

Annex No. 3 to the order No. 2017/8-311 of the director  
of the public institution Central management  
Agency of  
29 December 2017

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**PARTNERSHIP AGREEMENT No. [Agreement number]**

**concluded between**

**[Name of the Public partner] [if applicable , [name of the Transferor]**

**and [Private partner] and [Investor]**

**for the project "[name]"**

**[day] / [month] / [year]**

**[Place]**

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## I. INTRODUCTION

**[Public partner]**, located at **[address]**, legal partner code **[legal partner code]**, represented by **[position, name, surname of the representative]**, acting in accordance with **[basis for representation (Regulations of the Public partner, Decision, etc.)]**, (hereinafter – **the Public partner**);

*[If the Private partner will be granted property, which is not controlled by the Public partner* **[name of the Transferor]**, located at **[address, legal partner code]**, represented by **[position, name, last name of the representative]**, acting in accordance with **[basis for representation (Regulations of the Public partner, Decision, etc.)]**, (hereinafter – **the Transferor**);]

and

**[Private partner]**, a company established and operating in accordance with the laws of **[Country]**, located at **[address]**, legal partner code **[legal partner code]**, represented by **[position, name, last name of the representative]**, acting in accordance with **[basis for representation]** (hereinafter – **the Private partner**); and

**[the Investor]**, a company established and operating in accordance with the laws of **[Country]**, located at **[address]**, legal partner code **[legal partner code]**, represented by **[position, name, last name of the representative]**, acting in accordance with **[basis for representation]** (hereinafter – **the Investor**);

the Public partner *[if applicable , the Transferor]*, the Investor and the Private partner are separately referred to as the **Party**, and together collectively – the **Parties**;

### WHEREAS:

- A. The Public partner is seeking to procure **[briefly describe the services that are being procured]** services from the Private partner, capable of ensuring uninterrupted, high-quality and effective execution required Works and provision of Services at lowest cost, by using the Public and Private partner partnership model and ensuring the highest social and economic benefit;
- B. **[Indicate legal basis (legislation), by which the Public partner is authorized to procure services by the means of PPSP]**;
- C. Public partner has prepared, approved and announced the procurement on **[date]** in the official publication of the European Union (No. **[number]**) and on **[date]** in the Central Public Procurement Information System (address <https://pirkimai.eviesiejipirkimai.lt>) in accordance to the Law on Public Procurement of the Republic of Lithuania;
- D. The Investor has expressed his interest in participating in this Procurement and presented a Tender, while the Public partner, after completing the Procurement procedures in a specified manner and assessment of all tenders received, has declared him the winner of the Procurement;
- E. In accordance with the Conditions, the Investor has founded a Private partner **[indicate the date of the Project company founding]** in order to perform the obligations under this Agreement;

- F. For the purposes of this Agreement, the Public partner *[if applicable the Transferor as well]* undertakes to organize the transfer of property, essential for the performance of the obligations of the Private partner, owned by the Public partner *[if applicable and/or to the Transferor]* under the *[specify under which rights]* to the Private partner, in accordance to the conditions and to the extent described in this Agreement, and the Private partner agrees to receive this property, in accordance to the conditions to the extent described in this Agreement *[if the contractual obligations of the Public partner or the Transferor related to the property are transferred with that property and the rights and obligations of the [choose one or both Public partner / or the Transferor] arising from the concluded agreements]*, and agrees to assume all rights and obligations of the Private partner, indicated in this Agreement; has the financial resources, knowledge, experience and qualified personnel required for that;
- G. Under this Agreement the Investor and the Private partner undertake to be jointly and severally liable to the Public partner for the performance of the Private partner's obligations, arising out of this Agreement, including, but not limited to, Private partner's obligations to pay contractual penalties, interest, and to compensate losses;
- H. The parties seek to implement *[specify the name of the project]*, the aim of which is *[specify the aim of the project]*.

The Public partner *[if applicable the Transferor as well]* on the one side, and the Private partner together with the Investor on the other side, seeking to assume the contractual obligations, agreed upon and concluded the following partnership agreement at their free will:

## II. DEFINITIONS OF THE AGREEMENT AND INTERPRETATION THEREOF

### 1. Definitions used in the Agreement and interpretation thereof

- 1.1. The Capitalized terms used in the Agreement, annexes, supplements and/or modifications thereto, as well as other documents related to the Agreement or its implementation, have the following meanings, unless the relevant document would expressly indicate otherwise:

<b>Case of exemption</b>	means the cases specified in the paragraph 21.1 of the Agreement;
<b>Works</b>	means all the design, construction, installation, and other works performable by the Private partner, except for the Installation works and Repairs required for the creation of the Object, so that it would met the requirements of the Specifications and the Tender;
<b>Work performance plan</b>	means the technical, engineering, and organizational solution submitted by the Private partner, including the operations for the performance of the Works, and the sequence thereof;
<b>Business day</b>	means any other day except for Saturday and Sunday, and other official holidays in the Republic of Lithuania;

<b>Insurance agreements</b>	means insurance agreements specified in the Annex No. 5 to the Agreement <i>The list of mandatorily concluded insurance agreements</i>
<b>Amendment of a legal act with a discriminatory effect</b>	means an amendment to a legal act that applies to: <ul style="list-style-type: none"> <li>(a) The project, but does not apply to similar public-private partnership projects of such type;</li> <li>(b) The Private partner, but does not apply to other persons, or</li> <li>(c) Persons who are performing the agreements of Public-Private Partnerships (Private entities), but does not apply to other persons.</li> </ul>
<b>EU</b>	means the European Union;
<b>Fundamental legislative change</b>	means the change in the Special legislation, which adversely affects the rights and obligations of the Parties. However, the cases when the future change in the Special legislation has been provided for in another Special legislation, which was in force at the time of conclusion of the Agreement, it is not considered to be a Fundamental legislative change;
<b>Financial activity model</b>	means the Financial activity model prepared by the Investor based on the form presented in the Annex No. 17 to the Conditions <i>Requirements for a financial activity model</i> , which presents structure and conditions of the financing of Investor's and/or Private partner's operation, financially (economically) justifies the aims of investment, and presents the evaluation of the return on investment and other performance indicators as well as its future changes;
<b>Funder</b>	means a legal partner (except for the Investor and/or the Associated person), providing the Investor and/or Private partner with the financing indicated in the Financial activity model, needed for the proper performance of obligations under the Agreement, with which the Public partner may enter into a Direct agreement at the request of the Funder;
<b>Ministry of Finance</b>	means the Ministry of Finance of the Republic of Lithuania, institution code – 288601650, address – Lukiškių g. 2, LT-01512 Vilnius;
<b>Good business practice</b>	means the performance of activities in accordance to the standards, methods, means, tools, practice, and procedures corresponding and not in conflict with legislation and fair business practice, at a level of diligence and prudence, which would usually be expected of



qualified and experienced persons engaged in similar activities under same or similar conditions;

**Investments**

means investments into the Property and other investments for proper execution of Works and provision of Services, specified in the Specifications, as well as other investments into Property made in accordance with the terms specified in the Agreement;

**Return on investment**

means any revenue (dividends, interest, payment of funds by reducing the capital of the Private partner, or economic benefits received in any other form) receivable by the Investor from the Private partner;

**Internal rate of return**

means the rate of return (*Internal Rate of Return*), at which the present value of revenue streams receivable by the Investor from the Private partner are set to zero, and calculated based on the procedure indicated in the Financial activity model; *[if applicable, however, this provision may affect the Object's accounting in the balance sheet of the public sector: In any case, the Return on Investment Rate may not exceed 10%]*;

**Law on Investments**

means the Law on Investments of the Republic of Lithuania;

**Investor**

means *[indicate the name and details of the participant who successfully tendered the Procurement, with whom the Public partner has decided to conclude the Agreement]*, whose Tender has been declared the most beneficial and has been awarded the Procurement, with whom and the Private partner established by such person the Agreement is concluded, or with persons replacing them in cases provided in the Agreement;

**Installation works**

means Works performed after the formalization of the completion of construction works of the Object or its part, related to *[choose furniture, equipment, and installation]* works, that cannot be carried out without the formalization of the completion of construction work of the Object or its part, if the Agreement does not provide otherwise;

**Preconditions for the Agreement's entry into force**

means the conditions specified in the Annex 9 to this Agreement *Preconditions for Agreement's entry into force*, the fulfillment of which is mandatory for the Agreement's entry into force in full;

*[If applicable.*

*It is recommended to apply it only to secondary services, and only if there is an objective need*

**Price comparison**

means the comparison of prices of the checked services with market prices of the relevant services in accordance with the procedure specified in paragraphs 24.1-24.4 of this Agreement, carried out by the Private partner; It is recommended to indicate right away the Services to which the provisions apply (e.g. catering, washing, etc.];

**Overhaul**

means construction work, the aim of which is to reconstruct the load-bearing structures of the Object (or its separate parts) without changing the outer dimensions of the Object, as it is defined in the STR 1.01.08:2002 "Types of construction" (as subsequently amended);

*[If applicable*

**Another loan provider**

means a legal partner which does not match the definition of the Funder, but grants to the Private partner the main financing provided in the Financial activity model, necessary for the proper performance of its obligations under the Agreement;]

**Compensation event**

means the events specified in the paragraph **Error! Reference source not found.** of the Agreement, the risk of which are exclusively or partially attributed to the Public partner under the Agreement, and the negative consequences caused by which must be fully or partially compensated to the Private partner or the Investor in accordance with the procedure specified in the Agreement and based on which the deadlines for the performance of the Public partner's obligations set out in the Agreement may be extended;

**Utilities**

means the supply of electricity, heating, hot water, cold water, and gas, as well as wastewater treatment and waste management services.

*[If Market research and/or Price comparison is applicable.*

**Adjustment factors]**

means:

- (a) conditions and duration of the agreement for similar works and/or services;
- (b) the age, type and condition of the Object, where similar services are provided or works are carried out;
- (c) the time for the provision of similar services or carrying out of similar works;
- (d) the quality standards for the provision of similar services or carrying out of similar works;

any other essential differences between the requirements for Checked services and requirements applicable to similar services and similar works;

<b>Annual remuneration</b>	means the payment to the Private partner by the Public partner, calculated and paid in accordance to the terms of settlement and payment specified in the Annex 3 to this Agreement the <i>Terms of settlement and payment</i> ;
<b>New property</b>	means the personal property, needed for the outfitting of the Object, including the furniture, which is installed according to the requirements of the Specifications and the Tender, and/or required for the provision of Services at the Object;
<b>Lease agreement</b>	means the agreement(s) for the lease of the Land plot(s) concluded for the term of the performance of Works, pursuant to which the authorized state institution transfers to the Private partner to manage and use the Land plot(s) for the purposes of the performance of this Agreement;
<b>Object</b>	means <i>[indicate the property the creation/acquisition of which is transferred to the Private partner, or transferred to it for reconstruction, renovation, etc.]</i> ;
<b>Commencement of Object's operation</b>	means the date on which the Act, specified in the paragraph 9.3 of this Agreement, was signed by the Public partner and the Private partner, as of which, the Private partner starts to provide the Services and receive the Annual remuneration;
<b>Object creation period</b>	means a period of time from the starting date when the Agreement came into force in full to the commencement date of Object's operation;
<b>Modification</b>	means the modification of Works performed and/or Services provided in accordance with the terms specified in the paragraph 17 of this Agreement;
<b>Loan for use agreement</b>	means the agreement(s) concluded between the Public partner <i>[or if present the Transferor]</i> and Private partner, the form of which is enclosed as the Annex No. 8 to this Agreement, according to which the Private partner is transferred to manage and use the Transferred

property for the purposes indicated in this Agreement, and the term(s) of which match the term of this Agreement;

**Additional works and/or services**

means the works and services specified in the paragraph **Error! Reference source not found.** of the Agreement, and which are expressly not specified in the Agreement, including the Specification, which are not agreed upon by the Parties and which are not covered by the scope of the Change, as specified in the paragraph **Error! Reference source not found.** of the Agreement, and the amendment of the Agreement, specified in the paragraph **Error! Reference source not found.** of the Agreement, i.e. works on an object the purpose of which does not correspond in full or to any of the purposes or any part thereof indicated in the Specifications, and services are of different (another) nature than specified in the Specifications, but which are necessary for the Public partner for the more effective implementation of the Project and which may be initiated by the Public partner in accordance with the procedure established in the paragraph **Error! Reference source not found.** of the Agreement;

**Ordinary repair**

means construction works, the aim of which is to renew the Object (or its part) without reconstruction or overhauling, as it is defined in the STR 1.01.08:2002 "Types of construction" (as subsequently amended);

**Tender**

means the final Tender presented by the Investor at the time of Procurement according to the requirements of the Conditions, which is enclosed as the Annex 2 to the Agreement;

**Services**

means the services specified in the Specifications and provided by the Private partner in accordance with the requirements of the Agreement and the Specifications, as well as the provisions of the Tender;

**Service provision plan**

means the technical, engineering, and organizational solution submitted by the Private partner, including the operations for the provision of the Services, and the sequence thereof;

**Transferred property**

means *[specify what property is being transferred]* needed for the carrying out of Works or the provision of Services, transferred by the Public partner *[if present or the Transferor]* to be managed and

used by the Private partner on the basis of the Loan for use agreements or other lawful basis;

<b>Procurement</b>	means the procurement [ <i>if applicable</i> (procurement No. [number]) [ <i>method of procurement</i> ], of [ <i>indicate the services that are being procured</i> ] announced in the official publication of the EU (No. [number]) and the Central Public Procurement Information System] by the Public partner in accordance to the Law on Public Procurement, Law on Investment, and the Conditions;
<b>Security of obligation the performance</b>	means the security, specified in the paragraph 32 of the Agreement, intended to ensure the performance of the Private partner's obligations under the Agreement;
<b>Private partner</b>	means a private legal partner founded by the Investor for the achievement of the Project aim, and which is a party to this Agreement, engaged in the activity specified in the Agreement, and during the conclusion of the Agreement it must: <ol style="list-style-type: none"> <li>1. have the legal form of a private joint stock company; and</li> <li>2. belong (i.e. 100 percent of its shares) only to the Investor, except for cases when the Agreement expressly provides otherwise; and</li> <li>3. must have the sole purpose to perform the activity intended for the implementation of the project; and</li> <li>4. have no debts or other obligations unrelated to the performance of the Agreement; and</li> <li>5. employ the current business accounting standards; and</li> <li>6. to be a registered payer of the value added tax;</li> </ol>
<b>Project</b>	means the Public and Private partner partnership project [ <i>indicate project name</i> ], the implementation requirements of which are set in this Agreement;
<b>Design services</b>	means the services of the preparation of all Project documentation required for the performance of the Works specified in the Agreement;
<b>Project documentation</b>	means the technical and work project or the technical work project of the Object;
<b>VAT</b>	means the value added tax established by the Law on value added tax of the Republic of Lithuania;
<b>Repairs</b>	means the works of Ordinary repairs and Overhaul;

*[If the Market research is applicable. It is recommended to apply it only to secondary services, and only if there is an objective need*

means the market research of the Checked services carried out by the Private partner in accordance with the procedure specified in the paragraph 24 of this Agreement;]

**Market research**

*[If the Market research is applicable* **Market research date**

means the *[indicate the day]* of *[indicate the month]* of *[indicate the year]* (counting from the Service provision commencement date);]

**Conditions**

means the Procurement conditions and annexes thereof, including all of their adjustments and replies to the requests of the participants of the Procurement;

**Expenditures**

means all costs related to the execution of the Works and/or the provision of the Services, which can be transferred to the cost groups specified in the Financial activity model;

**Change in the special legislation**

means any legal act of the Republic of Lithuania or of the European Union, associated with the regulation of carrying out of Works and/or provision of Services or the rights and obligations of the shareholders of the Private partner, arising from the activity of the Private partner; Legislative changes of general nature, non-discriminatory against the Private partner or the Investor and applying to a broad range of entities (e.g. changes in the income tax, turnover tax (VAT), etc.) are not considered to be the change in the special legislation;

**Specifications**

means the annex No. 7 to the Agreement *Specifications*, setting the requirements and indicators that must be met by the Works and the Services;

**Sub-suppliers**

means the economic entities, specified in the Tender, replacing them according to the terms specified in the Agreement, or newly employed ones, carrying out the Works and providing the Services, the carrying out or provision of which is the responsibility of the Private partner, and to whom the Private partner pays remuneration,

except the suppliers of electricity, heating, water, wastewater treatment, waste management and other Utilities;

**Associated person**

means:

- a) the Investor;
- b) an Associated company;
- c) members of the supervisory and management bodies of the Investor and the Associated company;
- d) the spouse, close relatives of, and persons related by marriage up to the second degree, inclusive, to a member of the supervisory or management body of the Investor and the Associated company;
- e) companies, associated with the persons mentioned in paragraph d) and the member of the supervisory and management body of such companies.

**Associated company**

means any company, economic community, limited liability company, foundation or other unit (legal and non-legal partner), directly or indirectly controlled by the Private partner or the Investor, or which directly or indirectly controls the Private partner or the Investor, or which is directly or indirectly controlled in association with Private partner by another unit, having the right of ownership, part of the capital or by implementing the legislative requirements applicable to such a controlled company, and which is related to the performance of the Agreement. It is considered, that a unit controls other companies, if it directly or indirectly:

- a) has more, than 50% of stock or other equities issued by the controlled company; or
- b) has more, than 50% of total votes, provided by owning stock or other equities issued by the controlled company; or
- c) has the capability to appoint more than half of members of the management or another body (except for the general meeting) of the controlled company; or
- d) has concluded an Agreement, under which the controlled company is obligated to implement the decisions and orders of the controlling company; or
- e) has property rights to less than 50% of the property, revenue or residual claim in the controlled company.

The list of associated companies is enclosed to the Agreement as annex No. 6 *List of associated companies*, and has to be constantly updated should the information indicated in it change.

<b>Agreement</b>	means this partnership agreement between [ <i>Name of the Public partner</i> ] [ <i>if applicable, [name of the Transferor]</i> ] and [ <i>name of the Private partner</i> ], and [ <i>name of the Investor</i> ] concluded for the implementation of the Project as it is specified in the Law on investments;
<b>Value of the Agreement</b>	means the nominal (indexed) value amount of all payments of the Public partner to the Private partner, payable to the Private partner during the performance of the Agreement, according to the Financial activity model;
<b>Direct agreement</b>	means the agreement concluded between the Funder, the Public partner, and the Private partner under which the Public partner undertakes to the Funder (or its appointed partner) to provide certain rights and a possibility to exercise the step in right to perform the Agreement instead of the Public partner, which is presented as the annex 10 to the Agreement;
<i>[If the Market research is applicable]</i> <b>Checked services</b>	<b>means</b> [ <i>specify the services to be provided for which the Market Research will be carried out</i> ];
<b>Property</b>	means the Transferred property, New property, and the Object;
<b>Property value</b>	means the market value, determined by applying an individual appraisal performed by a property appraisal company or an independent appraiser in accordance with the legislation of the Republic of Lithuania;
<b>Public partner</b>	means [ <i>the name of the legal partner</i> ], which concludes the Agreement with the Investor and the Private partner established by him, or with persons replacing them in cases provided in the Agreement;
<b>Law on Public Procurement</b>	means the Law on Public Procurement of the Republic of Lithuania;



**Land plot(s)** means the Land plot with unique No. *[indicate number]*, Cadastral address *[indicate address]*, located at *[indicate address]*, *[if applicable, indicate other land plots]*, which is owned by *[specify the owner – the state / the municipality]*, and managed, used, and disposed of under the right of trust by *[specify the person]*, and which is leased to the Private partner according to the terms and conditions of the Agreement;

- 1.2. If based on the context, a term in the Agreement is not used otherwise:
  - 1.2.1. words in masculine also include words used in feminine and vice-versa;
  - 1.2.2. words in singular form also include plural form and vice-versa;
  - 1.2.3. references to sections, paragraphs, tables, or annexes mean the references to the sections, paragraphs, tables, or annexes of the Agreement, unless expressly indicated otherwise;
  - 1.2.4. references to the Agreement mean references to its annexes as well;
  - 1.2.5. "Conclusion" of the Agreement or any other document means that the Agreement or the other document was signed by all parties to the Agreement or the respective document;
  - 1.2.6. any reference to legislation is understood as a reference to the version of the legislation which is in force at the time of the performance of the Agreement, except cases, when it is clearly indicated otherwise;
  - 1.2.7. the titles of paragraphs and other provisions are used for convenience only and have no affect on the interpretation of the Agreement.
  - 1.2.8. in case of a requirement to obtain the consent from the Public partner, it is deemed that the Public partner has the right not to give such consent at its own discretion, by providing the motives of its decision.
- 1.3. The annexes are an integral part of the Agreement. The obligations of the Parties under this Agreement, or disputes due to the contradictions or inconsistencies in the Agreement documents, are interpreted in accordance to the following order of document superiority:
  - 1.3.1. Agreement;
  - 1.3.2. Annexes to the Agreement;
    - a) Specifications;
    - b) Financial activity model;
    - c) Terms of settlement and payments;
    - d) Matrix of risk distribution among the Parties;
    - e) *[If applicable Direct agreement with the Funder]*;
    - f) other parts of the Conditions;
    - g) Preconditions for the Agreement's entry into force;

- h) Tender
  - i) List of the mandatory insurance agreements;
  - j) other Annexes to the Agreement;
- 1.3.3. *[indicate other documents related to the conclusion and performance of the Agreement if any].*

### III. PURPOSE AND SUBJECT MATTER OF THE AGREEMENT

#### 2. Purpose and subject matter of the Agreement

- 2.1. The Private partner undertakes to perform Works, provide Services, assume the risk related to that and/or indicated in the Agreement, create, and/or acquire New property, properly manage and use the Property, and return/transfer it to the Public partner *[if present or to the Transferor or third parties]*, and the Land plot to the authorised institution at the expiration of the Agreement, in accordance with the term laid down in this Agreement and specified requirements, also properly carry out other obligations under the Agreement, and the Public partner *[if present the Transferor as well]* undertakes, to ensure that the control and use of the Land plot *[also indicate the other property that is being transferred]* were granted to the Private partner in accordance with the procedure set in this Agreement, assume the risk indicated in the Agreement, pay for Services in a timely manner, and to properly perform its other obligations under the Agreement.
- 2.2. The main aim of the Agreement is to ensure an effective carrying out of Works and provision of Services, and throughout the entire period of the Agreement to seek the improvement of the effectiveness and quality of Services, as well as the rational monitoring and administration of the Property.

### IV. PERIOD OF THE AGREEMENT VALIDITY AND PERFORMANCE

#### 3. Agreement's entry into force

- 3.1. The Agreement enters into force on the date when it is signed by all Parties, , except for the extent indicated in the paragraph 3.2.
- 3.2. The Agreement to the extent, associated with obligations to carry out Works, provide Services, and pay the Annual remuneration, comes into force on the next Business day after fulfillment of all Preconditions for the Agreement's entry into force specified in the annex 9 to the Agreement. The Preconditions for the Agreement's entry into force must be fulfilled within *[indicate a period, recommended 90-120 (ninety - one hundred and twenty) days]* from the date of the signing of the Agreement, except if the Parties would agree on the extension of the period of the Preconditions for the Agreement's entry into force.
- 3.3. Preconditions for the Agreement's entry into force are deemed fulfilled, when the Parties confirm that in writing. This must be done within *[indicate the period, recommended up to 5 (five)]* Business days since the receipt of all information about the fulfillment of the Preconditions for the Agreement's entry into force transferred to the Parties, or must present to the other Party a motivated refusal to recognise the Preconditions for the Agreement's entry into force as fulfilled. If a Party fails to provide a motivated refusal to confirm the fulfillment

of the Preconditions for the Agreement's entry into force within the time period specified in this paragraph, they are deemed as fulfilled.

- 3.4. If, due to the objective reasons that cannot be controlled by the Parties, the Agreement does not come into force in full within the time limit specified in the paragraph 3.2 of the Agreement, the Parties may extend the period of the Agreement's full entry into force by a mutual written agreement, but for no more than *[specify the period, recommended 90 (ninety) days]*.
- 3.5. In order to perform the Preconditions for the Agreement's entry into force and to properly prepare for the performance of obligations under the Agreement, the Parties throughout and prior to the period of Agreement's entry into force, must make maximum effort, including proper cooperation in acquiring the consents, permits, licenses, certificates and other documents, also providing the documents that are reasonably required for the performance of the Preconditions for the Agreement's entry into force.

3.6. The Parties agree that:

- 3.6.1. Failure to fulfill Preconditions for the Agreement's entry into force, depending on the Private partner is deemed as Private partner's refusal to conclude the Agreement in the sense of the Law, and the Public partner acquires the right to use the security for the Investor's Tender validity to compensate direct losses arising due to the the refusal of the Private partner to conclude the Agreement. Furthermore, if the Agreement does not come into effect in full due to the reasons depending on the Private partner and / or the Investor or their fault, or the risks transferred to them in this Agreement, it will be deemed as the refusal of the Private partner and the Investor to conclude the Agreement in the sense of the Law on Public Procurement, and the Public partner will propose to conclude an agreement to the participant, whose final tender in the tender queue is the first one after the Tender of the Investor;
- 3.6.2. Failure to fulfill Preconditions for the Agreement's entry into force, depending on the Public partner, is deemed as the Public partner's refusal to conclude the Agreement, and the Public partner undertakes to compensate direct losses, arising due to the Public partner's refusal to conclude the Agreement;
- 3.6.3. Failure to fulfill Preconditions for the Agreement's entry into force that are not dependent neither on the Public partner nor on the Private partner, and / or the Investor, or any risk transferred either of the Parties, or due to the fault of both Parties, shall be subject to the consequences specified in the paragraph of the Agreement, but the Parties are not obliged to compensate each other any expenses, costs, losses (damage), and are not required to pay any contractual penalties.
- 3.7. In any case of consequence of the failure of the Agreement enter into force in full specified in the paragraph 3.6 of the Agreement, the Parties shall apply full restitution and return to each other all that they have received from each other under the Agreement or due to this Agreement.

#### **4. The duration of Work performance and the begining and duration of the Service provision**

- 4.1. Works must be carried out within *[enter the period from the Tender of the Investor or the legislation]* from the date of the Agreement coming into effect in full.
- 4.2. The provision of Services may be commenced and payment for their provision is paid only after the Works and Installation works are carried out, and after Public partner and Private partner sign the certificate, specified in the paragraph 9.3 of this Agreement.

- 4.3. The provision of the Services at the Object or its respective part must be commenced in full scope, specified in the Specifications or the Tender, no later than within 30 (thirty) days from the date on which the operation of the Object is commenced and shall be provided till the expiration of the Agreement.
- 4.4. The deadline for the completion of Works and/or the date of Commencement of the operation of the entire Object indicated in the paragraph 4.1 of the Agreement, may be extended by a written agreement of the Parties only if the following conditions are present, when Works may cannot be completed or the provision of Services cannot be commenced because of:
- 4.4.1. the circumstances of the *Force Majeure*, as they are described in the paragraph 43 of the Agreement; or
  - 4.4.2. the Case of exemption; or
  - 4.4.3. the Compensation event.

## 5. Term of the Agreement

- 5.1. The Agreement is valid for *[indicate duration in years]* years from the moment it came into effect in full, which is specified in the paragraph 3.2 of the Agreement.

## V. WARRANTIES AND REPRESENTATIONS OF THE PARTIES

### 6. Warranties and representations of the Public partner *[and if present the Transferor]*

- 6.1. The Public partner *[and if present the Transferor]* respectively warrants and represents:
- 6.1.1. The Public partner *[and if present the Transferor]* has performed the necessary actions and obtained official permits and/or approvals for the conclusion of the Agreement and performance of the obligations under it. The Agreement establishes lawful and valid obligations for the Public partner *[and if present the Transferor]* in accordance with the provisions of the Agreement, which could be performed against it through enforcement;
  - 6.1.2. The Public partner, based on its competence and authority, established on the date of conclusion of the Agreement by the applicable legislation of the Republic of Lithuania, is responsible for the respective functions and areas of activity, implemented during the conclusion of the Agreement, therefore it may be a contracting authority in the sense of the Law on Public Procurement and a Public partner in the sense of the Law on Investment;
  - 6.1.3. To the belief and/or knowledge of the Public partner *[and if present the Transferor]*, it provided the Investor and the Private partner with all the available essential and, based on *[choose its / or their]* knowledge, correct information, requested by the Investor and the Private partner, related to the Land plot(s), the Transferred property and the obligations of the Public partner under the Agreement. To the knowledge of the Public partner, the information provided on the day of the conclusion of the Agreement is correct in all key aspects, except for possible changes of the status of Land plot(s), and the Transferred property due to a regular economic activity from the date of the information provision to the date of the conclusion of the Agreement. There are no

undisclosed key facts that the Public partner was aware of, which could affect the conclusion of the Agreement or performance of the indicated obligations;

- 6.1.4. By concluding and performing the Agreement the Public partner does not breach: any key agreements or obligations, to which it is a party to, court judgement, decision, or order, or an arbitration decision applicable to it, as well as any requirements of laws or other legislation applicable to it;
  - 6.1.5. The Public partner *[and if present the Transferor]* has the right to transfer the Transferred property to be managed and used by the Private partner under the right of *[indicate which right of management and use]* according to the terms and conditions specified in the Agreement. The Transferred property is not transferred to other persons, and is not seized *[if the property is not mortgaged and not mortgaged]*;
  - 6.1.6. No notices or summons to court or arbitration are served on the Public partner *[and if present the Transferor]*, and there are no initiated or pending judicial cases, arbitration or other legal proceedings against it, or against another person, which could have an essential adverse effect on the financial status of the Public partner and/or its ability to perform the obligations under the Agreement;
  - 6.1.7. *[if applicable The Land plot(s) that is(are) not included in the list of the state immovable property that is being updated, a list of the state immovable property sold in the public auction, and the list of other immovable property, also there are no persons with the right to restore property rights to the Land plot in accordance to the Law on the Restoration of the citizen ownership rights to the existing immovable property of the Republic of Lithuania, and there are no other restrictions, preventing the Private partner to conclude Land plot(s) lease agreement or to use the Land plot(s) for the purposes and in accordance to the terms specified in the Agreement, except for the restrictions that are specified in the Conditions, the Agreement, public registries, as well as those restrictions that were disclosed to the Investor during the Procurement;*
  - 6.1.8. *[indicate other representations and warranties by the Public partner and, if present, the Transferor;]*
  - 6.1.9. The representative of the Public partner *[and if present the Transferor]*, who is signing the Agreement, have all authority to conclude the Agreement.
- 6.2. Notwithstanding the representations and warranties of the Public partner set in the paragraph 6.1 of the Agreement, Parties declare and confirm, that the Public partner has made it possible for the Investor to perform independent verification of the accuracy, correctness, adequacy, legitimacy and absence of errors in the representations and warranties by the Private partner, as well as the status, state, shortcomings, restrictions, encumbrances, terms and conditions of the management and use of the Property, prior to the conclusion of the Agreement. The Public partner is aware, that the Private partner and the Investor are concluding the Agreement not only by trusting the representations and warranties, but also the information provided to the Private partner and the Investor.
  - 6.3. The Public partner *[and if present the Transferor]* undertakes to inform as soon as possible the Investor and the Private partner about any events or circumstances, due to which any

representation or warranty by the Public partner [*and if present the Transferor*] becomes invalid or could become invalid in the future.

- 6.4. The representations and warranties by the Public partner specified in the paragraph 6.1 of the Agreement are valid and will remain valid in full extent from the moment of the conclusion of the Agreement.

