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

**concluded between**

**[*Name of the Public partner*]**

**and [*Private partner*]**

**"Development of Military Town Infrastructure in Kairiai, Klaipėda District"**

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

**[*Place*]**

[*DATE*],

[*Place*]

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# INTRODUCTION

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

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

the Public partner and the Private partner are separately referred to as the **Party,** and together collectively – the **Parties;**

**Whereas**:

1. The Public partner is seeking to procure the development of the military infrastructure of the Kairai military training ground (design, construction of the new Facility), maintenance and other services from the Private partner, capable of ensuring uninterrupted, high-quality and effective execution required Works and provision of Services at lowest cost, by using the Public and Private partner partnership model and ensuring the highest social and economic benefit;
2. Under Resolution No. 1086 of 11 December 2024 of the Government of the Republic of Lithuania, “On the public-private partnership project ‘Development of Military Town Infrastructure in Kairiai, Klaipėda District,’” the Ministry of National Defence is authorised—once the conditions set out in the Rules for the Preparation and Implementation of Public-Private Partnership Projects approved by Government Resolution No. 1480 of 11 November 2009 have been met—to sign the Agreement with the Private Partner established by the Investor that wins the procurement and to implement the Project;
3. The procurement was carried out by means of a competitive dialogue procedure in accordance with the Law on Public Procurement in the Field of Defence and Security;
4. [select: the Private partner or the Investor] has expressed his interest in participating in this Procurement and presented a Tender, while the Public partner, after completing the Procurement procedures in a specified manner and assessment of all tenders received, has declared him the winner of the Procurement;
5. The Investor has founded a Private partner [*indicate the date of the Private partner founding*] in order to perform the obligations under this Agreement;
6. Private partner agrees to assume all rights and obligations of the Private partner, indicated in this Agreement and has the financial resources, knowledge, experience and qualified personnel required for that;
7. The Investor together with the Private partner it has founded are jointly and severally liable for the performance of the Private partner’s obligations, arising out of this Agreement, including, but not limited to, the Private partner’s obligations to pay contractual penalties, interest, and to compensate losses;
8. The Parties aim to implement the project for the development of the infrastructure of the Kairiai military training ground, the purpose of which is to establish a Facility designed to enhance the capabilities of the Republic of Lithuania for the protection, defence and deterrence of the sovereignty, inviolability and integrity of the territory of the Republic of Lithuania. The Public Partner on the one hand, and the Private Partner, on the other hand, intending to enter into contractual obligations, have freely and voluntarily agreed and entered into this Agreement:

# Definitions of the Agreement and interpretation thereof

## Definitions used in the Agreement and interpretation thereof

* 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:

|  |  |  |  |
| --- | --- | --- | --- |
| **Relief event** | | means the cases which are beyond the control of the Private Partner and/or the Subcontractors or other persons engaged by the Private Partner for the performance of the Agreement (whether by act or omission) and which are specified in Clause 21.1 of the Agreement and which give rise to the consequences specified in Clauses 21.4 and 21.5 of the Agreement; | |
| **Renovation and Repair Works** | | means the renovation works to be carried out on the Facility during the provision of the Services, replacing worn-out parts and/or equipment with new ones, in order to ensure that the Facility complies with the quantitative and qualitative requirements and indicators set out in the Agreement, the Annexes, the Design Documentation and the Service Plan; | |
| **Works** | | means all the design, construction, installation, assembly, and other works performable by the Private partner, necessary to create the Facility, so that it would met the requirements of the Specifications and the Tender; | |
| **Work performance plan** | | means the technical, engineering and organisational solution provided by the Private Partner covering the steps and sequence of actions for the execution of the Works for the Project; | |
| **Business day** | | means any other day except for Saturday and Sunday, and other official holidays in the Republic of Lithuania; | |
| **Insurance agreements** | | means insurance agreements specified in the Annex No. 5 to the Agreement *The list of mandatorily concluded insurance agreements* | |
| **Legal act with a discriminatory effect** | | means a legal act that applies to:   1. The project, but does not apply to similar public-private partnership projects of such type; 2. The Private partner, but does not apply to other persons, or 3. Persons who are performing the agreements of Public-Private Partnerships (Private entities) but does not apply to other persons. | |
| **EU** | | means the European Union; | |
| **Fundamental legislative change** | | means the change in the Special legislation or in the Legal act with a discriminatory effect, which adversely affects the rights and obligations of the Parties. The adoption/amendment of a Special legislation or a the Legal act with a discriminatory effect shall not be considered to be a substantial change in legislation if the drafts of such documents have been made public prior to the conclusion of the Agreement; | |
| **Financial operating**  **model** | | means the document prepared based on the form presented in Annex No. 12 to the Conditions *Requirements for a financial operating model* and submitted together with the Tender which presents structure and conditions of the financing of the Private partner’s operation, financially (economically) justifies the aims of investment, and presents the evaluation of the return on investment and other performance indicators as well as its future changes; | |
| **Funder (s)** | | means a legal partner (except for the Investor and/or the Associated person), providing the Private partner with the financing intended for investments indicated in the Financial Operating Model, needed for the proper performance of obligations under the Agreement, with which the Public partner must enter into a Direct agreement at the request of the Funder if more than one Funder is foreseen. Funders can be credit institutions, financial institutions, investment funds; | |
| **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; | |
| **CISCI** | | means the communication and information system for classified information as defined by the Law on State and Service Secrets of the Republic of Lithuania; | |
| **Investments** | | means investments into the Property and other investments for proper execution of Works and provision of Services, specified in the Specifications and the Financial Operating Model, as well as other investments into Property made in accordance with the terms specified in the Agreement; | |
| **Return on investment** | | means any revenue (dividends, interest, payment of funds by reducing the capital of the Private partner, or economic benefits received in any other form) receivable by the Investor from the Private partner; | |
| **Internal rate of return** | | means the rate of return (*Internal Rate of Return*), at which the present value of revenue streams receivable by the Investor from the Private partner are set to zero, and calculated based on the procedure indicated in the Financial Operating Model; | |
| **Law on Investments** | | means the Law on Investments of the Republic of Lithuania; | |
| **Investor** | | means [*indicate the name(s) and details of the legal entity(-ies)*, [select: whose Tender has been declared the most beneficial and has been awarded the Procurement, or the Tender of whose special purpose company established prior to the Procurement has been declared the most beneficial and has been awarded the Procurement; | |
| **Preconditions for the Agreement’s entry into force** | | means the conditions specified in the Annex 8 to this Agreement *Preconditions for the Agreement’s entry into force*, the fulfilment of which is mandatory for the Agreement’s entry into force in full; | |
| **Another loan provider**  **Compensation event** | | means a legal partner which grants to the Private partner the main financing provided in the Financial Operating Model in the form of a subordinated (or equivalent) loan, necessary for the proper performance of its obligations under the Agreement;  means the events specified in Clause 22.1 of the Agreement, the risk of which are exclusively or partially attributed to the Public partner under the Agreement, and the negative consequences caused by which must be fully or partially compensated to the Private partner in accordance with the procedure specified in the Agreement; | |
| **Utilities** | | means electricity, heating, hot water, cold water supply, wastewater management (including domestic and stormwater, sludge/mud/grease/oil products, etc.), gas supply, waste management (excluding food and pharmaceutical/medical waste, used oils, oil products), and telecommunications and communication services. The Private Partner shall cover all Utility costs related to the development of the Facility at its own expense until the Commencement of Operation of the Facility. From the Start of the Commencement of Operation of the Facility until the end of the Contract, Utility Service costs are considered pass-through costs and shall be reimbursed by the Public Partner based on actual consumption data; | |
| **New assets** | | means durable movable property not specified in the Specifications, acquired at the discretion of the Private Partner for the purpose of ensuring the timely and proper provision of the Services, a list of which shall be provided by the Private partner to the Public Partner prior to the commencement of the Commissioning of the Facility, and which will be owned by the Private Partner during the Agreement Period; | |
| **Lease agreement** | | means the lease(s) of the Land plot(s) for the duration of the Works, transferring to the Private partner the possession and use of the Land plot(s) for the purposes of this Agreement; | |
| **Facility** | | means the designed, constructed and appropriately equipped (including furniture and equipment as specified in the Specifications) infrastructure of the Kairiai Military Training Ground as defined in the Specifications; | |
| **Element(s) of the Facility** | | means part(s) of the buildings, structures, territory, other infrastructure, including equipment, furniture, of the; | |
| **Commencement of Operation of the Facility** | | means the Business Day following the date on which, following the completion of any Part of the Works, the Public Partner and the Private Partner have signed the confirmation of the compliance of Works with the Specifications and the Tender, as set out in Annex 11 to the Agreement, from which the Private Partner shall commence the provision of the Services and the receipt of the PPP Fee; | |
| **Modification (s)** | | means the modification of Works performed and/or Services provided in accordance with the terms specified in Clause 17 of this Agreement; | |
| **Additional works and/or services** | | means the works and services which are expressly not specified in the Agreement, including the Specification, which are not agreed upon by the Parties and which are not covered by the scope of the Change, as specified in Clause 17 of the Agreement, and the amendment of the Agreement, specified in Clause 37 of the Agreement, i.e. works in the Facility the purpose of which does not correspond in full or to any of the purposes or any part thereof indicated in the Specifications, and services are of different (another) nature than specified in the Specifications, but which are necessary for the Public partner for the more effective implementation of the Agreement and which may be initiated by the Public partner in accordance with the procedure established in Clause 16 of the Agreement; | |
| **Tender** | | means the Tender presented by [select: the Investor or the Private partner] at the time of Procurement according to the requirements of the Conditions, which is enclosed as the Annex 2 to the Agreement; | |
| **Services** | | means the services specified in the Specifications and provided by the Private partner in the Facility in accordance with the requirements of the Agreement and the Specifications, as well as the provisions of the Tender; | |
| **Service provision plan** | | means the technical, engineering, and organizational solution submitted by the Private partner, including the operations for the provision of the Service, and the sequence thereof in the Facility or any separate part thereof; | |
| **Procurement** | | means the procedure of competitive dialogue resulting in the selection Investor”; | |
| **Security of obligations performance** | | means the security, specified in Clause 31 of the Agreement, intended to ensure the performance of the Private partner’s obligations under the Agreement; | |
| **Hostile States** | | means the States or territories referred to in the list provided for in Article 92 (14) of the Public Procurement Law; | |
| **Private partner** | | means a private legal partner founded by the Investor for the implementation of the Agreement [select: before the Procurement or before the conclusion of the Agreement] 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:   * 1. have the legal form of a private joint stock company; and   2. belong by right of ownership (i.e. 100 percent of its shares) only to the Investor, except for cases when the Agreement expressly provides otherwise; and   3. must have the sole purpose to perform the activity intended for the implementation of the Agreement; and   4. have no debts or other obligations unrelated to the performance of the Agreement; and   5. employ the current business accounting standards; and   6. to be a registered payer of the value added tax; | |
| **Project** | | means PPP project “Development of Military Infrastructure of the Kairiai Military Training Ground" implemented by the Public Partner, the implementation requirements of which are set out in this Agreement; | |
| **Design services** | | means the services of the preparation of all Project documentation required for the performance of the Works specified in the Agreement; | |
| **Project documentation** | | means the design proposals for the Facility, the technical working design or other documents related to the design of the Facility; | |
| **VAT** | | means the value added tax established by the Law on value added tax of the Republic of Lithuania; | |
| **Recording Tool** | | means the Service Management Software developed and implemented by the Private Partner for the management of Services provided in the Facility, also for the logging of breaches of the Services in the Facility and for the communication of all issues related to the provision of the Services in relation to the performance of the Agreement; | |
| **Conditions** | | means the Procurement conditions and annexes thereof, including all of their adjustments and replies to the requests of the participants of the Procurement; | |
| **Expenditures** | | means all costs related to the execution of the Works and/or the provision of the Services in the Facility, including the Renewals and Repairs, which are attributable to the cost groups set out in the Financial Operating Model; | |
| **Special Legislation** | | means any legal act of the Republic of Lithuania and/or of the European Union, associated with the regulation of carrying out of Works and/or provision of Services or the rights and obligations of the shareholders of the Private partner, arising from the activity of the Private partner. Legislative changes of general nature, non-discriminatory against the Private partner and applying to a broad range of entities (for example, changes in the regulation of the activities of economic operators, with regard to their legal form, changes in the regulation of profits, changes in turnover taxes (VAT), etc.) are not considered to be the change in the special legislation; | |
| **Specifications** | | means the annex No. 7 to the Agreement *Specifications*, setting the requirements and indicators that must be met by the Works and the Services; | |
| **Subcontractors** | | means the economic entities, specified in the Tender, replacing them according to the terms specified in the Agreement, or newly employed ones, carrying out the Works and providing the Services, the carrying out or provision of which is the responsibility of the Private partner, and to whom the Private partner pays remuneration, except the suppliers of electricity, heating, water, wastewater treatment, waste management and other Utilities; | |
| **Associated person** | | means:   1. an Associated company; 2. members of the supervisory and management bodies of the Investor and the Associated company; 3. 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; 4. companies, associated with the persons mentioned in paragraph c) and the member of the supervisory and management body of such companies. | |
| **Associated company** | | means any company, economic community, limited liability company, foundation or other unit (legal and non-legal partner), directly or indirectly controlled by the Private partner or the Investor, or which directly or indirectly controls the Private partner or the Investor, or which is directly or indirectly controlled in association with Private partner by another unit, having the right of ownership, part of the capital or by implementing the legislative requirements applicable to such a controlled company, and which is related to the performance of the Agreement. It is considered, that a unit controls other companies, if it directly or indirectly:   1. has more, than 50% of stock or other equities issued by the controlled company; or 2. has more, than 50% of total votes, provided by owning stock or other equities issued by the controlled company; or 3. 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 4. has concluded an Agreement, under which the controlled company is obligated to implement the decisions and orders of the controlling company; or 5. has property rights to at least 50% of the property, revenue or residual claim in the controlled company.   The list of associated companies is enclosed to the Agreement as annex No. 6 *List of associated companies*, and has to be constantly updated should the information indicated in it change. | |
| **Agreement** | | means this partnership agreement between [*Name of the Public partner*] and [*name of the Private partner*] concluded for the implementation of the Project as it is specified in the Law on investments; | |
| **Direct agreement** | | means the agreement concluded between the Funder, the Public partner, and the Private partner under which the Public partner undertakes to the Funder (or its appointed partner) to provide in certain conditions a possibility to exercise the step in right to perform the Agreement instead of the Private partner, which is presented as the annex 0 to the Agreement *Direct Agreement*; | |
| **Property** | | means the New assets, and the Facility; | |
| **Public partner** | means the Ministry of National Defence of the Republic of Lithuania, which enters into the Agreement with the Private Partner and, in the cases provided for in the Agreement, its successor; | |
| **Law on State and Service Secrets** | means the Law on State and Service Secrets of the Republic of Lithuania; | |
| **Law on Public Procurement** | | means the Law on Public Procurement of the Republic of Lithuania; | |
| **LPPDS** | | means the Law on Public Procurement in the Field of Defence and Security of the Republic of Lithuania; | |
| **PPP Fee or Fee** | | means the payment by the Public Partner to the Private Partner for the creation of the Facility thereof and the provision of the Services, calculated and payable in accordance with the billing and payment procedures set out in Annex 3 to the Agreement; | |
| **Land plot(s)** | | means the following parcels of land owned by the Republic of Lithuania and held in trust by the Public Partner, portions of which required for the creation of the Facility will be transferred to the Private Partner by right of lease until the commencement of operation of of the Facility [*select the owned land parcels:*  1.) a plot of land with the unique number 5552-0001-0037, located in Klaipėdos district municipality, Priekulės eldership, Kairiai village;  2.) plot of land with unique number 4400-5816-0384, located in Klaipėdos district municipality, Priekulės eldership, Kairiai village]. | |

* 1. If based on the context, a term in the Agreement is not used otherwise:
     1. words in masculine also include words used in feminine and vice-versa;
     2. words in singular form also include plural form and vice-versa;
     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;
     4. references to the Agreement mean references to its annexes as well;
     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;
     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;
     7. the titles of paragraphs and other provisions are used for convenience only and have no affect on the interpretation of the Agreement.
     8. in case of a requirement to obtain the consent from the Public partner, it is deemed that the Public partner has the right not to give such consent at its own discretion, by providing the motives of its decision. The refusal of the public authority shall be rational and shall not be contrary to the principles of cooperation between the Parties, as well as to the principles of reasonableness and fairness, and shall not impede the performance of the Agreement or distort the balance of interests of the Parties.
  2. 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. Agreement;
     2. Annexes to the Agreement;
        1. Specifications;
        2. Financial Operating Model;
        3. Terms of settlement and payments;
        4. Matrix of risk distribution among the Parties;
        5. Direct agreement;
        6. other parts of the Conditions;
        7. Part of the tender Technical proposal (without annexes);;
        8. Annex to the Technical Part of the Tender - Site Development and Service Delivery Plan;
        9. Other Parts of the Tender
        10. List of the mandatory insurance agreements;
        11. other Annexes to the Agreement;

# Purpose and subject matter of the Agreement

## Purpose and subject matter of the Agreement

* 1. The Private partner undertakes to perform Works, provide Services, assume the risk related to that and/or indicated in the Agreement, create, and/or acquire New assets, properly manage and use the Property, and return/transfer it to the Public partner at the expiration of the Agreement, also properly carry out other obligations under the Agreement, and the Public Partner undertakes to lease to the Private partner Land, to allow the provision of the Services, to bear the risks set out in the Agreement, to pay the PPP Fee for the Services on time and to duly perform its other obligations under the Agreement.
  2. The main aim of the Agreement is to ensure an effective carrying out of Works and provision of Services, and throughout the entire period of the Agreement to seek the improvement of the effectiveness and quality of Services, as well as the rational monitoring and administration of the Property.

# Period of the Agreement validity and performance

## Agreement’s entry into force

* 1. The Agreement enters into force on the date when it is signed by all Parties, except for the extent indicated in Clause 3.2.
  2. The Agreement to the extent, associated with obligations to carry out Works, provide Services, and pay the Annual remuneration comes into force on the next Business day after fulfilment of all Preconditions for the Agreement’s entry into force specified in Annex 8 to the Agreement. The Preconditions for the Agreement’s entry into force must be fulfilled within 180 (one hundred and eighty) daysfrom the date of the signing of the Agreement, except if the Parties would agree on the extension of the period of the Preconditions for the Agreement’s entry into force.
  3. Preconditions for the Agreement’s entry into force are deemed fulfilled, when the Parties confirm that in writing. This must be done within up to 5 (five) Business days since the receipt of all information about the fulfilment of the Preconditions for the Agreement’s entry into force transferred to the Parties, or must present to the other Party a motivated refusal to recognise the Preconditions for the Agreement’s entry into force as fulfilled. If a Party fails to provide a motivated refusal to confirm the fulfilment of the Preconditions for the Agreement’s entry into force within the time period specified in this paragraph, they are deemed as fulfilled.
  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 Clause 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 90 (ninety) days. In the event of an extension of the time limit for the full entry into force of the Agreement as provided for in this Clause 3.4 of the Agreement, the liability provided for in Clause 47 of the Agreement shall not apply.
  5. In order to perform the Preconditions for the Agreement’s entry into force and to properly prepare for the performance of obligations under the Agreement, the Parties throughout and prior to the period of Agreement’s entry into force, must make maximum effort, including proper cooperation in acquiring the consents, permits, licenses, certificates and other documents, also providing the documents that are reasonably required for the performance of the Preconditions for the Agreement’s entry into force.
  6. The Parties agree that:
     1. Failure to fulfil Preconditions for the Agreement’s entry into force, depending on the Private partner, is deemed as Private partner’s refusal to conclude the Agreement in the sense of the Law, and the Public Partner shall be entitled to demand from the Private Partner the payment of a fine in the amount of EUR 3,500,000 (three million five hundred thousand euro), to be considered as the final loss of the Public Partner, as agreed in advance by the Parties, which the Private Partner shall have the right to recover, among other things, through the security of the Tender validity provided by the [choose: the Private partner] at the time of the Procurement. In the event of a breach of the Preconditions for the Agreement’s entry into force referred to in this clause, the indemnification formulae of Clause 43 of the Agreement shall not apply;
     2. Failure to fulfil Preconditions for the Agreement’s entry into force, depending on the Public partner, is deemed as the Public partner’s refusal to conclude the Agreement, and the Private Partner shall be entitled to demand from the Public Partner the payment of a fine in the amount of EUR 3,500,000 (three million five hundred thousand euro). In this clause the indicated amounts are considered as the final loss of the Private Partner. In the event of a breach of the Preconditions for the Agreement’s entry into force referred to in this clause, the indemnification formulae of Clause 44 Agreement shall not apply;
     3. If the Agreement does not enter into full force and effect through no fault of the Parties or due to circumstances beyond the control of the Parties, or due to the fault of the both Parties, the Parties shall make restitution and shall return to each other all that they have received from the other under or in connection with this Agreement, but shall not be obliged to compensate each other for any costs, expenses, losses (damages) and shall not be obliged to pay any liquidated damages.
  7. If the Agreement does not enter into full force due to the fault of either Party or circumstances under the control of either Party, that Party shall be deemed to have committed a material breach of the Agreement.

## The duration of Work performance and the beginning and duration of the Service provision

* 1. The Works must be completed within 3 (three) years from the date of entry into force of this Agreement as defined in Clause 3, unless otherwise specified in the Agreement. The Works may be completed earlier with the consent of the Public Partner, as stipulated in Clause 20.2.1. The Works shall be deemed completed when the Private Entity has finalized the Facility in accordance with legal requirements and received the signed confirmation by the Public Partner under Annex 11 ‘Assessment and Acceptance of Works. Return (Transfer) of the Assets’, confirming compliance with the Specifications and Proposal.
  2. The Works may be performed earlier than the periods specified in Clause 4.1, subject to the consent of the Public Partner as specified in Clause 13.9 of the Agreement. The Works shall be deemed to have been completed when the Private Partner formalises the completion of the Facility in accordance with the statutory procedures and receives the confirmation of the compliance of the Facility with the requirements of the Specifications and the Tender signed by the Public Partner, as set out in Annex 12 to the Agreement *Assessment and Acceptance of the Works*. *Return (Transfer) of Property*.

The duration of the Services provision shall not be longer than 12 (twelve) years. The Services shall commence to be provided in full on a part of the Facility and the Fee for the Services provision shall be payable only from the commencement of the operation of the Facility. In the event that the Works are completed earlier than within the time limits set out in Clause 4.1 of the Agreement, the maximum duration for the Services shall not be extended and the overall term of the Agreement, as set out in Clause 5.1 of the, shall be shortened accordingly.

* 1. The provision of the Services at the Facility 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 Facility is commenced and shall be provided till the expiration of the Agreement.
  2. The deadline for the completion of Works and/or the date of Commencement of the operation of the entire Facility indicated in Clause 4.1 of the Agreement, may be extended by a written agreement of the Parties only if the following conditions are present, when Works can cannot be completed or the provision of Services cannot be commenced because of:
     1. the circumstances of the *Force Majeure*, as they are described in Clause 42 of the Agreement; or
     2. the Case of exemption; or
     3. the Compensation event.

## Term of the Agreement

* 1. The Agreement is valid for 15 (fifteen)years from the moment it came into effect in full, which is specified in Clause 3.2 of the Agreement. The period may be shorter if the Work is completed earlier than the deadlines set out in Clause 4.1 of the Agreement, but in any event the duration for the provision of the Services shall not exceed the periods specified in Clause 4.3 of the Agreement. In any event, the term of the Agreement shall not exceed 12 (twelve) years.

# Warranties and representations of the Parties

## Warranties and representations of the Public partner

* 1. The Public partner respectively warrants and represents:
     1. The Public partner has performed the necessary actions and obtained official permits and/or approvals for the conclusion of the Agreement and performance of the obligations under it. The Agreement establishes lawful and valid obligations for the Public partner in accordance with the provisions of the Agreement, which could be performed against it through enforcement;
     2. The Public partner, based on its competence and authority, established on the date of conclusion of the Agreement by the applicable legislation of the Republic of Lithuania, is responsible for the respective functions and areas of activity, implemented during the conclusion of the Agreement, therefore it may be a contracting authority in the sense of the Law on Public Procurement and a Public partner in the sense of the Law on Investment;
     3. To the belief and/or knowledge of the Public partner, it provided the Investor and/or the Private partner with all the available essential and, based on its knowledge, correct information related to the Land plot(s). The information provided by the Public partner on the day of the conclusion of the Agreement is correct in all key aspects, except for possible changes of the status of Land plot(s) due to a regular economic activity from the date of the information provision to the date of the conclusion of the Agreement. There are no undisclosed key facts that the Public partner was aware of, which could affect the conclusion of the Agreement or performance of the indicated obligations. The incompleteness and inadequacy of the following information provided by the Public Partner shall not be deemed to be a breach of the representations and warranties of the Public Partner;
     4. By concluding and performing the Agreement the Public partner does not breach: any key agreements or obligations, to which it is a party to, court judgement, decision, or order, or an arbitration decision applicable to it, as well as any requirements of laws or other legislation applicable to it;
     5. No notices or summons to court or arbitration are served on the Public partner, and there are no initiated or pending judicial cases, arbitration or other legal proceedings against it, or against another person, which could have an essential adverse effect on the financial status of the Public partner and/or its ability to perform the obligations under the Agreement;
     6. The Land parcel is not included in the list of state immovable property to be renewed, the list of state immovable property and other immovable property to be sold at public auction, nor are there any persons entitled to restore property rights to the Land parcel in accordance with the Law of the Republic of Lithuania on Restoration of the Rights of Ownership of Citizens to the Existing Real Property, and there are no other restrictions that would prevent the Private partner from using it for the purposes and in the manner provided for in the Agreement, except for the restrictions provided for in the Terms and Conditions, the Agreement, the public registers, as well as those restrictions that were disclosed to the Private partner and/or the Investor at the time of the Procurement.
     7. The representatives of the Public partner signing the Agreement have all authority necessary for the conclusion of the Agreement.
  2. Notwithstanding the representations and warranties of the Public Partner set out in Clause 6.1 of the Agreement, the Parties represent and confirm that the Public Partner, prior to the execution of the Agreement, has given the [select: Investor of the Private partner] the opportunity to make its own independent verifications as to the correctness and accuracy of the information, data, representations, warranties and warranties provided by the Public Partner to the [select: Investor or the Private partner] during the Procurement process, as well as as the truthfulness, accuracy, correctness, lawfulness and freedom from errors of the Specifications and the draft Agreement, and as to the status, condition, deficiencies, encumbrances, liens, constraints, conditions of management and requirements of use and occupancy of the Land.
  3. The Public partner undertakes to inform as soon as possible the Private partner about any events or circumstances, due to which any representation or warranty by the Public partner becomes invalid or could become invalid in the future.
  4. The representations and warranties by the Public partner specified in Clause 6.1 of the Agreement are valid and will remain valid in full extent from the moment of the conclusion of the Agreement.

## Representations and Warranties of the Private partner

* 1. The Private partner represents and warrants:
     1. The Private partner is a legal entity properly established and lawfully operating in accordance with the legislation of the Republic of Lithuania, having acquired all rights, consents, approvals, and authorizations, and performed all actions in order to lawfully conclude the Agreement and exercise their rights and obligations under it;
     2. The Investor owns, and will own 100 % (one hundred percent) of the Private partner’s stock ([*indicate, who holds the stock of the Private partner and the parts of stock*]), except cases, when the Agreement clearly allows otherwise. The Private partner does not perform any other activities, unrelated to the performance of the obligations under the Agreement, and shall not engage in such activities without prior written consent of the Public partner during the entire term of the Agreement;
     3. The Private Partner shall ensure that it, the Subcontractors, specialists and other entities it engages to perform the Agreement will comply with the requirements imposed on them by law and/or the Procurement Documents and the Tender (in accordance with the commitments it has made):
        1. have the right to engage in the activities necessary for the performance of the Agreement;
        2. ensure that the Work will be carried out and the Services will be provided by natural persons, whether employed under a contract of employment or otherwise, who are not permanently resident in the Hostile States and who do not have the nationality of those States;
        3. ensure that, during the performance of the Agreement, the goods and services of the CPC codes listed in Article 92(13) of the Public Procurement Law shall not be supplied from the Hostile States;
        4. ensure that the Private partner, the Subcontractors, the entities whose capacities are relied upon and the Funder are registered in a Member State of the European Union or in a NATO Member State;
        5. ensure compliance with the established standards of the quality management system and/or the environmental management system and have documentation to prove it;
     4. The Private partner as well as its duly authorized employees, managers, management bodies, and shareholders/members have completed all actions, made all decisions, issued consents, and acquired, or will acquire all the necessary permits and consents for the conclusion of the Agreement, and performance of the obligations under it, prior to the performance of Works or provision of Services. The Agreement establishes lawful and valid obligations for the Private partner in accordance with the provisions of the Agreement, which could be performed against it;
     5. By concluding and performing the Agreement the Private partner does not breach: any key agreements or obligations, to which it is a party to, court judgement, decision, or order, or an arbitration decision applicable to it, as well as any requirements of laws or other legislation applicable to it;
     6. No notices or summons to court or arbitration are served on the Private partner, 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 Private partner, their ability to perform the obligations under the Agreement, of which the Public partner was not informed in writing;
     7. The [select: Investor or Private partner] 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;
     8. The Private partner shall 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;
     9. All information presented by the [select: Investor or Private partner] during the Procurement, including information about their activity, experience, knowledge, availability of the qualified personnel, financial status, contractual obligations, shareholders/members, and Associated companies is accurate, detailed and reflects the actual situation;
     10. The Private partner and the Investor have gathered all, the information, in their opinion necessary and sufficient, required to perform their obligations under the Agreement. The information collected by the Investor and the Private Partner referred to in this clause is limited to the information provided by the Public Partner during the Procurement and other information made public prior to the submission of the Tender, which is published or made available on the official websites of the EU, the state/municipal authorities of the Republic of Lithuania, or in the official information publications, or is compiled and stored in public state registers, information systems and to which any partner has had access without any restriction, as well as such information for the obtaining of which, in accordance with the legislation, the Investor or the Private Partner had to apply to the state/municipal authorities;
     11. The Private partner and the Investor were given the opportunity to familiarise with all documents and information presented to them and available publicly, on the basis of which the Investor and the Private partner had the opportunity to make independent conclusions about the rights and obligations of the Parties under the Agreement, and to decide on the participation in the Procurement. The Private partner assume all responsibility for the obligations undertaken by the Agreement and assessment of the risk related to them;
     12. At the time of the conclusion of the Agreement, the Private partner is not aware of any circumstances, which could prevent it from the proper performance of the obligations assumed under the Agreement;
     13. The Private partner has or has the ability to acquire the financial resources needed for the proper performance the Agreement. This confirmation does not apply in case of the additional investments that may be required for the procurement of Additional works and / or services or in case of any amendments to the Agreement;
     14. The Private partner is not insolvent, being liquidated, restructured, no bankruptcy, restructuring, reorganization, or liquidation procedures are initiated or conducted against it, it has not suspended or restricted its activity, there are no bankruptcy, restructuring, reorganization, or liquidation cases initiated against it;
     15. The representative of the Private partner signing the agreement has all authority to conclude the Agreement.
  2. The Private partner must immediately inform the Public partner about any events or circumstances, due to which any representation or warranty by the Private partner becomes invalid or could become invalid in the future.
  3. The Private partner understands that the Public partner concludes the Agreement only based on the representations and warranties of the Private partner as well as the information presented by them to the Public partner. The Public partner has not conducted any independent verification of the correctness and accuracy of the Private partner’s representations and warranties.
  4. The representations and warranties by the Private partner specified in Clause 7.1 of the Agreement are valid and will remain valid in full extent from the moment of the conclusion of the Agreement.

# Transfer of the land plot(s), creation and transfer/ return of new assets

## Land plot(s)

* 1. The Public Partner relinquishes the available rights to use the Land plot(s) at no later than 90 (ninety) days after the signing of the Agreement, and undertakes to perform all actions and make all efforts so that the Land plot(s) would be leased to the Private Partner at the deadline specified in Paragraph 3.2.
  2. The Private Entity must apply to the National Land Service under the Ministry of Environment for the conclusion of a Lease Agreement no later than 5 (five) Working days from the date of relinquishing of the rights to the Land plot by the current Land plot(s) owner specified in Paragraph 8.1 of this Agreement and the deadline for submitting evidence thereof to the Private Partner.
  3. The Land parcels shall be leased to the Private partner for the period of execution of the Works until the commencement of operation of the Facility.
  4. The Private Partner shall not be entitled to carry out any construction work on the Land(s) other than the Works contemplated by this Agreement and shall be entitled to use the Land(s) for the provision of the Services and for other activities for the purposes of this Agreement. The Private partner shall have no right to restrict its lease rights to the Land parcel(s) in any way.
  5. After the completion of the Works, the Private Partner shall be obliged to carry out the registration of the related changes in the Land Parcel Register data in the Real Estate Register of the Republic of Lithuania (hereinafter referred to as the "Real Estate Register") and to carry out any other related actions (including reimbursement of the costs related thereto). The Public partner shall, within its competence, provide all necessary and available information and powers for this purpose. This clause shall apply only insofar as it relates to the Works carried out by the Private Partner prior to the commencement of the operation of the Facility.
  6. The expiry of the Lease shall coincide with the commencement of the operation of the Facility. The Private partner shall, at its own cost and risk, take all necessary steps to terminate the Lease in accordance with the terms and conditions of the Lease set out in this clause.
  7. The Public partner undertakes to cooperate in order to exempt the Private partner from the State Land Rent Tax for the lease of the Land. In the event that the Private partner is not exempted from the land rent, the Public partner undertakes to reimburse the Private partner in full for the land rent paid by the Private partner, which shall not be included in the PPP Fee.
  8. The Public Partner accepts the risks associated with the Land Unit(s) due to:
     1. restrictions on the rights in rem of the Land Parcel(s), provided that such restrictions have not been disclosed to the Private partner and are not publicly available;
     2. the accuracy of the information provided to the Private partner regarding the condition and suitability (e.g. soil contamination) of the Land(s), except where the unsuitability (e.g. contamination) of the Land(s) has been caused by the actions of the Private partner (or any of its Subcontractors or other entities engaged by it). Insufficiency and incompleteness of the information provided shall not be deemed to be incorrect information;
     3. the establishment (amendment) of special conditions for the use of the Land Parcel(s), if the Public partner has not disclosed all the conditions for the use of the Land Parcel(s) that are known to it, or has failed to take into account the proposals made by the [select: Investor or the Private partner] during the Procurement regarding the conditions for the use of the Land Parcel(s), where the decision on such conditions falls within the competence of the Public partner;
     4. the accessibility of the Land Parcel(s) (Site).
  9. The Private Partner shall bear the risk of:
     1. restrictions on the property rights of the land plot(s), provided that such restrictions have been disclosed to the Private Partner or are publicly available (published in public registers);
     2. the condition and suitability of the land plot(s) (e.g. soil contamination) except as provided for in Clause 8.7.2 of the Agreement;
     3. the establishment (amendment) of special conditions for the use of the Land plot(s), except as provided for in Clause 8.7.3 of the Agreement;
     4. relocation, siting and connection of engineering networks on the Land plot(s) (as well as outside the Land plot(s)) to the Facility in such a way that the requirements set out in the Specifications and in the Tender are satisfied;
     5. entering into the necessary contracts with the Utility Providers.

