

Annex No. 5 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 (CONCESSION) AGREEMENT No. *[agreement number]***

**concluded between**

***[Name of the granting institution], [and if present the name of the Transferor,]  
[name of the Investor]***

**and *[name of the Concessionaire]***

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**on the awarding of the concession for the implementation of the project  
"*[name]*"**

---

**and its performance**

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

***[Place]***

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**Color explanation:** *Blue* - comments or explanations that need to be deleted;  
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*[applicable only to the projects, where new construction is planned. In each case the relevance of the formula variables must be evaluated and the formula adapted to a specific project]*  
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## I. INTRODUCTION

**[Granting institution]**, with the address at **[address]**, legal entity code **[legal entity code]**, represented by **[position, name, last name of the representative]**, acting according to **[basis for the representation (Articles of association of the Granting Institution, decision, etc.)]**, and which is the granting institution under the part 1 of the article 15 of the Law on Concessions (hereinafter – **the Granting institution**);

*[If the Concessionaire will be provided with the property that is not controlled and / or used by the Granting Authority [name of the Transferor ], with the address at [address, legal entity code], represented by [position, name, last name of the representative], acting according to [basis for the representation (Articles of association, decision, etc.)], (hereinafter – the Transferor);]*

and

**[name of the Investor]**, *[specify the legal form]* established and operating under the laws of **[country]**, with the address at **[address]**, legal entity code **[legal entity code]**, represented by **[position, name, and last name of the representative]** acting according to **[basis for the representation]** (hereinafter - **the Investor**);

**[name of the Concessionaire]**, *[specify the legal form]* established and operating under the laws of **[country]**, with the address at **[address]**, legal entity code **[legal entity code]**, represented by **[position, name, and last name of the representative]** acting according to **[basis for the representation]** (hereinafter - **the Concessionaire**);

the Granting institution, *[if present the Distributor]*, the Investor, and the Concessionaire, individually are referred to as **the Party**, and collectively - **the Parties**;

### WHEREAS:

- A. The Granting institution seeks to grant *[a brief description of the concession object]* to the Concessionaire, who is capable of ensuring a quality and efficient performance of the required Works, the uninterrupted provision of these Services and Commercial Activities at the lowest cost, by using the public-private partnership model, and by ensuring the greatest social and economic benefits;
- B. *[Specify the legal basis (legislation) authorizing the Granting institution to grant a concession during the implementation of the Project through the PPP];*
- C. The Granting institution 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 Concessions of the Republic of Lithuania;
- D. The Investor has expressed his interest in participating in this Procurement and presented a Tender, while the Granting institution, after completing the Procurement procedures in a specified manner and assessment of all tenders received, has declared him the winner of the Procurement;
- E. The Investor, in accordance with the Conditions, *[specify the date of the establishment*

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*or formation of the Concessionaire*], established the Concessionaire for the performance of obligations under the partnership (concession) agreement;

- F. For the purposes of this Agreement, the Granting institution [*if applicable* the Transferor as well] undertakes to organize the transfer of property, essential for the performance of the obligations of the Concessionaire, owned by the Granting institution [*if applicable* and/or to the Transferor] under the [*specify under which rights*] to the Concessionaire, in accordance to the conditions and to the extent described in this Agreement, and the Concessionaire agrees to receive this property, in accordance to the conditions to the extent described in this Agreement [if the contractual obligations of the Granting institution or the Transferor related to the property are transferred with that property and the rights and obligations of the [choose one or both Granting institution / or the Transferor] arising from the concluded agreements], and agrees to assume all rights and obligations of the Concessionaire, indicated in the Agreement; has the financial resources, knowledge, experience and qualified personnel required for that;
- G. Under this Agreement the Investor and the Concessionaire undertake to be jointly and severally liable to the Granting institution for the performance of the Concessionaire's obligations, arising out of this Agreement, including, but not limited to, Concessionaire'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 Granting institution [*if applicable* the Transferor as well] on the one side, and the Concessionaire 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:

***if applicable***  
**Remuneration** means the payment to the Concessionaire by the Granting institution, calculated and paid in accordance to the terms of settlement and payment specified in the Annex 3 to this Agreement the *Terms of settlement and payment*;

**Case of exemption** means such cases which are independent of the actions (actions or omissions) of the Concessionaire and which are specified in the paragraph 21 of the Agreement and which cause the consequences specified in the paragraphs 21.3 and 21.4 of the Agreement;

**Works** means all the design, construction, installation, and other works performable by the Concessionaire, except for the

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Repairs required for the creation of the Object, so that it would meet the requirements of the Specifications and the Tender;

|  |   |
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| <b>Work performance plan</b>                                 | means the technical, engineering, and organizational solution submitted by the Concessionaire, covering the Work performance actions and action sequence, and which is preliminary and intended for the proper management and administration of the Agreement;  |
| <b>Business day</b>  | means any other day, when banks in the Republic of Lithuania operate, 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. 6 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:<br>(a) The project, but does not apply to similar public-private partnership projects of such type;<br>(b) The Concessionaire, but does not apply to other persons, or<br>(c) Persons who are performing the agreements of Public-Private partnerships (concessionaires), but does not apply to other persons.   |
| <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 under the Agreement. 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>and:</b><br>a) such documents were made public before the conclusion of the Agreement, if from the submission of the Tender to the conclusion of the Agreement a period no longer than 6 (six) months has passed. |

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b) the provisions or plans contained in these documents are substantially similar or substantially have the same effect as the Fundamental legislative change;

**Financial activity model**

means the Financial activity model - a document presented by the Investor together with the Tender based on the form presented in the Annex No. 14 to the Conditions *Requirements for a financial activity model*, which presents structure and conditions of the financing of Investor's and/or Concessionaire's operation, financially (economically) justifies the aims of investment, and presents the evaluation of the return on investment and other performance indicators, value of the Agreement, as well as its future changes;

**Funder**

means a legal partner (except for the Investor and/or the Associated person), providing the Concessionaire with the financing indicated in the Financial activity model, needed for the proper performance of obligations under the Agreement, with which the Granting institution may enter into a Direct agreement at the request of the Funder;

**Ministry of Finance**

means the Ministry of Finance of the Republic of Lithuania, institution code – 288601650, address – Lukiškių g. 2, LT-01512 Vilnius;

**Good business practice**

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 mandatory investments into the Property and other investments necessary for proper performance of the Works, provision of the Public Services or the Services or other investments necessary for the proper performance of the Works and the provision of Services and Commercial Activities, specified in the Specifications and the Financial activity model, as well as other investments in the Property, made in accordance with the procedure specified in the Agreement;

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| <b>Return on investment</b>                               | means any revenue (dividends, interest, payment of funds by reducing the capital of the Concessionaire, or economic benefits received in any other form) receivable by the Investor from the Concessionaire;   |
| <b>Internal rate of return</b>                            | means the rate of return ( <i>Internal Rate of Return</i> ), at which the present value of revenue streams receivable by the Investor from the Concessionaire are set to zero, and calculated based on the procedure indicated in the Financial activity model;  |
| <b>Law on Investments</b>                                 | means the Law on Investments of the Republic of Lithuania;   |
| <b>Investor</b>   | means [ <i>indicate the name and details of the participant who won, with whom the Granting institution has decided to conclude the Agreement</i> ], whose Tender has been declared the most beneficial and has been awarded the Procurement, with whom and the Concessionaire established by such person the Agreement is concluded, or with persons replacing them in cases provided in the Agreement; In case, if the founder and shareholder of the Concessionaire is not only the Investor, who submitted the Tender, but also the Funder and / or Another loan provider, in such case, the Investor in the Agreement also means all Founders / Shareholders of the Concessionaire as well; |
| <b>Preconditions for the agreement's entry into force</b> | means the conditions specified in the Annex 5 to this Agreement <i>Preconditions for Agreement's entry into force</i> , the fulfillment of which is mandatory for the Agreement's entry into force in full;  |
| <b>Overhaul</b>   | means construction work, the aim of which is to reconstruct the load-bearing structures of the Transferred property (or its separate parts) without changing the outer dimensions of the Transferred property, as it is defined in the <a href="#">STR 1.01.08:2002</a> "Types of construction" (as subsequently amended);   |
| <b>Another loan provider</b>                              | means a legal partner which does not match the definition of the Funder, but grants to the Concessionaire the financing provided in the Financial activity model, necessary for the proper performance of its obligations under the Agreement;   |

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| <b>Commercial activity</b> | means the economic-commercial activity carried out at the own risk of the Concessionaire, which is allowed under the Specification and the Agreement, and the performance of which is specified in the Tender, and which is also related to the Public Services or Services provided in the Objects and / or which ensures the functioning of the Object without deviation from the implementation of the Project objectives and the requirements of the Object's functionality and purpose;  |
| <b>Compensation event</b>  | means the events specified in the paragraph 22 of the Agreement, the risk of which are exclusively or partially attributed to the Granting institution under the Agreement, and the negative consequences caused by which must be fully or partially compensated to the Concessionaire or the Investor in accordance with the procedure specified in the Agreement and based on which the deadlines for the performance of the Concessionaire's obligations set out in the Agreement may be extended;   |
| <b>Utilities</b>           | means the provision of electricity, heat, water, and gas supply, waste water and waste disposal services or other services as specified in the Specifications;  |
| <b>Law on Concessions</b>  | means the Law on Concessions of the Republic of Lithuania:  |
| <b>Concessionaire</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> |

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| <b>Procurement</b>                        | means the procedure for the awarding of a concession through the procurement [ <i>procurement No.</i> ], announced in the Central public procurement system, and carried out by the Granting institution to the Granting institution in accordance with the Law on Concessions, the Law on Investments, and the Conditions;   |
| <i>[if applicable]</i>                    | Benchmarking means a procedure during which the prices of services that are being provided or other parameters are compared to prices of similar services provided by market leaders or other parameters;]  |
| <i>[if applicable]</i> <b>Fee</b>         | means the remuneration paid to the Granting institution by the Concessionaire for the granted concession [ <i>applicable, where no separate lease fee is set</i> (including the possibility to use the Transferred property and its infrastructure in the Commercial Activities)], the final amount of which is specified by the Investor in the Tender and substantiated in the Financial activity model;]             |
| <b>New property</b>                       | means the movable property necessary for the outfitting of the Object, including the furniture to be installed, in accordance with the Specification Requirements and the Tender, and / or necessary for the provision of the Services or Commercial Activities in the Object, and acquired or created by the Concessionaire on the basis of any transaction as of the day when the Agreement fully entered into force; |
| <b>Object</b>                             | means [ <i>indicate the property the creation/acquisition of which is transferred to the Concessionaire, or transferred to it for reconstruction, renovation, etc.</i> ];   |
| <b>Commencement of Object's operation</b> | means the date on which the Granting institution and the Concessionaire sign the certificate, specified in the paragraph 9.3 of this Agreement, as of which the Concessionaire commences the provision of Services;   |
| <b>Modification</b>                       | means the modification of Works performed and Services provided in accordance with the terms specified in the paragraph 17 of this Agreement;   |
| <b>Additional works and/or services</b>   | means the works and services specified in the paragraph 16 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  |

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the Change, as specified in the paragraph 17 of the Agreement, and the amendment of the Agreement, specified in the paragraph 38 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 Granting institution for the more effective implementation of the Project and which may be initiated by the Granting institution in accordance with the procedure established in the paragraph 16 of the Agreement;

**Ordinary repair**

means construction works, the aim of which is to renew the Transferred property (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 Investor's Tender presented 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 provided by the Concessionaire in accordance with the requirements of the Agreement and the Specifications, and the Tender Provisions, except for the Commercial Activities;

**Service provision plan**

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

**Commencement of the Service provision**

means the day of the commencement of the operation of the Object (or a part of it), since which the Concessionaire begins to provide the Services in the respective part of the Object;

**Transferred property**

means [*specify what property is being transferred*] transferred into the control and use of the Concessionaire by the Contracting institution [*and / or if present the Transferor*] under [*choose*: lease, loan for use, trust] agreement, required for the performance of the Works and the provision of the Services. [*if applicable, except for the Land plot.*] A detailed List of the Transferred property is enclosed as an annex to the respective [*choose*: lease, loan for use, trust] agreement, and is an integral part thereof;

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| <b>Security of obligation the performance</b>          | means the security, specified in the paragraph 32.1 of the Agreement, intended to ensure the performance of the Concessionaire's obligations under the Agreement;  |
| <b>Project</b>   | means the investment project [ <i>specify the name</i> ], implemented through the concession by the Granting institution, the description of which is given in the Conditions;   |
| <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 Ordinary repairs and the Overhaul;   |
| <i>[if applicable]</i><br><b>Market research</b>       | means the market research of the checked services carried out by the Concessionaire in accordance with the procedure specified in the paragraph 24 of the Agreement;]  |
| <i>[if applicable the date of the Market research]</i> | means the [ <i>indicate the day</i> ] of [ <i>indicate the month</i> ] of [ <i>indicate the year</i> ] (counting from the Service provision commencement date);]   |
| <b>Conditions</b>                                      | means the Procurement conditions with annexes, including all of their adjustments and replies to the requests of the participants of the Procurement;  |
| <b>Change in the special legislation</b>               | means change of the legal act of the Republic of Lithuania and the European Union, related to the regulation of the performance of Works, the provision of the Services and the Public Services, or the rights and obligations of the Concessionaire's shareholders, arising from the activities of the Concessionaire (except for those related to the Commercial activities);  |
| <b>Specifications</b>                                  | means the annex No. 1 to the Agreement <i>Specifications</i> , setting the requirements and indicators that must be met by the Works and the Services;   |
| <b>Sub-suppliers</b>                                   | 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 Concessionaire, and to whom the Concessionaire pays remuneration, except the suppliers of electricity, heating, water, wastewater treatment, waste disposal/management and other Utilities; |

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**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 Concessionaire or the Investor, or which directly or indirectly controls the Concessionaire or the Investor, or which is directly or indirectly controlled in association with Concessionaire 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.

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The list of associated companies is enclosed to the Agreement<sup>7</sup> as the annex No. and has to be constantly updated should the information indicated in it change;

**Agreement** means this partnership agreement (concession) agreement between the [*the name of the Granting institution*] [*if present, the Transferor*] and [*the name of the Investor*] and [*the Name of the Concessionaire*] concluded for the implementation of the Project through the public-private partnership as specified in the Law on Concessions;

**Value of the Agreement** means the income receivable by the Investor and/or the Concessionaire during the performance of the Agreement, excluding the value added tax, which will be received as the remuneration for Works and Services, Commercial activities, and which are specified in the Investor's Tender and the Financial activity model;

**Direct agreement** means the agreement concluded between the Funder, the Granting institution, and the Concessionaire under which the Granting institution 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 Concessionaire, which is presented as the annex 9 to the Agreement;

**Property** means the Transferred property, the Object, and the New property [*if applicable, the Land plot as well*];

**Property value** means the market value, determined by applying an individual appraisal performed by a property appraisal company or an independent appraiser;

**Public services** means [*specify what Public services will be provided*];

[*if applicable the Land plot*] means [*specify a land plot or its part, and its characteristics*];

[*if applicable the Land plot lease agreement*] means the Agreement on the lease of the Land plot assigned for the implementation of the Project concluded by the Concessionaire and [*specify the entity with whom the state and / or municipal land lease agreement must be concluded*]

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*in accordance with the requirements of the Law on Land of the Republic of Lithuania and the related legislation].*

- 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.
- 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 and the Conditions:
    - a) Specifications;
    - b) Financial activity model;
    - c) *[if present Terms of settlement and payments]*
    - d) Matrix of risk distribution among the Parties;
    - e) *If applicable Direct agreement with the Funder]* other parts of the Conditions;
    - f) Preconditions for the agreement's entry into force
    - g) Tender;
    - h) List of the mandatory insurance agreements;
    - i) other Annexes to the Agreement;

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

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

- 2.1. The Concessionaire undertakes to perform the Works, provide the Services, in accordance with the procedure specified in the Agreement and in accordance with specified requirements, as well as to accept the risk specified in the Agreement, create and / or acquire the New property, properly control

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and use the Property, and after the expiration of the Agreement, to return / transfer it (if the Agreement does not provide otherwise ) to the Granting institution [*and/or the Transferor or for third parties if present*] [*if applicable, and the Land plot to the authorized institution*], in accordance with the legislation, [*if applicable, pay the Fee*], also properly perform other duties under the Agreement, and the Granting institution [*and the Transferor if present*] undertakes to ensure that the Concessionaire would be granted the control and use of the Land plot [*also specify other property that is being transferred*] in accordance with the procedure specified in the Agreement, also assume the risks specified in the Agreement, [*to pay the Remuneration on time, if the Granting institution pays the Remuneration to the Concessionaire*] for the Services and 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 [*including provision of Public services if these are provided*], and throughout the entire period of the Agreement to seek the improvement of the effectiveness and quality of Services, as well as the rational use and management 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 to the Agreement, except for the extent indicated in the paragraph 3.2.
- 3.2. The Agreement, insofar as it is related to the obligations to perform the Works, provide the Services and pay [*choose: Remuneration, Fee*] shall enter into force on the next Business day after the fulfillment of the conditions specified annex No. 5 to the Agreement *Preconditions for the Agreement's entry into force*. 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 for the implementation 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. The Parties must do this within [*indicate the period, recommended 5 (five)*] Business days since the receipt of all information about the fulfillment of the Preconditions for the agreement's entry into force, 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 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*]. In the event of the Agreement's validity extension in full in the case specified in this paragraph 3.4 of the Agreement, the liability specified in the paragraph 48 of the Agreement shall not apply.
- 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 Granting institution [*if applicable the Transferor as well*], the Investor, and the Concessionaire throughout and prior to the period of Agreement's entry into force, must make maximum effort, including proper cooperation in acquiring

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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 also agree on the following:

3.6.1. The failure to fulfill the Preconditions for the Agreement's entry into force that depend on the Concessionaire, is deemed to be the Investor's and / or the Concessionaire's refusal to conclude the Agreement within the sense of the Law on Concessions, and the Granting institution obtains the right to demand that the Investor and / or the Concessionaire would pay the fine with the total amount of *[the amount of the fine is determined in accordance with the losses which are anticipated, and based on the size of the security of the Tender validity required by the Conditions specify the amount, e.g. 50,000 (fifty thousand)]* EUR, which is considered to be the final losses of the Granting institution discussed by the Parties in advance, and has the right to recover this fine, *inter alia*, by using the security of the Tender validity submitted by the Investor during the Procurement.