## **7. Representations and Warranties of the Private partner and the Investor**

- 7.1. The Private partner and the Investor represent and warrant:

- 7.1.1. The Private partner and the Investor are legal entities properly established and lawfully operating in accordance with the legislation of [*indicate a country*], having acquired all rights, consents, approvals, and authorizations, and performed all actions in order to lawfully conclude the Agreement and exercise their rights and obligations under it;
- 7.1.2. The Investor owns, and will own 100 % (one hundred percent) of the Private partner's stock (*[indicate, who holds the stock of the Private partner and the parts of stock]*), except cases, when when the Agreement clearly allows otherwise. The Private partner does not perform any other activities, unrelated to the performance of the obligations under the Agreement, and shall not engage in such activities without prior written consent of the Public partner during the entire term of the Agreement;
- 7.1.3. The Private partner has or can, within a reasonable period, sufficient for the performance of obligations on time after the conclusion of the Agreement, acquire the right to engage in economic activity, required for the performance of the Agreement;
- 7.1.4. The Investor and the Private partner, as well as their duly authorized employees, managers, management bodies, and shareholders/members have completed all actions, made all decisions, issued consents, and acquired, or will acquire all the necessary permits and consents for the conclusion of the Agreement, and performance of the obligations under it, prior to the performance of Works or] provision of Services. The Agreement establishes lawful and valid obligations for the Private partner and the Investor in accordance with the provisions of the Agreement, which could be performed against it;
- 7.1.5. By concluding and performing the Agreement the Private partner and the Investor does not breach: any key agreements or obligations, to which they are a party to, court judgement, decision, or order, or an arbitration decision applicable to them, as well as any requirements of laws or other legislation applicable to them;
- 7.1.6. No notices or summons to court or arbitration are served on the Investor and Private partner, and there are no initiated or pending judicial cases, arbitration or other legal proceedings against them, or against another person initiated by them, which could have an essential adverse effect on the financial status and/or business of the Private partner and/or the Investor, their ability to perform the obligations under the Agreement, of which the Public partner was not informed in writing;
- 7.1.7. The Investor totally and unconditionally met the requirements indicated in the Conditions during the time of when the Tender was presented, and meets them at the

time of the conclusion of the Agreement, and will meet them throughout the term of the Agreement, taking into account the not-performed part of the Agreement;

- 7.1.8. The Private partner and the Investor conclude the Agreement having a real long-term business interest (no shorter than for the term of the Agreement) to ensure the carrying out of Works and provision of Services, as well as reception of benefits from it;
  - 7.1.9. All information presented by the Private partner and the Investor during the Procurement, including information about their activity, experience, knowledge, availability of the qualified personnel, financial status, contractual obligations, shareholders/members, and Associated companies is accurate, detailed and reflects the actual situation;
  - 7.1.10. The Private partner and the Investor have gathered all the information, in their opinion necessary and sufficient, required to perform their obligations under the Agreement. The Public partner confirms its understanding that the information, gathered by the Private partner and the Investor, indicated in this paragraph, is limited to the information presented at the time of the Procurement by the Public partner and other information published publicly prior to the presentation of the Tenders, accessible to any partner for familiarisation without any restrictions;
  - 7.1.11. The Private partner and the Investor confirm, that they were given the opportunity to familiarise with all documents and information presented to them and available publicly, on the basis of which the Investor and the Private partner had the opportunity to make independent conclusions about the rights and obligations of the Parties under the Agreement, and to decide on the participation in the Procurement. The Investor and the Private partner assume all responsibility for the obligations undertaken by the Agreement and assessment of the risk related to them;
  - 7.1.12. At the time of the conclusion of the Agreement, the Private partner and the Investor are not aware of any circumstances, which could prevent from the proper performance of the obligations assumed under the Agreement;
  - 7.1.13. The Private partner and the Investor have, or have the ability to acquire, the financial resources needed for the proper performance of the Agreement; This confirmation does not apply in case of the additional investments that may be required for the procurement of Additional works and / or services;
  - 7.1.14. The Private partner and the Investor are not insolvent, being liquidated, restructured, no bankruptcy, restructuring, reorganization, or liquidation procedures are initiated or conducted against them, they have not suspended or restricted their activity, there are no bankruptcy, restructuring, reorganization, or liquidation cases initiated against them;
  - 7.1.15. The representatives of the Private partner and the Investor, who are signing the agreement, have all authority to conclude the Agreement.
- 7.2. The Private partner and the Investor must immediately inform the Public partner about any events or circumstances, due to which any representation or warranty by the Private partner and the Investor becomes invalid or could become invalid in the future.



- 7.3. The Private partner and the Investor understand, that the Public partner [*and if present the Transferor*] concludes the Agreement only based on the representations and warranties of the Private partner and the Investor, as well as the information presented by them to the Public partner. The Public partner [*and if present the Transferor*] has not conducted any independent verification of the correctness and accuracy of the Private partner's and the Investor's representations and warranties.
- 7.4. The representations and warranties by the Investor and the Private partner specified in the paragraph 7.1 of the Agreement are valid and will remain valid in full extent from the moment of the conclusion of the Agreement.

## **VI. TRANSFER OF THE TRANSFERRED PROPERTY AND LAND PLOT(S), CREATION AND TRANSFER/ RETURN OF A NEW PROPERTY**

### **8. Transferred property *and* land plot(s)**

- 8.1. The Public partner undertakes to ensure, that the Public partner [*or if applicable the Transferor*] shall, no later than *within 10 (ten)* Business days after the conclusion of the Agreement on the control rights of the Land plot(s), also undertakes to complete all actions and make all efforts, so that the Land plot(s) is(are) leased or transferred to the Private partner for use and control under agreements or on other lawful basis within the period specified in the paragraph 3.2 of the Agreement.
- 8.2. Within no more than 5 (five) Business Days from the deadline for the waiver of the rights to the Land plot held by the current Land plot(s) manager(s), and the presentation of the evidence of that to the Private partner, specified in the paragraph 8.1 of this Agreement, the Private partner must contact the National land service under the ministry of agriculture of the Republic of Lithuania regarding the conclusion of the Lease agreement.
- 8.3. Land plot is leased to the Private partner for the period of the performance of Works.
- 8.4. The Private partner has no right to carry out any construction works in the Land plot(s), except for the Works specified in this Agreement and has the right to use the Land plot(s) for the provision of Services and other activities to achieve the aims of this Agreement. The Private partner has no right to restrict its lease rights to the Land plot(s) in any way.]
- 8.5. All actions related to the registration of the changed Land plot registry data in the Immovable property register (including the payment of the related expenses) must be performed by the Private partner. The Public partner, based on its competence, provides all the information that are necessary and available for that as well as authority.
- 8.6. The expiration of the lease agreement coincides with the end of the Works. The Private partner must, at its own expense and at risk, take all the necessary steps to terminate the Lease agreement in accordance with the Lease agreement validity terms specified in this paragraph.
- 8.7. The Public partner undertakes to cooperate in order for the Private partner to be exempted from the state land lease tax for the lease of the Land plot. In the event that the Private partner will not



be exempted from the land lease tax, the Public partner undertakes to fully reimburse the land lease tax paid by the Private partner, which is not included in the Annual remuneration.

- 8.8. *[If the Real Estate is transferred to the Private partner, the Public partner [if applicable or the Transferor] undertakes to sign with the Private partner the Loan for use agreement for the Transferred property no later than within [deadline, it is recommended to specify 20 ] Business days after signing of the Agreement.*
- 8.9. The Private partner undertakes to ensure, that throughout the entire period of the Agreement and Loan for use agreements the Transferred property shall be used according to its purpose, and under the conditions of the Agreement, and the rights and obligations under the agreements associated with the Private partner Transferred property shall be exercised in accordance with the provisions of those agreements. The Private partner should not fictitiously conclude/extend the agreements that are unnecessary for the proper performance of the Agreement. The Private partner is liable for the obligations and proper performance of the transferred agreements after the moment of their transfer.
- 8.10. The Private partner is liable for the use and control of the Transferred property without prejudice to the legislation of the Republic of Lithuania, including the legislation regulating environmental protection, work safety, and following of the hygiene norms.
- 8.11. The Private partner may not use the Transferred property for purposes other than the ones indicated in the Agreement.
- 8.12. *[Choose If the Transferred property cannot be further used in according to its primary purpose, the Private partner must repair such property or replace it with identical or better property intended as replacement property, and utilize or recycle such unusable Transferred property at its own expense / or [indicate, what Transferred property, and when will it have to be replaced by a new / identical / better property, utilized, etc. what for and under what conditions this will have to be done]]*
- 8.13. During the Term of the Agreement, the Private partner has the right to contact the Public partner requesting to terminate/change the Loan for use agreements or take back that Transferred property, which became unnecessary to the Private partner for the carrying out of Works or provision of Services. The Public partner must provide a motivated decision for such request no later than within 10 (ten) Business days from the moment of receiving the request from the Private partner, however it is not obligated to take back such property.
- 8.14. *[If required After carrying out the Works the Private partner must provide [indicate what easement/ easements] [indicate to whom]].*

## **9. Carrying out of Works, acquisition or creation of a New Property**

- 9.1. The Private partner must complete Works, acquire or create a New property, required for the provision of Services, adhering to the Specifications, the Tender, and the requirements specified in the Agreement, including the deadlines.
- 9.2. No later than within 1 (one) month from the date of Agreement's entry into force in full, the Private partner must submit a Work performance plan to the Public partner. A public partner has the right to submit comments / suggestions to the for Work performance plan within 20 (twenty) days, but the Private partner is not required to take them into consideration. If the

Public partner fails to submit comments / suggestions for the Work performance plan within the time limit specified in this paragraph, it is considered that the Public partner does not have any and the Private partner may commence the Works.

9.3. When preparing the Project documentation and creating the Object as a result of the Works:

- 9.3.1. The Private partner must prepare or ensure that Project documentation for the Object is prepared. The Project documentation must be presented for revision by the Public partner for comments and/or suggestions in stages (parts of the technical project or technical work project before the inspection of the technical project, changes of the technical project and work project, and completed work project prior to the commencement of works). When preparing the Project documentation or when ensuring that it will be prepared, the Private partner must present the solutions of the technical and work projects that are not indicated in the Specifications and/or Tender to the Public partner prior to confirmation of the final documents of this Project documentation. The Private partner must immediately present either one copy of the original or a duly certified duplicate of the prepared Project documentation to the Public partner. After the Works are completed, the Public partner must receive a version of Project documentation marked "Built this way" from the Private partner within 30 (thirty) days after the date on which the Object's construction completion certificate was issued. The Project documentation must be presented together with the Project documentation, i.e. certificates of materials used, declarations of conformity, system testing protocols, user manuals for devices/machinery, etc.)
- 9.3.2. Private partner undertakes to present the prepared suggestions for the Object, construction technical work project or technical project, prior to the inspection and corrected according to the mandatory remarks of the inspection, as well as individual parts of the Object's construction work project for revision (no later than 30 (thirty) days prior to the commencement of respective Works according to those parts of the project) to the Public partner. The Public partner carries out a preliminary assessment of the conformity of such material to the Specifications, the Tender and other requirements specified in the Agreement, and no later than within 15 (fifteen) Business days from the receipt the material informs the Private partner in writing about a positive assessment or presents a motivated negative assessment. However, a positive or negative assessment by the Public partner does not cause any direct consequences for the Parties. If no response in writing is received from the Public partner within the period specified in this paragraph, it will be deemed, that the Public partner does not have any remarks regarding the material presented by the Private partner.
- 9.3.3. The Work must be carried out in accordance with the Good business practice in order to achieve maximum quality and effectiveness, and adhering to all legislation requirements applicable for the Work, including environmental protection requirements.
- 9.3.4. The Private partner informs the Public partner after completion of Works in the Object, except for the Installation works. The Public partner within 15 (fifteen) Business days from the notice received from the Private partner about the completion of the Works, inspects the Work/results thereof, in order to identify possible inconsistencies with the Specifications and/or the Tender.

- 9.3.5. If the Works, except for the Installation works, meet the requirements that are set for them, the Public partner issues a written confirmation of that within 5 (five) Business days after inspection, it allows for the Private partner to organize the recording of the completion of the construction of the Object or part thereof on behalf of the Public partner according to the terms of the legislation.
- 9.3.6. If the Works, except for the Installation works, do not meet the fundamental requirements, set for them in the Specifications and/or the Tender, due to which based on the legislation, the Services cannot be provided at all or properly, the Public partner may decline to issue the requested confirmation on the conformity of the Works with the requirements, by providing motives. In such case all major inconsistencies are recorded in a written certificate, signed by the representatives of the Public partner and the Private partner, this document becomes an integral part of the Agreement. Issuing of the confirmation on the conformity of the Works with the requirements of the Specifications and / or the Tender is suspended until the Private partner rectifies the identified major inconsistencies. The Parties agree that for the purposes of this paragraph the Works are deemed non-compliant with the fundamental requirements (major inconsistencies), if the Works do not meet the fundamental requirements of the building specified in the Law on Construction of the Republic of Lithuania, and these inconsistencies cannot be eliminated by parallel execution of the Installation works, or if the Services cannot be provided according to the terms of the Agreement due to the major inconsistencies in the Object. Other inconsistencies that do not match the above circumstances shall be considered insignificant.
- 9.3.7. If the Public partner identifies insignificant inconsistencies of the Works, except for the Installation works, to the Specifications and / or the Tender that do not prevent the Private partner from the completion of the Works and commencement of the Installation works in accordance with the provisions of the legislations, these inconsistencies are recorded in the Specifications and / or the Tender requirement conformity confirmation certificate that is being issued, but the Private partner acquires the right to organize the recording of the Object's completion on behalf of the Public partner in accordance to the terms of the legislation. The Private partner must rectify such insignificant inconsistencies within the period indicated in the certificate confirming the conformity with the Specifications and the Tender.
- 9.3.8. The Private partner informs the Public partner after completion of the Installation works in the Object. The Public partner within 10 (ten) Business days from the notice received from the Private partner about the completion of the Object's Installation works, inspects the Installation works/results thereof, in order to identify possible inconsistencies with the Specifications and/or the Tender.
- 9.3.9. If the Installation works meet the requirements for that are set for them, the Public partner shall issue written confirmation within 3 (three) Business Days after the inspection. The moment of the issue of such confirmation is deemed to be the moment of the commencement of the Object's operation.
- 9.3.10. If the Installation works do not meet the fundamental requirements, due to what the Services cannot be provided properly, the Public partner does not issue the confirmation, indicating the motives. In such case all major inconsistencies are recorded in a written certificate, signed by

the representatives of the Public partner and the Private partner, this document becomes an integral part of the Agreement. Issuing of the confirmation on the conformity of the Installation Works with the requirements of the Specifications and the Tender is suspended until the Private partner rectifies the identified major inconsistencies.

- 9.3.11. If the Private partner informs the Public partner in advance and if the latter consents in writing, Works and Installation works may be completed at the same time. In such case, a procedure for the notification about the completion, inspection, and rectification of Works, specified in the paragraphs 9.3.4-9.3.7 of the Agreement, is applied.
- 9.3.12. If the Public partner identifies insignificant inconsistencies of the Installation works with the Specifications and the Tender, which do not prevent the Private partner from completing the Installation works of the Object or part thereof, and commence the provision of the Services, these inconsistencies are recorded in the certificate confirming the conformity with the Specifications and the Tender within 3 (three) Business days after the time of the inspection, the moment of its signing is deemed to be the moment of the commencement of the operation of the Object or a part of it. The Private partner must rectify such insignificant inconsistencies within the period indicated in the confirmation certificate.
- 9.3.13. During carrying out of Works, the Public partner and all persons that it authorised, the list of whom is agreed upon with the Private partner in advance, have the right to enter the site where the Works are being carried out, inspect, and supervise the carrying out of Works. The Private partner and the Sub-supplier(s) that it employed must provide all reasonable possibilities for the Public partner or its authorized persons to inspect and supervise the performance of Works.
- 9.3.14. The Private partner is responsible for the conformity of Works and result thereof with the Specifications, Tender, and legislation in all cases, regardless whether the Public partner or its authorized persons actually examine the conformity of the Works, and sign the Specifications and / or the Tender requirement conformity confirmation certificate.
- 9.3.15. The Private partner must, at its own expense, obtain all consents and permits, necessary according to the legislation in order to lawfully use the results of the Works after the completion according to their purpose, and present the copies of the aforementioned documents to the Public partner. In cases, indicated in the Agreement, and other cases, when the Public partner must have the originals of the consents and permits, previously mentioned in this paragraph, according to the requirements of the legislation for the proper use, control, and disposition of the Work results, the Private partner must present these documents to the Public partner.
- 9.3.16. In case a dispute or a disagreement arises between the Parties due to the inconsistencies of the Works or parts thereof, it shall be resolved in accordance with the provisions of the paragraph 53 of the Agreement.
- 9.4. A private partner must perform all other actions, required for the creation of the Object (including, but not limited to the obtaining of the new Object connection conditions, obtaining construction permitting documents, etc. (if necessary)).
- 9.5. During the Term of the Agreement, the New property will be owned by *[indicate the Party the Public partner / or the Transferor / or the Private partner]*. All actions (including covering of

the associated costs) related to the registration (when it is mandatory according to the legislation) of the New property must be performed by the Private partner by providing all information required for that and by granting an authorization to the Public partner [*and if present the Transferor*]. Under this Agreement, the Public partner (representatives, employees, and other persons) acquires the right to use the New property without separate agreement as far as it is necessary for the performance of the functions of the Public partner defined by the legislation.

- 9.6. The Private partner is responsible for the use and control of the Land plot(s), the New property, and the Object, as far as it is related to the provision of Services, without prejudice to the Specifications, the Tender and the Financial activity model, and the legislation, regulating building maintenance, environmental protection, work safety, and following of the hygiene norms.
- 9.7. During the term of the Agreement, the Object, from the moment of its acquisition or creation (including incomplete construction), will be owned by [*if the Public partner is a central Government institution to the Republic of Lithuania, of if the Public partner is a municipality specify the municipality*] on the basis of this Agreement, and the Private partner will control and use the Object under the loan for use, on the basis of this Agreement and the Loan for use agreement. All actions related to the registration (when it is mandatory according to the legislation) of the Object must be performed by the Private partner by providing all information required for that and by granting an authorization to the Public partner. The Private partner undertakes to register the completed Object [*if the Public partner is a central Government institution to the Republic of Lithuania, of if the Public partner is a municipality specify the municipality*] as property within 10 (ten) Business days from recording of the completion of construction work of the Object in accordance with the terms of the legislation, and no later than 10 (ten) Business days after the registration of the Object's\register's information in the Immovable property register contact the Public partner for the conclusion of a Loan for use agreement. The Public partner must immediately, but no later than within 5 (five) Business days, conclude the Loan for use agreement(s) (Annex 8 to the Agreement). After the Parties conclude the Loan for use agreement, the Private partner must register it in the Immovable property register within the period specified in he Loan for use agreement.
- 9.8. Under this Agreement, the Public partner (its representatives, employees, and other persons) acquires the right to use the Object or its respective part without separate agreement as far as it is necessary for the performance of the functions of the Public partner defined by the legislation. In other cases, these persons may use the Object only with a prior consent of the Private partner.
- 9.9. A private partner must ensure that the Subcontractors for the Works have had implemented an environmental management system certified in their respective areas of Works, compliant with the LST EN ISO 14001 or an equivalent standard, and certified employee work safety and health management systems compliant with the OHSAS 18001: 2007 or an equivalent standard; and during the period of Work performance to the recognition of the Object as suitable for use, according to the terms of the legislation, follow their requirements.

9.10. Prior to the completion of the Works, the Private partner must prepare and submit a Service provision plan to the Public partner. The requirements for the Service provision plan are set out in the Specifications and the legislation. The Service provision plan must comply with the Tender.

## **10. Return / transfer of the property**

10.1. After the term of the Agreement ends or if it is terminated prior to the expiration according to the terms and conditions of this Agreement, the Property must be returned (transferred) **through the Public partner or its other authorised person**. The Private partner undertakes to formalize the transfer of property rights to the New property in a form, which will be required according to the legislation in force at the moment of the expiration (termination) of the Agreement. The Public partner undertakes to pay *[it is recommended to specify 1 (one) euro]* to the Private partner for the property rights to the New property that are being transferred at the residual value. The Parties confirm, that this price is objective and accurate, since the price of the New property is included in the Annual remuneration paid by the Public partner to the Private partner under this Agreement.

10.2. During the return, the Property that is being returned (transferred) must comply with quantitative and qualitative requirements and indicators, set in the Specifications, taking into account normal deterioration, by providing the opportunity to further use the Property properly, as well as the requirements specified in the annex 10 to the Agreement *Requirements to the Property that is being returned / transferred*. The condition of the Object that is being returned must meet the fundamental building requirements, defined by the legislation of the Republic of Lithuania, regulating the fundamental building requirements, taking into account the normal deterioration of the Object.

10.3. In accordance to this paragraph 10 the condition of the Property that is being returned (transferred) is inspected by a commission formed from the representatives of the Public partner and the Private partner, which consists of 3 (three) representatives of each Public and Private entities, qualified to inspect the condition of the Property, and the chairman of which is appointed from the representatives of the Public partner. The decisions of the commission are made according to the procedure specified in the paragraph 53 of the Agreement. The commission commences its work on the condition of the Property that is being returned (transferred) at least 12 (twelve) months before the expiration of the Agreement, in the case of the premature termination – no later than within 10 (ten) Business days after a written notice regarding the termination of the Agreement is delivered, in order to identify as soon as possible the inconsistencies of the Property that is being returned (transferred) with the set requirements, and that the Private partner would be able to rectify these inconsistencies prior to the expiration of the Agreement. The results of the inspection of the Property condition must be accepted and approved by the commission at least 3 (three) months before the expiration of the Agreement, and in the case of the premature termination of the Agreement – at least 5 (five) Business days before the Agreement termination date. Based on the results of the inspection, the Public partner must either confirm the conformity of the Property condition with the set requirements, or present a motivated refusal to confirm it, specifying the specific inconsistencies, within 5 (five) Business days.

- 10.4. If the condition of the Property does not conform with the requirements specified in this paragraph 10, the Private partner must rectify such deficiencies within a reasonable period set by the Public partner in the manner chosen by the Private partner: by repairing such Property, replacing with a property of equal value, or by compensating the reasonable expenses of repairs or replacement of such Property with property of equal value.
- 10.5. In accordance to a transfer and acceptance (return) certificate, signed by the Parties, the Property meeting the requirements set in the Agreement and its annexes, must be returned (transferred) to the Public partner by the Private partner (except in cases specified in the Agreement) no later than during the day of the Agreement expiration or termination.
- 10.6. The Public partner may only refuse to sign the transfer and acceptance (return) certificate(s), if:
- 10.6.1. the Public partner confirms the conformity of the Property condition with the set requirements according to the paragraph 10.3 of the Agreement, the Property due to the deficiencies that appeared prior to the moment of transfer after the inspection of the Property condition according to the paragraph 10.3 of the Agreement, does not meet the set requirements, or
  - 10.6.2. after the Public partner presents a motivated refusal to confirm the conformity of the Property condition with the set requirements according to the paragraph 10.3 of the Agreement, the specific deficiencies specified in the refusal of the Public partner have not been rectified.
- 10.7. In cases specified in the paragraph 10.6 of the Agreement, the refusal to sign a confirmation and / or a transfer - acceptance certificate, the Public partner shall submit to a Private partner a reasoned written refusal, indicating in it specific nonconformities of the Property with the requirements. In such case the Private partner must rectify the specified deficiencies as soon as possible, but no later than within 3 (three) months after the expiration of the Agreement or its premature termination.

## **VII. OBLIGATIONS OF THE PARTIES**

### **11. Transfer and keeping of documents**

- 11.1. Parties exchange all documents, necessary for the performance of the Agreement in their possession within 15 (fifteen) days from the conclusion of the Agreement.
- 11.2. The Private partner must keep all documents of financial statements and agreements, related to the performance of obligations under the Agreement, no less that 2 (two) years to the end of the Agreement, if the requirements of the legislation does not specify a longer period. At the request of a the Public entity, a Private entity must transfer duly approved copies of such documents to the institutions/ persons specified by Public partner within no more than 10 (ten) Business days from the day on which they were requested and, if applicable, the day of conclusion.
- 11.3. After the expiration of the Agreement, the Private partner must ensure proper transfer of the Private partner's documents, related to the Property returned to the Public partner or indicated institution/person, at its own expense. In any case, such documents must be transferred to the Public partner no later than till the expiration of the Agreement. Despite this, the Private



partner must retain and keep duly certified copies of such documents for the period indicated in the paragraph 11.2 of the Agreement.

## **12. Obligations of the Public partner**

- 12.1. The Public partner undertakes to perform its obligations under the Agreement in a timely manner and promptly cooperate with the Investor and the Private partner in solving matters related to the performance of the Agreement.
- 12.2. The Public partner must ensure that the operation of the Private partner and the performance of the Agreement would be interfered with as little as possible when the Public partner, as well as the persons authorised by him, exercises the rights granted to the Public partner under the Agreement.
- 12.3. The Public partner shall pay the Annual remuneration to the Private partner in a timely manner for the carried out Works and the provided Services as set forth in the paragraph 23 of the Agreement. The Public partner undertakes to immediately inform the Private partner about financial problems, which could prevent the Public partner from proper and/or timely payment of the remuneration to the Private partner, and about the measures, taken by the Public partner to eliminate the problems.
- 12.4. At the request of the Private partner or the Investor, the Public partner must immediately issue the consents, arrangements, approvals, permits, authorizations and/or licenses to the Private partner, required for the exercising of rights and performance of obligations under the Agreement, in accordance with its competence specified in the legislation, or if indicated in the Agreement, but no later than within 10 (ten) Business days (except in cases when other periods are indicated in this Agreement) if the Private partner's right to apply for these consents, arrangements, approvals, permits, authorizations and/or licenses is granted by the legislation or the Agreement, and all the necessary information and documents were submitted to the Public partner. The Public partner has no right to unreasonably withhold the consents, arrangements, approvals, permits, authorizations and/or licenses specified in this paragraph. If the Public partner does not issue the consents, arrangements, approvals, permits, authorizations and/or licenses within the period set in this paragraph or other period set in the Agreement without providing the reasons for the failure to issue, it is deemed that the indicated consents, arrangements, approvals, permits, authorizations and/or licenses are issued. The Private partner must inform the Public partner in writing before performing actions on the basis of such consent, arrangement, approval, permit, authorization, or license of the Public partner (if performance of such actions without the express consent, arrangement, approval, permit, authorization or license from the Public partner is not contrary to the imperative requirements of the legislation). The Parties hereunder agree, that in case, if the Private partner cannot perform lawful actions required to perform its obligations under the Agreement without the express consent, arrangement, approval, permit, authorization or license from the Public partner, the Public partner undertakes to issue such consent, arrangement, approval, permit, authorization or license within 10 (ten) Business days from the date of receipt of all necessary information and documents, and if the Public partner unreasonably refuses to do that, such refusal is deemed a Compensation event.



- 12.5. If issuing of the permits and licenses required for the performance of the Agreement is assigned to the competence of another, state/municipal institutions and not to the Public partner, at the request of the Private partner or the Investor, the Public partner shall make all reasonable efforts (mediates, provides additional information, when that is not in conflict with the interests of the Public partner, issues permits or authorizations, etc.) that the required permits and licenses would be issued or renewed within the shortest period possible.
- 12.6. At the request of the Private partner or the Investor, the Public partner must provide all available information, which could be needed in order to obtain or renew permits and licenses required for the performance of the Agreement, no later than within 10 (ten) Business days from the date of receipt of the request of the Private partner and required documents.

### 13. Obligations of the Private partner and the Investor

- 13.1. The Private partner undertakes to effectively and with quality carry out the Works] and provide the Services in a timely manner and promptly cooperate with the Public partner and representatives appointed by it on all matters related to the performance of the Agreement.
- 13.2. The Private partner at its expense and risk ensures that both the Private partner and the persons, who are carrying out the Works and providing the Services, would have all the necessary licenses, permits (including design and construction related permits), attestations, approvals, or certificates in full extent throughout the entire period of the carrying out of the respective Works or provision of Services, the performance (provision) of which require the specified documents, as well as fulfill all conditions specified in them and will follow them. The Private partner will not be able to rely on the absence of such documents, in order to avoid liability for the non-performance and/or improper performance of the obligations under this Agreement, and shall be completely liable for all consequences arising out of the absence of such documents or their delayed receipt. *[If existing employees, associated with the provision of Services are being transferred the Private partner, together with the [indicate the subject, employees of which must be transferred to the Private partner] and with the employees indicated in annex No. 12 undertake to conclude a written agreement(s) till [indicate date] for the transfer of employees to the Private partner at same or equivalent conditions, as present in their employment agreements with the [indicate the subject, employees of which must be transferred to the Private partner]. The written agreement(s) may only be not concluded with such employees who are being transferred, who do not agree to be transferred to the Private partner, or terminate employment relations with [indicate the subject, employees of which must be transferred to the Private partner] prior to the date of signing the respective agreement.]*
- 13.3. The Private partner ensures that it and/or Sub-suppliers shall have the required number of qualified employees, required for the proper performance of the obligations under the Agreement, throughout the entire duration of the Agreement.
- 13.4. *[If existing employees, associated with the provision of Services are being transferred the Private partner undertakes to conclude a written agreement with the Public partner or the subject indicated by it for the transfer of employees of the Private partner, required for the further provision of similar Services, who agree to be transferred, as soon as possible, but no later than 1 (one) month after the end of the expiration of the Agreement on any basis. The*

exact list of such employees, who are being transferred, is defined by a commission indicated in the paragraph 53 of the Agreement no later than 10 (ten) days after the end of the expiration of the Agreement on any basis.]

- 13.5. The Private partner must comply with all conditions specified in the licenses, attestations, and/or permits, and follow them, as well as make all efforts that these conditions would be followed by the Private partner employed personnel that is carrying out Works or providing Services, and the Sub-suppliers.
- 13.6. The Private partner undertakes to comply with the requirements of the legislation that is regulating the environmental protection. The investments associated with the performance of such requirements are performed, and all risks are assumed by the Private partner.
- 13.7. The Private partner must keep financial records in accordance with the Law on Accounting of the Republic of Lithuania, and other legislation of the Republic of Lithuania and the European Union.
- 13.8. The Private partner and the Investor are jointly and severally responsible for the performance of the obligations under this Agreement:
- 13.8.1. without prejudice to the requirements of the legislation, as well as to the license and permit issuing conditions, and abstaining from such actions, which could become an obstacle for further issuing and/or renewal of required licenses and permits;
  - 13.8.2. without prejudice to the provisions of the Agreement;
  - 13.8.3. in accordance with the Financial activity model;
  - 13.8.4. based on the Good business practice
  - 13.8.5. without prejudice to the Conditions and obligations presented in the Tender, except for the cases, when they are changed in cases specified in the Agreement;
  - 13.8.6. in accordance with the requirements of the Insurance agreements.
- 13.9. Private partner must provide the Public partner with Service reports as specified in this Agreement.
- 13.10. During the period of the Agreement, without the consent of the Public partner, the Private partner and the Investor undertake to:
- 13.10.1. not to make decisions and not to perform the reorganization or reformation of the Private partner;
  - 13.10.2. ensure that a Private partner will not sell a material part of its assets and will not assume any material financial obligations. For the purposes of this paragraph, the material part of assets is considered an asset the value of which is *[define what will be considered a material part of the assets of the Private partner, e.g., exceeds 100 000 (one hundred thousand euros), as well as any Property unit, regardless of its value]*. Material financial obligations are **debt obligations**, with the total value in excess of *[limit, e.g.: 1 000 000 (one million) euro (excluding VAT)]*, or according to which payments exceed *[limit, e.g.: 500 000 (five hundred thousand) euro (excluding VAT)]* during the financial year. The financial obligations under the agreements with the

Funder, specified in the Financial activity model, warranties, or guaranties to the Sub-supplier, who is carrying out the Works (or part thereof) are not considered to be material in sense of this paragraph.

