calculated by the following formula:

NK = TV – D – B – DIGN – VN, where:

NK – the Agreement termination compensation, which cannot be larger than the value of the Assigned Property, returned to the Awarding Authority on the day of its return:

TV – the property value;

D – compulsory insurance benefits, received by the Concessionaire for the termination of the Agreement under the Agreement;

B – penalties to be paid both under the Agreement, and under the Monitoring and Deduction Mechanism, provided in Annex **Error! Reference source not found.** of the Agreement, not yet included / unclaimed from the Concessionaire;

DIGN - the part of the rate of return of Investments, exceeding the desired rate of return of Investments, indicated in the Proposal, which was received by the Investor and (or) the Concessionaire during the validity of the Agreement until the submission of the notification about the Agreement termination in accordance with the procedure, specified in Paragraph 40.4 of the Agreement, regardless of the form, in which DIGN is paid to the Concessionaire's shareholders.

VN – direct losses, incurred by the Awarding Authority due to the Agreement termination. The Parties declare that the Awarding Authority's direct losses contain the payment for legal, economics and other related fields experts, whom the

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Awarding Authority involved in the conclusion of the Agreement and will involve, when the basis for the Agreement termination is present. Only such amount of direct losses can be immediately deducted from the Agreement termination compensation, due to the amount of which, the Awarding Authority or the Concessionaire agree in writing within the corresponding term of warning concerning the Agreement termination, specified in Paragraph 40.4 of the Agreement, not later than *[specify the time period, recommended period – 30 (thirty) days]* until the Agreement termination. If during this term it is impossible to agree concerning the amount of direct losses, not later than within *[specify the time period, recommended period – 15 (fifteen) days]* by mutual agreement, the expert shall be appointed in order to assess the amount of direct losses. Only an impartial and interest-free person with competence to assess the Awarding Authority's amount of direct losses may be appointed as an expert. If the Awarding Authority and the Concessionaire agree with the amount of direct losses, assessed by the appointed expert, the Agreement termination compensation shall be reduced by this amount. If any Party disagrees with the amount of the direct losses, assessed by the appointed expert, within *[specify the time period, recommended period – 15 (fifteen) days]* from the notification about the assessed amount it has the right to apply to the Dispute Settlement Institution, specified in Paragraph 55 of the Agreement concerning the basic settlement of the dispute. In this case, the Agreement termination compensation is reduced by the amount of direct losses, assessed by the expert and disputed. Until the settlement of the dispute, this amount shall be transferred to the deposit account, for the amount of which, the deposit account holder pays interest. In that case, if an expert is not appointed within the established time, the Parties apply to the Dispute Settlement Institution, specified in Paragraph 55 of the Agreement. In this case, the amount of the Agreement termination compensation to be paid may be reduced only by such direct losses, the amount of which may be proved by documents during the calculation of the compensation. Until the settlement of the dispute, this part of disputable amount of direct losses shall be transferred to the deposit account, for the amount of which the deposit account holder pays interests.

44.2. The Commission, specified in Paragraph 44 of the Agreement, shall calculate the exact amounts, specified in Paragraph 53 of the Agreement, on the basis of the Concessionaire's documents of financial accountability, the accounts of the property appraisers or audit reports, the results inspections, carried out by the authorized institutions or the independent experts' conclusions.

44.3. The amount of compensation includes the Concessionaire's and Investor's any losses or misses, related to the Agreement termination and the Investor and Concessionaire's any other and (or) bigger losses (if they would be present or would occur), shall not be compensated and the Investor and Concessionaire refuses them all by the Agreement.

45. Compensation in case of termination of the Agreement due to circumstances, depending on the Awarding Authority

45.1. If the Agreement is terminated on the basis, specified in Paragraph 41 of the Agreement, due to the Awarding Authority's fault, the compensation shall be paid to the Concessionaire, calculated according to the following formula:

NK = TV + FG + I – D - B, where:

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NK – the Agreement termination compensation, which cannot be larger than the value of the Assigned Property, returned to the Awarding Authority on the day of its return:

TV – the property value;

FG – the Funder’s granted financing returning costs (including, but not limiting to the related costs, interests and the costs of termination of financial agreements), not exceeding usual practice of relevant market;