3.6.2. the failure to fulfill the Preconditions for the Agreement's entry into force that depend on the Granting institution, is deemed to be the Granting institution's refusal to conclude the Agreement, and the Concessionaire obtains the right to demand that the Granting institution would pay the fine with the total amount of *[specify the amount, e.g. 50,000 (fifty thousand)]* EUR, which is considered to be the final losses of the Concessionaire discussed by the Parties in advance.

3.6.3. if the Agreement does not come into force in its entirety due to the reasons that are beyond the control of the Parties or without their fault, or the risks attributed to the Parties, or the fault of both Parties, the Parties shall apply full restitution and return to each other everything received by each other under this Agreement or due to this Agreement, but are not obliged to compensate to each other any expenses, costs, losses (damages), and do not have to pay any contractual penalties.

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

4.1. The performance of Works must be commenced no later than specified in the Work performance Plan presented in the Tender and must be completed within *[specify the period from the Investor's Tender or a legal act]* from the day this Agreement enters into force in full.

4.2. When the provision of Services is commenced *[choose: Remuneration, Fee]* is paid only since the commencement of the Object's operation.

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 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 43.1 of the Agreement; or

4.4.2. the Case of exemption; or

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4.4.3. the Compensation event.

## **5. Term of the Agreement**

5.1. The Agreement is valid for [*specify the period*] years from its effective date in full. The moment of Agreement's entry into force is defined in the paragraph 3.1 of the Agreement, but for no more than the Internal rate of return specified in the Investor's Tender.

## **V. WARRANTIES AND REPRESENTATIONS OF THE PARTIES**

### **6. The warranties and representations of the Granting institution [*and if present the Transferor*]:**

6.1. The Granting institution [*and if present the Transferor*] respectively warrants and represents:

- 6.1.1. The Granting institution [*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 Granting institution [*and if present the Transferor*] in accordance with the provisions of the Agreement, which could be performed against it [*and if present against the Transferor*] through enforcement;
- 6.1.2. The Granting institution, in accordance with its competence and authority, established by the legislation of the Republic of Lithuania in force on the date of conclusion of the Agreement, is responsible for the respective functions and areas of activity that are being implemented and ensured at the time of the conclusion of the Agreement, therefore, it is the granting institution within the meaning of the Law on Concessions;
- 6.1.3. The Granting institution [*and the Transferor if present*] provided the Investor and the Concessionaire with all the essential and, to its knowledge, correct information demanded by the Concessionaire in relation to the Transferred property [*if applicable, to the Land plot*] and the obligations of the Granting institution [*and the Transferor if present*] under the Agreement. The information provided is correct on the day the Agreement is concluded, in all material respects, except for possible changes in the condition of the Transferred property [*if applicable, the Land plot*] due to the usual economic activity, occurring between the date of the presentation of the information and the date of the signing of the Agreement. There are no undisclosed significant facts that the Granting institution 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 Granting institution [*and the Transferor if present*] is not in breach of any essential agreements or obligations to which it [*they if the Transferor is present*] is, court (arbitration) decision, judgement, ruling, or order applicable to it [*them if the Transferor is present*], as well as any requirements of laws or other legislation applicable to it [*them if the Transferor is present*];
- 6.1.5. The Granting institution [*and the Transferor if present*] has the right to transfer to the Concessionaire the control and use of the Transferred property under the right of [*choose: lease, loan for use, trust*] in accordance with the terms and conditions specified in the Agreement. The Transferred property is not transferred to other parties, not seized, and not pledged;

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- 6.1.6. No notices or summons to court or arbitration are served on the Granting institution [and the Transferor *if present*], and there are no initiated or pending judicial cases, arbitration or other legal proceedings against it [them *if the Transferor is present*], or against another person initiated by it, which could have an essential adverse effect on the financial status of the Granting institution [and the Transferor *if present*], and/or its ability to perform the obligations under the Agreement;
- 6.1.7. [*if applicable* The Land plot that is 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, also there are no other restrictions, preventing the Concessionaire to conclude Land plot lease agreement or to use the Land plot for the purposes and in accordance to the terms specified in the Agreement, except for the restrictions that are specified in the Conditions, Agreements, public registries, as well as those restrictions that were disclosed to the Investor during the Procurement;]
- 6.1.8. The representative of the Granting institution [*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 Granting institution set in the paragraph 6.1 of the Agreement, Parties declare and confirm, that the Granting institution has made it possible for the Investor to perform independent verification of the accuracy, correctness, adequacy, legitimacy and absence of errors in the Specifications and the Draft agreement, as well as the correctness and accuracy of the data/information, representations and warranties made by the Granting institution [*and if present* the Transferor] [*and if applicable* the status, state, shortcomings, restrictions, encumbrances, terms and conditions of the management and use of the Land] during the Procurement, prior to the conclusion of the Agreement. The Granting institution is aware, that the Concessionaire and the Investor are concluding the Agreement not only by trusting the representations and warranties of the Granting institution, but also the information provided to the Concessionaire and the Investor.
- 6.3. Except when expressly stated otherwise in the paragraph 6.1 of the Agreement, the warranties and representations of the Granting institution [and the Transferor *if present*] specified in the paragraph 6.1 of the Agreement are valid in full from the moment of the conclusion of the Agreement.
- 6.4. The Granting institution [*and if present* the Transferor] undertakes to inform as soon as possible the Investor and the Concessionaire about any events or circumstances, due to which any representation or warranty by the Granting institution [*and/or if present* the Transferor] becomes invalid or could become invalid in the future.
- 6.5. The representations and warranties by the Granting institution 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 Concessionaire and the Investor**

- 7.1. The Concessionaire and the Investor represent and warrant:

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- 7.1.1. The Concessionaire and the Investor are legal entities properly established and lawfully operating in accordance with the legislation of [*indicate a country*], having acquired all rights and authorizations, and performed all actions in order to conclude the Agreement and exercise their rights and obligations under it;
- 7.1.2. The Investor owns, and will own 100 % of the Concessionaire's stock (*[indicate, who holds the stock of the Concessionaire and the parts of stock]*), except cases, when when the Agreement clearly specifies otherwise. The Concessionaire 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 Granting institution during the entire term of the Agreement;
- 7.1.3. The Concessionaire has or can, within a reasonable period 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 Concessionaire and its duly authorized employees, managers, management bodies and shareholders / participants have performed all the necessary actions and have obtained all the necessary permits / approvals which, under other agreements, the Articles of Association of the Investor and the Concessionaire or the legislation applicable to them, are necessary for the conclusion of the Agreement and the performance of obligations assumed under it. The Agreement establishes lawful and valid obligations for the Concessionaire and the Investor, which could be enforced against it in accordance with the provisions of the Agreement;
- 7.1.5. By concluding and performing the Agreement the Concessionaire and the Investor do not breach: any key agreements or obligations, to which they are a party to, court (or arbitration) judgement, decision, decree, or a ruling 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 Concessionaire, and there are no initiated or pending judicial cases, arbitration or other legal proceedings against it, or against another person initiated by it, which could have an essential adverse effect on the financial status and/or business of the Concessionaire or the Investor, their ability to perform the obligations under the Agreement, of which the Granting institution was not informed in writing;
- 7.1.7. The Investor and the Concessionaire 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 Concessionaire and the Investor conclude the Agreement having a real long-term business interest (no shorter that 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 Concessionaire and (or) the Investor during the Procurement, including information about its activity, experience, knowledge, availability of the qualified personnel, financial status, contractual obligations, shareholders, and Associated companies is not false;

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- 7.1.10. The Concessionaire and the Investor have gathered all, the information, in its opinion necessary and sufficient, required to perform its obligations under the Agreement. The Granting institution confirms its understanding that the information, gathered by the Concessionaire and the Investor, indicated in this paragraph, is limited to the information presented at the time of the Procurement by the Granting institution 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 Concessionaire 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 Concessionaire 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 Concessionaire 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 Concessionaire 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 Concessionaire and the Investor have or have the possibility to obtain the financial resources required for the proper performance of the Agreement. This confirmation does not apply for additional investments that may be required in the case of procurement of Additional works and / or services;
- 7.1.14. The Concessionaire 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 Concessionaire and the Investor, who are signing the agreement, have all authority to conclude the Agreement.
- 7.2. The Investor and the Concessionaire must promptly inform the Granting institution [*and the Transferor if present*] about any events or circumstances in connection with which any of the warranties or representations of the Concessionaire and the Investor will become incorrect or could become so in the future.
- 7.3. The Investor and the Concessionaire are aware that the Granting institution [*and the Transferor if present*] concludes the Agreement believing in the warranties and representations of the Concessionaire and the Investor, as well as their information provided to the Granting institution. The Granting institution [*and if present the Transferor*] has not conducted any independent verification of the correctness and accuracy of the Concessionaire's and the Investor's representations and warranties.
- 7.4. The representations and warranties by the Concessionaire and the Investor 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.

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## VI. CREATION AND TRANSFER OF THE TRANSFERRED PROPERTY *[and if applicable LAND PLOT(S),]* AND THE NEW PROPERTY

### 8. Transferred property and *[if applicable, Land plot(s)]*

- 8.1. The Granting institution undertakes to ensure that the *Granting institution* or the *Transferor*, no later than *within [specify the term, recommended is no longer than 10 (ten)]* Business days from the signing of the Agreement, will relinquish its rights of *[specify the loan for use or other legal basis for control]* to the control of *[if applicable, the Land plot(s)]* and the Transferred property, and also undertakes to take all actions and make every effort to ensure that the Land plot(s) and the Transferred property would be transferred for the control and use of the Concessionaire within the term specified in the paragraph 3.2 of the Agreement under the grounds of *[choose: lease, loan for use, trust]* agreements or other legal grounds.
- 8.2. *[if applicable 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 Concessionaire, specified in the paragraph 8.1 of this Agreement, the Concessionaire must contact the National land service under the ministry of agriculture of the Republic of Lithuania regarding the conclusion of the lease agreement.]*

*[if applicable, the expiration of the Land plot lease agreement coincides with the expiration of the Agreement. The Concessionaire must, at its own expense and at risk, take all the necessary steps to terminate the Land plot lease agreement in accordance with the Land plot lease agreement terms specified in this 8 paragraph.*

- 8.3. *[if applicable, the Concessionaire must perform all actions of the registration of changes in the Land plot register data in the Real property register and perform all other actions related to that (including the reimbursement of expenses related to that). The Granting institution, based on its competence, provides all the information that are necessary and available for that as well as authority].*
- 8.4. *[If applicable Within [specify the term, recommended is 5 (five) Business days] from the recording of the completion of Works in accordance with the terms of the legislation, the Concessionaire undertakes to provide all the necessary documents to the institution managing the Real property register regarding the registration of the updated register information of the Transferred property, and to sign the amendment of the [choose: lease, loan for use, trust] agreement(s), related to the changed register data of the updated Transferred property, with the Granting institution, and to register such amendment in the Real property register within [specify the term, recommended is 15 (fifteen) days] from the date of registration of the changed registry data of the Transferred property in the Real property register.*
- 8.5. *[if applicable, the Granting institution [and the Transferor if present] undertakes to make every effort, within the limits of its competence, to exempt the Concessionaire from the rental fee of the Land plot. In case if the Concessionaire will not be exempted from the rental fee of the land, the Granting institution undertakes to fully reimburse the rental fee of the land paid by the Concessionaire].*
- 8.6. The concessionaire undertakes to ensure that the Transferred property *[if applicable, the Land plot]* would be used in accordance with its purpose and the conditions of the Agreement, during the entire term of validity of the Agreement and *[choose: lease, loan for use, trust]* agreements *[if applicable,*

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the Land plot lease agreements]; and the rights and obligations under the agreements related to the Property [if applicable, the Land plot] transferred to the Concessionaire, would be performed in accordance with the requirements of those agreements. The Concessionaire should not fictitiously conclude/extend the agreements that are unnecessary for the proper performance of the Agreement. The Concessionaire is liable for the obligations and proper performance of the transferred agreements after the moment of their transfer.

- 8.7. Transferred property [if applicable, including the Land plot] under the prior written consent of the Granting institution may also be used for other purposes, as long as such use does not interfere with the efficient and quality performance of the Works and the provision of the Services, does not prevent from ensuring the compliance of the Work results and Services with the requirements of the legislation, the Agreement, and its Annexes. At the request of the Granting institution, the use of the Transferred property [if applicable, including the Land plot] for other purposes must be terminated if the demand is submitted no later than *[specify the term, recommended is 15 (fifteen) days]* before the required termination date. In case if the use of the Transferred property [if applicable, including the Land plot] for other purposes than the performance of the Agreement, interferes with the proper performance of the Agreement, at the request of the Granting institution such use must be terminated immediately upon receipt of such a request. Disputes regarding the validity of the claims specified in this paragraph 8.7 of the Agreement are examined by the commission specified in the paragraph 53 of the Agreement.
- 8.8. Upon the receipt of the prior written consent of the Granting institution, the Concessionaire has the right to sublease the Transferred property and the Land plot to the Sub-supplier specified in the Investor's Tender or the Sub-supplier employed during the performance of the Agreement.
- 8.9. The Concessionaire 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.
- 8.10. [Choose If the Transferred property cannot be further used in according to its primary purpose, the Concessionaire 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]*]
- 8.11. During the Term of the Agreement, the Concessionaire has the right to contact the Granting institution requesting to terminate/change [choose: lease, loan for use, and trust] agreements or take back that Transferred property, which became unnecessary to the Concessionaire for the carrying out of Works or provision of Services. The Granting institution 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 Concessionaire, however it is not obligated to take back such property.
- 8.12. [choose: Lease, Loan for use, Trust] agreements' expiration coincides with the expiration term of the Agreement, if [choose: lease, loan for use, trust] agreements do not specify early expiration of the agreements, the Concessionaire and the Investor must take all the reasonable actions, at their own expense and at risk, to ensure that, upon the expiration of the Agreement, rights and obligations under

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[choose: lease, loan for use, trust] agreement [*if applicable*, Land plot lease agreement] would be transferred to the Granting institution or to an entity specified by it in writing in advance.

- 8.13. For the Transferred property [*if applicable, including the Land plot*], the Granting institution [*and the Transferor if present*] will not demand any additional payments related to the control and use of the Transferred property [*if applicable, including the Land plot*], except for the payments specified in the annex No. 3 to the Agreement Terms of settlement and payments [*if applicable, and the Rental fee specified in the Lease agreement for the Transferred property, which must be paid by the Concessionaire in accordance with the legislation in force.*]
- 8.14. [*If required After carrying out the Works the Concessionaire must provide*] [indicate what easement/ easements] [indicate to whom]].

## **9. Carrying out of Works, acquisition or creation of a New Property. The rights and obligations of the concessionaire during control and use of the New property**

- 9.1. The Concessionaire must perform the Works, acquire or create the New Property required for the provision of the Services [*if provided or Public Services*], in accordance with the requirements Specifications, the Tender and the deadlines specified in the Agreement.
- 9.2. No later than within 1 (one) month from the date of Agreement's entry into force in full, the Granting institution must be provided with a Work performance plan. The Granting institution has the right no later than within [*specify the term, recommended is 20 (twenty)*] days to submit comments/suggestions for the amendment of the Work performance plan, but the Concessionaire is not required to take them into account and may commence the Works. If the Granting institution fails to submit comments / suggestions for the Work performance plan within the time limit set in this paragraph, it is considered that the Granting institution does not have any and the Concessionaire may commence the Works.
- 9.3. When preparing the Work implementation projects and creating the Object as a result of the Works:
- 9.3.1. The Concessionaire must prepare the Work performance projects or ensure that they would be prepared. Design documentation must be submitted to the Granting institution for review and submission of comments and / or proposals in phases (components of the technical work project or technical project before the performance of the expert inspection of the technical design, changes to the technical project and work design, and completed work project before the commencement of the work implementation). When preparing the design documentation or by ensuring that it would be prepared, the Concessionaire must submit in advance to the Granting institution the solutions of the technical and work projects that are not provided for in the Specifications and/or Tender, prior to the approval of the final documents of this Project documentation. The Concessionaire must immediately present either one copy of the original or a duly certified duplicate of the prepared project documentation to the Granting institution. After the Works are completed, the Granting institution must obtain from the Concessionaire a version of the design documentation with the label "Built this way". 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.)