- 13.11. The Private partner and the Investor undertake to inform the Public partner about any cases initiated in any court or arbitration, in which the Private partner or the Investor are participating in any capacity, and in which disputes and/or issues, arising from and/or associated with the carrying out of Works or provision of the Services are addressed no later than within 10 (ten) days from the beginning of the participation or becoming aware of such involvement.
- 13.12. The Private partner performs the obligations under this Agreement at its own expense, risk and without financial and/or material support from the Public partner, except if the Agreement expressly indicates otherwise.
- 13.13. After the Agreement is terminated or expires, the Private partner must unconditionally, and as soon as possible, without delay on any basis, return all Property to the Public partner or the subjects indicated by him, the return (transfer) of which is specified in the Agreement, including all rights and authorizations associated with the Property that is being returned (transferred) and Services provided, organize termination of contracts that may not be valid beyond this Agreement, unless their validity is necessary for the performance of activities under the Agreement and their validity does not cause any difficulties for the Public partner.
- 13.14. It is deemed that both, the Private partner and the Investor assume the obligations specified in the paragraphs 13.1 – 13.13 of the Agreement and other paragraphs of the Agreement; i.e. the Private partner and the Investor are jointly liable (joint debtors) to the Public partner for the performance of the obligations specified in the paragraphs 13.1 – 13.13 of the Agreement and other paragraphs of the Agreement.
- 13.15. After the termination of the Agreement or after it expires on other grounds, the Private partner and the Investor will ensure that the Object will conform to the qualitative and quantitative requirements set forth in this Agreement and in the legislation.

#### **14. Risk distribution**

- 14.1. The risk, associated with the obligations under this Agreement, is shared by the Parties in accordance to the terms specified in this Agreement and its annexes, including the *Matrix of Risk distribution between Parties* laid out in the annex No. 4 to the Agreement.
- 14.2. Should an archaeological risk, attributable to the Public partner, occur during the performance of Works, i.e. if any movable and/or immovable cultural valuables, relics, antiques, or other objects with artistic, historical, cultural, scientific, or monetary value or human remains are found in the Land plot, the Private partner must:
- 14.2.1. inform the Public partner about such findings as soon as possible;
- 14.2.2. if necessary, stop the Works to such extent, where carrying out of works could present a risk for the findings, or would limit or prevent excavation thereof; and
- 14.2.3. take all necessary measures for preserving the findings in the position and conditions, as they were initially found.

- 14.3. The Public partner must present instructions to the Private partner, indicating actions that it demands to be taken with respect to the findings, as soon as possible, but in any case no later than within 10 (ten) Business days. The Private partner must immediately and carefully carry out all such instructions of the Public partner, if the instructions are not in conflict with the Specifications or legislation requirements. If the Public partner will fail to provide the instructions, specified in this paragraph, or if they will be in conflict with the Specifications or legislation requirements, the Private partner will have to deal with the findings in accordance with the legislation requirements, informing the Public partner of such decision in writing.
- 14.4. The Private partner shall allow the representatives and/or officers of the Public partner or other public institutions to access the Land plot(s) in order to remove or transfer the findings, provided that the necessary safety requirements, applicable in the Land plot(s), will be followed when entering the Land plot(s).

### **15. Investments and terms of their execution**

- 15.1. The Private partner must make no smaller investments into the Property and the ensurance of the quality provision of Services than indicated in the Financial activity model and the Agreement, within the periods indicated in the Work performance plan, Service provision plan, and the Specifications.
- 15.2. The Private partner ensures, that the Object from the commencement of its operation and the Services, no later than 30 (thirty) days from the commencement of their provision will meet the requirements of the legislation, the Agreement, the Specifications, and the Tender, during the entire remaining period of the Agreement. This obligation is performed by the Private partner individually by finding and using the required funds and choosing the required means and methods.
- 15.3. The Private partner must use the financing specified in the Financial activity model for the performance of the obligations under the Agreement, including sources and conditions of financing. The Private partner has the right to change the financing sources and conditions specified in the Financial activity model, if such changes do not increase the Return on investment, specified in the Tender and do not increase the obligations and risks of the Public partner, including the obligations in cases of the termination of the Agreement without the fault of the Public partner. Such changing of financing sources and/or financing conditions require a prior written consent of the Public partner, it may not be unreasonably withheld and refused by the Public partner, providing that such consent does not increase the obligations and risks of the Public partner, including the obligations in cases of the termination of the Agreement without the fault of the Public partner. The Public partner must presented such consent or a motivated refusal to grant it within 20 (twenty) days from the date when the request with all the substantiating information and documents are presented to the Public partner.
- 15.4. After receiving the prior written consent of the Public partner, which may not be unreasonably withheld by the Public partner, the Private partner has the right to change the Investments or operating costs specified in the Financial activity model for other investments or to delay or advance the time periods for the execution of the Investments, or to change the operating expenses, if the same or higher receivable value is ensured to the Private

partner by the Public partner for the remuneration. The Public partner must present such consent or a motivated refusal to grant it within 20 (twenty) days from the date when the motivated request with all the substantiating documents and information are presented to the Public partner.

- 15.5. If the Public partner receives larger Return on investment than it was specified in the Financial activity model, the amount exceeding the planned Return on Investment goes to the Private partner, except in cases when such increase in the Return on Investment is directly caused by the actions or decisions of the Public partner. Due to the direct actions or decisions of a Public partner, the share of the Return on Investment, which exceeds the Internal rate of return, is distributed **[specify the rules of distribution or a ratio]**.

## **16. Additional works and Services**

- 16.1. During the preparation of the Tender, the Investor planned and evaluated in the Tender all works, services, and actions, required for the performance of the obligations set out in the Agreement, and the achievement of the results, as well as reflected this evaluation in the Financial activity model. In order to avoid doubts the Parties declare that obligations of the Private partner, specified in the Agreement, in their essence match the obligations of a contractor/contractor general assumed under the turnkey type agreements of construction contracting, i.e. such construction contracting agreements, under which the contractor must perform clearly specified works and actions, as well as those that are not clearly specified, which are required for the performance of Works and actions and the achievement of the results specified in the Agreement.
- 16.2. If it occurs that Additional work and/or services are required, such Additional works and / or Services may be performed and are paid for only if such Additional works and / or services are agreed upon in writing with the Public partner, and if the Investments of the Private partner (in case of Additional works) or costs (in the case of additional services) increase due to such Additional works and/or services, where applicable, taking into account savings due to the part of the Works or Services the performance of which are no longer required due to the Additional works and / or services
- 16.3. Additional works and / or services may only be initiated by the Public partner. The Private Partner has the right to inform the Public partner about the need for Additional works and / or services.
- 16.4. In order to agree upon the Additional works and/or services, the Public partner presents to the Private partner the motivated proposal regarding their necessity. The Additional works and services are formalized by concluding the agreement, specifying the names, units, amounts of the Additional works and/or services, as well as arguments for the necessity of Additional works and/or services, and technical solutions (drawings, etc.). (in case of works), or specifications (in case of services), also setting the prices, or substantiation of rates. The agreement for Additional works and/or services, prices thereof and terms of payment must be signed by the Public partner and the Private partner, and is deemed an integral part of the Agreement. If the Private partner fails to provide a motivated refusal for the consent or refusal to carry out Additional works and/or provide additional services within the timeframe set in the motivated

proposal of the Public partner, or unreasonably delays signing the agreement, the proposal for the Public partner and/or services is deemed cancelled. In such case, the Public partner may purchase Additional works and / or services from other legal entities in accordance with the procedure established in the legislation. The extension of the timeframes for the carrying out of Works and/or provision of Services (if such extension of timeframes is necessary) must also be resolved in the agreement specified in this paragraph. The performance of the Additional works or provision of Additional services may commence immediately after the signing of the agreement on the Additional works and/or services. If Additional Works and / or Services are procured from third parties, the Public partner undertakes to coordinate schedules of such Additional works and / or services with the Public Partner, as well as to take all measures to ensure that such third parties comply with the safety requirements of the work and do not interfere with the Public Partner's performance of the Works.

- 16.5. Expenses of the provision of additional works or service provision must be calculated according to the Pricing rules determination methodology approved by the order No. 1S-104 of the Director of the Public Procurement Office of 29 June 2017 (or its other relevant version or of the methodology that replaces it, valid at the time of the conclusion or performance of the Agreement).
- 16.6. The Private partner will take all reasonably practicable steps to ensure the financing of Additional works and / or services on terms acceptable to him and the Funder or Another loan provider. If the Private partner is not in a position to ensure financing for Additional works and / or services, the Public partner and the Private partner shall agree in writing the appropriate schedule for the payment for such Additional works and / or services, or forfeits such Additional works and / or services
- 16.7. If the Public partner and the Private partner do not agree on the financing of the Additional works and / or services as specified in the paragraph 16.6 of the Agreement, the Public partner has the right to purchase Additional works and / or services from other economic entities in accordance with the terms of legislation.
- 16.8. In any case, the total value of the Additional works and / or services, purchased from the Private partner in accordance with the procedure specified in this paragraph 16 throughout the term of Agreement may not exceed 50 percent of the initial value of the Agreement

## **17. Change of Works or Services**

- 17.1. The Public partner has the right to initiate a Change according to the terms specified in this paragraph 17 of the Agreement.
- 17.2. Only the Changes that are related to the Property and are equal, but do not change the size of the Annual remuneration, are allowed.
- 17.3. By initiating a Change the Public entity, it must present a notice about the Change to the Private partner. Such notice must contain:
  - 17.3.1. A description of the Change, detailed enough so it would be possible to assess and present a proposal to the Private partner;



- 17.3.2. Reasons why the changes for Works and/or Services are proposed;
  - 17.3.3. Impact on the carrying out of Works and/or provision of Services (if applicable);
  - 17.3.4. Implementation schedule of the proposed Change;
- 17.4. After the Private partner receives the notice on the Change, it has the right to refuse to implement the Change if:
- 17.4.1. legislation requirements would be breached by implementing the Change;
  - 17.4.2. previously issued permits, consents, or approvals of other kind, associated with this Agreement and/or the Object or the associated documentation of its part, would be cancelled should the proposed Change be implemented;
  - 17.4.3. the Change could have a fundamentally adverse effect on the capabilities to implement the Project;
  - 17.4.4. the proposed Change could do a substantial damage to the health or safety of a person;
  - 17.4.5. the proposed change could have a substantial adverse effect on the abilities of the Private partner to perform obligations under a Direct agreement or another agreement with the Funder specified in the Agreement;
  - 17.4.6. due to the proposed change the Private partner will incur additional costs, the financing thereof should be ensured by the Public partner.
- 17.5. After the receipt of a refusal to implement the proposed Change from the Private partner, the Public party may organize a meeting with the Private partner, during which the following matters shall be discussed:
- 17.5.1. the justification, confirming that all possible actions in order to reduce the increase of costs or increase the reduction of costs were taken;
  - 17.5.2. A financial calculation of the Change, i.e. a calculation of the amount of additional Investments and the Investments the execution of which is not required anymore, in accordance with the principle of the cost effectiveness and rationality;
  - 17.5.3. The reasons of the Private partner for refusing to implement the proposed Change and possible means for the elimination of these reasons.
- 17.6. Should a dispute regarding the proposal for Change arise between the Parties, the dispute is resolved in accordance to procedure specified in the paragraph 55 of the Agreement.
- 17.7. If the Parties agree on the Change, or if the dispute is resolved in accordance to procedure specified in the paragraph 55 of this Agreement, the respective Party confirms the received proposal (with changes, if applicable) or withdraws the Change that it initiated.
- 17.8. If the Parties agree on the Change, if there is a need, they arrange in writing a respective schedule of changes and payments. Should a dispute arise between the Parties regarding the schedule of the Change, the dispute is resolved in accordance to procedure specified in the paragraph 55 of the Agreement.

- 17.9. After the proposal is confirmed or an approval is received, the Private partner must provide the changed Financial activity model to the Public partner in accordance to the procedure specified in annex No. 3 to this Agreement, within 10 (ten) Business days, if necessary.
- 17.10. After the proposal for Change is confirmed the Parties shall immediately execute the respective changes to the Agreement (if such are necessary).

## **18. Provision of Services**

- 18.1. The Private partner must ensure, that the nature, amount, and quality of Services that are being provided, would constantly and completely meet the requirements of the Agreement. In case of disputes regarding the compliance of Services with the specified documents, they are resolved in accordance to procedure specified in the paragraph 53 of the Agreement.
- 18.2. The Private partner must provide Services at the site of the Property, except in the exemption cases specified in the Agreement, or in case of Services, which according to the Specifications, Tender, or their nature can be provided in another location.
- 18.3. The Private partner has the right to suspend the provision of Services in the part of the Object, where the Private partner is performing Repair works of the Object (or its part). If there is a need to transfer employees out of the Object (or its part), where the Repair works are being carried out, such transfer to another part of the Object or another institution must be organized by the Public partner in such a way that Repair works would not be interrupted. The Private partner must ensure, that Repair works are carried out and completed at the time and within deadlines agreed with the Public partner.
- 18.4. The Private partner undertakes to inform the Public partner about the Repair works that are being planned within the following terms and according to the following procedure:
- 18.4.1. the Private partner must inform the Public partner about the Ordinary repairs at least 2 (two) months before the commencement of the Ordinary repairs by agreeing on the procedure of the performance, extent, time, and deadlines of such works;
- 18.4.2. the Private partner must inform the Public partner about the Overhaul at least 6 (six) months before the commencement of the Overhaul by agreeing on the procedure of the performance, extent, time, and deadlines of such works;
- 18.4.3. if the urgent minor Repairs are needed for the operation of the Object or its part, which do not fall within the Ordinary repairs or the Overhaul, the Private partner informs the Public partner of that at least 2 (two) Business days before the commencement of such Repairs and agrees on the procedure of the performance, extent, time, and deadlines of such works, if the Specifications do not provide otherwise.
- 18.4.4. for the accident prevention and/or their elimination, the Private partner must immediately make all the necessary Repairs and inform the Public partner about the performed Repairs as soon as possible.
- 18.5. During the provision of Services, the Private partner (or the Service Subcontractor) must have installed a certified environmental protection system in the fields of the Service provision, conforming to the LST EN ISO or equivalent standard, and a certified system of employee



safety and health at work, conforming to the OHSAS 18001: 2007 or an equivalent standard, and to must adhere to the requirements thereof the entire time.

18.6. The Private partner is responsible for the supply and monitoring of the energy and water, and must conclude relevant agreements with the energy and water suppliers directly. A Public partner will use according to its own needs and will have the right to regulate the internal temperature or other variables that may affect the consumption of energy. The Private partner is responsible for meeting energy consumption targets as described in the Specifications.

## **19. Sub-suppliers**

19.1. The Private partner, at its own expense (i.e. without increasing the Annual remuneration just for that reason), risk, and liability may hire Sub-suppliers, who meet the qualification requirements for Sub-suppliers, specified in the Conditions for respective Sub-suppliers, presented in the annex No. 1 to the Agreement, for carrying out of Works and provision of Services, except in case specified in the paragraph 19.6 of the Agreement, only after receiving a prior written consent from the Public partner, which cannot be unreasonably withheld by the Public partner. Approval of the Public partner is not necessary in the case specified in the paragraph 19.6, also for Sub-suppliers that are listed in the Tender of the Investor.

19.2. During the performance of the Works or the provision of Services, Sub-suppliers must comply with the same requirements that apply to the Private partner due to the respective Works and Services under the Agreement.

19.3. Subcontractors or economic entities, the capacity of which were employed by the Investor during the Procurement in order to meet the requirements specified in the conditions, may be replaced by other entities if:

19.3.1. the replacing economic entities ensure at least same resources and capacity as the resources and capacity committed by the Sub-suppliers being replaced, required for the completion of the remaining part of the Agreement and meet the requirements for Sub-suppliers set in the Procurement conditions, including qualification requirements, if at the time of the Procurement the Investor has based its compliance with the requirements specified in the Procurement conditions on the qualification of the respective Sub-suppliers, and

19.3.2. The Private partner receives a prior written consent of the Public partner, which cannot be unreasonably withheld.

19.4. The Private partner may terminate or otherwise end the agreement with the Sub-Supplier or the entity, on the capacity of which the Investor relied at the time of the Procurement in order to comply with the Qualification Requirements set in the Conditions (i.e. to refuse to purchase the Works or the Services from the Sub-Supplier or the entity) and to perform the Works or provide the Services on his own, only if at that moment a Private partner itself meets the qualification requirements specified in the respective Conditions. In such case, the Private partner must obtain the consent for the performance of the Works or the provision of the Services from the Public partner.

- 19.5. After concluding an agreement with a Sub-Supplier, the Private partner presents a copy of the agreement to the Public partner within no more than 5 (five) days after the date of its conclusion.
- 19.6. Regardless of the paragraph 19.1 of the Agreement, the Private partner has the right to hire a new Sub-Supplier or entity without a prior written consent from the Public partner, (except in cases specified in paragraphs 20.2.4 - 20.2.8 of the Agreement, when such consent is required), if the total value of the Works carried out by such Sub-Supplier does not exceed [amount] excluding VAT or if the total amount of the Services being provided does not exceed [amount] excluding VAT.
- 19.7. Agreements with Sub-Suppliers and entities must be concluded in accordance with the principles of good faith and arm's length, as well as the Good business practice. Agreements must be valid until the expiration or termination of the Agreement, or it must be allowed to terminate them by a unilateral notice of the Public partner without any negative effects, at least 30 (thirty) days before the desired date of termination.
- 19.8. Regardless whether the Services are provided by the Private partner itself or by employing Sub-Suppliers, the Private partner is responsible for the proper carrying out of Works or the provision of Services, meeting the requirements of the Specifications and the Tender, as well as their quality.

## **20. Coordination of activities with the Public partner**

- 20.1. The Private partner must supply the Public partner with the following for familiarisation:
- 20.1.1. Candidacies of experts specified in the paragraph 28.1 of the Agreement;
  - 20.1.2. Candidacies of the auditor of the Private partner;
- 20.2. The Private partner must, in all cases, get a prior written consent of the Public partner for:
- 20.2.1. The change of Financial activity model, as specified in the paragraph 15.3 of the Agreement;
  - 20.2.2. The change of Financial activity model in cases other than specified in the paragraph 20.2.1 of the Agreement;
  - 20.2.3. The change of Sub-Suppliers, as specified in the paragraph 19 of the Agreement;
  - 20.2.4. Replacement candidacies for persons, the qualification of whom was the basis for the Private partner's compliance with the qualification requirements set in the Procurement conditions at the time of the Procurement;
  - 20.2.5. Transactions indicated in the paragraph 33 of the Agreement, related to the security of the Private partner's performance of obligations to third parties, except cases of exception specified in the Agreement;
  - 20.2.6. Temporary non-conclusion of the insurance agreements in the case specified in the paragraph 34.4 of the Agreement;
  - 20.2.7. Use of the insurance benefits received under the Insurance agreements for the loss of Property, use for the reconstruction of wrong Property, as indicated in the paragraph 34.8 of the Agreement;

- 20.2.8. Any transactions concluded between the Private partner and Associated persons, except for those specified in the Tender;
- 20.2.9. Other transactions, on the basis of which the Private partner assumes obligations, the value of which for the current financial year is *[amount, e.g.: exceeds 100 000 (one hundred thousand) Euro, or the total value of the agreement or the value of all agreements concluded with the respective contra-hent for the identical subject matter and performed or performable exceeds 500 000 (five hundred thousand) Euro (excluding VAT)]*. If it is not possible to calculate these values in advance, the consent of the Public partner will be required if:
- a) the duration of the agreements are more than 10 (ten) years; or
  - b) the duration of the agreements is indefinite; except for the cases, when (1) the possibility of their unilateral termination is provided in these agreements, by notifying the other party before no more than 2 (two) months in advance, and (2) if the Private partner assumes no obligations to compensate losses or pay contractual penalties of any size if the agreement is terminated this way.
- 20.3. The Public partner must express its consent or a motivated refusal to issue the consent for the conclusion of the transactions specified in the paragraph 20.2 of the Agreement, no later than within 10 (ten) Business days from the date of the receipt of the request of the Private partner or the Investor, and all of the necessary information, as well as the confirming documents, if other periods for the provision of a specific response are not specified in the Agreement, Public partner also has no right to refuse to issuing such consent. If the Public partner fails to provide any remarks or objections within the specified time period, it is deemed that the Public partner agrees with the proposed actions. If a consent for conclusion of the specified transactions is issued, the transactions must be concluded under market conditions in accordance to the principle of arm's length. The Private partner informs the Public partner about the conclusion of a transaction immediately, but no later than within 10 (ten) days, by providing the copies of the agreement, annexes to it, documents listed in it, and associated documents.

## **VIII. CASES OF EXEMPTION AND COMPENSATION EVENTS**

### **21. Cases of exemption**

- 21.1. The following are deemed to be Cases of exemption, and the Private partner has the right to temporarily completely or in part suspend the performance of the Works and/or provision of the Services, if:
- 21.1.1. The Public partner fails to fulfill its obligations under the Agreement;
  - 21.1.2. *[Indicate other grounds to be considered as the Case of Exemption;]*
  - 21.1.3. Annual remuneration for performance of the Agreement is not received for more than 30 (thirty) days due to circumstances under the control of the Public partner;

- 21.1.4. the amount of Annual remuneration payments which is delayed in one year exceeds half the amount of the Annual remuneration payment for one month
  - 21.1.5. on the Substantial Amendment of the Law in the event of the circumstances specified in the Agreement 39 or in the implementation of the risk assigned to the Public partner in the Risk Sharing Ratio presented in Annex 4 to the Agreement;
  - 21.1.6. any restrictions on property or similar rights with respect to the Property or Land plots;
  - 21.1.7. Partial or complete performance of the Works and/or provision of Services, is objectively impossible due to any restrictions of ownership or similar rights with respect to the Object (its part) or Land plot(s);
  - 21.1.8. the performance of Works are delayed due to non-issuing of the permits to perform Works or due to the delay to issue them, which was caused by the actions of the authorised state/municipal institutions or omission failing to observe the legislation requirements, and not the actions or omission of the Private partner;
  - 21.1.9. Strikes, lockouts, occupation of buildings (except for those of the employees of the Private partner or Associated persons) occur in the Object, provided that they do not grant the right to apply *Force Majeure* circumstances under the paragraph 43 of the Agreement;
  - 21.1.10. Partial or complete performance of the Works and/or provision of Services, is impossible due to the failure of the Public partner to perform or improper performance of its functions assigned to in the legislation, and that causes a physical or psychological threat to the employees of the Private partner.
- 21.2. If the provision of the Services is suspended completely or partially on the grounds specified in the paragraph 21.1 of the Agreement, the Private partner must:
- 21.2.1. Notify the Public partner about it and provide the reasons for such suspension in advance, but no later than 5 (five) days before, or, if it is impossible, as soon as it becomes possible;
  - 21.2.2. Within 10 (ten) business days from the request to apply the Case of Exemption, the Private partner shall provide the Public partner with all information related to the Case of Exemption, including:
    - 21.2.2.1. Detailed description of the Case of Exemption, including the nature of the Case of Exemption, its date of occurrence, and likely duration;
    - 21.2.2.2. The effect of the Case of Exemption on the ability of the Private partner to perform its obligations under this Agreement, specifying which specific obligations are impossible to perform;
    - 21.2.2.3. A description of the measures that the Private partner intends to take in order to reduce the consequences of the Case of Exemption.
  - 21.2.3. Taking all reasonably available measures to provide the Services to their maximum possible extent and to renew provision of the Services in their entire provided scope as soon as possible;
  - 21.2.4. Taking reasonable measures to ensure security of the Property.
- 21.3. If the Case of Exemption occurs before the fulfilment of the Preconditions for the Agreement's entry into force or before the commencement of the Object's operation, the period of

Agreement's coming into force specified in the paragraph 3 of the Agreement, Work performance period, and/or Service provision commencement timeframe specified in the paragraph 4 of the Agreement, however the total term of the Agreement validity is not extended.

- 21.4. In Case of Exemption, the liability specified in the paragraph 48 of this Agreement and grounds for termination of the Agreement specified in the paragraph 40 of the Agreement do not apply to the Private partner.
- 21.5. The provisions of paragraphs 21 and 22 of the Agreement may also be applied to the same circumstances, if these circumstances meet both the criteria of the Case of Exemption and the Compensation Event.
- 21.6. Any disputes between the Parties regarding the Case of exemption are resolved in accordance with the procedure specified in the paragraph 53 of this Agreement.

## 22. Compensation events

22.1. The Compensation events are the events the risk of which according to the Agreement, including the Annex No. 4 to the Agreement the Matrix of Risk distribution between Parties is exclusively or partially attributed to the Private partner, and which are specified bellow, the consequences of which do not have to be compensated and / or remunerated by other persons, and / or which have not resulted from the actions of the Investor or the Private partner, or their Associated persons, or Sub-Suppliers, or other entities employed by the Private partner for the performance of the Agreement, with the exception of actions which were intended to avoid the Compensation event or its affect on the increase in the Investments or the costs, associated with the provision of the Services, provided in the Financial activity model, should the caused loses, or the increase in the Investments or the Costs, associated with the provision of the Services were bigger::

22.1.1. new legislation, imposing additional requirements for the performance of Works and / or provision of Services are changed or passed due to which it becomes necessary to perform Additional works and / or services, to change the ways and means of Service provision, and when such legislation is classified as the Fundamental legislative changes;

22.1.2. replacing or accepting new legislation exclusively governing the activities of the Private partner, for which the Private partner is compelled to incur unplanned expenses for the implementation of the Contract, and when such legal acts are classified as substantive changes to the legislation;

22.1.3. The Property is transferred or handed over to the third party for control or use or is awarded by a court decision (except in cases specified in the Agreement), but only if this does not constitute grounds for termination of the Agreement on the grounds specified in its paragraph No. **Error! Reference source not found.**

22.1.4. it is not objectively possible to perform the Works or to provide the Services in whole or in part because the Public partner fails to fulfill its obligations under the Contract, not in accordance with the Contractor's obligations under the Treaty in the event of non-execution or unlawful actions;

- 22.1.5. partial or complete performance of the Works or provision of Services, is objectively impossible due to any restrictions of ownership rights with respect to the Property;
- 22.1.6. partial or complete performance of the Works is objectively impossible due to any restrictions of ownership rights with respect to the Land plot;
- 22.1.7. Objectively, it is not objectively possible to perform the Works objectively because of unauthorized acts or omissions of public administration entities delaying the issuance of the necessary documents for designing, although they have received from the Private partner all documents compliant with legal acts (without a dispute regarding the content of documents) to the entity of public administration;
- 22.1.8. it is objectively impossible to perform all or part of the Works due to transactions concluded by the Public partner with third parties, if this results in delays in the performance of the Works or the Property;
- 22.1.9. the circumstances of the *Force majeure* occur. In this case, the Grant is obliged to *[determine the size, recommended - 50 (fifty)]%* of the consequences of the risk, unless the Contractor has or should be insured against particular circumstances of force majeure, in which case the risk of the consequences of all circumstances of force majeure falls on the Private partner;
- 22.1.10. the value added tax rate changes.
- 22.2. Upon the occurrence of the Compensation event, the Private partner must notify in writing the Public partner immediately, but not later than within *[specify the term, recommended is 5 (five) Business days]* from the moment when it became aware (or should have become aware), and no later than within *[specify the term, recommended is 21 (twenty one) day]* from the Compensation event submit to the Public partner the documents supporting the Compensation Event, proving its impact on the size of the Investments specified in the Financial activity model or on the deadlines established by the Parties in the Agreement or the Tender. Failure to notify the Definition of a Compensation Event for objective reasons beyond the control of the Private partner does not invalidate the Private partner's right to compensation.
- 22.3. Within *[specify the term, recommended is 15 (fifteen) days]* from the receipt of the documents, confirming the incurred losses and the size thereof, or the necessity to extend the established deadlines, the Private partner must make the motivated decision regarding the confirmation of the Compensation Event or the motivated refusal to do so.
- 22.4. Upon confirmation of the Compensation Event the following are compensated to the Private partner:
- 22.4.1. If due to the Compensation Event the Investments into the Property increase – the increase of such Investments is necessary to ensure the sustained Internal rate of return;
- 22.4.2. If due to the Compensation Event the costs of the Private partner, related to the Service provision increase – the increase of such costs is necessary to ensure the sustained Internal rate of return;
- 22.5. Compensation specified in the paragraph 22.4 of the Agreement is calculated and paid in accordance to the annex No. 3 to the Agreement *Terms of settlement and payments*.

- 22.6. The parties confirm the joint understanding that after the performance of Change or exercising of the right for the performance of Additional works and /or the services and payment for them according to the terms set forth in the paragraphs 16 and 17 of the Agreement, the additional compensations for the same thing are not paid to the Private partner according to the terms set forth in this paragraph 22 of the Agreement.
- 22.7. After the confirmation of the Compensation event for the period which is necessary to rectify the consequences of the Compensation event, the term of the Agreement coming into force specified in the paragraph 3 of the Agreement, the terms of the completion of Works specified in the paragraph 4.1 of the Agreement, or the terms of the commencement of Service provision specified in the paragraph 4.2 of the Agreement, or other timeframes specified in the Specifications, the Tender, or elsewhere in the Agreement or agreed by the Parties, are extended, except for the maximum expiration term of this Agreement set herein.
- 22.8. If the Private partner presents the notice about the Compensation Event without observing the deadline set forth in the paragraph 22.2 of the Agreement, the compensation for the missed deadline is not paid, and in case of extension of the deadlines, such period is included into the extended deadline.
- 22.9. Any disputes between the Parties regarding the existence of the Compensation Event, the size of the compensation and terms of payment, postponement of the deadlines, and its duration are resolved according to the procedure of dispute resolution set forth in the paragraph 53 of the Agreement.
- 22.10. In case of the Compensation event of which the Private partner notified the Public partner by duly submitting the notice and documents confirming this Compensation event according to the terms set forth in the paragraph 22.2 of the Agreement, the liability specified in the paragraph 48 of the Agreement and grounds for the termination of the Agreement specified in the paragraph 40 of the Agreement do not apply to the Private partner for that period of the Compensation event that was duly reported and documents confirming this Compensation event were submitted within the deadlines specified in the paragraph 22.2 of the Agreement.

## **IX. PAYMENTS**

### **23. Payments and terms of payment**

- 23.1. The Private partner receives only the Annual remuneration for performance of the Agreement, it is calculated and paid out according to the terms of the annex No. 3 to the Agreement *Terms of settlement and payments*.
- 23.2. The amounts paid to the Private partner are reduced or increased in such cases and by such amounts that are specified in this paragraph 23 and the annex No. 3 to the Agreement *Terms of settlement and payments*.
- 23.3. Any taxes, levies or payments of any other nature shall not be deducted from the payments made by the Public partner to the Private partner, except for the deductions according to the penalties scheme set out in the Specifications.



- 23.4. All payments of the Annual remuneration under the paragraph 23 of the Agreement must be made in accordance with the procedure set out in the Annex No. 3 to the Agreement *Terms of settlement and payments*.
- 23.5. Annual remuneration payments and other payments under this Agreement are calculated and carried out in euros.
- 23.6. The Parties confirm that the Private partner has the right to agree with the Funder that the Annual remuneration or a part thereof would be paid to the Bank account of the Funder. In that case, the Public partner transfers the Annual remuneration or a part thereof directly to the specified bank account of the Funder.
- 23.7. All costs and expenses relating to the performance of the obligations of the respective Party under the Agreement shall be assumed by the respective Party and shall not be reimbursed at the expense of the other Parties, except in cases when the Agreement expressly provides otherwise.
- 23.8. A private partner covers all the Utility service tax costs related to the creation of the Property, up to (but not including) the commencement date of Object's operation, at its own expense. From the commencement date of Object's operation until the end of the Agreement, the costs of Utility service taxes are deemed to be Pass-through costs and they are paid by the Public partner on the basis of actual consumption data and in accordance with the procedure specified in the annex No. 3 to the Agreement *Terms of settlement and payments*. At the end of the reference month, the Private partner, together with the documents required for the payment for the Utility services (VAT invoices from the Utility service providers), must submit a detailed report on the consumed energy and on the amounts of disposed waste. The Public partner reserves the right at any time during the reference month to check the accounting of the energy resources and accounting of other Utility services, as well as disposed waste amounts.
- 23.9. If, due to the fault of the Private partner, the Object cannot be used for the provision of the Services and the performance of functions of the Public partner, i.e. due to the inadequacy of the Object, the Private partner cannot provide the Services, and the Government partner is unable to perform the functions assigned in the legislation, the Public partner does not pay the Annual remuneration for the period during which the Object could not be used, in whole or in part, for the provision of Services and the performance of the functions assigned to the Public partner in the legislation. The principle of "Zero availability - zero payment" applies. The Parties agree and confirm that Cases of exemptions and / or *Force Majeure* specified in the Agreement are not considered as cases of "Zero availability - zero payment".
- 23.10. In the case specified in the paragraph 23.9 of the Agreement, the Public partner shall notify the Private partner in writing immediately, but not later than within 5 (five) Business Days from the inadequacy of the Object to provide Services to the Private partner and for the Public partner to perform the functions under the legislation, and not later than within 10 (ten) Business days shall submit to the Private partner substantiating documents (about the failure to provide all or part of the Services and the inability of the Public partner to perform the functions specified in the legislation, as well as the period during which it is objectively impossible to use the Object). Any disagreement between the Parties regarding the existence



and duration of the event specified in the paragraphs 23.9 - 23.10 of the Agreement, are resolved in accordance with the procedure set out in the paragraph 53 of the Agreement.