## Carrying out of Works, acquisition or creation of New assets

* 1. The Private Partner shall carry out the Works in accordance with:
     1. the time frame set out in the Contract, including the Specifications and the Tender;
     2. the requirements set out in the Agreement, including the Specifications and the Tender, and the legal requirements applicable to the design, construction, erection, installation and other works;
     3. the requirements set out in the Agreement, including the Specifications and the Tender, and the statutory requirements for the Facility to be suitable for the performance of its statutory functions and the provision of the Services by the Public authority.
  2. The Private Partner shall bear the design risk.
  3. The Public Partner shall bear the design risk only for:
     1. inaccuracies/deficiencies in the Conditions prepared by the Public Partner become apparent during the course of the provision of Design Services;
     2. the discovery of previously unknown constraints due to cultural heritage protection requirements;
     3. inaccurate requirements for the Facility, where the [select: Investor or Private partner] has offered during the Procurement to clarify the inaccurate requirements for the Facility identified by the Public Partner, but the Public Partner has failed to clarify the relevant requirements;
     4. changes to the technical design of the Facility or a component of the Facility initiated by the Public Partner.
  4. No later than within 1 (one) month from the date of Agreement’s entry into force in full, the Private partner must submit a Work performance plan to the Public partner. A public partner has the right to submit comments / suggestions to the for Work performance plan within 20 (twenty) days, but the Private partner is not required to take them into consideration. If the Public partner fails to submit comments / suggestions for the Work performance plan within the time limit specified in this paragraph, it is considered that the Public partner does not have any and the Private partner may commence the Works.
  5. The risk of damage to the Works, including the construction, installation and erection of the Works and damage caused to the environment in the course of the Works shall be borne by the Private Partner.
  6. The Private Partner shall be responsible for selecting the necessary means, methods and times of work in such a way as to minimise disturbance to third parties (e.g. surrounding residents).
  7. At the end of the Design Works and at least 1 (one) month before the commencement of the Works (construction works), the Private Partner shall submit to the Public Partner the following documents:
     1. copies of the construction contracts with the Subcontractors indicated in the Tender;
     2. all permits and/or approvals and/or certificates required for the execution of the Works (including both the ISO 14001 or equivalent certificate and the certificate of a certified occupational health and safety management system complying with ISO 45001 or equivalent) issued to the Private Partner or the Subcontractors (depending on who will execute the Works);
     3. permits issued in accordance with the procedure established by the Law on State and Official Secrets to work with or have access to the information classified as "Restricted" on behalf of the Private Partner’s and the Subcontractors’ employees (natural persons) responsible for the Work related to obtaining (using) classified information;
     4. a certificate confirming compliance with the requirements for the protection of the information classified as "Restricted" or a certificate confirming the reliability of the Subcontractors (legal entities) issued in accordance with the procedure established by the Law on State and Service Secrets on behalf of Subcontractors carrying out Work related to the receipt/use of classified information as legal entities.
  8. When preparing the Project documentation and creating the Facility as a result of the Works:
     1. the Private Partner shall prepare or ensure that the Project Documentation is prepared in accordance with the requirements of the applicable (current) laws of the Republic of Lithuania, other legal acts, normative construction technical documents. The Design Documentation with the completed table referred to in Clause 2.3 of Annex 12 to the Agreement, *Assessment and Acceptance of Works. Return/Transfer of Property*, shall be submitted to the Public Partner for review, comments and/or proposals in phases (design proposals, components of the detailed design prior to the examination of the detailed design, amendments to the design proposals and the detailed design, and the finalised detailed design prior to the commencement of the works). In preparing the Design Documentation or ensuring that it is prepared, the Private Partner shall be obliged to submit to the Public Partner any solutions to the Design Proposals, the Technical Working Design not provided for in the Specifications and/or the Proposal in advance of the approval of the final documents of this Design Documentation. The Private Partner shall promptly submit to the Public Partner one original or duly certified copy of each of the prepared Design Documents. Upon completion of the Works, after the completion of the construction in accordance with the procedure established by law, by informing the Public Partner in accordance with the procedure set out in Clause 9.8.5 of the Agreement, the Private partner shall submit to the Public Partner a version of the complete Design Documentation with the mark "As Built" within 30 (thirty) days from the day of the issuance of a certificate of completion of the construction. The Design Documentation shall be accompanied by the Completion Documentation (i.e. certificates of materials used, declarations of conformity, system test reports, operating instructions for equipment, appliances, etc.). The design documentation may be transmitted in digitised electronic format, and foreign language documents may be transmitted as specified in the contract. The Private Partner shall deliver the complete set of the Design Documentation, together with translations of the documents into the Lithuanian language, to the Public Partner no later than 60 (sixty) days after the completion of the Works;
     2. the Private Partner undertakes to submit the design proposals to the Public Partner for review. The Private Partner undertakes to submit the pre-examination construction detailed design, adjusted in accordance with the mandatory comments of the examiner, as well as the individual parts of the construction detailed design (no later than 20 Business Days before the commencement of the relevant Works on the Facility in accordance with those parts of the detailed design) to the Public Partner for review. The Public Partner shall make a preliminary assessment of the conformity of such design documentation with the Specifications, the Tender and the other requirements set out in the Agreement in accordance with the procedures set out in Annex 12 to the Agreement, *Assessment and Acceptance of Works*. *Return/Transfer of Property.*
     3. The Private Partner, in accordance with the legislation of the Republic of Lithuania, shall hand over the prepared parts of the design proposals, the technical working draft or the part of the technical working draft marked as "Restricted" to the responsible persons of the Public Partner, who shall carry out their evaluation in accordance with the procedure established by the legislation, and shall submit comments and proposals to the Private Partner for their revision. The Private Partner shall be obliged to design the documents referred to in this clause in the premises of the Private Partner and/or the Subcontractor which comply with the requirements of the legislation and which are authorised to work with classified information, and using the CICIS. The Public Partner shall have the right to enter such premises at any time during working hours to verify compliance with the legal requirements. An employee of the Private Partner or the Subcontractor who, during the performance of the Agreement, prepares/creates classified information must classify it in accordance with the classification manual approved by the Public Partner (if classified information will be created during the performance of the Agreement). The Private Partner shall ensure that the design, coordination, examination and other Work of the design proposals, the technical work project or the parts of the technical work project marked as "Restricted" are carried out in accordance with the legislation of the Republic of Lithuania governing the protection of classified information.
     4. 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. The Private Partner shall, on behalf of the Public Partner, arrange for the completion of the construction of part of the Facility in accordance with the procedures prescribed by law and the registration of its ownership in accordance with Clause 9.12 of the Agreement;
     5. Upon completion of the Works, the Private Partner shall notify the Public Partner and provide the completed table referred to in Clause 3 of Annex 12 to the Agreement, *Assessment and Acceptance of Works. Return/Transfer of Property*. The Public Partner shall evaluate the conformity of the works in the Facility with the Specifications, the Tender and the other requirements set out in the Agreement in accordance with the procedures set out in Annex 12 to the Agreement, *Assessment and Acceptance* *of Works*;
     6. During the performance of the Works, the Public Partner and any of its authorised persons, a list of whom shall be agreed in advance with the Private Partner, shall have the right to enter the site of the Works and to inspect and supervise the execution of the Works. The Private Partner and its Subcontractor(s) shall provide all reasonable facilities for the Public Partner and its authorised persons to inspect and supervise the execution of the Works;
     7. Upon request by the Public Partner, the Private Partner shall provide documentation confirming that the Private Partner, Subcontractors, specialists or other entities meet the requirements set out in Clause 7.1.3 of the Agreement.
     8. The Private Partner shall notify the Public Partner or other Partner at least three (3) Business Days prior to accessing the Site and shall state the name, date of birth, position, nationality and duration of the visit to the Site of the persons intending to access the Site. Nationals of hostile states are prohibited from entering the Site. The Public Partner or other Partner shall have the right to inspect the Site unannounced for the presence of Nationals of hostile states.
     9. The Private Partner shall at all times be responsible for the conformity of the Works and the result thereof with the Specifications, the Tender and the Legislation. Upon actual verification by the Public Partner or its authorised persons of the compliance of the Works on the Part of Facility (after the Parties have signed a deed of confirmation of compliance with the Specifications and/or the Tender), the Private Partner shall be liable for the adequacy of the Works on the Part of Facility and the result thereof, i.e., the constructed part of Facility and the maintenance of its condition in accordance with the Agreement requirements;
     10. The Private partner must, at its own expense, obtain all consents and permits, necessary according to the legislation in order to lawfully use the results of the Works after the completion according to their purpose, and present the copies of the aforementioned documents to the Public partner. In cases, indicated in the Agreement, and other cases, when the Public partner must have the originals of the consents and permits, previously mentioned in this paragraph, according to the requirements of the legislation for the proper use, control, and disposition of the Work results, the Private partner must present these documents to the Public partner;
     11. In case a dispute or a disagreement arises between the Parties due to the inconsistencies of the Works or parts thereof, it shall be resolved in accordance with the provisions of Clause 52 of the Agreement.
  9. A private partner must perform all other actions, required for the creation of the Facility (including, but not limited to the obtaining of the new Facility (part of Facility) connection conditions, obtaining construction permitting documents, etc. (if necessary)), except for Additional works and services.
  10. During the Term of the Agreement, the New assets will be owned by the Private partner. All actions (including covering of the associated costs) related to the registration (when it is mandatory according to the legislation) of the New assets must be performed by the Private partner, while the Public partner provides all information required for that and grants an authorization.
  11. The Private partner is responsible for the use and control of the Land plot(s), the New assets, and the Facility, as far as it is related to the provision of Services, without prejudice to the Specifications, the Tender and the Financial Operating Model, and the legislation, regulating building maintenance, environmental protection, work safety, and following of the hygiene norms.
  12. Upon this Agreement, the Facility, from the moment of its creation (including incomplete construction), will be owned by to the Republic of Lithuania, and the Private partner will control and use the Facility under the loan for use. All actions related to the registration of the Facility must be performed by the Private partner, the Public partner will provide all information required for that and grant an authorization to. The Private partner undertakes to register the completed part of the Facility in the Real Estate Register as the property right of the Republic of Lithuania and as the loan for use by the Partner within 10 (ten) Business Days from the date of completion of the construction of the Facility in the manner prescribed by the legislation and the date of submission to the Private partner of the necessary information, documents and/or authority necessary for such registration. Upon registration of the data to be registered in the Real Estate Register relating to the Facility, the Private partner undertakes to register the fact of administration of the Facility in the Real Estate Register no later than prior to the commencement of the commissioning of the Facility, in accordance with the provisions of Article 4.254 of the Civil Code of the Republic of Lithuania.
  13. Employees of the Public partner, soldiers, visitors (other than persons under the responsibility of the Private partner or its Subcontractors) and other persons under the responsibility of the Public partner and persons under its control shall use the Facility in a proper manner, in accordance with the intended use and without damaging the Facility and/or causing any loss to it. Damage to / loss of the Property due to the actions of the Public partner, visitors (other than persons for whom the Private partner or its subcontractors are responsible) and other persons within the scope of responsibility of the Public partner and persons under their control shall be deemed to be an Case of Exemption and/or an Compensation event (except where the damage to the Property is caused by the inadequacy of the quality of the Property or by the Private partner’s inadequate decisions in the development of the Property);
  14. This Agreement grants the Public partner, (their agents, employees, soldiers and other persons) the right to use the Facility without a separate agreement to the extent necessary for the performance of the Public partner’s functions as defined in the Law. Otherwise, such persons may use the Facility only by prior agreement with the Private partner.
  15. The Private partner shall ensure that it and/or its Subcontractors who perform the Works have installed, in the respective areas of the Works they perform, a certified environmental management system complying with ISO 14001 or an equivalent standard and certified occupational health and safety management systems complying with ISO 45001 or an equivalent standard, and comply with the requirements thereof in accordance with the procedures laid down by the legislation for the period of the Works until the Facility has been declared suitable for use. This requirement shall not apply if the value of the Work performed by the Subcontractor does not exceed the value of the Work per calendar year as specified in Clause 19.5 of the Agreement.

## Return / transfer of the property

* 1. Except as provided in Clause 10.2 of the Agreement, the risk of the residual value of the entire Facility, i.e. compliance with the quantitative and qualitative requirements and indicators set out in the Agreement, including those set out in the Specifications, taking into account normal wear and tear, shall be borne by the Private partner.
  2. The Public partner shall bear the risk of the residual value of the Facility only in respect of transactions entered into by the Public partner with third parties, provided that such transactions have resulted in restrictions on the possession, use and disposal of the Facility.
  3. Upon expiry or early termination of the Agreement in accordance with the terms and conditions set out in this Agreement, the Property shall be returned to the Public partner or Partner. The Parties undertake to document the transfer of ownership of the New assets in such form as will be required under the applicable law at the time of expiry/termination of the Agreement. The Parties acknowledge that the cost of the New assets is included in the Fee payable by the Public partner to the Private partner under this Agreement, or in the event of early termination of the Agreement, and that no payment shall be made to the Private partner by the Public partner in respect of the transfer of ownership of the New assets.
  4. The Facility to be returned/transferred shall, at the time of return, comply with the quantitative and qualitative requirements and indicators set out in the Agreement, the Specifications, taking into account normal wear and tear, allowing for the continued proper operation of the Facility, for a period of time not shorter than the *Useful life of the Facility* as specified in Annex 9 to the Agreement. The condition of the Facility to be returned must also comply with the essential requirements of the building, as laid down by the legislation of the Republic of Lithuania governing the essential requirements of the building, taking into account the normal wear and tear of the Facility. The New assets returned shall comply with the New assets list set out in Clause 18.1.4 of the Agreement, except for New assets which have been subjected to full physical wear and tear during the performance of the Agreement.
  5. The condition of the Facility to be returned/transferred pursuant to this Clause of the Agreement, subject to the provisions of Clause 4 of Annex 12 to the Agreement *Assessment and Acceptance of Works. Return/Transfer of Property*, and the condition of the New assets in accordance with the list referred to in Clause 18.1.4 of the Agreement, shall be verified by a commission consisting of three (3) representatives each of the Public partner and the Private partner, who shall be competent to assess the condition of the Facility and shall be headed by the representative of the Public partner. The decisions of the Commission shall be taken in accordance with the procedure set out in Clause 52 of the Agreement. The Commission shall commence its work on assessing the condition of the Facility to be returned/transferred at least twelve (12) months prior to the expiry of the Agreement, and in the event of early termination of the Agreement, not later than sixty (60) days prior to the date of termination of the Agreement, in order to identify, as early as possible, non-compliances of the Facility with the requirements set out therein and to enable the Private partner to remedy such non-compliances by the end of the Agreement. The results of the inspection of the Property condition shall be recorded in a certificate of inspection of the Facility and New assets condition, which shall be drawn up not later than 30 (thirty) days after the Facility and New assets condition inspection commencement, and shall be signed by all the members of the Commission.
  6. If the Commission determines that an element of the Facility or the New assets, that will be returned, is not in a condition that would qualify for return, the Private partner shall submit to the Public partner within 15 (fifteen) Business Days after the completion of the inspection:
     1. a proposal for the performance of work to correct the identified discrepancies in the Facility/Part of the Facility Element, which shall include the scope, method, timeframe, and cost estimate for such work, if the Private partner plans to correct the discrepancies through the reparation; or
     2. a proposal for the replacement of an element of the Facility with another equivalent element, which shall include a detailed description of the new proposed element, the timeframe for the replacement and the cost estimate.
     3. a proposal for the replacement of the New assets with another equivalent if the inspection reveals that the New assets does not comply with the list set out in Clause 18.1.4 of the Agreement, except for New assets which have been subject to complete physical wear and tear during the performance of the Agreement.
  7. The Public partner shall, upon receipt of the proposal from the Private partner, referred to in Clause 10.6 of the Agreement, within five (5) Business Days, either provide its approval for the rectification of the identified discrepancies of the Facility and the New assets, or comment on them. If the Public partner comments on the Private partner’s proposal referred to in Clause 10.6 of the Agreement, the Private partner shall, within a reasonable period of time not exceeding 5 (five) Business Days, revise the proposal in accordance with the Public partner’s comments, and shall submit it to the Public partner.
  8. The Private partner shall carry out the works to remedy any identified discrepancies in the condition of the Facility or any individual item of the Facility/Part of the Facility or New Asset, or to replace it with an equivalent item of the Facility/Part of the Facility or New Asset, at its own expense.
  9. If the Private partner fails to rectify the discrepancies in the Facility or New Asset within the time limit set out in the proposal as referred to in Clause 10.6 of the Agreement or the revised proposal as referred to in Clause 10.7 of the Agreement, the costs of the discrepancies in the Facility or the New Asset as set out in the Private partner’s offer shall be compensated in the way set out in Clause 10.15 of the Agreement.
  10. New Assets corresponding to the list of New Assets referred to in Clause 18.1.4 of the Agreement shall be handed over by the Private partner to the Public partner on the date of expiry or termination of the Agreement in accordance with the transfer and acceptance act signed between the Public Partner and the Private partner. The procedures for the inspection of the New Assets and the correction of any discrepancies shall be the same as for the inspection of the Facility and the correction of any discrepancies as set out in this Clause 10 of the Agreement.
  11. Not later than 1 (one) month prior to the expiry of the Agreement, the representatives of the Public Partner and the Private partner shall conduct a joint re-inspection of the Facility and the New Assets. Such inspection shall verify that the condition of the Assets is in accordance with the requirements set out in the Agreement, including whether any deficiencies in the individual elements of the Assets identified during the first inspection have been rectified.
  12. After the inspection of the condition of the Asset as referred to in Clause 10.11 of the Agreement, the Public Partner and the Private partner shall, on the date of termination of the Agreement:
      1. sign a handover and acceptance act of the Facility confirming that the condition of the Facility complies with the requirements of the Agreement;
      2. sign a handover and acceptance act of the Facility stating that the condition of the Facility does not comply with the requirements of the Agreement and detailing such non-compliance and the value of the correction thereof.
  13. In the event of premature termination of the Agreement, the re-inspection of the condition of the Facility provided for in Clause 10.11 shall not be carried out. In such case, the Public Partner shall sign a handover and acceptance act of the Facility in accordance with the procedure set out in Clause 10.12 of the Agreement.
  14. In the event that, after the signature of the handover and acceptance act, any deficiencies or other non-conformities of the Assets with the requirements of the Agreement are discovered, if such deficiencies or non-conformities could not have been detected at the time of the acceptance of the Assets (concealed deficiencies or non-conformities), or if they have been intentionally concealed by the Private partner, the Public partner shall notify the Private partner of the deficiencies or non-conformities within 20 (twenty) Business Days of their discovery and the Private partner shall be obliged to rectify the deficiencies or non-conformities within the period of time to be agreed with the Public Partner.
  15. If the Private partner fails to rectify the non-conformities of the Assets within the time limit set out in the proposal as referred to in Clause 10.6 of the Agreement or the revised proposal as referred to in Clause 10.7 of the Agreement, or after the signing by the Public Partner of the handover and acceptance act of the Assets as referred to in Clause 10.12.2 of the Agreement, the estimated cost of the non-conformity of the Assets, as well as the additional costs of maintenance of the Assets and / or of any other services that are or will be incurred by the Public partner as a result of the non-conformity of the Assets as set out in the handover and acceptance act of the Assets, are:
      1. paid by the Private partner to the Public Partner not later than 5 (five) Business Days prior to the Agreement Termination Date; or
      2. shall be reimbursed by the exercise of a Performance Security in accordance with Clause 31 of the Agreement. If such costs cannot be reimbursed by way of performance security, they shall be deducted from the compensation payable to the Private partner pursuant to clauses 43 to 45 of the Agreement.
  16. Upon termination of the Agreement, the obligations of the Private partner in respect of Works warranty obligations (including the Renewal and Repair Works), the remedial works to rectify non-conformities in the Assets (where such non-conformities have been identified and remedied by the Private partner in accordance with Clause 10 of the Agreement) and the Equipment delivered/installed shall survive the expiry of the Agreement. Defects identified during the warranty period shall be recorded and remedied in accordance with the procedures set out in the Civil Code of the Republic of Lithuania and other legal acts. For clarity, the Parties agree that the warranty periods for the Works shall commence from the commencement of the operation of the Facility, and for the new equipment replaced/installed during the Renewal and Repair Works, from the date of replacement/installation of the new equipment.

# Obligations of the Parties

## Transfer and keeping of documents

* 1. The Private partner must keep all documents of financial statements and agreements, related to the performance of obligations under the Agreement, no less that 2 (two) years after the end of the Agreement, if the requirements of the legislation does not specify a longer period. Documents may be stored in electronic format. At the request of a the Public partner, a Private partner must transfer duly approved copies of such documents to the institutions/ persons specified by Public partner within no more than 10 (ten) Business days from the day on which they were requested and, if applicable, the day of conclusion.
  2. After the expiration of the Agreement, the Private partner must ensure proper transfer of the Private partner’s documents, related to the Property returned to the Public partner or indicated institution/person, at its own expense. In any case, such documents must be transferred to the Public partner no later than within 10 (ten) days after expiration of the Agreement. Despite this, the Private partner must retain and keep duly certified copies of such documents for the period indicated in Clause 11.1 of the Agreement.

## Obligations of the Public partner

* 1. The Public partner undertakes to perform its obligations under the Agreement in a timely manner and promptly cooperate with the Private partner in solving matters related to the performance of the Agreement.
  2. The Public partner must ensure that the operation of the Private partner and the performance of the Agreement would be interfered with as little as possible when the Public partner, as well as the persons authorised by it, exercises the rights granted to the Public partner under the Agreement.
  3. The Public partner shall pay the Annual remuneration to the Private partner in a timely manner for the carried out Works and the provided Services as set forth in Clause 23 of the Agreement. The Public partner undertakes to immediately inform the Private partner about financial problems, which could prevent the Public partner from proper and/or timely payment of the remuneration to the Private partner, and about the measures, taken by the Public partner to eliminate the problems.
  4. At the request of the Private partner, the Public partner must immediately issue the consents, arrangements, approvals, permits, authorizations and/or licenses to the Private partner, required for the exercising of rights and performance of obligations under the Agreement, in accordance with its competence specified in the legislation, or if indicated in the Agreement, but no later than within 10 (ten) Business days (except in cases when other periods are indicated in this Agreement) if the Private partner’s right to apply for these consents, arrangements, approvals, permits, authorizations and/or licenses is granted by the legislation or the Agreement, and all the necessary information and documents were submitted to the Public partner. The Public partner has no right to unreasonably withhold the consents, arrangements, approvals, permits, authorizations and/or licenses specified in this paragraph If the Public partner does not issue the consents, arrangements, approvals, permits, authorizations and/or licenses within the period set in this paragraph or other period set in the Agreement without providing the reasons for the failure to issue, it is deemed that the indicated consents, arrangements, approvals, permits, authorizations and/or licenses are issued. The Private partner must inform the Public partner in writing before performing actions on the basis of such consent, arrangement, approval, permit, authorization, or license of the Public partner (if performance of such actions without the express consent, arrangement, approval, permit, authorization or license from the Public partner is not contrary to the imperative requirements of the legislation). The Parties hereunder agree, that in case, if the Private partner cannot perform lawful actions required to perform its obligations under the Agreement without the express consent, arrangement, approval, permit, authorization or license from the Public partner, the Public partner undertakes to issues such consent, arrangement, approval, permit, authorization or license within 10 (ten) Business days from the date of receipt of all necessary information and documents, and if the Public partner unreasonably refuses to do that, such refusal is deemed a Compensation event.
  5. If issuing of the permits and licenses required for the performance of the Agreement is assigned to the competence of another, state/municipal institutions and not to the Public partner, at the request of the Private partner, the Public partner shall make all reasonable efforts (mediates, provides additional information, when that is not in conflict with the interests of the Public partner, issues permits or authorizations, etc.) that the required permits and licenses would be issued or renewed within the shortest period possible.
  6. At the request of the Private partner, the Public partner must provide all available information, which could be needed in order to obtain or renew permits and licenses required for the performance of the Agreement, no later than within 10 (ten) Business days from the date of receipt of the request of the Private partner and required documents.

## Obligations of the Private partner

* 1. The Private partner undertakes to effectively and with quality carry out the Works and provide the Services in a timely manner and promptly cooperate with the Public partner and representatives appointed by it on all matters related to the performance of the Agreement.
  2. The Private partner at its expense and risk ensures that both the Private partner and the persons, who are carrying out the Works and providing the Services, would have all the necessary licenses, permits (including design and construction related permits), attestations, approvals, or certificates in full extent throughout the entire period of the carrying out of the respective Works or provision of Services, the performance (provision) of which require the specified documents, as well as fulfil all conditions specified in them and will follow them. The Private partner will not be able to rely on the absence of such documents, in order to avoid liability for the non-performance and/or improper performance of the obligations under this Agreement, and shall be completely liable for all consequences arising out of the absence of such documents or their delayed receipt, unless the risks associated with such documents are fully allocated to the Public Partner in accordance with this Agreement.
  3. The Private partner ensures that it and/or Sub-suppliers shall have the required number of qualified employees, required for the proper performance of the obligations under the Agreement, throughout the entire duration of the Agreement.
  4. The Private partner must comply with all conditions specified in the licenses, attestations, and/or permits, and follow them, as well as make all efforts that these conditions would be followed by the Private partner employed personnel that is carrying out Works or providing Services, and the Sub-suppliers.
  5. The Private partner undertakes to comply with the requirements of the legislation that is regulating the environmental protection. The investments associated with the performance of such requirements are performed, and all risks are assumed by the Private partner.
  6. The Private partner must keep financial records in accordance with the Law on Accounting of the Republic of Lithuania, and other legislation of the Republic of Lithuania and the European Union.
  7. The Private partner is responsible for the performance of the obligations under this Agreement:
     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;
     2. without prejudice to the provisions of the Agreement;
     3. in accordance with the Financial Operating Model;
     4. based on the Good business practice
     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;
     6. in accordance with the requirements of the Insurance agreements.
  8. Private partner must provide the Public partner with Service reports as specified in this Agreement.
  9. During the period of the Agreement, without the consent of the Public partner, the Private partner undertakes to:
     1. not to complete the Works earlier than the deadline set out in Clause 4.1 of the Agreement;
     2. not to make decisions and not to perform the reorganization or reformation of the Private partner;
     3. ensure that no material part of the assets of a Private partner will be sold and no material financial obligations will be assumed. For the purposes of this paragraph, the material part of assets is considered an asset the value of which is 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 1 000 000 (one million) euro (excluding VAT), or according to which payments exceed 500 000 (five hundred thousand) euro (excluding VAT) during the financial year. However, contracts and guarantees or sureties to the Subcontractor performing the Works (part thereof) shall not be considered material within the meaning of this clause if they do not increase the obligations of the Public Partner.
  10. The Private partner undertakes to inform the Public partner about any cases initiated in any court or arbitration, in which the Private partner 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 10 (ten) days from the beginning of the participation or becoming aware of such involvement. The Private Partner also undertakes to inform the Public Partner of any fines or economic sanctions imposed by the competent authorities within the timeframe set out in this clause.
  11. The Private partner performs the obligations under this Agreement at its own expense, risk and without financial and/or material support from the Public partner, except if the Agreement expressly indicates otherwise.
  12. After the Agreement is terminated or expires, the Private partner must unconditionally, and as soon as possible, without delay on any basis, return all Property to the Public partner or the subjects indicated by it, the return (transfer) of which is specified in the Agreement, including all rights and authorizations associated with the Property that is being returned (transferred) and Services provided, organize termination of contracts that may not be valid beyond this Agreement, unless their validity is necessary for the performance of activities under the Agreement and their validity does not cause any difficulties, including financial, for the Public partner.
  13. It is deemed that both, the Private partner and the Investor assume the obligations specified in Clauses 13.1 – 13.12 of the Agreement and other paragraphs of the Agreement; i.e. the Private partner and the Investor are jointly liable (joint debtors) to the Public partner for the performance of the obligations specified in Clauses 13.1 – 13.12 of the Agreement and other paragraphs of the Agreement.

## Risk distribution

* 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 Annex 4 to the Agreement.

## Investments and terms of their execution

* 1. The Private partner must make no smaller investments into the Property and the ensurance of the quality provision of Services than indicated in the Financial Operating Model and the Agreement, within the periods indicated in the Work performance plan, Service provision plan, and the Specifications.
  2. The Private partner ensures, that every part of the Facility from the commencement of their operation and the Services, no later than 30 (thirty) days from the commencement of their provision will meet the requirements of the legislation, the Agreement, the Specifications, and the Tender, during the entire remaining period of the Agreement. This obligation is performed by the Private partner individually by finding and using the required funds and choosing the required means and methods.

## Additional works and Services



16.1. During the preparation of the Tender, the [select: Investor or the Private partner] has planned and evaluated in the Tender all works, services, and actions, required for the performance of the obligations set out in the Agreement, and the achievement of the results, as well as reflected this evaluation in the Financial Operating Model. In order to avoid doubts the Parties declare that obligations of the Private partner, specified in the Agreement, in their essence match the obligations of a contractor/contractor general assumed under the turnkey type agreements of construction contracting, i.e. such construction contracting agreements, under which the contractor must perform clearly specified works and actions, as well as those that are not clearly specified, which are required for the performance of Works and actions and the achievement of the results specified in the Agreement.

* 1. If the need for Additional Works and/or Services becomes apparent, such Additional Works and/or Services may be performed and paid for only if in accordance with the laws of the Republic of Lithuania and the Parties have entered into a written agreement for the performance of such Additional Works and/or Services.
  2. Additional works and / or services may only be initiated by the Public partner. The Private Partner has the right to inform the Public partner about the need for Additional works and / or services.
  3. In order to agree upon the Additional works and/or services, worth more than EUR 10,000 (ten thousand), the Public partner presents to the Private partner the motivated proposal regarding their necessity, that shall contain:
     1. reasons for the need for additional works and/or services;
     2. a description of the Additional Works or Services ("Description of the Additional Works or Services", indicative quantities), which should be sufficiently detailed to be able to assess and respond to the Public Partner with the agreement or refusal to carry out the Additional Works and/or provide the Additional Services;
     3. the period of time within which the Private Partner shall provide a response to the Public Partner to agree or refuse to carry out the Additional Works and/or to provide the Additional Services. If no such time period is specified in the proposal, the Private partner shall provide its consent or refusal within 15 (fifteen) Business Days of receipt of the proposal.
  4. The Additional works and services are formalized by concluding the agreement, when the value of Additional works and/or services is more than EUR 10,000 (ten thousand), specifying the names, units, amounts of the Additional works and/or services, as well as reasons for the necessity of Additional works and/or services, and technical solutions (drawings, etc.) (in case of works), or specifications (in case of services), also setting the prices, or substantiation of rates. The agreement for Additional works and/or services, prices thereof and terms of payment must be signed by the Public partner and the Private partner, and is deemed an integral part of the Agreement. If the Private partner fails to provide a motivated refusal for the consent or refusal to carry out Additional works and/or provide additional services within the timeframe set in the motivated proposal of the Public partner, or unreasonably delays signing the agreement, the proposal for the Public partner and/or services is deemed rejected. In such case, the Public partner may purchase Additional works and / or services from other legal entities in accordance with the public procurement procedure. The extension of the timeframes for the carrying out of Works and/or provision of Services (if such extension of timeframes is necessary) must also be resolved in the agreement specified in this paragraph. The performance of the Additional works or provision of Additional services may commence immediately after the signing of the agreement on the Additional works and/or services. If Additional Works and / or Services are procured from third parties, the Public partner undertakes to coordinate schedules of such Additional works and / or services with the Public Partner, as well as to take all measures to ensure that such third parties comply with the safety requirements of the work and do not interfere with the Public Partner’s performance of the Works.
  5. The Parties agree that the price of the Additional Works worth more than EUR 10,000 (ten thousand) shall be calculated in accordance with the following conditions:
     1. the prices of additional materials and/or equipment shall be calculated on the basis of the prices in the SISTELA information database, or, if they are not available in the SISTELA information database, - on the basis of the manufacturer’s prices offered by the Private partner, which may not be higher than the average market price, determined by assessing the prices of the construction products and equipment of not less than 3 (three) economic operators (if such number of economic operators exists on the market), valid at the time of concluding the agreement for the Additional Works;
     2. the prices for additional construction/installation works shall be calculated on the basis of the rates in the SISTELA information database, if any, and, if no such name is available in the SISTELA information database, on the basis of the nearest SISTELA reference rate in force at the time of the conclusion of the agreement on the Additional Works;
     3. the reasonableness of the price for the Additional Work set out in Clauses 16.6.1 to 16.6.2 of the Agreement shall be examined by the Commission referred to in Clause 52 of the Agreement..
  6. The Parties agree that the price of the Additional Services worth more than EUR 10,000 (ten thousand) shall be calculated in accordance with the following conditions:
     1. on the basis of the prices offered by the Private partner, which shall not be higher than the average market price, determined by assessing the prices of services of at least 3 (three) operators (if there are such operators on the market) in force at the time of conclusion of the agreement on the Additional Services;
     2. the reasonableness of the price of the Additional Services set out in Clause 16.7.1 of the Agreement shall be examined by the Commission referred to in Clause 52 of the Agreement.
  7. If the value of the Additional Works and/or Services does not exceed EUR 10,000 (ten thousand) (this limit applies to the value of each Additional Work or Service, but the total value of the Additional Works or Services in a calendar year may not exceed EUR 50,000 (fifty thousand)), the Authorised Person of the Public partner shall inform the Authorised Person of the Private partner of the need for such Additional Works or Services by email. The representative of the Private partner shall assess the nature and scope of the Additional Works and Services and shall, within 5 (five) Business Days, submit a proposal by email on the timing and cost of the Additional Works and/or Services. The Private partner shall submit the supporting documents for the Additional Works and/or Services up to a value of EUR 10,000 (ten thousand) together with a quarterly (during the execution of the Works) or monthly (during the provision of the Services) report.
  8. The Private partner will take all reasonably practicable measures to ensure the financing of Additional works and / or services on terms acceptable to him and the Funder or Another loan provider. If the Private partner is not in a position to ensure financing for Additional works and / or services, the Public partner and the Private partner shall agree in writing the appropriate schedule for the payment for such Additional works and / or services, or forfeits such Additional works and / or services
  9. If the Public partner and the Private partner do not agree on the financing of the Additional works and / or services as specified in Clause 16.7 of the Agreement, the Public partner has the right to purchase Additional works and / or services from other economic entities in accordance with the terms of legislation.
  10. In any case, the total value of the Additional works and / or services, purchased from the Private partner in accordance with the procedure specified in this paragraph throughout the term of Agreement may not exceed 50 percent of the initial value of the Agreement

## Change of Works or Services

* 1. The Parties have the right to initiate a Change according to the terms specified in this Clause 17 of the Agreement.
  2. Only Changes that relate to the Assets and
     1. does not exceed EUR 10,000 (ten thousand) (this limit shall apply to the value of each Change, but the total value of Changes in a calendar year shall not exceed EUR 50,000 (fifty thousand); or;
     2. are equivalent and do not change the amount of the PPP Fee may be made. Changes shall be deemed to be equivalent and not to alter the amount of the PPP Fee if the difference between the price of the Works or Services to be refused and the price of the Works or Services offered, excluding VAT, is no more than one (1) percent.
  3. By initiating a Change, the Party must present an email notice about the Change to another Party. Such notice must contain:
     1. A description of the Change, detailed enough so it would be possible to assess and present a proposal to another Party (if the Change is initiated by the Public partner) or a consent (if the Change is initiated by the Private partner);
     2. Reasons why the changes for Works and/or Services are proposed;
     3. Impact on the carrying out of Works and/or provision of Services (if applicable);
     4. Implementation schedule of the proposed Change;
     5. the period within which the other Party must submit a proposal (if the Change is initiated by a Public Partner) or consent (if the Change is initiated by a Private partner) to implement the Change. If no such period is specified in the notice, the Party shall submit its proposal/consent within 15 (fifteen) Business Days from the date of receipt of the notice of the initiation of the Change.
  4. After the Party receives the notice on the Change, it has the right to refuse to implement the Change if:
     1. legislation requirements would be breached by implementing the Change;
     2. previously issued permits, consents, or approvals of other kind, associated with this Agreement and/or the Facility or the associated documentation of its part, would be cancelled should the proposed Change be implemented;
     3. the Change could have a fundamentally adverse effect on the capabilities to perform the Agreement;
     4. the proposed Change could do any damage to the human health or safety;
     5. the proposed change could have a substantial adverse effect on the abilities of the Private partner to perform obligations under a Direct agreement or another agreement with the Funder specified in the Agreement;
     6. due to the proposed change the Private partner will incur additional costs, the financing thereof should be ensured by the Public partner.
  5. After the receipt of an email refusal to implement the proposed Change from the Party, the Party that initiated the Change may organize a meeting with the other Party, during which the following matters shall be discussed:
     1. the justification by the Private partner, confirming that all possible actions in order to reduce the increase of costs or increase the reduction of costs were taken;
     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;
     3. The reasons of refusing to implement the proposed Change and possible means for the elimination of these reasons.
  6. The Parties agree that the price for the Replacement Works shall be calculated in accordance with the following principles:
     1. the prices of the materials and/or equipment to be replaced shall be calculated on the basis of the prices in the SISTELA Information Database or, if not available in the SISTELA Information Database, on the basis of the manufacturer’s prices offered by the Private partner, which may not be higher than the average market price determined by assessing the prices of the construction products and equipment of at least 3 (three) economic operators (if such number of economic operators exists on the market), which are in force at the time of conclusion of the agreement on the replacement Works;
     2. the prices of the materials and/or equipment to be withdrawn as a result of the change shall be calculated on the basis of the prices in the SISTELA information database or, if not available in the SISTELA information database, on the basis of the manufacturer’s prices offered by the Private Partner, which shall not be higher than the average market price, determined by assessing the prices of construction products and equipment of at least 3 (three) economic operators (if there are so many economic operators on the market) in force at the time of the final offer;
     3. the prices of the Replacement Construction/Equipment Works shall be calculated on the basis of the rates in the SISTELA Information Database, if any, and, if no such name is available in the SISTELA Information Database, on the basis of the nearest SISTELA Information Database rate for the work in force at the time of the conclusion of the agreement on the Replacement Works;
     4. the prices of the construction/installation works to be withdrawn as a result of the change, shall be calculated in accordance with the rates in the SISTELA Information Database, if any, and, if such a name does not exist in the SISTELA Information Database, the nearest SISTELA Reference Labour Rate in force at the time of the submission of the final proposal;
     5. the reasonableness of the Replacement Price set out in Clauses 17.6.1 to 17.6.3 shall be examined by the Committee referred to in Clause 52 of the Agreement.
  7. The Parties agree that the price of the Replacement Services shall be calculated in accordance with the following conditions:
     1. on the basis of the prices offered by the Private partner, which shall not be higher than the average market price, determined by assessing the prices of the services of at least 3 (three) operators (if there are such operators on the market), valid at the time of conclusion of the agreement on the Additional Services.
     2. The reasonableness of the Replacement Price set out in Clause 17.7.1 of the Agreement shall be subject to the review of the Committee referred to in Clause 52 of the Agreement.
  8. Should a dispute regarding the proposal for Change arise between the Parties, the dispute is resolved in accordance to procedure specified in Clause 54 of the Agreement.
  9. If the Parties agree on the Change or a refusal to implement the Change, or if the dispute is resolved in accordance to procedure specified in Clause 54 of this Agreement, the respective Party confirms the received proposal (with changes, if applicable) or withdraws the Change that it initiated.
  10. 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 Clause 54 of the Agreement.
  11. After the proposal is confirmed or an approval is received, the Private partner must provide the changed Financial Operating Model to the Public partner in accordance to the procedure specified in Annex 3 *Settlement and payment procedures* to this Agreement, within 10 (ten) Business days, if necessary.
  12. After the proposal for Change is confirmed the Parties shall immediately execute the respective changes to the Agreement (if such are necessary).