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- 9.3.2. The Concessionaire undertakes to present the prepared suggestions for the Object, construction technical work project or technical project, after 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 *[specify the term, recommended is 30 (thirty)]* days prior to the commencement of respective Works according to those parts of the project to the Granting institution. The Granting institution 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 *[specify the term, recommended is 5 (five)]* Business days from the receipt the material informs the Concessionaire in writing about a positive assessment or presents a motivated negative assessment. However, a positive or negative assessment by the Granting institution does not cause any direct consequences for the Parties. If no response in writing is received from the Granting institution within the period specified in this paragraph, it will be deemed, that the Granting institution does not have any remarks regarding the material presented by the Concessionaire.
- 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. After completing the Works, the Concessionaire shall inform the Granting institution about it. The Granting institution shall inspect the Works / their results within *[specify the term, recommended is 15 (fifteen)]* days from the date of receipt of the notice about the completion of the Works, in order to identify possible non-compliance with the Specifications and / or the Tender;
- 9.3.5. If the Works meet the requirements set for them, the Granting institution within *[specify the term, recommended is 5 (five)]* Business days from the performance of the inspection issues a written confirmation about it, or other necessary documents on the basis of which the Concessionaire organizes the formalization of the completion of the construction of the Object or its part in accordance with the procedure set in the legislation;
- 9.3.6. If the Works do not meet the essential requirements set in the Specifications and / or the Tender, therefore, in accordance with the legislation, the Services cannot be provided at all or in the proper manner *[if provided or Public Services]*, the Granting institution may reasonably refuse to issue the approval specified in the paragraph 9.3.5 of the Agreement. In such case all major inconsistencies are recorded in a written certificate, signed by the representatives of the Granting institution and the Concessionaire, 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 the Tender is suspended until the Concessionaire rectifies the major inconsistencies.
- 9.3.7. During carrying out of Works, the Granting institution and all persons that it authorised, the list of whom is agreed upon with the Concessionaire in advance, have the right to access the site where the Works are being carried out, inspect, and supervise the carrying out of Works. The Concessionaire and the Sub-supplier(s) that it employed must provide all reasonable possibilities for the Granting institution or its authorized persons to inspect and supervise the performance of Works.

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- 9.3.8. The Concessionaire is responsible for the conformity of Works and result thereof with the Specifications, Tender, and legislation in all cases, regardless whether the Granting institution or its authorized persons actually examine the conformity of the Works with the set requirements, or sign the Specifications and / or the Tender requirement conformity confirmation certificate.
- 9.3.9. The Concessionaire 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 Granting institution. In cases, when the Granting institution must have the originals of the consents, authorisations, and permits, previously mentioned in this paragraph of the Agreement, according to the requirements of the legislation for the proper use, control, and (or) disposition of the Work results, the Concessionaire must present these documents to the Granting institution.
- 9.3.10. In case a dispute or a disagreement arises between the Parties due to the inconsistency of the Works or parts thereof, it shall be resolved in accordance with the provisions of the paragraph 53 of the Agreement.
- 9.4. The Concessionaire 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. *[if the New property will be owned by the Concessionaire during the period of validity of the Agreement, the New property will be owned by the Concessionaire during the period of validity of the Agreement. if the New property will not be owned by the Concessionaire during the period of validity of the Agreement, The New property will be controlled and used by the Concessionaire under the right of [choose: lease, loan for use, trust], ownership rights are registered for [specify the entity that will own the New property under the rights of ownership]].* All actions (including covering of the associated costs) related to the registration (if such registration is mandatory according to the legislation) of the New property must be performed by the Concessionaire by providing all information required for that and by granting an authorization to the Granting institution.
- 9.6. The Concessionaire is liable for the use and control of the New property without violating the Specifications, Tender, and legislation of the Republic of Lithuania, including the legislation regulating environmental protection, work safety, and following of the hygiene norms.
- 9.7. New property, under the prior written consent of the Granting institution, may also be used by the Concessionaire for other purposes, as long as such use does not interfere with the efficient and quality provision of the Services, does not prevent from ensuring the compliance of the Services with the requirements of the legislation and the Agreement. At the request of the Granting institution, the use of the New property for other purposes must be terminated if the demand is submitted no later than *[specify the term, recommended is 15 (fifteen) days]* before the required termination date. In case if the use of the New property for other purposes than the performance of the Agreement, interferes with the proper performance of the Agreement, at the request of the Granting institution such use must be terminated immediately upon receipt of such a request. Disputes regarding the validity of the claims specified in this paragraph 9.7 of the Agreement are examined by the commission specified in the paragraph 53 of the Agreement.

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- 9.8. *[If applicable the Concessionaire on the basis of [choose: lease, loan for use, trust] agreements, uses the Object for Commercial activities only during the period, when the Granting institution or its designated entities do not perform activities, i.e., when Public services in these objects are not provided. No later than within 30 (thirty) days from the completion of the Works in accordance with the procedure specified in this article 9 of the Agreement, the Concessionaire and the Granting institution must agree on the terms for the cooperation when using the Objects for the performance of their activities and the provision of the Public Service, and review these terms, and, if necessary, update them at least every quarter of the year. The Granting institution undertakes to ensure that the Granting institution or its authorized bodies would use and handled after use in accordance with the same requirements that are defined in the Specifications].*
- 9.9. The Concessionaire 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. Before completion of the Works, but no later than 1 (one) month before the completion of the Works, the Concessionaire must prepare and submit to the Granting institution a Service provision plan, the form of which is prepared and submitted by the Granting institution no later than 6 (six) months before the completion of the Works. 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. Upon expiration of the validity of the [choose: lease, loan for use, trust] agreements *[if applicable, the Land plot lease agreements]*, as well as when returning the Transferred property *[if applicable, including the Land plot]* after the expiration of the Agreement or its premature termination in accordance with the terms and conditions established in this Agreement, the transferred property *[if applicable, including the Land plot]* the Concessionaire must return (transfer) to the Granting institution *[and the Transferor if present]* in accordance with the procedure set in the legislation.
- 10.2. Upon the expiration of the Agreement or in case of premature termination, *[if during the term of the Agreement the New property was owned by the Concessionaire]*, the New property ownership rights shall be transferred to the Granting institution in accordance with the procedure set by the legislation. *For the transferred ownership rights to the New property, evaluated at the residual value, the Granting institution undertakes to pay to the Concessionaire [it is recommended to specify 1 (one) euro]. / or* The New property remain in the ownership of the Concessionaire. *if during the term of the Agreement the New property was controlled and used by the Concessionaire under the right of [choose: lease, loan for use, trust]*, the Concessionaire must return the New property to the Granting institution in accordance with the procedure set in the legislation.].
- 10.3. The Parties agree that during the return, the Property must comply with quantitative and qualitative requirements and indicators, set in the Specifications, taking into account normal

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deterioration, by providing the opportunity to further use the Property properly no shorter period than the one specified in the Specifications.

- 10.4. 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 Granting institution and the Concessionaire, which consists of 3 (three) representatives of each the Granting institution and the Concessionaire, qualified to inspect the condition of the Property, and the chairman of which is appointed from the representatives of the Granting institution. 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 *[specify the term, recommended is 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 Concessionaire 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 *[specify the term, recommended is 3 (three)]* months before the expiration of the Agreement, and in the case of the premature termination of the Agreement – at least *[specify the term, recommended is 5 (five)]* Business days before the Agreement termination date. Based on the results of the inspection, the Granting institution 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.
- 10.5. If the returned Property does not conform with the requirements specified in this paragraph 10 of the Agreement, the Concessionaire must rectify such deficiencies within a reasonable period set by the Granting institution in the manner chosen by the Concessionaire: by repairing such property, replacing with a property of equal value, or by compensating to the Granting institution the reasonable expenses of repairs or replacement of such Property with another property of equal value.
- 10.6. 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 Granting institution by the Concessionaire (except in cases specified in the Agreement) no later than during the day of the Agreement expiration or termination.
- 10.7. The Granting institution may only refuse to sign the transfer and acceptance (return) certificate(s), if:
- 10.7.1. the Granting institution confirms the conformity of the Property condition with the set requirements according to the paragraph 10.4 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 10.4 of the Agreement, does not meet the set requirements, or
- 10.7.2. after the Granting institution presents a motivated refusal to confirm the conformity of the Property condition with the set requirements according to the paragraph 10.5 of the Agreement, the specific deficiencies specified in the refusal of the Granting institution have not been rectified.

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10.8. In cases specified in the paragraph 10.7 of the Agreement, the refusal to sign a confirmation and / or a transfer - acceptance certificate, the Granting institution shall submit to the Concessionaire a reasoned written refusal, indicating in it specific nonconformities of the Property with the requirements. In such case the Concessionaire 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. The Concessionaire 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 Granting institution, the Concessionaire must transfer duly approved copies of such documents to the Granting institution or the institutions/ persons specified by it within no more than 10 (ten) Business days from the day on which they were requested and, if applicable, the day of conclusion.

11.2. After the expiration of the Agreement, the Concessionaire, at its own expense, ensures that the Concessionaire's documents, related to the Property that is being transferred, would be properly transferred to the Granting institution or the institutions / persons designated by it. In any case, such documents shall be transferred to the Granting institution not later than within 10 (ten) Business days after the expiration of the Agreement. Despite this, the Granting institution must retain and keep duly certified copies of such documents for the period indicated in the paragraph 11.1 of the Agreement.

### **12. Obligations of the Granting institution**

12.1. The Granting institution undertakes to perform its obligations under the Agreement in a timely manner and to cooperate as promptly as possible with the Concessionaire in solving matters related to the performance of the Agreement.

12.2. The Granting institution must ensure that the operation of the Concessionaire and the performance of the Agreement would be interfered with as little as possible when the Granting institution, as well as the persons authorised by it, exercises the rights granted to the Granting institution under the Agreement.

12.3. *[If the Granting institution pays the Remuneration to the Concessionaire, the Granting institution must pay the Remuneration to the Concessionaire in a timely manner for the provided Services and performed Works as specified in the paragraph 23 of the Agreement. The Granting institution undertakes to immediately inform the Concessionaire about financial problems, which could prevent the Granting institution from proper and/or timely payment of the remuneration to the Concessionaire, and about the measures, taken by the Granting institution to eliminate the problems].*

12.4. At the request of the Concessionaire or the Investor, the Granting institution must immediately issue the consents, arrangements, approvals, permits, and/or licenses to the Concessionaire, 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,

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but no later than within 10 (ten) Business days (except in cases when other periods are indicated in the legislation and (or) this Agreement) if the Concessionaire's right to apply for these arrangements, approvals, permits, and/or licenses is granted by the legislation or the Agreement, and all the necessary information and documents were submitted to the Granting institution. The Granting institution has no right to unreasonably withhold the consents, arrangements, approvals, permits, authorizations and/or licenses specified in this paragraph. If the Granting institution 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 for which the Concessionaire applied to the Granting institution, are issued. The Concessionaire must inform the Granting institution in writing before performing actions on the basis of such consent, arrangement, approval, permit, authorization, or license of the Granting institution (if performance of such actions without the express consent, arrangement, approval, permit, authorization or license from the Granting institution is not contrary to the imperative requirements of the legislation). The Parties hereunder agree, that in case, if the Concessionaire cannot properly perform lawful actions required to perform its obligations under the Agreement without the express consent, arrangement, approval, permit, authorization or license from the Granting institution, the Granting institution 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 Granting institution 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 Granting institution, at the request of the Concessionaire, the Granting institution shall make all lawful efforts (mediates, provides additional information, when that is not in conflict with the legislation and public interest, 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 Concessionaire or the Investor, the Granting institution must provide all available information, which could be needed in order to obtain 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 Concessionaire and the required documents.

12.7. In cases specified in the Agreement, where the Granting institution issues consents to the Concessionaire, the Granting institution is required to issue the consents within the set time limits, if the time limit for the issuing of consent is not set, the Granting institution must issue such consent within a reasonable time. The Granting institution's refusal to issue a consent must be substantiated.

### **13. Obligations of the Concessionaire and the Investor**

13.1. The Concessionaire undertakes to carry out the Works, and provide the Services with quality in a timely manner, and to promptly cooperate with the Granting institution and representatives appointed by it on all matters related to the performance of the Agreement.

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13.2. The Concessionaire at its expense and risk ensures that both the Concessionaire itself and the persons, who are carrying out the Works and providing the Services, would have all the necessary licenses, permits (including design and construction permits), attestations, approvals, or certificates required for the Agreement performance during the period of the Agreement's effect in full or 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 concessionaire will not be able to rely on the absence of such documents in order to avoid liability due to non-performance of obligations under this Agreement and / or improper performance thereof, and will be fully liable for the consequences of the absence or late receipt of such documents, except for the cases when the risk associated with such documents under this Agreement is fully assigned to the Granting institution.

*[If existing employees, associated with the provision of Services are being transferred the Concessionaire, together with the [indicate the subject, employees of which must be transferred to the Concessionaire] and with the employees indicated in annex No. 10 undertake to conclude a written agreement(s) till [indicate date] for the transfer of employees to the Concessionaire at same or equivalent conditions, as present in their employment agreements with the [indicate the subject, employees of which must be transferred to the Concessionaire]. 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 Concessionaire, or terminate employment relations with [indicate the subject, employees of which must be transferred to the Concessionaire] prior to the date of signing the respective agreement.]*

13.3. The Concessionaire ensures that they 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 Concessionaire undertakes to conclude a written agreement with the Granting institution or the subject indicated by it for the transfer of employees of the Concessionaire, 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 Concessionaire must comply with all conditions specified in the licenses, attestations, or permits, and follow them, as well as make all efforts that these conditions would be followed by the Concessionaire employed personnel or the Sub-suppliers that are carrying out Works or providing Services, .

13.6. The Concessionaire undertakes to comply with the requirements of the legislation that is regulating the environmental protection. The investments related to the performance of such requirements are made by and the risk is assumed by the Concessionaire, except in the case of the Fundamental legislative change as specified in this Agreement.

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- 13.7. The Concessionaire 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 EU.
- 13.8. The Concessionaire and the Investor are jointly responsible for the proper 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. Concessionaire must provide the Granting institution with Service reports as specified in this Agreement.
- 13.10. During the period of the Agreement, without the consent of the Granting institution, the Concessionaire and the Investor undertake to:
- 13.10.1. not to make decisions on the reorganization or restructuring of the Concessionaire and not to execute them with respect to the Concessionaire;
- 13.10.2. not to sell the main share of the Concessionaire's property and not to assume any essential financial obligations. For the purposes of this paragraph, the material part of assets is considered an asset *[define what will be considered a material part of the assets of the Concessionaire, 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. However, financial obligations under the agreements with the Funder (including refinancing agreements) or Other loan provider, specified in the Financial activity model, and agreements, payments, warranties or bonds to the Sub-supplier who performs Works (or part thereof) and to the Sub-supplier who provides the Services specified in the Tender are not considered to be essential in the sense of this paragraph of the Agreement.
- 13.11. The Concessionaire and the Investor undertake to inform the Granting institution about any cases initiated in any court or arbitration, in which the Concessionaire is 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 *[specify the term, recommended is 10 (ten) days]* from the beginning of the participation or becoming aware of such involvement.
- 13.12. The Concessionaire and Investor perform the obligations under this Agreement at its own expense, risk and without financial support from the Granting institution, except if the Agreement expressly indicates otherwise.

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- 13.13. Upon termination of the Agreement or in case of other grounds, the Concessionaire must, unconditionally and as soon as possible without any delay, return to the Granting institution or its designated entities all Property, the return of which is specified in the Agreement, as well as all rights and authorizations related to the Property that is being returned, or the performed Works, or provided Services, also to organize proper termination of agreements concluded for the performance of activities under the Agreement which cannot be valid longer than this Agreement, except if their validity is necessary for the performance of activities under the Agreement and their validity does not cause difficulties for the Granting institution.
- 13.14. It is deemed that both, the Concessionaire 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 Concessionaire and the Investor are jointly liable (joint debtors) to the Granting institution for the performance of the obligations specified in the paragraphs 13.1 – 13.13 of the Agreement and other paragraphs of the Agreement.

#### **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 Granting institution, 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 Concessionaire must:
- 14.2.1. inform the Granting institution about such findings as soon as possible; and
- 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 Concessionaire handles findings in accordance with the requirements of the legislation.
- 14.4. The Concessionaire shall allow the representatives and/or officers of the Granting institution or other public institutions to access the Land plot in order to remove or transfer the findings, provided that the necessary safety requirements, applicable in the Land plots, will be followed when entering the Land plots.

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

- 15.1. The Concessionaire must make at least the same investments into the Property and the assurance of the quality provision of the Services [including provision of Public services if these are provided] as provided in the Financial activity model, in accordance with the terms specified in the Work performance and Service provision plans and Specifications.
- 15.2. The Concessionaire ensures, that the Property from the commencement of the Object's operation, no later than within 30 (thirty) days from the date of this Service, will meet the requirements of the legislation, the Agreement, the Specifications, and the Tender, during the

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entire remaining period of the Agreement. This obligation is performed by the Concessionaire individually by finding and using the required funds and choosing the required means and methods.

15.3. The Concessionaire has the right to modify the sources of funding indicated in the Financial activity model, the scope of funding, or funding conditions, if it increases the Return on investments with respect to the risks assumed by either of the Parties and does not increase the obligations of the Granting institution, including the obligations in case of termination of the Agreement without the fault of the Granting institution. Such changes to the sources of funding require the prior written consent of the Granting institution which cannot be unreasonably withheld by the Granting institution. The Granting institution must present such consent or a motivated refusal to grant it within *[specify the term, recommended is 15 (fifteen) days]* from the date when the request with all the substantiating information and documents are presented to the Granting institution. The change in the return on investment for the purposes of this paragraph 15.3 of the Agreement is the difference between the current values of the income flows that comprise the return on investment before and after the change of the sources or terms of funding. For the calculation of the current value of cash flows the Internal rate of return, specified in the Financial activity model at the time of submission of the Tender, is used as a discount rate.