**24. *[If Market research is applicable the Market research]* and the Price comparison**

- 24.1. The provisions of the paragraph 24 of the Agreement are applicable only for the following secondary Services:
- 24.1.1. *[specify the Services, e.g.: catering, washing.];*
- 24.1.2. *[specify the Services, e.g.: catering, washing.];*
- 24.2.6 (six) months before the respective date of the Market Research, the Private partner undertakes to perform the Price comparison at its own expense. The purpose of the Price comparison is to assess the prices for the provision of the Checked services and their competitiveness. During the Price comparison the Private partner, acting honestly and objectively, must perform the market price comparison for the Checked services and respective services. The comparison is performed according to the average price of similar services provided to other entities or persons, which is set by selectively evaluating the prices of works or services of no less than 3 (three) other entities on the market of similar reputation, having similar resources and capacities that are not Associated Persons with respect to the Private partner and / or the Investor, and taking their average, unless there are not such number of entities on the market, in such case the prices of works and services of all entities on the market are evaluated and their average taken. Entities, the prices of which shall be evaluated, and their number shall be proposed by the Private partner providing the motives for such proposal. Within 10 (ten) days from the receipt of such proposal the Public partner may submit a motivated instruction to change the number of entities, the prices of which are to be evaluated, remove certain indicated entities, or include additional entities.
- 24.3. The results of the Price comparison, specified in the paragraph 24.1 of the Agreement, shall be submitted by the Private partner to the Public partner no later than *[indicate term, recommended is 3 (three) months]* before the respective date of the Market research. The results should substantiate how much the prices of the works and / or the services of the market participants differ in percentage from the costs of the respective elements of the Checked services, specified in the Financial activity model, taking into account the Adjustment factors (the "Market Price"), updated in accordance with the Terms of settlement and payments specified in the annex No. 3 to this Agreement, if applicable.
- 24.4. If the Market price established during the Prices comparison is lower than *[recommended 95 (ninety five)] per cent or higher than [recommended 105 (one hundred five)per cent]* per cent, the element prices of the Checked services indicated in the Financial activity model, or if the Price Comparison cannot be performed due to the reasons that are beyond the control of the Parties (including unavailability and / or lack of market data necessary for the comparison), the Parties, no later than *[indicate term, 30 (thirty) days period is recommended]* till the date of the Market research agree on the respective changes of prices of the Checked services by optimising the Financial activity model in accordance with the

Terms of settlement and payments specified in the annex No. 3 to the Agreement. In case the agreement is not reached on the respective changes of the Checked service price, the dispute is transferred for resolution to the commission or in accordance with the procedure set forth in paragraph 55 of the Agreement at the unilateral choice of the Public partner, or the Private partner shall perform the Market research.

- 24.5. In case the Market research is carried out, no later than before the date of the Market research, the Public partner and the Private partner shall take reasonable measures in order to agree on:
- 24.5.1. The possibility for entities, called to make proposals in the Market research, to make proposals for the provision of one or all Checked services in respect of which the Market research is being carried out;
- 24.5.2. The number and id of entities, called to make proposals in the Market research, ensuring that entities intended to be called will have sufficient competencies, resources, and financial capabilities, necessary for provision of the respective Checked Services;
- 24.5.3. The appropriate announcement about the Market research of the Checked services;
- 24.5.4. The content and wording of the invitation to submit proposals on the respective Checked services, and the proposal evaluation criteria that have to be chosen in a way, which would ensure the highest value for money, and to identify the economically most beneficial proposal with respect to the price, quality of services, personnel qualification, and technical advantages.
- 24.6. Until the date of the Market research, the Private partner undertakes to prepare the documents specified in the paragraph 24.5 of the Agreement, and the list of entities intended to be called to submit proposals, with respect to the agreements reached between the Public partner and the Private partner, specified in the paragraph 24.5 of the Agreement. Within *[indicate a period, 10 (ten) Business days are recommended]* from the receipt of these documents the Public partner shall be entitled to:
- 24.6.1. reasonably remove the certain entity intended to be called for submission of a proposal, if, based on the belief of the Public partner, such entity does not meet the requirements set forth in the paragraph 24.5.1 of the Agreement, except for the existing Sub-Supplier of the respective Checked Service;
- 24.6.2. include additional entities intended to be called for submission of a proposal, if, based on the belief of the Public partner, such entities meet the requirements specified in the paragraph 24.5.1 of the Agreement and their inclusion will allow to receive proposals providing higher value for money;
- 24.6.3. amend and/or modify provisions of the invitation to submit proposals, if, based on the motivated and reasonable belief of the Public partner, the Private partner has made a material error in it, or failed to include essential information, or the Parties have not reached the agreement on any of the subjects indicated or indicatable in the invitation in accordance with the procedure set forth in paragraph 24.5 of the Agreement.
- 24.7. Based on the tender documents, agreed upon with the Public partner in accordance with the procedure set forth in the paragraphs 24.6 and 24.5 of the Agreement, the Private entity

must carry out the tender of the Market research as soon as possible, and not later than within 10 (ten) days after the deadline for the submission of proposals, submit to the Public partner the received proposals and all information reasonably requested by the Public partner that would allow the Public partner to evaluate the received proposals according to the proposal evaluation criteria set forth in the tender documents. No later than within *[indicate term, 20 (twenty) days are recommended]* from the date of the receipt of the proposals and all the reasonably requested documents, the Public partner must make the decision on the proposal providing the highest value for money. The Private partner undertakes to employ the entity, whose proposal was recognised as providing the highest value for money, as the Sub-Supplier of the respective Checked services.

24.8. If the price of the proposal, winning the tender for the Market research, as it is specified in the paragraph 24.7 of the Agreement, is:

24.8.1. higher than the element of the price of the respective Checked service, for which the Market research has been carried out, indicated in the Financial activity model, in such case the Financial activity model shall be optimised in accordance with the Terms of settlement and payments set forth in the annex No. 3 of the Agreement, and from the moment of the determination of the winner of the Market research tender, recalculated Annual remuneration is applied;

24.8.2. lower than the element of the price of the respective Checked service, for which the Market research has been carried out, indicated in the Financial activity model, in such case the Financial activity model shall be optimised in accordance with the Terms of settlement and payments set forth in the annex No. 3 of the Agreement, and from the moment of the conclusion of agreement under which the winner of the Market research tender is employed as the Sub-Supplier, recalculated Annual remuneration is applied.

24.9. Costs of the Market research and of the performance of Price comparison procedures are covered by the Private partner *or* by both Parties in equal parts. All disagreements and disputes between the Parties related to the Market research and the Price comparison are resolved by the commission or in accordance with the procedure specified in the paragraph 55 of the Agreement.

## **25. Change of Financing Conditions**

25.1. The Private partner has the right to change the sources of financing or financing conditions specified in the Financial activity model if this does not increase the obligations of the Public partner in accordance with the terms specified in the annex No. 3 to this Agreement *Terms of settlement and payments*.

## **X. CONTROL OF THE PERFORMANCE OF OBLIGATIONS**

### **26. Right of the Public partner to control**

26.1. The Public partner has the right to control how the Private partner is performing its obligations under the Agreement, including the right to inspect the following, by its preferred means and at his own expense, in accordance with the procedure set forth in the Agreement:

- 26.1.1. The performance of works carried out by the Private partner according to the procedure specified in the paragraph 9 of the Agreement;
- 26.1.2. Property of the Private partner as well as the performance of all obligations undertaken by the Private partner under the Agreement;
- 26.1.3. Compliance of the Private partner's activity with the requirements set forth in paragraph 18 of the Agreement.
- 26.2. As the Public partner is exercising its right to inspect and control the activity of the Private partner, the Private partner must cooperate fully with the Public partner and its representatives, enable them and provide the possibilities at the agreed time to familiarise with the documents, inspect the Property, premises / location where the activity, related to the execution of the Works and provision of the Services, is being carried out, as well as provide all the requested information related to the performance of the obligations undertaken under the Agreement, however the inspections must not interfere with the Private partner's execution of the Works or provision of the Services.
- 26.3. Rights of the Public partner to control the activity of the Private partner, provided for in this paragraph 26, have no effect on any other provisions of the Agreement, that enable the Public partner to exercise other or identical or similar rights to control.
- 26.4. Any provision of the Agreement cannot be interpreted as relieving the Private partner from the liability for infringements established and sanctions imposed by state institutions or for damage caused to the third parties.

## **27. Provision of the information**

- 27.1. The Private partner shall provide the Public partner with the information and provides possibilities to control its activity, related to the exercising of the rights and performance of obligations under this Agreement. No later than within the indicated timelimits the Private partner shall provide the Public partner with the following information:

No.	Information	Timeframe
1.	Set of audited financial statements and annual activity report of the Private partner	Not later than 130 (one hundred thirty) days after the end of each financial year
2.	Monthly / quarterly and annual activity report prepared by the Private partner as it is specified in the Specifications	No later than within 5 (five) Business days after each respective reference period
3.	The report on inspection of the compliance, specified in the paragraph 28 of the Agreement, with the requirements specified in the paragraph 18 of the Agreement	No later than within the timeframes specified in the Specifications, and if such timeframes are not specified in the Specifications – no later than within 2 (two) months after the receipt of the motivated request of

No.	Information	Timeframe
		the Public partner to perform the inspection
4.	Financial activity model implementation reports, providing information on the performed investments, works carried out, together submitting concluded agreements that were not submitted before, signed work acceptance certificates, received and settled invoices, and other information and documents requested by the Public partner	No later than within 14 (fourteen) days after the end of each quarter of the financial year
5.	Agreements concluded with Sub-Suppliers	Within periods specified in the Agreement
6.	Insurance agreements specified in the paragraph 34.1 of the Agreement	Within periods specified in the Agreement
7.	Agreements of the Private partner specified in the paragraphs 20.2.8 and 20.2.9 of the Agreement	Within 5 (five) days from their conclusion
8.	Other information and / or documents requested by the Public partner if they affect or can affect the performance of the obligations under the Agreement or if they are related to the provision of the information about the performance of the Agreement to the Public partner for the purposes of appropriate notifying	Within reasonable period of time indicated in the request of the Public partner

## 28. Inspection of the provided Services

28.1. In cases specified in the Specifications or upon motivated request of the Public partner, but no more than 1(one) time per each year of the Agreement duration, the Private partner must invite at its own expense independent financial, technical, legal, and other experts and specialists, who would perform the inspection of conformity with the requirements specified in the paragraph 18 of the Agreement and present its written report to the Public partner. If during the inspection non-conformities with the requirements specified in the paragraph 18 **Error! Reference source not found.** of the Agreement are detected, the Private partner must additionally specify the reasons that led to them.

28.2. The inspection (complete or partial) of conformity of the Private partner's activity with the requirements specified in the paragraph 18 of the Agreement can also be carried out by the Public partner in case of any of the following grounds:

28.2.1. Report of the inspection of the conformity with the requirements, specified in the paragraph 18 of the Agreement, submitted by the Private partner in accordance with the paragraph 27.1 of the Agreement is incomplete or contradictory;

28.2.2. The Public partner possesses a reliable information about the possible infringements of the requirements specified in the paragraph 18 of the Agreement;

- 28.2.3. Activity inspections or investigations against the Private partner are initiated by state and / or municipal institution, or infringements are detected and / or sanctions imposed after their completion;
- 28.2.4. the possibility of periodic inspections is provided for in non-discriminatory normative legislation applicable to the provision of the Services;
- 28.2.5. the performance of such inspection or submission of information, the obtaining or examination of which requires the performance of such inspection, is required by the authorities, including, but not limited to the ministry of finance of the Republic of Lithuania, and the national audit office of Lithuania.
- 28.3. The Public partner may carry out inspection on its own or invite independent financial, technical, legal and other experts/specialists, or governmental or control institutions in cases specified in the paragraphs 28.2.1 - 28.2.5 of the Agreement. If any infringements of the requirements specified in the paragraph 18 of the Agreement are identified, the Public partner may request the Private partner to reimburse the expenses of such inspection, and in such case the Private partner must cover the actual expenses of such inspection incurred by the the Public partner, which cannot exceed the general market prices of respective inspection services.
- 28.4. The Private partner must provide the proper conditions for the governmental and control institutions, including, but not limited to the national audit office of Lithuania, the state tax inspectorate under the ministry of finance of the Republic of Lithuania, acting in accordance with the requirements of the legislation, to perform inspections of conformity with the requirements specified in the paragraph 18 of the Agreement, and / or other inspections.

## **XI. TRANSFERS OF RIGHTS AND OBLIGATIONS**

### **29. Transfer of rights and obligations**

- 29.1. The Public partner shall not be entitled to transfer its rights and obligations under the Agreement without prior written consent of the Private partner and the Investor, it shall not be unreasonably withheld by the latter. In case of transfer of the rights and obligations, the Public partner (except for the case of liquidation of the Public partner) shall remain jointly liable to the Private partner together with the person to whom the rights and obligations under the Agreement were transferred by the Public partner.
- 29.2. The Private partner with a prior consent of the Public partner has the right to transfer its rights and obligations under the Agreement only to its branch or subsidiary company to which can be directly decisively influenced by the Private entity as it is defined in the Law on Companies of the Republic of Lithuania. Arrangement must ensure that these prerequisites will be met during the entire period of the Agreement and no less than 3 (three) months after the expiration of the Agreement. The person, who took over the rights and obligations, must provide the same security of the performance of obligations as it was done by the previous Private partner. Security of the performance of obligations, provided by the previous Private partner, shall be returned, however it shall remain jointly liable for the proper performance of the Agreement. After all of these conditions are met, the entity, who



took over the rights and obligations of the previous Private partner shall be deemed the Private partner for the purpose of this Agreement.

29.3. Apart from the cases specified in the paragraphs 31.2 and 33.2 of the Agreement, the Investor has the right to transfer its rights and obligations under the Agreement or the shares of the Private partner or the part of them if:

29.3.1. the new Investor meets the qualification requirements specified in the Procurement conditions for the non-performed part of the Agreement; In such case, the initial Investor is exempted from the joint liability for the proper performance of the obligations of the Private partner under the Agreement, except for the liability arising from the obligations of the Private partner prior to the replacement of the Investor;

29.3.2. due to restructuring of the Investor, including its takeover, merger or acquisition, or due to insolvency, all or part of the rights of the initial Investor shall be taken over by another economic entity that meets the initial criteria of the qualitative selection, related to the non-performed part of the Agreement, provided that other substantial changes of the Agreement, which would require a new procurement to be organised, are not required;

29.3.3. the Investor acts on the basis of a joint enterprise agreement, and after the performance of the Works one of the parties to the joint enterprise agreement withdraws by transferring its rights and obligations or the shares held by the Private partner to the remaining parties to the joint enterprise agreement, if such transfer is permitted under the joint enterprise agreement. In such case the parties to the joint enterprise agreement remain jointly liable for the withdrawing party's obligations under the Agreement.

29.4. Cases of the replacement of the Investor specified in the paragraph 29.3 of the Agreement are possible only if due to such change the general nature of the Agreement does not change.

### **30. Temporary transfer of the performance of Private partner's obligations**

30.1. In case of exceptional circumstances due to which the Private partner (the Sub-Suppliers that it employed) cannot ensure the performance of the Works and / or their a continuous and effective provision of the Services, since it is unable to perform or, though it can perform them, but does not perform unreasonably or illegally, any of its obligations under the Agreement, the Public partner shall be entitled to take over and / or transfer performance of such obligation or, in case such obligation cannot be performed otherwise – all obligations, to the third parties temporarily, but no longer than for 90 (ninety) days. The right of the Public partner set forth in this paragraph shall not affect in any other of its rights under the Agreement.

30.2. Based on the ground, specified in the paragraph 30.1 of the Agreement, the Private partner must transfer its obligations to the Public partner or to the third party specified by the Public partner upon receipt of the written request of the Public partner. In such case all rights and obligations of the Private partner, including the rights of the Private partner arising from agreements with the third parties that are necessary for the proper performance of the obligations are transferred to the Public partner or to the third party specified by the Public partner. The Private partner must ensure proper transfer of performance of the Works and

provision of the Services, properly document necessary permits and perform all other necessary actions without delay.

30.3. For the purpose of this paragraph 30, exceptional circumstances are:

- 30.3.1. material breaches of the Agreement as they are defined in the paragraphs 40.2 and 41.2 of the Agreement that are not eliminated during the set term;
- 30.3.2. there is a risk of a severe damage to the environment, public health, safety of people or property, proper performance of functions and duties of government institutions and employees thereof operating at the Object, and when, in reasonable opinion of the Public partner, the Private partner is unable to prevent that (e.g. the infrastructure used for the provision of Services becomes unsafe, the necessary verification of the reliability of the infrastructure, used for the provision of Services, is not performed, the failure to observe the manufacturer's instructions, during the performance of the Works or the provision of the Services, the mandatory safety requirements are not observed, the Works are performed or the Services are provided by unqualified personnel, hazardous materials are released into the environment, etc.);
- 30.3.3. circumstances of the *Force Majeure*, set forth in the paragraph 43 of the Agreement, due to which the Private partner cannot perform its obligations, last more than 20 (twenty) days, but the Public partner or the third party can ensure the performance of the obligations;
- 30.3.4. Fundamental legislative change.

30.4. Prior to performance of the actions specified in this paragraph, the Public partner, no later than 60 (sixty) days in advance, during performance of the Works or no later than 30 (thirty) days / in advance after the commencement of Object's operation, notifies the Private partner about:

- 30.4.1. the intention to perform the specified actions;
- 30.4.2. the reason for performance of such actions;
- 30.4.3. the date from which the indicated actions shall be commenced;
- 30.4.4. the period during which, in the opinion of the Public partner, the indicated actions will be performed;
- 30.4.5. if possible, the impact of such actions on the Private partner and its capability to perform the Works or provide the Services during the period of when such actions are performed. The Private partner shall not be liable for the actions, failure to act of the entity that takes over the performance of the obligations, or conformity of the results of the performance of obligations that were taken over and /or transferred, with the requirements of the Agreement and / or legislation.

30.5. The performance of the obligation, transferred under the paragraph 30.1 of the Agreement, is the responsibility of the entity to whom the performance of the respective obligation is transferred. The Private partner must supply all information necessary for the performance of the transferred obligation under the Agreement, and it shall not be deemed to be the breach of the confidential information security requirements of either Party.

30.6. During the temporary transfer of the private partner's obligations to the third parties, the Annual remuneration is not paid to the Private partner.



- 30.7. After the circumstances due to which the respective obligation of the Private partner was taken over or transferred, expire, the rights that were transferred temporarily shall be returned to the Private partner without delay and the Agreement is performed as usual.
- 30.8. Temporary transfer of the Private partner's obligations shall not prevent termination of the Agreement in accordance with the section XVI of the Agreement.

### **31. Possibility to Step-In**

- 31.1. The Funder is entitled to exercise the step-in right, set forth in the Direct agreement, in accordance with the requirements and procedure set forth in the Direct agreement as well as other rights of the Funder set forth in the Direct agreement. The Public partner cannot exercise actions conflicting with the Direct agreement.
- 31.2. If the Investor or the Private partner fails to perform their obligations under the Agreement or perform them improperly, and when that is deemed to be a material breach of the Agreement, the Funder, subject to the conditions set forth in the Direct agreement, shall be entitled to assign another entity for performance of the Agreement instead of the Private partner and for performance of the obligations of the Private partner in favor the Funder.

## **XII. SECURITY OF PERFORMANCE OF OBLIGATIONS IN FAVOR OF THE PUBLIC PARTNER AND THIRD PARTIES**

### **32. Security of performance of obligations in favor of the Public partner**

- 32.1. When performing the Preconditions for the Agreement's entry into force, the Private partner must present the Security of obligation performance in accordance with the forms specified in the Conditions, the size of which would be:
- 32.1.1. prior to the commencement of Object's operation / operation of the respective part of the Object – 5 (five) percent of the total value of the Investment into the Object's creation, specified in the Investor's Tender (including VAT);
- 32.1.2. from the commencement of the Object's operation / operation of the respective part of the Object – until the expiration of the Agreement (security valid for 12 months prior to the operation of the Object / the respective part of the Object is presented, and it is extended for every 12 month period until the end of the Agreement (if remaining period of the Agreement is shorter than 12 months, the Security of the performance of obligations is extended for the remaining term of the the Agreement) – 5 (five) percent of the Annual remuneration for the respective year of Service provision (VAT excluded).
- 32.2. The Security of the performance of obligations provided by the Private partner can be valid for a shorter period than it is indicated in the paragraph 32.1 of the Agreement , however in such case the Private partner must submit to the Public partner a new security of performance of obligations of equivalent value no later than 15 (fifteen) days prior to the expiration of the security of performance of obligations. Not later than within 3 (three) business days from the receipt of the security (or the request about its suitability) the Public partner must confirm whether the security is suitable and equivalent.

- 32.3. If the Private partner fails to perform its obligations that are secured by the security of performance of Obligations, or in the case specified in the paragraph 42 of the Agreement, the Public partner has the right to use the security of performance of Obligations provided to it. In such case the security of performance of Obligations shall be used to cover (i) losses caused by the fault of the Private partner or the Investor, (ii) amounts payable by the Private partner under this paragraph of the Agreement, and (iii) the other financial liabilities of the Private partner in favor of the Public partner under the Agreement. Should after such use there would be unspent security funds claimed against the security of performance of Obligations left, they are returned to the Private partner within 7 (seven) Business days.
- 32.4. Upon expiration of the Agreement and if the Public partner does not use the security of performance of Obligations, or if the Private partner performs the secured obligations, but not later than within 7 (seven) days, the Public partner refunds the security of performance of Obligations provided to it.

### **33. Security of the performance of obligations in favour of the third parties**

- 33.1. By securing the performance of its obligations in favor of the Funder, the Private partner without the separate consent of the Public partner has the right to pledge and / or transfer its future income, received under the Agreement or transfer its claim rights, related to the Agreement, to the Funder, as well as pledge to the Funder the account into which the payments are made by the Public partner to the Private partner. The Private partner must immediately notify the Public partner about the concluded pledge transaction. The Private partner can secure the performance of its obligations using other property, by other means of security specified in the legislation, or to other persons, only after receiving a prior written consent of the Public partner, which may not be unreasonably withheld.
- 33.2. Shares of the Private partner and the rights granted by them can be pledged to the Funder with the prior notification of the Public partner, however without its separate consent, by concluding an appropriate agreement between the Funder and the Investor. If the Funder uses the pledge specified in this paragraph and if the situation provided for in the paragraph 40.1 of the Agreement, the period specified in the paragraph 40.1 is restarted.
- 33.3. The Public partner undertakes to cooperate and without a valid reason, when it is not contrary to the interests of the Public partner, does not increase the obligations of the Public partner, do not create additional liabilities and risks to it and/or to the state, and are not contrary to the legislation, do not refuse to issue permits or consents that will be necessary for the creation of the measures to secure the obligations of the Private partner in favor of the Funder. Public partner's refusal to issue the permit or the consent specified in this paragraph must be valid.

## **XIII. INSURANCE**

### **34. Insurance and use of the insurance benefits**

- 34.1. Within timeframes set forth in the annex No. 5 to the Agreement *List of the mandatory insurance agreements*, the Private partner must conclude Insurance agreements set forth in the annex No. 0 to the Agreement *List of the mandatory insurance agreements* at its own expense and risk in his favour and / or conclude Insurance agreements set forth in the annex

No. 5 of the Agreement and / or required by the legislation with the financially stable insurance companies for the amount required by the legislation. If the insurance amount indicated in the annex 5 to the Agreement *List of the mandatory insurance agreements* is higher than the insurance amount required by the legislation, the amount indicated in the annex No. 5 to the Agreement shall apply. The Private partner must have a valid Insurance Agreements during the entire period set forth in the annex No. 5 to the Agreement *List of the mandatory insurance agreements* (i.e. one or more Insurance Agreements, including renewal of Insurance agreements or replacement with the new Insurance Agreements for the same object of insurance must cover continuously all the period indicated in the annex No. 5 to the Agreement).

- 34.2. No later than within 10 (ten) days from the conclusion of the Insurance Agreements the Private partner shall submit their copies and other documents confirming their conclusion and documents confirming the payment of insurance premiums to the Public partner. In case the insurance premiums are paid not at the same time when the Insurance Agreements are being concluded, documents confirming the payment are submitted to the Public partner no later than within 10 (ten) days from the payment of the insurance premiums.
- 34.3. If the Private partner fails to perform its obligation to conclude Insurance Agreements specified in the annex No. 5 to the Agreement in due time, they can be concluded by the Public partner at the expense of the Private partner.
- 34.4. Insurance Agreements may be not concluded only in such case and only for such period when it is impossible to conclude insurance agreements due to situation in the insurance market or if costs of such insurance agreement would exceed 10 (ten) per cent of the Annual remuneration for the relevant period. Existence of circumstances set forth in this paragraph must be proved by the Party referring to them.
- 34.5. The Parties must take all required actions and restrain from certain actions if due to such actions and / or omission the insurer would acquire the right to terminate the concluded Insurance Agreements, suspend their validity, as well as refuse to pay to the Private partner insurance claims in case of damage or to pay substantially smaller amount due to the fact that this damage was recognised as an uninsured event due to the actions and / or omissions of the Parties.
- 34.6. Upon occurrence of the insured event, during which the Property was damaged or lost, the funds received by the Private partner as insurance benefits for the lost Property, shall be used for its restoration / replacement with the equivalent Property.
- 34.7. If it is impossible to restore the Property / replace it with equivalent Property or it is economically impracticable to do so, the insurance benefit must be used for reimbursement of the losses. If the insurance claim is insufficient to reimburse the losses, the rest part shall be covered by the person liable for causing the damage (or to whom respective risk, due to manifestation of which the Property was damaged or lost, is assigned according to the Agreement) from its own and /or borrowed funds. If upon covering the losses or restoration / replacement of the Property with the equal property, the insurance benefit is not completely spent, the remainder of it is used in accordance with the procedure set in the annex No. 3 to the Agreement *Terms of settlement and payments*.

- 34.8. The Private partner is entitled to use the insurance benefits received not for the restoration of the property only in case if such other of use of the funds would provide higher economic or social benefits and if a written consent of the Public partner is obtained for such way of use of the funds.
- 34.9. While concluding agreements with Sub-Suppliers and other entities, the Private partner must ensure that Sub-Suppliers or other entities would ensure and hold the insurance of their civil liability for damage caused to the third parties and their property, the value of which is no lower than 10 (ten) percent of the value of the agreement with the Sub-Suppliers or other entities (VAT included) for the amount of (.....) euros, for the entire period of the agreement performance, except for those cases when the cover of the Private partner's Insurance agreements applies and the damage is caused by the actions of the Sub-Suppliers that it employed. When concluding contracting agreements with the Sub-Suppliers, regardless of the value of such agreements, the Private partner must ensure that the Sub-Suppliers would insure and hold the insurance of their civil liability for damage to third parties and their property, except for those cases when the cover of the Private partner's Insurance agreements applies and the damage is caused by the actions of the Sub-Suppliers that it employed.
- 34.10. Performance or failure to perform of the obligations set forth in this paragraph does not release the Private partner from the performance of obligations under this Agreement and the liability.

#### **XIV. INTELLECTUAL PROPERTY**

##### **35. The obligation to comply with the requirements of the intellectual property protection**

- 35.1. The parties must comply with the requirements of the intellectual property protection.

##### **36. Licenses granted by the Private partner**

- 36.1. After the expiration of the Agreement, the Private partner shall grant the Public partner a indefinite, transferable, royalty-free, and non-exclusive license (allowing to sub-license) to use all and any intellectual property rights granted to a Private partner, which are required for Service Provision and Property control and maintenance, including all the rights of the Project Documentation possessed/ acquired by the Private partner.
- 36.2. If after the expiration of the Agreement any intellectual property rights required for Service provision and Property control and maintenance, are owned by third parties, the Private partner and the Investor shall take all the available reasonable means at their own expense to acquire the part of intellectual property rights, sufficient for the Service provision and Property control and maintenance, in favour of Public partner.
- 36.3. The Private partner must compensate all the losses incurred by the Public partner, caused due to any infringement of the intellectual property rights related to the Service provision and Property control and maintenance.

##### **37. Licenses granted by the Public partner**

- 37.1. Under the Agreement, the Public partner grants the Private partner a non-transferable, non-exclusive, royalty-free license (allowing to sub-license) to use any intellectual property

rights owned by Public partner and/or granted to it on any grounds during the validity of the Agreement, which are required for design works, construction, financing, Service provision, and Property control and maintenance, in order to perform the Agreement.

37.2. The Public partner shall compensate all the losses of the Private partner, which are caused by any infringement of the intellectual property rights set out in this paragraph.

## **XV. AMENDMENT OF THE AGREEMENT**

### **38. Cases of the agreement amendment**

38.1. Besides the Additional works and / or services specified in the paragraph 16 of the Agreement and amendment specified in the paragraph 17 of the Agreement, the Parties can agree on the amendment of the Agreement, including its annexes, provided that such amendments are consistent with public interests, and do not change the nature of this Agreement and risk sharing between the Parties in essence.

38.2. The provisions of the Agreement can be amended in the following cases:

38.2.1. the Fundamental legislative change occurs;

38.2.2. if the value of the specific amendment of the Agreement can be expressed in funds and the value of such amendment does not exceed 10 % of the Agreement value, and procurement value limits set by the European Union legislation, provided that such Agreement amendment does not change the general nature of the Agreement. If there are several consecutive such amendments, the value shall be calculated according to the total value of such amendments; or

38.2.3. or if the amendment of the Agreement is necessary if all of the following conditions are fulfilled:

38.2.3.1. the necessity to amend occurred because of the circumstances that could not have been anticipated by the Parties acting carefully and diligently;

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

38.2.3.3. the growth of annual remuneration does not exceed 50% of the initial value of the Agreement. In case of few consecutive amendments, this limit is applied to the value of each amendment.

38.2.4. in accordance with the official requirements (letters) of the institutions of the European Union and / or the Republic of Lithuania in order to ensure that the Agreement would not be recorded in the balance sheet of the government sector. In such a case, the Public partner informs the Private partner and the Investor in writing about the requirements of the institutions of the European Union and / or the Republic of Lithuania, and coordinates with the Private partner and the Investor the necessary amendments of the Agreement, if such are necessary.

38.3. The insignificant amendments of the Agreement (of the technical nature) can be made in all cases,

38.4. Other amendments of the Agreement that are not provided for in this Agreement and which are not in conflict with the principles of equality, non-discrimination, mutual recognition, proportionality and transparency, as well as the rational use of funds set out in the Law on

Public Procurement, are possible only with the consent of the Public Procurement Office, if that is required under the legislation.

**39. Amendment of the Agreement due to the Fundamental change of legislation or due to the circumstances specified in the paragraphs 38.2.2-38.2.3**

39.1. The cases of the Agreement amendment indicated in the paragraph 38.2 of the Agreement do not relieve the Parties from the performance of the obligations under the Agreement, except for the cases, when there is no possibility to perform own obligations due to the Cases of exemption or the Compensation events (during the periods of their presence) and cases, when the performance of such obligations would violate the imperative requirements of the legislation.