I – the Concessionaire’s paid shares, after subtracting the paid distribution profit, and the amount of the provided and not yet returned subordinated loans;

D – compulsory insurance benefits, received by the Concessionaire for the termination of the Agreement under the Agreement;

B – penalties to be paid both under the Agreement, and under the Monitoring and Deduction Mechanism, provided in Annex **Error! Reference source not found.** of the Agreement, not yet included / unclaimed from the Concessionaire;

45.2. The commission, provided in Paragraph 45 of the Agreement, shall calculate the exact amounts, specified in Paragraph 53 of the Agreement, on the basis of the Concessionaire’s documents of financial accountability, the accounts of property appraisers or audit reports, the results of inspections of authorized institutions or the conclusions of independent experts.

45.3. The amount of compensation also includes the Concessionaire’s and Investor’s any losses or misses, related to the Agreement termination and the Investor and Concessionaire’s any other and (or) bigger losses (if they would be present or would occur), shall not be compensated and the Investor and Concessionaire refuses them all by the Agreement.

46. Compensation in case the Agreement is terminated without any fault on behalf of the Parties

46.1. In the case, if the Agreement is terminated on the basis, specified in Paragraph 42.1 of the Agreement, the Awarding Authority shall pay the compensation to the Concessionaire, which is calculated by the formula:

$NK = 0,5*(TV+FG) - D - B$, where:

NK – the Agreement termination compensation, which cannot be larger than the value of the Assigned Property, returned to the Awarding Authority on the day of its return:

TV – the property value

FG – returning costs of the financing, granted by the Funder (including, but not limiting to the related costs, interests and the costs of termination of financial agreements), not exceeding usual practice of relevant market;

D – compulsory insurance benefits, received by the Concessionaire for the termination of the Agreement under the Agreement;

B – penalties to be paid both under the Agreement, and under the Monitoring and Deduction Mechanism, provided in Annex **Error! Reference source not found.** of the Agreement, not yet included / unclaimed from the Concessionaire.

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46.2. The Commission, provided in Paragraph 52.1 of the Agreement, shall calculate the exact amount, on the basis of the Concessionaire's documents of financial accountability, the accounts of property appraisers or audit reports, the results of inspections of authorized institutions or the conclusions of independent experts.

46.3. The amount of compensation includes the Concessionaire's and Investor's any losses or misses, related to the Agreement termination and the Investor and Concessionaire's any other and (or) bigger losses (if they would be present or would occur), shall not be compensated and the Investor and Concessionaire refuses them all by the Agreement.

47. Payment of the Agreement termination compensation

47.1. Termination compensations, that must be paid by the Awarding Authority according to Paragraphs 44.1 and 46.1 of the Agreement, shall be paid not later than within [*specify the time period, recommended period – 30 (thirty) days*] from the day of the Agreement termination or, by the choice of the Awarding Authority, they shall be paid in parts, which are not less than the Concessionaire needs to return according to the agreements concerning the financing, provided by the Funder and by the terms, established in such agreements. In this case, all the amount of the compensation shall be paid to the Concessionaire within the term, which is not longer than the remaining validity term of the Agreement, if it would not be terminated. Annual interest, equal to the Concessionaire's annual interest, paid to the Funder, shall be paid for the compensation, paid in parts.

47.2. The compensation that shall be paid by the Awarding Authority in accordance with Paragraph 45.1 of the Agreement, must be paid in a lump sum not later than within [*specify the time period, recommended period – 90 (ninety) days*] from the moment of signing the Property restitution act.

47.3. The termination compensation, provided in Paragraphs 44, 45 and 46 of the Agreement is the only compensation or the Parties' other form of payment for one another for the Agreement termination. Any other payments for the Agreement termination shall not be carried out.

XVII. THE PARTIES' LIABILITIES

48. The parties' mutual liability

48.1. If a Party is late to fulfill its contractual obligations by the deadlines set in the Agreement, or if the Party within [*set a deadline, it is recommended - 30 (thirty) days*] (or another reasonable term indicated by the other Party), in the manner specified in the Agreement, fails to remedy the situation after the other Party informs the first Party of any breach of the Agreement, the Party in respect to which the obligations are to be met may require the Party at fault to pay a fine amounting to [*determine the amount of the fine*] for each violation for each day of delay. The fines provided in Paragraph 48.1 of this Agreement shall be imposed only if the Agreement does not provide other sanctions for such a breach.