## Provision of Services

* 1. At least 20 (twenty) Business Days prior to the commencement of Operation of the Facility, the Private partner shall submit to the Public Partner the following information and documents:
     1. copies of the Service Contracts with the Subcontractors;
     2. permits, certificates, licenses, certificates or other documents confirming the right to provide the relevant Services;
     3. Service Delivery Plan. The Service Delivery Plan shall be consistent with the Tender;
     4. a list of New Assets not specified in the Specifications but acquired by the Private partner for the provision of the Services, to be updated and provided to the Public Partner within 10 (ten) Business Days in the event that during the performance of the Agreement the Private partner acquires New Assets other than those specified in the New Assets list.
  2. The Private partner undertakes to provide the following Services:
     1. renovation and repair works;
     2. maintenance of the Facility;
     3. cleaning;
     4. maintenance of the site and green areas;
     5. development and maintenance of the recording tool
     6. . the other Services provided for in the Specifications.
  3. The Private partner must ensure, that the nature, amount, and quality of Services that are being provided, would constantly and completely meet the requirements of the Agreement. In case of disputes regarding the compliance of Services with the specified documents, they are resolved in accordance to procedure specified in Clause 52 of the Agreement. The Private partner must provide Services at the site of the Property, except in the exemption cases specified in the Agreement, or in case of Services, which according to the Specifications, Tender, or their nature can be provided in another location.
  4. The Private partner has the right to suspend the provision of Services in the Facility, where the Private partner is performing Repair works of the Facility (or its part). If there is a need to transfer employees out of the Facility (or its part), where the Repair works are being carried out, such transfer to another part of the Facility or another institution must be organized by the Public partner in such a way that Repair works would not be interrupted. The Private partner must ensure, that Repair works are carried out and completed at the time and within deadlines agreed with the Public partner. The Parties understand that in case of the need to suspend the provision of Services at the Facility where the Private Partner is carrying out the Renewal and Repair Works specified in the Service Delivery Plan, the Fee shall be payable during the period of such Renewal and Repair Works, i.e., shall not be deemed to be a circumstance as provided for in Clause 23.9 of the Agreement, except where the Private Partner, in the course of carrying out the Renewal and Repair Works, fails to comply with the time limits for carrying out the Renewal and Repair Works as agreed with the Public Partner in advance.
  5. The Private partner undertakes to inform the Public partner about the Repair works that are being planned within the following terms and according to the following procedure:
     1. the Private partner must inform the Public partner about the Ordinary repairs at least 2 (two) months before the commencement of the Ordinary repairs by agreeing on the procedure of the performance, extent, time, and deadlines of such works;
     2. of urgent Renovation and repair works necessary for the functioning of the Facility/ unit of the Facility, at least 2 (two) Business Days prior to their commencement, agreeing on the procedure, scope and timeframe of their performance;
     3. for the accident prevention and/or their elimination, the Private partner must immediately make all the necessary Repairs and inform the Public partner about the performed Repairs as soon as possible.
  6. During the provision of Services, the Private partner (or the Service Subcontractor) must have installed a certified environmental protection system in the fields of the Service provision, conforming to the ISO 14001 or equivalent standard, and a certified system of employee safety and health at work, conforming to ISO 45001 or an equivalent standard, and to must adhere to the requirements thereof the entire time. This requirement shall not apply if the value of the Services performed by the Subcontractor does not exceed the value of the Services in a calendar year as specified in Clause 19.5 of the Agreement.
  7. Upon request by the Public Partner, the Private Partner shall provide documentation confirming that the Services, Renewals and Repairs are in accordance with the requirements set out in the Specifications and the requirements of Clause 7.1.3 of the Agreement.
  8. The Private partner is responsible for the supply and monitoring of the energy and water, as set out in the Specifications and in Annex 3 to the Agreement, *Settlement and Payment Procedures*.

## Subcontractors

* 1. The Private partner, at its own expense (i.e. without increasing the Annual remuneration just for that reason), risk, and liability may hire Subcontractors, who meet the qualification requirements for Subcontractors, specified in the Conditions for respective Subcontractors, presented in Annex 1 to the Agreement *The Terms and Conditions of the Procurement*, as meet the requirements of the absence of grounds for exclusion and the requirements of national security, for carrying out of Works and provision of Services, except in case specified in Clause 19.5 of the Agreement, only after receiving a prior written consent from the Public partner, which cannot be unreasonably withheld by the Public partner. Approval of the Public partner is not necessary in the case specified in Clause 19.5, also for Sub-suppliers that are listed in the Tender.
  2. During the performance of the Works or the provision of Services, subcontractors must comply with the same requirements that apply to the Private partner due to the respective Works and Services under the Agreement.
  3. Subcontractors or economic entities, the capacity of which were employed by the [select: Investor or the Private partner] during the Procurement in order to meet the requirements specified in the conditions, may be replaced by other entities if:
     1. if ensure at least same resources and capacity as the resources and capacity committed by the Sub-suppliers being replaced, required for the completion of the remaining part of the Agreement and meet the requirements for Sub-suppliers that are being replaced set in the Procurement conditions, including qualification requirements, if at the time of the Procurement the Investor has based its compliance with the requirements specified in the Conditions on the qualification of the respective Sub-suppliers, and
     2. the replacing economic operators meet the requirements for Subcontractors in the Conditions of Procurement with regard to the absence of grounds for exclusion and the national security requirements; and
     3. the Private Partner obtains the prior written consent of the Public Partner, which shall not be unreasonably withheld.
  4. After concluding an agreement with a Subcontractor, the Private partner presents a copy of the agreement to the Public partner within no more than 5 (five) days after the date of its conclusion.
  5. Regardless of Clause 19.1 of the Agreement, the Private partner has the right to hire a new Subcontractor or entity without a prior written consent from the Public partner, (except in case specified in Clause 20.2.8 of the Agreement, when such consent is required), if the total value of the Works carried out by such Subcontractor does not exceed 500 000 (five hundred thousands) EUR excluding VAT or if the total amount of the Services being provided does not exceed 300 000 (three hundred thousands) EUR excluding VAT and the Works executed or Services provided by such Subcontractors are not related to classified information.
  6. Agreements with Subcontractors and entities must be concluded in accordance with the principles of good faith and arm’s length, as well as the Good business practice. Agreements must be valid until the expiration or termination of the Agreement, except for such agreements as are necessary to ensure the warranty service of the Facility, but such agreements shall not adversely affect in any way the rights and obligations of the Public Partner, including financial obligations.
  7. Regardless whether the Services are provided by the Private partner itself or by employing Subcontractors, the Private partner is responsible for the proper carrying out of Works or the provision of Services, meeting the requirements of the Specifications and the Tender, as well as their quality.

## Coordination of activities with the Public partner

* 1. The Private partner must supply the Public partner with the following for familiarisation:
     1. Candidacies of experts specified in Clause 27.1 of the Agreement;
     2. Candidacies of the auditor of the Private partner;
  2. The Private partner must, in all cases, get a prior written consent of the Public partner for:
     1. Completion of the Works earlier than the deadline set out in Paragraph 4.1 of the Agreement;
     2. The change of Financial Operating Model, as specified in the Annex 3 *Settlement and payment procedures* of the Agreement;
     3. The change of Subcontractors, as specified in Clause 19 of the Agreement;
     4. Transactions indicated in Clause 32 of the Agreement, related to the security of the Private partner’s performance of obligations to third parties, except cases of exception specified in the Agreement;
     5. the terms and conditions of the Insurance Contracts (draft Insurance Contracts shall be provided) in accordance with Annex 5 to the Agreement, *List of Mandatory Insurance Contracts*;
     6. the terms and conditions of the Performance Security (draft Performance Security Agreements shall be provided);
     7. the temporary non-execution of the Insurance Contracts in the event as provided for in Clause 33.4 of the Agreement;
     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 Clause 33.11 of the Agreement;
     9. Any transactions concluded between the Private partner and Associated persons, except for those specified in the Tender;
     10. Other transactions, on the basis of which the Private partner assumes obligations, the value of which for the current financial year exceeds 150 000 (one hundred and fifty 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 300 000 (three hundred thousand) Euro (excluding VAT). This clause shall not apply to the contractual obligations of the Private Partner under clause 13.9.3 of the Agreement. If it is not possible to calculate these values in advance, the consent of the Public partner will be required if:
         1. the duration of the agreements are more than 10 (ten) years; or
         2. the duration of the agreements is indefinite; except for the cases, when (1) the possibility of their unilateral termination is provided in these agreements, by notifying the other party before no more than 2 (two) months in advance, and (2) if the Private partner assumes no obligations to compensate losses or pay contractual penalties of any size if the agreement is terminated this way.
  3. The Public partner must express its consent or a motivated refusal to issue the consent for the conclusion of the transactions specified in Clause 20.2 of the Agreement, no later than within 10 (ten) Business days from the date of the receipt of the request of the Private partner, and all of the necessary information, as well as the confirming documents, if other periods for the provision of a specific response are not specified in the Agreement, Public partner also has no right to refuse to issuing such consent. If the Public partner fails to provide any remarks or objections within the specified time period, it is deemed that the Public partner agrees with the proposed actions. If a consent for conclusion of the specified transactions is issued, the transactions must be concluded under market conditions in accordance to the principle of arm’s length. The Private partner informs the Public partner about the conclusion of a transaction immediately, but no later than within 10 (ten) days, by providing the copies of the agreement, annexes to it, documents listed in it, and associated documents.

# Cases of exemption and Compensation events

## Cases of exemption

* 1. The following are deemed to be Cases of exemption, if:
     1. The Public partner fails to fulfil its obligations under the Agreement;
     2. Annual remuneration for performance of the Agreement is not received for more than 30 (thirty) days due to circumstances under the control of the Public partner;
     3. the amount of Annual renumeration payments which is delayed in one year exceeds half the amount of the Annual renumeration payment for one month, which shall be calculated by taking the average of the monthly PPP Fees payable under the Agreement during that one (1) year;
     4. the Private partner is no longer able to perform the Works or provide the Services in whole or in part due to a Material Change in Legislation (the risk of any other changes in Legislation that are not considered Material shall be borne by the Private Partner);
     5. delays in the execution of the Works due to archaeological finds, cultural heritage requirements, if the Public Partner was not aware of such information or was aware of such information but not provided at the time of the Procurement;
     6. it is not possible to carry out the Works or provide the Services in whole or in part due to a breach of the representations and warranties made by the Public Partner in relation to the condition of the Land(s), i.e. where the information provided by the Public Partner (including information provided during the Procurement) is incorrect or the Public Partner has not provided all the information available to the Public Partner in relation to the condition of the Land(s). Incompleteness and/or inadequacy of the information provided by the Public Partner does not constitute an Exemption;
     7. delays in the execution of the Works due to the presence of construction waste on the Land, if such information was not known to the Public Partner or was known but not provided at the time of the Procurement;
     8. it is objectively impossible to carry out the Works or to provide the Services in whole or in part due to any restrictions on ownership or similar rights in respect of the Facility or any part of the elements of a part of the Facility or the Land(s);
     9. the delay in the performance of the Works is due to the non-issuance or delay in the issuance of permits for the execution of the Works caused by the acts or omissions of the State/municipal authorities in failing to comply with the requirements of the Laws, but not by the acts or omissions of the Private partner;
     10. strikes, lock-outs or other temporary disturbances occur on the Facility (other than by employees of the Private Partner or Related Persons or Subcontractors), provided that they do not give rise to a right to apply Force Majeure pursuant to Clause 42 of the Agreement;
     11. the performance of the Works or the provision of the Services is prevented by the act or omission of persons (soldiers, employees, visitors) under the control of the Public Partner;
     12. as a result of transactions entered into by the Public Partner with third parties, where this results in delays in the performance of the Works or damage to the Assets;
     13. delay in the performance of the Works or the provision of the Services due to the unlawful acts of public authorities or other public administration bodies;
     14. accidents occur in engineering, communication networks, the installation and maintenance of which is not the responsibility of the Private partner, which are not due to the Private partner’s actions (acts or omissions) and which directly affect the proper performance of the Agreement;
     15. force majeure in accordance with Clause 42 of the Agreement;.
  2. If any of the circumstances set out in clause 21.1 of this Agreement arise:
     1. The authorised representative of the Private partner shall notify the authorised person of the Public partner immediately, but no later than within 2 (two) days from the occurrence of the Case of Exemption, by email about it specifying the nature of the Case of Exemption, the date of its occurrence, its presumable duration, what measures were or will be taken to mitigate the consequences of the Case of Exemption as well as which contractual obligations the Private partner cannot fulfil due to the Case of Exemption;
     2. The authorised person of the Public partner shall within 2 (two) Business days from date of receipt by email of the notification of the Case of Exemption confirm the Case of Exemption or inform the authorised person of the Private partner of the reasons for not confirming the Case of Exemption;
     3. The Private partner shall provide a detail information about the Case of Exemption along with a quarterly (during the execution of the Works) or monthly (during the provision of Services) report.
  3. In the event that archaeological finds are discovered on the Land, the Private partner shall, including the actions provided for in Clause 21.2 of the Agreement,:
     1. take all necessary steps to preserve the finds in the same position and condition in which they were found;
     2. suspend the Works and/or Services to the extent that their performance would endanger the Finds or restrict/interfere with their excavation;
     3. allow access to the Land by representatives of the Public Partner and/or other public authorities for the purpose of removing or handing over the Finds, provided that the applicable security requirements shall be complied with during access to the Land;
     4. deal with the finds in accordance with the requirements of the law.
  4. If a case of Exemption arises prior to the fulfilment of the Conditions Precedent to the Agreement or the commencement of the Operation of the Facility, the deadline of the full commencement of the Agreement set out in Clause 3 of the Agreement, the time limits for the completion of the Works and/or the commencement of the provision of the Services for the parts of the Facility (taking into account extensions thereof pursuant to the other provisions of the Agreement) set out in Clause 4 of the Agreement, shall be extended for the period of time of the case of Exemption, but shall not extend the overall duration of the Agreement.
  5. In Case of Exemption, the liability specified in Clause 47 of this Agreement and grounds for termination of the Agreement specified in Clause 39 of the Agreement do not apply to the Private partner.
  6. The provisions of Clauses 21 and 22 of the Agreement may also be applied to the same circumstances, if these circumstances meet both the criteria of the Case of Exemption and the Compensation Event.
  7. If the Private Partner submits the notification of the Case of Exemption without complying with the deadline set out in Paragraph 21.2 of the Agreement, except when the notification of the Case of Exemption is delayed due to objective circumstances beyond the control of the Private Partner and such circumstances are indicated by the Private Partner in its notification, the Case of Exemption shall not apply for the period of delay.
  8. Any disputes between the Parties regarding the Case of exemption are resolved in accordance with the procedure specified in Clause 52 of this Agreement.
  9. If the Private partner fails to provide all or part of the Services as a result of an Exemption Case, the PPP Fee shall be payable to the Private partner in accordance with the Settlement and Payment Procedures set out in Annex 3 to the Agreement.

## Compensation events

* 1. The Compensation events are the events the risk of which according to the Agreement, including Annex 4 to the Agreement the *Matrix of Risk Distribution between Parties* is exclusively or partially attributed to the Public partner, and which are specified bellow, the consequences of which do not have to be compensated and / or remunerated by other persons, and / or which have not resulted from the actions of the Private partner, or its Associated persons, or Sub-Suppliers, or other entities employed by the Private partner for the performance of the Agreement, with the exception of actions which were intended to avoid the Compensation event or its affect on the increase in the Investments or the costs, associated with the provision of the Services, provided in the Financial Operating Model, should the caused loses, or the increase in the Investments or the Costs, associated with the provision of the Services were bigger::
     1. new legislation, imposing additional requirements for the performance of Works and / or provision of Services are changed or passed when such legislation is classified as the Fundamental legislative changes;
     2. new legislation is changed or passed which exclusively governs the activities of the Private partner, for which the Private partner is compelled to incur unplanned expenses for the implementation of the Agreement, and when such legal acts are classified as substantive changes to the legislation;
     3. The Facility / Element thereof 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 Clause 40.
     4. the Public partner breaches representations and warranties as to the condition of the Land(s) in accordance with the provisions of Clause 6.1 of the Agreement, i.e. if the information provided by the Public partner as to the condition of the Land(s) is incorrect or does not provide all the available information as to the condition of the Land(s), and which increases the Investment or the Costs. Incompleteness and inadequacy of information provided by the Public partner shall not constitute Compensation Events;
     5. the execution of the Works is made more expensive or otherwise more difficult by the discovery of archaeological finds or cultural heritage claims or construction waste, if such information was not known to the Public partner or was known to the Public partner but was not provided at the time of the procurement;
     6. third parties with whom the Public Partner has entered into transactions, through no act or omission of the Private partner, cause damage to the Assets, unless the Assets were required to be insured against a particular risk or the Public partner remedies the damage caused to the Assets. In such case, the Public partner shall indemnify only to the extent that the Private partner’s loss is not covered by the insurance benefit under the Insurance Contracts;
     7. Public Partner’s persons, soldiers, employees and visitors under the control of the Public Partner, use the Assets for purposes other than those for which they are intended and/or in disregard of the reasonable requirements of the manufacturers’ or the Private Partner’s documentation, instructions, which results in damage to or destruction of the Assets and an increase in the Investment and/or the Costs. In such case, the Public Partner shall only reimburse to the extent that the Private Partner’s losses are not covered by the insurance benefit under the Insurance Contracts. An Event of Compensation shall not be deemed to have occurred where the damage to the Assets is due to the inadequate quality of the Assets or to inadequate decisions by the Private Partner in the development of the Assets;
     8. it is objectively impossible to carry out the Works or to provide the Services, in whole or in part, due to the failure of the Public Partner to perform its Contractual obligations, other than due to the default or wrongful act of the Private partner in relation to its contractual obligations;
     9. partial or complete performance of the Works is objectively impossible due to any restrictions of ownership rights with respect to the Land plot or the Facility/ components of the Facility;
     10. it is not objectively possible to perform the Works because of unauthorized acts or omissions of public administration entities delaying the issuance of the necessary documents for designing, although they have received from the Private partner all documents compliant with legal acts (without a dispute regarding the content of documents) to the entity of public administration;
     11. the circumstances of the *Force majeure* occur. In this case, the Public partner is obliged to assume 50 (fifty) % of the consequences of the risk, unless the Private partner is or should be insured against particular circumstances of force majeure, in which case the risk of the consequences of all circumstances of force majeure falls on the Private partner;
  2. Losses incurred by the Private partner as a result of a Compensation Event shall be compensated for by the Public partner’s share of the risk, i.e. in full, if the risk is allocated in full to the Public partner, or in part, if the risk is shared between the Public Partner and the Private Partner, as set out in the Matrix of Risk Distribution between the Parties in Annex 4 to the Agreement.
  3. In the event of a Compensation Event where the damage to the Property at the initial assessment is greater than 2000 (two thousand) Euros, the Private partner shall immediately, but no later than within 5 (five) Business Days of becoming aware of (or having reason to become aware of) the Compensation Event, notify the Public partner in writing and, no later than 21 (twenty-one) Days after notification of the Compensation Event, provide the Public partner with documentation substantiating the Compensation Event and demonstrating the impact of the Compensation Event on the level of the Investments in the Financial Operating Model or the occurrence of direct losses that may be compensated for in accordance with the *settlement and payment procedures* set out in Annex 3. Missing the deadline for notification of the Compensation Event for objective reasons beyond the control of the Private partner shall not invalidate the Private partner’s right to compensation.
  4. If the damage to the Property upon the occurrence of a Compensation Event does not exceed EUR 10,000 (ten thousand euros) as initially estimated, the Private Partner shall notify the Public partner’s Authorised Person of such Compensation Event by e-mail within 5 (five) Business Days at the latest and record such Compensation Event in the Registration Tool. And within 10 (ten) Business Days shall submit the documents supporting the Compensation Event by email. The Authorised Person of the Public partner shall approve or reject the Compensation Event in the Registration Tool within 3 (three) Business Days from the date of submission of the documentation of the Compensation Event. Information on each Compensation Event recorded and approved or rejected during a calendar month, where the damage to the Property does not exceed EUR 10,000 (ten thousand), shall be provided together with the monthly Service report.
  5. In the event of damage to the Property as a result of the Compensation Events referred to in Clauses 22.1.6 to 22.1.7, the replacement and repair of the Property shall be subject to the time limits for rectification of damage set out in Appendix 4 to Annex 3 to the Agreement, the *Settlement and Payment Procedures*, the time limits for the correction of the damage set out in that Appendix, the liability provided for in Clause 47 of the Agreement, and the grounds for termination set out in Clause 39 of the Agreement.
  6. Where the damage to the Property in the event of a particular Compensation Event exceeds EUR 10,000 (ten thousand), the Public Partner shall, within 20 (twenty) days of the submission of the documents substantiating the damage and the amount of such damage or the necessity to extend the time limits, make a reasoned decision on the confirmation of the Compensation Event or a reasoned refusal to do so.
  7. Upon confirmation of the Compensation Event the following are compensated to the Private partner:
     1. If due to the Compensation Event the Investments into the Property increase – the increase of such Investments is necessary;
     2. If due to the Compensation Event the costs of the Private partner, related to the Service provision increase – the increase of such costs is necessary;
  8. Compensation specified in Clause 22.7 of the Agreement is calculated and paid in accordance to Annex 3 to the Agreement *Settlement and payment procedures*.
  9. 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 Clauses 16 and 17 of the Agreement, the additional compensations for the same thing are not paid to the Private partner according to the terms set forth in Clause 22 of the Agreement.
  10. If the Private partner presents the notice about the Compensation Event without observing the deadline set forth in Clause 22.2 of the Agreement, except where the delay in notifying the Compensation Event is due to objective circumstances beyond the control of the Private Partner and such circumstances are specified by the Private Partner in its notification, the compensation for the missed deadline is not paid.
  11. Any disputes between the Parties regarding the existence of the Compensation Event, the size of the compensation and terms of payment, the postponement of the deadlines, and its duration are resolved according to the procedure of dispute resolution set forth in Clause 52 of the Agreement.
  12. In case of the Compensation event of which the Private partner notified the Public partner by dully submitting the notice and documents confirming this Compensation event according to the terms set forth in Clause 22.2 of the Agreement, the liability specified in Clause 47 of the Agreement and grounds for the termination of the Agreement specified in Clause 39 of the Agreement (except as provided in Clause 22.5 of the Agreement where liability and grounds for termination apply) do not apply to the Private partner for that period of the Compensation event that was duly reported and documents confirming this Compensation event were submitted within the deadlines specified in Clause 22.2 of the Agreement.

# Payments

## Payments and terms of payment

* 1. The Private partner receives only the Annual remuneration for performance of the Agreement, it is calculated and paid out according to the terms of Annex 3 to the Agreement *Settlement and payment procedures*.
  2. The amounts paid to the Private partner are reduced or increased in such cases and by such amounts that are specified in this Clause 23 and Annex 3 to the Agreement *Settlement and payment procedures*.
  3. Any taxes, levies or payments of any other nature shall not be deducted from the payments made by the Public partner to the Private partner, except for the deductions according to Annex 3 to the Agreement *Settlement and payment procedures*.
  4. Annual remuneration payments and other payments under this Agreement are calculated and carried out in euros.
  5. The Parties confirm that the Private partner has the right to agree with the Funder that the Annual remuneration or a part thereof would be paid to the Bank account of the Funder. In that case, the Public partner transfers the Annual remuneration or a part thereof directly to the specified bank account of the Funder.
  6. All costs and expenses relating to the performance of the obligations of the respective Party under the Agreement shall be assumed by the respective Party and shall not be reimbursed at the expense of the other Parties, except in cases when the Agreement expressly provides otherwise.
  7. A private partner covers all the Utility service tax costs related to the creation of the Property, up to (but not including) the commencement date of Object’s operation, at its own expense. From the commencement date of Object’s operation until the end of the Agreement, the costs of Utility service taxes are deemed to be Pass-through costs and they are paid by the Public partner on the basis of actual consumption data and in accordance with the procedure specified in Annex 3 to the Agreement *Settlement and payment procedures*.
  8. If, in accordance with the Law on Municipal Infrastructure Development of the Republic of Lithuania, a Private Partner becomes obliged to pay a municipal infrastructure development contribution, the Public Partner shall give notice to cooperate in order to exempt the Private Partner from payment of such contribution. In the event that the Private Partner is not exempted from payment of the Municipal Infrastructure Development Levy, the Public Partner undertakes to reimburse the Private Partner in full for the premium paid by the Private Partner, which shall not be included in the PPP Fee.
  9. If, due to the fault of the Private partner, the Object cannot be used for the provision of the Services and the performance of functions of the Public partner, i.e. due to the inadequacy of the Object, the Private partner cannot provide the Services, and the Public partner is unable to perform the functions assigned in the legislation, the Public partner does not pay the Annual remuneration for the period during which the Object could not be used, in whole or in part, for the provision of Services and the performance of the functions assigned to the Public partner in the legislation. The principle of "Zero availability - zero payment" applies. The Parties agree and confirm that Cases of exemptions and / or *Force Majeure* specified in the Agreement are not considered as cases of "Zero availability - zero payment". The procedure for the application of this Agreement clause is set out in Clause 53 of the Settlement and Payment Arrangements in Annex 3 to the Agreement.
  10. Any disagreement between the Parties as to the existence and duration of the event referred to in Clause 23.9 of the Agreement shall be settled in accordance with the procedure set out in Clause 52 of the Agreement.

## Change of Financing Conditions

* 1. The Private partner shall use the financing set out in the Financial Operating Model, including the sources and terms of financing, to fulfil its obligations under the Agreement. The Private partner shall have the right to change the sources of funding or the terms of funding set out in the Financial Operating Model provided that this does not increase the obligations and risks of the Public partner, including in the event of termination of the Agreement, and provided that the new Funder complies with the national security requirements set out in the Conditions. Such change in the Funding Sources and/or Funding Terms shall require the prior written consent of the Public partner and shall not be unreasonably withheld or refused by the Public partner, provided that it does not increase the Public partner ‘s liabilities and risks and that the change is in accordance with the national security requirements set out in the Conditions. Such consent or reasoned refusal shall be provided by the Public Partner within 7 (seven) Business Days of the request submission with all supporting information and documentation.

# Control of the performance of obligations

## Right of the Public partner to control

* 1. The Public partner has the right to control how the Private partner is performing its obligations under the Agreement, including the right to inspect the following, by its preferred means and at its own expense, in accordance with the procedure set forth in the Agreement:
     1. The performance of works carried out by the Private partner according to the procedure specified in Clause 9.8 of the Agreement;
     2. Property of the Private partner as well as the performance of all obligations undertaken by the Private partner under the Agreement;
     3. the compliance of the Private Partner’s performance with the requirements set out in the Agreement and its Annexes.
  2. As the Public partner is exercising its right to inspect and control the activity of the Private partner, the Private partner must cooperate fully with the Public partner and its representatives, enable them and provide the possibilities at the agreed time to familiarise with the documents, inspect the Property, premises / location where the activity, related to the execution of the Works and provision of the Services, is being carried out, as well as provide all the requested information related to the performance of the obligations undertaken under the Agreement, however the inspections must not interfere with the Private partner’s execution of the Works or provision of the Services.
  3. Rights of the Public partner to control the activity of the Private partner, provided for in this Clause 25, have no effect on any other provisions of the Agreement, that enable the Public partner to exercise other or identical or similar rights to control.
  4. Any provision of the Agreement cannot be interpreted as relieving the Private partner from the liability for infringements established and sanctions imposed by state institutions or for damage caused to the third parties.

## Provision of the information

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

| **No**. | **Information** | **Timeframe** |
| --- | --- | --- |
|  | Set of audited financial statements and annual activity report of the Private partner | Not later than within 130 (one hundred thirty) days after the end of each financial year |
|  | Monthly / quarterly and annual activity report prepared by the Private partner as per Public partner’s prepared forms. | Quarterly report - no later than 10 (ten) Business Days after the end of each relevant reporting period.  Annual Report - no later than 30 (thirty) Business Days after the end of each relevant reporting period. |
|  | Monthly and annual activity reports on the provision of the Services, prepared by the private partner, in accordance with the formats provided by the Public Partner. The annual report shall be accompanied by recommendations and proposals for energy conservation, management, etc. | No later than ten (10) Business Days after the end of each relevant reporting period.  Annual Report - no later than 30 (thirty) Business Days after the end of each relevant reporting period. |
|  | Report on the verification of compliance with the requirements set out in Clause 18 of the Agreement as provided for in Clause 27 | No later than 2 (two) months from the date of a reasoned request for verification by the Public Partner. |
|  | Agreements concluded with Sub-Suppliers | Within periods specified in the Agreement |
|  | Insurance agreements specified in Clause 33.1 of the Agreement | Within periods specified in the Agreement |
|  | Agreements of the Private partner specified in Clauses 20.2.8 and 20.2.9 of the Agreement | Within 5 (five) days from their conclusion |
|  | the documents referred to in Clauses 9.8.7 and 18.7 of the Agreement | Within a reasonable period of time specified in the Public Partner’s request |
|  | Other information and / or documents requested by the Public partner if they affect or can affect the performance of the obligations under the Agreement, or if they are related to the provision of the information about the performance of the Agreement to the Public partner for the purposes of appropriate notifying | Within reasonable period of time indicated in the request of the Public partner |

## Inspection of the provided Services

* 1. Upon motivated request of the Public partner, but no more than 1(one) time per each 4 (four) years of the Agreement duration starting from operations commencement, the Private partner must invite at its own expense independent financial, technical, legal, and other experts and specialists, who would perform the inspection of conformity with the requirements specified in Clause 18 of the Agreement and present its written report to the Public partner. If during the inspection non-conformities with the requirements specified in Clause 18 **Error! Reference source not found.** of the Agreement are detected, the Private partner must additionally specify the reasons that led to them.
  2. The Public Partner shall carry out a routine inspection on a monthly basis, taking into account the Service Delivery Plan and the information provided in the monthly report.
  3. The inspection (complete or partial) of conformity of the Private partner’s activity with the requirements specified in Clause 18 of the Agreement can also be carried out by the Public partner in case of any of the following grounds:
     1. Report of the inspection of the conformity with the requirements, specified in Clause 18 of the Agreement, submitted by the Private partner in accordance with Clause 26.1 of the Agreement is incomplete or contradictory, and the Private Partner fails to remedy the deficiencies within the time limit set by the Public Partner;
     2. The Public partner possesses a reliable information about the possible infringements of the requirements specified in Clause 18 of the Agreement;
     3. Activity inspections or investigations against the Private partner are initiated by state and / or municipal institution, or infringements are detected and / or sanctions imposed after their completion;
     4. the possibility of periodic inspections is provided for in non-discriminatory normative legislation applicable to the provision of the Services;
     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 the Public Procurement Service, the Ministry of Finance, the State Audit Office, the Central Project Management Agency, the European Court of Auditors.
  4. The Public partner may carry out inspection on its own or invite independent financial, technical, legal and other experts/specialists, or governmental or control institutions in cases specified in Clauses 27.3.1 – 27.3.5 of the Agreement. If any infringements of the requirements specified in Clause 18 of the Agreement are identified, the Public partner may request the Private partner to reimburse the expenses of such inspection, and in such case the Private partner must cover the actual expenses of such inspection incurred by the Public partner, which cannot exceed the general market prices of respective inspection services.
  5. The Private partner must provide the proper conditions for the governmental and control institutions, including, but not limited to the national audit office of Lithuania, the state tax inspectorate under the ministry of finance of the Republic of Lithuania, acting in accordance with the requirements of the legislation, to perform inspections of conformity with the requirements specified in Clause 18 of the Agreement, and/or other inspections.

# Transfers of rights and obligations

## Transfer of rights and obligations

* 1. The Public partner shall not be entitled to transfer its rights and obligations under the Agreement without prior written consent of the Private partner, it shall not be unreasonably withheld by the latter. In case of transfer of the rights and obligations, the Public partner (except for the case of liquidation of the Public partner) shall remain jointly liable to the Private partner together with the person to whom the rights and obligations under the Agreement were transferred by the Public partner.
  2. The Private partner with a prior consent of the Public partner, that shall not be unreasonably withheld, has the right to transfer its rights and obligations under the Agreement only to its branch or subsidiary company to which can be directly decisively influenced by the Private partner as it is defined in the Law on Companies of the Republic of Lithuania and which meet the requirements for the absence of grounds for exclusion and the requirements of national security. Arrangement must ensure that these prerequisites will be met during the entire period of the Agreement and no less than 3 (three) months after the expiration of the Agreement. The person, who took over the rights and obligations, must provide the same security of the performance of obligations as it was done by the previous Private partner. The initial Private partner shall remain jointly liable together with the new Private partner for the performance of the Agreement before the transfer. After all of these conditions are met, the entity, who took over the rights and obligations of the previous Private partner shall be deemed the Private partner for the purpose of this Agreement.
  3. The shares or part of shares of the Private partner may be transferred may be disposed of (transferred) with the prior consent of the Public partner, which may not be unreasonably withheld by the Public partner:
     1. the new Investor satisfies the requirements of non-exclusion and national security set out in the Procurement Terms and Conditions, in which case the original Investor shall be relieved of joint liability for the proper performance of the Private Partner’s obligations under the Agreement, except for liability arising from the obligations of the original Investor and/or the Private Partner prior to the change of Investor; *or*
     2. the new Investor is a Funder or Other Loan Provider that is subject to the no exclusion grounds and national security requirements set out in the Conditions, in which case the original Investor shall be relieved of joint and several liability for the Private Partner’s performance of tits obligations under the Agreement, other than liability arising from the obligations of the original Investor and/or the Private Partner prior to the change of Investor; *or*
     3. due to restructuring 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 meeting the requirements of no exclusion grounds and national security; *or*
     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 Private partner to the remaining parties to the joint enterprise agreement, if such transfer is permitted under the joint enterprise agreement. In such case the parties to the joint enterprise agreement remain jointly liable for the withdrawing party’s obligations under the Agreement.
  4. Cases of the transfer (disposal) of the shares or part of the shares of the Private partner specified in Clause 28.3 of the Agreement are possible only if due to such change the general nature of the Agreement does not change.