15.4. *[If applicable If the sources of funding, specified in the Financial activity model, or the terms of the funding that is received are changed in case specified the paragraph 15.3 of the Agreement, and due to that increases the Return on investments, according to the paragraph 23 of the Agreement the payments payable to the Granting institution are increased by [specify the amount, recommended is 50 (fifty)] percent of such increase.]*

15.5. If the Concessionaire 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 Concessionaire, except in cases when such increase in the Return on Investment is directly caused by the actions or decisions of the Granting institution. Due to the direct actions or decisions of a Granting institution, the share of the Return on Investment, which exceeds the Internal rate of return, is distributed *[specify the rules of distribution or a ratio]*.

15.6. The Concessionaire, having received the prior written consent of the Granting institution, has the right to change the Investments specified in the Financial activity model for other investments or to delay or advance the deadlines of Investment execution, provided that the same or higher value received by the Service recipients of the Granting institution for the payments to the Concessionaire is ensured. The Granting institution must present such consent or a motivated refusal to grant it within *[specify the term, recommended is 15 (fifteen) days]* from the date when the request with all the substantiating information are presented to the Granting institution.

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

16.1. During the preparation of the Tender, the Investor must have anticipated in advance and evaluate 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 to reflect this evaluation in the Financial activity model. In order to avoid doubts the Parties declare that obligations of the Concessionaire, specified in the Agreement, in their essence match the obligations of a contractor/contractor general assumed under the turnkey type agreements of construction contracting,

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- 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 there is a need for Additional works or services, such works or services may be carried out and are paid for only if this is not in conflict with the legislation of the Republic of Lithuania and such works or services are coordinated in writing with the Concessionaire.
- 16.3. Additional works and / or services may only be initiated by the Granting institution. The Concessionaire has the right to inform the Granting institution about the need for Additional works and / or services.
- 16.4. In order to agree upon the additional works or services, the Granting institution presents to the Concessionaire 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 Granting institution and the Concessionaire, and is deemed an integral part of the Agreement. If the Concessionaire 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 Granting institution, or unreasonably delays signing the agreement, the proposal for the Additional works and/or services is deemed cancelled. In such case, the Granting institution 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 Granting institution undertakes to coordinate schedules of such Additional works and / or services with the Concessionaire, 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 Concessionaire'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 Concessionaire will take all reasonably practicable steps to secure the funding for Additional works and / or Services on terms acceptable to him and the Funder or Another loan provider. If the Concessionaire is not in a position to ensure financing for Additional works and / or services, the Granting institution and the Concessionaire 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 Granting institution and the Concessionaire do not agree on the financing of the Additional works and / or services as specified in the paragraph 16.6 of the Agreement, the

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Granting institution 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 Concessionaire 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 Parties to the Agreement have the right to initiate a Change according to the terms specified in this paragraph 17.

17.2. Only such Amendments that are related to the Property and are equivalent and / or do not increase or decrease the obligations of the Granting institution are permitted.

17.3. If a Party initiates the Amendment, it must submit a notice to the other Party about the Amendment that is being initiated. Such notice must contain:

17.3.1. A description of the change, which should be sufficiently detailed, so that a proposal could be evaluated and submitted to the other Party (if the Amendment is initiated by the Granting institution) or a consent (if the Amendment is initiated by the Concessionaire);

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 and deadlines (if applicable);

17.3.4. implementation schedule of the proposed Change;

17.3.5. the deadline by which the other Party must submit a proposal (if the Amendment is initiated by the Granting institution) or a consent (if the Amendment is initiated by the Concessionaire) regarding the implementation of the Amendment. If such deadline is not specified in the notification, the Party must submit the proposal / consent within 15 (fifteen) Business days from the date of receipt of the notice of the initiated Amendment.

17.4. After the Party that 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 project documentation related to [~~strike out the unnecessary~~ **Building-dormhouse / Foster home**], 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 Project company to perform obligations under a Direct agreement or another agreement with the Funder specified in the Agreement;

17.4.6. the Concessionaire will incur additional Costs due to the proposed Amendment, the funding of these Costs should be ensured by the Granting institution.

17.5. After the receipt of a refusal to implement the proposed Change from the Party, the initiating Party must organize a meeting with the other Party, during which the following matters shall be discussed:

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- 17.5.1. the justification presented by the Concessionaire, confirming that Concessionaire took all possible actions in order to reduce the increase of the Change related costs or increase the reduction of costs;
- 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 Party 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 or due to refusal to change the Works and/or Services, arise between the Parties, the dispute is resolved in accordance to the procedure specified in the the paragraph 55 of this Agreement.
- 17.7. If the Parties agree on the proposal for Change or refusal to perform it, or if the dispute is resolved in accordance to procedure specified in the paragraph 55 of this Agreement, the Granting institution 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. 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, the Concessionaire must provide the changed Financial activity model to the Granting institution 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 is confirmed the Parties shall immediately execute the respective changes to the Agreement (if such are necessary).

## **18. Provision of Services**

- 18.1. The Concessionaire must ensure the possibility for the consumers to use the Services on a permanent and non-discriminatory basis in accordance with the Tender and Specifications from the commencement of the provision of the Services.
- 18.2. The Concessionaire must ensure, that the nature, amount, and quality of Services that are being provided, would constantly and completely meet the requirements of the legislation and 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.
- 18.3. The Concessionaire 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 must be provided in another location.
- 18.4. Only in the Service provision deviations of the following cases and following sizes specified in the Specifications are allowed. Allowed continuous and total duration of any of such deviation is specified in the Specifications.
- 18.5. During the provision of Services, the Concessionaire (or the respective Service Subcontractors) 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

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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.

## **19. Sub-suppliers**

- 19.1. The Concessionaire may only employ Sub-suppliers or other entities that meet the qualification requirements for Sub-suppliers set out in the Conditions for Sub-suppliers specified in the Annex No. 1 to the Agreement and with the prior consent of the Granting institution, which cannot be unreasonably withheld by the Granting institution, for the performance of the Works and the provision of the Services, except in the case specified in the paragraph 19.6 of the Agreement. Approval of the Granting institution is not necessary in the case specified in the paragraph 19.6, also for Sub-suppliers or other entities, that were listed in the Tender of the Investor.
- 19.2. During the performance of the Works or the provision of Services, Sub-suppliers or other entities must comply with the same requirements that apply to the Concessionaire 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 fulfill the requirements specified in the Conditions, may be replaced by other entities if:
- 19.3.1. replacing operators *[if the capacity of the Sub-suppliers was taken into account when selecting the winner of the Procurement, it shall ensure the resources of the same quality, as the resources and capacities, committed by the Sub-suppliers that are being replaced, required for the performance of the remaining part of the Agreement, and]* meet the requirements for replacing Sub-suppliers or other economic entities set in the Conditions, including qualification requirements, if during the Procurement the Investor based his compliance with the requirements set in the Conditions on the qualification of the respective Sub-suppliers or other economic entities; and
- 19.3.2. The Concessionaire receives the prior written consent of the Granting institution (except in the case specified in the paragraph 19.6 of the Agreement, it cannot be unreasonably withheld.
- 19.4. The Concessionaire 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 by receiving the written consent from the Granting institution, which may not be unreasonably withheld.
- 19.5. After concluding an agreement with the Sub-supplier, the Concessionaire shall submit a copy of the agreement to the Granting institution no later than *[specify the term, recommended is 3 (three) Business days]* after its conclusion.
- 19.6. Regardless of the paragraph 19.1 of the Agreement, the Concessionaire has the right to employ a new Sub-supplier or an entity and without the prior written consent of the Concessionaire, provided that the total value of the performed works and provided services by such Sub-

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supplier within a period of 12 months does not exceed the *[specify the amount]* during the financial year.

- 19.7. Agreements with Sub-Suppliers 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 without any negative effects, at least *[specify the term, recommended is 30 (thirty) days]* before the desired date of termination.
- 19.8. Regardless whether the Works are performed or the Services are provided by the Concessionaire itself or by employing Sub-Suppliers, the Concessionaire 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.
- 19.9. Subcontractors or other entities must 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. This requirement does not apply to sub-sub-suppliers.

## **20. Coordination of actions with the Granting institution**

- 20.1. The concessionaire must provide the Granting Authority with access to:
  - 20.1.1. Candidacies of experts specified in the paragraph 28.1 of the Agreement;
  - 20.1.2. The candidate's auditor's candidature;
- 20.2. In all cases, the concessionaire must obtain prior written consent of the Granting Authority, which can not be unreasonable, due to:
  - 20.2.1. Financing sources, volumes and / or financing conditions as provided for in the Agreement 15.3;
  - 20.2.2. The change of the financial activity model;
  - 20.2.3. The change or employment of Sub-Suppliers, as specified in the paragraph 19;
  - 20.2.4. Replacement candidacies for persons, the qualification of whom was the basis for the Investor's compliance with the qualification requirements set in the 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 Concessionaire's performance of obligations to third parties, except cases of exception specified in the Agreement;
  - 20.2.6. In the case provided for in the contract clause 8.10- the terms and conditions of contracts relating to the use of the Asset for purposes other than those specified in the Agreement;
  - 20.2.7. Temporary non-conclusion of the insurance agreements in the case specified in the paragraph 34.4 of the Agreement;

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- 20.2.8. 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
- 20.2.9. Any transactions concluded between the Concessionaire and Associated persons, except for those specified in the Tender;
- 20.2.10. other transactions, except for those specified in the Tender, on the basis of which the Concessionaire 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 contrahent for the identical subject matter and performed or performable exceeds 500 000 (five hundred thousand) Euro (excluding VAT)]* euros (excluding VAT). In case if it is not possible to calculate these values in advance, the consent of the Granting institution will be required if:
- a) the term of validity of contracts is longer than *[term]* or exceeds the period of validity of the Contract; 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 *[specify the term, recommended is 30 (thirty) days]* in advance, and (2) if the Concessionaire assumes no obligations to compensate losses or pay contractual penalties of any size if the agreement is terminated this way.
- 20.3. The Granting Authority must express its consent or a motivated refusal to issue consent for the conclusion of the transactions specified in the 20.2 Agreement not later than *[within 10 days (ten working days)]* from the date of the request of the Concessionaire. If the Granting institution fails to provide any remarks or objections within the specified time period, it is deemed that the Granting institution 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 Concessionaire shall, without delay, but no later than within *[set deadline, recommend to -10 (ten) Working Days]*, inform the Granting Authority, submitting copies of the contract and / or other related 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 Concessionaire 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 Granting Authority fails to fulfill its obligations under the Agreement;
  - 21.1.2. *[If the Granting Authority pays the Concessionaire a Reward for not more than 30 (thirty) days due to the circumstances of the Granting Authority, it does not receive the payment of the respective Monthly Payment for the performance of the Contract];*
  - 21.1.3. *[If the Granting Authority pays the Concessionaire a Remuneration for a one-year delay in the amount of the Reward exceeding half the amount of the One Monthly Payment];*

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- 21.1.4. 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 Granting Authority in the Risk Sharing Ratio presented in Annex 4 to the Agreement;
- 21.1.5. any restrictions on property or similar rights with respect to the Property or Land plots;
- 21.1.6. the issuance of permissions to perform the Works for the issue or delay caused by actions or omissions of authorized public sector institutions of the Republic of Lithuania without complying with the requirements of legal acts;
- 21.1.7. on transactions concluded by the Granting institution with third parties, if this results in delays in the performance of the Works or the Property;
- 21.1.8. delays in the execution of the Works or provision of Services due to unlawful actions by state institutions or other public administration entities;
- 21.1.9. engineering / communication networks for which installation and supervision are not the responsibility of the Concessionaire, accidents which occur not due to the acts or actions of the Granting Authority (operation or omission) and which directly affect the proper implementation of the Contract;
- 21.1.10. due to the circumstances of the *Force majeure*
- 21.2. If the performance of Works and/or provision of the Services is suspended completely or partially on the grounds specified in the paragraph 21.1 of the Agreement, the Concessionaire must:
  - 21.2.1. Notify the Granting institution about it and provide the reasons for such suspension in advance, but no later than [*specify the term, recommended is 3 (three) Business days*] in advance, or, if it is impossible, as soon as it becomes possible;
  - 21.2.2. within [*deadline, recommended 15 (fifteen) days*] from the application for exemption, the Concessionaire must provide the Granting Authority with all information relating to the Exemption event, 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 Concessionaire 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 Concessionaire intends to take in order to reduce the consequences of the Case of Exemption.
  - 21.2.3. taking all reasonably available measures to perform Works and to provide the Services to their maximum possible extent and to renew performance of Works and the 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 Exemption event arises before the fulfillment of the terms of entry into force of the Agreement or before the performance of the Works, the provision of the Services, the term of the Expiration is extended by the terms of entry into force of the Agreement 3 as specified in

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the Agreement 4.1 , the timeframes specified in the Contract Terms specified in 4.2 the Contract Terms or the Starting terms of the Services, the term of validity is not extended.

21.4. In Case of Exemption, the liability specified in the paragraph 48 of the Agreement and grounds for termination of the Agreement specified in the paragraph 40 of the Agreement do not apply to the Concessionaire.

21.5. The provisions of paragraphs 21 and 22 of the Agreement may 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 Granting institution, 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 Concessionaire, or their Associated persons, or Sub-Suppliers, or other entities employed by the Concessionaire 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 Concessionaire, for which the Concessionaire 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. 40.

22.1.4. it is not objectively possible to perform the Works or to provide the Services in whole or in part because the Granting Authority 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

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- Concessionaire 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 Granting institution 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 Concessionaire;
- 22.1.10. the value added tax rate changes.
- 22.2. Losses incurred by the Concessionaire due to the Compensation event shall be compensated by to the share of risk assumed by the Granting institution.
- 22.3. Upon the occurrence of the Compensation event, the Concessionaire must notify in writing the Granting institution 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 Granting institution 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 Concessionaire does not invalidate the Concessionaire's right to compensation.
- 22.4. 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 Granting institution must make the motivated decision regarding the confirmation of the Compensation Event or the motivated refusal to do so.
- 22.5. Upon confirmation of the Compensation Event the following are compensated to the Concessionaire:
- 22.5.1. 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;
- 22.5.2. if due to the Compensation Event the costs of the Concessionaire, related to the Service provision increase – the increase of such costs is necessary to ensure the sustained Internal rate of return;
- 22.5.3. *[if applicable If due to the Compensation Event the reasonable income of the Concessionaire, related to the Service provision decrease – the decrease of such income is necessary to ensure the sustained Internal rate of return;]*
- 22.6. Compensation specified in the paragraph No. 22.5 of the Agreement is calculated and paid in accordance to the annex No. 3 to the Agreement *Terms of settlement and payments*.
- 22.7. 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

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compensations for the same thing, i.e. the second time for the same thing, are not paid to the Concessionaire according to the terms set forth in this paragraph 22 of the Agreement.

- 22.8. 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 Agreement, Specifications, the Tender, or agreed by the Parties, are extended respectively, except for the term of this Agreement.
- 22.9. If the Concessionaire presents the notice about the Compensation Event without observing the deadline set forth in the paragraph 22.3 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.
- 22.10. 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.
- 22.11. In case of the Compensation event of which the Concessionaire notified the Granting institution by duly submitting the notice and documents confirming this Compensation event according to the terms set forth in the paragraph 22.3 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 Concessionaire for that period of the Compensation event that was duly reported and documents confirming this Compensation event were submitted according to the procedure specified in the paragraph 22.3 of the Agreement.

## **IX. PAYMENTS**

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

23.1. The Concessionaire receives a remuneration from the Services of users from the Services users by determining [what percentage (at the discretion of the Concessionaire, according to approved fees or other means) may be taken by the Concessionaire and what determines it]. The amount of this remuneration may be changed only in accordance with [if the requirements for reimbursement are specified in the Annex 3 to the Agreement on Settlement and Payment procedures specified in the Annex to the Agreement / if the requirements for the exchange are set out in the text of the Contract, the following requirements:

23.1.1. [*specify requirements for remuneration*];

23.1.2. [ . . .];

No other payments from users may be taken unless explicitly stated otherwise in the Agreement.

23.2. In cases where the Concessionaire is permitted to use the Asset to perform other activities necessary for performance of the Contract, the Concessionaire has the right to determine the amount of income received for such use at its own discretion, unless the Asset is used for the

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activities of the Affiliates, in which case compulsory transactions for the use of the Assets in accordance with the extended arm principle shall be made.