48.2. If the Concessionaire fails to fulfill the Investment until the date specified in Financial Business Model and the Specifications, the Concessionaire shall pay [*determine the amount, it is recommended – 0,02 (two hundredths) per cent*] of interest on the past due amount of the Investment to be carried out, for each day of delay until the removal of the violation. The amount of such interest to be paid for

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one violation can not exceed [*determine the amount, it is recommended - 5 (five) percent*] of the past due amount of the Investment to be performed.

48.3. If, assessing the conformity of the Concessionaire's activities with the Requirements of the Provision of Services set out in the Specifications, a non-compliance with these requirements is established, the Concessionaire shall be subject to the measures and responsibilities foreseen in the Mechanism of Monitoring and Deductions set forth in Annex 3 of the present Agreement.

48.4. The application of liability foreseen in this Paragraph 48 of the Agreement shall not exempt the Parties from their responsibility to fulfill their obligations under the Agreement, does not change the payment obligations set forth in Paragraph IX of the Agreement and does not withdraw the right to terminate the Agreement in accordance with the terms laid down in Paragraph XVI of the Agreement.

48.5. If the Concessionaire fails to fulfill his obligations which are secured by Security Financial Collateral Arrangement, or in the case referred to in Paragraph 40 of the Agreement, the Awarding Authority shall have the right to exercise the obligations provided in the Collateral Arrangement. In this case, the Collateral Arrangement shall be used to cover (i) the losses resulting from the Concessionaire's fault, (ii) the amounts payable by the Concessionaire in accordance with this Paragraph 48 of the Agreement and (iii) other Concessionaire's financial commitments to the Awarding Authority under the Agreement. After the use of the Collateral Arrangement, the remaining amount shall be returned to the Concessionaire during [*specify the time period, recommended period – 30 (thirty) days*].

48.6. In accordance with this Paragraph 48 of the Agreement, either Party is subject to liability coverage, the amount of which for one breach cannot exceed [*determine the amount, it is recommended - 3 (three) per cent*] of Concessionaire's annual income of the previous year.

48.7. The Parties shall indemnify each other only direct damages. As far as this does not conflict with existing laws, the liability provided in this Paragraph is assumed to be the Parties' minimal losses discussed in advance, and the only compensatory measure allowed.

48.8. Before carrying out the payments under this Paragraph, the Parties shall have the right to set off all or part of mutual payments, as far as this does not conflict with the mandatory provisions of the legislation of the Republic of Lithuania.

48.9. The fines and interest provided in this Paragraph must be paid within [*set a deadline, it is recommended - 30 (thirty) days*] from the day when the cause for such payments arises.

48.10. The indemnification for losses and penalties shall not release the Party from its commitment to fulfill the relevant obligation.

49. The Concessionaire's obligation to cover losses

49.1. The Concessionaire secures and prevents from , - if necessary, compensates for - all losses, incurred by the Awarding Authority, its employees or representatives, that may arise from any personal injury or death, property damage or loss or other reasons related to the fulfillment or breach of Concessionaire's obligations under the Agreement, including Assets management, use and maintenance.

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- 49.2. The Concessionaire's duty referred to in Paragraph 49.1 of the Agreement to protect from or compensate for losses does not arise only if such losses result from the Awarding Authority's action or failure to act resulting in breach of the Agreement.
- 49.3. If the Awarding Authority receives any notification, requirement, claim or other document suggesting that the Awarding Authority shall or may be required to compensate for the losses referred to in Paragraph 49.1 of the Agreement, the Awarding Authority is bound to immediately inform the Concessionaire by sending him a notification accompanied by the documents received. The Concessionaire shall not be liable for any losses that arise from unreasonable delay in the notification.
- 49.4. The Concessionaire is required to resolve the question of the validity of the claim for damages and, if necessary, to compensate for these losses. If the Concessionaire believes that the claim for damages is unjustified, he shall have the right to use all legal remedies which could be used by the Awarding Authority, if liability would not be transferred to the Concessionaire. In this case, the Awarding Authority shall provide the Concessionaire with all relevant powers. If the Awarding Authority does not provide the Concessionaire with the powers, the Concessionaire is exempted from liability under Paragraph 49 of this Agreement.