39.2. After the Fundamental legislative change or the occurrence of the circumstances specified in the paragraphs 38.2.2-38.2.3 of the Agreement, which can have a negative impact on the Private partner's exercising of the rights and performance of the obligations under the Agreement, the Parties must take all the available measures to ensure that the incurred damage would be minimised. If the Fundamental legislative change or the circumstances specified in the paragraphs 38.2.2-38.2.3 of the Agreement are favourable to the Private partner's exercising of the rights and performance of the obligations under the Agreement, it must make every effort to achieve the highest economic and social benefit for the Public partner by fully exploiting the newly presented opportunities.

39.3. After the Fundamental legislative change or the occurrence of the circumstances specified in the paragraphs 38.2.2-38.2.3 of the Agreement, and in order to restore the balance of rights and obligations of the Parties or the economic balance set out in the Agreement, each Member has a right to demand the amendment of the provisions of the Agreement, which is in effect. When amending the provisions of the Agreement, the Parties shall maintain the same balance of rights and obligations and/or economic balance (particularly the return on investment), which was prior to the Fundamental legislative change or the occurrence of the circumstances specified in the paragraphs 38.2.2-38.2.3 of the Agreement.

39.4. After the Fundamental legislative change or the occurrence of the circumstances, specified in the paragraphs 38.2.2-38.2.3 of the Agreement, any Party can serve a notice of the Fundamental legislative change or the occurrence of the circumstances, specified in the paragraphs 38.2.2-38.2.3 of the Agreement, to the other Party, indicating:

- 39.4.1. the essence and reasoning of the amendment or circumstances;
- 39.4.2. whether the amendment of the Agreement is necessary;
- 39.4.3. the change in the costs of the Agreement, excluding the possible savings, clearly specifying the additional costs and/or costs that the Private partner will not incur because of the Fundamental legislative change or the occurrence of the circumstances, specified in the paragraphs 38.2.2-38.2.3 of the Agreement;
- 39.4.4. the detailed amendment implementation procedure and schedule;
- 39.4.5. evidence, confirming that Parties to the Agreement took all the possible actions in order to reduce the increase of costs or increase the reduction of costs were taken;

- 39.4.6. calculation of the additional or unnecessary costs, according to the principles of cost effectiveness and rationality.
- 39.5. If the Parties to the Agreement agree that due to the Fundamental legislative change or the circumstances set out in the paragraphs 38.2.2-38.2.3 of the Agreement, the Private partner may incur additional costs, the Private partner will take all the reasonably available measures to ensure additional financing at the terms favourable to him and the Funder;
- 39.6. After the Parties confirm the Fundamental legislative change or the circumstances specified in the paragraphs 38.2.2-38.2.3 of the Agreement, the Private partner must present to the Public partner a re-optimized Financial activity model no later than within 15 (fifteen) Business days. In order to avoid doubts, if the Fundamental legislative change or the circumstances specified in the paragraphs 38.2.2-38.2.3 of the Agreement result in the reduction of the costs of the required Investments and/or Services, the Annual remuneration must be changed in such way, that the Public partner would not pay the Private partner for the respective savings.
- 39.7. If the Private partner has taken all the reasonably available measures to ensure the additional financing, but was unable to do that within 60 (sixty) Business days after confirmation of the Fundamental legislative change or the circumstances specified in the paragraphs 38.2.2-38.2.3 of the Agreement, the Public partner undertakes to compensate the additional costs of the Private partner according to the terms specified in this Agreement.
- 39.8. If the Private partner has no possibility to ensure the additional financing according to the procedure set out in the paragraph 39.7 of this Agreement, the Public partner and the Private partner shall agree in writing on a respective payment schedule. Should a dispute arise between the Public partner and the Private partner regarding the payment schedule, the dispute is resolved in accordance to procedure specified in the paragraph 55 of the Agreement.
- 39.9. After the Fundamental legislative change is confirmed the Parties shall immediately execute the respective changes to the Agreement (if such are necessary).

## **XVI. TERMINATION OF THE AGREEMENT**

### **40. The grounds for the termination of the agreement due to the circumstances depending on the Private partner or the Investor**

- 40.1. The Public partner has a right to terminate the Agreement unilaterally and without going to a court, when the Private partner or the Investor fail to perform the obligations under the Agreement or performs them improperly, and that is a material violation of the Agreement, whereas the Public partner has previously notified these Parties about the failure to perform or an improper performance, but the Party which fails to perform the Agreement or performs it improperly, failed to eliminate the material violations of the Agreement in a way and within reasonable period of time that were specified in the notification, or such violation cannot be eliminated, or the elimination of the violation loses its purpose. In all cases, the time provided for the elimination of such violations shall not be considered unreasonable if it is no shorter than 120 (one hundred and twenty) days for the violations related to the



performance of Works and 90 (ninety) days for violations related to the Service provision and in case of other violations.

- 40.2. The Parties agree that the material violations of the Agreement in the sense of the paragraph 40.1 are the following:
- 40.2.1. the Private partner is late in performing the Services in full for more than 30 (thirty) days after the deadline specified in the paragraph 4.2 of the Agreement;
  - 40.2.2. the Private partner does not provide the Security of the performance of obligations specified in the paragraph 32.1 of the Agreement, or it expires before the deadline that is set in it, and such deadline is not extended according to the terms set in the paragraph 32.1 of the Agreement;
  - 40.2.3. the Private partner is late in performing the investments set out in the Financial activity model for more than 60 (sixty) days, if this results in the delay of the Commencement of Object's operation, or the provision of Services of proper quality cannot be ensured.
  - 40.2.4. the Private partner or the Investor violates the warranties and representation set out in the paragraph 7 of the Agreement, and it has a material impact on the proper performance of the Agreement;
  - 40.2.5. when during any of 12 (twelve) months of the Agreement performance period, starting with the commencement of the payment of the Annual remuneration according to the provisions of the Agreement, amount of the deductions applied to the Private partner according to the Fine imposition system specified in the Specifications, exceeds the amount of the share of Annual remuneration payment – the Object maintenance service and administrative costs (M2) - of 3 (three) months;
  - 40.2.6. if the deviations from the Services specified in the Specifications last longer than the deadlines specified in the Specifications;
  - 40.2.7. The Private partner, the Investor, or the Associated company as well as the directors or employees of the respective entity are found guilty of a crime related to the improper performance of Works and/or Service provision (including such crimes as graft and bribery) by a court. The termination of the Agreement on the grounds of this paragraph is impossible, if within the period of 120 (one hundred and twenty) days from conviction (irrespective of the right file an appeal or cassation), such director or employee is dismissed from work at the Private partner, the Investor, or the Associated company;
  - 40.2.8. The Private partner, the Investor or directors or employees thereof are found guilty of a crime, related to the participation in the Procurement (including such crimes as graft and bribery) by court, and that decided or could help to decide the results of the Procurement, or the Return on Investment, and/or the amount of the Annual payments, or the scope and/or quality of Works and Services;
  - 40.2.9. The Private partner fails to observe the requirements specified in the paragraph 29.2 of the Agreement regarding the transferring of the shares of the Private partner and the rights and obligations of the Investor;



- 40.2.10. The Private partner fails to observe the requirements specified in the paragraph 29.3 of the Agreement regarding the transferring of the shares of the Private partner and the obligations of the Investor;
- 40.2.11. the validity of the Insurance Agreements specified in the Annex No. 0 to the Agreement *List of the mandatory insurance agreements* expired or was terminated, and/or the concluded Insurance Agreements fail to achieve the minimum size of the insurance premium specified in the Annex No. 0 to the Agreement *List of the mandatory insurance agreements*, and new Insurance agreements are not concluded, or the validity of the terminated Insurance agreements is not extended within the periods specified in this Agreement;
- 40.2.12. the Private partner has mortgaged or transferred its property rights, property or otherwise secured its performance of the obligations without the prior consent of the Public partner specified in the paragraph 33.1;
- 40.2.13. While performing its obligations according to the chapter X of the Agreement or other provisions of the Agreement, the Private partner knowingly submits to the Public partner false or incomplete information which is required to ensure the control of the Agreement performance done by the Public partner.
- 40.3. Except for the cases specified in the paragraph 40.1 of this Agreement, the Public partner has a right to (unilaterally) terminate the Agreement without going to court, if:
- 40.3.1. the liquidation, bankruptcy, insolvency, restructuring or similar procedures are initiated for the Private partner or the Investor, and this gives the ground for the Public partner to believe that the obligations under the Agreement will not be performed according to the requirements of the Agreement;
- 40.3.2. during the conclusion of the Agreement or the Procurement, the Private partner or the Investor provided Public partner with the false information related to its financial state and/or economic activity, and/or any other information, and it was established or became evident after the conclusion of the Agreement and had material significance when declaring the Investor's Tender as winning and/or when concluding the Agreement with the Investor.
- 40.4. If the material violation of the Agreement was not eliminated within the period specified in the paragraph 40.1 of the Agreement, the Public partner must inform the other Parties about the termination of the Agreement on the grounds specified in the paragraph 40.1 of the Agreement, no later than 45 days in advance, and about the termination of the Agreement in cases specified in the paragraph 40.3 of the Agreement - no later than 20 (twenty) days in advance.

#### **41. The grounds for the termination of the agreement due to the circumstances depending on the Public partner**

- 41.1. The Private partner has a right to terminate the Agreement unilaterally and without going to a court, when the Public partner fails to perform the obligations under the Agreement or performs them improperly, and that is a material violation of the Agreement, whereas the Private partner has previously notified the Public partner about the failure to perform or an improper performance, but the Public partner failed to eliminate the material violations of the Agreement in a way and within reasonable period of time that were specified in the

notification, or such violation cannot be eliminated, or the elimination of the violation loses its purpose. The period set for the elimination of the Public partner's violations cannot be less than 60 (sixty) days for failure to perform the payment obligations or in cases of an improper performance, and 90 (ninety) days for cases of failure to perform other other obligations or improper performance thereof.

- 41.2. The Parties agree that only the following violations will be deemed the material violations of the Agreement:
- 41.2.1. the Public partner is late in paying to the Private partner any payments that are mandatory under the Agreement for more than 60 (sixty) days, or the amount of Annual remuneration payments overdue for a year exceeds the half value of one payment of the Annual remuneration;
  - 41.2.2. the Public partner violates the warranties and representation set out in the paragraph 6 of the Agreement, and it has a material impact on the proper performance of the Agreement;
  - 41.2.3. the Public partner transfers its rights and obligations to a third party without the prior consent of the Private partner specified in the paragraph 29.1 of the Agreement;
  - 41.2.4. The shares of the Investor or the Private partner (any part thereof) are taken for the public needs, sold or transferred to a third party on other statutory grounds of similar nature, without the will of the shareholders of the Private partner or the Investor, unless and to the extent expressly provided otherwise in this Agreement;
  - 41.2.5. if due to the requirements of the legislation amended or newly passed after the signing of the Agreement, the activities in which the Private partner is engaged (performance of Works or Service provision) become unlawful or the execution of such activities becomes impossible;
- 41.3. if the material violation of the Agreement was not eliminated during the period specified in the paragraph 41.1 of the Agreement, the Private partner must inform the Public partner about the termination of the Agreement on the ground specified in the paragraph 42.2 of the Agreement, no latter than within 30 (thirty) days.

**42. Termination of the Agreement without the fault of the Parties (due to the circumstances of the *force majeure*)**

- 42.1. Parties have the right to unilaterally terminate the Agreement, without going to court, when the performance of the Agreement becomes impossible due to the circumstances of the *force majeure*, which could not control or reasonably anticipate during the conclusion of the Agreement by the Party that is unilaterally terminating the Agreement and could not prevent the occurrence of these circumstances or consequences thereof, as it is specified in the paragraph 43 of the Agreement. In this case, each of the Parties shall be entitled to terminate the Agreement, if due to such circumstances, the material obligations under the Agreement could not be performed for more than 120 (one hundred and twenty) days in a row.
- 42.2. The Party that is terminating the Agreement unilaterally on the ground specified in the paragraph 42.1 of the Agreement, must notify the other Party no later than 30 (thirty) days in advance.
- 42.3. The parties also have the right to terminate the Agreement by mutual agreement.

### 43. The circumstances of the *Force majeure*

- 43.1. Force majeure means any event specified in the paragraph **Error! Reference source not found.** of the Agreement, for which the Party which is bound by the specific obligation can not reasonably be controlled and which the Party could not foresee or avoid (this circumstance or its consequences) and which makes it wholly or partially impossible to fulfill the obligation of that Party. Lack of funds or inability to meet its financial obligations, absence of goods or services, required to perform the obligation, in the market or violation of the obligations of the debtor contrahents are not considered the circumstances of the *force majeure*.
- 43.2. Force majeure events are considered to be exemptions from liability in the event of force majeure in the rules approved by the Government of the Republic of Lithuania in 1996. July 15 Resolution No. 840 (or in the version relevant to the rules or rules replacing them in force at the time when the Agreement is concluded or is being executed):
- 43.2.1. war (published or not published), civil war, terrorist act, revolts and revolutions, piracy, sabotage;
- 43.2.2. natural disasters: severe storms, cyclones, earthquakes, sea or river floods, lightning;
- 43.2.3. explosions, fires, the destruction of machinery, industrial buildings and some (or all) internal communications;
- 43.2.4. lawful or unlawful acts of the public authorities (except those acts of the Granting Authority which, on the basis of other provisions of the Treaty, have taken the request to relieve the Party of liability).
- 43.3. The inability of a Party to meet the obligations under the Agreement due the circumstances of the *force majeure* shall exempt the Party from liability for non-performance of the relevant obligations or part thereof, and it is not a subject to any sanctions, if the Party affected by the circumstances of the *force majeure* has taken all reasonable efforts in order to reduce the damage incurred due to such circumstances or used all the necessary measures in order to perform its obligations under the Agreement. The circumstances, specified in this paragraph **Error! Reference source not found.** of the Agreement must be proven by the Party, which is unable to perform the obligations under the Agreement.
- 43.4. In the event of the circumstances of the *force majeure*, the Party affected by them must provide the other Parties with an initial written report about the occurrence of these circumstances, including a brief description of their contents, no later than within [*specify the term, recommended is 5 (five) Business days*] from the moment of the occurrence of the circumstances.
- 43.5. No later than [*specify the term, recommended is 10 (ten) Business days*] after the presentation of the initial report, the Party affected by the circumstances of the *force majeure* must provide the other Parties with a detailed written report. It must contain all the information related to the disturbance in the performance of the obligations under the Agreement, such as: effect of the *force majeure* on the ability of the Party to fulfill its obligations under the Agreement, the dates of the occurrence and disappearance of the circumstances of the *force majeure* and the period, required for the elimination of the consequences caused by these circumstances, etc.

- 43.6. After the circumstances of the *force majeure* cease, the Party affected by them must inform the other Parties to the Agreement about that no later than within [*specify the term, recommended is 5 (five) Business days*], and specifies the date for the renewal of the performance of obligations under the Agreement.
- 43.7. The periods for the performance of the respective obligations are extended for the Party, which is unable to meet its obligations under the Agreement due to the circumstances of the *force majeure*, for as long as it is objectively necessary due to the effect of the *force majeure*, but taking into account the maximum Agreement validity period specified in the paragraph 5 of the Agreement.
- 43.8. If the Private partner is not providing the Services due to the circumstances of the *force majeure*, the Public partner suspends the payment of the Annual remuneration until the date of the disappearance of such circumstances.

#### **44. Compensation after the termination of the agreement due to the circumstances depending on the Private partner or the Investor**

44.1. If the Agreement is terminated on the ground specified in the paragraph 40 due to the fault of the Investor or the Private partner or due to the circumstances that depend on them, the Public partner shall pay to the Private partner only the compensation, which is calculated according to the following equation:

**NK** = **FI** + **FG** + **NA** – **G** – **D** – **K**–**VN**, where:

**NK** – the compensation for the termination of the Agreement, which in any case cannot exceed the value of the Property, transferred to the Public partner in case of the termination of the Agreement, the value of which is determined by an independent property appraiser in accordance with the legislation of the Republic of Lithuania.

**FI** - financing share granted by the Funder to the Private partner and used by the Private partner for performance of the Agreement still not repaid at the time of termination of the Agreement, including accrued but still not repaid interest for the loan that is being repaid;

**FG** – return costs of the funding (FI) granted by the Funder to the Private partner for obligations under the Agreement, calculated and applied in the case where the funding is repaid before the deadlines specified in the funding agreement, and other costs of the funding agreement termination and / or the early repayment of the loan before the deadline specified in the funding agreement, which do not exceed the usual market costs;

**NA** - the outstanding parts of the Annual remuneration at the moment of the termination of the Agreement for the Services provided with quality, which must be paid for the Public partner according to the Agreement;

**G** - the available funds of the Private partner, remaining after the settlement with creditors, including but not limited to the funds accrued in a special account intended to cover the expenses of the Object's life-cycle;

**D** - compulsory insurance benefits received by the Private partner under the Agreement due to its termination;

**K** - Deductions of the Annual remuneration not yet credited / recovered from the Private partner's and contractual penalties payable by the Private partner.

**VN** – the direct losses of the Public partner incurred due to the termination of the Agreement. Only such amount of the direct losses may be deducted from the compensation for the termination of the Agreement (NK), due to the size of which the Public partner and the Private partner agree in writing within a respective period for the notice of termination of the Agreement, specified in the paragraph 40.4 of the Agreement, no later than 20 (twenty) days prior to the termination of the Agreement. If within this period the agreement on the amount of direct losses is not reached, the expert shall be appointed by mutual agreement to determine the amount of the direct losses no later than within 10 (ten) days. Only impartial and free from conflict of interest competent entity may be appointed as the expert. The amount of direct losses determined by the expert is reduced by the Agreement termination compensation. In that case, if an expert is not appointed within the set time, the Parties shall apply to the dispute resolution authority, referred to in the paragraph 55 of the Agreement. In such a case, the amount of the compensation payable for the termination of the Agreement may be reduced only by such direct losses, the size of which is not disputed by the Parties. The disputed amount of the direct losses shall be transferred to the deposit account until the resolution of the dispute, the holder of the deposit account pays interest for the amount kept in it, the interest belongs to the Party (distributed among those Parties), which is (are) awarded the disputed amount under the final decision of the court.

The Exact amounts under this paragraph are calculated by the commission specified in the paragraph 53 of the Agreement, based on the

documents of the Private partner and the Public partner that substantiates the respective amounts according to the paragraph 44 of the Agreement, financial reporting documents of the Private partner, reports of the real estate appraisers and audit, inspection results of the authorised authorities, or the conclusions of independent experts. In the event that the Private partner's financial statements are not audited during the calculation of the exact amounts under the paragraph 44.1 of the Agreement, the Investor or the Private partner must, at its own expense, hire the auditor to audit the financial statements and submit the audit findings and the audited financial statements to the commission specified in the paragraph 53 of the Agreement. Either Party disagreeing with the calculations of the said commission shall have the right to apply to the dispute resolution authority, referred to in the paragraph 55 of the Agreement.

The amount of the compensation includes all and any losses and lost earnings of the Investor and the Private partner related to the expiration of the Agreement, and no other and / or greater losses of the Investor and the Private partner (if any) are compensated, and the Investor and the Private partner waive them under the Agreement.

#### **45. Compensation after the termination of the agreement due to the circumstances depending on the Public partner**

45.1. In the event the Agreement is terminated on the ground specified in the paragraph 41 of the Agreement due to the fault of the Public partner, the compensation paid to the Private partner is calculated according to the following equation:

**NK = FI + FG + KI + R + NA + S – G – D - K, where:**

- NK** – the compensation for the termination of the Agreement, which in any case cannot be less than 100% of the FI;
- FI** - financing share granted by the Funder to the Private partner and used by the Private partner for performance of the Agreement still not repaid at the time of termination of the Agreement, including accrued but still not repaid interest for the loan that is being repaid;
- FG** – return costs of the funding (FI) granted by the Funder to the Private partner for obligations under the Agreement, calculated and applied in the case where the funding is repaid before the deadlines specified in the funding agreement, and other costs of the funding agreement termination and / or the early repayment of the loan before the deadline specified in the funding agreement, which do not exceed the usual market costs;
- KI** - share of funding granted by the funders other than the Funder to the Private partner that was not yet repaid at the time of the termination of the Agreement and the share of Private partner's own capital properly used for the Investments specified in the Financial activity model of the Private partner (no larger than the one which reflects the results of the creation of the Object (i.e. used to create them) and which have not yet been evaluated during the determination of the FI (these Object creation work results do not include those Object creation work results that were evaluated during the determination of the FI, i.e. the same object creation work results, which have already been evaluated when establishing the amount of the repayable FI, are not being evaluated for the second time when determining the repayable KI amount). In order to avoid any doubts, the Parties declare that no other shares of the funding provided by other funder of the loan for the Private partner and of the equity used for the performance of the Agreement, nor any other interest and unreceived return on investment are compensated;
- R** – the amount required to ensure to ensure the return on investments specified in the Financial activity model for the investments performed by the shareholders of the Private partner, which was not yet paid out to the Private partner, and discounted by the Internal rate of return for the investments specified in the Financial activity model;
- NA** - the outstanding parts of the Annual remuneration at the moment of the termination of the Agreement for the Services provided with quality, which must be paid for the Public partner according to the Agreement;
- S** - costs and expenses that are or will be incurred by the Private partner due to the termination of this Agreement, and which are or will be related to the termination of the employment agreements with the Private partner's employees, the termination of the agreements with the Sub-suppliers, and taxes, which will have to be paid by the Private partner of the Agreement termination compensation that will be paid out;
- G** - the available funds of the Private partner, remaining after the settlement with creditors, including but not limited to the funds accrued in a special account intended to cover the expenses of the Object's life-cycle;
- D** - compulsory insurance benefits received by the Private partner under the Agreement due to its termination;



**K** - Deductions of the Annual remuneration not yet credited / recovered from the Private partner's and contractual penalties payable by the Private partner.

The Exact amounts under this paragraph are calculated by the commission specified in the paragraph 53 of the Agreement, based on the financial reporting documents of the Private partner, reports of the real estate appraisers and audit, inspection results of the authorised authorities, or the conclusions of independent experts. In the event that the Private partner's financial statements are not audited during the calculation of the exact amounts under the paragraph 45 of the Agreement, the Public partner must, at its own expense, hire the auditor to audit the financial statements and submit the audit findings and the audited financial statements to the commission specified in the paragraph 53 of the Agreement. Either Party disagreeing with the calculations of the said commission shall have the right to apply to the dispute resolution authority, referred to in the paragraph 55 of the Agreement.

The amount of the compensation includes all and any losses and lost earnings of the Investor and the Private partner related to the expiration of the Agreement, and no other and / or greater losses of the Investor and the Private partner (if any) are compensated, and the Investor and the Private partner waive them under the Agreement.

#### **46. Compensation in case the Agreement is terminated without the fault of the Parties**

46.1. In the event the Agreement is terminated on the ground specified in the paragraph 42 of the Agreement, the Public partner pays the compensation to the Private partner, it is calculated according to the following equation:

**NK = 0,5\*(FI + FG + NA – G – D – K), where:**

**NK** – the compensation for the termination of the Agreement, which in any case cannot exceed the value of the Property, transferred to the Public partner in case of the termination of the Agreement, the value of which is determined by an independent property appraiser in accordance with the legislation of the Republic of Lithuania;

**FI** - financing share granted by the Funder to the Private partner and used by the Private partner for performance of the Agreement still not repaid at the time of termination of the Agreement, including accrued but still not repaid interest for the loan that is being repaid;

**FG** – return costs of the funding (FI) granted by the Funder to the Private partner for obligations under the Agreement, calculated and applied in the case where the funding is repaid before the deadlines specified in the funding agreement, and other costs of the funding agreement termination and / or the early repayment of the loan before the deadline specified in the funding agreement, which do not exceed the usual market costs;

**NA** - the outstanding parts of the Annual remuneration at the moment of the termination of the Agreement for the Services provided with quality, which must be paid for the Public partner according to the Agreement;

**G** - the available funds of the Private partner, remaining after the settlement with creditors, including but not limited to the funds accrued in a special account intended to cover the expenses of the Object's life-cycle;

**D** - compulsory insurance benefits received by the Private partner under the Agreement due to its termination;

**K** - Deductions of the Annual remuneration not yet credited / recovered from the Private partner's and contractual penalties payable by the Private partner.

The exact amount is calculated by the commission specified in the paragraph 53 of the Agreement, based on the financial reporting documents of the Private partner, reports of the real estate appraisers and audit, inspection results of the authorised authorities, or the



conclusions of independent experts. In the event that the Private partner's financial statements are not audited during the calculation of the exact amounts under the paragraph 46 of the Agreement, the Parties must hire an auditor to perform the audit of the documents of the financial statements, they assume these expenses equally, and submit the audit findings and the audited financial statements to the commission specified in the paragraph 53 of the Agreement. Either Party disagreeing with the calculations of the said commission shall have the right to apply to the dispute resolution authority, referred to in the paragraph 55 of the Agreement.

The amount of the compensation includes all and any losses and lost earnings of the Investor and the Private partner related to the expiration of the Agreement, and no other and / or greater losses of the Investor and the Private partner (if any) are compensated, and the Investor and the Private partner waive them under the Agreement.

#### **47. Payout of the Agreement termination compensation**

47.1. Compensations payable by the Public partner according to the paragraphs 45.1 and 46.1 of the Agreement, if their size does not exceed 1 (one) Annual remuneration, shall be paid no later than within 30 (thirty) days / after the Agreement termination date, while in other cases at the choice of the Public partner are paid within 30 (thirty) days from the Agreement termination date or in proportional instalments, paying each quarter at least the proportional part of the compensation, and paying the full amount of payment within the period:

47.1.1. In case of the paragraph 44 of the Agreement: no longer than within the remaining period of the duration of the Agreement, if the Agreement is not terminated;

47.1.2. In case of the paragraph 45 of the Agreement: no longer than 1/2 (half) of the remaining period of the duration of the Agreement, if the Agreement is not terminated;

47.1.3. In case of the paragraph 46 of the Agreement: no longer than within the remaining period of the duration of the Agreement, if the Agreement is not terminated.

47.2. For the amounts that are payable during the deferred period, exceeding 40 (forty) Business days, the interest, specified in the agreement with the Funder, are paid (but no higher than the ones paid by the Private partner till the expiration of the Agreement). The Public partner and the Funder have the right to determine a lower interest rate by a mutual agreement, then over the deferred period, for the amounts that are payable during the deferred period, exceeding 40 (forty) Business days, the interest, agreed between the Public partner and the Funder, are paid.

47.3. Under the written agreement between the Public partner, the Private partner, and the Funder and /or other creditors of the Private partner, these persons may agree on the transfer of the Private partner's rights of claim to compensation payable by the Public partner (part of it) to the Funder and /or other creditors of the Private partner.

47.4. Should the tax obligations arise for the Private partner due to Agreement termination compensation payable by the Public partner under the 47.1 of the Agreement, the payable Agreement termination compensation:

- 47.4.1. is not increased by any amounts, if the Agreement is terminated on the ground of the paragraph 40 of the Agreement due to the reasons depending on the Private partner and/or the Investor;
- 47.4.2. is increased by such amount, which would compensate to the Private partner the tax obligations arising due to the Agreement termination compensation, if the Agreement is terminated on the ground of the paragraph 41 of the Agreement due to the reasons depending on the Public partner;
- 47.4.3. is increased by such amount, which would compensate to the Private partner 50 (fifty) per cent of the tax obligations arising due to the Agreement termination compensation, if the Agreement is terminated on the ground of the paragraph 42 of the Agreement without the fault of the Parties;
- 47.4.4. The amount of the compensation of tax obligations specified in the paragraph 47 is paid to the Private partner within 30 (thirty) days after submission of the respective claim of the Private partner along with the documents confirming the occurrence of the tax obligations specified in this paragraph and size thereof.

## **XVII. LIABILITY OF THE PARTIES**

### **48. Mutual liability of the parties**

- 48.1. If during the evaluation of the conformity of the Private partner's activity to the requirements of the Object's condition and Service provision, a non-conformity to these requirements is identified, deductions set in the Specifications are applied to the Private partner, they are deducted from the Annual remuneration according to the terms of the Agreement and the annex No. 3 to the Agreement *Terms of settlement and payments*. When applying the deductions from the to Annual remuneration, no other contractual penalties, interest or other forms of loss compensation can be applied with respect to the Private partner for the same breach of the Agreement, except for other losses specified in the paragraph 48 of this Agreement (The duty of the Private partner to compensate the losses), if these losses occurred due to the actions of the Private partner (any act or omission).
- 48.2. If the Private partner fails to perform the Investments till the date specified in the Financial activity model and the Specifications, the Private partner pays late interest in the amount of 0.02 (two hundredths) percent of the amount of overdue Investments for each day of delay until the elimination of the violation.
- 48.3. If during the assessment of the conformity of the Private partner's activities with the requirements specified in the Specifications, the non-conformity with these requirements is identified, the measures and liability, specified in the Deduction mechanism set out in the Specifications and the Annex No. 3 to the Agreement *Terms of settlement and payments*, and the Fine imposition (deduction) system set out in the Specifications, are imposed on the Private partner.
- 48.4. The application of the liability specified in this paragraph 48 does not release the Parties from the duty to perform obligations under the Agreement, does not change the payment obligations specified in the chapter IX of the Agreement, and does not deprive of the right

to terminate the Agreement in accordance with the grounds specified in the chapter XVI of the Agreement.

- 48.5. The Parties are obliged to compensate to each other only the direct losses. As far as it is not contrary to the laws in force, the liability specified in this paragraph is considered to be the minimum losses of the Parties discussed in advance and is the only permissive measure of their compensation, if the Agreement does not provide otherwise.
- 48.6. Prior to the performance of payments according to this paragraph 48 of the Agreement, the Parties have the right to perform mutual payments or their partial set-off when that is not contrary to the imperative provisions of the legislation of the Republic of Lithuania.
- 48.7. At the request of the respective Party, the contractual penalties, specified in this Agreement, must be paid within 30 (thirty) days from the day on which the grounds for the payment occurred.
- 48.8. Compensation of losses according to the Agreement and payment of the contractual penalties does not relieve the Party from duty to perform the respective obligation.

#### **49. The duty to compensate the losses**

- 49.1. One Party indemnifies from, and if necessary – compensates all, direct losses of the other Party, which can occur due to injury or the death of any person, property damage or loss, or other reasons, related to the non-performance of the first Party obligations under the Agreement or their improper performance, including Land plot and Property control, usage and maintenance.
- 49.2. The duty to indemnify from damages or to compensate them to the aggrieved Party, specified in the paragraph 49.1 of the Agreement, does not occur only if such damages occur due to the actions or omission of the aggrieved Party that violate the provisions of the Agreement.
- 49.3. If the Party receives any notice, claim, complaint, or any other document, which allows to believe that the aggrieved Party has or may have to compensate the damages specified in the paragraph 49.1 of the Agreement, it is mandatory to notify the other Party of that immediately, together presenting the received documents. The Party to which the claim is delivered is not responsible for the damages, which occur due to the unreasonable delay to issue such notice.
- 49.4. The Party to which the claim is delivered must resolve the issue regarding the validity of the claim to compensate the damages, and if needed, compensate such damages. If the Party to which the claim is delivered believes that the claim to compensate the damages is unreasonable, it has the right to use all legal remedies, which could be used by the Party delivering the claim, if the liability would not be transferred to the Party, which received the claim. In such case the Party, which delivered the claim has to provide the Party, which received the claim, all respective authority. If the Party which delivered the claim fails to provide the authority, the Party which received the claim is released from the liability according to this paragraph 49.

### **XVIII. OTHER PROVISIONS**

## 50. Confidentiality

50.1. In accordance with the Law on Public Procurement, the Agreement is published through CPP IS instruments, except for the annexes No. 2 and 11 (if applicable) to the Agreement.