- 23.3. *[If applicable the Granting Authority grants the Concessionaire the right to provide the Services and receives for this the consideration specified in the Contract Clause 23 receives from the Concessionaire a Fee specified in the Settlement and Payment Procedure set forth in the Annex 3 to the Agreement.]*
- 23.4. *[If the Concessionaire is not remunerated for the transferred Assets for the transferred Assets, if the Reward is paid for the transferred Asset or part thereof, the Concessionaire undertakes to transfer the Assets according to [specify [choose: lease, lease, entrustment] contracts for which the property received by the Concessionaire is due] [ if you need to pay a fixed amount to pay [sum] euro remuneration [indicate when and how to pay]. / if payment will require a periodic remuneration from the Granting Authority from the entry into force of the Contract [specify which amounts and how they will be paid].]*
- 23.5. The Granting authority for the Concessionaire for the New Assets redeemed separately *[chooses not to pay / or reimburse the Settlement and Payment Procedure set out in the Annex 3 to the Agreement].*
- 23.6. *[If the Granting Authority pays the Concessionaire a fee, the amount paid to the Concessionaire is reduced or may be increased in such cases and in the amounts specified in the Settlement and Payment Procedure set out in the Annex 3 to the Agreement.]*
- 23.7. *[If the Concessionaire makes payments to the Granting Authority* In accordance with the Agreement Clause 23.3, the Granting Authority grants to the Granting Authority the right to provide the Services for the Concessionaire and to receive remunerated payments for it increases or can be reduced in such cases and in the amounts specified *in the Settlement and Payment Procedure* set out in the Annex 3 to the Agreement.
- 23.8. Payments made by one Party to the other Party shall not be subject to any taxes, fees or other forms of payment other than those provided for in the Annex 3 to the Agreement *on Settlement and Payments* and / or contractual penalties, penalties, damages or default.
- 23.9. *[If the amount of the change in the amount of payments due to the changed tax rules is indicated in Annex 3 to the Agreement in the Settlement and Payment Procedure, the amount of Payments for the Service due to changes in the tax laws is changed according to the procedure set out in the Settlement and Payment Procedure set out in the Annex 3 to the Agreement. / if the change in the size of the payments due to the changed tax arrangements is indicated in the text of the Agreement. The change in the value added tax rate shall be amended accordingly by the amount of payments made to the other Party in accordance with the Agreement, subject to the changed rate of the added tax.*
- 23.10. Changes in taxes other than those specified in the 23.9 Agreement shall not affect payments between the Parties. */ or the amount of the payments between the Parties is changed and the [change in other taxes that affect the payments] will change. Changes are made in the following order:*
- 23.10.1. *[specify fee] - [specify what kind of payments and how will they be changed due to a change in tax];*

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23.10.2. [. . .].

The amount of the payments made on the basis of this Clause 23.10 of this Agreement shall apply from the date of entry into force of the change in the relevant tax rate.]

23.11. All payments made by the Grantor or the Concessionaire are indexed each year in accordance with the procedure set out in the Accounts and Payments Procedure annex 3 to the Agreement. The indexed payment amount applies [*specify when the indexed payment amount applies*].

23.12. All payments under this 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*.

23.13. All payments are determined and made in euro.

23.14. All costs 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.

23.15. [*If the Granting Authority pays the Concessionaire a fee* If, due to the fault of the Concessionaire, the Object can not be used for the provision of the Services [*if provided* and / or for the Provision of Public Services], i.e. y due to the inadequacy of the Object, the Concessionaire can not provide the Services [*if provided* and / or Public Services] and the Granting Authority the functions entrusted to it by law, the Granting Authority shall not pay the remuneration for the period during which the Object could not be used in whole or in part for the provision of the Services or the Public Services the provision of the functions entrusted to it by the law of the Granting Authority (null-availability - zero payment). 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".

## **24. [*if applicable* Market research and Benchmarking**

24.1. The concessionaire undertakes to perform Market Inspection / Comparative Analysis at its own expense within 6 (six) months prior to the relevant Market Inspection Date or before a written reasoned Granting Authority to perform its performance in relation to the types of services specified by the Granting Authority in the following order and terms:

24.1.1. The Granting Authority may also, on its own decision and at the expense of the Market Inspection / Benchmarking, be entrusted to independent professionals. Market testing / Benchmarking may be delegated by the Granting Authority to independent experts in case of doubts as to the validity and (or) reliability of the results of the Valuation study performed by the Concessionaire. If, in this case, it is determined that the results of the Market Testing / Benchmarking performed by the Concessionaire are reasonable and reliable, the costs of such research are not reimbursed to the Granting Authority. However, if the investigation determines the unjustified and / or unreliable results of the Market Inspection / Benchmark analysis submitted by the Concessionaire, the Concessionaire shall reimburse all costs of such an examination to the Granting authority not later than within [*deadline, recommended - 30 (thirty) days*] after submission of the Granting Authority's claim Concessionaire;

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- 24.1.2. The market test / comparative analysis must be performed by the Concessionaire not later than within 3 (three) months from the date of the Market Inspection or the submission of a reasoned request by the Granting Authority in writing. Before the Market Inspection / Benchmarking, the Parties agree on an effective and transparent Market Surveillance / Benchmarking Methodology, which must be followed by Market Inspection / Benchmarking. If there is no agreement on the harmonization of the Market Inspection / Benchmarking Methodology, such a methodology shall be developed and approved by the commission specified in the 53 Agreement item;
- 24.1.3. On the basis of the results of the market analysis / comparative analysis, having found more effective methods of operation and / or methods and / or finding more efficient potential submissions of services similar to the Services, the Granting Authority may offer the installation and / or use of the Concessionaire, thus improving the obligations of the Contract the performance results (eg by reducing operating costs, improving the quality of the Services, etc.). The concessionaire has the right to refuse to install more effective methods and methods of operation and / or to use more effective potential submissions only if, as a result of such a change, it would suffer negative consequences - increase the investment or increase the costs of the provision of the Services, or the Concessionaire would suffer any other losses that would not be compensated by such a change benefits received. The benefits resulting from the modifications shall be apportioned between the Parties in accordance with the Settlement and Payment Procedure set out in Annex 3 to the Agreement].

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

- 25.1. The concessionaire has the right to change the sources, scope or financing conditions indicated in the Financial Operating Model in the order of this Agreement 15.3 and in the Annex 3 to the Agreement in accordance with the Settlement and Payment Procedure procedure.

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

### **26. Granting authority to control**

- 26.1. The Granting Authority has the right to control how the Concessionaire carries out its obligations under the Agreement, including the right to inspect the instruments it chooses:
- 26.1.1. The performance of works carried out by the Concessionaire according to the procedure specified in the paragraph 9.3 of the Agreement;
- 26.1.2. Assets managed and used by the concessionaire, and all obligations assumed by the Concessionaire under the Contract;
- 26.1.3. The compliance of the Services provided by the concessionaire with the requirements of the Agreement and its annexes.
- 26.2. As the Granting institution is exercising its right to inspect and control the activity of the Concessionaire, the Concessionaire must cooperate fully with the Granting institution and its representatives, enable them and provide the possibilities to familiarise with the documents, inspect 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.

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26.3. Rights of the Granting institution to control the activity of the Concessionaire, provided for in this paragraph 26 of the Agreement, have no effect on any other provisions of the Agreement, that enable the Granting institution to exercise identical or similar rights to control.

26.4. Any provision of the Agreement cannot be interpreted as relieving the Concessionaire 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 Concessionaire shall provide the Granting institution 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 Concessionaire shall provide the Granting institution with the following information:

| No. | Information  | Timeframe  |
|-----|--|--|
| 1.  | The financial statements of the Concessionaire, audited by an independent auditor, and the auditor's report on them  | No later than <i>[set deadline, it is recommended 130 (one hundred and thirty days)]</i> after the end of each financial year  |
| 2.  | Monthly / quarterly and annual activity report prepared by the Concessionaire as it is specified in the Specifications   | No later than within <i>[specify the term, recommended is 1 (five) Business days]</i> 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 18.2 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 the Granting institution to perform the inspection |
| 4.  | Reports on the implementation of the financial activity model, which include information on investments made, works, and other information and documents required by the Granting Authority.<br><br>The awarding authority may, at any time during the performance of the Contract, request the submission of concluded contracts, signed work acceptance acts, received and paid invoices | No later than within <i>[specify the term, recommended is 14 (fourteen) days]</i> 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  |

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| No. | Information  | Timeframe  |
|-----|--|--|
| 7.  | Agreements of the Concessionaire specified in the paragraphs 20.2.9 and 20.2.10 of the Agreement   | Within the terms provided for in the Agreement, and in the absence of time limits, within 5 (five) Business Days from the day they are concluded |
| 8.  | Other information and / or documents requested by the Granting institution 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 Granting institution for the purposes of appropriate notifying | Within reasonable period of time indicated in the request of the Granting institution  |

## 28. Inspection of the provided Services

- 28.1. In cases specified in the Specifications or upon motivated request of the Granting institution, but no more than 1(one) time every 2 years of the Agreement duration, the Concessionaire must invite at its own expense independent financial, technical, and legal experts to perform the inspection of conformity with the requirements specified in the paragraph 18.2 of the Agreement and present its report to the Granting institution. If during the inspection non-conformities with the requirements specified in the paragraph 18.2 of the Agreement are detected, the Concessionaire must additionally specify the reasons that led to them.
- 28.2. The inspection (complete or partial) of conformity of the Concessionaire's activity with the requirements specified in the paragraph 18.2 of the Agreement can also be carried out by the Granting institution in case of any of the following grounds:
- 28.2.1. The inspection report submitted by the concessionaire for compliance with the requirements of the 18.2 Agreement is incomplete or contradictory and the Concessionaire does not remedy these deficiencies or provides explanations within the time limit set by the Granting authority;
  - 28.2.2. The Granting institution possesses the information about the possible infringements of the requirements specified in the paragraph 18.2 of the Agreement;
  - 28.2.3. Concerning the concessionaire, the state and / or municipal authorities initiate activity inspections or investigations, impose sanctions if this affects the further performance of the Contract;
  - 28.2.4. the possibility of periodic inspections is provided in the Specifications and 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.

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- 28.3. The Granting institution 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 18.2 of the Agreement are identified, the Granting institution may request the Concessionaire to reimburse the expenses of such inspection, and in such case the Concessionaire must cover the actual expenses of such inspection incurred by the the Granting institution, which cannot exceed the general market prices of respective inspection services.
- 28.4. The Concessionaire 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 18.2 of the Agreement, and / or other inspections.

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

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

- 29.1. The Granting institution shall not be entitled to transfer its rights and obligations under the Agreement without prior written consent of the Concessionaire and the Investor, it shall not be unreasonably withheld by the latter. In case of transfer of the rights and obligations, the Granting institution (except for the case of liquidation of the Granting institution) shall remain jointly liable to the Concessionaire together with the person to whom the rights and obligations under the Agreement were transferred by the Granting institution.
- 29.2. The concessionaire, having the prior consent of the Granting Authority (the latter is not entitled to unreasonably give up), is entitled to transfer its rights and obligations under the Contract only to its own branch or subsidiary to which the Concessionaire may directly exercise. *[If applicable, as defined in Article 5 of the Republic of Lithuania Law on Companies.]* 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 entity, who took over the rights and obligations, must provide the same security of the performance of obligations as it was done by the previous Concessionaire. Security of the performance of obligations, provided by the Concessionaire, 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 Concessionaire shall be deemed the Concessionaire for the purpose of this Agreement.
- 29.3. An Investor, in addition to the cases stipulated in the Contract 31.1, shall have the right to transfer his rights and obligations under the Agreement or the concessionaire shares or part thereof, after obtaining the prior consent of the Granting Authority, which the latter may not give unduly, if:
- 29.3.1. the new Investor meets the qualification requirements specified in the Conditions for the non-performed part of the Agreement; For clarity, in such case, the initial Investor is exempted from the joint liability for the proper performance of the obligations of the Concessionaire under the

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Agreement, except for the liability arising from the obligations of the Concessionaire prior to the replacement of the Investor;

- 29.3.2. a new Investor is a Sponsor or another Lender of the Borrower that is subject to the Terms and Conditions *[which qualification requirements apply]* (if the Investor does not fully comply with *[which qualification requirements apply]*). In this case, the new investor is jointly and severally liable for the performance of the obligations under the Contract;
- 29.3.3. due to restructuring or reorganisation of the Investor, 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 qualification requirements set in the Conditions, related to the non-performed part of the Agreement, provided that other substantial changes of the Agreement, which would require a concession awarding to be organised, are not required;
- 29.3.4. 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 Concessionaire 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 replacements of the Investor specified in the paragraph 28.3 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 Concessionaire's obligations**

- 30.1. In case of exceptional circumstances due to which the Concessionaire (the Sub-Suppliers or other entities that it employed) cannot ensure continuous and effective performance of the Works and / or 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, it is possible 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 for no longer than *[specify the term, recommended is 90 (ninety) days]*. The right of the Granting institution set forth in this paragraph 30.1 of the Agreement 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 Concessionaire must transfer its obligations to the Granting institution or to the third party specified by the Granting institution upon receipt of the written request of the Granting institution. In such case all rights and obligations of the Concessionaire, including the rights of the Concessionaire arising from agreements with the third parties that are necessary for the proper performance of the obligations are transferred to the Granting institution or to the entity specified by the Granting institution. The Concessionaire must ensure proper transfer of performance of the Works and/or provision of the Services, as well as properly document necessary permits and perform all other necessary actions without delay.
- 30.3. For the purpose of this paragraph 30 of the Agreement, 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;

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- 30.3.2. there is a real threat of serious damage to the environment, public health, the safety of people or property, and, in the opinion of the Granting Authority, the Concessionaire can not prevent it (for example, 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 Concessionaire cannot perform its obligations, last more than *[specify the term, recommended is 15 (fifteen) days]*, but the Granting institution or the third party can ensure the performance of the obligations;
- 30.4. The Granting Authority is recommended to submit *60 (sixty) days before the [written deadline set by the [deadline set]*, before the [written deadline set in advance] is set] at the time of execution of the work or not later than *[the deadline is 30 (thirty) days]* after the Services are started. 30, informs the Concessionaire 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 Granting institution, the indicated actions will be performed;
- 30.4.5. if possible, the impact of such actions on the Concessionaire and its capability to perform the Works or provide the Services during the period of when such actions are performed.
- 30.5. The Concessionaire shall not be liable for the 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.
- 30.6. 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. This entity is supplied with 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.
- 30.7. *[If the Granting Authority pays the Concessionaire remuneration for the transfer of obligations of the Temporary Concessionaire to third parties during the period of remuneration]*.
- 30.8. 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. This entity is supplied with 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 of either Party. *[If the Granting Authority pays the Concessionaire a fee to the Concessionaire for the period during which such a commitment has been transferred to another entity under the Contract:*

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- 30.8.1. Payments of the same amount that would cover the obligations of the Concessionaire to the financiers and 50 (fifty) percent of the profit of the previous month, - if special circumstances arose due to the fault of the Granting authority;
- 30.8.2. no payments are free of charge - if special circumstances arose due to the Concessionaire's fault;
- 30.8.3. payments of such amount that would cover the obligations of the Concessionaire to the financiers and the part of the necessary concessionaire costs for that period, but did not give rise to profit, - if special circumstances arose in the absence of the fault of one of the Parties or with the same fault.

The size of the exact payments in the cases specified in this Clause 30.8 of the Agreement shall be approved by the commission provided for in the Contract clause 53.

- 30.9. After the circumstances due to which the respective obligation of the Concessionaire was taken over or transferred, expire, the rights that were transferred temporarily shall be returned to the Concessionaire without delay and the Agreement is performed as usual.
- 30.10. Temporary transfer of the Concessionaire'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 agreement. The Granting institution cannot exercise actions conflicting with the Direct agreement.

## **XII. SECURITY OF PERFORMANCE OF OBLIGATIONS IN FAVOR OF THE GRANTING INSTITUTION AND THIRD PARTIES**

### **32. Security of performance of obligations in favor of the Granting institution**

- 32.1. When performing the Preconditions for the Agreement's entry into force, the Concessionaire 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 the provision of the Services - *[specified in the Terms and Conditions set by the percentage or fixed amount]* from the total value of the Investments (with VAT) indicated in the Investor's Proposal;
  - 32.1.2. from the beginning of the provision of the Services to the termination of the Agreement (for each 12 (twelve) months period since the beginning of the Services) - *[choose the applicable method [amount] [specify currency] for the amount / or [percent] VAT] or Tax (with no VAT or other Order Determination of the amount of the Security Collateral);*
- 32.2. The concessionaire's performance of the performance of the obligations may be shorter than the term 32.1 of the Agreement (for example, it may be valid for 12 months), but in such a case the Concessionaire must submit to the Grantor no later than *[set deadline, 15 (fifteen) days]* to a new, equivalent Enforcement Entity. No more than within *[specify the term, recommended is 3 Business days]* from the receipt of the security (or the request about its suitability) the Granting institution must confirm whether the security is suitable and equivalent.

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- 32.3. If the Concessionaire fails to perform its obligations that are secured by the security of performance of Obligations, or in the case specified in the paragraph 40 of the Agreement, the Granting institution has the right to use the security of performance of Obligations provided to it. In such case, the enforcement of the obligations shall be used to cover (i) losses caused by the Concessionaire or the Investor and (ii) other financial obligations of the Concessionaire or the Investor to the Granting Authority in accordance with the Contract. Should after such use there would be unspent security funds claimed against the security of performance of Obligations left, they are returned to the Concessionaire within 10 (ten) Business days.
- 32.4. Upon expiry of the Agreement, and within 3 (deliberate) months, the Granting institution does not use the Obligations or the obligations assured by the Concessionaire upon fulfillment of the obligations, the Granting authority shall return the performance of the Enforcement rendered to it not later than *[the deadline is 7 (seven) days recommended]*.

### **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 Concessionaire 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 Granting institution to the Concessionaire *[If the Granting institution is paying Remuneration to the Concessionaire]*. The Concessionaire must immediately notify the Granting institution about the concluded pledge transaction. The Concessionaire 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 Granting institution, which may not be unreasonably withheld. Such consent of the Granting Authority is not required when the value of such collateral does not exceed 100,000 (one hundred thousand) euros and does not relate to the Property Constraint.
- 33.2. The shares of a concessionaire or the rights granted by them, upon prior notification to the Granting Authority, may be pledged to the Financier by concluding the respective agreement between the Grantor and the Investor or the Parent Agreement. If the Funder uses the pledge specified in this paragraph of the Agreement and if the situation provided for in the aforementioned paragraph 40.1 of the Agreement, the period specified in the paragraph is restarted.
- 33.3. The Granting institution undertakes to cooperate and without a valid reason, when it is not contrary to the interests of the Granting institution, does not increase the obligations of the Granting institution, 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 Concessionaire in favor of the Funder. The Granting institution's refusal to issue a permit or a consent must be substantiated.