XVIII. OTHER PROVISIONS

50. Confidentiality

- 50.1. During the validity period of this Agreement and 2 (two) years after the expiry of this Agreement the Parties shall maintain the confidentiality of the contents of this Agreement, discussions and negotiations over the Agreement, as well as any other written, oral or other information or documents directly or indirectly related to the Agreement, received from the other Party, its employees or advisers as far as it does not contradict the requirements of the Law on Concessions (hereinafter - the Confidential Information).
- 50.2. This information is not considered Confidential Information:
- 50.2.1. the object of the Agreement – the composition and scope of the Services and Work covered by the Agreement;
 - 50.2.2. the validity period of the Agreement, including the date of its conclusion;
 - 50.2.3. the contracting Parties;
 - 50.2.4. the value of the Agreement;
 - 50.2.5. the value of the investments;
 - 50.2.6. the Mechanism of Monitoring and Deductions;
 - 50.2.7. amendments to the Agreement;
 - 50.2.8. findings of the audits on Concessionaire's accounts;
 - 50.2.9. payments, penalties and compensations paid by the Parties;
 - 50.2.10. The Concessionaire's annual financial account.
- 50.3. Neither Party has the right to disclose to third parties any part of the Confidential Information without the prior written consent of the other Party, except in the

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following cases when the disclosure of the Confidential Information shall not be deemed a breach of the Agreement:

- 50.3.1. If the Parties agree in writing to report to the media or to a third party;
- 50.3.2. It is necessary to disclose the Confidential Information in order to properly fulfill the obligations undertaken by the Parties under this Agreement (in the latter case, however, the information may be disclosed only to the extent necessary for the fulfillment of those obligations);
- 50.3.3. The Confidential Information is disclosed to Related Companies;
- 50.3.4. Disclosure of the Confidential Information is required by applicable law;
- 50.3.5. The Parties reveal the Confidential Information to its employees, the lawyers, auditors, advisors and / or other consultants selected by a Party (in the latter case, the Party is liable to the other Party if its employees, advisers or consultants violate the obligation of confidentiality set out in Paragraph 50.1 of the present Agreement).

51. Notifications

51.1. In order to be considered duly served and to cause consequences envisaged, notifications related to the Agreement must be made in writing, in *[specify the language or languages]* language (or translated and approved by the translator's signature and seal) and:

- 51.1.1. delivered in person or
- 51.1.2. sent by pre-paid registered post or
- 51.1.3. sent by courier, or
- 51.1.4. by fax (after that it is mandatory to submit the notification in other manner provided in Paragraph 51.1 of the Agreement).

51.2. All notifications related to this Agreement shall be sent to the Parties at the following addresses:

Party	Contact details
[The Awarding Authority]	To: [Responsible person's name] Address: [Address] Fax No .: [Fax number]
[if any The Transferor]	To: [Responsible person's name] Address: [Address] Fax No .: [Fax number]
[The Concessionaire]	To: [Responsible person's name] Address: [Address] Fax No .: [Fax number]

Colour explanation: *Blue* – comments or explanations, which are to be deleted;
Green – alternative provisions, which do not need to be changed;
Red – the information to be entered.

Party	Contact details
[The Investor]	To:[Responsible person's name] Address: [Address] Fax No .:[Fax number]

51.3. The Parties shall inform each other and other interested persons of any change of the contact persons or their contact details as soon as possible, but not later than *[set a deadline, it is recommended - 5 (five) days]*. Before such information, notifications sent at the addresses indicated above are deemed properly submitted and the persons indicated shall be considered as having the right to represent that Party.

52. Amendments

52.1. Any amendments, supplements, or annexes to the Agreement shall be valid only if they are executed in one or several written documents signed by all the Parties, the rights and obligations of which are related to these amendments, supplements or annexes.

53. Resolution of disputes, arising when performing the Agreement

53.1. In cases where the Agreement provides reference to this Paragraph 53.1 of the Agreement, decisions are taken by a Commission composed of the Concessionaire's representatives on the one side, and the Awarding Authority's representatives on the other side. The Commission's decisions are binding on the Parties.