## Temporary transfer of the performance of Private partner’s obligations

* 1. In case of exceptional circumstances due to which the Private partner (the Sub-Suppliers that it employed) cannot ensure the performance of the Works and / or their a continuous and effective provision of the Services, since it is unable to perform or, though it can perform them, but does not perform unreasonably or illegally, any of its obligations under the Agreement, the Public partner shall be entitled to take over and / or transfer performance of such obligation or, in case such obligation cannot be performed otherwise – all obligations, to the third parties temporarily, but no longer than for 90 (ninety) days. The right of the Public partner set forth in this paragraph shall not affect in any other of its rights under the Agreement.
  2. Based on the ground, specified in Clause 29.1 of the Agreement, the Private partner must transfer its obligations to the Public partner or to the third party specified by the Public partner upon receipt of the written request of the Public partner. In such case all rights and obligations of the Private partner, including the rights of the Private partner arising from agreements with the third parties that are necessary for the proper performance of the obligations are transferred to the Public partner or to the third party specified by the Public partner. The Private partner must ensure proper transfer of performance of the Works and provision of the Services, properly document necessary permits and perform all other necessary actions without delay.
  3. For the purpose of this Clause 29, exceptional circumstances are:
     1. material breaches of the Agreement as they are defined in Clause 39.2 of the Agreement that are not eliminated during the set term;
     2. there is a risk of a severe damage to the environment, public health, safety of people or property, proper performance of functions and duties of Public partner and employees thereof operating at the Facility, and when, in reasonable opinion of the Public partner, the Private partner is unable to prevent that (e.g. the infrastructure used for the provision of Services becomes unsafe, the necessary verification of the reliability of the infrastructure, used for the provision of Services, is not performed, the failure to observe the manufacturer’s instructions, during the performance of the Works or the provision of the Services, the mandatory safety requirements are not observed, the Works are performed or the Services are provided by unqualified personnel, hazardous materials are released into the environment, etc.);
     3. circumstances of the *Force Majeure*, set forth in Clause 42 of the Agreement, due to which the Private partner cannot perform its obligations, last more than 20 (twenty) days, but the Public partner or the third party can ensure the performance of the obligations;
  4. Prior to performance of the actions specified in this paragraph, the Public partner, no later than 5 (five) days in advance, notifies the Private partner about:
     1. the intention to perform the specified actions;
     2. the reason for performance of such actions;
     3. the date from which the indicated actions shall be commenced;
     4. the period during which, in the opinion of the Public partner, the indicated actions will be performed;
     5. if possible, the impact of such actions on the Private partner and its capability to perform the Works or provide the Services during the period of when such actions are performed.
  5. The Private Partner shall not be liable for the acts, omissions or non-compliance of the entity that takes over the performance of the obligations with the requirements of the Agreement and/or the legislation, defects in the performance of the obligations, as well as any damage caused to the Facility or to the element of the Facility during the temporary assignment of the performance of the obligations of the Private Partner.
  6. The performance of the obligation, transferred under Clause 29.1 of the Agreement, is the responsibility of the entity to whom the performance of the respective obligation is transferred. The Private partner must supply all information necessary for the performance of the transferred obligation under the Agreement, and it shall not be deemed to be the breach of the confidential information security requirements of either Party.
  7. During the temporary transfer of the Private Partner’s obligations to third parties, in the absence of the circumstances referred to in Clause 23.9 of the Agreement, no payments shall be made to the Private Partner in respect of the M4 and M5 portions of the PPP Fee set out in Annex 3 to the Agreement, Settlement and Payment Procedures. If the Private Partner provides part of the Services, then it shall be paid the M4 and M5 portions of the PPP Fee only for the part of the Services provided.
  8. After the circumstances due to which the respective obligation of the Private partner was taken over or transferred, expire, the rights that were transferred temporarily shall be returned to the Private partner without delay and the Agreement is performed as usual.
  9. If, in the opinion of the Private Partner, the Public Partner has unreasonably applied a temporary assignment of the Private Partner’s obligations, the dispute shall be resolved in accordance with the procedure set out in Clause 54 of this Agreement. The temporary assignment of the Private Partner’s obligations shall not preclude termination of the Agreement in accordance with the procedures set out in Section XVI of the Agreement.

## Possibility to Step-In

* 1. The Funder is entitled to exercise the step-in right, set forth in the Direct agreement, in accordance with the requirements and procedure set forth in the Direct agreement as well as other rights of the Funder set forth in the Direct agreement. The provisions of the Direct Agreement shall not increase the obligations assumed by the Public Partner under the Agreement.

# Security of performance of obligations in favour of the Public partner and third parties

## Security of performance of obligations in favour of the Public partner

* 1. The Private Partner must provide a bank guarantee or a surety insurance certificate from an insurance company to secure the fulfilment of its obligations under the Agreement:
     1. for the duration of the Works (to be provided in fulfilment of the Conditions Precedent to the Agreement), a Performance Security at the rate of 1 (one) per cent of the value of the Investment as specified in the Financing Business Model. The Private partner shall have the right to submit a Performance Security valid for 1 (one) year; in such case it must extend the validity of the Performance Security annually in accordance with the procedure set in Clause 31.2.5 of the Agreement.
     2. for the period of the provision of the Services (to be submitted 3 (three) months prior to the expiry of the term of the Agreement and to be valid for a period of at least 6 (six) months after the Assets have been handed over/returned in accordance with the procedures set out in Clause 10 of the Agreement) - EUR 10 (ten) million.
  2. Conditions for the performance of obligations:
     1. performance security shall be an unconditional, irrevocable, first-call bank (guarantor) or insurance company (insurer) undertaking to pay to the Public Partner the amount claimed by it if the Public Partner submits a demand for payment stating (i) that the Private Partner is in breach of its obligations(s) under the terms of the Agreement, and (ii) that the Private Partner is in breach of the Agreement, including any unpaid penalties. In the case of surety insurance, the insured event shall be deemed to be the first demand by the Public Partner for payment of an insurance claim due to a breach of contractual obligations;
     2. The performance security must be issued by: (i) a bank or insurance company licensed in the European Union; or (ii) a bank or insurance company from a third country, which on the date of issuance of the security must have an investment grade rating of not less than Standard & Poor’s ‘A-’, Fitch ‘A-’, Moody’s ‘A3’, or the equivalent, as approved by at least one international rating agency, and must be held by the bank or insurance company issuing the security, or by the group of companies of which it is a part;
     3. the Performance Security must be written in Lithuanian or English (and translated into Lithuanian);
     4. the amount required under the Performance Security must be paid no later than 10 (ten) days after the Public Partner has submitted the payment claim to the guarantor or insurer;
     5. in the case of a Performance Security referred to in Clause 31.1.1 of the Agreement, if a Performance Security with a validity of 1 (one) year, the Private Partner shall renew the Performance Security annually and shall submit to the Public Partner a document confirming the renewal of the Performance Security not later than 10 (ten) Business Days prior to the expiry date of the performance of the Performance Security. The Performance Security shall contain an unconditional undertaking by the guarantor or insurer to pay to the Public Partner the amount specified in its payment claim as security if the Private Partner has not renewed the validity of the Performance Security and/or has not provided the Public Partner with a document confirming the same 10 (ten) Business Days prior to the expiry date of the Performance Security. In the event of renewal or provision of a new Performance Security, the Deposit shall be returned;
     6. the Performance Security shall contain an unconditional undertaking by the guarantor or insurer to pay to the Public Partner the amount specified in its claim for payment, both to reimburse the Public Partner for costs already incurred as a result of the Private Partner’s breaches, and to pay the Public Partner’s actual future costs;
     7. the Performance security shall provide that any disputes between the Guarantor or the Insurer and the Public Partner relating to the Performance security shall be settled by the courts of the Republic of Lithuania.
  3. Prior to the provision of the Performance Security, the Private partner must apply to the Public partner for confirmation of its suitability. The Public Partner shall respond to such request no later than within 5 (five) Business Days of such request.
  4. If the Private Partner fails to provide the Performance Security within the time specified in Clause 31.1.2 of the Agreement, the Public Partner shall be entitled to suspend the payment of the PPP Fee by an amount equal to the Performance Security specified in Clause 31.1.2 of the Agreement until the Performance Security is provided.
  5. The Public Partner shall be entitled to draw on the Performance Security provided to it in respect of amounts to which it is entitled under the Agreement:
     1. in the event provided for in Clause 31.2.5 of the Agreement, where the Public Partner does not receive timely evidence of the extension of the Performance Security. In such case, the Public Partner shall be entitled to demand payment of the full amount of the outstanding Performance Security as deposit;
     2. the Private partner fails to pay the amount (fines, penalties) due to the Public Partner under the Agreement. In such a case, the Public Partner shall have the right to demand payment of the amount owed by the Private partner;
     3. the Private partner fails to fulfil its contractual obligations other than those referred to in clauses 31.5.1 to 31.5.2 within 30 days of receipt of a written request from the Public Partner. In such a case, the Public Partner shall be entitled to demand the payment of such amount of the Performance Security as is necessary for the Public Partner to fulfil its outstanding contractual obligations on behalf of the Private Partner, to compensate any loss or damage caused by the Private Partner (e.g., to remedy the defects in the Assets as referred to in Clause 10.15.2 of the Agreement);
     4. the circumstances set out in Clause 39 of the Agreement arise, entitling the Public Partner to terminate the Agreement for the fault of the Private partner.
  6. The Private Partner undertakes to ensure that a document is submitted ensuring the fulfillment of the obligations of the contractor’s guarantee period in accordance with Part 2 of Article 41 of the Law on Construction within 5 (five) Working days after the completion of the Facility. The amount of the guarantee security cannot be less than five percent (5%) of the Investment Value. The security document must be valid for at least three (3) years from the date of acceptance and transfer of the Facility, and its beneficiary must be a Private Partner, with an undertaking that the guarantee will be transferable or otherwise available to the Public Partner if the Private Partner fails to fulfill its guarantee obligations. The security for the fulfillment of guarantee obligations must be an unconditional, irrevocable, first-demand obligation of the bank (guarantor) or insurance company (insurer) to pay the customer the amount requested by him. The terms of Paragraphs 31.2.2 - 31.2.3 of the Agreement apply to the security for the fulfillment of guarantee obligations.
  7. If, after the exercise of the Performance Security, there remain any security funds, they shall be returned to the Private partner within 7 (seven) Business Days.

## Security of the performance of obligations in favour of the third parties

* 1. By securing the performance of its obligations in favour of the Funder, the Private partner without the separate consent of the Public partner has the right to pledge and / or transfer its current and future income, received under the Agreement or transfer its claim rights, related to the Agreement, to the Funder, as well as pledge to the Funder the account into which the payments are made by the Public partner to the Private partner, to pledge the Private partner to the Funder under a corporate mortgage, i.e. the Private partner is pledged as an asset comprising all the assets of the Private partner, both present and future, and to deposit funds in the Funder’s account. The Private partner must immediately notify the Public partner about the concluded pledge transaction. The Parties further agree that the Private partner’s performance of its obligations under the Financing Agreement may be secured by a surety and/or guarantee of the Investor or any other person connected with the Private partner and/or the Investor. The Private partner can secure the performance of its obligations using other property, by other means of security specified in the legislation, or to other persons, only after receiving a prior written consent of the Public partner, which may not be unreasonably withheld. The consent of the Public Partner shall not be required where the value of such security does not exceed EUR 150,000 (one hundred and fifty thousand) and does not involve a lien on the Facility and does not increase the liabilities of the Public Partner.
  2. Shares of the Private partner and the rights granted by them can be pledged to the Funder with the prior notification of the Public partner, however without its separate consent, by concluding an appropriate agreement or a direct agreement between the Funder and the Investor.
  3. The Public partner undertakes to cooperate and without a valid reason, when it is not contrary to the interests of the Public partner, does not increase the obligations of the Public partner, do not create additional liabilities and risks to it and/or to the state, and are not contrary to the legislation, not to refuse to issue permits or consents that will be necessary for the creation of the measures to secure the obligations of the Private partner in favour of the Funder or other lender. Public partner’s refusal to issue the permit or the consent specified in Clauses 32.1 and 32.3 of the Agreement must be motivated.

# Insurance

## Insurance and use of the insurance benefits

* 1. The Private Partner shall, at its own expense and risk, enter into the specified and/or legally required Insurance Agreements for its own benefit, within the time limits specified in Annex 5 to the Agreement *List of Mandatory Insurance Contracts*, for an amount not less than the amount specified and/or required by law. The Private partner shall, prior to entering into the Insurance Agreement, agree the draft Insurance Agreement with the Public Partner. If the amount of insurance specified in Annex 5 of the *List of Mandatory Insurance Contracts* is higher than the amount of insurance required by law, the amount specified in Annex 5 of the Agreement shall apply. The Private partner must have Insurance Agreements in force for the entire period specified in Annex 5 to the Agreement (i.e. one or more Insurance Contracts, including the renewal or replacement of Insurance Contracts by new Insurance Contracts, in respect of the same subject-matter of insurance, must continuously cover the whole of the period of insurance specified in Annex 5).
  2. The Insurer may be a legal entity having the right to provide insurance services in Lithuania:
     1. an insurance company incorporated in the European Union, *or*
     2. an insurance company from a third country, which shall have, at the date of conclusion of the insurance contract, an investment grade rating approved by at least one international rating agency, at least ‘A-’ by Standard & Poor’s, ‘A-’ by Fitch, ‘A3’ by Moody’s, or equivalent; the rating shall be held by the insurance company which concluded the insurance contract, or by the group of companies of which it forms part..
  3. No later than within 5 (five) days from the conclusion of the Insurance Agreements the Private partner shall submit to the Public partner their copies and other documents confirming their conclusion and documents confirming the payment of insurance premiums. In case the insurance premiums are paid not at the same time when the Insurance Agreements are being concluded, documents confirming the payment are submitted to the Public partner no later than within 5 (five) days from the payment of the insurance premiums.
  4. insurance contracts may only be not concluded in the event and for the period of time when it is not possible to conclude such an insurance contract due to the situation on the insurance market and the occurrence of these circumstances is not attributable to the acts and/or omissions of the Private partner and/or its Subcontractors. The existence of the conditions referred to in this clause shall be proved by the Party invoking them and shall be subject to the consent of the other Party.
  5. The Private partner must notify the Public Partner of the existence of the circumstances referred to in Clause 33.4 of the Agreement within 5 (five) Business Days.
  6. The Private partner undertakes to keep the situation in the insurance market under constant review to check whether the circumstances set out in Clause 33.4 of the Agreement have ceased to exist.
  7. If all the circumstances in Clause 33.4 of the Agreement are present, the Parties will decide on possible alternatives to insurance in accordance with Clause 52 of the Agreement. If the Parties fail to agree on possible alternatives to insurance in accordance with the procedure set out in Clause 52 of the Agreement and/or the circumstances set out in Clause 33.4 continue for more than 6 (six) months, the Agreement may be terminated in accordance with the procedure set out in Clause 41 of the Agreement.
  8. The Parties must take all required actions and restrain from certain actions if due to such actions and / or omission the insurer would acquire the right to terminate the concluded Insurance Agreements, suspend their validity, as well as refuse to pay to the Private partner insurance claims in case of damage or to pay substantially smaller amount due to the fact that this damage was recognised as an uninsured event due to the actions and / or omissions of the Parties.
  9. Upon occurrence of the insured event, during which the Property was damaged or lost, the funds received by the Private partner as insurance benefits for the lost Property, shall be used for its restoration / replacement with the equivalent Property.
  10. If it is impossible to restore the Property / replace it with equivalent Property or it is economically impracticable to do so, the insurance benefit must be used for reimbursement of the losses. If the insurance claim is insufficient to reimburse the losses, the rest part shall be covered by the person liable for causing the damage (or to whom respective risk, due to manifestation of which the Property was damaged or lost, is assigned according to the Agreement) from its own and /or borrowed funds. If upon covering the losses or restoration / replacement of the Property with the equal property, the insurance benefit is not completely spent, the remainder of it is used in accordance with the procedure set in Annex 3 to the Agreement *Settlement and payment procedures*.
  11. The Private partner is entitled to use the insurance benefits received not for the restoration of the property only in case if such other of use of the funds would provide higher economic or social benefits and if a written consent of the Public partner is obtained for such way of use of the funds, or in the event of premature termination of the Agreement in the cases set out in clauses 39 to 41 of the Agreement.
  12. While concluding agreements with Sub-Suppliers, the Private partner must ensure that Sub-Suppliers would ensure and hold the insurance of their civil liability for damage caused to the third parties and their property, the value of which is no lower than 10 (ten) percent of the value of the agreement with the Sub-Suppliers (VAT included), for the entire period of the agreement performance, except for those cases when the cover of the Private partner’s Insurance agreements applies and the damage is caused by the actions of the Sub-Suppliers that it employed.
  13. Performance or failure to perform of the obligations set forth in this paragraph does not release the Private partner from the performance of obligations under this Agreement and the liability.

# Intellectual property

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

* 1. The parties must comply with the requirements of the intellectual property protection.

## Licenses granted by the Private partner

* 1. All intellectual property rights in the products, services, content, trademarks, brands, programmes, works or expressions thereof relating to the Assets created during the term of this Agreement shall be owned by the Private partner or by third parties, subject to any agreements between the Private partner and third parties.
  2. After the expiration of the Agreement, the Private partner shall grant the Public partner a indefinite, transferable, royalty-free, and non-exclusive license (allowing to sub-license) to use all and any intellectual property rights granted to a Private partner, which are required for Service Provision and Property control and maintenance, including all the rights of the Project Documentation possessed/ acquired by the Private partner, unless the Private Partner has no right to assign the intellectual property rights or has been granted a limited licence. In such a case, the Private Partner shall cooperate and provide the Public Partner with the necessary information to enable the Public Partner to independently apply to the holder of the Intellectual Property Rights for the necessary licenses.
  3. If after the expiration of the Agreement any intellectual property rights required for Service provision and Property control and maintenance, are owned by third parties, the Private partner shall take all the available reasonable means at their own expense to acquire the part of intellectual property rights, sufficient for the Service provision and Property control and maintenance, in favour of Public partner.
  4. The Private partner must compensate all the losses incurred by the Public partner, caused due to any infringement of the intellectual property rights related to the Service provision and Property control and maintenance committed by the Private partner and (or) Subcontractors or any other persons employed by the Private partner for the implementation of the Agreement.

## Licenses granted by the Public partner

* 1. Under the Agreement, the Public partner grants the Private partner a non-transferable, non-exclusive, royalty-free license (allowing to sub-license) to use any intellectual property rights owned by Public partner and/or granted to it on any grounds during the validity of the Agreement, which are required for design works, construction, financing, Service provision, and Property control and maintenance, in order to perform the Agreement.
  2. The Public partner shall compensate all the losses of the Private partner, which are caused by any infringement of the intellectual property rights set out in this paragraph.

# Amendments to the agreement

## Cases of amendments to the agreement

* 1. Besides the Additional works and / or services specified in Clause 16 of the Agreement and amendment specified in Clause 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. The Private partner shall have the right to inform the Funder of any amendments to the Agreement, including the content of the amendments.
  2. The provisions of the Agreement can be amended in the following cases:
     1. the Fundamental legislative change occurs; *or*
     2. if the value of the specific amendment of the Agreement can be expressed in funds and the value of such amendment does not exceed 10 % of the Agreement value, 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*
     3. or if the amendments to the Agreement are necessary if all of the following conditions are fulfilled:
        1. the necessity to amend occurred because of the circumstances that could not have been anticipated by the Parties acting carefully and diligently;
        2. the amendment shall not change the general nature of the Agreement;
        3. the growth of annual remuneration does not exceed 50% of the initial value of the Agreement. In case of few consecutive amendments, this limit is applied to the value of each amendment.
     4. in accordance with the official requirements (letters) of the institutions of the European Union and / or the Republic of Lithuania in order to ensure that the Agreement would not be recorded in the balance sheet of the government sector. In such a case, the Public partner informs the Private partner in writing about the requirements of the institutions of the European Union and / or the Republic of Lithuania, and coordinates with the Private partner the necessary amendments to the Agreement, if such are necessary.
     5. necessary procedural changes to the Agreement which do not affect the PPP Fee, such as changes to the timing of the provision of information by the Parties to each other, changes to the recording of irregularities in the Recording Tool, changes to the reporting to the Public partner, changes to the rules of submission for the Financial Operating Model;
     6. The insignificant amendments of the Agreement (of the technical nature) can be made in all cases;
  3. Other amendments of the Agreement that are not provided for in this Agreement and which are not in conflict with the principles of equality, non-discrimination, mutual recognition, proportionality and transparency, as well as the rational use of funds.
  4. At the time of amendment of the Agreement, the price of the Works or Services shall be determined in accordance with the procedures set out in Clauses 17.6 to 17.7 of the Agreement.
  5. The Parties understand that the initial Investments and Costs (Fees) set out in the Proposal for the initial scope of the Works and Services shall not be subject to any recalculation and may only be changed by indexation as set out in the Settlement and Payment Procedures set out in Annex 3 to this Agreement.
  6. The initial value of the Agreement shall mean the amount of the PPP Fee for the entire term of the Agreement in real (non-indexed) value without VAT. In the event that the PPP Fee is indexed in real terms in accordance with the procedures set out in the Settlement and Payment Procedures in Annex 3 to the Agreement, the value of the Agreement referred to in this Clause 37 of the Agreement shall be recalculated by the following procedure: by adding the indexed PPP Fee amounts for the preceding year and the current year of each year during the term of the Agreement, i.e. the year of the amendment of the Agreement, to the actual (unindexed) PPP Fee amounts set out in the Schedule of Fee Payments set out in Appendix 1 to Annex 3 of the Settlement and Payment Procedures in each of the years which have not yet expired.

## Amendments to the Agreement due to the circumstances specified in Clause 37.2.2

* 1. The cases of the Agreement amendment indicated in Clause 37.2 of the Agreement do not relieve the Parties from the performance of the obligations under the Agreement, except for the cases, when there is no possibility to perform own obligations due to the Cases of exemption or the Compensation events (during the periods of their presence) and cases, when the performance of such obligations would violate the imperative requirements of the legislation.
  2. In case of the occurrence of the circumstances specified in Clause 37.2 of the Agreement, which can have a negative impact on the Private partner’s exercising of the rights and performance of the obligations under the Agreement, the Parties must take all the available measures to ensure that the incurred damage would be minimised. If the circumstances specified in Clause 37.2 of the Agreement are favourable to the Private partner’s exercising of the rights and performance of the obligations under the Agreement, it must make every effort to achieve the highest economic and social benefit for the Public partner by fully exploiting the newly presented opportunities.
  3. In case of occurrence of the circumstances specified in Clause 37.2 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 Party has a right to demand the amendment to the provisions of the Agreement, which is in effect. When amending the provisions of the Agreement, the Parties shall maintain the same balance of rights and obligations and/or economic balance (particularly the return on investment), which was prior to the occurrence of the circumstances specified in Clause 37.2 of the Agreement.
  4. In case of the occurrence of the circumstances, specified in Clause 37.2. of the Agreement, any Party can serve a notice of the occurrence of the circumstances to the other Party, indicating:
     1. the essence and reasoning of the amendment or circumstances;
     2. change in the Investment/Costs of the Agreement, excluding potential savings, clearly indicating the additional investments/costs and/or Investments/Costs that will no longer be incurred by the Private partner as a result of the circumstances described in Clause 37.2.2;
     3. timetable for the implementation of the change;
     4. calculation of the amount of the additional Investments/Costs or unnecessary Investments/Costs, in accordance with the principles of cost-effectiveness and rationality.
  5. Upon the occurrence of the circumstances referred to in Clauses 37.2.1, 37.2.3.3, 37.2.4 and 37.2.5. of the Agreement, either Party may serve on the other Party a notice stating:
     1. the essence and reasoning of the amendment or circumstances;
     2. whether the amendment of the Agreement is necessary;
     3. the change in the costs of the Agreement, excluding the possible savings, clearly specifying the additional costs / investments and/or costs / investments that the Private partner will not incur because of the occurrence of the circumstances, specified in Clauses 37.2.1, 37.2.3.3., 37.2.4 and 37.2.5 of the Agreement;
     4. the detailed amendment implementation procedure and schedule;
     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;
     6. calculation of the additional or unnecessary costs/investments, according to the principles of cost effectiveness and rationality.
  6. If the Parties to the Agreement agree that due to the circumstances set out in Clause 37.2, the Private partner may incur additional costs, the Private partner will take all the reasonably available measures to ensure additional financing at the terms favourable to him and the Funder;
  7. After the Parties confirm the circumstances specified in Clause 37.2, the Private partner must present to the Public partner an optimized Financial Operating Model no later than within 15 (fifteen) Business days. In order to avoid doubts, if the Fundamental legislative change or the circumstances specified in Clause 37.2 of the Agreement:
     1. result in the reduction of the costs of the required Investments and/or Services, the Annual remuneration must be changed in such way, that the Public partner would not pay the Private partner for the respective savings.
     2. result in increase in the required Investments and/or Costs, the Annual remuneration shall be amended in a way to compensate the Private partner for the increase in Investments or Costs.
  8. After the circumstances specified in the clause 37.2 are confirmed the Parties shall immediately execute the respective changes to the Agreement (if such are necessary).

# Termination of the agreement

## The grounds for the termination of the agreement due to the circumstances depending on the Private partner

* 1. The Public partner has a right to terminate the Agreement unilaterally and without going to a court, when the Private partner fail to perform the obligations under the Agreement or performs them improperly, and that is a material violation of the Agreement, whereas the Public partner has previously notified these Parties about the failure to perform or an improper performance, but the Party which fails to perform the Agreement or performs it improperly, failed to eliminate the material violations of the Agreement in a way and within reasonable period of time which may not be less than 120 (one hundred and twenty) days for breaches relating to the performance of the Works and not less than 90 (ninety) days for breaches relating to the provision of the Services. The Parties may agree to terminate the Agreement without a time limit for the correction of a violation if such violation cannot be corrected or is no longer meaningful. The specific time limit for any identified material breaches of the Agreement shall be set out in a notification by the Public Partner. The clause on the time limit for the elimination of the breach shall not apply in the cases referred to in Clauses 39.2.1, 39.2.13 to 39.2.14 of the Agreement.
  2. The Parties agree that the material violations of the Agreement in the sense of Clause 39.1 are the following:
     1. the date of entry into force of the Agreement in its entirety as set out in Clause 3.2 of the Agreement (taking into account any extensions thereof) is delayed by more than 45 (forty-five) days due to a failure to comply with the conditions precedent to the entry into force of the Preliminary Agreement which are within the control of the Private partner. The Parties may agree not to wait for the expiry of this period if it is reasonably foreseeable that the conditions for the entry into force of the Preliminary Agreement referred to in Clause 3 of the Agreement will not be fulfilled within this period;
     2. the Private Partner is more than 60 (sixty) days late in obtaining the positive act of the general design examination of the Facility or a part of the Facility, taking into account the date of receipt of the general design examination of the Facility or a part of the Facility as specified in the Work Plan;
     3. the commencement of the Operation of any part of the Facility is delayed by more than 60 (sixty) days due to the fault of the Private Partner or circumstances attributable to its risk;
     4. the Private partner or the Investor violates the warranties and representation set out in Clauses 7.1.1–7.1.2, 7.1.7–7.1.9, 7.1.13 and 7.1.14 of the Agreement, and it has a material impact on the proper performance of the Agreement;
     5. if the violation referred to in Appendix 4 of the Settlement and Payment Procedures of Annex 3 to the Agreement, Deduction and Penalty Mechanism, has not been corrected for more than 90 (ninety) days and the violation affects at least 30 per cent of the Facility (the time of the temporary correction shall not be counted in this period) or the Facility or 30 per cent thereof has been inoperable for more than 60 (sixty) days (the percentages being calculated from the total area of the Facility as stated in the extract of the State Company of the Register Centre.
     6. for a period of 6 (six) consecutive months in a calendar year during the Agreement Period starting from the commencement of the payment of the PPP Fee in accordance with the provisions of the Agreement to the Private Partner in accordance with the Settlement and Payment Procedures of Annex 3 to the Agreement, Appendix 4, Deductions and Penalty Mechanism, the amount of the deductions exceeds the amount of the 3 (three) most recent monthly PPP Fee instalments - M4 and M5 - due under the Agreement;
     7. the Private Partner or its managers, other members of the management or supervisory body have been found guilty of a criminal act specified in the LPPDS. Termination of the Agreement on the basis of this Paragraph is not possible if such manager or other member of the management or supervisory body is fired / removed from positions in the Private Partner within 20 (twenty) days from the date of the conviction (regardless of the possibility of filing an appeal or cassation).
     8. The Associated company as well as the directors or employees of the respective entity are found guilty of a crime related to the improper performance of Works and/or Service provision (including such crimes as graft and bribery) by a court as indicated in the Procurement Law. The termination of the Agreement on the grounds of this paragraph is impossible, if within the period of 20 (twenty) days from conviction (irrespective of the right file an appeal or cassation), such director or employee is dismissed from work at the Associated company;
     9. The Private partner fails to observe the requirements specified in Clause 28.2 of the Agreement regarding the transferring of the rights and obligations of the Private partner;
     10. Failure to observe the requirements specified in Clause 28.3 of the Agreement regarding the transferring of the shares of the Private partner;
     11. the Insurance Agreements provided for in Clause 33.1 of the Agreement have expired or have been terminated and/or the Insurance Agreements entered into do not reach the minimum premium provided for in Annex 5 to the Agreement, *List of Mandatory Insurance Agreements*, and no new Insurance Agreements are entered into or the expired Insurance Agreements are renewed within the time limits set out in this Agreement;
     12. the Private partner has mortgaged or transferred its property rights, property or otherwise secured its performance of the obligations without the prior consent of the Public partner specified in Clause 32.1;
     13. While performing its obligations according to Chapter X of the Agreement or other provisions of the Agreement, the Private partner knowingly submits to the Public partner false or incomplete information which is required to ensure the control of the Agreement performance done by the Public partner.
     14. Liquidation, bankruptcy, insolvency or restructuring proceedings are initiated against the Private Partner and it becomes apparent that the obligations under the Agreement will not be fulfilled in accordance with the requirements of the Agreement;
     15. At the time of the Procurement or the conclusion of the Agreement, the Public Partner was provided with incorrect data relating to its financial standing and/or business activities and/or any other information provided to the Public Partner, which has been discovered or has come to light after the conclusion of the Agreement, and which has been of material significance in the recognition of the Tender as the successful tender and/or in the conclusion of the Agreement with the Private partner.
     16. Breach the representations and warranties set out in Clauses 7.1.3.2 to 7.1.3.4 of the Agreement;
     17. commits any other breach of the Agreement which meets the characteristics of a material breach of the Agreement as specified in the Civil Code of the Republic of Lithuania.
  3. In addition to the cases provided for in Clause 39.2 of the Agreement, the Public Partner shall have the right to terminate the Agreement without recourse to court (unilaterally) if the following material breaches of the Agreement occur, which shall not be subject to the time limits for the correction of the breach specified in Clause 39.1:
     1. the competent authorities decide that the Investor or the Private Partner (the person controlling them) is unreliable and poses a threat to national security;
     2. the Private partner’s security clearance certificate or the certificate confirming compliance with the requirements for the protection of classified information marked "Restricted" is revoked and the transaction may not proceed in accordance with the Law on State and Official Secrets of the Republic of Lithuania;
     3. the Private partner’s security clearance or certificate confirming compliance with the requirements for the protection of classified information marked ‘Restricted’ expires and no new documents are issued to the Private partner, and the transaction may not proceed in accordance with the Law on State and Official Secrets of the Republic of Lithuania;
     4. the subcontractor’s security clearance or certificate confirming compliance with the requirements for the protection of classified information marked "Restricted" issued to the Subcontractor, which is required to work with or have access to classified information in the performance of the Agreement, is revoked, and the transaction may not be continued in accordance with the Law of the Republic of Lithuania on State and Official Secrets, or the Private Partner does not replace the subcontractor with a new subcontractor within 15 (fifteen) Working Days;
     5. the subcontractor’s security clearance certificate or certificate confirming compliance with the requirements for the protection of classified information marked "Restricted" issued to the Subcontractor who is required to work with or have access to classified information in the performance of the Agreement expires and the transaction may not be continued in accordance with the Law of the Republic of Lithuania on State and Official Secrets or the Private Partner does not replace the Subcontractor with new Subcontractors within 15 (fifteen) Working Days;
     6. the competent authorities make a decision that the Subcontractor (the legal entity controlling it) is unreliable and poses a threat to national security and the Private Partner does not replace it with a new Subcontractor within 15 (fifteen) Business Days;
     7. the competent authorities decide that the Funder is unreliable and pose a risk to national security and the Private Partner does not replace them with a new one within 30 (thirty) Business Days.
  4. If a material breach of the Agreement has not been remedied within the time limit specified in Clause 39.1 of the Agreement, the Public Partner shall notify the other Parties of the termination of the Agreement on the grounds provided for in Clauses 39.2.2 to 39.2.12, 39.2.15 to 39.2.16, 39.3 of the Agreement at least 45 (forty five) days in advance, and of termination of the Agreement in the cases provided for in Clauses 39.2.1 and 39.2.13 to 39.2.14 of the Agreement - at least 20 (twenty) days.

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

* 1. The Private partner has a right to terminate the Agreement unilaterally and without going to a court, when the Public partner fails to perform the obligations under the Agreement or performs them improperly, and that is a material violation of the Agreement under Clause 40 of the Agreement, whereas the Private partner has previously notified the Public partner about the failure to perform or an improper performance, but the Public partner failed to eliminate the material violations of the Agreement within reasonable period of time that were specified in the notification, or such violation cannot be eliminated, or the elimination of the violation loses its purpose. The period set for the elimination of the Public partner’s violations cannot be less than 60 (sixty) days for failure to perform the payment obligations or in cases of an improper performance, and 90 (ninety) days for cases of failure to perform other obligations or improper performance thereof. The Parties may agree to terminate the Agreement without a deadline for remedying the breach if the breach cannot be remedied or if remedying the breach no longer makes sense. The clause on the time limit for elimination of the breach shall not apply to the case referred to in Clause 39.2.1 of the Agreement.
  2. The Parties agree that only the following violations will be deemed the material violations of the Agreement:
     1. the date for the Agreement to enter into full force and effect as set out in Clause 3.2 of the Agreement (taking into account any extensions) is delayed by more than 45 (forty-five) days due to a failure to comply with the conditions to the entry into force of the Preliminary Agreement which are within the control of the Public Partner;
     2. the Public partner is late in paying to the Private partner any payments that are mandatory under the Agreement for more than 60 (sixty) days;
     3. the amount of the Public Partner’s overdue PPP Fees for a period of one (1) year exceeds the amount of PPP Fees payable under the Agreement for the last three (3) months;
     4. the Public partner violates the warranties and representation set out in Clauses 6.1.1, 6.1.4 and 6.1.5 of the Agreement, and it has a material impact on the proper performance of the Agreement;
     5. the Public partner transfers its rights and obligations to a third party without the prior consent of the Private partner specified in Clause 28.1 of the Agreement;
     6. The shares of the Private partner (any part thereof) are taken for the public needs, sold or transferred to a third party on other statutory grounds of similar nature, without the will of the Investor shareholders, unless and to the extent expressly provided otherwise in this Agreement;
     7. if due to the requirements of the legislation amended or newly passed after the signing of the Agreement, the activities in which the Private partner is engaged (performance of Works or Service provision) become unlawful or the execution of such activities becomes impossible;
     8. the breach by the Public Partner of its obligations under the Agreement has resulted in the Private Partner being unable to carry out (perform) the Works or provide the Services for a period of 3 (three) consecutive months, or the performance of such activities is materially impaired;
     9. an Event of Exemption under Clause 21 of the Agreement continues for more than 120 (one hundred and twenty) days, irrespective of whether it has been recognised as a Compensation Event, except for those Events of Exemption referred to in Clauses 21.1.2 or 21.1.3 or 21.1.14 or 21.1.15.
     10. commits any other breach of the Agreement which meets the characteristics of a material breach of the Agreement as specified in the Civil Code of the Republic of Lithuania
  3. if the material violation of the Agreement was not eliminated during the period specified in Clause 40.1 of the Agreement, the Private partner must inform the Public partner about the termination of the Agreement on the ground specified in Clause 40.1 of the Agreement, no later than within 30 (thirty) days.

## Termination of the Agreement without the fault of the Parties or due to the circumstances of the force majeure

* 1. Parties have the right to unilaterally terminate the Agreement, without going to court, when the performance of the Agreement becomes impossible due to the circumstances of the *force majeure*, which could not control or reasonably anticipate during the conclusion of the Agreement by the Party that is unilaterally terminating the Agreement and could not prevent the occurrence of these circumstances or consequences thereof, as it is specified in Clause 42 of the Agreement. In this case, each of the Parties shall be entitled to terminate the Agreement, if due to such circumstances, the material obligations under the Agreement could not be performed for more than 120 (one hundred and twenty) days in a row.
  2. The Parties may agree to terminate the Agreement by mutual consent without fault of the Parties.
  3. The Party unilaterally terminating the Agreement or the Party initiating the termination shall notify the other Party of the termination of the Agreement at least 30 (thirty) days prior to the date of termination.