## **XIII. INSURANCE**

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

- 34.1. List of *Compulsory Insurance Contracts of the Contract* by the terms specified in the Annex 6 The Concessionaire must, at its own expense and at its own expense, not less than the specified amount specified in the Annex 6 to the Agreement and / or legal acts, conclude Insurance

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Contracts as required by the Contract 6 and / or required by law in reliable, financially stable and authorized good reputation in insurance companies. If the insurance amount indicated in the annex 6 to the Agreement is higher than the insurance amount required by the legislation, the amount indicated in the annex No. 6 to the Agreement shall apply. Insurance contracts must enter into force under the terms of the prior entry into force of the agreement. The Concessionaire must have valid Insurance Agreements, required to be concluded according to the statutory requirements, during the entire period when the Agreement is in full force (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. 6 to the Agreement).

- 34.2. No later than within 10 (ten) days from the conclusion of the Insurance Agreements the Concessionaire shall submit their copies and other documents confirming their conclusion and documents confirming the payment of insurance premiums to the Granting institution. 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 Granting institution no later than within 10 (ten) days from the payment of the insurance premiums.
- 34.3. If the Concessionaire fails to perform its obligation to conclude Insurance Agreements specified in the annex No. 6 to the Agreement in due time, they can be concluded by the Granting institution at the expense of the Concessionaire.
- 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 [*specify limit*]. The existence of the conditions specified in this clause must be proved by the party relying on it and, in order to obtain the consent of the other party.
- 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 Concessionaire 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 Concessionaire 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 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 concessionaire is entitled to use the received insurance indemnity not for the restoration of the property only if other means of utilization of the funds would provide greater economic

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and social benefits and the method of utilization of such funds has been obtained by the consent of the Granting Authority or if the Agreement is terminated before the time fixed in Sections 40, 41 and 42 of the Treaty. cases.

- 34.9. While concluding agreements with Sub-Suppliers and other entities, the Concessionaire 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 [*specify the amount*] euros, for the entire period of the agreement performance, except for those cases when the cover of the Concessionaire'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 Concessionaire 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 Concessionaire'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 Concessionaire 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. Licensed by the concessionaire**

- 36.1. After the expiration of the Agreement, the Concessionaire shall grant the Granting institution a indefinite, transferable, royalty-free, and non-exclusive license (allowing to sub-license) to use all and any intellectual property rights granted to a Concessionaire, which are required for Service Provision and Property control and maintenance, including all the rights of the project documentation possessed/ acquired by the Concessionaire, except in cases when the Concessionaire has no right to transfer such rights of intellectual property or he is granted limited licenses. In this case, the Concessionaire cooperates and provides the Granting Authority with the necessary information so that it can independently apply to the Intellectual Property Rights Holders for the necessary licenses.
- 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 Concessionaire or the Investor shall take all the available reasonable means at their own expense to acquire/purchase, if that is not contrary to the legislation of the Republic of Lithuania, the part of such intellectual property rights, sufficient for the Service provision and Property control and maintenance, in favour of Granting institution.
- 36.3. The Concessionaire must compensate all the losses incurred by the Granting institution, caused due to any infringement of the intellectual property rights related to the Service provision and Property control and maintenance.

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### **37. Granting licenses by the issuing authority**

- 37.1. The Granting authority grants to the Concessionaire a non-transferable, non-exclusive and non-remunerated license (granting sub-licenses) for the use of any intellectual property rights owned by the Granting Authority for the design, construction, financing, provision of the Services or Asset Management, The rights of the granting authority are available / acquired in relation to the design documentation.
- 37.2. The Granting institution shall compensate all the losses of the Concessionaire, which are caused by any infringement of the intellectual property rights set out in this paragraph 37 of the Agreement.

## **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 in essence.
- 38.2. The provisions of the Agreement may be amended in the following cases, if both Parties so agree:
- 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 increase the Agreement value by more than 10% of the Agreement, 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 price for the Works or the Service does not exceed 50% of the original value of the Contract. In case of few consecutive amendments, this limit is applied to the value of each amendment.
- 38.2.3.4. 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 Granting institution informs the Concessionaire 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 Concessionaire and the Investor the necessary amendments of the Agreement, if such are necessary and do not change the economic balance of the Parties.

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38.2.3.5. other amendments to the Contract not provided for in this Agreement are possible only if they are in compliance with Article 62 of the Concession Law

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

**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 of the Agreement**

39.1. The cases of the Agreement amendment indicated in the paragraph 38.2 of the Agreement do not relieve the Concessionaire from the performance of the obligations under the Agreement, except for the case, 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 and 38.2.3 of the Agreement, which can have a negative impact on the Concessionaire's exercising of the rights and performance of the obligations under the Agreement, the Concessionaire 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 Concessionaire'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 Granting institution and the end users of services 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 and 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, in particular the Internal rate of return, which was prior to the Fundamental legislative change or the occurrence of the circumstances specified in the paragraphs 38.2.2 and 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 and 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 Project, excluding the possible savings, clearly specifying the additional costs and/or costs that the Concessionaire will not incur because of the Fundamental legislative change or 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;

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- 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 Concessionaire may incur additional costs, the Concessionaire will take all the reasonably available measures to ensure additional financing at the terms favourable to him and the Funder.
- 39.6. *[If the Granting institution is paying Remuneration to the Concessionaire 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 Concessionaire must present to the Granting institution 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 Remuneration must be changed in such way, that the Granting institution would not pay the Concessionaire for the respective savings. In case, if the Fundamental legislative change or the circumstances specified in the paragraphs 38.2.2-38.2.3 of the Agreement result in the increase of the required Investments and/or Costs, the Remuneration must be changed in such way, that the Concessionaire would be compensated the increased Investments or Costs.]*
- 39.7. *[If the Granting institution is paying Fee to the Concessionaire 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 Concessionaire must present to the Granting institution 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 Fee must be changed in such way, that the Granting institution would receive benefit from the Concessionaire for its respective savings. In case, if the Fundamental legislative change or the circumstances specified in the paragraphs 38.2.2-38.2.3.3 of the Agreement result in the increase of the required Investments and/or Costs, the Fee must be changed in such way, that the Concessionaire would be compensated the increased Investments or Costs.]*
- 39.8. If the Concessionaire 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 Granting institution undertakes to compensate the additional costs of the Concessionaire according to the terms specified in this paragraph of the Agreement.
- 39.9. If the Concessionaire has no possibility to ensure the additional financing according to the procedure set out in the paragraph 39.8 of this Agreement, the Granting institution and the Concessionaire shall agree in writing on a respective payment schedule. Should a dispute arise between the Granting institution and the Concessionaire regarding the

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payment schedule, the dispute is resolved in accordance to procedure specified in the paragraph 55 of the Agreement.

- 39.10. 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 Concessionaire or the Investor**

- 40.1. The Granting Authority shall have the right to unilaterally, without resorting to a court or arbitration, terminate the Agreement if the Concessionaire or the Investor fails to perform or improperly performs its obligations under the Treaty and is a material breach of the Contract, and the Granting Authority has notified these Parties to the contrary about the failure to fulfill or improper execution of the Contract, the defaulting or improperly executed Party has not eliminated material breaches of the Agreement in such a way and within such a reasonable period which, in the case of violations related to the performance of the Works, can not be shorter than *[set a deadline, it is recommended 120 (one hundred twenty) days]*, and with the Services *[if provided and / or Public Service]* and other violations is not less than *[set a deadline of 90 (ninety days) recommended]*. The parties may agree to terminate the Agreement without providing the time for the removal of the violation, if such violation cannot be removed or the sense for removal becomes unreasonable. The specific deadline for determining the material breach of the Contract shall be specified in the notification provided by the Granting Authority.
- 40.2. The Parties agree that the material violations of the Agreement in the sense of the paragraph 40.1 are only the following:
- 40.2.1. more than *[the deadline is 60 (sixty) days]*, the date of entry into force of the Agreement as provided for in the Agreement 3.1 is overdue (taking into account all its extensions) due to the failure to comply with the terms and conditions of entry into force of the Advance Contract as belonging to the Concessionaire. The parties may agree not to wait for this period to expire if it is reasonable to conclude that the terms of entry into force of the Advance Contract referred to 3 in the Agreement will not be fulfilled within this time limit;
- 40.2.2. The Concessionaire has not started providing the Services *[if provided and / or Public Services]* to the full extent as from *[the deadline, recommended (30 (thirty days))]* from the deadline set in the Contract Point 4, subject to its extension;
- 40.2.3. The concessionaire does not provide the Granting institution with a new term of the Term, specified in the 32.1 term indicated in the Agreement, or it expires earlier than the term specified therein and does not provide new Enforcement or is not extended in accordance with the procedure set forth in the Agreement 32.2;
- 40.2.4. A concessionaire more than *[set the deadline, it is recommended to 60 (sixty) days]* delay the Investment in the Financial Operational Model if this could delay the start of operation of the Object;

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- 40.2.5. The concessionaire violates the declarations and guarantees provided for in the Agreement 7.1.1, 7.1.2, 7.1.4, 7.1.5, 7.1.6, 7.1.7, 7.1.9, 7.1.12, 7.1.14 in the Agreement.
- 40.2.6. The Concessionaire shall not terminate the use of the Property for other purposes than the Contract, if such use has not been received by the Granting Authority in accordance with the procedure established in the Agreement 8.7, at the request of the Granting Authority in accordance with the procedure established in the Agreement 8.7;
- 40.2.7. If the deviations from the Services specified in the Specifications *[if provided and / or Public services are provided]* exceeds the time limits specified in the Agreement 18.4, or the terms of the *Settlement and Payment Procedure* of the Contract Annex 3, and extend beyond 3 (three) months;
- 40.2.8. *[If the Granting authority pays the Reward to the Concessionaire when during the 12 (twelve) months period during which the Contract has been in operation from the Starting of the Payment of the Grant in accordance with the provisions of the Agreement, the Concessionaire will, in accordance with the Schedule 3 and Payment Procedure Schedule, exceed 3 (three) months' Part of the remuneration] - amounts*];
- 40.2.9. *[If the Concessionaire pays the Payment to the Granting Authority during which, during any period of 9 (nine) months during the period of performance of the Contract from the commencement of payment of the Tax in accordance with the provisions of the Agreement, the amount of impunity applicable to the Concessionaire in accordance with the Schedule and Payment Procedure of Annex 3 to the Agreement exceeds 3 (three) months*;
- 40.2.10. The Concessionaire, the Investor, or the Associated company as well as the directors, officers, or employees thereof are found guilty of a crime related to the 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 40.2.10 of the Agreement is impossible, if within *[specify the term, recommended is 120 (one hundred and twenty) days]* from conviction (irrespective of the right file an appeal or cassation), such director, officer, or employee is dismissed from work at the Concessionaire, the Investor, or the Associated company;
- 40.2.11. The Concessionaire, the Investor or directors, officers 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 *[choose: Remuneration, Fee]*, or the scope and / or quality of the Works or Services;
- 40.2.12. The concessionaire violates the obligations set out in the Agreement 29.2 in relation to the transfer of its rights and obligations;
- 40.2.13. the validity of the Insurance Contracts provided for in the Annex 6 to the Agreement has expired or ceased and / or the Insurance Contracts concluded do not reach the minimum amount of insurance benefit provided for in this Annex;
- 40.2.14. the Concessionaire has mortgaged or transferred its property rights, New property or otherwise secured its performance of the obligations without the prior consent of the Granting institution specified in the paragraph 33.1;

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- 40.2.15. While performing its obligations according to the chapter X of the Agreement or other provisions of the Agreement, the Concessionaire knowingly submits to the Granting institution false or incomplete information which is required to ensure the control of the Agreement performance done by the Granting institution;
- 40.3. Except for the cases specified in the paragraph 40.1 of this Agreement, the Granting institution has a right to (unilaterally) terminate the Agreement without going to court or arbitration if:
- 40.3.1. The liquidation, bankruptcy, insolvency, restructuring or similar procedures are initiated for the Concessionaire, and this gives the ground for the Granting institution to believe that the obligations under the Agreement will not be performed according to the requirements of the Agreement;
- 40.3.2. The Concessionaire at the time of the Tender or the conclusion of the Agreement provided the Granting Authority with inaccurate data relating to its financial status and / or economic activity and / or any other information submitted to the Granting Authority, which was established after the conclusion of the Agreement.
- 40.4. If the main violation of the Contract 40.1 was not eliminated by the term specified in the paragraph 39.1 of the Agreement, the Granting authority shall inform the other Party not later than *[specify the deadline, 60 (sixty days) recommendation]*, on the basis provided for in the Contract Clause 40.3, and, in cases provided for in the Contract, not later than before *[the deadline is set to 30 (thirty) days]*.

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

- 41.1. The Concessionaire has a right to terminate the Agreement unilaterally and without going to a court, when the Granting institution fails to perform the obligations under the Agreement or performs them improperly, and that is a material violation of the Agreement, whereas the Concessionaire has previously notified the Granting institution about the failure to perform or an improper performance, but the Granting institution 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 Granting institution's violations cannot be less than *[specify the term, recommended is 60 (sixty) days]* for failure to perform the payment obligations or in cases of an improper performance *If the Granting institution is paying Remuneration to the Concessionaire*, 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. more than *[set the deadline, it is recommended that 45 (forty five) days]* of the date of entry into force of the paragraph 3.2 of the Agreement stipulate the full date (taking into account all its extensions) due to the failure to comply with the terms of entry into force of the Advance Contract as belonging to the Granting Authority;
- 41.2.2. *[If the Granting Authority pays a fee to the concessionaire the Granting Authority more than [to set the time limit, it is recommended to 60 (sixty) days] it is late to pay the Concessionaire*

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any contractual payments, or the amount of any remuneration that is late for one year exceeds half the amount of one Payment of the Grant

- 41.2.3. the Granting institution violates the warranties and representation set out in the paragraphs 6.1.1, 6.1.4, 6.1.6, and 6.1.8 of the Agreement, and it has a material impact on the proper performance of the Agreement;
- 41.2.4. The Granting institution transfers its rights and obligations to a third party without the prior consent of the Concessionaire specified in the paragraph 29.1 of the Agreement;
- 41.2.5. The shares (or any part thereof), property, or New property of the Investor or the Concessionaire or part thereof are taken for the public needs, sold forcefully or transferred to a third party on other statutory grounds of similar nature, without the will of the shareholders of the Concessionaire or the Investor, unless and to the extent expressly provided otherwise in this Agreement;
- 41.2.6. if due to the requirements of the legislation amended or newly passed after the signing of the Agreement, the activities in which the Concessionaire is engaged (performance of Works or Service provision) become unlawful or the execution of such activities becomes impossible or essentially impeded;

if the Concessionaire is unable to perform the activity (to perform the Works or to provide the Services) during the 2 (two) consecutive months for breach by the Granting Authority or the implementation of such activity is substantially complicated.

- 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 Concessionaire must inform the Granting institution about the termination of the Agreement on the ground specified in the paragraph 41.1 of the Agreement, no later than *[specify the term, recommended is 30 (thirty) days]* in advance.

## **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 or arbitration, 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 *[specify the term, recommended is 150 (one hundred and fifty) days]* in a row. The parties may agree to terminate the Agreement without providing the time for the removal of the violation, if such violation cannot be removed or the sense for removal becomes unreasonable.
- 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 *[specify the term, recommended is 30 (thirty) days]* in advance.

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

- 43.1. Force majeure means any event specified in the paragraph 43.2 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 took 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 43.2 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)*]

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**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 Granting Authority pays the Concessionaire a Fee* If the Concessionaire fails to provide the Services in circumstances of force majeure, the Granting Authority shall suspend the Indemnity [*specify the part of the Remuneration which it does not pay*] until the date of the disappearance of such circumstances].
- 43.9. [*If the Concessionaire grants to the Granting Authority a Tax* If the Concessionaire fails to provide the Services due to circumstances of force majeure, the Concessionaire shall suspend the Payment [*to specify the Unpaid Fee*] before the expiry of such circumstances].

#### **44. Compensation after the termination of the agreement due to the circumstances depending on the Concessionaire 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 Concessionaire or due to the circumstances that depend on them, the Granting institution shall pay to the Concessionaire only the compensation, which is calculated according to the following equation:

*[applies only to projects where construction is foreseen. In each case the relevance of the formula variables must be evaluated and the formula adapted to a specific project ]*

**NK = TV – D – B – DIGN – VN, where:**

**NK** – Compensation for the termination of the Agreement, which cannot be higher than the value of the refundable property transferred [*if applicable, including the New one*] to the Granting institution on the day of its return, determined by an independent property appraiser in accordance with the legislation of the Republic of Lithuania;

**TV** – value of the transferred property [*if applicable, including the New one*];

**D** – compulsory insurance benefits received by the Concessionaire under the Agreement due to its termination;

**B** - not yet reckoned / not extracted from the Concessionaire's penalty, payable both in accordance with the Agreement and in accordance with the Settlement and Payment Procedure set forth in the Annex 3 to the Agreement;

**DIGN** - the portion of the return on investment that exceeds the target return on investment specified in the Offer, which the Investor and / or the Concessionaire received during the period of validity of the Agreement prior to the notification of the termination of the Contract in accordance with the procedure set out in the paragraph 40.4 of the Agreement, irrespective of the form in which DIGN has been paid to the Concessionaire's shareholders;

**VN** – the direct losses of the Granting institution incurred due to the termination of the Agreement. Only such amount of the direct losses may be deducted from the compensation for the termination

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of the Agreement (NK), due to the size of which the Granting institution and the Concessionaire 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.