53.2. The Commission consists of 6 (six) representatives - 3 from the Concessionaire's and 3 from the Awarding Authority's side. The Concessionaire and the Awarding Authority shall appoint three representatives to the Commission - legal, financial and technical experts in the field; each Party shall appoint its representatives to the Commission, within *[set a deadline, it is recommended - 5 (five) Business days]* from the date of signing the Agreement and inform the other Party of the designated representatives. In case of any member's of the Commission resignation or inability to perform his duties, the Party that appointed the member undertakes to replace the member that resigned or is unable to perform his duties with a new member within *[set a deadline, it is recommended - three (3) Business days]* from the disclosure of the circumstances.

53.3. The Commission's decisions shall be made by open vote. The Commission's meeting may take place and decisions can be made if the meeting is attended by at least 4 members of the Commission. The Commission's decisions shall be adopted in an open vote by a majority of the votes of the members present at the meeting provided that not only representatives appointed to the Commission by one Party voted for the decision. The Commission's meetings and the vote must be recorded and signed by all the members of the Commission present at the meeting. In the event of a tied vote, the chairman shall have the casting vote. The Commission's meetings and the vote must be recorded and signed by all of the members of the Commission.

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53.4. The Commission shall establish its internal organization, and the chairman of the Commission – the Awarding Authority’s representative, responsible for the organization and execution of the Commission’s meetings - shall be elected during the first meeting, that is to be held **on[*date*], [*time*], at: [*address*]**. The chairman of the Commission, responsible for the organization and execution of meetings, shall be elected by the Commission at its first meeting.

53.5. In the event that the Commission is not formed in accordance with Paragraph 53.2 of the Agreement, it cannot make decisions at two consecutive meetings of the Commission because of lack of a quorum necessary for decision-making, or if a submitted issue to be resolved by the Commission is not resolved within **[*set a deadline, it is recommended - 30 (thirty) days*]** from the date of its submission (unless a different period is provided in the Agreement), the issue shall be referred to the authorized representatives of the Parties. If the authorized representatives of the Parties do not reach an agreement on the issue referred within the additional **[*set a deadline, it is recommended - 15 (fifteen) days*]** term, the contentious issue is submitted to other authorities in accordance with Paragraph 55 of the Agreement.

54. Applicable law

54.1. The Agreement, the relationship between the Parties arising from the Agreement and the interpretation of the relationship is subject to the legislation of the Republic of Lithuania.

54.2. The Agreement itself and the transactions made under the Agreement are commercial, and not public or state regulations. Neither Party has – nor, if it has, it waives - immunity from enforcement of legal proceedings or court (arbitration) judgments in its own respect or in respect of its funds and the Concessionaire shall additionally waive immunity in respect of his assets.

55. Resolution of disputes

55.1. The Parties shall try to solve any dispute or objection arising out of the Agreement in the following procedures:

55.1.1. by mutual negotiations and full cooperation. Negotiations must start within **[*set a deadline, it is recommended - 5 (five) days*]** from the date of sending a notification of a dispute, objection or claim to the other Party;

55.1.2. if over **[*set a deadline, it is recommended - 30 (thirty) days*]** from the date of notification to the other Party of a dispute, objection or claim the Parties fail to reach an agreement or to start mutual negotiations, the final decision on any dispute, objection or claim, as well as issues concerning the breach, termination or invalidity of the Agreement, is reached in the courts of the Republic of Lithuania.

56. Severance of individual provisions of the Agreement

56.1. If any provision of the Agreement is contrary to the legislation of the Republic of Lithuania or for any reason becomes partly or completely invalid, it shall under no circumstances void the remaining provisions of the Agreement. In such a case, the Parties agree to replace the invalid provision with a legally effective provision, the

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result of which should be as far as possible closer to the legal and / or economic result by the replaced provision.

57. Counterparts of the Agreement

57.1. This Agreement has been concluded in [number] original copies in [specify the language or languages], one copy for each Party of the Agreement.

58. Jointly drafted Agreement

58.1. The Agreement has been concluded with the consent and agreement of the Parties on all the provisions and text of the Agreement. Each party acknowledges that during the period of the negotiations on the Agreement it acted in good faith.