## The circumstances of the *Force majeure*

* 1. Force majeure means any event specified in Clause 42.2 of the Agreement, for which the Party which is bound by the specific obligation cannot 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 fulfil 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.
  2. Force majeure events are considered to be the following events:
     1. war (declared or undeclared) to which the Republic of Lithuania is not necessarily a party, but the effects of which are directly felt in the Republic of Lithuania;
     2. civil war, terrorist acts, revolts and revolutions, piracy, sabotage;
     3. natural disasters: severe storms, cyclones, earthquakes, sea or river floods, lightning, extreme climatic or environmental conditions recognised by the competent authority as a natural disaster;
     4. nuclear explosions, ionising radiation or radioactive, chemical or biological contamination;
     5. pressure waves caused by aircraft travelling at supersonic speeds, aircraft accidents;
     6. epidemics and/or pandemics where the competent public authorities impose restrictions on economic activities or on the movement of people.
  3. The inability of a Party to meet the obligations under the Agreement due the circumstances of the force majeureshall 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 of the Agreement must be proven by the Party, which is unable to perform the obligations under the Agreement.
  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 notice about the occurrence of these circumstances, including a brief description of their contents, no later than within 5 (five) Business days from the moment of the occurrence of the circumstances.
  5. No later than 10 (ten) Business days after the presentation of the initial notice, the Party affected by the circumstances of the force majeure must provide the other Parties with a detailed written notice. 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 majeureon the ability of the Party to fulfil its obligations under the Agreement, the date of the occurrence and the anticipated date disappearance of the circumstances of the force majeure and the period, required for the elimination of the consequences caused by these circumstances, etc.
  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 5 (five) Business days, and specifies the date for the renewal of the performance of obligations under the Agreement.
  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 Clause 5 of the Agreement.
  8. If the Private partner is not providing the Services due to the circumstances of the force majeure, the Public partner pays the PPP Fee until the date of the disappearance of such circumstances.

## Compensation after the termination of the agreement due to the circumstances depending on the Private partner

* 1. If the Agreement is terminated on the ground specified in Clause 39 due to the fault of the Private partner or due to the circumstances that depend on them, the Public partner shall pay to the Private partner only the compensation, which is calculated according to the following equation:

**1) if–Operation has commenced:**

**NK =** **LMS + NA – AR – K- VN**, where

**LMS -** the MS portions of the PPP Fee (Object Creation Costs) outstanding at the date of termination of the Agreement. The amount of these portions shall be determined by adding together the portions of the PPP Fee MS set out in Appendix 1 of the *Settlement and Payment Procedures* in Annex 3 to this Agreement, from the month of termination of the Agreement until the end of the term of the Agreement as defined in Clause 5.1 of the Agreement;

**NA** - the outstanding parts of the Annual remuneration at the moment of the termination of the Agreement for the Services provided with quality, and for which the Public partner is liable to pay under the Agreement;

**AR -** Renewal and Repair Works for which the Public Partner has already paid, as part of the M42 portion of the PPP Fees as set out in Annex 3 of the Settlement and Payment Procedures to the Contract, but which have not been performed by the Private Partner;

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

**VN** – direct losses incurred by the Public Partner as a result of the termination of the Agreement, including, but not limited to, costs incurred or to be incurred by the Public Partner as a result of the termination of the Agreement (costs of completion of the Facility, costs of rectifying defects in the Facility and additional costs of administration/maintenance of the Facility, costs of additional financing, costs of organizing a new public procurement procedure). Only the amount of the direct losses agreed in writing between the Public Partner and the Private Partner within the relevant notice period set out in Clause 39.1 of the Agreement, no later than 20 (twenty) days prior to the termination of the Agreement, may be deducted from the termination indemnity (NK) immediately. If no agreement on the amount of direct damages can be reached within this period, an expert shall be appointed by mutual agreement to determine the amount of direct damages no later than 10 (ten) days. The expert may only be an impartial and competent entity without conflict of interest. The amount of the direct loss determined by the expert shall be reduced by the termination indemnity. In the event that the expert is not appointed within the time limit set, the Parties shall refer the matter to the Dispute Settlement Body referred to in Clause 54 of this Agreement. In such a case, the amount of the termination indemnity may only be reduced by the amount of the direct loss, the amount of which shall not be disputed by the Parties. The disputed part of the amount of direct damages shall be deposited, pending the settlement of the dispute, in an escrow account, on which the holder of the escrow account shall pay interest, which shall accrue to the Party(ies) to which the final judgment awards the disputed amount

**2) if the commencement of Operation the Facility has not started:**

**NK = BV – K-VN**, where

**BV** - the book value of the assets transferred to the Public Partner at the time of termination of the Agreement, which shall be calculated in accordance with the provisions of Public Sector Accounting and Financial Reporting Standard 12 or its successor legislation and which may not exceed the Cost of creating the elements of the relevant part of the Facility, as specified in the FAM.

**K** - Liquidated damages not yet paid by the Private Partner;

**VN** – direct losses incurred by the Public Partner as a result of the termination of the Agreement, including, but not limited to, costs incurred or to be incurred by the Public Partner as a result of the termination of the Agreement (costs of completion of the Facility, costs of rectifying defects in the Facility and additional costs of administration/maintenance of the Facility, costs of additional financing, costs of organizing a new public procurement procedure). Only the amount of the direct losses agreed in writing between the Public Partner and the Private Partner within the relevant notice period set out in Clause 39.1 of the Agreement, no later than 20 (twenty) days prior to the termination of the Agreement, may be deducted from the termination indemnity (NK) immediately. If no agreement on the amount of direct damages can be reached within this period, an expert shall be appointed by mutual agreement to determine the amount of direct damages no later than 10 (ten) days. The expert may only be an impartial and competent entity without conflict of interest. The amount of the direct loss determined by the expert shall be reduced by the termination indemnity. In the event that the expert is not appointed within the time limit set, the Parties shall refer the matter to the Dispute Settlement Body referred to in Clause 54 of this Agreement. In such a case, the amount of the termination indemnity may only be reduced by the amount of the direct loss, the amount of which shall not be disputed by the Parties. The disputed part of the amount of direct damages shall be deposited, pending the settlement of the dispute, in an escrow account, on which the holder of the escrow account shall pay interest, which shall accrue to the Party(ies) to which the final judgment awards the disputed amount.

* 1. The exact amounts under this Clause shall be calculated by the Committee provided for in Clause 52 of the Agreement on the basis of the documents submitted by the Private Partner and the Public Partner in support of the respective amounts under Clause 43 of the Agreement, the Private Partner’s financial statements, the reports of valuers or auditors of the assets, the results of inspections carried out by the authorised authorities, or the reports of independent experts. In the event that the financial statements of the Private Partner are not audited at the time of the calculation of the exact amounts under Clause 43.1 of the Agreement, the Private Partner shall be obliged to engage, at its own expense, an auditor to audit the financial statements and to submit the audit reports and the audited financial statements to the Committee provided for in Clause 52 of the Agreement. Any Party disagreeing with the calculation of the said committee shall have the right to appeal to the dispute resolution body referred to in Clause 54 of the Agreement.
  2. The amount of compensation calculated in accordance with the procedure set out in this Clause 43 shall be final and no further and/or greater loss (if any) of the Private Partner shall be indemnified and all of which shall be waived by the Private Partner in the Agreement.
  3. For the sake of clarity, the Parties confirm that the costs associated with the rectification of defects in the condition of the Returned Assets and the additional costs of maintenance and/or other services of the Assets incurred or to be incurred by the Public Partner as a result of the unsuitable condition of the Assets, if any, shall not be included in the reimbursement formula set out in Clause 43.1 of the Agreement, except as provided in Clause 10.15.2 of the Agreement. Pursuant to Clause 10.15.2 of the Agreement, the compensation referred to in Clause 43.1 of the Agreement shall be reduced by the costs associated with the rectification of the deficiencies in the condition of the Assets and the additional costs of the maintenance and/or other services of the Assets incurred or to be incurred by the Public Body as a result of the deficient condition of the Assets. The procedures and conditions for the identification of defects in the condition of the Assets and the additional costs of maintenance and/or other services of the Assets incurred or to be incurred by the Public Partner as a result of the defective condition of the Assets and for their correction or reimbursement to the Public Partner are set out in Clause 10 of this Agreement.

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

* 1. In the event the Agreement is terminated on the ground specified in Clause 40 of the Agreement due to the fault of the Public partner, the compensation paid to the Private partner is calculated according to the following equation:

**NK =** **FI + FG + KI + NA + PN – K – AR, where:**

**NK** – the compensation for the termination of the Agreement, which in any case cannot be less than 100% of the FI+FG+KI;

**FI** - the portion of the financing provided by the Funder to the Private Partner and used by the Private Partner for the performance of the Agreement that has not yet been repaid at the time of the termination of the Agreement, and the accrued but unpaid interest on the repaid loan. The maximum unpaid interest shall not exceed the interest rate specified in the FAM;

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

**KI** - share of funding granted by the funders other than the Funder to the Private partner that was not yet repaid at the time of the termination of the Agreement and the share of Private partner’s own capital properly used for the Investments specified in the Financial Operating Model of the Private partner (no larger than the one which reflects the results of the creation of the Facility (i.e. used to create them) and which have not yet been evaluated during the determination of the FI (these Facility creation work results do not include those Facility creation work results that were evaluated during the determination of the FI, i.e. the same Facility creation work results, which have already been evaluated when establishing the amount of the repayable FI, are not being evaluated for the second time when determining the repayable KI amount). In order to avoid any doubts, the Parties declare that no other shares of the funding provided by other funder of the loan for the Private partner and of the equity used for the performance of the Agreement, nor any other interest and unreceived return on investment are compensated;

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

**PN -** Direct losses incurred by the Private Partner as a result of the termination of the Agreement. The amount of the direct loss shall be agreed in writing between the Private Partner and the Public Partner within the relevant notice period set out in Clause 39.1 of the Agreement, at the latest 20 (twenty) days prior to the termination of the Agreement. If no agreement on the amount of direct damages can be reached within this period, an expert shall be appointed by mutual agreement to determine the amount of direct damages no later than 10 (ten) days. The expert may only be an impartial and competent entity without conflict of interest. The amount of the direct loss determined by the expert shall be reduced by the termination indemnity. In the event that the expert is not appointed within the time limit set, the Parties shall refer the matter to the Dispute Settlement Body referred to in Clause 54 of this Agreement. In such a case, the amount of the termination indemnity may only be reduced by the amount of the direct loss, the amount of which shall not be disputed by the Parties. The disputed portion of the direct loss amount shall be deposited, pending resolution of the dispute, in an escrow account on which the escrow holder shall pay interest, which shall accrue to the Party(ies) to whom the final judgment awards the disputed amount;

**K** - the outstanding deductions from the PPP Fees from the Private Partner, the outstanding penalties payable to the Public Partner in accordance with the Settlement and Payment Arrangements in Appendix 4 of Annex 3 to the Agreement, the Deduction and Penalty Mechanism, and any other liquidated damages payable by the Private Partner;

**AR**- Renewal and repair works for which the Public Partner has already paid, as part of the PPP Fees set out in Annex 3 of the Settlement and Payment Procedures of the Agreement, but which have not been performed by the Private Partner.

44.2 The exact amounts under this clause shall be calculated by the committee provided for in clause 52 of the Agreement on the basis of the Private Partner’s audited financial statements (whether annual or quarterly), property valuers’ or auditors’ reports, the results of inspections carried out by the authorised authorities or independent experts’ reports. In the event that the financial statements of the Private Partner are not audited at the time of calculation of the exact amounts under Clause 44 of the Agreement, the Public Partner shall be obliged to engage, at its own expense, an auditor to audit the financial statements and to submit the audit reports and audited financial statements to the Committee provided for in Clause 52 of the Agreement. Any Party disagreeing with the calculation by the said committee shall have the right to appeal to the Dispute Settlement Body referred to in Clause 54 of the Agreement.

44.3 The amount of compensation calculated in accordance with the procedure set out in this Clause 44 shall be final and no further and/or greater loss (if any) of the Private Partner shall be indemnified and all of which shall be waived by the Private Partner in the Agreement.

44.4 For the sake of clarity, the Parties confirm that the costs associated with the rectification of defects in the condition of the returned Assets and the additional costs of maintenance and/or other services of the Assets incurred or to be incurred by the Public Partner as a result of the unsuitable condition of the Assets, if any, shall not be included in the reimbursement formula set out in Clause 44.1 of the Agreement, except as provided in Clause 10.15.2 of the Agreement. Pursuant to Clause 10.15.2 of the Agreement, the costs associated with the rectification of deficiencies in the condition of the Assets and the additional costs of maintenance and/or other services incurred or to be incurred by the Public partner as a result of the deficient condition of the Assets shall be deducted from the compensation referred to in Clause 44.1 of the Agreement. The procedures and conditions for the identification of defects in the condition of the Assets and the additional costs of maintenance and/or other services of the Assets incurred or to be incurred by the Public Partner as a result of the defective condition of the Assets and for their correction or reimbursement to the Public Partner are set out in Clause 10 of this Agreement.

## Compensation in case the Agreement is terminated without the fault of the Parties or due to force majeure

* 1. In the event the Agreement is terminated on the ground specified in Clause 41 of the Agreement, the Public partner pays the compensation to the Private partner, it is calculated according to the following equation:
     1. if, in accordance with the procedure established by the legislation of the Republic of Lithuania, the Facility has been declared unsuitable (unusable) for use:

**NK** - compensation for termination of the Agreement.

**1) if the Operation of the Facility commenced:**

**NK= LMS + NA - AR - K**, where

**LMS** - the MS portions of the PPP Fees (“Facility Creation Costs”) not yet paid at the date of termination of the Agreement. The amount of these instalments shall be determined by adding together the MS instalments of the PPP Fee as set out in Appendix 1 of the Settlement and Payment Procedures in Annex 3 to this Agreement, from the month of termination of the Agreement until the end of the term of the Agreement as defined in Clause 5.1 of the Agreement;

**NA** - the unpaid portions of the PPP Fees outstanding at the time of termination of the Agreement in respect of the Services provided in a high quality prior to the time of termination of the Agreement and for which the Public partner is liable to pay under the Agreement;

**AR** - Renewal and Repair Works for which the Public Partner has already paid, as part of the M42 payment of the PPP Fees set out in Annex 3 to the Agreement in the *Settlement and Payment Procedures*, but which the Private Partner has not performed;

**K** - the deductions from the PPP Fees not yet credited/claimed from the Private Partner and the liquidated damages not yet paid by the Private Partner.

**2) if the Operation of the Facility has not commenced:**

**NK= BV - K**, where

**BV** - the book value of the assets transferred to the Public Partner at the time of termination of the Agreement, which shall be calculated in accordance with the provisions of Public Sector Accounting and Financial Reporting Standard 12 or its successor legislation, using the direct proportional (straight-line) depreciation method, and which shall not exceed the Cost of creation of the elements of the Facility, as specified in the FMV.

**K** - Liquidated damages not yet paid by the Private Partner;

* + 1. if the Facility may be used by the Public Partner, or by other public authorities, for the performance of the functions set out in the legislation of the Republic of Lithuania:

**NK** - compensation for termination of the Agreement.

**1) if the Operation of the Facility commenced:**

**NK = LMS + NA - AR - K**, where

**LMS** - the MS portions of the PPP Fees (Object Creation Costs) not yet paid at the date of termination of the Agreement. The amount of these instalments shall be determined by adding together the instalments MS of the PPP Fee as set out in Appendix 1 of the Settlement and Payment Procedures in Annex 3 to this Agreement, from the month of termination of the Agreement until the end of the term of the Agreement as defined in Clause 5.1 of the Agreement;

**NA** - the unpaid portions of the PPP Fees outstanding at the time of termination of the Agreement in respect of the quality Services delivered up to the time of termination of the Agreement and for which the Public Partner is liable to pay under the Agreement;

**AR** - Renewal and Repair Works for which the Public Partner has already paid, as part of the M42 share of the PPP Fees set out in Annex 3 to the Agreement in the Settlement and Payment Procedures, but which the Private Partner has not performed;

**K** - the deductions from the PPP Fees not yet credited/claimed from the Private Partner and the liquidated damages not yet paid by the Private Partner.

**2) if the Operation of the Facility has not commenced:**

**NK = BV - K**, where

**BV** - the book value of the assets transferred to the Public Partner at the time of termination of the Agreement, which shall be calculated in accordance with the provisions of Public Sector Accounting and Financial Reporting Standard 12 or its successor legislation, using the direct proportional (straight-line) depreciation method, and which shall not exceed the Cost of creation of the elements of the Facility, as specified in the FMV.

**K** - Liquidated damages not yet paid by the Private Partner;

* 1. If the Agreement is terminated on the grounds set out in Clause 41.2 of the Agreement, the Public Partner shall pay to the Private Partner compensation calculated in accordance with the formula:

**NK = FI + FG+KI + NA - K - AR**, where:

**NK** – the compensation for the termination of the Agreement;

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

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

**KI** - the portion of the financing and equity provided by the Other Lenders to the Private Partner and to the Private Partner for the Investments envisaged in the Financial Operating Model that has not yet been duly used at the time of termination of the Agreement (up to a maximum of the portion that reflects the results of the works to create the Facility (i.e. the same results of the Asset Creation Works that have already been assessed for the purpose of determining the amount of the FI to be reimbursed shall not be assessed a second time for the purpose of determining the amount of the KI to be reimbursed). For the avoidance of doubt, the Parties declare that no other part of the financing and equity provided by the other Loan Provider to the Private Partner and used by the Private Partner for the performance of the Agreement, and no other interest and no return on the Investment shall be reimbursed

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

**K** - the outstanding deductions from the PPP Fees from the Private Partner, the outstanding penalties payable to the Public Partner in accordance with the Settlement and Payment Procedures in Appendix 4 of Annex 3 to the Agreement, the Deduction and Penalty Mechanism, and any other liquidated damages payable by the Private Partner;

**AR**- Renewal and repair works for which the Public Partner has already paid, as part of the PPP Fees set out in Annex 3 of the *Settlement and Payment Procedures* of the Agreement, but which have not been performed by the Private Partner.

45.3 The exact amount shall be calculated by the committee provided for in Clause 52 of the Agreement on the basis of the documents of the Private Partner, the financial statements of the Private Partner, the reports of property appraisers or auditors, the results of inspections carried out by the authorized bodies or the conclusions of independent experts. In the event that the financial statements of the Private Partner are not audited at the time of the calculation of the exact amounts pursuant to Clause 45 of the Agreement, the Parties shall be obliged to engage an auditor to audit the financial statements and to share the cost equally and to submit the audit reports and the audited financial statements to the committee provided for in Clause 52 of the Agreement. Any Party disagreeing with the calculation of the said committee shall have the right to appeal to the dispute settlement body referred to in Clause 54 of the Agreement

45.4 The amount of compensation calculated in accordance with the procedure set out in this Clause 45 shall be final and any further and/or greater losses (if any) of the Private Partner shall not be indemnified and shall be waived by the Private Entity in accordance with the Agreement.

45.5 For the sake of clarity, the Parties confirm that the costs associated with the rectification of defects in the condition of the returned Assets and the additional costs of maintenance and/or other services of the Assets incurred or to be incurred by the Public Partner as a result of the unsatisfactory condition of the Assets, if any, shall not be included in the reimbursement formulae set out in Clauses 45.1 and 45.2 of the Agreement, except as set out in Clause 10.15.2. Pursuant to Clause 10.15.2 of the Agreement, the costs associated with the rectification of deficiencies in the condition of the Assets and the additional costs of maintenance and/or other services of the Assets incurred or to be incurred by the Public Body as a result of the unsuitable condition of the Assets shall be deducted from the reimbursement referred to in Clauses 45.1 and 45.2 of the Agreement. The procedures and conditions for identifying and correcting the defects in the condition of the Assets and the additional costs of maintenance and/or other services of the Assets incurred or to be incurred by the Public Partner as a result of the unsatisfactory condition of the Assets and the procedure and conditions for their correction or reimbursement to the Public Partner are set out in Clause 10 of this Agreement.

## Payout of the Agreement termination compensation

* 1. Compensations payable by the Public partner according to Clauses 43.1, 44.1, 45.1 and 45.2 of the Agreement, if their size does not exceed 1 (one) PPP Fee, shall be paid no later than within 30 (thirty) days after the Agreement termination date, while in other cases at the choice of the Public partner are paid within 30 (thirty) days from the Agreement termination date or in proportional instalments, paying each quarter at least the proportional part of the compensation, and paying the full amount of payment within 4 (four) years from the date of termination. Disputes between the Parties as to the amount of the compensation shall not prevent the payment of that part of the compensation which is not in dispute between the Parties.
  2. For the amounts that are payable during the deferred period, exceeding 30 (thirty) Business days, the interest, specified in the agreement with the Funder, is paid (but no higher than the ones paid by the Private partner till the expiration of the Agreement). The Public partner and the Funder have the right to determine a lower interest rate by a mutual agreement, then over the deferred period, for the amounts that are payable during the deferred period, exceeding 30 (thirty) Business days, the interest, agreed between the Public partner and the Funder, are paid.
  3. Under the written agreement between the Public partner, the Private partner, and the Funder and /or other creditors of the Private partner, these persons may agree on the transfer of the Private partner’s rights of claim to compensation payable by the Public partner (part of it) to the Funder and /or other creditors of the Private partner.
  4. Should the tax obligations arise for the Private partner due to Agreement termination compensation payable by the Public partner under the 46.1 of the Agreement, the payable Agreement termination compensation:
     1. is not increased by any amounts, if the Agreement is terminated on the ground of Clause 39 of the Agreement due to the reasons depending on the Private partner;
     2. is increased by such amount, which would compensate to the Private partner the tax obligations arising due to the Agreement termination compensation, if the Agreement is terminated on the ground of Clause 40 of the Agreement due to the reasons depending on the Public partner;
     3. is increased by such amount, which would compensate to the Private partner 50 (fifty) per cent of the tax obligations arising due to the Agreement termination compensation, if the Agreement is terminated on the ground of Clause 41 of the Agreement without the fault of the Parties or due to force majeure;
     4. The amount of the compensation of tax obligations specified in Clause 46 is paid to the Private partner within 30 (thirty) days after submission of the respective claim of the Private partner along with the documents confirming the occurrence of the tax obligations specified in this paragraph and size thereof.
     5. Disputes between the Parties as to the amount of compensation shall not prevent the payment of that part of the compensation which is not in dispute.

# Liability of the parties

## Mutual liability of the parties

* 1. If during the evaluation of the conformity of the Private partner’s activity to the requirements of the Facility’s condition and Service provision, a non-conformity to these requirements is identified, deductions or fines are applied to the Private partner, according to the terms of the Agreement and Annex 3 to the Agreement *Settlement and payment procedures*. When applying the deductions from the PPP Fee, no other contractual penalties, interest or other forms of loss compensation can be applied with respect to the Private partner for the same breach of the Agreement, except for other losses specified in Clause 47 of this Agreement (The duty of the Private partner to compensate the losses), if these losses occurred due to the actions of the Private partner (any act or omission).
  2. A Party that is in default in the performance of a monetary obligation shall be liable to pay to the other Party(ies) interest at the rate of 0.03 (three-hundredths) per cent of the amount of the delayed payment for each day of delay in the performance of the obligation.
  3. If the Agreement is terminated during the execution of the Works due to the fault of the Private Partner, as referred to in Clause 39 of this Agreement, and if the Facility hasn’t commenced its operation, the Private Partner shall pay to the Public Partner a penalty of 4 (four) per cent of the MS portion of the PPP Fee.
  4. If the Agreement is terminated through the fault of the Private Partner as referred to in Clause 39 of this Agreement when Operation of all parts of the Facility has already commenced, the Private Partner shall pay the Public Partner a penalty of 4 (four) per cent of the amount of M4 and M5 portions of the PPP Fee.
  5. The imposition of liability under this Clause 47 of the Agreement shall not relieve the Parties of their obligation to perform their obligations under the Agreement, shall not modify the payment obligations set out in Section IX of the Agreement, and shall not deprive the Parties of the right to terminate the Agreement on the grounds provided for in Section XVI of the Agreement.
  6. The amount of the liability of the Private Partner under Clauses 47.2 to 47.5 of the Agreement shall not exceed more than 4 (four) per cent of the value of the Investments (exclusive of VAT) during the entire term of the Agreement. The Parties confirm their common understanding that the limitation of liability referred to in this Clause of the Agreement shall not apply in the case of the availability of the Facility or a part thereof as referred to in Clause 23.9 of the Agreement, and in the case of the Private Partner’s compliance with the condition of the Facility and the requirements for the provision of the Services as referred to in Clause 47.1 of the Agreement as referred to in the Specification.
  7. The amount of liability applicable to the Public Partner pursuant to Clause 47.2 of the Agreement shall not exceed 7 (seven) per cent of the PPP Fee at a real (non-indexed) value during the entire term of the Agreement.
  8. The Parties shall only be liable to each other for direct damages unless otherwise expressly provided in the Agreement. To the extent not inconsistent with applicable law, the liability provided for in this clause of the Agreement shall be deemed to be the Parties’ pre-negotiated losses and the only permitted means of compensation therefor, except for the Public Partner Losses (VN) and Private Partner Losses (PN) referred to in the termination indemnity formulae referred to in Clauses 43, 44, 45 of the Agreement.
  9. The Parties shall have the right to set-off payments or part thereof between themselves before making payments under this Clause 47 of the Agreement if required by a mandatory provision of the legislation of the Republic of Lithuania. This provision shall not apply to deductions pursuant to Annex 3 *Settlement and Payment Procedures* of the Agreement.
  10. Liquidated damages provided for in this Agreement shall be payable at the request of the Party concerned within 30 (thirty) days from the date on which the cause for payment arose.
  11. The payment of damages under the Agreement and the payment of liquidated damages shall not relieve a Party of its obligation to perform the relevant obligation.

## The duty to compensate the losses

* 1. One Party indemnifies from, and if necessary – compensates all, direct losses of the other Party, which can occur due to injury or the death of any person, property damage or loss, or other reasons, related to the non-performance of the first Party obligations under the Agreement or their improper performance, including Land plot and Property control, usage and maintenance.
  2. The duty to indemnify from damages or to compensate them to the aggrieved Party, specified in Clause 48.1 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.
  3. If the Party receives any notice, claim, complaint, or any other document, which allows to believe that the aggrieved Party has or may have to compensate the damages specified in Clause 48.1 of the Agreement, it is mandatory to notify the other Party of that immediately, together presenting the received documents. The Party to which the claim is delivered is not responsible for the damages, which occur due to the unreasonable delay to issue such notice.
  4. The Party to which the claim is delivered must resolve the issue regarding the validity of the claim to compensate the damages, and if needed, compensate such damages. If the Party to which the claim is delivered believes that the claim to compensate the damages is unreasonable, it has the right to use all legal remedies, which could be used by the Party delivering the claim.

# Other provisions

## Agreement Publicity and Confidential Information

* 1. In accordance with the Law on Public Procurement, the Agreement is not published through CPP IS instruments, except for information the disclosure of which would be contrary to the laws governing the protection of information and data or the public interest, would infringe the legitimate commercial interests of the Investor and/or the Private Partner, or would have a negative impact on the competition between suppliers (hereinafter referred to as "Confidential Information").
  2. Neither Party has the right to disclose to third parties any information, the disclosure of which would be contrary to the legislation regulating the protection of information and data or to the public interest, would violate the legitimate commercial interests of the Private Partner or would have a negative impact on the competition of suppliers (hereinafter – the Confidential Information) without the prior written consent of the other Party, except for the cases specified below, when the disclosure of the Confidential Information will not be considered a breach of the Agreement:
     1. if the Parties agree in writing to inform the media or the third Party;
     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);
     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 Clause 49.1 of the Agreement);
     4. Confidential information is disclosed to the Government of the Republic of Lithuania, Ministry of Finance of the Republic of Lithuania, Public Procurement Office, National Audit Office, State Tax Inspectorate, Central project management agency PI, National Data Agency, Europe Statistics Department (Eurostat) or other competent public and control institutions, performing the functions assigned to them;
     5. the disclosure of the Confidential information is required under the applicable legislation;
     6. the Confidential information is disclosed by the Parties to their employees, lawyers, auditors, advisers, and/ or other consultants selected by the Party, (in the latter case the Party is liable to the other Party, if its employees or chosen lawyers, auditors, advisers, and/ or other consultants will violate the obligation of confidentiality specified in Clause 49.1 of the Agreement).
  3. The following information, in addition to the information referred to in Clause 49.1, will not be considered confidential and must be published publicly:
     1. Subject-matter of the Agreement – the composition and the scope of the Services and the key elements of infrastructure (excluding drawings or other technical details) for the provision of which the Agreement was concluded;
     2. Term of validity of the Agreement, including the date of its conclusion;
     3. Parties to the Agreement;
     4. Value of the Agreement;
     5. Value of the planned Investments;
     6. The PPP Fee of the Private partner paid by the Public partner (by detailing the structure and indexation mechanism of such payment as referred in Annex 3 *Settlement and payment procedures*);
     7. Compensations or contractual penalties paid by the Parties;
     8. Amendments of the Agreement, except for the Confidential information;
     9. Other information which could not be considered confidential according to the Law on Public Procurement.
  4. The personal data (names, titles, email address, or telephone number) contained in the Agreement and its Annexes may only be used for the purpose of identifying the persons responsible for the performance of the Agreement and for communicating with respect to the performance of the Agreement between the Parties, the Subcontractors or the persons authorised by the Public Partner.
  5. The Parties to the Agreement shall ensure that personal data processed in connection with the performance of the Agreement shall be accessible only to those persons for whom it is necessary for the performance of their obligations under the Agreement. The Private Partner shall be responsible for the personal data processed by the subcontractors under this Agreement.
  6. The personal data referred to in the Agreement and its Annexes may not be disclosed to third parties without the express consent of the other Party, except to the Subcontractors named by the Private Partner who are engaged for the performance of the Agreement and only where necessary for the performance of the Agreement or where non-disclosure of such data would cause an extreme difficulty in performing the Agreement.
  7. If a Subcontractor is changed in accordance with the procedures set out in the Agreement, the separate consent of the other Subcontractor for the transfer of personal data must be obtained.
  8. If, in the course of the performance of the Agreement, it becomes apparent that personal data is being processed which is not covered by the terms of the Agreement, the Parties shall inform each other immediately in respect of such data and shall keep such data confidential. If it becomes apparent that personal data not covered by the Agreement are being processed, the Parties shall agree in writing on the processing of such personal data, specifying the categories of personal data to be processed and the purposes for which they are to be processed.
  9. Any personal data which have been processed for the purpose of fulfilling the obligations under the Agreement may be processed up to the point at which the obligations of the Parties under the Agreement cease to exist, after which they shall be destroyed. Only personal data the destruction of which would entail an unreasonable expenditure of time or money or would not be justified for the purposes of the use of the result of the Agreement may not be destroyed.
  10. The Parties shall take sufficient technical and organisational measures to ensure the security and confidentiality of information. The Parties shall inform each other within 1 (one) Business Day of any breach of personal data processed under the Agreement. The notification of the breach must specify the nature of the breach, the possible consequences of the breach and the measures taken to remedy or mitigate the consequences of the breach. The Parties shall not indemnify each other for costs and losses incurred by the other Party in connection with the performance of its personal data processing obligations under this Agreement

## Notices

* 1. In order to be considered as properly delivered and would cause envisaged consequences, the Agreement related notices must be executed in writing in Lithuanianor to be translated to it, the translation is to be confirmed by the signature and the seal of the translator) and:
     1. delivered under signature, or
     2. sent via registered prepaid mail, or
     3. delivered via courier, or
     4. sent to the official e-mail of the Private partner, and the Public partner.
  2. All Agreement related notices are to be sent to the Parties at the following addresses:

| **Party** | **Contact details** |
| --- | --- |
| [***to the Public partner***] | **To:**[***name, last name of the person responsible***]  **Address:**[***address***]  **E-mail address: *[e-mail address]*** |
| [***to the Private partner***] | **To:**[***name, last name of the person responsible***]  **Address:**[***address***]  **E-mail address: *[e-mail address]*** |

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

## Changes

* 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.

## Resolution of the issues that occurred during the performance of the Agreement

* 1. In the cases when there is a reference to this Clause 52 or in other cases when the Parties agree so, decisions are made by the commission formed of the representatives of the Private partner from one side and the Public partner 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 Clause 54.2 of the Agreement or to transfer to this institution the respective dispute of the Parties for resolution. The Commission may call on legal, financial and technical and other experts and specialists.
  2. The commission is comprised of 6 (six) representatives equal number from the side of the Private partner and the side of the Public partner. The Private partner and the Public partner appoint to the commission 3 (three) representatives – specialists of Law, finance, and technical field. Each of the Parties has to appoint representatives to the commission within 10 (ten) Business days from the day of the signing of the Agreement, and has to inform the other Party of the appointed representatives. If any commission member resigns or is unable to perform its obligations, the Party that assigned such representative undertakes to replace the representative, who resigned or is unable to perform its duties, with a new representative within 5 (five) Business days since the establishment of the specified circumstances.
  3. The commission passes decisions in an open vote. The session of the commission can take place and the decisions may be passed, when at least 4 members of the commission are present. The decisions of the commission are passed by the vote majority of the members, who are participating in the session, under the condition that the decision was not passed only by the members of one Party. If the number of votes is equal, the deciding vote is of the chairman of the commission. The sessions of the commission and voting must be recorded and signed by all representatives of the commission, who were present at the session.
  4. The commission sets the terms of work organization and elects the chairperson – the representative of the Public partner responsible for the organization and conduction of the commission sessions, during its first session, it will take place on *[date]*, at *[time],* at *[address]*. Failure to elect the chairperson of the commission, does not prevent the commission to perform its activity.
  5. In case if the commission is not formed according to the procedure, specified in Clause 52.2 of the Agreement, the commission cannot make the decisions regarding the absence of the quorum to pass the decisions at two commission sessions in a row, or if the issue submitted to the commission for resolution, is not resolved within 20 (twenty) Business days since the date of the presentation of the issue (unless the Agreement would provide another period), the issue is transferred for resolution to the authorised representatives of the Parties. If the authorised representatives of the Parties fail to reach an agreement on the specified issue within an additional period of 20 (twenty) Business days, the issue is transferred for resolution according to the terms set out in Clause 54 of the Agreement.

## Governing law

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

## Dispute resolution

* 1. Any dispute arising out of the Agreement or related to it, disagreement, objection, or demand the Parties will attempt to resolve via negotiations and comprehensive cooperation.
  2. If the Parties fail to reach the mutual agreement or the mutual negotiation is not commenced within 30 (thirty) days after the notice to the other Party about the disagreement, dispute, objection, or claim that arose, any disagreement, dispute, objection, or claim arising out of the Agreement shall be transferred to the commission comprised of 3 (three) experts. No later than within 20 (twenty) Business days after the Parties inform each other about the transfer of the dispute for resolution to the expert commission, each of the Parties appoint one expert, the specialist of the respective field, which was the cause of the dispute (Employment, Services, finances, property appraisal, etc.), and 2 (two) experts appointed by the Parties in such way appoint the third expert by mutual agreement. This period may be extended up to 30 (thirty) Business days if the Public partner has to procure the services of the expert that is being appointed in accordance with the procedure specified in the legislation of the Republic of Lithuania. The Party cannot appoint as an expert its own an employee, former employee and/ or the person associated with the Party by contractual or any obligation or subordination relations (excluding the relations formed due to the appointment of an expert). If the experts fail to decide on the candidacy of the third mutual expert within 15 (fifteen) Business days from their appointment, in such case at the request of the Parties the third expert is selected by the Public partner within 30 (thirty) Business days in accordance with the legislation of the Republic of Lithuania. Expenses, related to the appointment of the expert commission and the services that it provided, are covered by the Party declared by the expert commission as being at fault. If the expert commission decides that both Parties are at fault:
     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;
     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
  3. If the decision of the expert commission is not satisfactory to either of the Parties, in such a case the dispute or disagreement shall, at the request of either of the Parties, be referred to the court of the Republic of Lithuania based on the location of the registered office of the Public partner.
  4. The risk of settling disputes between the Parties shall be borne by the Party against whom the competent authority has finally settled the dispute.
  5. The risk of resolving disputes between the Investor, the Private Partner, the Funder, the Other Loan Provider and/or the Sub-Funder shall be borne by the Private Partner.

## Invalidity of the individual provisions of the Agreement

* 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.