44.2. 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 Concessionaire and the Granting institution that substantiate the respective amounts according to the paragraph 44.1 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 Concessionaire's financial statements are not audited during the calculation of the exact amounts under the paragraph 44 of the Agreement, the Investor or the Concessionaire 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.

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

#### **45. Compensation after the termination of the agreement due to the circumstances depending on the Granting institution**

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 Granting institution, the compensation paid to the Concessionaire is calculated according to the following equation:

*[applicable only to the projects, where new construction is planned. In each case the relevance of the formula variables must be evaluated and the formula adapted to a specific project]*

$NK = TV + FG + I - D - B$ , where:

**NK** – Compensation for the termination of the Agreement, which cannot be higher than the value of the refundable property transferred [*if applicable, including the New one*] to the

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Granting institution on the day of its return, determined by an independent property appraiser in accordance with the legislation of the Republic of Lithuania:

**TV** – value of the transferred property [if applicable, including the New one];

**FG** - Costs of repayment of financing granted to the Comptroller and contractual obligations (including, but not limited to, related fees, interest and costs of termination of financing contracts) up to normal market costs;

**I** - the paid-up shares of the Concessionaire, minus the distributed profit distributed, and the amount of subordinated loans granted and still outstanding;

**D** – compulsory insurance benefits received by the Concessionaire under the Agreement due to its termination;

**B** - not yet reckoned / not extracted from the Concessionaire's penalty, payable both in accordance with the Agreement and in accordance with the Settlement and Payment Procedure set forth in the Annex 3 to the Agreement.

45.2. 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 Concessionaire and the Granting institution that substantiate the respective amounts according to the paragraph 44.1 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 Concessionaire's financial statements are not audited during the calculation of the exact amounts under the paragraph 44 of the Agreement, the Investor or the Concessionaire 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.

45.3. The amount of the compensation includes all and any losses and lost earnings of the Investor and the Concessionaire related to the expiration of the Agreement, and no other and / or greater losses of the Investor and the Concessionaire (if any) are compensated, and the Investor and the Concessionaire 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 42.1 of the Agreement, the Granting institution pays the compensation to the Concessionaire, it is calculated according to the following equation:

*[applicable only to the projects, where new construction is planned. In each case the relevance of the formula variables must be evaluated and the formula adapted to a specific project]*

**NK = 0,5\*(TV+FG) – D – B, where:**

**NK** – Compensation for the termination of the Agreement, which cannot be higher than the value of the refundable property transferred [*if applicable, including the New one*] to the Granting institution on the day of its return, determined by an independent property appraiser in accordance with the legislation of the Republic of Lithuania:

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**TV** – value of the transferred property [if applicable, including the New one];

**FG** - Costs of repayment of financing and contractual obligations of the Financed Concessionaire (including, but not limited to, related fees, interest and costs of termination of financing contracts) up to normal market costs;

**D** – compulsory insurance benefits received by the Concessionaire under the Agreement due to its termination;

**B** - not yet reckoned / not extracted from the Concessionaire's penalty, payable both in accordance with the Agreement and in accordance with the Monitoring and Settlement mechanism in the Annex 3 to the Agreement.

46.2. 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 Concessionaire and the Granting institution that substantiate the respective amounts according to the paragraph 44.1 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 Concessionaire's financial statements are not audited during the calculation of the exact amounts under the paragraph 44 of the Agreement, the Investor or the Concessionaire 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.

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

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

47.1. Compensation payable by the awarding authority under the paragraphs 44.1 and 46.1 of the Agreement must be paid not later than within *[set deadline, recommended - 30 (thirty) days]* from the date of termination of the Agreement or, at the discretion of the Granting authority, paid in installments not less than the Concessionaire, to be repaid in accordance with the arrangements for the Grantor the obligation to pay the financing provided in accordance with the Agreement within the timeframes specified in such agreements. In such a case, the full amount of the compensation to the Concessionaire shall be paid within a period not exceeding the remaining term of the Contract if this is not terminated. Compensation paid in installments shall be paid in annual interest equal to the annual interest paid by the Concessionaire's Funder, but not higher than those paid by the Concessionaire before the expiry of the Contract.

47.2. The compensation to be paid by the Granting authority pursuant to the Agreement 45.1 shall be one amount not later than *[set by the deadline, 90 (ninety days)]* days after the date of signing the Asset returning act (s).

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47.3. The termination compensation provided for in the Agreement and the clauses 44, 45 and 46 is the only compensation or other payment by the Parties to each other for the termination of the Agreement. No other payments for the termination of the Agreement will be made.

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

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

- 48.1. If the compliance of the Concessionaire's activity with the Service Requirements specified in the Specifications is found to be inconsistent with these requirements, *[If the Granting Authority pays to the Concessionaire the remuneration set out in the Specifications applicable to the Concessionaire, which are deducted from the Remuneration set forth in the Agreement and the Annex 3 to the Agreement Procedure for Settlement and Payment. When applying the deductions from the to Remuneration, no other contractual penalties, interest or other forms of loss compensation can be applied with respect to the Concessionaire for the same breach of the Agreement, except for other losses specified in the paragraph 48 of this Agreement (The duty of the Concessionaire to compensate the losses), if these losses occurred due to the actions of the Concessionaire (any act or omission)]. [If the Concessionaire pays to the Granting Authority, the Concessionaire shall pay the Tax for each day prior to the day of removal of the violation as provided for in the Settlement and Payment Procedure set forth in the Annex 3. When applying these contractual penalties, no other contractual penalties, interest or other forms of loss compensation can be applied with respect to the Concessionaire for the same breach of the Agreement, except for other losses specified in the paragraph 48 of this Agreement (The duty of the Concessionaire to compensate the losses), if these losses occurred due to the actions of the Concessionaire (any act or omission)]*
- 48.2. If the Concessionaire does not complete the Works in accordance with the terms of the Contract and the Offer, subject to any extensions in accordance with the provisions of the Agreement, the Concessionaire shall pay *[to set the amount recommended by 500 (five hundred euros)]* for each day before the date of removal of the violation.
- 48.3. The application of the liability specified in this paragraph 48 of the Agreement 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.
- 48.4. The liability of any party under this 48 Clause of this Agreement may not exceed more than 5 (five) percent of the value of the Investment (excluding VAT). The Parties confirm the general understanding that the limitation of liability specified in this Clause 23.15 of the Agreement does not apply to the availability of the Object or part thereof specified in the Agreement item 48.1 and in the cases specified in the Concessionaire's Performance Specifications for the Object Condition and Service Provisions specified in the Item.
- 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 article is considered to be the minimum losses of the Parties discussed in advance and is the only permissive measure of their compensation.

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- 48.6. Prior to the performance of payments according to this paragraph 48, the Parties have the right to perform set-off of mutual payments or parts thereof, if it is required according to the imperative provisions of the legislation of the Republic of Lithuania. , *[If the Granting Authority pays the Concessionaire Compensation This provision does not apply to deductions in accordance with the Schedule and Payment Order of the Schedule in the Annex 3 of the Contract from the Fee.*
- 48.7. At the request of the respective Party, the contractual penalties, specified in this article, must be paid within *[specify the term, recommended is 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 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 performance or non-performance of the first Party obligations under the Agreement, including Property *[and if applicable, including Land plot]* 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 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, but no later than within 5 (five) Business days, 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 to compensate losses 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 other 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 the paragraph 49.

### **XVIII. OTHER PROVISIONS**

#### **50. Confidentiality**

- 50.1. 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 this Agreement, 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,

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directly or indirectly related to it, confidential insofar as it is not in conflict with the requirements of the Law on Concessions (hereinafter - the **Confidential information**).

- 50.2. 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:
- 50.2.1. if the Parties agree in writing to inform the media or the third Party;
- 50.2.2. 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);
- 50.2.3. 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);
- 50.2.4. Confidential information is disclosed to the Ministry of Finance of the Republic of Lithuania, National Audit Office, State Tax Inspectorate, Central project management agency PI, Public Procurement Office, or other competent public and control institutions, performing the functions assigned to them;
- 50.2.5. the disclosure of the Confidential information is required under the applicable legislation;
- 50.2.6. the Confidential information is disclosed by the Parties to their employees, 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).
- 50.3. The following information will not be considered confidential and can be published publicly:
- 50.3.1. Object of the Agreement – the composition and the scope of the Services and Works for which the Agreement is concluded;
- 50.3.2. Term of validity of the Agreement, including the date of its conclusion;
- 50.3.3. Parties to the Agreement;
- 50.3.4. Value of the Agreement;
- 50.3.5. Value of the planned Investments;
- 50.3.6. Granting authority [*to choose: Remuneration, Fee*] to the Concessionaire or the Concessionaire (detailing by *choice: Remuneration, Fee*, as specified in Annex 3 to the Agreement, Settlement and Payment Procedure).
- 50.3.7. Amendments of the Agreement
- 50.3.8. Payments by the parties, damages and compensation;
- 50.3.9. Concessionaire's annual financial report;
- 50.3.10. Other information which could not be considered as confidential according to the Law on Concessions.

## **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*

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*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. dispatching by courier service, or
  - 51.1.4. sent by official e-mail or other electronic means of the Investor, the Concessionaire and the Granting authority
- 51.2. All Agreement related reports are to be sent to the Parties at the following addresses:

| Party                            | Contact details   |
|----------------------------------|---|
| <i>[Granting institution]</i>    | <b>To:</b> <i>[name, last name of the person responsible]</i><br><b>Address:</b> <i>[address]</i><br><b>E-mail address:</b> <i>[e-mail address]</i> |
| <i>[if there is a Depositor]</i> | <b>To:</b> <i>[name, last name of the person responsible]</i><br><b>Address:</b> <i>[address]</i><br><b>E-mail address:</b> <i>[e-mail address]</i> |
| <i>[Concessionaire]</i>          | <b>To:</b> <i>[name, last name of the person responsible]</i><br><b>Address:</b> <i>[address]</i><br><b>E-mail address:</b> <i>[e-mail address]</i> |
| <i>[Investor]</i>                | <b>To:</b> <i>[name, last name of the person responsible]</i><br><b>Address:</b> <i>[address]</i><br><b>E-mail address:</b> <i>[e-mail address]</i> |

51.3. The Parties without delay, but no later than within *[specify the term, recommended is 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.

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### **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 53.1 of the Agreement or in other cases when the Parties agree so, decisions are made by the commission formed of the representatives of the Concessionaire from one side and the Granting institution 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 or to transfer to this institution the respective dispute of the Parties for resolution.
- 53.2. The Commission shall comprise [*number of representatives, recommended 6 (six)*] representatives, equally on behalf of the Concessionaire and the Granting Authority. The Concessionaire and the Granting Authority shall appoint to the Commission, after [*appointing a representative number, recommending 3 (three)*] representatives - [*appointing representatives, advising on* legal, financial and technical matters)], the representatives of the Commission shall be appointed by each Party within [*set deadline, recommended - 10 (ten) Business Days*] from the date of signing of the Agreement, informing the appointed representatives by informing the other Party. 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 [*specify the term, recommended is 5 (five) Business days*] since the establishment of the specified circumstances. If required, the financier or other specialist may also be appointed to the Commission.
- 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 [*specify the number of members, recommended is 4 (four)*] 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. 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 Granting institution 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 [*specify the term, recommended is 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 [*specify the term, recommended is 20 (twenty) Business days*], the issue is transferred for resolution according to the terms set out in the paragraph 55 of the Agreement.

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## **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 (arbitration) decision with respect to itself or its funds, and the Concessionaire and the Investor waive it against their property as well.

## **55. Dispute resolution**

- 55.1. Parties will try to resolve any dispute or disagreement arising out of the Agreement through mutual negotiations and with full cooperation.
- 55.2. If the Agreement does not provide for any other appropriate dispute resolution procedure, within [*time limits, it is recommended that 30 (thirty)*] days after notification to the other Party of the disputes, disagreements, objections or demands of the present dispute, the Parties fail to reach a common agreement or to enter into negotiations, any dispute arising from the Agreement, the disagreement, objection, or claim is transferred by the Parties to a panel of 3 (three) experts. No later than within [*specify the term, recommended is 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 Concessionaire 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 Granting institution 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 [*specify the term, recommended is 15 (fifteen)*] Business days from their appointment, in such case at the request of the Parties the third expert is selected by the Granting institution within [*specify the term, recommended is 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 for resolution to [*choose*

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the court of the Republic of Lithuania based on the location of the registered office of the Granting institution *or* [specify the name] arbitration].

## **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 contract is [number] in original copies [state the language or languages] one for each of the Contracting Parties.

## **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 Granting institution during the Investor selection procedure, 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 Concessionaire, 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 Concessionaire together declare and confirm that the Concessionaire 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 Conditions**

**2 Final tender**

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- 3 Terms of settlement and payments**
- 4 Matrix of risk distribution among the Parties**
- 5 Preconditions for the Agreement's entry into force**
- 6 List of the mandatory insurance agreements**
- 7 List of associated companies**
- 8 Requirements for the property that is being returned**
- 9 Direct agreement**
- 10 *[if applicable]* the List of the employees that are being transferred]**

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

For the **[Granting institution]:** *[Position, name, last name]*

\_\_\_\_\_  
signature

*[If present for [the Transferor]:]* *[Position, name, last name]*

\_\_\_\_\_  
signature]

For the **[Concessionaire]:** *[Position, name, last name]*

\_\_\_\_\_  
signature

For the **[Investor]:** *[Position, name, last name]*

\_\_\_\_\_  
signature]

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**1 Annex to the Agreement**

**THE CONDITIONS**

*[Add the Conditions]*

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**2 Annex to the Agreement**

**THE TENDER**

*[Add the Concessionaire's Tender]*

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### **3 Annex to the Agreement**

#### **TERMS OF SETTLEMENT AND PAYMENTS**

*[Add the Terms of settlement and payments]*

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#### 4 Annex to the Agreement

### 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]*

| No.  | Risk category  | Risk description  | Distribution         |                |  |
|------|--|---|----------------------|----------------|--|
|      |  |   | Granting institution | Concessionaire | General info<br><i>(the principles of risk distribution are specified)</i> |
| 1.   | <b>Design (planning) quality risk</b>  |   |                      |                |  |
| 1.1. | A technical project of a building or its separate parts prepared under the order of the Granting institution is inaccurate (if the Concessionaire must use the building project or its separate parts)     | <p>A risk factor manifests when it turns out that the technical project of a building or its separate parts prepared by the Granting institution are inaccurate.</p> <p>The occurrence of a risk factor may imply an additional expenses of the Concessionaire for design services, for the Concessionaire, this could also lead to increased Work costs as well as delay in Works.</p> |                      |                |  |
| 1.2. | Redesign services are mandatory (if the Concessionaire must use the technical project of the building or its separate parts and the inaccuracies in this technical project of the building are identified) | <p>The manifestation of a risk factor means that the technical project of a building or its separate parts prepared by the Granting institution are inaccurate.</p> <p>The occurrence of a risk factor may imply an additional expenses of the Concessionaire for design services, for the Concessionaire, this could also lead to increased Work costs as well as delay in Works.</p>  |                      |                |  |

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|      |   |   |  |  |  |
|------|---|---|--|--|--|
| 1.3. | A technical project (including a work project) of the building prepared by the Concessionaire or a technical work project is inaccurate | The manifestation of the risk factor means the additional design costs that the Concessionaire 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.   |  |  |  |
| 1.4. | 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.   |  |  |  |
| 1.5. | The design task prepared by the Concessionaire 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, it becomes apparent that the Object will not be suitable for its intended use or will be used in a different scope than was planned. It is estimated that the manifestation of the risk factor determines the increase in the operating costs.   |  |  |  |
| 1.6. | 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 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 Works are stopped due to design inaccuracies or the need for redesign on the site |  |  |  |

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|      |  |  |  |  |  |
|------|--|--|--|--|--|
| 1.7. | 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.   |  |  |  |
| 1.8. | 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 Work: delay in the provision of the design services prevent Works from starting, the seasonal impact of the 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. This risk does not apply in the case of a Dismissal and / or Additional works and / or services.   |  |  |  |
| 1.9. | At the time of the Procurement, the Investor did not propose to specify the inaccurate requirements set for the Object by the Granting institution | When the designing activity starts, it becomes clear that the requirements set by the Granting institution 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 Granting institution due to their mutual incompatibility. In the event when the requirements set by the Granting institution 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. |  |  |  |

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| 1.10. | At the time of the Procurement, the Investor proposed to specify the inaccurate requirements set for the Object by the Granting institution   | At the time of the Procurement, the Investor proposes to clarify the requirements set for the Object by the Granting institution, which are deemed as inaccurate or potentially unfulfillable during the actual implementation of the project. If the risk factor manifests the designing and Work scope changes, therefore, the cost of Works increases, and a need to extend the duration of the Works occurs.  |  |  |  |
| 1.11. | The restrictions on the control, use, and disposition of the Land plot and / or Property that is being transferred, or the requirements applicable to the Land plot and / or Property that is being transferred, were not disclosed to the Investor during the Procurement if they are not publicly available | During the Procurement, the Granting institution fails to disclose the information on the restrictions of the rights in Rem (control, use, and disposition) are imposed on the Land plot and / or Property that is being transferred required for the implementation of the project that is known or available to it. The Investor has submitted the Tender only with the consideration of the information that was disclosed to it by the Granting institution during the Procurement, therefore, upon the commencement of the implementation of the Project and after discovering the restrictions of the rights <i>in Rem</i> of the Land plot and / or Property that is being transferred, a situation is possible where the Investor / Concessionaire is unable to implement the Project according to the Tender that it prepared. In this case, the Investor / Concessionaire must reorganize its activities according to the changed circumstances of the Project implementation, i.e. incur unplanned Project management costs. |  |  |  |