50.2. During the term of validity of this Agreement and 2 (two) years after the termination of this Agreement, the Parties must keep the content of discussions and negotiations regarding the Agreement, as well as any other written, oral or any other information or documents, obtained from the other Party, or employees or advisers thereof, directly or indirectly related to it, confidential (hereinafter - the **Confidential information**), if the legislation of the Republic of Lithuania does not provide otherwise.

50.3. None of the Parties has a right to disclose any part of the Confidential information to the third Parties without the prior written or any other consent of the other Party, except for the following, when the disclosure of the Confidential information is not considered as the breach of the Agreement:

50.3.1. if the Parties agree in writing to inform the media or the third Party;

50.3.2. the Confidential information must be disclosed in order to properly perform the obligations of the Parties under the Agreement (however, in the latter case the information may only be revealed to the extent which is necessary for the performance of the aforementioned obligations);

50.3.3. the Confidential information is disclosed to the Associated companies (in such case the Party is liable to the other Party, if the Associated company, its employees, advisers or consultants will violate the obligation of confidentiality specified in the paragraph 50.1 of the Agreement);

50.3.4. Confidential information is disclosed to the Government of the Republic of Lithuania, Ministry of Finance of the Republic of Lithuania, Public Procurement Office, National Audit Office, State Tax Inspectorate, Central project management agency PI, or other competent public and control institutions, performing the functions assigned to them;

50.3.5. the disclosure of the Confidential information is required under the applicable legislation;

50.3.6. the Confidential information is disclosed by the Parties to their employees, lawyers, auditors, advisers, and/ or other consultants selected by the Party, (in the latter case the Party is liable to the other Party, if its employees or chosen lawyers, auditors, advisers, and/ or other consultants will violate the obligation of confidentiality specified in the paragraph 50.1 of the Agreement).

50.4. The following information will not be considered confidential and must be published publicly:

50.4.1. Object of the Agreement – the composition and the scope of the Services and Works for the provision and performance of which the Agreement is concluded;

50.4.2. Term of validity of the Agreement, including the date of its conclusion;

50.4.3. Parties to the Agreement;

- 50.4.4. Value of the Agreement;
- 50.4.5. Value of the planned Investments;
- 50.4.6. The Annual remuneration of the Private partner paid by the Public partner (by detailing the structure and indexation mechanism of such payment);
- 50.4.7. Compensations or contractual penalties paid by the Parties;
- 50.4.8. Amendments of the Agreement
- 50.4.9. Other information which could not be considered as confidential according to the Law on Public Procurement.

## 51. Notices

51.1. In order to be considered as properly delivered and would cause envisaged consequences, the Agreement related notices must be executed in writing [*specify the language, Lithuanian or any other language is recommended*] (or to be translated to it, the translation is to be confirmed by the signature and the seal of the translator) and:

- 51.1.1. delivered under signature, or
- 51.1.2. sent via registered prepaid mail, or
- 51.1.3. delivered via courier, or
- 51.1.4. sent to the official e-mail of the Investor, the Private partner, and the Public partner, or

51.2. All Agreement related reports are to be sent to the Parties at the following addresses:

Party	Contact details
<i>[to the Public partner]</i>	<p><b>To:</b> [<i>name, last name of the person responsible</i>]</p> <p><b>Address:</b> [<i>address</i>]</p> <p><b>E-mail address:</b> [<i>e-mail address</i>]</p>
<i>[to the Private partner]</i>	<p><b>To:</b> [<i>name, last name of the person responsible</i>]</p> <p><b>Address:</b> [<i>address</i>]</p> <p><b>E-mail address:</b> [<i>e-mail address</i>]</p>
<i>[to the Investor]</i>	<p><b>To:</b> [<i>name, last name of the person responsible</i>]</p> <p><b>Address:</b> [<i>address</i>]</p> <p><b>E-mail address:</b> [<i>e-mail address</i>]</p>
<i>[if present [to the Transferor]</i>	<p><b>To:</b> [<i>name, last name of the person responsible</i>]</p> <p><b>Address:</b> [<i>address</i>]</p>

Party	Contact details
	E-mail address: <i>[e-mail address]</i>

51.3. The Parties without delay, but no later than within 5 (five) days, inform each other and other stakeholders about the changes of the contact details or contact persons. Before such informing, notices delivered according to the indicated contact details are deemed to be delivered properly, and indicated persons are considered as having a right to represent that Party.

## **52. Changes**

52.1. Any amendments and appendments of the Agreement or annexes to it are valid only if they are formalized in one or several written documents, which are signed by all the Parties to the Agreement.

## **53. Resolution of the issues that occurred during the performance of the Agreement**

53.1. In the cases when there is a reference to this paragraph 53 or in other cases when the Parties agree so, decisions are made by the commission formed of the representatives of the Private partner from one side and the Public partner *[and if present the Transferor]* from the other side. The decisions of the commission are mandatory for the Parties, however they do not prohibit to either of the Parties to appeal the resolution of the respective issue to the dispute resolution authority specified in the paragraph 55.2 of the Agreement or to transfer to this institution the respective dispute of the Parties for resolution.

53.2. The commission is comprised of 6 (six) representatives equal number from the side of the Private partner and the side of the Public partner. The Private partner and the Public partner appoint to the commission 3 (three) representatives – specialists of Law, finance, and technical field. Each of the Parties has to appoint representatives to the commission within 10 (ten) Business days from the day of the signing of the Agreement, and has to inform the other Party of the appointed representatives. If any commission member resigns or is unable to perform its obligations, the Party that assigned such representative undertakes to replace the representative, who resigned or is unable to perform its duties, with a new representative within 5 (five) Business days since the establishment of the specified circumstances.

53.3. The commission passes decisions in an open vote. The session of the commission can take place and the decisions may be passed, when at least 4 members of the commission are present. The decisions of the commission are passed by the vote majority of the members, who are participating in the session, under the condition that the decision was not passed only by the members of one Party. If the number of votes is equal, the deciding vote is of the chairman of the commission. The sessions of the commission and voting must be recorded and signed by all representatives of the commission, who were present at the session.

53.4. The commission sets the terms of work organization and elects the chairperson – the representative of the Public partner responsible for the organization and conduction of the commission sessions, during its first session. it will take place on *[date]*, at *[time]*, at

*[address]*. Failure to elect the chairperson of the commission, does not prevent the commission to perform its activity.

53.5. In case if the commission is not formed according to the procedure, specified in the paragraph 53.2 of the Agreement, the commission cannot make the decisions regarding the absence of the quorum to pass the decisions at two commission sessions in a row, or if the issue submitted to the commission for resolution, is not resolved within 20 (twenty) Business days since the date of the presentation of the issue (unless the Agreement would provide another period), the issue is transferred for resolution to the authorised representatives of the Parties. If the authorised representatives of the Parties fail to reach an agreement on the specified issue within an additional period of 20 (twenty) Business days, the issue is transferred for resolution according to the terms set out in the paragraph 55 of the Agreement.

#### **54. Governing law**

54.1. The agreements and the relationships of the Parties that arise from it, as well as interpretation thereof are governed by the Law of the Republic of Lithuania.

54.2. The Agreement and the transactions, performed on the basis of the Agreement, are commercial acts, neither public nor national. Neither of the Parties has the immunity with respect to the Agreement, and if they have one, they waive the immunity from legal processes or the execution of court's decision with respect to itself or its funds, and the Private partner and the Investor waive it against their property as well.

#### **55. Dispute resolution**

55.1. Any dispute arising out of the Agreement or related to it, disagreement, objection, or demand the Parties will attempt to resolve via negotiations and comprehensive cooperation.

55.2. If the Parties fail to reach the mutual agreement or the mutual negotiation is not commenced within 30 (thirty) days after the notice to the other Party about the disagreement, dispute, objection, or claim that arose, any disagreement, dispute, objection, or claim arising out of the Agreement shall be transferred to the commission comprised of 3 (three) experts. No later than within 20 (twenty) Business days after the Parties inform each other about the transfer of the dispute for resolution to the expert commission, each of the Parties (for the purpose of this paragraph, the Investor and the Private partner are considered as a single Party) appoint one expert, the specialist of the respective field, which was the cause of the dispute (Employment, Services, finances, property appraisal, etc.), and 2 (two) experts appointed by the Parties in such way appoint the third expert by mutual agreement. This period may be extended up to 30 (thirty) Business days if the Public partner has to procure the services of the expert that is being appointed in accordance with the procedure specified in the legislation of the Republic of Lithuania. The Party cannot appoint as an expert its own an employee, former employee and/ or the person associated with the Party by contractual or any obligation or subordination relations (excluding the relations formed due to the appointment of an expert). If the experts fail to decide on the candidacy of the third mutual expert within 15 (fifteen) Business days from their appointment, in such case at the request of the Parties the third expert is selected by the Public partner within 30 (thirty) Business days in accordance with the legislation of the Republic of Lithuania. Expenses, related to the appointment of the expert commission and the services that it provided, are covered by the Party declared by the expert commission as being at fault. If the expert commission decides that both Parties are at fault:



- 55.2.1. the Party recognized by the experts as being at fault, whose unlawful actions or omission have had a material impact on the dispute, disagreement, objection, or claim, covers 70% of all costs of the experts;
  - 55.2.2. each party covers the costs of an expert that it appointed, and the costs of the third expert are covered in equal parts, if the experts declare that both parties are equally wrong about the dispute, disagreement, objection, or claim that occurred
- 55.3. If the decision of the expert commission is not satisfactory to either of the Parties, in such a case the dispute or disagreement shall, at the request of either of the Parties, be referred to the court of the Republic of Lithuania based on the location of the registered office of the Public partner.

## **56. Invalidity of the individual provisions of the Agreement**

56.1. If any of the provisions of the Agreement is in conflict with the imperative provisions of the Law of the Republic of Lithuania and/ or becomes partially or completely invalid due to any reason, it does not void the validity of the other provisions of the Agreement in any case. In such case the Parties agree to replace the invalid provision with another legally effective provision, which would have as similar legal and/ or economic effect as the one of the provision that is being replaced as possible, but would not be contrary to the imperative provisions of the Law of the Republic of Lithuania and would not be considered as completely or partially invalid.

## **57. Copies of the Agreement**

57.1. The Agreement is concluded in **[number]** original copies in Lithuanian – two for each Party to the Agreement.

## **58. Jointly drafted Agreement**

58.1. The Agreement is concluded after the Parties agreed on and accepted all provisions and wording of the Agreement. Each of the Parties confirms that during the **[negotiations]** or **[dialogue]** regarding this Agreement it acted honestly.

58.2. The Investor declares and confirms that despite the fact that the initial draft of the Agreement was drafted and presented by the Public partner during the Investor selection procedures, the Investor had appropriate means to familiarise with the draft of the Agreement and evaluate its terms and conditions, and together its duties, liability, and risks as well, before submitting a Tender, engage in **[if applicable negotiations]** **[or if applicable dialogue]** regarding more favourable conditions of the Agreement draft for the Investor and the Private partner, and prepare such Tender for the Investor selection procedures, including the financial proposal, which would properly evaluate and reflect the duties, liability, and risks of the Investor in the financial expression.

58.3. The Investor and the Private partner together declare and confirm that the Private partner also had appropriate means to familiarise with the Agreement draft before signing it. Therefore, it is deemed that the Parties agreed to sign the agreement only when all the provisions of and annexes to the Agreement, and the wording thereof became acceptable to all the Parties. Therefore, the Agreement could not be considered as providing an advantage for any or both of the Parties; it cannot be interpreted in favour of any or both of the Parties or to the detriment of any or both of the Parties.

**XIX. ANNEXES TO THE AGREEMENT:**

- 1 Procurement conditions**
- 2 Tender**
- 3 Terms of settlement and payments**
- 4 Matrix of risk distribution among the Parties**
- 5 List of the mandatory insurance agreements**
- 6 List of associated companies**
- 7 Specifications**
- 8 Loan for use agreement**
- 9. Preconditions for the Agreement's entry into force**
- 10. Requirements for the Property that is being returned / transferred**
- 11. Direct agreement**
- 11 [if applicable the List of the employees that are being transferred]**

**Signatures of the representatives of the Parties:**

on behalf of ***[the Public partner]:***

*[Position, name, last name]*

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signature

on behalf of ***[the Private partner]:***

*[Position, name, last name]*

---

signature

on behalf of ***[the Investor]:***

*[Position, name, last name]*

---

signature

on behalf of the *[if present* ***[the Transferor]:***

*[Position, name, last name]*

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signature]

**PROCUREMENT CONDITIONS**

*[Add the Procurement conditions]*

**THE TENDER**

*[Add the Investor's Tender]*

## TERMS OF SETTLEMENT AND PAYMENTS

*[The specified Terms of settlement and payments are indicative and must be adapted according to the specifics of the particular Project]:*

### I. GENERAL PROVISIONS

1. The terms used in this annex shall have the same meaning as is assigned to them in the Agreement, unless is expressly stated otherwise or the context clearly gives a different meaning.
2. In the event of disputes concerning the application of the provisions of this document, they shall be resolved in accordance with the procedure set in the Agreement.
3. The basis for the calculation of the Annual remuneration and creation of the payment schedule is the Financial activity model (hereinafter - FAM) prepared by the Investor and submitted together with the Tender. (Annex No 1 to the Financial part of the Tender).
4. The base date is the date of Agreement's entry into force, i.e. *[date]* The counting of the years of the Agreement starts from the base date. The base month and year of the Agreement (collectively - the Base year of the Agreement) are deemed to be *[date]*, i.e. the month and the year when the Agreement came into force in full.

### II. ANNUAL REMUNERATION

5. The Annual remuneration is a periodic fixed payment paid by the Public partner to the Private partner, and calculated in accordance with the terms established in this document.
6. The Annual remuneration (**M**) is comprised of the following parts:
 

MS	The flows of the borrowed and own capital ( $MS=(M1) \text{ Credit flows} + (M2) \text{ Equity flows}$ )
M3	Costs of financial and investment activity
M4	Service provision costs
M5	Administrative and management costs

### III. CALCULATION AND RECALCULATION OF THE ANNUAL REMUNERATION

7. For the respective year (i.e., for each 12-month period starting with the commencement of the payment of the Annual remuneration according to the provisions of the Agreement), the Annual remuneration is calculated according to the following equation:

$$M_n = MS_n + M3_n + M4_n + M5_n$$

where:

$M_n$	Annual remuneration in the $n^{\text{th}}$ year
$MS_n$	Flows of the borrowed and own capital in the Debt and equity capital flows in the $n^{\text{th}}$ year
$M3_n$	Costs of the financial and investment activities in the $n^{\text{th}}$ year
$M4_n$	Service provision costs in the $n^{\text{th}}$ year
$M5_n$	Administration and management costs in the $n^{\text{th}}$ year

#### **IV. PAYMENT OF THE ANNUAL REMUNERATION**

8. The payment of the Annual remuneration starts from the commencement of the Object's operation.
9. The Annual remuneration of the Object is of the same size without the consideration of the indexing at the the real value (changes of inflation, prices, salary) every year (except for the first and last year of payment, if payments started not at the beginning of the year).
10. The payment of the Object's Annual remuneration starts from the date of commencement of the Object's operation. The schedule for the payment of the Annual remuneration instalments in real (non-indexed) amounts is presented according to the Table 1 of the supplement No. 1 to this annex to the Agreement "Annual remuneration payment Schedule".
11. The Annual remuneration calculated in nominal (indexed) values in accordance with the procedure established in this document for each relevant year (i.e., for each 12-month period starting when the Agreement comes into force), is presented according to the Table 2 of the supplement No. 1 to this annex to the Agreement "Annual remuneration payment Schedule".
12. At the beginning of each year of the Agreement, the Table 2 of the supplement No. 1 to this annex to the Agreement "Annual remuneration payment Schedule", is updated in accordance with the indexation procedure described in this Annex, by adjusting the indicated nominal amount of the Annual remuneration for the respective year. Updated Supplement No.1 is documented by the written agreement of the Parties.



13. Payments of the Annual remuneration are made every month, in accordance with the procedure established in the Agreement, after the Private partner submits a VAT invoice.
14. The monthly share of the Annual remuneration is calculated according to the following equation:

$$m_{nk} = \frac{M_n}{12}$$

where:

- $m_{nk}$  The share of the Annual remuneration of the  $k^{\text{th}}$  month at the nominal (indexed) value in the  $n^{\text{th}}$  year
- $M_n$  Annual remuneration in the  $n^{\text{th}}$  year

15. If the Annual remuneration is not paid for the full year at the commencement of the Object's operation, the monthly instalments of the Annual remuneration are calculated according to the equation specified in this paragraph. Such situation may arise if the Works were completed and the period of the Object's operation would commence and end in the middle of the year (e.g.: 5<sup>th</sup> month of the 2<sup>nd</sup> year of the Agreement). In such case, the first and last Annual payment for the Object's operation would only be comprised of the remaining months of the relevant year. This rule applies to all shares of the Annual remuneration. The equation for the calculation of the Annual remuneration in a given situation is as follows:

$$m_{nm} = \frac{M_n}{L} \text{ where:}$$

- $m_{nm}$  The share of the Annual remuneration of the  $m^{\text{th}}$  month at the nominal (indexed) value in the  $n^{\text{th}}$  year
- L The number of months of the incomplete year of the Agreement, till the beginning of the next year.

16. In the event that the actual date of commencement of the Object's operation is later than the end date of the Object's creation period specified in the Investor's Tender due to reasons other than the fault of the Public Partner or the circumstances attributed to the risk of the Public partner, then that share of the Annual remuneration, which was planned from the end date of the Object's creation period specified in the Investor's Tender till the actual date of commencement of the Object's operation shall not be paid to the Private partner, and only the share of the Annual remuneration is paid for the period actual date of commencement of

the Object's operation till the expiration of the Agreement (if the Agreement is not terminated earlier).

17. The amount of the Annual remuneration paid to the Private partner is calculated according to the following formula:

$$S_{nk} = m_{nk} - I_P - I_K + KD - I_A$$

where:

$S_{nk}$	The amount paid to the Private partner on the $k^{\text{th}}$ month in the $n^{\text{th}}$ year
$m_{nk}$	The share of the Annual remuneration of the $k^{\text{th}}$ month in the $n^{\text{th}}$ year
$I_P$	Deduction due to the Operational violation
$I_K$	Deduction due to the Quality violation
$KD$	Compensation for the Compensation Event
$I_A$	Deduction due to the Cases of exemption

## V. CALCULATION OF THE ANNUAL REMUNERATION COMPONENTS

18. Share of the Annual remuneration **MS - Flows of the borrowed and own capital - (Non-indexed share of the Annual remuneration):**

18.1. comprised of :

- **M1** Credit flows - Share of the Annual remuneration intended for the credit granted by the Funder for the payment for the established infrastructure and the payment of the related financing fees;
- **M2** Equity capital flows - share of Annual remuneration for the equity flows, i. e. the invested capital and the subordinated loans, granted by the funders (e.g. shareholders) for the payment for the established infrastructure and the payment of the related financing fees;

18.2. Calculated according to:

18.2.1. The terms and conditions of the loan granted by the Funder specified in the FAM: the size of the loan, loan agreement conclusion fees, loan duration, deferral period, loan repayment method, loan repayment schedule, etc.;

18.2.2. The terms and conditions of the subordinated or insubordinated loan granted by the respective funders (e.g. shareholders) (if any) specified in the FAM (the size of the loan, loan agreement conclusion fees, loan duration, deferral period, loan repayment method, loan repayment schedule, etc.);

- 18.2.3. The conditions for the provision of the equity specified in the FAM (size, internal rate of return of equity, etc.);
- 18.2.4. The actually invested amount during the period of the Object's creation till the commencement of the Object's operation (based on the loan granted by the Funder, subordinated or insubordinated loan granted by the respective Funder or Other loan provider), without exceeding the amount of the Investments specified in the Tender of the Investor (including Object's creation funding and all other expenses till the commencement of the Object's operation), which is equal to *[amount]* EUR (excluding VAT), unless it is amended in cases specified in the Agreement;
- 18.2.5. The remaining unrepaid share of the loan and / or of the subordinated loan granted by the Funder or Other loan provider and the unpaid part of the equity of the Private partner, but not exceeding the share of of the loan and / or of the subordinated loan granted by the Funder or Other loan provider and the unpaid part of the equity of the Private partner which remains for the relevant period specified in the Tender, unless the amount of the Investments was increased in cases specified in the Agreement. In such a case, the share of the loan granted by the Funder which remains for the respective period specified in the Tender is increased by the corresponding share of the unrepaid increased amount of the Investments;
19. Share of the Annual remuneration **M3 - Costs of the financial and investment activities - (Non-indexed share of the Annual remuneration):**
- 19.1. Share of the Annual remuneration for the payment of the interest on the Funder's loan and subordinated loan of the Other loan provider, and the payment of return on the equity of the Private partner;
- 19.2. Calculated according to:
- 19.2.1. The terms and conditions of the loan granted by the Funder specified in the FAM: the size of the loan, interest rate, loan agreement conclusion fees, loan duration, deferral period, loan repayment method, loan repayment schedule, etc.;
- 19.2.2. The terms and conditions of the subordinated or insubordinated loan granted by other loan provider (if any) specified in the FAM (the size of the loan, interest rate, loan agreement conclusion fees, loan duration, deferral period, loan repayment method, loan repayment schedule, etc.);
- 19.2.3. The conditions for the provision of the equity specified in the FAM (size, internal rate of return of equity, etc.);

**20. Share of the Annual remuneration M4 - Service provision costs - (Indexed share of the Annual remuneration):**

- 20.1. The share of the Annual remuneration for the coverage of the costs of Service provision (excluding administration and management costs) from the date of commencement of the Object's operation"
- 20.2. Calculated according to the M4 value specified in the Table 1 of the supplement No. 1 to this annex to the Agreement "Annual remuneration payment Schedule" (i.e., the annual amount of the Service provision cost at the (base) prices in force during the submission of the Tender), indexing it in accordance with the terms set out in this document.

**21. Share of the Annual remuneration M5 - Administration and management costs - (Indexed share of the Annual remuneration):**

- 21.1. The share of the Annual remuneration for the coverage of the costs of Administration and management from the commencement of the Service provision;
- 21.2. Calculated according to the M5 value specified in the Table 1 of the supplement No. 1 to this document "Annual remuneration payment Schedule" (i.e., the annual amount of the Administration and management costs at the (base) prices in force during the submission of the Tender), indexing it in accordance with the terms set out in this document.

**VI. CALCULATION AND PAYMENT OF UTILITIES**

22. A private partner covers all the utility service tax costs related to the creation of the Object, up to (but not including) the commencement date of the Service provision, at its own expense.
23. From the commencement date of the Service provision until the end of the Agreement, the costs of utility taxes are deemed to be Pass-through costs and they are paid by the Public partner on the basis of actual consumption data according to the procedure specified in Agreement and in the Specifications.

The Public partner can verify the validity of information related to utility charges provided by the Private partner.

**VII. INDEXING**

24. The following parts of the Annual remuneration are indexed according to the terms of this document:
- M4 Service provision costs
- M5 Administrative and management costs

25. The components M4 and M5 of the Annual remuneration are indexed from start of the payment of the Annual remuneration according to the provisions of the Agreement and covering the entire period from the base month. The base month is *[date]*.
26. The components M4 and M5 of the Annual remuneration are indexed once for each 12-month period from start of the payment of the Annual remuneration according to the provisions of the Agreement.
27. Indicator according to which the components M4 and M5 of the Annual remuneration are indexed:
- 27.1. applicable indexing indicator:
- Index\_SVKI* The monthly harmonized index of consumer prices of the Republic of Lithuania published by the Statistics Department of the Republic of Lithuania.
- Should the Department of Statistics of the Republic of Lithuania no longer gather the statistics on the harmonized index of consumer prices and it would be no longer published, then the harmonized index of consumer prices shall be replaced by another relevant index or other comparable statistical indicator agreed by the Parties which would be closest to its purpose.
- 27.2. The source of the indexing indicator *Index\_SVKI*: Indicator database of the Department of Statistics of the Republic of Lithuania. The indexing indicator is obtained by performing the following steps:
- 27.2.1. <http://www.stat.gov.lt/>;
- 27.2.2. Official statistics portal;
- 27.2.3. Economy and finance;
- 27.2.4. Price indices, changes, and prices;
- 27.2.5. Harmonized index of consumer prices (HICP), changes of prices, HICP of fixed taxes and weights;
- 27.2.6. Monthly harmonized indices of consumer prices, changes of prices according to the Harmonized Index of Consumer Prices, and harmonized indices of consumer price for fixed taxes;
- 27.2.7. Harmonized Index of Consumer Prices, compared to the base period of the index (2015 = 100).
- 27.2.8. Properties: period, Classification of Individual Consumption Costs by Purpose (COICOP), special group of goods and services - Consumer goods and services.
- 27.3. M4 is indexed according to the equation:

$$M4_n = M4_{0n} \times \frac{Index_{SVKI_n}}{Index_{SVKI_0}}$$

where:

$M4_n$	Annual remuneration share M4 at the nominal (indexed) value in the $n^{\text{th}}$ year
$M4_{0n}$	The value of the component M4 of the Annual remuneration in the $n^{\text{th}}$ year specified in the Table 1 of the supplement No. 1 "Annual remuneration payment Schedule", at the valid (basic) prices during the submission of the Tender
$Index_{SVKI_n}$	the indexing rate value announced by the Statistics Department of the Republic of Lithuania for the calendar month, after the period of every 12 months counting from the date of the commencement of Service provision, the (i.e., the first time the value of the indexing rate for the month of the commencement of Service provision, and later the value of the indexing rate of the same month for each subsequent calendar year)
$Index_{SVKI_0}$	the value of the indexing indicator published by the Department of Statistics of the Republic of Lithuania for the base month specified in this document

27.4. M5 is indexed according to the equation:

$$M5_n = M5_{0n} \times \frac{Index_{SVKI_n}}{Index_{SVKI_0}}$$

where:

$M5_n$	Annual remuneration share M5 at the nominal (indexed) value in the $n^{\text{th}}$ year
$M5_{0n}$	The value of the component M5 of the Annual remuneration in the $n^{\text{th}}$ year specified in the supplement No. 1 "Annual remuneration payment Schedule", at the valid (basic) prices during the submission of the Tender
$Index_{SVKI_n}$	the indexing rate value announced by the Statistics Department of the Republic of Lithuania for the calendar month, after the period of every 12 months counting from the date of the commencement of Service provision, the (i.e., the first time the value of the indexing rate for the month of the commencement of Service provision, and later the value of the indexing rate of the same month for each subsequent calendar year)
$Index_{SVKI_0}$	the value of the indexing indicator published by the Department of Statistics of the Republic of Lithuania for the base month specified in this annex

## VIII. COMPENSATION EVENT

28. In the cases specified in the Agreement, the losses incurred by the Private partner due to the Compensation Event are compensated by the Public partner.
29. If, the Compensation Event results in the increase of Investments into the Property, and the Parties agree to pay the compensation for the aforementioned increase in instalments, the instalments of such compensation shall be calculated according to the following equation:

$$KD = \frac{\Delta Invest \times (1 + WACC)}{N}$$

$$WACC = \frac{E}{V} \times R_E + \frac{D}{V} \times R_D \times (1 - tax) + \frac{H}{V} \times R_H \times (1 - tax)$$

where:



<i>KD</i>	Monthly instalment of the compensation
$\Delta Invest$	The amount of the increase in Investments into Property (the full amount is indicated, if the Compensation event occurs due to the manifestation of the risk exclusively attributed to the Public partner, or part of this amount, proportional to the share of the risk that is attributed to the Public partner)
<i>N</i>	The period expressed in months from the start of the Compensation Event (if the Private partner has notified about the Compensation Event and has provided the supporting documents within the period specified in the Agreement prior to the planned expiration of the Agreement, or earlier if agreed with the Public partner). If the Compensation Event (of which the notification and supporting documents were provided within the period specified in the Agreement) occurred before the date of the commencement of Service provision, then "N" is equal to the period, from the date of the commencement of Service provision till the expiration of the Agreement, or earlier if agreed with the Public partner, expressed in months
<i>WACC</i>	<i>weighted average cost of capital</i>
<i>E</i>	The size of the actually invested equity
<i>D</i>	The amount of the loan actually granted by the Funder
<i>H</i>	The size of the actually invested hybrid capital (including subordinated loans, convertible bonds, mezzanine loans, etc.)
<i>V</i>	The amount that was actually invested during the Object's creation period till the date of the commencement of Service provision (under the Loan or Subordinated loan granted by the Funder, or subordinated or insubordinated loan granted by other funders, equity, as well as hybrid capital), $V = E + D + H$ .
$R_E$	Return on the provided equity
$R_D$	Interest on the loan granted by the Funder
$R_H$	Return on the granted hybrid capital
<i>Tax</i>	Income tax rate

30. If the Compensation Event results in the increase of the Private partner's costs related to the Service provision, such increase of costs are compensated together with the amounts of the annual remuneration paid to the Private partner each month. When determining the amount of the increase in the costs associated with the Service provision, the details of the values of the Service components specified in the FAM and justification for the increase of the costs related to the Service provision, according to the procedure of justification for the Additional works and services specified in the paragraph 16 of the Agreement are followed.

## IX. CASE OF EXEMPTION

31. In Case of Exemption, the Annual Remuneration paid by the Public partner to the Private partner is reduced In accordance with the terms established in the Agreement.
32. If due to the Case of Exemption the Private partner failed to provide Services or provided incomplete Services, as specified in the Specifications and the Agreement, the Private partner will not be paid for the Services (the part of the Services) that were not provided during the period of Exemption.
33. When determining the value of the part of the Services, which was not provided, the breakdown of the Service component values listed in the FAM presented together with the Tender is observed. In any case, such unpaid amount may not exceed the component M4.

## **X. DEDUCTIONS**

34. Deductions to the Annual remuneration of the Private partner may be applied in accordance with the terms specified in the Fine imposition system set out in the annex No. 7 to the Agreement *Specifications*.
35. Deductions from the Annual remuneration (if any) are applied on a monthly basis.
36. The amount of deductions calculated for the reference month may not exceed the share of the Annual remuneration for the  $k^{\text{th}}$  month in the  $n^{\text{th}}$  year ( $m_{nk}$ ).
37. If the deductions amount calculated for the reference month is higher than the difference between the share of the Annual remuneration for the  $k^{\text{th}}$  month in the  $n^{\text{th}}$  year ( $m_{nk}$ ) and the credit flows for the  $k^{\text{th}}$  month in the  $n^{\text{th}}$  year ( $M1_{nk}$ ), a part of the deductions calculated for the reference month that exceeds the difference between the share of the Annual remuneration for the  $k^{\text{th}}$  month in the  $n^{\text{th}}$  year ( $m_{nk}$ ) and the credit flows for the  $k^{\text{th}}$  month in the  $n^{\text{th}}$  year ( $M1_{nk}$ ), is transferred to other reference periods.
38. The size of the Deductions from the Annual remuneration for other reference periods due to the part of the deductions amount, exceeding the difference between the share of the Annual remuneration for the  $k^{\text{th}}$  month in the  $n^{\text{th}}$  year ( $m_{nk}$ ) and the credit flows for the  $k^{\text{th}}$  month in the  $n^{\text{th}}$  year ( $M1_{nk}$ ), transferred to these periods, is not reduced .
39. If, due to the fault of the Private partner, the Object cannot be used for the provision of the Services and the performance of functions of the Public partner, i.e. due to the inadequacy of the Object, the Private partner cannot provide the Services, and the Government partner is unable to perform the functions assigned to it in the legislation, the Public partner does not pay the Annual remuneration for the period during which the Object could not be used for

the provision of Services and the performance of the functions assigned to the Public partner in the legislation. The principle of "Zero availability - zero payment" applies.

#### **XI. USE OF THE INSURANCE BENEFITS**

40. As described in the paragraph 32 of the Agreement, if the insurance benefit is not consumed after the compensation of losses or restoration / replacement of the Property with equivalent property, the balance is used to compensate the parts M4-M5 of the amount paid the next month to the Private partner. If the parts M4-M5 of the amount paid the next month to the Private partner are fully covered for the remainder of the next month, the unused balance will be used to reimburse the parts M4-M5 of the amount paid to the Private partner the later on, until the balance is fully consumed.