XIX. ANNEXES TO THE AGREEMENT

0 Tender Conditions

0 The Offer

Error! Reference source not found. **The Monitoring and Deduction Mechanism**

Error! Reference source not found. **The Matrix Distribution of Risk among the Parties**

5 The Pre-conditions of Entry into Force of the Agreement

0 Lease Agreements

Error! Reference source not found. **The List of Compulsory Insurance agreements Conclusions**

Error! Reference source not found. **The List of Associated Companies**

9 The Requirements for the Property Restitution

10 The Direct Agreement

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Signatures of the Parties' representatives:

on behalf of: *[Position, name, surname]*
[The Awarding Authority]

signature

[If any on behalf of [Transferor] *[Position, name, surname]*

signature]

on behalf of: *[the* *[Position, name, surname]*
Concessionaire]

signature

on behalf of *[the Investor]* *[Position, name, surname]*

signature

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Annex 1 to the Agreement

TENDER CONDITIONS

[Attach Tender Conditions]

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Annex 2 to the Agreement

THE OFFER

[Attach the Offer, submitted by the Concessionaire]

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Annex 3 to the Agreement

THE MONITORING AND DEDUCTION MECHANISM

[Attach the Monitoring and Deduction Mechanism]

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Annex 4 to the Agreement

THE MATRIX OF RISK DISTRIBUTION AMONG THE PARTIES

[Attach the matrix of risk distribution among the Parties]

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Annex 5 to the Agreement

PRECONDITIONS OF ENTRY INTO FORCE OF THE AGREEMENT

The Parties shall take all the necessary measures to ensure the smooth transfer of the Assigned Property, guarantee of obligations fulfillment according to the Agreement and the receipt of the necessary permits and licenses, including:

- 1 The conclusion and entry into force in their full scope of the agreements on the design, contract, equipment procurement and the provision of services with the Subcontractors, indicated in the Offer;
- 2 *[if applicable The receipt of the permit for concentration from the Competition Council;]*
- 3 The receipt of consents of third parties on the conclusion of Lease Agreements related to them;
- 4 The conclusion of agreements with Funders;
- 5 The receipt and / or renewal of the necessary permits, licenses and certificates on behalf of the Concessionaire;
- 6 The conclusion of Insurance agreements, provided in Paragraph **Error! Reference source not found.** of the Agreement;
- 7 The conclusion of Lease agreements;
- 8 The conclusion of Land lease agreement;
- 9 *[...]*.

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Annex 6 to the Agreement

LEASE AGREEMENTS

The Assigned Property shall be transferred to the Concessionaire by the following agreements:

1. *[Indicate the names of the agreements, by which the Awarding Authority or the Transferor's property is transferred to the Concessionaire];*

2. *[...].*

[If together with the Assigned property, the rights and obligations are transferred according to the related agreements to that property Together with these agreements, the rights and obligations are transferred to the Concessionaire according to the following agreements:

1. *[Indicate the names of the agreements, according to which the rights and obligations, related to the Assigned Property, are transferred to the Concessionaire];*

2. *[...].*

Agreements are attached to this annex.

[Attach Lease Agreements.]

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Annex 7 to the Agreement

THE LIST OF COMPULSORY INSURANCE AGREEMENTS

The Concessionaire must conclude and have during all the validity time the following valid insurance agreements:

1. Not later than before [*state the time period, recommended period – 5 (five) Business days*] until the commencement of the performance of works or the provision of the Services – to insure its **civil liability for all risks**, which can arise due to any activity, which is performed by the Concessionaire according to this Agreement, for not less than [*indicate the amount*] euros for one insured event for the insured amount. This insurance must continuously be valid until the termination of the Agreement validity and also to cover these damages, which can arise due to the provision of the services and works of the Subcontractors or other third parties, providing the services or performing works;
2. Not later than before [*state the time period, recommended period – 5 (five) Business days*] until the commencement of the Provision of the Services – to insure the Property and all the long-term material property that it contains, **by maximum insurance of property restitution value** from all possible risk events, in any case, not less than [*specify the amount*] value insurance amount. This insurance must be valid until the Agreement validity termination.

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Annex 8 to the Agreement

THE LIST OF ASSOCIATED COMPANIES

Associated companies:	Associated relationships:
1.	
2.	
3.	
4.	
5.	

(Position of authorized person)

(Signature)

(Name and surname)

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Annex 9 to the Agreement

REQUIREMENTS FOR THE PROPERTY RESTITUTION

[Attach requirements for the property restitution]

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Annex 10 to the Agreement