## Jointly drafted Agreement

* 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 regarding this Agreement it acted honestly.
  2. [to be retained if the Tender was submitted by a Private partner: the Private partner declares and confirms that, although the initial draft of the Agreement was prepared and submitted during the Procurement, the Private partner had adequate opportunity to familiarize itself with the draft Agreement and to evaluate its terms and conditions, and thus its obligations, responsibilities and risks, before submitting its Tender, to dialogue the terms and conditions of the draft Agreement that were more favourable to the Private partner and to prepare a Tender, including a financial proposal, in which the Private partner’s duties, responsibilities and risks were properly evaluated and reflected in a financial form].
  3. The Private partner declares sand confirms that it 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 of the Parties; it cannot be interpreted in favour of any of the Parties or to the detriment of any of the Parties.

# ANNEXES TO THE AGREEMENT:

1. **Terms and Conditions of the Procurement**

**2. Tender**

**3. Settlement and payment procedures**

**4.** **Matrix of risk distribution among the Parties**

**5.** **List of the mandatory insurance agreements**

**6.** **List of associated companies**

**7.** **Specifications**

**8. Terms and conditions for the entry into force of the preliminary Agreement**

1. **Asset lifetime**
2. **Direct agreement**
3. **Assessment and acceptance of works** **Signatures of the representatives of the Parties:**

|  |  |
| --- | --- |
| **on behalf of the Public partner:** | [*Name of the Public partner*]  [*address*]  [*legal entity code*]  *[Position, name, last name]* |
| **on behalf of the Private partner:** | [*Name of the Private partner*]  [*address*]  [*legal entity code*]  *[Position, name, last name]* |
|  |  |
|  |  |

**ANNEX 1. TERMS AND CONDITIONS OF THE PROCUREMENT**

[*Insert the Terms and Conditions of the Procurement*]

**ANNEX 2. TENDER**

*[Insert the Tender]*

**ANNEX 3. SETTLEMENT AND PAYMENT PROCEDURES**

# General Provisions

1. The terms used in this annex shall have the same meaning as is assigned to them in the Agreement, unless is expressly stated otherwise or the context clearly gives a different meaning.
2. In the event of disputes concerning the application of the provisions of this document, they shall be resolved in accordance with the procedure set in the Agreement.
3. The basis for the calculation of the PPP Fee and creation of the payment schedule is the Financial Operating Model (hereinafter - FAM) prepared by the Investor and submitted together with the Tender (Annex No 1 to the Financial part of the Tender).

# 

# Public-private partnership Fee (PPP Fee)

1. The PPP Fee is a periodic fixed payment paid by the Public partner to the Private partner, and calculated in accordance with the terms established in this document.
2. The PPP Fee (M) is comprised of the following parts:

| MS | The flows of the borrowed and own capital (MS=(M1) Credit flows + (M2) Equity flows) |
| --- | --- |
| M3  M31  M32  M4  M41  M42 | Costs of financial and investment activity  Income from financing activities (interest)  Income from investing activities and equity  Service provision income and Income from renovation and repair works:  Service provision income  Income from renovation and repair works |
| M5 | Administrative and management costs |

# Calculation and recalculation of the PPP fee

1. For the respective year the Fee is calculated according to the following equation:

where:

| Mn | Annual remuneration in the *n*th year |
| --- | --- |
| MSn | Flows of the borrowed and own capital in the *n*th year |
| M31n | Income from financing activities (interest) in the *n*th year |
| M32n | Income from investing activities and own equity in the *n*th year |
| M41n | Service provision costs in the *n*th year |
| M42n | Income from renovation and repair works in the *n*th year |
| M5n | Administration and management costs in the *n*th year |

1. The fee may be amended in the following cases:
   1. in the event of an amendment to the Agreement in accordance with the procedure set out in Clause 37 of the Agreement;
   2. as a result of indexation in accordance with the procedure set out in this Annex;
   3. in the event of amendments to the terms of the Agreement as set out in Clause 4 of the Agreement;
   4. in other cases expressly provided for in the Agreement.
2. In the event of a change in the Fee, the Private Partner shall promptly submit to the Public Partner an updated Table 1 and Table 2 of the PPP Fee Schedule attached as Appendix 1 to this Agreement, if, in accordance with the provisions of the Agreement, the amount of the Fee of the Facility changes in the course of a Calendar Year. The procedure for indexation of the Fee is set out in Clause VII of this Annex.

# Payment of the PPP Fee

1. The payment of the Facility’s Fee starts from the date of commencement of the Facility’s operation. The Public Partner shall pay VAT on the value of the Investments for the creation of the Assets in equal instalments together with each month’s Fee, unless the Private Partner becomes liable to pay the full amount of the VAT on the value of the Investments upon completion of the Works. Should the Private Partner become liable to pay the full VAT on the value of the Investments upon completion of the Works, in such case the Public Partner shall pay the standard rate of VAT calculated on the value of the Investments for the creation of the Assets, which, according to Investor’s the submitted proposal (Tender), shall be EUR [specify amount from FAM], unless such value of the Investments has been changed in accordance with the provisions of the Agreement, notwithstanding the fact that the Public Partner shall pay the value of the Investments in instalments throughout the term set out in the Agreement, as provided for in the procedures set forth in this Annex.
2. The fee shall be the same in each year without indexation (inflation, price, wage changes ("Wages and salaries") in real terms) (except for the first and the last year of payments, if payments do not start at the beginning of the calendar year).
3. The schedule of payment of the Fee Deductibles in real (non-indexed) terms for each Service Year shall be as set out in Table 1 of Appendix 1 to the Agreement, the *PPP Fee Schedule*, of this Annex.
4. The Fee for each month of the provision of the Services, calculated in accordance with the procedures set out in this Annex, is set out in real (non-indexed) terms in Table 2 of *the PPP Fee Payment Schedule* in Appendix 1 to this Annex to the Agreement.
5. At the beginning of each relevant calendar year of the Agreement, the Private Partner shall, in accordance with the provisions of Section VII of this Annex, update Table 2 of the *PPP Fee Payment Schedule* attached as Appendix 1 to this Annex, adjusting the nominal amount of the Fee for the relevant year, and shall submit the same to the Public Partner for coordination. The Public Partner shall, within ten (10) Business Days from the date of receipt of the table, either agree to the amendment to Table 2 of the *PPP Fee Payment Schedule* attached as Appendix 1 to this Annex, or provide a reasoned refusal to agree to the amendment. If the Public Partner fails to reconcile the amendment to Table 2 or to provide a reasoned refusal to reconcile the amendment within the time limit set out in this clause, the Public Partner shall be deemed to have reconciled Table 2 to the *PPP Fee Payment Schedule* attached as Appendix 1 to this Annex, without comment.
6. Fee payments shall be made monthly within 21 (twenty-one) days of the date on which the Private Partner submits and reconciles with the Public Partner the monthly report and VAT invoice. The monthly report shall be reconciled by the Public Partner within 5 (five) Business Days of receipt. If the Public Partner has no material comments affecting the calculation and payment of the Tax, the Public Partner shall be deemed to have reconciled.
7. The monthly share of the Fee is calculated according to the following equation y:

where:

| *mnk* | The share of the Fee of the *k*th month value in the *n*th year |
| --- | --- |
| *Mn* | Fee in the *n*th year |

1. If the Commencement Date does not fall on the first day of a calendar month, the MS and M3 portions of the first month’s Fee shall be calculated and payable in full for the entire calendar month in the event that the Commencement Date of Operation is before the 15th day of the calendar month. In this case, no MS and M3 instalments of the Fee shall be paid in the last month of Operation of the Facility. If the Commencement Date of the Facility is later than the 15th day of the calendar month, the MS and M3 portions of the Monthly Fee shall not be payable in the first Month of Operation of the Facility, but shall be calculated and payable in full for the entire calendar month in the last Month of Operation of the Facility. The M4 and M5 portions of the Monthly Fee shall in all cases be calculated and paid from the Commencement Date of Operation of the Facility to the end of the calendar month for the first month of Operation of the Facility and from the first day of the calendar month to the last day of payment of the Annual Remuneration due under the Agreement for the last month of Operation of the Facility.
2. If the period for the development of the Facility extends beyond the scheduled period (the scheduled commencement of Operation of the Facility is delayed), the Fee calculated by the FAM shall be payable outside the number of months in each year as calculated by the FAM for the first and subsequent years of the Contract Fee payment, depending on the extent of the delay to the commencement of the Operation, but by spreading the Fee over the remaining number of months from the Commencement Date of Operation of the Facility o the end of the calendar year in such a way that the monthly instalments of the Fee (MS, M3 and M42) shall be calculated by spreading the Fee of these instalments equally over the remaining months from the Commencement Date of Operation of the Facility to the end of the calendar year, and the instalments of M41 and M5 shall be payable for only the number of months remaining from the Commencement Date of Operation of the Facility to the end of the calendar year as provided for in the FAM. In this case, the first year’s Fee would consist only of the remaining months of the relevant Agreement in that calendar year. This rule shall apply throughout the Service Period. The formula for calculating the Fee in this situation is as follows:

where:

|  | The share of the Fee of the *m*th month at the nominal (indexed) value in the *n*th year | |
| --- | --- | --- |
|  | Fee share for MS, M3 and M42 remuneration share in the *n*th year; | |
| L | The number of months of the incomplete year of the Agreement, from the factual commencement of Operation of the Facility till the end of calendar year |
|  | the mth month’s share of the tax on the M41 and M5 remuneration part in nominal (indexed) value in the *n*th year |
|  |  |

1. In the event that the Commencement Date of the Facility is postponed to a calendar year other than the planned calendar year, the Fee shall be recalculated in accordance with the procedure set out in Clause 61.3 of this Annex.
2. If the actual date of Commencement of Operation of the Facility is later than the Contract Time for the performance of the Works (including any extensions of the Works), then that part of the Fee which was provided for as of the date of commencement of Operation of the Facility as specified in the Tender and the Agreement shall be including extensions of the time limit for the Works in accordance with the provisions of the Agreement, up to the actual date of the commencement of the Commissioning of the Facility shall not be payable to the Private Partner, but shall only be payable from the date of the actual commencement of the commissioning of the Facility up to the expiry date of the Agreement (unless terminated earlier). For this purpose, the Private Partner shall replace the FAM as specified in Section XIII of this Annex.
3. The amount of the monthly Fee paid to the Private partner is calculated according to the following formula for each part of Facility:

where:

| *Snk* | The amount paid to the Private partner on the *k*th month in the *n*th year |
| --- | --- |
| *mnk* | The share of the Fee of the *k*th month in the *n*th year |
| *IF* | Deduction for malfunctioning |
| *IP* | Deduction due to the Operational violation |
| *IKt* | Deduction due to other violation |
| *KD* | Compensation for the Compensation Event |
| *KS* | Other amounts payable to the Private Partner under the Agreement |
| *KI* | other amounts due to the Public Partner under the Agreement |
| *IA* | Deduction in accordance with Clause 53 of this Annex in respect of a defective Facility or part thereof |

1. **Calculation of the PPP Fee components for the Facility**
2. Share of the PPP Fee **MS - Flows of the borrowed and own capital - (Non-indexed share of the Fee):**
   1. comprised of :

* **M1** Credit flows - The portion of the Fee allocated to the repayment of the part of the loan granted by the Funder for the development of a Facility;
* **M2** Equity capital flows - share of the Fee for the equity flows, i. e. the invested capital and the subordinated loans, granted by the funders (e.g. shareholders) for the payment for the established infrastructure and the payment of the related financing fees;
  1. Calculated according to:
     1. The terms and conditions of the loan granted by the Funder specified in the FAM: the size of the loan, loan agreement conclusion fees, loan duration, deferral period, loan repayment method, loan repayment schedule, etc.;
     2. The terms and conditions of the subordinated (or equivalent) loan granted by the respective funders (e.g. shareholders) for each part of Facility (if any), specified in the FAM (the size of the loan, loan agreement conclusion fees, loan duration, deferral period, loan repayment method, loan repayment schedule, etc.);
     3. The conditions for the provision of the equity specified in the FAM (size, internal rate of return of equity, etc.);
     4. The actually invested amount during the period of commencement of the Facility’s creation till the commencement of operation of the Facility, without exceeding the amount of the Investments specified in the Tender (including Facility’s creation funding and all other expenses till the date of commencement of operation of the Facility), which is equal to *[amount]* EUR (excluding VAT), unless it is amended in cases specified in the Agreement;
     5. The remaining unrepaid share of the loan and / or of the subordinated loan granted by the Funder or Other loan provider and the unpaid part of the equity of the Private partner, but not exceeding the share of the loan or of the subordinated loan granted by the Funder or Other loan provider and the unpaid part of the equity of the Private partner which remains for the relevant period specified in the Tender, unless the amount of the Investments was increased in cases specified in the Agreement. In such a case, the share of the loan granted by the Funder which remains for the respective period specified in the Tender is increased by the corresponding share of the unrepaid increased amount of the Investments;

1. Share of the Fee **M3 - Costs of the financial and investment activities - (Non-indexed share of the Fee):**
   1. consist of:
      1. M31 - the portion of the Fee allocated to the payment of the interest on the Funder’s loan for the Facility, the interest on the subordinated loan provided by the Other Lender and the financing, loan agreement and origination fees related to these loans;
      2. M32 - Payment of the portion of the Fee allocated to secure the return on equity of the Facility for a Private Partner and the payment of financing and loan agreement fees in respect of the subordinated loans;
   2. Calculated according to:
      1. The terms and conditions of the loan granted by the Funder in relation to Facility specified in the FAM: the size of the loan, interest rate, loan agreement conclusion fees, loan duration, deferral period, loan repayment method, loan repayment schedule, etc.;
      2. The terms and conditions of the subordinated loan granted by other loan provider (if any) in relation to Facility specified in the FAM (the size of the loan, interest rate, loan agreement conclusion fees, loan duration, deferral period, loan repayment method, loan repayment schedule, etc.);
      3. The conditions for the provision of the equity in relation to Facility specified in the FAM (size, internal rate of return of equity, etc.);
2. Share of the Fee **M4 - Service provision costs - (Indexed share of the PPP Fee):**
   1. M41 - the portion of the Fee allocated to cover the Costs of providing the Services of the Facility from the commencement of the operation of the Facility. Calculated by indexing the value of M41 (i.e. the annual amount of the Costs of providing the Services of the Facility at the time of the submission of the Tender at the prices in force at the time of the submission (base prices)) as set out in Table 1 of Appendix 1 to the PPP Fee Schedule of this Annex to the Agreement in the manner specified in this Annex;
   2. M42 - the proportion of the Fee allocated to cover the Costs of the Renovation and Repair Works on the Facility from the commencement of operation the Facility. Calculated by applying the value of M42 in Table 1 of Appendix 1 of the PPP Fee Payment Schedule attached to this Annex to the Agreement (i.e. the annual amount of the Costs of the Renewal and Repair Works on the Facility at the prices in force at the time of the submission of the Bid (base prices)) indexed in the manner set out in this Annex.
3. Share of the PPP Fee **M5 - Administration and management costs - (Indexed share of the Fee):**
   1. The share of the Annual remuneration for the coverage of the costs of Administration and management from the commencement of the Service provision in the Facility;
   2. Calculated according to the M5 value specified in the Table 1 of the supplement No. 1 to this document "*PPP Fee payment Schedule*" (i.e., the annual amount of the Administration and management costs at the (base) prices in force during the submission of the Tender), indexing it in accordance with the terms set out in this document.

# Calculation and payment of utilities

1. The Private partner covers all the Utility service tax costs related to the creation of the Facility, up to (but not including) the commencement date of operation of the Facility, at its own expense.
2. From the Commencement Date for the Facility until the end of the Agreement, monitoring and quantification of the Utilities shall be carried out throughout the Facility. The cost of the Utilities (other than the organisation and coordination of the Utilities) shall not be included in the PPP Fee and shall be paid for by means of a separate invoice for reimbursement submitted by the Private Partner, which shall specify such Utilities;
   1. heating energy (for heating, ventilation, cooling and hot water for the premises of the Facility);
   2. electricity (to ensure the functioning of the Facility, hot water preparation, used for telecommunications, machinery, communications, etc.);
   3. cold water and sewerage;
   4. gas;
   5. other Utilities.
3. The costs of Utilities referred to in Clause 27 of this Annex shall be considered as pass-through costs and shall be paid by the Public Partner on the basis of actual consumption. The Public Partner may verify the validity of the information provided by the Private Partner in relation to the Utilities.

# Indexing

1. The following parts of the PPP Fee are indexed according to the terms of this document:

| M41 | Service provision Income |
| --- | --- |
| M42 | Income from renovation and repair works |
| M5 | Administrative and management Income |

1. The indexation of the MS part of the Fee shall be a one-off and shall apply only if the value of the indicator "Price indices of construction cost elements (2021 - 100)", dimension "non-residential buildings" (total value) published by the State Agency for Data, during the entire period of development the Facility (counting from the entry into force of the Agreement in its entirety to the commencement of the operation of the Facility) is greater than 9 (nine) percent.
2. The MS Part indexation shall apply to the following groups and amounts of Costs for the creation of the Facility (excluding VAT):
   1. site infrastructure, installation of structures (excluding outdoor engineering networks) *[specify amount]*;
   2. off-site infrastructure outside the boundaries of the Land - Part 1 *[specify amount]*;
   3. outdoor engineering networks within the boundaries of the Land - *[specify amount]*;
   4. outdoor engineering networks and infrastructure outside the boundaries of the Land plot - *[specify amount]*;
   5. building(s) *[specify amount]*;
   6. Furniture and Equipment *[specify amount]*;
   7. Installation of furniture and equipment *[specify amount]*.
3. The portions of the Fee MS for each part of the Property referred to in Clause 32 of this Annex shall be indexed in accordance with the following formula, if:

:

where:

|  |  |
| --- | --- |
|  | nominal (indexed) value of the MS part of the Fee portion; |
| **OSV** | the total value of the Development Costs of the Facility, calculated on the basis of the value of the Development Costs for the Facility as set out in the Tender; |
| **NOSV** | The part of the Development Costs not related to the construction and installation of the Facility, which is calculated on the basis of the Tender by adding together the following groups of Costs: design (including obtaining a building permit); general design expertise; construction supervision; project management, etc. |
| **SSKI** | the change in the values of the indicator "Price indices of construction cost elements (2021 - 100)", dimension: for buildings, dimension: "non-residential buildings" (total value), published by the State Data Agency, from the date of entry into force of the Agreement in its entirety to the date of the commencement of the operation of the Facility, expressed as a percentage exceeding 9 (nine) per cent, and calculated in accordance with the formula:  – 9%  where:  SSKIn – the value of the indicator ‘Price indices for construction cost elements (2021 - 100)’, dimension: for buildings, dimension: ‘non-residential buildings’ (total value) published by the State Data Agency, based on the data for the month in which the commissioning of the Project will start.  SSKI0 – the value of the indicator ‘Price indices for construction cost elements (2021 - 100)’, dimension: ‘non-residential buildings’ (total value), published by the State Data Agency, for the month of entry into force of the Agreement in full. |

1. The indexed amount of the Costs for the development (construction and installation) of the Facility shall be paid (together with the VAT applicable to the indexed amount) to the Private Partner:
   1. once, together with any Monthly Fee for the first month of the first Operation Year of the Facility; or
   2. in equal instalments over a period of time determined by the Public Partner, but not exceeding the remainder of the Agreement Term. In such case, the Private Partner shall be reimbursed by the Public Partner for the additional financing costs, if any, but not in excess of the amount specified in the FAM.
2. The M41, M42 and M5 portions of the Fee shall be indexed as from the commencement of the payment of the Fee in accordance with the provisions of the Agreement and covering the entire period from the Base Date. The Base Date shall be deemed to be the date on which the Agreement enters into full force and effect, i.e. *[date]*.
3. The M41, M42 and M5 instalments of the Fee the Facility shall be indexed once for each period of twelve (12) months from the commencement of the payment of the Fee under the Agreement.
4. The index for the indexation of Fee Shares M41, M42 and M5:
   1. applicable indexing indicator:

|  | The monthly harmonized index of consumer prices of the Republic of Lithuania published by the Statistics Department of the Republic of Lithuania.  Should the Department of Statistics of the Republic of Lithuania no longer gather the statistics on the harmonized index of consumer prices and it would be no longer published, then the harmonized index of consumer prices shall be replaced by another relevant index or other comparable statistical indicator agreed by the Parties which would be closest to its purpose. |
| --- | --- |

* 1. The source of the indexing indicator *Index\_SVKI*: Indicator database of the Department of Statistics of the Republic of Lithuania. The indexing indicator is obtained by performing the following steps:
     1. <http://www.stat.gov.lt/> ;
     2. Official statistics portal;
     3. All indices;
     4. Indexes database;
     5. Economy and finance;
     6. Price indices, changes, and prices;
     7. Harmonized index of consumer prices (HICP), changes of prices, HICP of fixed taxes and weights;
     8. Harmonized index of consumer prices;
     9. Harmonized indices of consumer prices (2015 = 100).
     10. Properties: period, Classification of Individual Consumption Costs by Purpose (COICOP), special group of goods and services - Consumer goods and services.
  2. M41 is indexed according to the equation:

where:

|  | Fee share M41 at the nominal (indexed) value in the *n*th year |
| --- | --- |
|  | The value of the component M41 of the Fee in the *n*th year specified in the Table 1 of the Appendix 1 of this Annex "*PPP Fee payment Schedule*", at the valid (basic) prices during the submission of the Tender |
|  | the indexing rate value announced by the Statistics Department of the Republic of Lithuania for the calendar month, after the period of every 12 months counting from the date of the commencement of Service provision, the (i.e., the first time the value of the indexing rate for the month of the commencement of Service provision, and later the value of the indexing rate of the same month for each subsequent calendar year) |
|  | the value of the indexing indicator published by the Department of Statistics of the Republic of Lithuania for the base month specified in this document |

* 1. M42 is indexed according to the equation:

Where:

|  | Fee share M42 at the nominal (indexed) value in the *n*th year |
| --- | --- |
|  | The value of the component M42 of the Fee in the *n*th year specified in the Table 1 of the Appendix 1 of this Annex "*PPP Fee payment Schedule*", at the valid (basic) prices during the submission of the Tender |
|  | the indexing rate value announced by the Statistics Department of the Republic of Lithuania for the calendar month, after the period of every 12 months counting from the date of the commencement of Service provision, the (i.e., the first time the value of the indexing rate for the month of the commencement of Service provision, and later the value of the indexing rate of the same month for each subsequent calendar year) |
|  | the value of the indexing indicator published by the Department of Statistics of the Republic of Lithuania for the base month specified in this document |

* 1. M5 is indexed according to the equation:

where:

|  | Fee share M5 at the nominal (indexed) value in the *n*th year |
| --- | --- |
|  | The value of the component M5 of the Fee in the *n*th year specified in the Appendix 1 "*PPP Fee payment Schedule*", at the valid (basic) prices during the submission of the Tender |
|  | the indexing rate value announced by the Statistics Department of the Republic of Lithuania for the calendar month, after the period of every 12 months counting from the date of the commencement of Service provision, the (i.e., the first time the value of the indexing rate for the month of the commencement of Service provision, and later the value of the indexing rate of the same month for each subsequent calendar year) |
|  | the value of the indexing indicator published by the Department of Statistics of the Republic of Lithuania for the base month specified in this annex |

# Compensation event

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

where:

| *KD* | Monthly instalment of the compensation |
| --- | --- |
| Δ*Invest* | The amount of the increase in Investments into Property (the full amount is indicated, if the Compensation event occurs due to the manifestation of the risk exclusively attributed to the Public partner, or part of this amount, proportional to the share of the risk that is attributed to the Public partner) |
| *N* | The period expressed in months from the start of the Compensation Event (if the Private partner has notified about the Compensation Event and has provided the supporting documents within the period specified in the Agreement prior to the planned expiration of the Agreement, or earlier if agreed with the Public partner). If the Compensation Event (of which the notification and supporting documents were provided within the period specified in the Agreement) occurred before the date of the commencement of Service provision, then "N" is equal to the period, from the date of the commencement of Service provision till the expiration of the Agreement, or earlier if agreed with the Public partner, expressed in months |
| *WACC* | *weighted average* *cost of capital* |
| *E* | The size of the actually invested equity |
| *D* | The amount of the loan actually granted by the Funder |
| *H* | The size of the actually invested hybrid capital (including subordinated loans, convertible bonds, mezzanine loans, etc.) |
| *V* | The amount that was actually invested during the Facility’s development period till the date of the commencement of Service provision (under the Funder’s credit, subordinated or unsubordinated loan provided by the Other Lenders and equity and hybrid equity for the Facility), *V = E + D+ H*. |
| *RE* | Return on the provided equity |
| *RD* | The cost (interest) of the financing provided by the Funder, including the interest rate swap, for the Facility |
| *RH* | Return on the granted hybrid capital |
| *Tax* | Income tax rate |

1. If the Compensation Event results in the increase of the Private partner’s costs related to the Service provision, such increase of costs are compensated together with the amounts of the PPP Fee, as a component of M4, subject also to appropriate indexation, if such Costs increase in periods n+1 and subsequent periods, paid to the Private partner each month. When determining the amount of the increase in the costs associated with the Service provision, the details of the values of the Service components specified in the FAM and justification for the increase of the costs related to the Service provision, according to the procedure of justification for the Additional works and services specified in Clause 16 of the Agreement are followed.
2. If an Exemption Event which lasts more than 14 (fourteen) days is also a Compensation Event which does not result in an increase in the Investment and/or Cost in the Facility and/or the Services, but which results in the Private Partner or the Subcontractor incurring any other direct loss in connection with the provision of the Services i.e. the Private Partner or Subcontractor incurs the Costs provided for in the FAM, but does not receive income to the extent provided for in the Agreement or the FAM, the Costs of M41 shall be offset as a component of M4 together with the Fee payable to the Private Partner each month, related to payroll taxes of the employees of the Private Partner or the Subcontractor (taxes paid by the employee and the employer, deductions for supplementary (second tier) pension saving, only to the extent that the State contribution to the employee’s accumulation is valid (in case of supplementary pension saving in the previous periods). The compensation to the Private Partner or the Subcontractor shall commence on the 15th (fifteenth) day of the Exemption Event and shall be payable for a maximum period of 120 (one hundred and twenty) days.
3. If an Exemption Event, which is also a Compensation Event, lasts for more than 2 (two) months, and as a result the Private Partner or the Subcontractor terminates the employment contract with the employee(s) directly related to the provision of the Services, in such a case, the Government Partner shall compensate the employee(s) with the severance pay due under the Labour Code of the Republic of Lithuania.
4. If a Compensation Event due to a Force Majeure Event results in state or municipal support/aid, the Compensation shall be reduced by the amount of such support/aid. In determining the amount of state or municipal support (aid) granted, the applicable legal acts on the granting of support (aid), the Private Partner’s applications to the competent authorities, decisions on the granting of support (aid), bank statements and any other documents that may identify the fact and amount of state or municipal support (aid) granted shall be used.

# Case of Exemption

1. If, as a result of an Exemption Event, the Private Partner has not provided the Services or has provided incomplete Services as set out in the Specifications and the Agreement, the Private Partner shall only be paid the M4 Portion of the Fee for the Services provided (the M4 Portion of the Fee shall not be payable for the Services not provided) during the period of the Exemption Event, but shall be paid the MS, M3, and M5 portions of the Fee.
2. When determining the value of the Services, which was not provided, the breakdown of the Service component values listed in the FAM presented together with the Tender is observed. In any case, such unpaid amount may not exceed the component M4.
3. If the Exemption Event is related to the Force Majeure circumstances referred to in Clause 42.1 of the Agreement, the Public Partner shall pay to the Private Partner 50 (fifty) per cent. of the M42 and M5 portions of the Fee. In the event that the consequences of the Force Majeure are or may be insured as provided for in the Agreement, then the entire risk shall be borne by the Private Partner and the Public Partner shall not be liable for the payment of the M42 and M5 portions of the Fee.

# Deductions and penalties

1. Deductions to the PPP Fee of the Private partner may be applied in accordance with the terms specified in the Fine imposition system set out in the Appendix 4 of this Annex to the Agreement *Mechanism for deductions and penalties*.
2. Penalties shall apply in the event that the breaches referred to in Appendix 4 to this Annex, Deduction and Penalty Mechanism, occur prior to the commencement of the Operation of the Facility. The fines shall be paid by the Private Partner to the Public Partner within the time limit set out in Clause 47.11 of the Agreement.
3. Deductions shall apply where the breaches referred to in Appendix 4 Deduction and Penalty Mechanism of this Annex occur after the commencement of the Operation of the Facility. Deductions from the Fee (if any) shall be applied monthly.
4. The amount of deductions calculated for the reference month may not exceed the share of the Annual remuneration for the *k*th month in the *n*thyear (*mnk*).
5. If the deductions amount calculated for the reference month is higher than the difference between the share of the Fee for the *k*th month in the *n*thyear (*mnk*) and the credit flows for the *k*th month in the *n*thyea (M1nk), a part of the deductions calculated for the reference month that exceeds the difference between the share of the Fee for the *k*th month in the *n*thyear (*mnk*) and the credit flows for the *k*th month in the *n*thyea (M1nk), is transferred to other reference periods, however for the period of time not exceeding 3 (three) months. If the 3 (three) month time limit is not sufficient to carry forward the deduction, the deduction shall also be applied to the M1 part of the Fee.
6. The size of the Deductions from the PPP Fee for other reference periods due to the part of the deductions amount, exceeding the difference between the share of the Fee for the *k*th month in the *n*thyear (*mnk*) and the credit flows for the *k*th month in the *n*thyea (M1nk), transferred to these periods, is not reduced .
7. If, due to the fault of the Private partner, the Facility, it’s part or element (or part of element) cannot be used for the provision of the Services and the performance of functions of the Public partner as set out in the legislation, i.e. due to the inadequacy of the Facility, it’s part or element (or part of element), the Private partner cannot provide the Services, and the Public partner is unable to perform the functions assigned to it in the legislation, cannot use it, the Public partner does not pay the PPP Fee for the period during which the Facility, it’s part or element (or part of element) could not be used for the provision of Services and the performance of the functions assigned to the Public partner in the legislation. If the Facility is not wholly adequate for the provision of the Services and/or the performance of the functions by the Public Partner as defined by law, the Fee for the Facility shall not be payable in full, and if only part of the Facility or an element (or part of an element) is not adequate, then the part of the Fee for the relevant part of the Facility shall be paid in proportion to the area of the Facility that is not suitable for the provision of the Services and/or the performance of the functions of the Public Partner, based on the total area of the Facility as indicated in the extract from the State Enterprise of the Register Centre.
8. Any disagreement between the Parties as to the existence and duration of an event referred to in Clause 53 of this Annex shall be settled in accordance with the procedure set out in Clause 52 of the Agreement.

# Use of the insurance benefits

1. As described in Clause 31 of the Agreement, if the insurance benefit is not consumed after the compensation of losses or restoration / replacement of the Property with equivalent property, the balance is used to compensate the parts M4-M5 of the amount paid the next month to the Private partner. If the parts M4-M5 of the amount paid the next month to the Private partner are fully covered for the remainder of the next month, the unused balance will be used to reimburse the parts M4-M5 of the amount paid to the Private partner the later on, until the balance is fully exhausted.

# Change in tax legislation

1. In case of changes in tax legislation the PPP Fee will be recalculated in the following manner:
   1. recalculation (if necessary) and payment of tax in the event of a change in the provisions of the Law of the Republic of Lithuania on Value Added Tax governing the deduction of VAT, or in the event of a change in the interpretation of the authorised authority regarding the deduction of VAT
   2. The recalculation of the PPP Fee due to the changes in the VAT rate is carried out and the recalculated PPP Fee is applied from the entry into force of the Law on Value Added Tax of the Republic of Lithuania, which changes the VAT rate, and the commencement of the application of the new VAT rate;
   3. For the part of the PPP Fee, for which VAT invoices are not yet issued in accordance with the terms of the Agreement, a new VAT rate is applied instead of the former VAT rate.
   4. The recalculated Fee due to the changed VAT rate is formalized by a written agreement of the Parties;
2. The fee shall be recalculated and paid without separate written agreement between the Parties due to a change in the VAT rate.
3. Compensation for the rental fee for the state land of a land plot:
   1. If the Private partner will not be exempted from the for the rental fee for the state land of a land plot or will be exempted only in part, the Public partner will compensate to the Private partner the rental fee for the state land which was actually paid, by paying the respective amounts to the Private partner no later than within 30 (thirty) days from the date of receipt of the relevant invoices and documents that substantiate them from the Private partner.
4. In cases other than those specified in this Annex to the Agreement, in cases of a change in the tax legislation, the Parties will follow the Agreement.

# Review of the Financial Operating Model

1. After the Public Partner and the Private Partner have signed the Agreement, the Private Partner shall, prior to the full entry into force of the Agreement, modify the FAM and submit it to the Public Partner for coordination no later than 3 (three) weeks before the full entry into force of the Agreement. The Public Partner shall agree or comment on the amended FAM within 5 (five) Business Days of receipt of the amended FAM. The amended FAM shall take into account:
   1. the change in EURIBOR (if applicable). In such case, the change (increase or decrease) in the Cost shall be attributed to the Public Partner in accordance with its share of risk in accordance with Annex 4 to the Agreement, the Matrix of Risk Distribution between the Parties, and the Fee shall be modified (increased or decreased) in accordance with the Public Partner’s share of risk;
   2. the effective date on which the Agreement becomes effective in full. In such event, the Fee for the Facility shall be adjusted accordingly, taking into account the actual duration of the provision of the Services of the Facility and the overall duration of the Agreement, in such a way that the Private Partner shall receive the full amount of the MS and M3 portions of the Fee referred to in the FAM and which would have been received by the Private Partner in respect of the entire period from the date of the commencement of the Commissioning of the Facility as specified in the Agreement;
2. During the performance of the Agreement, the FAM is changed in the following cases:
   1. After making the amendments in the cases specified in Clause 37 of the Agreement;
   2. In Cases of Exemption 1 (one) time a year within 30 (thirty) days after the end of the calendar year).
   3. where the Commencement Date for the Facility, as set out in the Agreement and the Tender, is delayed in accordance with Clause 19 of this Annex. The FAM shall be modified to take into account the shortening of the duration of the Services and the payment to the Private Partner of the M1, M2 and M3 instalments of the Fee shall be made within a period shorter than the maximum period of 12 (twelve) years;
   4. in the event of a change in the VAT rate;
   5. a change in the terms and conditions of the Financing as set out in Clause 24.1 of the Agreement;
   6. agreement of Additional Works and/or Services where changes to the FAM are necessary;
   7. in other cases where there is a change in the Fee (except for the Compensation Event), in the terms of performance of contractual obligations, etc.
3. The Private partner performs the FAM optimization procedures at his own expense, submitting the updated version of the FAM to the Public partner.
4. During the performance of the Agreement, the Public partner has the right to review and audit the FAM, at any time, without the consent of the Private partner.
5. If the FAM is adjusted, it will take effect from the date on which the FAM corrections are approved by the Public partner, and is treated as a ‘Financial Operating Model’ as specified in the Agreement.

ANNEXES:

Appendix 1. PPP Fee payment Schedule;

Appendix 2. Requirements for VAT invoice, credit and debit documents;

Appendix 3. Requirements for the Utilities Reimbursement Invoice, credit and debit documents;

Appendix 4. Mechanism for deductions and penalties.