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| 1.12. | The Granting institution during the Procurement disclosed the restrictions on the control, use, and disposal of the Land plot and / or Property that is being transferred | The restrictions of the rights <i>in Rem</i> (control, use, and disposition) are imposed on the Land plot and / or Property that is being transferred 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 Granting institution 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 / or Property that is being transferred and coordinated this Project implementation plan with the Granting institution. In this case, the Investor / Concessionaire must reorganize its activities according to the changed circumstances of the project implementation, i.e. incur unplanned Project management costs. |  |  |  |
| 1.13. | At the time of purchase, it was agreed upon the establishment / changing of the special Land plot and / or Property that is being transferred use conditions              | A specific agreement on the special Land plot and / or Property that is being transferred use conditions may be reached by the parties at the time of Procurement, but during the performance of agreements the Investor / Concessionaire may, in the implementation of the agreements, deviations from the planned schedule and the budget allocated for the implementation of the activities are possible.  |  |  |  |
| 1.14. | At the time of purchase, it was not agreed upon the establishment / changing of the special Land plot and / or Property that is   | As the implementation of the Project is commenced, the circumstances that made it necessary to change the special Land plot and / or Property that is being transferred use conditions, became apparent. If the   |  |  |  |

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|       | being transferred use conditions   | special Land plot and / or Property that is being transferred use conditions are set or changed, it may become necessary to modify the planned project solutions, therefore, the Concessionaire will incur unplanned costs of design services.   |  |  |  |
| 1.15. | 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. |  |  |  |
| 1.16. | Requirements of the Cultural heritage protection known in advance are not evaluated                            | At the time of the Procurement, the Granting institution presented to the Investor the known restrictions of the cultural heritage, which had to be observed by the Concessionaire when designing the Object. Regardless of the reasons, a Concessionaire may assess the requirements of the cultural heritage protection inadequately.  |  |  |  |

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| 1.17. | During the provision of design services, the inaccuracies / deficiencies of the environmental impact assessment prepared by the Granting institution 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.  |  |  |  |
| 1.18. | During the provision of design services, the inaccuracies / deficiencies of the environmental impact assessment prepared by the Concessionaire 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.  |  |  |  |
| 1.19. | Documents required for the designing, the access to which is the obligation of the Granting institution, do not become accessible within the specified period                                     | The Concessionaire determines the duration and plan of the design service provision on the assumption that the Granting institution 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 Granting institution is late in submitting the necessary documents to the Concessionaire, this may affect the entire duration and quality of the Project implementation. |  |  |  |
| 1.20. | 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.<br><br>These circumstances are beyond the control of the Parties. However, in cases where the effects of <i>force majeure</i> circumstances can be insured, then all the risk that they pose is assumed by the Concessionaire.   |  |  |  |

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| 1.21. | The Granting institution changes the requirements for the Object during the designing phase (including insignificant changes)   | A situation may arise, when during the design phase, the Granting institution specifies to the Concessionaire, 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.  |  |  |  |
| 1.22. | 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 Concessionaire 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 Granting institution or other competent state/municipal institutions fail 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.   |  |  |  |
| 1.23. | 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. |  |  |  |
| 2.    | <b>Quality risk of the purchased (provided) Works</b>   |   |  |  |  |

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| 2.1 | Damage that is caused due to the condition of the Object before it is transferred to the Concessionaire                                | If due to the condition of the Object, damage to the environment may be caused: pollutants may be released into the environment. The manifestation of the risk factor means a change in the cost of Works, because if the environmental damage would occur, the consequences of environmental damage should be eliminated first, and only then the planned Works should be performed.   |  |  |  |
| 2.2 | Damage caused to the environment during the performance of Works or Repairs in the Object when it is transferred to the Concessionaire | Environmental damage can be caused during the performance of Works or repairs: 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 Works/repairs, since should the environmental damage would be caused, the estimate of Works/repairs growth would increase by the cost of the environmental damage elimination works.               |  |  |  |
| 2.6 | The quality of the Works is not ensured due to adverse weather conditions  | Due to unfavorable weather conditions (except for the circumstances of the <i>force majeure</i> ) performance of the Works cannot be carried out according to the plan, it may be necessary to use additional tools to perform Works. The manifestation of the risk factor implies a change in the costs of the Works, because due to the weather conditions the Works can take longer than planned, also the should the need for additional Works occur it may lead to the the unplanned increase in the Works estimate. |  |  |  |
| 2.8 | The quality of the Works is not ensured due to the organization of technological processes   | The situation is possible where the quality of the Works or Repairs 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 Works/Repairs,   |  |  |  |

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|      |   | deviations from their performance schedule.  |  |  |  |
| 2.9  | The quality of the Works or Repairs is not ensured due to the changes in the statutory quality requirements, except for the Fundamental legislative changes, during the performance of the Works or repairs | New legislation is passed or the current one is amended (except for the Fundamental legislative changes) during the performance of the Works or repairs by the Concessionaire, which defines the requirements for the quality of the Works or the Repairs that are being performed, if such legislation is applicable to Works and / or Repairs.   |  |  |  |
| 2.10 | The quality of the Works/Repairs is not guaranteed due to human resources   | The quality of the Works/Repairs 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 Works/Repairs 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 Works/Repairs, is also possible. |  |  |  |
| 2.11 | A property located in adjacent areas is damaged during the Works  | In the course of Works/Repairs on the site, the activity of the machinery, people, and / or sub-suppliers 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 Works/Repairs, since should the damage to the adjacent territories would   |  |  |  |

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|      |   | be caused, the estimate of Works/Repairs would increase by the cost of the property damage elimination.  |  |  |  |
| 2.12 | Previously unknown restrictions of Works regarding the requirements of archeological and cultural heritage protection are become apparent         | 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 Works completely in another way in order to ensure the protection of cultural heritage. Costs of Works due to the manifestation of this risk factor may increase as: 1) the planned duration of 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 Works technological solution proposed during the Procurement may be required; 3) the scope of the Works may change; 4) it may be necessary to employ additional specialists (e.g. archaeologists, historians, etc.) in the Concessionaire's team. |  |  |  |
| 2.13 | The Granting institution changes the requirements for the quality of the Works during the Works execution phase (including insignificant changes) | After the designing phase, the Granting institution specifies to the Concessionaire, 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.   |  |  |  |
| 2.14 | The requirements for the quality of the Works are changed at the initiative and / or demand of the Concessionaire                                 | A situation may arise when the Concessionaire initiates a change of the requirements for the quality of the contracting works after the designing phase. For example, the Concessionaire may propose to set a higher energy  |  |  |  |

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|           |   | 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.  |  |  |  |
| 2.15      | The quality of the Works is not guaranteed due to the suitability and sufficiency of the technological resources                  | A situation when the quality of the Works is not ensured due to the suitability, sufficiency, and other related factors of the technological resources, is possible.   |  |  |  |
| 2.16      | The quality of the Works and Repairs is not guaranteed due to the price and/or quality of Utilities.                              | The quality of the Works/Repairs is not guaranteed due to the price, quality and availability of utilities.  |  |  |  |
| 2.17      | The quality of the Works or Repairs is not ensured due to the availability and quality of raw materials, materials and mechanisms | The quality of the Works/Repairs is not ensured due to the timely unavailability and quality of the raw materials, materials, and machinery required for their performance.  |  |  |  |
| 2.18      | The quality of the Works or Repairs is not guaranteed due to the actions or omissions of the Sub-suppliers                        | Sub-suppliers are employed to perform the Works/Repairs, but they do not observe the obligations, do not ensure the required quality of Works, etc.  |  |  |  |
| 2.19      | Circumstances of the <i>force majeure</i> occur during the performance of Works or Repairs  | The manifestation of the circumstances of the <i>force majeure</i> may lead to a disruption in the quality of the Works/Repairs, or the complete or partial termination of the Works/Repairs process. The definition of the circumstances of the <i>force majeure</i> is provided in the Agreement.<br><br>In cases where the effects of <i>force majeure</i> circumstances must be insured according to the terms of the Agreement, then all the risk is assumed by the Concessionaire. |  |  |  |
| <b>3.</b> | <b>Quality risk of the purchased (provided) Services</b>  |  |  |  |  |

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| 3.1 | Damage is caused to the environment during the provision of the Services, when the provision of Services is the responsibility of the Concessionaire   | 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 | Damage is caused to the environment during the provision of the Services and / or Public services when the provision of the Services and / or Public Services is the responsibility of the Granting institution. | A risk factor manifests when the Granting institution causes damage to the environment during the provision of the Services and / or Public Services, i.e. upon the entry into force of the Agreement, the use of improper means, equipment or human resources, or processes at the time of the provision of the Services and / or the Public Services the pollutants are released into the environment or the damage is caused by other means.<br>The manifestation of the risk factor means the change in the cost of the Concessionaire, since, if the damage would be caused to the environment, the environmental damage elimination costs would occur, and these would have to be compensated by the Granting institution. |  |  |  |
| 3.3 | 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.  |  |  |  |
| 3.4 | 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.   |  |  |  |

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| 3.5 | The Granting institution changes the established requirements during the provision of the Services (including insignificant changes) | During the phase of the Service provision, the Granting institution specifies to the Concessionaire, 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.   |  |  |  |
| 3.6 | The requirements for the quality of the Services are changed at the initiative and / or demand of the Concessionaire                 | The Concessionaire initiates a change in the Service quality requirements after the commencement of the Service provision phase.  |  |  |  |
| 3.7 | 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/ repairs 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. |  |  |  |
| 3.8 | 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.<br><br>In cases where the effects of <i>force majeure</i> circumstances must be insured according to the terms of the Agreement, then all the risk is assumed by the Concessionaire.  |  |  |  |

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| 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.   |  |  |
| 4.3 | The requirements for the quality (including insignificant changes) are changed during the creation (installation) and delivery of the New property | After the Agreement's entry into force, the Granting institution 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   |  |  |
| 4.4 | 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, |  |  |

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|           |   | machinery, or other property, is also possible.   |  |  |  |
| 4.5       | 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.<br><br>In cases where the effects of <i>force majeure</i> circumstances must be insured according to the terms of the Agreement, then all the risk is assumed by the Concessionaire. |  |  |  |
| 4.6.      | The requirements for the New property are changed at the initiative and / or demand of the Concessionaire | After the commencement of the implementation of the Agreement, the Concessionaire 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 Concessionaire, while being responsible for the funding of the Project, assumes the risk to fulfill all conditions of the Funder.   |  |  |  |

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| 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 | Changes in the need for funding due to the change of the VAT rate  | A situation is possible where, after the change in the VAT rate, there is a need to provide additional funding than was calculated during the creation of the Financial activity model. Changes in the VAT 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 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.   |  |  |  |
| 5.8 | The need for funding changes due to change of the rate of any tax, other than value added tax, or toll after the Agreement's entry into full 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 the actions or omission of Sub-suppliers   | Sub-suppliers or other entities are employed to ensure funding, but they do not observe the obligations, carry out other unscheduled actions that  |  |  |  |

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|           |  | change the need for funding from other sources.  |  |  |  |
| <b>6.</b> | <b>The risk of the suitability of the Services that are being provided</b>   |  |  |  |  |
| 6.1       | Delay in the commencement of Service provision or supply of goods  | 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 Granting institution changes the established quality requirements for the Services after the end of the investment process | During the Service provision, the Granting institution specifies to the Concessionaire, 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 Agreement, the Concessionaire is responsible for the provision of the Services and therefore assumes the risk of failure to obtain the permits necessary for the performance of Services, except insofar as it depends on the failure of the Granting institution to perform its obligations under the Agreement.  |  |  |  |
| 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 ensurance 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         |  |  |  |

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|           |   | 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 Work phase, except for the Fundamental legislative changes.. | 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>The risk of demand for the Services that are being provided</b>                              |  |  |  |  |
| 7.1       | The number of competitors and their activities changes  | The demand may change due to changes in the number of competitors and their marketing, sales promotion campaigns, etc.<br><br>The manifestation of a risk factor means increased demand and, consequently, an increase in the operating income flow after the decrease of the number of competitors. An increase in the number of  |  |  |  |

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|           |   |  |  |  |  |
|-----------|---|--|--|--|--|
|           |   | competitors or an increase in the intensity of their marketing, sales promotion, and similar activities, respectively, leads to a decrease in revenue flow.  |  |  |  |
| 7.2       | The opinion of consumers about the Services provided or supplied goods 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  |  |  |  |
| 7.3       | The pricing is changed  | Risk factor manifests when demand changes due to a change in the pricing of Services or goods.<br><br>The manifestation of the risk factor means both a potential increase as well as decrease in demand, since the manifestation of the risk factor affects the demand.   |  |  |  |
| 7.4       | Changes in demographic factors  | The risk factor manifests when there is a change in the number of consumers, their composition, place of residence, or other changes occur - i.e. changes in demographic factors.<br><br>The manifestation of the risk factor means both an increase as well as decrease in demand, since the manifestation of the risk factor affects the demand. |  |  |  |
| 7.5       | The technologies that do not meet the Specification, Tender, and / or Service quality becoming 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 Property residual value at the end of the Agreement</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 the requirements of the Agreement and/or Tender were not observed. These deviations may indicate that the Property did not   |  |  |  |

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|      |   |  |  |  |  |
|------|---|--|--|--|--|
|      |   | undergo planned repairs, preventive inspections were not carried out on time.  |  |  |  |
| 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 Repairs 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 Concessionaire's transactions with third parties       | Concessionaire's 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. |  |  |  |
| 8.5. | Restrictions set on the rights of Property control, use, and disposition with respect to the Granting institution's transactions with third parties | Granting institution made transactions with third parties during the reference period and the restrictions on the rights of Property control, use, and disposition are imposed. These restrictions may imply additional Investments or increase of costs.  |  |  |  |

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## 5 Annex to the Agreement

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

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 The conclusion and entry into force in full of designing, contractual works, equipment and service procurement agreements with Sub-suppliers specified in the Tender;
- 2 *[if applicable, the obtaining of the permit for concentration from the Competition Council;]*
- 3 The obtaining of consents from third parties regarding the conclusion of the *[choose: lease, loan for use, or trust]* agreements related to them;
- 4 Conclusion of the agreements with the Funders;
- 5 Obtaining and / or renewal of the necessary permits, licenses, and certificates on behalf of the Concessionaire;
- 6 Provision of of the Security of the performance of obligations specified in the paragraph 32 of the Agreement.
- 7 Conclusion of insurance agreements specified in the Annex 6 to the Agreement;
- 8 *[if applicable, the waiver of the loan for use rights to Land plot;]*
- 9 Conclusion of *[choose: Lease, Loan for use, Trust, and sublease]* agreements;
- 10 Conclusion of the Land plot lease agreement;
- 11 *[indicate other Preconditions for the agreement's entry into force necessary for the Agreement's entry into force].*

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## 6 Annex to the Agreement

### LIST OF THE MANDATORY INSURANCE AGREEMENTS

A Concessionaire 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. *[If under the Agreement construction works are carried out* no later than before *[specify the deadline]* Business days prior to the date of commencement of the designing - **insure its civil liability with the designer's civil liability insurance** in the insurance amount that is no smaller than *[specify the amount]* euros. This insurance must be valid during the entire period of the designing work and construction 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 Concessionaire;
2. *[If under the Agreement construction works are carried out* no later than before *[specify the deadline]* Business days prior to the date of commencement of the Work performance - **insure its civil liability with the contractor's civil liability insurance** in the insurance amount that is no smaller than *[specify the amount]* euros. 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 Works are performed by the Sub-supplier, the relevant insurance agreement must be concluded by the Sub-supplier instead of the Concessionaire;
3. *[If under the Agreement construction works are carried out* no later than before *[specify the deadline]* Business days prior to the date of commencement of the Work performance - **insure its civil liability with the technical supervisor's of Works civil liability insurance**. If the technical supervisor of the Works is a Sub-supplier, the relevant insurance agreement must be concluded by the Sub-supplier instead of the Concessionaire;
4. *[If under the Agreement construction works are carried out* no later than before *[specify the deadline]* Business days prior to the date of commencement of the Works - **insure the Transferred property, 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 *[specify the term, recommended is 5 (five) Business days]* prior to the commencement of the performance of the Works and / or provision of the Services to insure its **civil liability for all risks**, which may result from any activity performed by the Concessionaire under this Agreement, for the insurance amount no smaller than *[specify the amount]* EUR per insured event. This insurance must be valid until the expiration of the

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Agreement, and also cover the damage which may occur due to the services that are provided or works that are performed by the Sub-suppliers or other third parties, providing Services and performing Works;

6. Insure the Transferred property and all the tangible fixed assets present in it with the **maximum property recoverable amount insurance** against all potential risks, and in any case for the insurance amount no smaller than [*specify amount*], no later than [*specify the term, recommended is 5 (five) Business days*] prior to the commencement of the Service provision. This insurance must be valid until the expiration of the Agreement.

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**7 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)

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## **8 Annex to the Agreement**

### **REQUIREMENTS FOR THE PROPERTY THAT IS BEING RETURNED**

*[Add the requirements for the property that is being returned]*

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9 **Annex to the  
Agreement**

**DIRECT AGREEMENT**

*[Add the Direct Agreement]*

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## **10 Annex to the Agreement**

### **LIST OF THE EMPLOYEES THAT ARE BEING TRANSFERRED**

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

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