#### **XII. CHANGE IN TAX LEGISLATION**

41. In case of changes in tax legislation the Annual remuneration will be recalculated in the following manner:
- 41.1. The recalculation of the Annual remuneration due to the changes in the VAT rate is carried out and the recalculated Annual remuneration is applied from the entry into force of the Law on Value Added Tax of the Republic of Lithuania, which changes the VAT rate, and the commencement of the application of the new VAT rate;
- 41.2. For the part of the Annual remuneration, for which VAT invoices are not yet issued in accordance with the terms of the Agreement, a new VAT rate is applied instead of the former VAT rate.
- 41.2.1. The recalculated Annual remuneration due to the changed VAT rate is formalized by a written agreement of the Parties;
42. Compensation for the rental fee for the state land of a land plot:
- 42.1. If the Private partner will not be exempted from the for the rental fee for the state land of a land plot or will be exempted only in part, the Public partner will compensate to the Private partner the rental fee for the state land which was actually paid, by paying the respective amounts to the Private partner no later than within 30 (thirty) days from the date of receipt of the relevant invoices and documents that substantiate them from the Private partner.
43. In cases other than those specified in this Annex to the Agreement, in cases of a change in the tax legislation, the Parties will follow the Agreement.

### **XIII. OPTIMIZATION, REOPTIMIZATION, AND REVIEW OF THE FINANCIAL ACTIVITY MODEL**

44. Before the signing of the Agreement, the Investor must perform the FAM optimization procedure, carry out an independent audit of the FAM at its own expense, and submit a report of factual findings regarding the FAM to the Public Partner. FAM audit must be performed by an independent audit firm included in the list of audit firms of the Republic of Lithuania. The audit must be carried out in accordance with international standards for the related services and the legislation in force in the Republic of Lithuania, which would enable the auditor to make sure that the FAM:

- i) properly reflected the terms and conditions of the Agreement and the set premises,
- ii) employed accounting principles and tax calculations are justified,
- iii) has no errors in the financial simulation.

The candidacy of an audit firm must be agreed upon with the Public partner before the audit, and audit may be carried out only after the written consent of the Public partner that the audit firm is acceptable to the Public partner, is obtained. The investor assumes full responsibility for the results of an independent audit of the FAM, i.e. after an independent audit of the FAM and the identification of errors in the financial simulation, which results in the increase of the estimated Annual payment due to the correction thereof, this increase is not assumed by the Public partner and the annual remuneration will not be recalculated. If the correction of the simulation errors would result in the decrease of the calculated Annual remuneration, the FAM and the recalculated Annual remuneration will be respectively optimized in favour of the Public partner, retaining the Internal rate of return specified in the Investor's Tender.

45. The FAM optimization procedure is performed prior to the Agreement's entry into force, after the conclusion of the agreement between the Private partner and the Funder. The FAM is optimized (respectively modifying the Private partner's costs and the Annual remuneration specified in the Tender and the FAM, and restoring the Internal rate of return specified in the Investor's Tender) when:

- 45.1. changes the rate of the EURIBOR. In such case, the change in costs (increase or decrease) will be attributed to the Public partner and the Annual remuneration will be adjusted accordingly (increased or decreased); and / or
- 45.2. The Funder changes the funding provided to the Private partner in the FAM. In such case, if the changes to the terms of financing proposed by the Funder prior to the Agreement's entry into force in full, result in the increase of the Private partner's costs related to the

performance of the Agreement, this increase in costs is not assumed by the Public partner, and the Annual remuneration is not recalculated / increased; if due to the change in the terms of financing proposed by the Funder prior to the Agreement's entry into force in full the Private partner's costs decrease, this decrease of costs shall be attributed to the Public partner and the Annual remuneration shall be reduced accordingly.

46. During the performance of the Agreement, the FAM is reoptimized in the following cases:

46.1. When the Private partner agrees with the Funder on the improvement of the financing conditions;

46.2. After making the amendments in the cases specified in the paragraph 38 of the Agreement;

46.3. In Cases of Exemption (if these cases are long-term).

47. If the FAM is adjusted, the Private partner performs the optimization and reoptimization procedures at his own expense, submitting the updated version of the FAM to the Public partner.

48. During the performance of the Agreement, the Public partner has the right to review and audit the FAM, at any time, without the consent of the Private partner.

If the FAM is adjusted, it will take effect from the date on which the FAM corrections are approved by the Public partner, and is treated as a "Financial activity model" as specified in the Agreement.

Supplement. Annual remuneration payment schedule.

Supplement of remuneration and payment procedure to  
the annex No. 3 of the Agreement

**ANNUAL REMUNERATION PAYMENT SCHEDULE**

\_\_\_\_\_ 20\_\_\_\_ No. \_\_\_\_\_

Table No. 1 "Annual remuneration during the year of the Service provision"

<b>Service provision year</b>	<b>Annual remuneration (at the base (non-indexed) values)</b>		
	<b>Amount of the Annual remuneration (M=MS (M1+M2)+M3+M4+M5), Eur (excluding VAT)</b>	<b>Components</b>	<b>Value, Eur (excluding VAT)</b>
1.		M1	
		M2	
		M3	
		M4	
		M5	





Table No. 2 "Annual remuneration for the period of the respective /number/ months"

Calendar year	Month	Monthly remuneration (at the actual non-indexed values)		
		The value of the monthly remuneration ( $M=MS(M1+M2)+M3+M4+M5$ ), Eur (excluding VAT)	Components	Value, Eur (excluding VAT)
20_____			M1	
			M2	
			M3	
			M4	
			M5	

### MATRIX OF RISK DISTRIBUTION AMONG THE PARTIES

*[The specified list of risks and risk description are indicative and must be adapted with respect to the specifics of the particular Project]*

*[The specified list of risks and risk description are indicative and must be adapted with respect to the specifics of the particular Project and the risk distribution presented in the partnership questionnaire.]*

Ser. No.	Risk category	Risk description	Distribution		
			to the Public partner	to the Private partner	General info
<b>1.</b>	Design (planning) quality risk				
1.1.	A technical project (including a work project) prepared by the Private partner or a technical work project is inaccurate	The manifestation of the risk factor means the additional design costs that the Private partner must reimburse in this case. It is estimated that the manifestation of the risk factor determines the financial flow of the investment costs - the cost of design services that may be incurred both during the investment and in the reinvestment period.			
1.2.	Project objectives and planned results do not solve the problem for which the Project is initiated.	The occurrence of a risk factor means that after the implementation of the Project, the generated results will not be used or will be used in a different than planned scope, or users will not be the target groups of the Project. It is deemed that the manifestation of the risk factor determines the flows of the operating			

		expenses and revenue: in case of deviations from the planned consumer flows, their size can change significantly.			
1.3.	The design task does not allow achieving the goals and planned results of the Project	The occurrence of a risk factor means that, after the implementation of the Project, the Object will not be suitable for its intended use or will be used, but in a different scope than was planned. It is deemed that the manifestation of the risk factor determines the flows of the operating expenses and revenue: in case of deviations from the planned consumer flows, intensity of the use of the Object, etc., their size can change significantly.			
1.4.	Project activities are delayed due to the duration of designing service procurement procedures	The factor manifests during the period of investment and reinvestment, and determines the expenses of contracting works. The risk factor manifests during both the investment and reinvestment periods, depending on the time since which the need to initiate the procurement of the design services occurs. The manifestation of the risk factor determines the cost of the investment: when the downtime is recorded because the contracting works are stopped due to design inaccuracies or the need for redesign on the site			
1.5.	The price of the designing services deviates from the planned	The identified price of the design services may deviate from the planned one due to various reasons. The manifestation of the risk factor implies additional costs for designing services.			

1.6.	The duration of the designing services deviates from the planned	The identified duration of the design services may deviate from the planned one due to various reasons. The manifestation of the risk factor determines the investment costs for the contract work: delay in the provision of the design services prevent contract works from starting, the seasonal impact of the contract works may occur, it can cause the downtime and payment of late interest. The manifestation of the risk factor implies additional costs for designing services.			
1.7.	At the time of the Procurement, the Investor did not propose to specify the inaccurate requirements set for the Object by the Public partner	When the designing activity starts, it becomes clear that the requirements set by the Public partner for the Object cannot be realized in practice as they are not compatible with the requirements established in the legislation (e.g. technical regulations for construction, hygiene norms, etc.), or there is no possibility to implement all the requirements set by the Public partner due to their mutual incompatibility. In the event when the requirements set by the Public partner become known for the Investor at the time of the Procurement, but while being able the Investor, does not evaluate them properly, and/or does not submit a proposal to adjust them accordingly. If the risk factor manifests the designing scope changes, therefore, the cost of designing services increases, and a need to extend the duration of the designing services occurs.			

1.8.	At the time of the Procurement, the Investor proposed to specify the inaccurate requirements set for the Object by the Public partner	At the time of the Procurement, the Investor proposes to clarify the requirements set for the Object by the Public partner, which are deemed as inaccurate or potentially unfulfillable during the actual implementation of the project. If the risk factor manifests the designing scope changes, therefore, the cost of designing services increases, and a need to extend the duration of the designing services occurs.			
1.9.	During the Procurement the restrictions on the control, use and disposition of the Land plot were not disclosed to the Investor	At the time of the Procurement, the Public partner does not disclose information about the restrictions of the rights <i>in Rem</i> (control, use, and disposition) of the Land plot required for the implementation of the Project. The Investor has submitted the Tender after assessing the information disclosed to him by the Public partner at the time of the Procurement, therefore, once the implementation of the Project commenced and restrictions of the rights <i>in Rem</i> of the Land plot became known, the situation that the Investor / Private partner will not be able to implement the Project in accordance with the Tender that it prepared, and the Project implementation plan presented and agreed upon by the Public partner, is possible. In this case, the Investor / Private partner must reorganize its activities according to the changed circumstances of the Project implementation, i.e. incur unplanned Project management costs.			

1.10.	During the Procurement the restrictions on the control, use and disposition of the Land plot were disclosed to the Investor	The restrictions of the rights <i>in Rem</i> (control, use, and disposition) are imposed on the Land plot required for the implementation of the project. Although the Investor has submitted the Tender based on the evaluation of the information disclosed to it by the Public partner at the time of the Procurement, it is possible that the Investor created the Project implementation plan without taking into account the restrictions on the rights <i>in Rem</i> set for the Land plot and coordinated this Project implementation plan with the Public partner. In this case, the Investor / Private partner must reorganize its activities according to the changed circumstances of the project implementation, i.e. incur unplanned Project management costs.			
1.11.	At the time of purchase, it was agreed upon the establishment / changing of the special Land plot use conditions	A specific agreement on the special Land plot use conditions may be reached by the parties at the time of Procurement, but during the performance of agreements the Investor / Private partner may, in the implementation of the agreements, deviations from the planned schedule and the budget allocated for the implementation of the activities are possible.			
1.12.	At the time of purchase, it was not agreed upon the establishment / changing of the special Land plot use conditions	As the implementation of the Project is commenced, the circumstances that made it necessary to change the special Land plot use conditions, became apparent. If the special Land plot use conditions are set or changed, it may			

		become necessary to modify the planned project solutions, therefore, the Private partner will incur unplanned costs of design services.			
1.13.	Previously unknown restrictions regarding the requirements of cultural heritage protection are become apparent	During the issuing a summary of design conditions and / or a construction permit, it becomes apparent that the construction of an object requires the performance of archaeological survey, the protection of archaeological findings, and / or the substantial alteration of design solutions that were not planned in advance, so that these would ensure compliance of the created / reconstructed infrastructure with the restrictions applicable to the protection of the cultural heritage. Designing costs due to the manifestation of this risk factor may increase as: 1) the planned duration of designing services may change as a result of archaeological survey and / or archaeological findings; 2) essential alterations to the design solutions proposed during the Procurement may be required; 3) the scope of the design works may change; 4) it may be necessary to employ additional specialists (e.g. archaeologists, historians, etc.) in the team of designers.			
1.14.	Requirements of the Cultural heritage protection known in advance are not evaluated	At the time of the Procurement, the Public partner presented to the Investor the known restrictions of the cultural heritage, which had to be observed by the Private partner when designing the Object. Regardless of the reasons, a Private partner may assess the			

		requirements of the cultural heritage protection inadequately.			
1.15.	During the provision of design services, the inaccuracies / deficiencies of the environmental impact assessment prepared by the Public partner or the Procurement documents become apparent	It becomes apparent during the designing that the prepared environmental impact assessment documents contain inaccuracies or shortcomings. The manifestation of the risk factor determines the financial flow of the investment costs - the cost of designing services, and therefore the manifestation of the risk to the the financial flows is to be estimated throughout the investment period.			
1.16.	During the provision of design services, the inaccuracies / deficiencies of the environmental impact assessment prepared by the Private partner or the Procurement documents become apparent	It becomes apparent during the designing that the prepared environmental impact assessment documents contain inaccuracies or shortcomings. The manifestation of the risk factor determines the financial flow of the investment costs - the cost of designing services, and therefore the manifestation of the risk to the the financial flows is to be estimated throughout the investment period.			
1.17.	Documents required for the designing, the access to which is the obligation of the Public partner, do not become accessible within the specified period	The Private partner determines the duration and plan of the design service provision on the assumption that the Public partner will provide all necessary data within the agreed time limit upon submission of a formal request in accordance with the provisions of the Agreement. Deviations are possible from the design plan, if the Public partner is late in submitting the necessary documents to the Private partner, this may affect the entire			



		duration and quality of the Project implementation.			
1.18.	Circumstances of the <i>force majeure</i> occur during the designing (planning)	The occurrence of the circumstances of <i>force majeure</i> may lead to the disruption or termination of the Project implementation activities.			The Private partner and the Public partner share the consequences of this risk in equal parts. In cases where the effects of <i>force majeure</i> circumstances can be insured, then all the risk is assumed by the Private partner.
1.19.	The Public partner changes the requirements set for the Object	A situation may arise, when during the design phase, the Public partner specifies to the Private partner, other requirements for the Object than the ones according to which the Investor prepared and submitted the Tender, including the Financial activity model, and on the basis of which the Agreement was concluded. The manifestation of the risk factor implies additional costs for designing services.			
1.20.	There is a delay in issuing the documents necessary for designing, although all documents meeting the set requirements are provided (there is no dispute regarding the contents of the documents)	The Private partner submits a request for issuing of a set of design conditions and / or other necessary documents, submitted in accordance with the statutory requirements in order to commence the designing, but the Public partner fails to issue the requested documents according to the received request on time. The manifestation of the risk factor can determine the designing time and the costs planned for the designing.			

1.21.	There are disputes over the quality and content of the documents required for the designing	The object of the dispute are the content and quality of the documents required for the designing (e.g., the set of designing conditions, building survey documents, the technical project of the building, the conditions for connection, of the special architecture requirements, the requirements for the special requirements for the management and protection of the protected area, the special heritage protection requirements, the documents for the construction products transferred to the contractor by the builder (the customer; etc.). The manifestation of the risk factor can determine the designing time and the costs planned for the designing.			
<b>2.</b>	<b>Quality risk of the purchased (performed) contracting works</b>				
2.1.	Damage that is caused due to the condition of the Land plot before it is transferred to the Private partner	If due to the condition of the Land plot (soil contamination, etc.), damage to the environment may be caused: pollutantss may be released into the environment, etc. The manifestation of the risk factor means a change in the cost of contracting works, because if the environmental damage would occur, the consequences of environmental damage should be eliminated first, and only then the planned contracting works should be performed.			
2.2.	During the performance of the contracting works the environmental damage is caused	Environmental damage can be caused by contracting works: prohibited concentration of substances that would contaminate the environment may be released, prohibited environmentally hazardous substances may be used, etc. The manifestation of the risk			

		factor means a change in the cost of the contracting works, since should the environmental damage would be caused, the estimate of contract work growth would increase by the cost of the environmental damage elimination works.			
2.3.	The quality of the contracting works is not ensured due to adverse weather conditions	Due to unfavorable weather conditions, performance of the contracting works cannot be carried out according to the plan, it may be necessary to use additional tools to perform contracting works. The manifestation of the risk factor implies a change in the costs of the contracting works, because due to the weather conditions the contracting works can take longer than planned, also the should the need for additional contracting works occur it may lead to the the unplanned increase in the contracting works estimate.			
2.4.	The quality of the contracting works is not ensured due to the organization of technological processes	The situation is possible where the quality of the contracting works does not meet the required one, when the requirements of the technological processes are not observed. The manifestation of the risk factor means additional costs for contracting works, deviations from the contracting work schedule.			
2.5.	The quality of the contracting works is not ensured due to the changes in the statutory quality requirements during the	When the Private partner performs contracting works, new legislation, defining the requirements for the quality of the performed contracting works, is passed or existing legislation is amended.			

	performance of the contracting works				
2.6.	The quality of the contracting works is not guaranteed due to human resources	The quality of the contracting works is not guaranteed due to human factors: inadequate staff qualifications, competencies, insufficient number, inadequate work load, or violations of work discipline. A situation when the quality of the contracting works is not ensured due to the suspension of the performance of works due to human resources, strike, lobbying activities of the public initiative groups or other grounds, which cannot be regarded as an external circumstance of the <i>force majeure</i> , is also possible. In addition to these factors, a situation where intentional or unintentional acts (such as theft, fraud, hooliganism, negligence, etc.) performed by third parties / employees have a significant impact on the quality of the contracting works, is also possible.			
2.7.	A property located in adjacent areas is damaged during the contracting works	In the course of contracting works on the site, the activity of the machinery, people, and / or subcontractors cause damage to property located in adjacent areas, regardless of the type of property (immovable and movable property). The manifestation of the risk factor means a change in the cost of the contracting works, since should the damage to the adjacent territories would be caused, the estimate of contract work would increase by the cost of the property damage elimination.			

2.8.	<p>Previously unknown restrictions of contracting works regarding the requirements of archeological and cultural heritage protection are become apparent</p>	<p>During the issuance of construction documents it becomes clear that there is a need to perform previously unplanned archaeological survey, protect archaeological findings, and / or organizes the process of contracting works completely in another way in order to ensure the protection of cultural heritage. Costs of contracting works due to the manifestation of this risk factor may increase as: 1) the planned duration of contracting works may change as a result of archaeological survey and / or archaeological findings, or other restrictions of cultural heritage protection; 2) essential alterations to the contracting works technological solution proposed during the Procurement may be required; 3) the scope of the contracting works may change; 4) it may be necessary to employ additional specialists (e.g. archaeologists, historians, etc.) in the contractor's team.</p>			
2.9.	<p>The Public partner changes the requirements for the quality of the contracting works during the contracting works execution phase (including insignificant changes)</p>	<p>After the designing phase, the Public partner specifies to the Private partner, other requirements for contracting works and the Object than the ones according to which the Investor prepared and submitted the Tender, and/or performed designing and other preparation activities, and on the basis of which the Agreement was concluded. The manifestation of the risk factor implies additional costs of contract works.</p>			

2.10.	The requirements for the quality of the contracting works are changed at the initiative and / or demand of the Private partner	A situation may arise when the Private partner initiates a change of the requirements for the quality of the contracting works after the designing phase. For example, a Private partner may propose to set a higher energy efficiency class for the Object under construction due to rising prices of the energy resources in the market. The manifestation of the risk factor implies additional costs of contract works.			
2.11.	The quality of the contracting works is not guaranteed due to the suitability and sufficiency of the technological resources	A situation when the quality of the contracting works is not ensured due to the suitability, sufficiency, and other related factors of the technological resources, is possible.			
2.12.	The quality of the contracting works is not guaranteed due to the price and quality of utilities.	The quality of the contracting works is not guaranteed due to the price, quality and availability of utilities.			
2.13.	The quality of the Contract works is not ensured due to the availability and quality of raw materials, materials and mechanisms	The quality of the contracting works is not ensured due to the timely unavailability and quality of the raw materials, materials, and machinery required for the performance of works.			
2.14.	The quality of the contracting works is not guaranteed due to the actions or omissions of the Sub-suppliers	Sub-suppliers are employed to perform the contracting works, but they do not observe the obligations, do not ensure the required quality of works, etc.			
2.15.	Circumstances of the <i>force majeure</i> occur during the performance of contracting works	The manifestation of the circumstances of the <i>force majeure</i> may lead to a disruption in the quality of the contracting works, or the complete or partial termination of the contracting work process. The definition of the			

		circumstances of the <i>force majeure</i> is provided in the Agreement.			
<b>3.</b>	<b>Quality risk of the purchased (provided) services</b>				
3.1.	Damage is caused to the environment during the provision of the Services, when the provision of Services is the responsibility of the Private partner	During the provision of services, pollutants are released into the environment through the use of tools, equipment or human resources, and that causes the damage to the environment.			
3.2.	The quality of the service provision is not guaranteed due to the actions or omissions of the Sub-suppliers	Sub-suppliers are employed to provide services, but they do not observe the obligations, do not ensure the required quality of services, etc.			
3.3.	The quality of the service provision is not ensured due to the organization of technological processes	The situation is possible where the quality of the Service provision does not meet the required one, when the requirements of the technological processes are not observed. The manifestation of a risk factor implies additional costs for the provision of the Services, and may also mean lower expenses for the Service provision than was planned, and the deviation from the Service provision schedule.			
3.4.	The Public partner changes the established requirements during the provision of the Services (including insignificant changes)	During the phase of the Service provision, the Public partner specifies to the Private partner, other Service quality requirements than the ones according to which the Investor prepared and submitted the Tender, including the Financial activity model, and on the basis of which the Agreement was concluded.			

3.5.	The requirements for the quality of the Services are changed at the initiative and / or demand of the Private partner	A Private partner initiates a change in the Service quality requirements after the commencement of the Service provision phase.			
3.6.	The quality of the Service provision is not ensured due to the quality and availability of human resources	The quality of the services is not guaranteed due to human factors: inadequate staff qualifications, competencies, insufficient number, inadequate work load, or violations of work discipline. A situation when the quality of the Services is not ensured due to the suspension of the performance of Works due to human resources employed by the person, strike, lobbying activities of the public initiative groups or other grounds, which cannot be regarded as an external circumstance of the <i>force majeure</i> , is also possible. In addition to these factors, a situation where intentional or unintentional acts (such as theft, fraud, hooliganism, negligence, etc.) performed by third parties / employees have a significant impact on the quality of the Services, is also possible.			
3.7.	Circumstances of the <i>force majeure</i> occur (during the Service provision)	The occurrence of the circumstances of <i>force majeure</i> may lead to the disruption or termination of the Service provision.			
4.	<b>The risk of the quality of the machinery, equipment, and other assets (New property) to be acquired (produced)</b>				



4.1.	Damage to the environment is caused by the creation and installation of the New property	Environmental damage can be caused when creating (installing) the New property: during the creation (installation) prohibited concentration of substances that would contaminate the environment may be released, prohibited environmentally hazardous substances may be used, etc.			
4.2.	The quality of the creation of the New property is not ensured due to the actions of the Sub-suppliers	New property is acquired through Sub-suppliers, but they do not observe the obligations, do not ensure the required property quality.			
4.2.1.	The Public partner changes the requirements for their quality (including insignificant changes) during the creation (installation) and delivery of the New property	After the Agreement's entry into force, the Public partner changes the requirements for the quality of the New property, instead of those under which the Investor prepared and submitted the Tender, and / or performed other preliminary activities			
4.3.	The quality of the New property is not guaranteed due to human resources	The quality of the New property is not guaranteed due to human factors: inadequate staff qualifications, competencies, insufficient number, inadequate work load, or violations of work discipline. A situation when the quality of the Property that is being purchased is not ensured due to the suspension of the performance of works due to human resources employed by the person, strike, lobbying activities of the public initiative groups or other grounds, which cannot be regarded as an external circumstance of the <i>force majeure</i> , is also possible. In addition to these factors, a situation where intentional or unintentional acts (such as theft, fraud, hooliganism, negligence,			

		etc.) performed by third parties / employees have a significant impact on the quality of the equipment, machinery, or other property, is also possible.			
4.4.	Circumstances of the <i>force majeure</i> occur during the creation of the New property	The occurrence of the circumstances of <i>force majeure</i> may lead to the disruption or termination of the New property installation and supply. The definition of the circumstances of the <i>force majeure</i> is provided in the Agreement.			
4.5.	The requirements for the New property are changed at the initiative and / or demand of the Private partner	After the commencement of the implementation of the Agreement, the Private partner initiates a change in the requirements for the quality of the New property.			
<b>5.</b>	<b>Risk of the access to funding</b>				
5.1.	Losses due to different currencies of funding costs and operating income	The project funding is secured by concluding a loan agreement or agreements in one currency, and the flows of the main income are planned in another currency. During the creation of the Financial activity model, the ratio between these currencies is evaluated, but due to the long duration of the Agreement this ratio may change.			
5.2.	The need for funding changes due to the increased Investment costs	After the increase in the investment costs, occurs a need to provide additional funding, necessary to ensure the financial viability of the Project.			
5.3.	Fulfillment of the conditions for granting the principal loan	The Private partner, while being responsible for the funding of the Project, assumes the risk to fulfill all conditions of the Funder.			

5.4.	The interbank interest rate on the principal loan changes before the Agreements comes into force in its entirety	A specific risk factor that is likely to occur over a period of less than one year (the exact time period depends on how much time will be allocated in the Agreement for the conclusion of the funding agreements). A possible situation where the interest rate on interbank loan rate changes in full between the time the Agreement is concluded and its entry into force.			
5.5.	The interbank loan interest rate changes after the conclusion of funding agreements	A possible situation, when due to the changes of the macroeconomic conditions during the period of the funding agreement validity, the interbank loan interest rate changes.			
5.6.	The need for funding changes due to the changes in the value added tax rate prior to the Agreement's entry into force	A situation is possible where, after the change in the value added tax rate, there is a need to provide additional funding than was calculated during the creation of the Financial activity model. Changes in the value added tax rate do not change the operating costs and income, but have a significant impact on the financial viability of the Project.			
5.7.	The need for funding changes due to the changes in the value added tax rate after the financial closing	The rate of the value added tax changes as the tax policy changes in the country during the period of the funding agreement validity.			
5.8.	The need for funding changes due to change of the rate of any tax, other than value added tax, or toll prior to the Agreement's entry into force	The change in the rate of any tax other than the value added tax, as well as toll rates, raises the need to ensure the additional funding, other than the one that was calculated during the drafting of the Financial activity model.			

5.9.	The need for funding changes due to change of the rate of any tax, other than value added tax, or toll after the financial closing	The change in the rate of any tax other than the value added tax, as well as toll rates, raises the need to ensure the additional funding, other than the one that was calculated during the drafting of the Financial activity model.			
5.10.	The need for funding changes due to the violation of the state support regulations	If the project company benefits from the violation of the state support regulations, it assumes the risk of the return of the unlawful financial gain			
5.11.	The need for funding changes due to the actions or omission of Sub-suppliers or other entities	Sub-suppliers or other entities are employed to ensure funding, but they do not observe the obligations, carry out other unscheduled actions that change the need for funding from other sources.			
<b>6.</b>	<b>Risk of the suitability of services presented to the market</b>				
6.1.	Delay in the commencement of Service provision	Due to the prolonged investment process or organizational preparation, the commencement of Service provision is delayed. The manifestation of the risk factor means a change in net income, since the delayed commencement of the Service provision changes the abilities to generate the planned revenue stream, and also deviates from the plan of the operating expenses.			
6.2.	The Public partner changes the established quality requirements for the Services after the end of the investment process	During the Service provision, the Public partner specifies to the Private partner, other requirements than the ones according to which the Investor prepared and submitted the Tender, including the Financial activity model, and on the basis of which the Agreement was concluded.			

6.3.	Permits (licenses) are not obtained	Under the Contract, the Private partner is responsible for the provision of the Services, and therefore assumes the risk of failure to obtain the permits necessary to provide the Services.			
6.4.	The qualifications and competences of human resources are unsuitable	Respective qualification and competences of the personnel responsible for the Service provision is required. Without assurance of the proper qualification and competence, the quality of the Services may not meet the established requirements of suitability. The lack or discrepancy in the qualification and competences of human resources directly determines the net operating income: on the one hand, revenue flows may decrease due to customer dissatisfaction with the services; on the other hand, inadequate qualifications may indicate changes in the operating costs.			
6.5.	Unsuitable technologies are used	The provision of the Services requires the use of suitable technologies, the use of which ensures compliance with the specified quality requirements.			
6.6.	Unsuitable raw materials and materials are used	The provision of the Services with quality requires the use of suitable raw materials and materials.			
6.7.	New requirements are set after the period of Works	New requirements for the provision of the Services are set in the legislation. Establishment of new requirements may mean new establishment of requirements for the quality of the Services provided, or changes in the organization of production activities. Since the occurrence of new requirements affects the cost of			

		services, it also results in changes in the operating costs.			
<b>7.</b>	<b>Risk of demand for services presented to the market</b>				
7.1.	The opinion of consumers about the Services provided changes	Demand changes because of consumer opinion about the Services. Changes in consumer opinion depend on processes happening in the society that are the subject of the sociological research. The change in consumer opinion is likely to result in both the increase and decrease of the demand.			
7.2.	Technology getting obsolete	Demand is changing because of the difference between the Property, the technology used and the emerging new technologies.			
<b>8.</b>	<b>The risk of the residual value of the Property at the end of the reference period</b>				
8.1.	Deviation from the Property condition maintenance plan	The residual value of the Property at the end of the Project's reference period does not correspond with the planned value, because there was a deviation from the prearranged Property condition maintenance plan during the reference period. These deviations may indicate that the Property did not undergo planned repairs, preventive inspections were not carried out on time, etc.			
8.2.	Property condition maintenance costs are planned inaccurately	The residual value of the Property at the end of the period changes due to inaccurate calculations of the infrastructure condition maintenance costs, therefore the required Works were not carried out in full or not carried out at all, and the quality requirements were not observed.			

8.3.	Lack of information about the use of the Property during the reference period	A situation is possible that for the determination of the residual value of the Property at the end of the period, it is necessary to assess the extent and intensity of the Property use, as well as the actual steps taken for the Property maintenance and the improvement of condition.			
8.4.	Restrictions set on the rights of Property control, use, and disposition with respect to the transactions with third parties	Transactions with third parties performed during the reference period and at the end of the reference period, restrictions on the rights of Property control, use, and disposition are set. These restrictions, depending on the method of calculating the residual value of the Property, may mean a change in the residual value of the Object.			

## 5 Annex to the Agreement

### LIST OF THE MANDATORY INSURANCE AGREEMENTS

A Private partner must conclude and maintain valid the following insurance agreements throughout the term of the Agreement *[the specified list of the insurance agreements is indicative and must be adapted according to the specifics of the particular Project]:*

1. no later than 5 (five) Business days prior to the date of commencement of the Object's designing - insure own civil liability with the designer's civil liability insurance in the amount no smaller than *[specify the amount, recommend 5-10% of the value of design works]* EUR. This insurance must be valid during the entire period of the Designing services and Work performance, till the date of commencement of the Service provision and 2 (two) years after this date. If the design works are performed by the Sub-supplier, the relevant insurance agreement must be concluded by the Sub-supplier instead of the Private partner;]
2. no later than 5 (five) Business days prior to the date of commencement of the Object's construction works - insure own civil liability with the contractor's civil liability insurance in the amount no smaller than *[specify the amount, recommend 5-10% of the value of construction works]* EUR. The specified insurance may also be a component of the Construction All-Risks Insurance (CAR) referred to in the paragraph 4 of the Agreement. This insurance must be valid during the entire period of the Work performance, till the date of commencement of the Service provision and 2 (two) years after this date. If the Object's construction works are performed by the Sub-supplier, the relevant insurance agreement must be concluded by the Sub-supplier instead of the Private partner;]
3. no later than 5 (five) Business days prior to the date of commencement of the performance of the Object's construction, to insure own civil liability with the the construction technical supervisor's civil liability insurance in accordance with the terms and conditions specified in the rules of mandatory insurance of the civil liability of the Building construction technical supervisor that are in effect. If the technical supervisor of the Object's construction works is a Sub-supplier, the relevant insurance agreement must be concluded by the Sub-supplier instead of the Private partner;]
4. no later than before *[specify the deadline]* Business days prior to the date of commencement of the Works - insure the Object, materials, and equipment with the Construction All-Risks Insurance (CAR) insurance in the amount that is no smaller than the value of the Investments specified in the Tender. The insurance must be valid until the date of commencement of the Service provision, and from this date must be replaced with the insurance specified in the paragraph 6;
5. not later than 5 (five) Business days prior to the date of commencement of the Service provision, to insure own civil liability from all risks that may arise from any activity in which the Private partner is engaged under this Agreement (except for the activities specified in the paragraphs 1-4 of this Annex to the Agreement) in the amount no smaller than *[specify the amount, recommend 5% of the value of the Services]* EUR per insured event. This insurance must be valid until the



expiration of the Agreement, as specified in the Agreement, and also cover the damage which may occur due to Sub-suppliers or other third parties, employed for the Services provided or Repairs performed at the Object, or for Additional works and / or services;

6. not later than 5 (five) Business days prior to the date of commencement of the Service provision  
- insure the Object and all the New assets located in it, owned by the Private partner, with the maximum insurance for the property restoration value from all potential risk cases, and in any case for the amount no smaller than the value of the Investments specified in the Tender. This insurance must be valid until the expiration of the Agreement.