# APPENDIX 4. MECHANISM FOR DEDUCTIONS AND PENALTIES

**1. GENERAL PROVISIONS**

* 1. The purpose of this Appendix 4, *Deduction and Penalty Mechanism*, of Annex 3, *Settlement and Payment Procedures*, of the Agreement ("Appendix") is to bind and motivate the Private Partner to comply with the requirements set out in the Agreement (including the Specifications and the Tender). Deductions and penalties for non-compliance shall be calculated in accordance with the procedures set out in this Appendix. Deductions shall reduce the Fee payable to the Private Partner and penalties shall be paid in accordance with the procedure set out in Clause 47.11 of the Agreement.
  2. The terms defined in the Agreement shall apply to this Appendix unless it is clear from the context, content and meaning of this document that the terms defined in the Agreement, the Specifications and this Appendix have a different meaning or that such terms are defined differently in this Appendix:
     1. **Grace period** - a period of 90 (ninety) days commencing from the commencement of the Operation of the Facility, during which the periodicity and functioning violations shall be recorded, but no deductions shall be calculated and applied. During the grace period, the time limits and procedures set out in this Appendix shall apply to the correction of periodicity and performance violations. The grace period shall not apply to Level A functional breaches, nor shall it apply in cases where the time taken to correct periodicity or functional breaches is more than twice the time taken to correct the relevant breach as set out in Tables 1 and 2 in this Appendix.
     2. **Remediation Period** - means the period of time within which the Private Partner shall remedy a periodicity or functioning or other breach to the level existing prior to the relevant breach, consistent with the requirements of the Agreement, including the Specifications, and/or the Tender.
     3. **Temporary Remediation** - means an action by a Private Partner where it is not possible to remedy a breach of a particular Functioning within the Remediation Period set out in Table 2 of this Appendix for objective reasons beyond the Private Partner’s control (e.g. time of year, a complex accident that the Private Partner cannot objectively remedy with its own resources, the time limit for the supply of materials needed to remedy the violation is longer than the Remediation Period), but it is only possible to carry out certain individual actions to remedy the functional violation in order to ensure the safety, security and continued provision of the Services of the Facility. The Temporary Remediation solutions shall be subject to the approval of the Public Partner.
     4. **Recurring Breach** means a periodicity or functioning breach that occurs more than three times in the same system/area within a 2 calendar month period, e.g. a room or rooms are not cleaned at the prescribed frequency more than three times, a ventilation system has failed more than three times.
     5. **Final Rectification** means an action by a Private Partner where the remediation of a Functional Breach is subject to a Temporary Remediation, in which case a deadline is set for the complete remediation of the Functional Breach, as set out in this Appendix.
  3. In the event of a periodicity or functionality violation identified by a Public Partner or a Private Partner, the person who identified the violation shall record the location of the violation, a description of the violation of the Service, and the level of the violation (in the case of a functionality violation) in the Recording Tool. Functional Breaches may be detected and recorded in the Recording Tool by automated monitoring and alerting systems and the level of Breach shall be assigned in accordance with the procedures set out in this Annex.
  4. The time to correct a Periodicity Breach shall be as set out in Table 1 of this Annex and a Functional Breach shall be as set out in Table 2 of this Annex.
  5. In the case of a Periodicity Breach or a Functioning Breach, the Remediation Period shall commence from the time the Periodicity Breach or Functioning Breach is recorded in the Recording Tool.
  6. The Private Partner shall immediately take all measures to minimise the consequences of the Periodicity or Functioning Breach and to correct the Breach within the shortest possible time. Upon correction of the relevant periodicity or functionality violation, the Private Partner shall record in the Recording Tool the exact Time of Correction or the Time of Final Rectification (as applicable) and other information that is specified in the Recording Tool.
  7. In the event of a Functional Breach, the level of the Breach specified in Section 3 of this Annex shall be immediately assigned by the Private Partner or by an automated monitoring or alert system.
  8. The Private Partner must immediately take all measures to minimise the consequences of a breach of periodicity or functionality.
  9. If the Private Partner fails to remedy a Periodicity Breach, Functioning Breach or other Breach within the Remediation Period (if any) set out in Table 1, Table 2 or Table 3 of this Appendix, as applicable, or fails to remedy a Functioning Breach within the Temporary Remediation Period or the Final Rectification Period, as applicable, if any, set out in this Appendix, and as approved by the Public Partner, then the following deductions shall apply:
     1. the Periodicity Breach Deduction (PPI);
     2. the Functioning Violation Deduction (FPI);
     3. other breach deduction (KTI).
  10. The total deduction shall be calculated according to the following formula:

***K = PPI + FPI + KTI***

where:

**K** - is the total deduction by which the Fee is reduced in accordance with the Agreement (in respect of the Facility in the relevant month in which the periodicity and/or functioning and/or other breach occurred);

**PPI** - the periodicity violation deduction;

**FPI** - Functioning Violation Deduction;

**KTI** - deduction for other irregularity.

**2. PERIODICITY BREACHES**

* 1. Periodicity Breaches shall be established in cases where the Private Partner fails to comply with the requirements set out in the Service Delivery Plan and/or the Tender and/or the Specifications, and where such failures are not and cannot be classified as Functional Breaches by their nature. The periodicity breaches are set out in Table 1 of this Appendix.
  2. For each occurrence of a Periodicity Violation that is not corrected within the Remediation Period set out in Table 1 of this Appendix, a Periodicity Violation Point Amount (PPT) shall be calculated. The PPT is set out in Table 1 of this Appendix for the specific Periodicity Breach.
  3. The PPI means the specific amount calculated to reduce the Fee (for the month in which the Periodicity Breach occurred).
  4. The PPI shall be calculated in accordance with the formula:

***PPI = MA x PPT x 0,0004%[[1]](#footnote-1) ,***

where:

PPI - Periodicity Breach Deduction;

MA - the Fee payable to the Private Partner under the Agreement in respect of the relevant month;

PPT - the sum of the Periodicity Breach Points for the Period.

* 1. Procedure for calculating PPI:
     1. The PPTs shall be recorded in the monthly report available via the Recording Tool.
     2. PPTs shall be counted if the periodicity breach is not corrected within the Remediation Period set out in Table 1 of this Appendix.
     3. Where more than one Periodicity Violation has been detected, recorded and not corrected within the Remediation Period, the PPTs for all Periodicity Violations shall be aggregated and the PPI shall be calculated as set out in Clause 2.4 of this Appendix.
     4. Where a Recurring Periodicity Breach has been identified, the PPT points shown in Table 1 shall be multiplied by 2 (two) for that breach.

**Table 1.** Periodicity breaches

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Code** | **System / Area** | **Action / Service** | **Remediation period** | **PPT** |
| RĮ | Recording Tool | Recording of breaches, changes in status are recorded at the time and by the person entitled to do so (only on the Private Partner side). | 3 h | 5 |
| VA | Performance reports at the time of Service provision | During the provision of the services, activity reports, except those generated automatically from the Registration Tool, are delivered in the format, content and quality specified and at the time specified. | 1 d. | 10 |
| ŠVS | Heating systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1 d. | 30 |
| ŠP | Heating point systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1 d. | 30 |
| VKS | Ventilation and air-conditioning systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 3 d. | 20 |
| KVS | Hot water systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1 d. | 30 |
| VS | Water supply systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1 d. | 30 |
| NS | Domestic wastewater systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1 d. | 30 |
| SAN | Sanitary appliances | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1 d. | 30 |
| LS | Storm-water systems and facilities | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1 d. | 20 |
| ES | Electrical systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1 d. | 30 |
| ASS | Security alarm systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1.d. | 20 |
| JKS | Movement control systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 2 d. | 20 |
| VSS | Video surveillance systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 2.d. | 20 |
| TRS | Telecommunications and communications information transmission systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 2 d. | 20 |
| AS | Automation systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 3 d. | 20 |
| DŠS | Smoke extraction systems and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1 d. | 30 |
| PGGS | Fire safety, fire detection and fire extinguishing systems and installations | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1 d. | 30 |
| DS | Gas pipeline system and equipment | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 1 d. | 30 |
| KL | Passenger elevators | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 3 d. | 20 |
| TKL | Technical elevators, hoists and conveyor installations | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 2 d. | 20 |
| SNS | Equipment for specific use | Maintenance, repair or replacement of other furniture, equipment for specific use carried out in accordance with the Service Delivery Plan. | 1 d. | 10 |
| STP | Maintenance of buildings (including roads) and their structures, finishes and other elements | Proper and timely maintenance, inspections and other work on the system and equipment (including its components) as specified in the Service Plan. | 3 d. | 20 |
| TIP | Infrastructure elements, systems and equipment for the site | Proper and timely maintenance, inspections and other works on the site infrastructure (including its components) as set out in the Service Delivery Plan. | 3 d. | 20 |
| VAT | Emergency services for all systems | 24-hour emergency services are available (either through appropriate contracts with emergency services or through own resources). | 1 d. | 20 |
| VV | Cleaning indoor areas | Cleaning of the premises and their elements is carried out in accordance with the Service Delivery Plan. | 1.d. | 10 |
| VD | Disinfection | The premises shall be disinfected, disinsected and deratomised in accordance with the Service Delivery Plan. | 1 d. | 20 |
| TPR | Cleaning and maintenance of facades, site infrastructure and green areas | Cleaning and maintenance of facades and functional elements of the site is carried out in accordance with the Service Delivery Plan | 1 d. | 10 |
| LVV | Cleaning of building windows and shopfronts externally and internally | Cleaning services for building windows and shopfronts are carried out in accordance with the Service Delivery Plan | 1 d. | 10 |
| BA | Furniture (Furniture installed by a private partner) | Proper and timely maintenance, inspections and other work on furniture (furniture installed by the Private Partner) as per the Service Delivery Plan. | 1 d. | 10 |

**3. FUNCTIONAL BREACHES**

* 1. A Functional Breach is a breach that affects (or may affect) one or more of the functional sectors of the Facility, or an element of the Facility and:
     1. which prevents persons authorised to enter, occupy, use or leave a Functional Sector from doing so in a safe and normal manner;
     2. which affects, restricts or materially affects the proper and beneficial use of the Functional Sector;
     3. which does not meet the minimum requirements for the Facility, or element of the Facility as indicated in the Specifications (condition of the building structures; condition of the premises subject to the special requirements; condition of the technical and engineering protection equipment, the condition of the building’s technical installations; condition of the external installations and elements; condition of other elements).
  2. Each functioning fault shall be classified in one of the following levels, taking into account the criteria for determining the levels of functioning faults set out in Clauses 3.6 and 3.7 of this Appendix:
     1. Level A functional breach;
     2. Level B functional breach;
     3. Level C functional breach;
     4. Level D functional breach
  3. Determination of the levels of functional violations (A, B, C or D). The damage caused by the disruption of Services is measured differently depending on the Facility, or part of the element space where the Services have been disrupted, the type of failure and the magnitude of the failure. This determines the response to remedy the disruption and the size of the FPI. The assignment of a Functional Breach to a specific level determines the Remediation Period and the FPT for that breach.
  4. The level of the Functional Breach (A, B, C or D) shall be determined by the level of significance of the Functional Sectors as specified in Work Section 2 *Territory* and Work Section 3 *Building Creation* of Appendix 2 *Specifications of Buildings, Structures, and Territory* of the Specifications. *Need* in the column *Level of Significance of the Room/Space/Functional unit*.
  5. The following 4 levels of significance for functional sectors are distinguished:
     1. Level A: very high;
     2. Level B: high;
     3. Level C: medium;
     4. Level D: low.
  6. Level A of Functional Breach shall include damage and failures corresponding to a failure to provide the Service to the Facility or an element of the critical infrastructure of the Facility:
     1. power supply to the Facility, Structures and/or Site;
     2. back-up power supply (emergency power generators, energy converters);
     3. flooding of one or more rooms and/or area of one or more elements of the Facility with water or other liquids;
     4. water leaking through roofs or facades;
     5. failure of fire safety and alarm systems;
     6. failure of digital data transmission for which the Private Partner is responsible (internet, telephone, access control, information system, CCTV surveillance and recording, sound systems);
     7. inaccessibility of the Site Element and/or its individual premises (premises which directly affect the activities currently taking place, which are used by the employees of the Site Element or the users of the Site Element, except for the persons related to the Private Partner, and/or the Subcontractors);
     8. damage to one or more parts of the Facility Element and/or failure of engineering systems which directly affects the activities taking place at the time and which adversely affects the Facility or the Facility Element, or its individual areas and premises used by employees, visitors, or users of the Public Partner other than persons related to the Private Partner, and/or the Subcontractors.
  7. Levels B, C and D are assigned to the functional sector in which the level of hygiene, safety and security at the time of the breach is lower than the acceptable, set out in the Specifications or in the legislation.
  8. The level of a Functional Breach shall be assigned by the Private Partner using the Recording Tool immediately after such a breach is recorded in the Recording Tool or, if the level can be determined immediately, at the time the Functional Breach is recorded in the Recording Tool. Where two or more levels of Functioning Breach may be assigned to a particular Functioning Breach, the higher level of Functioning Breach shall be assigned.
  9. The Public Partner may, within 1 (one) Business Day, change the level of a Functioning Violation in the Registration Tool assigned by the Private Partner if it considers that it is incorrectly assigned. If the Private Partner disagrees with the levels changed by the Public Partner, this disagreement should be resolved in accordance with the procedure set out in Clause 52 of the Agreement. Pending resolution of the dispute, the parties shall be guided by the level of breach determined by the Government Partner. The FPI shall be calculated and applied only after the dispute between the Parties has been resolved and the malfunction has been fully remedied.
  10. For each Functional Breach not remedied within the Remediation Time set out in Table 2 of this Annex or within the period of Temporary Remediation, if applicable, the FPTs set out in Table 2 of this Annex shall be calculated for that particular Functional Breach.
  11. FPI means the calculated specific amount by which the Facility Share PPP Fee is reduced (for the month in which the Functional Breach was committed and not remedied).
  12. FPI is calculated according to the formula:

**FPI = MA x FPT x 0.0004% [[2]](#footnote-2), x LV**

where:

FPI is the functional breach deduction;

MA - the Fee payable to the Private Partner under the Agreement for the relevant month;

FPT - the sum of the Functioning Breach Points per 1 Breach Time Unit;

LV - Time Units of the duration of the Breach.

* 1. FPTs shall be calculated in the following order:
     1. firstly, the number of FPTs for a given functional breach is counted in the relevant month. The FPTs shall be recorded in the monthly report available via the Recording Tool;
     2. the FPTs shall be counted if the Functional Breach is not corrected within the Remediation Period set out in Table 2 of this Appendix, or within the Final Remediation Period, if applicable;
     3. if more than one Functioning Breach has been identified, recorded and not corrected within the Remediation Time or the Final Remediation Time, as applicable, the FPTs for all Functional Breaches shall be aggregated and the FPI shall be calculated as specified in Clause 3.12 of this Appendix.
     4. Where a Recurring Functional Breach has been identified, the FPT points shown in Table 2 for that breach shall be multiplied by 2 (two).
  2. The number of hours (or fraction thereof) of the duration of the functional impairment for the purposes of calculating the Functional Impairment shall be equal to the number of hours (or fraction thereof) elapsed since the end of the Remediation Time or the Final Remediation Time, if applicable. The term "Duration of Breach" for the purposes of this Chapter means the time period during which a Functional Breach must be corrected in accordance with the level of Functional Breach (A, B, C or D).
  3. If the level of a Functional Impairment is changed prior to the time of its Remediation (i.e., a redetermination of the level of the Functional Impairment is required) in accordance with the Specifications and this Appendix, then the Units of Duration of the Functional breach shall be calculated by applying the time for the Remediation of the level of the Functional breach to the newly assigned level of the Functional Impairment from the time that the level of the Functional Impairment was, or was due to have been changed.

**Table 2.** Functional breaches

|  |  |  |  |  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- | --- | --- | --- | --- |
| **Code** | **System / Scope** | **Remediation time** | | | | **FPT within LV** | | | |
| **A** | **B** | **C** | **D** | **A** | **B** | **C** | **D** |
| RĮ | The system of the Recording Tool is working properly.\*\* (only from the Private Partner side) | 4 hrs | | | | 20 | | | |
| ŠVS | Heating systems and equipment working properly | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| ŠP | The systems and equipment of the heating point are working properly | 3 hrs. | 6 hrs. | 16 hrs. | 32 hrs. | 40 | 30 | 20 | 10 |
| VKS | Ventilation and air-conditioning systems and equipment are working properly | 2 hrs. | 6 hrs. | 16 hrs. | 32 hrs. | 40 | 30 | 20 | 10 |
| KVS | Hot water systems and equipment are working properly | 3 hrs. | 6 hrs. | 16 hrs. | 32 hrs. | 40 | 30 | 20 | 10 |
| VS | Water supply systems and equipment are working properly | 2 val. | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| NS | Domestic sewage systems and facilities are functioning properly | 2 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| SAN | Sanitary appliances work properly | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| LS | Storm-water systems and equipment are functioning properly | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| ES | Electrical systems and equipment working properly | 2 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| ASS | Security alarm systems and equipment are working properly | 2 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| JKS | Movement control systems and equipment are working properly | 2 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| VSS | Video surveillance systems and equipment are working properly | 2 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| TRS | Telecommunications and communications information transmission systems and equipment are functioning properly | 2 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| AS | Automation systems and equipment are working properly | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| DŠS | Smoke extraction systems and equipment are functioning properly | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| PGGS | Fire safety, fire detection and fire extinguishing systems and equipment working properly | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| DS | The gas system and installations are working properly | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| KL | Passenger lifts working properly | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| TKL | Technical lifts, hoists and conveyor installations are working properly | 3hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| SNS | Specific-use devices work properly | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| STP | Buildings (including roads) and their structures, facades and other elements are properly maintained | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| TIP | The site’s infrastructure and elements, systems and facilities are functioning properly | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| VAT | Emergency services for all systems | 2 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| VV | Internal cleaning services adequate Internal rooms/equipment etc. clean, in order (????) | 2 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| VD | Disinfection, disinsectisation and deratisation services are appropriate | 2 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| TR | Cleaning of façades, grounds and green areas, cleaning services for its elements are appropriate | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| LV | External and internal cleaning services for windows and shop windows of buildings are appropriate | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| BA | Furniture (Furniture installed by a private partner) is fit for use | 3 hrs | 6 hrs | 16 hrs | 32 hrs | 40 | 30 | 20 | 10 |
| ŽK | the Facility or its element, and/or the Services, and/or the Renewal and Repair Works comply with the requirements of the Environmental Criteria Description set out in the Specifications, or documentation is provided to the Public Partner confirming compliance with the requirements | 20 d. | | | 10 | | | | |

\*\*In the event of a malfunction of the Recording Tool, the Private Partner shall, prior to remediation, notify the Public Partner’s Responsible Person of the malfunction by other means, such as by telephone, and shall take all measures to remedy the malfunction within the remediation timeframe set out in this Appendix and to avoid or prevent the occurrence of damage or greater damage.

**4. EXEMPTIONS FROM THE DEDUCTION MECHANISM IN THE EVENT OF PERIODICITY AND FUNCTIONAL BREACHES**

* 1. This Appendix shall not apply to periodicity and functional breaches where the Facility or its element or an individual room/space thereof is not available for the exercise of the functions of the Public Partner as provided by law and/or is not available for use and/or the provision of Services for more than 24 (twenty-four) hours in the Functional Sectors A and B levels of severity, or for more than 48 (forty-eight) hours in Functional Sectors C and D levels of severity. In such case, the provisions of Clause 23.9 of the Agreement and Clause 53 of the Settlement and Payment Arrangements in Annex 3 to the Agreement shall apply.

**5. OTHER BREACHES**

* 1. Other breaches shall be established in cases where the Private Partner fails to comply with the requirements set out in the Agreement regarding the notification of the Public Partner and other obligations set out in the Agreement. The list of other breaches and the penalties and deductions applicable to them are set out in Table 3 of this Appendix entitled "Other Breaches".
  2. The penalties set out in Table 3 "Other Breaches" of this Appendix shall apply if the Other Breach occurs prior to the commencement of the Operation of the Facility. Deductions shall apply if the other Breach occurs after the Commencement.

Table 3. Other breaches.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| # | Other breach | Remediation period | Amount of penalty | Deduction amount |
| 1. | Failure to comply with the requirements set out in clause 7.1.3 of the Agreement and/or failure to provide documentation of compliance at the request of the Public Partner. | Within 20 days of a request from the Public Partner to correct non-compliance or to provide documentation (in the case of failure to provide required documentation), | EUR 10 000 (ten thousand) | EUR 10 000 (ten thousand) |
| 2. | Failure to submit to the Public Partner, in time, the annual reports on the execution of the Works provided for in Clause 26 of the Agreement, or failure by the Private Partner to correct errors or inaccuracies in the reports at the request of the Public Partner, | Within 20 days of the expiry of the reporting deadlines provided for in the Agreement (in the case of errors, inaccuracies, within 10 days of the submission of the comments of the Public Partner) | EUR 7 000 (seven thousand) | Not applicable[[3]](#footnote-3) |
| 3. | If the Private Partner is delayed in obtaining a positive act of general design expertise for the Facility, taking into account the date of receipt of the general design expertise act specified in the Work Plan. | 60 days from the date of receipt of the general design examination report as specified in the execution plan for the Works | The private partner shall pay a penalty of EUR 10 000 (ten thousand) for each day of delay until the breach is rectified or the agreement terminated | Not applicable |
| 4. | Delay in the commencement of the Operation of the Facility as specified in the Agreement and the Tender, taking into account any extensions under the provisions of the Agreement. | Not applicable | The private partner shall pay a penalty of EUR 10 000 (ten thousand) for each day of delay until the breach is rectified or the agreement terminated | Not applicable |
| 5. | The solar power plant is not installed or a solar power plant with a lower capacity than specified in the Proposal submitted by the Investor is installed. |  | EUR 600,000 (six hundred thousand) |  |

* 1. Failure to remedy the breach within the time limit set out in Table 3 shall result in the Private Partner being subject to the fine or deduction specified. In the event of a repetition of the same breach, the time limit for rectification shall be restarted (except in the case of a breach provided for in Paragraph 5 of Table 3, for which a one-time fine is provided) and if the breach is not rectified within the time limit, the fine or deduction shall be applied again. There shall be no limit to the number of fines and deductions for the same repeated breach, unless the next breach results in termination of the Agreement, in which case the fine or deduction shall be calculated up to the date of termination.