*[List other mandatory insurance agreement and insurance amounts];*

**6. Annex to the Agreement****LIST OF ASSOCIATED COMPANIES**

<b>Associated companies:</b>	<b>Linking relations:</b>
1.	
2.	
3.	
4.	
5.	

---

(Position of the authorised person)

---

(signature)

---

(Name and last name)

**7. Annex to the Agreement**

**SPECIFICATIONS**

*[Enclose the Specifications]*

## 8 Annex to the Agreement

## LOAN FOR USE AGREEMENT

\_\_\_\_\_ No. \_\_\_\_\_  
(date)

\_\_\_\_\_  
(location of conclusion)

Loan provider \_\_\_\_\_ ,  
(name and code of the state institution, enterprise, office, or organizations

\_\_\_\_\_ that is transferring the property (hereinafter - the institution))

according to \_\_\_\_\_  
(the law, articles of association of the institution, power of attorney – document title, number, date)

represented by \_\_\_\_\_ ,  
(position, name, last name, and personal code of the representative)

and the loan recipient \_\_\_\_\_ ,  
(the name and code of the loan for use subject, specified in the article 14 of the Law on the control, use, and disposition of the property of the state and municipality of the Republic of Lithuania, which accepts the property)

according to \_\_\_\_\_  
(the law, articles of association of the loan for use entity, power of attorney – document title, number, date)

represented by \_\_\_\_\_ ,  
(position, name, last name, and personal code of the representative)

on the basis of [*indicate the decision of the Seimas of the Republic of Lithuania, the Government of the Republic of Lithuania, or the municipal council on the expediency of the project*], or of the decision No. \_\_\_\_ of the manager of the state property managed in the centralised way of \_\_\_\_\_ 20 \_\_,

concluded the following Loan for use agreement:

1. The Loan provider transfers to the Loan recipient acting according to its own articles of association

the property controlled by the state / municipality for temporary control free of charge and use under

the right of trust: \_\_\_\_\_

(name and description of the property: inventory number of the intangible, tangible fixed assets, acquisition and residual value, address of the real estate or other real property, unique number, marking of the building

in the plan, total area of the building, area of the premises and indices, value of acquisition of short-term tangible assets;

the main characteristics of the equipment, and if the property is transferred according to the list, it is indicated that the property is being transferred

attached list)

\_\_\_\_\_ (specify the purpose of use of the property)

2. Loan provider transfers the item to the loan recipient \_\_\_\_\_ .  
(specify the deadline)

3. Other conditions \_\_\_\_\_ .

4. Third party rights to the item \_\_\_\_\_ .  
(pledging, attachment, usufruct, etc.)

6. Loan recipient insures the Property as it is specified in the Agreement.

7. The Loan recipient registers the loan for use agreement in the Real property register at his own expense within 15 days from the date of the signing of the Agreement, in accordance with terms of the legislation (except in the case specified in the paragraph 8). After the loan for use agreement expires, the Loan recipient deregisters it from the Real property register.

8. If the Loan provider is the manager of a state property managed in a centralised manner, it registers the loan for use agreement in the Real property register within 15 days from the date of the signing of the Agreement, and after the expiration of the Loan for use agreement deregisters it.

9. The Loan provider, without prejudice to the rights of the Loan recipient, has the right to verify whether the Loan recipient uses the item properly for the purpose and according to the Loan for use agreement.

10. Loan provider must:

10.1. to transfer the item specified in paragraph 1 of the agreement under the transfer-acceptance certificate within 5 Business days from the date of signing the Loan for use agreement;

10.2. accept the item that is being returned to him after the expiration of the Loan for use agreement under the transfer-acceptance certificate within 5 Business days after the expiration of the Loan for use agreement.

11. Loan recipient must:

11.1. use the item for its primary use and according to the Agreement, only for activities specified during the declaration of the decision on the transfer of state / municipal property for temporary control and use free of charge on the grounds of Loan for use, and strictly observe the fire safety, storage, sanitation and technical regulations applicable to this item, as well as do not change the purpose of the item during the entire term of the agreement;

11.2. provide an opportunity for the Loan provider to control, whether the transferred item is used according to its purpose and the Loan for use agreement, or whether the Loan recipient is engaged in the activities for which the state / municipal property was transferred.

11.3. compensate the losses to the Loan provider, if the transferred item broke down or was damaged due to the failure to perform maintenance or repairs;

11.4. inform the Loan provider in writing about the item that will be returned, one month before the expiration of the Loan for use agreement;

11.5. return the item to the Loan provider in the condition in which it was transferred, taking into account normal wear, with all the elements of the improvement, which are inseparable from the item, after the expiration of the Loan for use agreement or if it is terminated in advance;

11.6. the Loan recipient must perform all tax obligations on the Agreement expiration date.

12. The funds of the Loan recipient, used to improve or rearrange the item are not reimbursed.

13. The Loan provider has the right to terminate the Loan for use agreement before the expiration:

13.1. On the grounds specified in the Civil Code of the Republic of Lithuania;

13.2. if the Loan recipient fails to provide an opportunity to control, whether the item, transferred in accordance with the Loan for use agreement is used according to its purpose and the Loan for use agreement, or whether the Loan recipient is engaged in the activities for which the state / municipal property was transferred.

14. The Loan recipient cannot lease or otherwise transfer to third parties the state / municipality property, which was transferred to it.

15. This Agreement is an integral part of the Agreement, and is interpreted and applied in conjunction with the Agreement. The Agreement shall prevail over the provisions of this Loan for use agreement.

16. This Loan for use agreement is concluded in 2 copies, one for the loan provider and one for the loan recipient.

ENCLOSED (if any documents are enclosed):

1. \_\_\_\_\_, \_\_\_ page(s).  
(a copy of the document granting the right to transfer the property)
2. \_\_\_\_\_, \_\_\_ page(s).  
(list of assets if the assets are transferred according to the list)
3. \_\_\_\_\_, \_\_\_ page(s).  
(copy of the item's real property cadastre file)
4. \_\_\_\_\_, \_\_\_ page(s).  
(copy of the articles of association of the loan subject)
5. \_\_\_\_\_, \_\_\_ page(s).  
(Information extract from the real property register central database)
6. \_\_\_\_\_, \_\_\_ page(s).  
(transfer and acceptance certificate)
7. \_\_\_\_\_, \_\_\_ page(s).  
(other documents)

Details of the parties to the Loan for use agreement:

Loan provider's: \_\_\_\_\_  
(address, phone number, number of the settlement account in the bank)

Loan recipient's: \_\_\_\_\_  
(address, phone number, number of the settlement account in the bank)

Loan provider  
(Signature)  
(Signature)  
(Name and last name)  
S. P.

Loan recipient  
  
(Name and last name)  
S. P.

**CERTIFICATE OF THE TRANSFER AND ACCEPTANCE OF THE PROPERTY  
TRANSFERRED UNDER THE LOAN FOR USE AGREEMENT**

\_\_\_\_\_ No. \_\_\_\_\_  
(date)

\_\_\_\_\_  
(location of conclusion)

According to the Loan for use agreement No. \_\_, of \_\_ \_\_\_\_\_ 20\_\_, the Loan provider

\_\_\_\_\_

\_\_\_\_\_ (the name and code of the state / municipal institution, enterprise, office, organization (hereinafter - the institution), which is transferring the property) according to

\_\_\_\_\_ (the law, articles of association of the institution, power of attorney – document title, number, date) represented by \_\_\_\_\_ ,  
(position, name, last name, and personal code of the representative)

transfers, and the loan recipient \_\_\_\_\_ ,  
(the name and code of the loan for use entity which is accepting the property) according to

\_\_\_\_\_ (the law, articles of association of the institution, power of attorney – document title, number, date) represented by \_\_\_\_\_ ,

(position, name, last name, and personal code of the representative) accepts under the right of trust of the loan recipient the property owned by the state / municipality:

\_\_\_\_\_ .

(name and description of the property that is being transferred: inventory number of the intangible, tangible fixed assets, acquisition and residual value, address of the real estate or other real property, unique number, marking of the building in the plan, total area of the building, area of the premises and indices, value of acquisition of short-term tangible assets; the main characteristics of the equipment, and if the property is transferred according to the list, it is indicated that the property is being transferred according to the enclosed list)

Condition of the property that is being transferred at the time of the transfer

\_\_\_\_\_ .

(specify the defects of the property if detected)

This certificate is drafted in 2 copies, one for the loan provider and one for the loan recipient.

Transferred by:

Loan provider

(Name and last name)

(Signature)

Accepted by:  
Loan recipient

(Name and last name)

(Signature)



## 9 Annex to the Agreement

### PRECONDITIONS FOR THE AGREEMENT'S ENTRY INTO FORCE

*[The specified Preconditions for the Agreement's entry into force are indicative and must be adapted according to the specifics of the particular Project]:*

The parties shall take all the necessary measures, so that prior to the Agreement's entry into force, the smooth transfer of the transferred Property, performance of obligations under the Agreement and receipt of permits and licenses necessary for the performance of the Agreement, would be ensured, including the following:

1. Provision of of the Security of the performance of obligations specified in the paragraph 32.1 of the Agreement.
2. The conclusion and entry into force in full of designing, contractual works, equipment and service procurement agreements with Sub-suppliers specified in the Tender (copies of the agreements are submitted to the Public partner);
3. *[If applicable* the acquisition of the Competition Council's approval for concentration or the letter of the Investor or the Private partner that such permit is not required (presented to the Public partner);]
4. *[If applicable* termination of the land plot Loan for use agreements;]
5. *[If applicable* conclusion of the land plot lease agreements (a copy of the agreement is presented to the Public partner);]
6. *[If applicable* acquisition of consents from third parties for the conclusion of Lease agreement that is related to them (if necessary) (copies of the consent are presented to the Public partner);]
7. *[If applicable* conclusion of the Loan for use agreement with the Public partner for the property that is being transferred;]
8. *[If applicable* conclusion of agreements with the Funder (a copy of the agreement is presented to the Public partner);]
9. *[If the Works are performed* to commence the performance of Works / *if the Works are not performed* to commence the provision of Services] acquisition and / or renewal of the necessary permits, licenses and certificates on acquisition and/or renewal of the required permits, licenses, and certifications behalf of the Private partner (copies of documents are presented to the Public partner);]
10. *[If applicable* conclusion of the Insurance agreement specified in the paragraph 1 of the Annex No. 0 to the Agreement (a copy of the agreement is presented to the Public partner)]

11. *[indicate other Preconditions for the Agreement's entry into force necessary for the Agreement's entry into force].*

**10 Annex to the  
Agreement**

**REQUIREMENTS FOR THE PROPERTY THAT IS BEING RETURNED /  
TRANSFERRED**

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**DIRECT AGREEMENT No. *[agreement number]***

**concluded between**

***[Title of the Public partner], [title of the Funder]***

**and *[Title of the Private partner]***

**on [...]**

***[day] / [month] / [year]***

***[Place]***

---

## INTRODUCTION

**[Public partner]**, located at **[address]**, legal partner code **[legal partner code]**, represented by **[position, name, surname of the representative]**, acting in accordance with **[basis for representation (Regulations of the Public partner, Decision, etc.)]**, (hereinafter – **the Public partner**);

**[Fuder (in case of several funders, representative thereof)]**, with the address **[address, legal entity code]**, represented by **[position, name, and last name of the representative]**, acting according to **[specify the grounds for representation (articles of association of the Funder, decision, etc.)]**, (hereinafter – **the Funder**);

and

**[Private partner]**, the company established and operating according to the legislation of the Republic of Lithuania, with the address at ....., legal entity code ....., represented by ....., acting according to ..... (hereinafter – **the Private partner**);

hereinafter in the agreement the Public partner, the Funder, and the Private partner individually are referred to as the **Party**, and all together as the **Parties**;

### WHEREAS:

- A. The Private partner and the Public partner concluded the Agreement on **[specify the title]**, under which the Private partner undertook to perform Works and provide Services, assume the risks related to that, to properly control and use the Property, and after the expiration of the Agreement return it to the Public partner, as it is specified in the Agreement, also to properly perform his other obligations under the Agreement, and the Public partner undertook to provide the Transferable property for the Private partner to control and use in accordance with the terms of the Agreement, to assume the specified risk, to make timely payments performed Works and provided Services, as well as to properly perform his other obligations under the Agreement;
- B. Parties seek to ensure proper implementation of the Project, even in a situation where the grounds for the termination of the Agreement occurs due to the fault of the Private partner;
- C. The Funder seeks to ensure the recovery of the funding granted to the Private partner from the remuneration paid to the Private partner for for the implementation of the Project in case if the risk of failure to implement the Project would present due to the fault of the Private partner;

While intending to assume contractual obligations, the Public partner, the Investor, and the Private partner voluntarily agreed upon and concluded this direct agreement (hereinafter – **the Agreement**):

### 1. Definitions used in the agreement and interpretation thereof

1.1. Terms and definitions starting in this Agreement with Capital letter has the same meaning as it is described in the Agreement or as they are defined below, if the context does not require otherwise:

- Necessary period** means a period the counting of which begins from the day of notice about the termination of the Agreement, and which:
- (a) expires after 120 (one hundred and twenty) days during the work phase;

(b) expires after 90 (ninety) days during the operation phase;

**Representative**

means:

- (a) the Funder and / or his subsidiaries;
- (b) administrator, managing administrator, and administrator or manager of the Private partner;
- (c) a person, who is directly or indirectly managed or controlled by the Funder and / or any other main creditor; or
- (d) Any other person, approved by the Public partner (such approval should not be unreasonably rejected or withheld);

**Date of the Step-In**

means the date on which the Funder starts any actions, described in the paragraph 4.5 of this Agreement;

**Period of the Step-In**

means (depending on which ends sooner) [*specify the period*] month period from the Step-In date or the period from the Step-In date till:

- (a) Date of the Step-Out;
- (b) Date of any transfer, specified in the paragraph 8 of this Agreement;
- (c) Date of the termination of the Agreement, because of a violation in accordance with the paragraph 5 of this Agreement; and
- (d) expiration of the Agreement;

**Liquid Market**

Means that there are parties in the market that are suitable, willing to participate and provide services specified in the Agreement (at least two parties, each of which can be appointed as a Suitable substitute);

**Credit agreement**

means [*specify the name of the agreement*] the credit agreement, concluded on [*date*] between the Private partner, the Funder, and other main creditors, or finance institutions;

**Date of the Step-Out**

means the date that comes after 30 (thirty) days pass after the notice was delivered according to the paragraph 6 of this Agreement (Step-Out);

**Notice about the termination of the Agreement**

means the notice of the Public partner to the Investor according to the paragraph 3.1 of this Agreement;

**Private partner's failure to perform obligations**

Private partner's failure to perform the obligations under the Agreement, or improper performance thereof is deemed a material violation of the Agreement.

**Agreement**

means [*specify the title*];

**Suitable substitute**

means a person, approved by the Public partner (such approval cannot be unreasonably rejected or withheld), who:

- (a) meets the requirements set in the Agreement for the subject, which replaces the Private partner, has a legal capacity, competence, and authority to become the Party to the Agreement, and to perform the obligations of the Private partner under the Agreement; and
- (b) employs persons with the suitable qualification, experience, and technical competence, who are able to use the sources of the resources (including financial assets, and subcontracting agreements), and who are fully competent to perform the obligations of the Private partner under the Agreement.

1.2. If based on the context, a term in the Agreement is not used otherwise:

- 1.2.1. words in masculine also include words used in feminine and vice-versa;
- 1.2.2. words in singular form also include plural form and vice-versa;
- 1.2.3. references to sections, paragraphs, tables, or annexes mean the references to the sections, paragraphs, tables, or annexes of the Agreement, unless expressly indicated otherwise;
- 1.2.4. references to the Agreement mean references to its annexes as well;
- 1.2.5. "Conclusion" of the Agreement or any other document means that the Agreement or the other document was signed by all parties to the Agreement or the respective document;
- 1.2.6. any reference to legislation is understood as a reference to the version of the legislation which is in force at the time of the performance of the Agreement, except cases, when it is clearly indicated otherwise;
- 1.2.7. the titles of paragraphs and other provisions are used for convenience only and have no effect on the interpretation of the Agreement.

## **2. Consent regarding the security**

- 2.1. The Public partner confirms, that it agrees with the security, created for the benefit of the Founder in accordance with the section 8 of this Agreement ("The transfer of the rights of claim"), in order to ensure the obligations of the Private partner under the Credit agreement [if there are more agreements concluded with the Funders, or other documents of Funding], which restricts the rights of the Private partner under the Agreement.
- 2.2. The Public partner confirms that it never received any notice about any other security intended to restrict the rights of the Private partner under the Agreement.

## **3. Notice about the termination of the agreement and the existing obligations**

- 3.1. The Public partner undertakes not to terminate the Agreement or not to issue a notice about the termination of the Agreement because of the Private partner's failure to perform its obligations, without providing the Funder with a minimum Necessary period by dispatching an advance written notice to the Funder with the suggested date for the termination of the Agreement and the grounds for the termination of the Agreement explained at length (**Notice of the termination of the Agreement**).
- 3.2. No later than 30 (thirty) days after the Notice of the termination of the agreement, the Public partner undertakes to present a report to the Funder providing the information about any amount, which is owed by the Private partner to the Public partner, and about all other obligations or duties that are not performed, which are known to the Public partner at the

moment of the Notice of the termination of the agreement and / or which will become due during the Necessary period.

#### **4. Illiquid market**

- 4.1. At any time during the Necessary period, the Funder has the right to submit a written notice ("Notice about an illiquid market") to the Public partner, listing in it the reasons as to why the Funder believes that the Liquid market does not exist.
- 4.2. Within the period of 14 days (inclusive) from the receipt of the Notice about the illiquid market, the Public partner has to inform the Funder of his opinion, whether the liquid market exists or not. If the Public partner believes that the market is liquid, in such case it must state in the notice the reasons based on which the Public partner thinks so. If the parties disagree upon whether the the Liquid market exists or not, either party has the right to initiate a resolution of a dispute in a manner specified in the paragraph 55 of the Agreement ("Dispute resolution").
- 4.3. If the parties amicably agree or after the dispute is resolved, and it becomes apparent that the Liquid market does not exist, the Agreement may expire / or be terminated according according to the terms specified in it.
- 4.4. If any dispute, arising from the paragraph 4 of this Agreement is being resolved according to the paragraph 55 of the Agreement ("Dispute resolution"), the Necessary period is extended for the period of the dispute examination.
- 4.5. During the period, while the Private partner is not performing its obligations (regardless of whether it received the Notice about the termination of the agreement), or during the Necessary period, the Funder may appoint a Representative to perform the obligations of the Private partner and assume the rights under the Agreement, together with or separately of the Private partner. The Funder has to inform the Public partner about any actions specified in this paragraph at least 5 (five) days in advance.

#### **5. Step-In Period**

- 5.1. Without violating the provisions of the paragraph 3 of this Agreement, according to which the Agreement cannot be terminated without prior delivery of a Notice about the termination of the agreement, however, based on the paragraphs 5.2 and 5.3 of the Agreement, the Public partner cannot terminate the Agreement during the Step-In period:
  - 5.1.1. based on the fact that the Funder notified about any actions specified in the paragraph 4.5 of this Agreement;
  - 5.1.2. if the grounds for termination of the Agreement originated before the date of the Step-In, and the Public partner was informed of that; or
  - 5.1.3. if the grounds for termination originated exclusively due to the Private partner.
- 5.2. In case of the the paragraph 5.1.2 of the Agreement, the Agreement may be terminated if the grounds for termination originated:
  - 5.2.1. During the period of the Work performance phase, after the Public partner has acquired the right to terminate the Agreement due to a failure to perform the Works on time or due to failure to provide the Services; or
  - 5.2.2. During the Service provision phase, and neither the appointed Representative nor the Private partner try to properly eliminate the violations of the Agreement (including any defect elimination program), which:



- (a) occurred prior to the Step-In date; and
- (b) are continuing (and it is possible to eliminate them); and
- (c) provide grounds for the Public partner to terminate the Agreement.

5.3. The public partner acquires the right to terminate the Agreement by submitting a written notice to the Private partner and to the appointed Representative:

- 5.3.1. if any amount of the obligations, specified in the paragraph 3.2 of this Agreement is not paid to the Public partner until the date of Step-In (inclusive) or until the last day of the Necessary period;
- 5.3.2. if the amounts, of which the Public partner was not informed during the Notice about the termination of the agreement, or during the period when the Private partner was not performing its obligations, become due at a later time, but are not paid within the period of 30 (thirty) days (inclusive), from the day when the Representative was informed of these amounts.

5.4. During the Step-In period the Public partner consults not with the Private partner, but with the appointed Representative.

5.5. During the Step-In period the Representative is responsible for all of its actions, performed when it is acting as the Representative in a way in which the Private partner would act according to the terms specified in the Agreement.

## **6. Step-Out**

6.1. The Representative appointed during the Step-In period is released from all of its obligations and duties to the Public partner that arise from the Agreement and originate till the date of the Step-Out, and all rights of the appointed Representative with respect to the Public partner are revoked, if the Funder or the appointed Representative submits a written notice of that to the Public partner no later than within 30 (thirty) days.

6.2. The Private partner remains to be bound by the Agreement, regardless of the Step-Out date.

## **7. Novation**

7.1. Based on the paragraph 7.2 of this Agreement, during the period, when the Private partner is not performing its obligations, or during the Step-In period, the Funder may organize the transfer of the Private partner's rights and obligations to the Suitable substitute based on the Agreement by submitting a written notice to the Public partner and to any of the appointed Representatives, no less than 30 (thirty) days in advance.

7.2. The Public partner informs the Funder about the fitness of the person to whom the Funder proposes to transfer the rights and obligations of the Private partner under the Agreement, 30 (thirty) days after the receipt of all sufficient information requested by the Public partner in order to decide, whether the person to whom the rights and obligations will be transferred is the Suitable substitute.

7.3. The Public partner cannot unreasonably withhold or delay its decision regarding the fitness of a person to whom the rights and obligations will be transferred to be a Suitable Substitute.

7.4. When any transfer of rights and obligations comes into effect according to the paragraph 7.1 of this Agreement:

- 7.4.1. The Private partner is released of all obligations that arise from the Agreement from the date when the Suitable substitute overtakes all rights and obligations;

- 7.4.2. Any existing ground for the termination of the Agreement is deemed by the Public partner as having no effect and any notice of termination of the Agreement is automatically recalled; and
- 7.4.3. The direct agreement between the Public partner and the Funder comes into effect for the new Suitable substitute under the same conditions and grounds as in this Agreement.
- 7.5. The Private partner confirms that it agrees with any transfer of its rights and obligations, arising from the Agreement and/or this Agreement, which may be performed in a manner specified in this Agreement.

## 8. The transfer of the rights of claim

- 8.1. As the Private partner seeks to ensure own obligations under the Credit agreement with this Agreement, it unconditionally and irrevocably transfers to the Funder 100% (hundred percent) of its rights of claim to all present and future payments, which the Public partner obliged to pay to the Private partner under the Agreement.
- 8.2. The Public partner states, that it agrees with the transfer of the rights of claim specified in the paragraph 8.1 of the Agreement, and is properly informed about the transfer of the rights of claim.
- 8.3. The amounts received by the Funder from the Public partner, after the exercising of the transferred rights of claim, will be used to cover the debt of the Private partner to the Funder *[if applicable , which on the day of the conclusion of this Agreement is equal to [amount] euros ([amount in words] euros),]*. The Private partner does not receive additional remuneration for the transfer of the rights of claim under the Agreement.
- 8.4. The rights of claim that are being transferred to the Funder transfer from the moment of the signing this Agreement.
- 8.5. The parties agree that after the moment of the signing of this Agreement, all payments arising under the Agreement must be paid directly to the Funder into the bank account(s) No. *[account number]*, *[bank name]*, bank code *[bank code]*].
- 8.6. No later than within 3 (three) Business days after the date of the signing of this Agreement, the Private partner transfers to the Funder under the transfer-acceptance certificate notarized copies of the Agreement and all documents related to it, which confirm the right of claim against the Public partner, which are in the possession of the Private partner. Any expenses related to the preparation of these documents and their transfer to the Funder are assumed by the Private partner, unless the Private partner and the Funder agree otherwise.
- 8.7. The Private partner warrants and represents, that the rights of claim transferred under this Agreement are valid. In order to avoid any doubts, the Private partner does not warrant and is not responsible for: (i) the Public partner's failure or avoidance to perform its obligations under the Agreement; (ii) any warranty, guarantee, or representation of the Public partner or the third party in connection with the Agreement; (iii) the financial state or the credit risk of the Private partner or any third party; or (iv) the inspection of the property or the financial statements of the Public partner, except in cases, if it becomes apparent that during the conclusion of this Agreement, the Private partner knew of the circumstances why the Public partner would be unable to perform its obligations to the Funder.
- 8.8. The Funder warrants and represents, that it is fully aware of the economic-financial state of the Public partner, as well as the totality of the property, and all other facts to such extent, which in its opinion is required for the conclusion and performance of this Agreement, and that during the conclusion of this Agreement it does not refer to any warranties or

representations made by the Private partner or its representatives that are not included in this Agreement.

- 8.9. From moment of transfer of the rights of claim under this Agreement, the Funder assumes full responsibility for the proper recording of the transfer of the rights of claim, exercising thereof, and /or enforced performance.

## 9. Warranties and representations

- 9.1. By signing this Agreement, the Funder and the Private partner confirm that if the shares of the Private partner will be pledged to the Funder, the share pledge sheet will provide that, during the recovery from the shares, they will be transferred to the ownership of the Funder, and during any other actions specified in the paragraph 7 of this Agreement, it will meet the conditions for the recovery from the Private partner set out in the Agreement. By signing this Agreement, the Funder provides unconditional and irrevocable confirmation that it will inform the Public partner in advance of the expected recovery from the shares of the Private partner. Prior written notice of the Funder to the Public partner must be submitted no later than 30 (thirty) days before the expected recovery, specifying the size of the Private partner's debt to the Investor.
- 9.2. By signing this Agreement, the Funder warrants and represents that it does not object to the possibility of the temporary taking over the performance of the obligations of the Private partner by the Public partner, specified in the Agreement, and such case the Funder will not exercise the opportunity of Step-In until the period for the performance of the obligations of the Private partner overtaken by the Public partner will expire.
- 9.3. The Public partner confirms that it will perform any actions, which may be necessary in order to ensure that actions specified in the Agreement will be performed, i.e. that any Novation (paragraph 7 of the Agreement), the transfer of the rights and obligations to the Representative "Step-in" (paragraph 4.5 of the Agreement), Step-Out (paragraph 6 of the Agreement), including the signing of any transfer documents, submission of any notices, warnings during registrations, etc., which in every case may be required by the Funder, the Representative, or Private partner.

## 10. Notices

- 10.1. In order to be considered as properly delivered and would cause envisaged consequences, the Agreement related notices must be executed in writing in Lithuanian (or to be translated to it, the translation confirmed by the signature and the seal of the translator) and:

- 10.1.1. delivered under signature, or
- 10.1.2. sent via registered prepaid mail, or
- 10.1.3. dispatching by courier service, or
- 10.1.4. sent via email.

- 10.2. All Agreement related reports are to be sent to the Parties at the following addresses:

**Party**

**Contact details**

<b><i>[to the Public partner]</i></b>	<b>To:</b> <i>[name, last name of the person responsible]</i> <b>Address:</b> <i>[address]</i> <b>E-mail address:</b>
<b><i>[to the Funder]</i></b>	<b>To:</b> <i>[name, last name of the person responsible]</i> <b>Address:</b> <i>[address]</i> <b>E-mail address:</b>
<b><i>[to the Private partner]</i></b>	<b>To:</b> <b>Address:</b> <b>E-mail address No.:</b>

10.3. The Parties without delay, but no later than within 5 (five) days, inform each other and other stakeholders about the changes of the contact details. Notice that are delivered according to the available contact details prior to such notification, are considered to be delivered properly.

## **11. Changes**

11.1. Any amendments and appendments of the Agreement or annexes to it are valid only if they are formalized in one or several written documents, which are signed by all the Parties to the Agreement, to whose rights and obligations the amendments, appendments or annexes are related.

## **12. Governing law**

12.1. The agreements and the relationships of the Parties that arise from it, as well as interpretation thereof are governed by the legislation of the Republic of Lithuania.

12.2. The Agreement and the transactions, performed on the basis of the Agreement, are commercial acts, neither public nor national. Neither of the Parties has the immunity with respect to the Agreement, and if they have one, they waive the immunity from legal processes, arrest, or the execution of court's decision with respect to itself or its property (in case of the Public partner only against its funds).

## **13. Dispute Resolution**

13.1. Parties will try to resolve any dispute or disagreement arising out of the Agreement through mutual negotiations and with full cooperation. If the Parties fail to reach an agreement or start mutual negotiations within 20 (twenty) days after the date of the notification about the dispute, disagreement, or claim, which has occurred, to the other Party, any dispute, disagreement, or claim arising from the Agreement, as well as matters regarding the violation, termination, or invalidity of the Agreement will be resolved by the court of the Republic of Lithuania based on the location of the registered office of the Public partner.

## **14. Invalidity of the individual provisions of the agreement**

14.1. If any of the provisions of the Agreement is in conflict with the legislation of the Republic of Lithuania and/ or becomes partially or completely invalid due to any reason, it does not void the validity of the other provisions of the Agreement in any case. In such case, the Parties agree to replace the invalid provision by a legally effective another

provision, which would have legal and / or economic effect as similar as possible to the provision that is being replaced.

**15. Validity of the Agreement**

15.1. This Agreement is valid until the Public partner will perform all payments to the Private partner which the Public partner must perform under the terms of the Agreement.

**16. Copies of the Agreement**

16.1. The Agreement is concluded in Lithuanian in 3 original copies one for each Party to the Agreement.

**SIGNATURES OF THE REPRESENTATIVES OF THE PARTIES:**

**on behalf of the Public partner:**

*[Position, name, last name]*

\_\_\_\_\_  
signature

S. P. \_\_\_\_\_  
signature

S. P.

**On behalf of the Funder:**

*[Position, name, last name]*

\_\_\_\_\_  
signature

S. P.

**on behalf of the  
Private partner:**

*[Position, name, last name]*

\_\_\_\_\_  
signature

S. P.

## 12 Annex to the Agreement

### LIST OF THE EMPLOYEES THAT ARE BEING TRANSFERRED

The Private partner must conclude written agreement(s) regarding the transfer of employees to the Private partner with *[indicate the subject, the employees of which will have to be transferred to the Private partner]* and the following employees:

1. *[Indicate the names and last names/positions of employees that are being transferred.];*
2. *[...].*