**ANNEX 4. MATRIX OF RISK DISTRIBUTION BETWEEN THE PARTIES**

| **Ser. No.** | **Risk category** | **Risk description** | | **Distribution** | | | |
| --- | --- | --- | --- | --- | --- | --- | --- |
| **to the Public partner** | | **to the Private partner** | **General info** |
| **1.** | **Land plot suitability risk** | | | | | | |
| 1.1. | Land parcels are subject to restrictions on their rights in rem if such restrictions have not been disclosed to the Private Partner and are not publicly available. | | At the time of procurement, the Public Partner did not disclose any information known to it regarding restrictions on the property rights (possession, use and disposal) of the land plots required for the implementation of the Facility. The Tender was based only on the information disclosed by the Public partner during the Procurement, and as a result of the commencement of implementation of the Agreement and the disclosure of the restrictions on the Land, it is possible that the Private partner may not be in a position to implement the Agreement in accordance with the Tender and the Agreement implementation plan presented and agreed by the Public partner. In such a case, the Private Partner shall be obliged to reorganise its activities in accordance with the changed circumstances for the Agreement implementation, i.e. to incur unplanned management costs or to delay the execution of the Works. | X |  | |  |
| 1.2. | Land parcels are subject to restrictions if such restrictions have been disclosed to the Private Partner or are publicly available. | | The land needed to implement the Agreement is subject to restrictions on the rights in rem (possession, use and disposal). Although during the submission of the Tender, the assessment of the information disclosed by the Public Partner during the Procurement was carried out, it is possible that the Private partner has drawn up the Agreement Implementation Plan without taking into account the restrictions on the rights in rem imposed on the Land and has negotiated the Agreement Implementation Plan with the Public Partner. In such a case, the Private Partner shall be obliged to reorganize its activities in accordance with the changed circumstances of the project implementation, i.e. incur unplanned management costs or delay in the execution of the Works. |  | X | |  |
| 1.3 | The condition of the Land is unsuitable (for example, due to soil contamination) where the information provided by the Public Partner about the condition of the Land was incorrect, except where the unsuitability of the Land (for example, due to contamination) was caused by the actions of the Private Partner (or any of its Subcontractors or other operators it has engaged). Incompleteness of the information provided shall not be deemed to be incorrect information. | | If the unsuitability of the Land results in changes to the cost of the Works, for example, contamination of the Land may result in environmental damage, such as the release of polluting substances into the environment etc. The occurrence of a risk factor implies a change in the cost of the Works, since in the event of environmental damage, the first step would be to remedy the environmental damage and only then to carry out the planned Contract Works. The risk is attributable to the Public Partner only if the information provided by the Public Partner regarding the condition of the Land was incorrect and the unsuitability of the Land was not caused by the actions of the Private Partner (its Subcontractors or other operators it has engaged). | X |  | |  |
| 1.4 | The condition of the land is unsuitable (e.g. due to contamination), except as provided for in Clause 1.3 of the Annex to this Agreement. | | If the Land becomes unsuitable as a result of the actions of the Private Partner (its Subcontractors or other operators it has engaged) which change the cost of the Works, for example, contamination of the Land may cause environmental damage, such as the release of polluting substances into the environment etc. The occurrence of a risk factor implies a change in the cost of the Works, since in the event of environmental damage, the first step would be to remedy the environmental damage and only then to carry out the planned Works. |  | X | |  |
| 1.5 | Imposing or amending the Special Conditions for the use of the Land, if the Public Partner has not disclosed all the conditions for the use of the Land that are known to it, or has not taken into account the proposals for the conditions for the use of the Land submitted by the [select: Investor or Private partner] during the Procurement process, where the decision on the use of the Land is within the competence of the Public Partner. | | The Public Partner has not disclosed all the conditions of use of the Land plots known to it or has not taken into account the proposals submitted during the Procurement regarding the conditions of use of the Land plots, where the decision on such conditions is within the competence of the Public Partner, and the Project has made it necessary to change, establish special conditions of use of the Land plots, and therefore it may become necessary to change the planned design solutions, which may result in the Private Partner incurring unforeseen costs of design services. | X |  | |  |
| 1.6 | Establishment or modification of Special Conditions for the use of the Land, except as provided in Clause 1.5 of the Annex to this Agreement; | | The specific agreement on the Special Land Use Conditions was reached by the Parties during the Procurement, however, the Private Partner, in the implementation of the agreements, may deviate from the planned schedule and budget for the implementation of the activities, or the [select: Investor or Private partner] did not propose to impose, amend or modify the Special Land Use Conditions at the time of the Procurement, and during the implementation of the Agreement it has become aware of circumstances which have made it necessary to amend the Special Land Use Conditions. The establishment or modification of the Special Land Use Conditions may necessitate changes to the planned design solutions, which will result in unforeseen costs for the Private Partner for Design Services. |  | X | |  |
| 1.7 | Relocation, siting and connection of utilities on (and off) the Land in such a way that the requirements set out in the Specifications and the Tender are not met. | | The occurrence of a risk factor means increased costs for the Works, delays in the Works related to the connection and relocation of utilities so that the utilities and their location are in accordance with the Design Documentation. |  | X | |  |
| 1.8 | Failure to conclude the necessary contracts with the Utilities. | | The occurrence of a risk factor means increased costs for the Contract Works and/or the provision of the Services and possible delays in the start of the operation of the Facility. |  | X | |  |
| 1.9 | The land (building site) is not accessible. | | If the Public Partner or other competent authority does not have the right to transfer to the Private Partner the Land necessary for the execution of the Works, or if there are legal restrictions on the transfer of the Land, or if third parties are operating on the Land and there are structures belonging to third parties on the Land that would interfere with the performance of the Agreement obligations. The occurrence of a Risk Factor means that the Investments may increase, the execution of the Works and the commencement of the operation of the Facility may be delayed. | X |  | |  |
| **2.** | **Design (planning) quality risk** | | | | | | |
| 2.1 | The design proposal, technical working draft for the Facility prepared by the private partner under the Agreement, including the Specifications, is inaccurate or does not comply with the Agreement and/or legislation. | The manifestation of the risk factor means the additional design costs that the Private partner must reimburse in this case. It is estimated that the manifestation of the risk factor determines the financial flow of the investment costs - the cost of design services that may be incurred both during the Works and during the Repair works period. | |  | | X |  |
| 2.2 | Project objectives and planned results can not be reach due to the project documentation prepared by the Private partner | The occurrence of a risk factor means that after the Private Partner has prepared the Design Documentation and/or developed the Facility in accordance with the Design Documentation, the Facility will not be usable for its intended purpose, or will be used, but to an extent different from that planned. The occurrence of a risk factor is considered to lead to an increase in operating costs. | |  | | X |  |
| 2.3. | Project activities are delayed due to the duration of designing service procurement procedures | The factor occurs during the period of execution of the Works and determines the cost of the Works. The manifestation of the Risk Factor leads to a change in the Investment: suspension of the Works due to design inaccuracies or the need for redesign leads to downtime on site. It may also lead to delays in the start of operation of the Facility. | |  | | X |  |
| 2.4 | 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. This risk does not apply to the circumstances referred to in point 2.12 of this Annex. | |  | | X |  |
| 2.5 | The duration of the designing services deviates from the planned | The identified duration of the design services may deviate from the planned one due to various reasons. The manifestation of the risk factor determines the investment costs for the contract work: delay in the provision of the design services prevent contract works from starting, the seasonal impact of the contract works may occur, it can cause the downtime and payment of late interest. The manifestation of the risk factor implies additional costs for designing services. It may also delay the start of the Operation of the Facility. This risk does not apply to the circumstances set out in Clause 2.12 of this Annex. | |  | | X |  |
| 2.6 | At the time of the Procurement, the [select: Investor or Private partner] did not propose to specify the inaccurate requirements set for the Facility or its part by the Public partner | When the designing activity starts, it becomes clear that the requirements set by the Public partner for the Facility or its part cannot be realized in practice as they are not compatible with the requirements established in the legislation (e.g. technical regulations for construction, hygiene norms, etc.), or there is no possibility to implement all the requirements set by the Public partner due to their mutual incompatibility. In the event when the requirements set by the Public partner become known to the [select: Investor or Private partner] at the time of the Procurement, but 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. It may also lead to delays in the start of operation of the Facility. | |  | | X |  |
| 2.7 | At the time of the Procurement, the [select: Investor or Private partner] proposed to specify the inaccurate requirements set for the Facility or its part by the Public partner | At the time of the Procurement, the [select: Investor or Private partner] proposes to clarify the requirements set for the Object by the Public partner, which are deemed as inaccurate or potentially unfulfillable during the actual implementation of the project. If the risk factor manifests the designing scope changes, therefore, the cost of designing services increases, and a need to extend the duration of the designing services occurs. It may also lead to delays in the start of Commissioning. | |  | |  | X  Risk attributable to the Private Partner if the [select: Investor or Private partner] has proposed during the Procurement to revise the requirements set by the Public Partner and the Public Partner has made the relevant changes.  A risk is attributed to a Public Partner if the [select: Investor or Private partner] has proposed during the Purchase to revise the requirements set by the Public Partner, but the Public Partner has not revised the relevant requirements. |
| 2.8 | Unknown restrictions on cultural heritage protection requirements come to light | In the course of issuing a planning permission and/or a building permit, it becomes apparent that it is necessary to carry out unplanned archaeological investigations, to protect archaeological finds and/or to substantially modify the design solutions to ensure that the element of the Site complies with the constraints applicable to the protection of cultural heritage. The design costs may increase due to the occurrence of this risk factor, as: 1) the planned duration of the Design Services may change due to the archaeological investigations and/or the protection of the archaeological finds; 2) substantial changes may be required to the design solutions proposed at the time of the Procurement; 3) the scope of the Design Services may change; 4) the need for additional specialists (e.g. archaeologists, historians, etc.) may be required to be part of the Design Team. It may also delay the commencement of the Operation of the Facility. | | X | |  |  |
| 2.9 | Requirements of the Cultural heritage protection known in advance are not evaluated | At the time of the Procurement, the Public partner presented to the known restrictions of the cultural heritage, which had to be observed by the Private partner when designing the Facility or its part. Regardless of the reasons, a Private partner may assess the requirements of the cultural heritage protection inadequately. | |  | | X |  |
| 2.10 | During the provision of design services, the inaccuracies / deficiencies of [*if applicable* the environmental impact assessment] prepared by the Public partner or the Procurement documents become apparent | It becomes apparent during the designing that the prepared environmental impact assessment documents contain inaccuracies or shortcomings. The manifestation of the risk factor determines the financial flow of the investment costs - the cost of designing services, and therefore the manifestation of the risk to the financial flows is to be estimated throughout the works period. | | X | |  |  |
| 2.11 | During the provision of design services, the inaccuracies / deficiencies of the environmental impact assessment prepared by the Private partner or the Procurement documents become apparent | It becomes apparent during the designing that the prepared environmental impact assessment documents contain inaccuracies or shortcomings. The manifestation of the risk factor determines the financial flow of the investment costs - the cost of designing services, and therefore the manifestation of the risk to the financial flows is to be estimated throughout the works period. | |  | | X |  |
| 2.12 | The public partner modifies the specified requirements for the Facility, or its element | A situation may arise where the Public Partner specifies to the Private Partner at the Design Stage different requirements for the Facility, or its element, than those on the basis of which the [select: Investor or Private partner] has prepared and submitted the Tender, including the Financial Operating Model, and on the basis of which the Agreement is concluded. The occurrence of a Risk Factor shall result in additional costs for Design Services. | | X | |  |  |
| 2.13 | Documents required for the designing, the access to which is the obligation of the Public partner, do not become accessible within the specified period | The Private partner determines the duration and plan of the design service provision on the assumption that the Public partner will provide all necessary data within the agreed time limit upon submission of a formal request in accordance with the provisions of the Agreement. Deviations are possible from the design plan, if the Public partner is late in submitting the necessary documents to the Private partner, this may affect the entire duration and quality of the Project implementation, and delay the commencement of the operation of the Facility. | | X | |  |  |
| 2.14 | There is a delay in issuing the documents necessary for designing, although all documents meeting the set requirements are provided (there is no dispute regarding the contents of the documents) | The Private partner submits a request for issuing of a set of design conditions and / or other necessary documents, submitted in accordance with the statutory requirements in order to commence the designing, but the Public partner fails to issue the requested documents according to the received request on time. The manifestation of the risk factor can determine the designing time and the costs planned for the designing. | | X | |  |  |
| **3.** | **Quality risk of the works** | | | | | | |
| 3.1 | During the performance of the contracting works or repair works by the Private partner or subcontractors engaged by it the environmental damage is caused | Environmental damage can be caused by the Private partner or subcontractors engaged by it when performing contracting or repair works: prohibited concentration of substances that would contaminate the environment may be released, prohibited environmentally hazardous substances may be used, etc. The manifestation of the risk factor means a change in the cost of the contracting or repair works, since should the environmental damage would be caused, the estimate of contract work growth would increase by the cost of the environmental damage elimination works. | |  | | X |  |
| 3.2 | The quality of the contracting works is not ensured due to adverse weather conditions | Due to unfavourable weather conditions (except for force majeure), performance of the contracting works cannot be carried out according to the plan, it may be necessary to use additional tools to perform contracting works. The manifestation of the risk factor implies a change in the costs of the contracting works, because due to the weather conditions the contracting works can take longer than planned, also the should the need for additional contracting works occur it may lead to the unplanned increase in the contracting works estimate. It may also lead to delays in the start of operation of the Facility. | |  | | X |  |
| 3.3 | Quality of works or renovation and repair works is not ensured due to the organisation of technological processes | The situation is possible where the quality of the works or renovation and repair works does not meet the required one, when the requirements of the technological processes are not observed. The manifestation of the risk factor means additional costs for contracting works, deviations from the contracting work schedule. | |  | | X |  |
| 3.4 | The quality of the Works or the Renovation and Repair Works is not assured due to a change in statutory quality requirements, other than a change in Material Legislation, during the performance of the Works or the Renovation and Repair Works | New or amended legislation (other than Material Changes to legislation) is adopted during the course of the Works or the Renewal and Repair Works by the Private Partner which specifies requirements for the quality of the Works or the Renewal and Repair Works, provided that such legislation is applicable to the Works and/or the Renewal and Repair Works | |  | | **X** |  |
| 3.5 | Cost of works deviates from plan | The identified cost of the Works may deviate from the planned price for various reasons. The occurrence of a risk factor implies additional costs for the Works. This risk shall not apply in the circumstances set out in Clauses 2.12 and 3.9 of this Annex. | |  | | X |  |
| 3.6 | The quality of the works or the quality of the renovation and repair works is not ensured due to human resources | The quality of the works, renovation and repair works is not ensured due to human factors: inadequate staff qualifications, competences, insufficient numbers, inadequate workload, and breaches of work discipline. It is also possible that the quality of the Works, Renewals and Repairs may not be ensured due to human resources, strike, lobbying by public initiative groups or any other suspension of the Works initiated on other grounds, which cannot be considered as an external force majeure event. In addition to these factors, it is possible that intentional or unintentional acts (theft, fraud, hooliganism, negligence, etc.) committed by third parties, employees, may have a significant impact on the quality of the Works, the Renewal and the Repair Works. | |  | | X |  |
| 3.7 | Damage to adjacent land or property on adjacent land or sites caused by the works or by the renovation and repair works | During the Works, Renovations and Repairs, the activities of machinery, people and/or subcontractors working on the site cause damage to property on adjacent plots of land, irrespective of the type of property (immovable and movable property). The occurrence of a risk factor implies a change in the Cost of the Works, Renovation and Repairs, as the Cost of the Works, Renovation and Repairs would increase by the cost of repairing the damage to the property in the event of damage to adjacent areas. | |  | | X |  |
| 3.8 | Previously unknown restrictions of contracting works regarding the requirements of archaeological and cultural heritage protection are become apparent | During the issuance of construction permits, it becomes apparent that it is necessary to carry out unplanned archaeological investigations, to protect archaeological finds, and/or to organise the process of works in a substantially different way in order to ensure the requirements for the protection of the cultural heritage. The cost of the Works may increase due to the occurrence of this risk factor, as: 1) the planned duration of the Works may change due to the archaeological investigations and/or activities for the protection of archaeological sites or other restrictions on the protection of cultural heritage; 2) substantial changes may be required to the technological solution of the Works proposed during the procurement; 3) the scope of the Works may change; 4) the Private Partner’s team may need to be supplemented with additional specialists (e.g. archaeologists, historian); 5) for other related reasons. | | **X** | |  |  |
| 3.9 | The Public partner changes the requirements for the quality of the contracting works and Facility, part of Facility, its element during the contracting works execution phase (including insignificant changes) | After the designing phase, the Public partner specifies to the Private partner, other requirements for contracting works and the Facility, part of Facility, its element, than the ones according to which [select: the Investor or Private partner] 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 and delay in the commencement of operation of the Facility. | | X | |  |  |
| 3.10 | The requirements for the quality of the contracting works are changed at the initiative and / or demand of the Private partner | A situation may arise when the Private partner initiates a change of the requirements for the quality of the contracting works after the designing phase. For example, a Private partner may propose to set a higher energy efficiency class for the Facility, part of Facility, it’s element 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. It may also delay the start of the Operation of the Facility. | |  | | X |  |
| 3.11 | The quality of the contracting works is not guaranteed due to the suitability and sufficiency of the technological resources | A situation when the quality of the contracting works is not ensured due to the suitability, sufficiency, and other related factors of the technological resources, is possible. | |  | | X |  |
| 3.12 | The quality of the works or renovation and repair works is not guaranteed due to the price and quality of utilities. | The quality of the works or renovation and repair works is not guaranteed due to the price, quality and availability of utilities. | |  | | X |  |
| 3.13 | The quality of the works or renovation and repair works is not ensured due to the availability and quality of raw materials, materials and mechanisms | The quality of the works or renovation and repair works is not ensured due to the timely unavailability and quality of the raw materials, materials, and machinery required for the performance of works. | |  | | X |  |
| 3.14 | The quality of the works or renovation and repair works is not guaranteed due to the actions or omissions of the Sub-suppliers | Sub-suppliers are employed to perform the contracting works, but they do not observe the obligations, do not ensure the required quality of works or renovation and repair works , etc. | |  | | X |  |
| **4.** | **Quality risk on equipment, installations and other assets (excluding New Assets)** | | | | | | |
| 4.1 | The equipment or installations to be purchased does not comply with the requirements of the Agreement, the Tender or the legislation | A situation may arise where the equipment or installations developed or acquired do not comply with the requirements of the Agreement, the Tender or the legislation, or where they are assembled or installed in the Facility, or its element, without complying with the requirements of the technological processes. The occurrence of a risk factor shall result in additional Costs. | |  | | X |  |
| 4.2 | Damage to the environment caused by the installation of equipment or installations at the Facility, or its element | Environmental damage may be caused by the installation or assembly of equipment or installations at the Facility or its element: unauthorised concentrations of polluting substances may be released into the environment during the manufacturing/installation process, unauthorised environmentally hazardous materials may be used, etc. The occurrence of a risk factor may result in an increase in the quality and scope of the Services provided and an increase in Costs. | |  | | X |  |
| 4.3 | The public partner changes the requirements for the equipment, installations to be installed during the provision of the Services | The Public Partner specifies to the Private Partner at the stage of the provision of the Services different requirements for the equipment to be installed, than those under which the [select: Investor or Private partner] prepared and submitted the Tender, including the Financial Operating Model, or under which the Private Partner developed or acquired and installed the equipment, installations at the Facility, , or its element. The occurrence of a Risk Factor may result in an increase in the quality and scope of the Services provided and an increase in Costs. | | X | |  |  |
| 4.4 | Requirements for equipment, installations to be installed are changed at the initiative and/or request of the Private Partner | Upon commencement of the Agreement, the Private Partner initiates a change in the quality requirements for the equipment to be installed and the installations to be made. The occurrence of a risk factor may lead to an increase in the quality and scope of the Services provided and an increase in the Costs. | |  | | X |  |
| **5.** | **Risk of availability of financing** | | | | | | |
| 5.1 | Losses due to different currencies of financing costs and operating income | Project financing is secured through a loan agreement or agreements in one currency, with the underlying revenue streams projected in another currency. The relationship between these currencies is assessed at the time of the FAM, but the long duration of the Agreement may change this relationship. | |  | | X |  |
| 5.2 | The need for financing changes as a result of an increase in the Investments, if the increase in the Investments is due to circumstances for which the Private Partner is responsible under the Agreement | The increase in the Investment will necessitate the need to secure the additional financing required to ensure the financial viability of the Project. | |  | | X |  |
| 5.3 | The change in the Financing Requirement is due to an increase in the Investments, if the increase in the Investments is due to circumstances for which the Public Partner is responsible under the Agreement | The increase in the Investment will necessitate the need to secure the additional financing required to ensure the financial viability of the Project. | | X | |  |  |
| 5.4 | Fulfilment of loan conditions | The Private Partner, being responsible for the financing of the Agreement, assumes the risk of fulfilling all the terms and conditions of the Funder or the Other Loan Provider. | |  | | X |  |
| 5.5 | The interest rate on the Interbank Loan changes prior to the entry into force of the Agreement in full | A specific risk factor that is likely to manifest itself over a period of less than one year (the exact length of the period depends on how much time it will take to the Agreement enter into full force). A situation may arise where there is a change in the interest rate on interbank loans between the conclusion of the Agreement and its entry into full force. | | X | |  |  |
| 5.6 | The interest rate on the Interbank Loan changes after the entry into force of the Agreement in full | It is possible that during the term of the Agreement the interest rate on interbank loans may change as a result of changes in macroeconomic conditions. | |  | | X |  |
| 5.7 | Changes in financing needs due to changes in the VAT rate | It is possible that a change in the VAT rate could lead to the need to provide additional funding beyond that estimated in the Financial Operating Model. A change in the VAT rate does not change the level of operating costs and revenues, but has a significant impact on the financial viability of the Agreement. | | X | |  |  |
| 5.8 | A change in the need for funding resulting from a change in the rate of any tax, other than VAT, or charge, unless it is a Substantial Change in Legislation | Changes in the rate of any tax other than VAT, as well as changes in the rates of charges, will require additional funding beyond that estimated in the Financial Operating Model. The risk shall be attributed to the Private Partner unless such change is considered to be a Substantial Change in Legislation. | |  | | X |  |
| 5.9 | The need for funding changes as a result of acts or omissions of Subcontractors or other economic operators | Subcontractors or other economic operators are involved in securing funding, but default on their commitments, or take other unplanned actions that change the need for funding from other sources. | |  | | X |  |
| 5.10 | Funding needs change due to a substantial change in legislation | The risk arises from the adoption or amendment of legislation which is classified as Special or Discriminatory Legislation under the Agreement, or the amendment of other legislation which is classified as a Material Change in Legislation under the Agreement. | | X | |  |  |
| **6.** | **Quality risk of the services provided (stability)** | | | | | | |
| 6.1 | Damage is caused to the environment during the provision of the Services, when the provision of Services is the responsibility of the Private partner | During the provision of services, pollutants are released into the environment through the use of tools, equipment or human resources, and that causes the damage to the environment. | |  | | **X** |  |
| 6.2 | The quality of the service provision is not guaranteed due to the actions or omissions of the Subcontractors | Subcontractors are engaged to provide services, but they do not observe the obligations, do not ensure the required quality of services, etc. | |  | | **X** |  |
| 6.3 | The quality of the service provision is not ensured due to the organization of technological processes | The situation is possible where the quality of the Service provision does not meet the required one, when the requirements of the technological processes are not observed. The manifestation of a risk factor implies additional costs for the provision of the Services, and may also mean lower expenses for the Service provision than was planned, and the deviation from the Service provision plan. | |  | |  | X  The Public Partner shall be solely liable for the risks arising from the acts or omissions of the Public Partner, the employees , and visitors in the exercise of their statutory functions. |
| 6.4 | The Public partner changes the established requirements during the provision of the Services (including insignificant changes) | During the phase of the Service provision, the Public partner specifies to the Private partner, other Service quality requirements than the ones according to which the [select: Investor or Private partner] prepared and submitted the Tender, including the Financial Operating Model, and on the basis of which the Agreement was concluded. | | X | |  |  |
| 6.5 | The requirements for the quality of the Services are changed at the initiative and / or demand of the Private partner | A Private partner initiates a change in the Service quality requirements after the commencement of the Service provision phase due to the reasons other than material change in legislation. | |  | | X |  |
| 6.6 | The quality of the Service provision is not ensured due to the quality and availability of human resources | The quality of the services is not guaranteed due to human factors: inadequate staff qualifications, competencies, insufficient number, inadequate work load, or violations of work discipline. A situation when the quality of the Services is not ensured due to the suspension of the performance of Works due to human resources employed by the person, strike, lobbying activities of the public initiative groups or other grounds, which cannot be regarded as an external circumstance of the *force majeure*, 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. | |  | | X |  |
| 6.7 | Technology becomes obsolete and does not meet the of the Specification, the Tender and/or quality of the Services | The technology used in the Facility, or its element does not comply with the Specifications, the Tender and/or does not ensure the quality of the Services, or there is a risk that the quality of the Services and/or compliance with the Agreement (including its annexes) and the requirements of the Law (unless this is a Material Change in Law) will not be ensured. | |  | | **X** |  |
| **7** | **Suitability risk** | | | | | | |
| 7.1 | Delay in commencement of the Services is not due to the fault of the Public Partner or to circumstances beyond the control of the Public Partner as provided for in the Agreement | Delays in the progress of the Works on the Facility or in organisational preparations delay the start of the Services. The manifestation of the risk factor implies a change in net income, as the delay in the start of the Operation changes the possibilities to generate the planned income stream, as well as the deviation from the plan for operating expenses. | |  | | **X** |  |
| 7.2 | No permits (licences) have been obtained for the provision of the Services | Under the Agreement, the Private Partner shall be responsible for the provision of the Services and shall bear the risk of non-obtaining the necessary authorisations for the provision of the Services, except to the extent that it is due to the failure of the Public Partner to perform its obligations under the Agreement. The occurrence of a Risk Factor means that all or part of the Services cannot be provided. | |  | | X |  |
| 7.3 | The Public Partner is unable to use the Facility, or its element and/or to carry out their statutory functions | The inadequacy of the Facility, or element (part of an element) of the Facility prevents the Private Partner from providing the Services and the Public Partner, from using it and performing its statutory functions in accordance with Clause 23.9 of the Agreement. | |  | | **X** |  |
| 7.4 | The Services are not provided in whole or in part where such circumstances do not fall within the scope of an exemption case | The acts or omissions of the Private Partner or its Subcontractors or other entities may result in the failure to provide all or part of the Services at the Facility, or an element (part of an element) of the Facility. | |  | | X |  |
| **8.** | **Risk of demand** | | | | | | |
| 8.1 | There is a change in the number of employees, visitors or other persons served by the Public Partner | A change in demand is due to a change (increase or decrease) in the number of employees, visitors or other persons served by the Public Partner, which may affect the provision of the Services and/or increase the Investment or the Costs. | | X | |  |  |
| **9.** | **Insurance risk** | | | | | | |
| 9.1 | Concluding insurance contracts | The Private Partner (its Subcontractors or other entities engaged) fails to conclude or renew Insurance Contracts within the procedure and time limits set out in the Agreement, fails to comply with the terms and conditions of the Insurance Contracts. The occurrence of a risk factor may result in failure to ensure the fulfilment of the Private Partner’s obligations and to protect the interests of the Public Partner. Losses or damages that would have been payable by the Insurer shall be payable by the Private Partner. | |  | | X |  |
| 9.2 | Inability to conclude an Insurance contract | Insurance contracts may not be concluded due to a situation in the insurance market where it is not possible to conclude the relevant Insurance contract.The occurrence of a risk factor may mean that the Private Partner’s obligations will not be met and the interests of the Public Partner will not be protected, or may lead to the termination of the Agreement. | |  | |  | X |
| **10.** | **The risk of the residual value of the Property** | | | | | | |
| 10.1 | Deviation from the Facility, part of Facility or its element condition maintenance plan | The residual value of the Assets at the end of the Agreement is not in line with the planned value due to deviations from the pre-established maintenance plan during the reporting period. Such deviations may mean that the Assets have not been repaired as planned, preventive maintenance has not been carried out on time, etc. | |  | | X |  |
| 10.2 | Facility, part of Facility or its element condition maintenance costs are planned inaccurately | The residual value of the Facility, part of Facility or its element at the end of the period changes due to inaccurate calculations of the infrastructure condition maintenance costs, therefore the required Works were not carried out in full or not carried out at all, and the quality requirements were not observed. | |  | | X |  |
| 10.3 | Lack of information about the use of the Facility, part of Facility or its element during the reference period | A situation is possible that for the determination of the residual value of the Facility, part of Facility or its element 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. | |  | | X |  |
| 10.4 | New Assets do not correspond to the list of New Assets, except for New Assets that are fully physically worn out during the performance of the Agreement. | When the New Assets are transferred from the Private Partner to the Public Partner at the end of the Agreement, the New Assets may not correspond to the list of New Assets (in terms of quantity). | |  | | X |  |
| 10.5 | Restrictions on the ownership, use and disposal of New Assets due to the Private Partner’s transactions with third parties | During the term of the Agreement, the Private Partner performs transactions with third parties and, at the end of the Agreement, restrictions are set on the ownership, use and disposal of the Property. These restrictions may mean that not all of the New Assets will be transferred to the Public Partner at the end of the Agreement. | |  | | X |  |
| 10.6 | Restrictions on the ownership, use and disposal of New Assets due to the Public Partner’s transactions with third parties | During the reporting period, the Public Partner entered into transactions with third parties and imposed restrictions on the ownership, use and disposal of the Facility, or an element thereof. These restrictions may result in additional Investments or increases in Costs. | | X | |  |  |
| **11.** | **Risk of changes in legislation** | | | | | | |
| 11.1 | Material change in legislation | During the course of the Works and/or the provision of the Services, changes to or the adoption of new material legislation. The occurrence of a Risk Factor may result in an increase in the Private Partner’s Investments or Costs, other direct losses in connection with the provision of the Services, as set out in Annex 3 to the Agreement, the *Settlement and Payment Procedures*, or an increase in the time for the performance of the Works. | | X | |  |  |
| 11.2 | Change in general legislation | Changes to legislation that is not classified as Material Legislation occur during the course of the Works or the provision of the Services. The occurrence of a risk factor may result in an increase in the Private Partner’s Investments or Costs. | |  | | X |  |
| 11.3 | Changes in VAT | The VAT rate changes, increasing the Private Partner’s Costs. | | X | |  |  |
| **12.** | **Risk of termination of the Agreement** | | | | | | |
| 12.1 | Due to the fault of the Private Partner | A breach of the Agreement by the Private Partner shall be deemed to be a material breach of the Agreement as referred to in Clause 39 of the Agreement. | |  | | X |  |
| 12.2 | Due to the fault of the Public Partner | A breach of the Agreement by a public partner shall be considered a material breach of the Agreement as defined in Clause 40 of the Agreement. | | X | |  |  |
| 12.3 | Due to Force majeure circumstances | Due to Force majeure, as referred to in Clause 42.2 of the Agreement, which is beyond the control of either Party and which is specified in the Agreement, makes it impossible to continue the performance of the Agreement and the Agreement is terminated. | |  | |  | X |
| 12.4 | By agreement of the Parties (without fault of the Parties) | In the absence of fault by the Parties to the Agreement, the Parties agree to terminate the Agreement by mutual consent. | |  | |  | X |
| **13.** | **Dispute resolution risk** | | | | | | |
| 13.1 | Disputes arise between the Investor, the Private Partner, the Funder, the Other Loan Provider and/or the Subcontractor | Internal disputes arise between the Investor, the Private Partner, the Funder, the Other Loan Provider and/or the Subcontractor with respect to the performance of the Works or the provision of the Services, the financing, etc., which may result in a failure to ensure the timely and/or quality performance of the Works or the provision of the Services. | |  | | X |  |
| 13.2 | Disputes over the quality and content of design documents | The subject-matter of the dispute is the content and quality of the documents required for the design (e.g. the design specification; the building survey documents; the technical design of the building; the connection conditions; the special architectural requirements; the special requirements for the management and protection of the protected area; the special requirements for the protection of heritage; the construction products to be handed over by the builder/developer to the contractor; etc.). The occurrence of a risk factor may determine the duration of the design and the costs planned for the design. | |  | | X |  |
| 13.3 | Disputes arise between the Public Partner and the Investor, the Private Partner, which the Parties are unable to resolve in accordance with the procedures set out in the Agreement | Disputes arise between the Parties to the Agreement regarding the implementation of the Agreement and are not resolved in accordance with the procedures set out in the Agreement, which may delay the commencement of operation of the Facility or may not ensure the timely and quality provision of the Services. | |  | |  | X  Risk is attributed to the Party against whom the competent authority has finally settled the dispute |
| **14.** | **Political risks** | | | | | | |
| 14.1 | Seimas of the Republic of Lithuania, the Government or other central governmental authorities, or the Public Partner makes decisions that materially change the ability of the Public Partner to perform its obligations under the Agreement | The risk includes a situation in which the Seimas of the Republic of Lithuania, the Government of the Republic of Lithuania, other central authorities, or a Public Partner would take a political decision to discontinue or substantially reduce the financing of the Facility (e.g., as a result of a change in priorities after an election). Risks also include highly unlikely political decisions that could make the Facility redundant. This risk is more likely to occur at the Service Delivery stage, a longer period after Project approval, and in the event of a change in the political composition of government. | | X | |  |  |
| 14.2 | The Seimas of the Republic of Lithuania, the Government of the Republic of Lithuania adopt decisions that adversely affect the implementation of the Agreement during the performance of the Works and/or the provision of the Renovation and Repair Services. | The risk includes a situation where a decision makes unavailable the technological resources, materials, equipment, parts, necessary for the execution of the Works and/or for the provision of the Renovation and Repair Services, as planned in the technical work design, and where this results in an increase in the Investments and/or Costs, and where there is no alternative (e.g. another part suitable for the system) that would not result in a higher Investments and/or Costs. This risk does not include legislation passed by the Parliament, the Government, the risk of which is assigned to the Private Partner in this Agreement (e.g. general and tax legislation other than the VAT Law). | | X | |  |  |
| **15.** | **Risk of force majeure** | | | | | | |
| 15.1 | Force Majeure occurs in the performance of the Works or Services | The occurrence of Force Majeure may lead to suspension, interruption, increase in the Investment or Costs or other direct losses in the performance of the Works or the provision of the Services, as well as to the termination of the Agreement. | |  | |  | X  The Private Partner and the Public Partner share equally the consequences of this risk. In cases where the consequences of Force Majeure are required or permitted to be insured in accordance with the procedures set out in the Agreement, the Private Partner shall bear the entire risk. |
| **16.** | **Risk of vandalism** | | | | | | |
| 16.1 | The Facility, or an element (part of an element) thereof is damaged, which results in the Private Partner incurring higher than expected Costs for the provision of the Services. | The Facility, or an element thereof (part of an element) is damaged by visitors, other persons for whom the Public Partner are responsible, and as a result of which the Private Partner incurs greater than anticipated Costs for the provision of Services. | |  | |  | X  The Public Partner shall bear the risk unless the damage to the Facility, or element(s) thereof is caused by the inadequate quality of the Facility, or element(s) thereof or the inadequate decisions of the Private Partner in the design of the Facility, or element thereof, or the actions or omissions of the Private Partner or the Sub-Contractors in which case the risk shall be attributed to the Private Partner. |

# Annex No. 5. List of mandatory insurance contracts

The Private Partner must conclude the following insurance contracts no later than 10 (ten) Working Days before the date of commencement of the Agreement:

**During the performance of the Works:**

1. prior to the date of commencement of the Design of the Facility – **a contract for designer's civil liability insurance**. The insurance coverage period must cover the period: from the commencement of the design of the Facility until the end of the guarantee period specified in Paragraph 1 of Part 1 of Article 6.698 of the Civil Code in accordance with the procedure and conditions established in the Rules for Compulsory Civil Liability Insurance of the Structure Designer approved by the insurance supervision authority. In the event that the design work of the Facility is performed by a Subcontractor, the relevant insurance contract must be concluded by the Subcontractor instead of the Private Partner;
2. prior to the date of the commencement of the expert inspection of the Facility design (part thereof) – **the civil liability insurance contract of the structure design expert inspection contractor**. The insurance coverage period must cover the period: from the commencement of the expert inspection of the design (part thereof) of the Facility until the end of the guarantee period specified in Paragraph 1 of Part 1 of Article 6.698 of the Civil Code in accordance with the procedure and conditions established in the Rules for Compulsory Civil Liability Insurance of the Structure Design (part thereof) expert inspection contractor approved by the insurance supervision authority. In the event that the expert inspection of the prepared design (or individual parts) of the Facility being developed during the Works stage is performed by the Subcontractor, the relevant insurance contract must be concluded by the Subcontractor instead of the Private Partner;
3. prior to the date of commencement of the construction works of the Facility – **contract for construction works and civil liability insurance**. The entire construction site must be an insured place under the insurance contract. The term of **insurance coverage for construction works** must cover the period: from the date of commencement of the construction works of the Facility until the date of transfer of the result of the Works and (or) installation works to the Public Partner and the date of commencement of the operation of the Facility. The term of **insurance coverage for construction works** must cover the period: from the date of commencement of the construction works of the Facility until the date of transfer of the result of the Works and (or) installation works to the Public Partner and the date of commencement of the operation of the Facility. Insurances must meet the conditions set in the regulations of the Compulsory construction and reconstruction work insurance and civil liability insurance for the construction, reconstruction, repair, renewal (modernization), demolition or cultural heritage structure maintenance works. In the event that the construction work of the Facility is performed by a Subcontractor, the relevant insurance agreement must be concluded by the Subcontractor instead of the Private Entity;
4. prior to the date of commencement of the construction works of the Facility – **contract for insurance of civil liability of the technical supervisor of structure construction**. The term of insurance coverage must cover the period: from the commencement of the construction work of the Facility and at least 2 (two) years after the transfer of the results of the Works and (or) installation works to the Public Partner and the date of the start of the operation of the Facility. The insurance must comply with the conditions specified in the rules of compulsory civil liability insurance of the technical supervisor of the structure construction. In the event that the Work Technical Supervisor of the construction of the Facility is a Subcontractor, the relevant insurance agreement must be concluded by the Subcontractor instead of the Private Entity;

**During the Service provision:**

1. prior to the date of the commencement of the operation of the Facility – to insure its civil liability for all risks that may arise from any activity that the Private Partner carries out under this Agreement (except for the activities specified in Paragraphs 1 - 4 of the Annex to this Agreement). The sum insured shall be no less than 300,000 (three hundred thousand) euros per insured event for the sum insured. This insurance shall be valid continuously until the end of the term of the Agreement, as set out in the Agreement, and shall also cover damages that may arise from the provision of Services or Renovation and Repair, or Additional Works and/or Services by Subcontractors or other third parties. The unconditional deductible shall not exceed 600 (six hundred) euros;
2. prior to the date of commencement of operation of the Facility – the Facility and all New Assets therein, owned by the Private Partner, shall be insured with the maximum replacement value insurance against all possible risk cases, but in any case – for a sum insured no less than the Investment Value specified in the Proposal. The term of insurance coverage shall cover the period: from the date of commencement of operation of the Facility until the end of the term of the Agreement. The insurance contract must provide that the right of recourse against the Public Partner does not apply. The unconditional deductible shall not exceed 600 (six hundred) euros.

# Annex No. 6. List of associated companies

|  |  |
| --- | --- |
| **Associated Companies:** | **Links:** |
|  |  |
|  |  |
|  |  |
|  |  |
|  |  |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
|  |  |  |  |  |  |
| (position of the authorised person) |  | (Signature) |  | (Name and last name) |  |

# Annex No. 7. Specifications

*[Add Specifications]*

# ANNEX 8. 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 receipt of permits and licenses necessary for the performance of the Agreement, would be ensured, including the following:

* 1. The fulfilment of the conditions precedent to the entry into force of the Agreement for which the Private Partner is responsible:
  2. the execution of the Land Lease Agreement (a copy of the agreement shall be provided);
  3. the provision of the performance security referred to in Clause 31.1.1 of the Agreement;
  4. the conclusion of agreements with the Funder(s) (a copy of the agreement shall be provided);
  5. the conclusion of agreements with the Another loan provider (s) (a copy of the agreement shall be provided);
  6. Submission of the Design Services Agreement(s) with the Subcontractor(s);
  7. copies of permits, approvals, licences and certificates required for the execution of the design;
  8. stakeholders’ agreement (a copy of the agreement shall be provided);
  9. the Insurance Contract provided for in Clause 1 of Schedule 5 to the Agreement (a copy of the Agreement shall be provided);
  10. the submission of a surety from the Investor for the obligations of the Private partner in connection with the performance of the Agreement, which shall state that:

1.7.1. the surety is free of charge;

1.7.2. in the event of non-performance or improper performance by the Private partner of its obligations under the Agreement, the Investor shall be jointly and severally liable to the Public partner;

1.7.3. the Investor shall also be liable in the event that the Agreement is amended and the scope of the Private partner’s obligations and the Investor’s liability as a guarantor change as a result, or if any other consequences unfavourable to the Investor as a guarantor arise;

1.7.4. the liability of the Investor as guarantor shall only terminate when the Private partner’s obligations under the Agreement have expired and shall not terminate earlier by reason of the failure of the Public partner to call upon the liability of the Investor as guarantor for a certain period.

* 1. to carry out an independent audit of the Financial Operating Model at its own expense and to submit to the Public Partner a report on its actual observations on the Financial Operating Model in the form set out in the Appendix to this Annex, Financial Operating Model Actual Observation Report Form. The audit of the Financial Operating Model shall be carried out by an independent audit firm included in the list of audit firms of the Republic of Lithuania. The audit shall be carried out in accordance with international standards for related services and the legislation in force in the Republic of Lithuania, which would enable the auditor to satisfy itself that the Financial Operating Model adequately reflects the terms of the Agreement and the assumptions set out therein, that the accounting principles applied and the calculation of fees are reasonable, and that there are no errors in the financial modelling. The nomination of the audit firm shall be agreed with the Public Partner prior to the audit being carried out, and only after written agreement by the Public Partner that the audit firm is acceptable to the Public Partner may the audit work be performed. The Private Partner shall assume full responsibility for the results of the independent audit of the Financial Operating Model, i.e. in the event of an independent audit of the Financial Operating Model and the identification of errors in the financial modelling resulting in an increase in the calculated PPP Fee as a result of the correction of such errors, such increase shall not be passed on to the Public Partner and the PPP Fee shall not be recalculated. In the event that the correction of modelling errors results in a decrease in the calculated PPP Fee, the Financial Operating Model shall be amended and the PPP Fee recalculated accordingly in favour of the Public Partner prior to the entry into force of the Agreement in its entirety, while maintaining the rate of return on investments specified in the Tender.
  2. a permit to work with or have access to classified information marked "Restricted" issued in the name of the Private Partner and the employees of the Subcontractors and the Subcontractors (natural persons) in accordance with the procedure laid down by the Law on State and Official Secrets, who will carry out design work related to the creation of classified information;
  3. the documents of the Private Partner and of the Subcontractors who will carry out the design work related to the creation of classified information in their capacity as legal entities:
     1. a certificate confirming compliance with the requirements for the protection of classified information classified as "Restricted" or a certificate confirming the trustworthiness of the Private Partner and the Subcontractors (legal persons), issued in accordance with the procedure established by the Law on State and Official Secrets;
     2. documents issued certifying that the premises are recognised as suitable for storing or handling classified information;
     3. authorisation issued by the Security Supervisory Authority or the Departmental Security Supervisory Authority for the processing and transmission of classified information classified as "Restricted" in the IIRIS in favour of the Private Partner Subcontractor.

1. The fulfilment of the preconditions for the entry into force of the Agreement, which are the responsibility of the Public Partner:
   1. observations, if any, on the audit of the Financial Operating Model to the Private Partner;
   2. termination of a Land Plot Lease Agreement.

# Appendix 1. Form for the report on factual observations on the verification of the Financial Operating Model in accordance with agreed procedures

[*This report form contains the minimum information required in the report. It is at the discretion of the auditor to decide what additional information will be included*]

We have performed the procedures agreed with you, as listed below, in relation to the review of the Financial Operating Model (‘FOM’), in accordance with the procedures set out below and as agreed/agreed in advance. We have carried out this engagement in accordance with the International Standards for related services [*specify relevant standards or procedures*]\* applicable to the engagements of agreed procedures. The procedures were designed for the sole purpose of assisting you in assessing that the terms and conditions and assumptions set out in the FVM [*specify date and version of document*] are reasonably reflected in the [*specify name of the Agreement*] (the ‘Agreement’), the accounting principles and fee calculations applied are reasonable, there are no errors in the financial modelling, and are summarised as follows:

|  |  |  |
| --- | --- | --- |
| Item No. | Procedures carried out *(all procedures shall be specified)* | Observations made *(detail the non-conformities of the procedure carried out)* |
| 1. | We have checked whether the procedure for calculating the Fee is in accordance with the guidelines set out in the Agreement. |  |
| 2. | We have checked whether the Fee is equal each year without taking into account the indexation assumptions in the FOM at a real value. |  |
| 3. | We have checked that the values for the calculation of the Fee as set out in the FOM have been correctly transposed into Table 1 ‘Fee payment schedule’ of Appendix 1 to Annex 3 to the Agreement, ‘Settlement and Payment Procedures’. |  |
| 4. | We have checked whether the Fee in nominal (indexed) values as stated in the FOM is in accordance with Table 2 ‘Fee Payment Schedule’ of Appendix 1 to Annex 3 to the Agreement ‘Settlement and Payment Procedures’. |  |
| 5. | We have checked whether the terms and conditions of the subordinated or non-subordinated loan granted by the Funder(s) and/or the Other Lender, such as the amount of the loan, the loan agreement fees, the duration of the loan, the grace period, the method of repayment of the loan, the repayment schedule, etc., have been properly reflected in the FOM. |  |
| 6. | We have checked whether the amount of the Agreement investment is correctly reflected in the FOM. |  |
| 7. | We have checked whether the calculation of the Agreement utility charges and the conditions and assumptions for the payment of the Agreement utility charges are correctly reflected in the FOM. |  |
| 8. | We have checked whether the change in the outstanding portion of the Funder’s loan in the FOM corresponds to the change in the outstanding portion of the Investments. |  |
| 9. | We have checked the calculation of the FOM’s calculation of the cost of financing and investment activities in accordance with the terms of the loan from the Funder(s) and the terms of the subordinated or unsubordinated loan from the Other Lender. |  |
| 10. | We have checked that the cost assumptions for the provision of the Services are correctly reflected in the FOM. |  |
| 11. | We have checked that the Administration and Management cost assumptions presented are properly represented in the FOM. |  |
| 12. | We have checked that the FOM correctly indexes the Fee components and that the indexation assumptions shown are correctly used. |  |
| 13. | We have checked that the financial accounting assumptions reflected in the FOM are consistent with the terms of the Agreement. |  |
| 14. | We have checked that the assumptions used in the FOM result in the correct calculation of corporation tax. |  |
| 15. | We have checked whether the assumptions made in the FOV correctly calculate VAT. |  |
| 16. | We have checked whether the equity and debt capital structure presented in the FOM complies with the thin capitalisation rule. |  |
| 17. | We have checked that the FOM is free from financial modelling errors. |  |

As the above procedures are neither an audit nor a review carried out in accordance with International Standards on Auditing or International Standards on Review Engagements (or the relevant national standards or procedures), we do not provide any assurance on the amounts used for FOM.

If we had performed additional procedures or an audit or review of the financial statements in accordance with International Standards on Auditing or International Standards on Review Engagements (or the relevant national standards or procedures), we would have reported to you any other matters that came to our attention.

The report relates only to applicable items, accounts, items or specific financial and non-financial information and that it does not cover the financial statements of the entity as a whole.

Our report is intended solely for the purpose set out in the first paragraph of this report and is intended for your information and that of the Ministry of National Defence of the Republic of Lithuania, and may not be used for any other purpose or communicated to any other party.

Annexes:

Auditor

Auditor’s Certificate No.

Details of the audit firm

Certificate No. of the audit firm

Date

\*It is recommended to follow International Standard on Related Services (ISRS) 4400 – ‘Assignments to perform agreed-upon procedures on financial information’.

# Annex 9. Duration of use of the facility

| **Item No.** | **Structural elements** | **Name of construction product (building material)** | **Duration of use from the commencement of operation of the Facility** | **Duration of use at the end of the Agreement**  **(this column specifies the terms, assuming that the term of the Services is 12 (twelve) years and taking into account the planned reinvestment in the individual components/structural parts of the sub-elements of the Facility)** |
| --- | --- | --- | --- | --- |
|  | Foundations | Reinforced concrete, concrete, stone concrete | 150 |  |
| Stone | 80 |  |
| Bricks | 60 |  |
| Wood | 10 |  |
| Metal | 50 |  |
|  | Walls | Bricks, reinforced concrete blocks | 125 |  |
| Blocks | 100 |  |
| Monolithic concrete, monolithic reinforced concrete, stone concrete, stone | 150 |  |
| Reinforced concrete slabs | 125 |  |
| Logs | 65 |  |
| Timber with framing | 40 |  |
| Timber panels with framing | 50 |  |
| Metal with framing | 60 |  |
| Glass with framing | 40 |  |
| Asbestos-cement with framing, asbestos-free with framing | 40 |  |
| Plastic with framing | 35 |  |
| Clay | 50 |  |
| Slag concrete | 80 |  |
|  | Linings | Reinforced concrete | 125 |  |
| Wood | 60 |  |
| Metal | 125 |  |
| Ceramics | 125 |  |
|  | Roof structure | Reinforced concrete | 125 |  |
| Wood | 50 |  |
| Metal | 100 |  |
|  | Roof covering | Ceramics | 80 |  |
| Metal | 25 |  |
| Asbestos cement, asbestos-free (eternite) | 40 |  |
| Plastics | 20 |  |
| Ruberoid, bitumen | 12 |  |
| Wooden planks | 35 |  |
| Straw, reeds | 30 |  |
| Concrete (tiles) | 80 |  |
| Wood chips | 25 |  |
| Glass | 25 |  |
|  | Exterior finish | Plastering of concrete and masonry walls | 30 |  |
| Plaster for wooden walls | 15 |  |
| Decorative plaster | 50 |  |
| Ceramic tiles | 75 |  |
| Glass tiles | 30 |  |
| Stone panels | 100 |  |
| Glass panels | 30 |  |
| Concrete panels | 60 |  |
| Metal sheets | 30 |  |
| Wooden cladding | 30 |  |
| Plastic cladding | 20 |  |
| Asbestos-cement, asbestos-free panels | 30 |  |
| Particleboard | 15 |  |
| Fibreboard | 15 |  |
| Decorative brickwork | 75 |  |
| Thermal insulation panels | 20 |  |
|  | Partitions | Bricks, blocks, reinforced concrete blocks | 75 |  |
| Glass blocks | 50 |  |
| Monolithic concrete, monolithic reinforced concrete, stone concrete | 75 |  |
| Reinforced concrete slabs | 75 |  |
| Gypsum concrete | 60 |  |
| Logs | 60 |  |
| Fibreboard, particleboard | 30 |  |
| Wooden planks, wooden panels | 40 |  |
| Plasterboard | 30 |  |
| Metal | 50 |  |
| Glass | 40 |  |
| Plastic | 30 |  |
| Asbestos-cement, asbestos-free sheets | 40 |  |
|  | Floor | Parquet | 60 |  |
| Metal | 80 |  |
| Linoleum, realin | 15 |  |
| Carpeting | 10 |  |
| Boards | 30 |  |
| Parquet, laminated panels | 20 |  |
| Ceramic tiles | 60 |  |
| Concrete tiles, concrete pads, bricks | 20 |  |
| Concrete slabs, artificial stone slabs | 30 |  |
| Natural stone slabs | 80 |  |
| Teraca | 30 |  |
| Monolithic | 20 |  |
| Asphalt | 10 |  |
| Plucked clay | 15 |  |
| Pressed cardboard, chipboard, wood panels, fibreboard | 15 |  |
|  | Windows | Wood | 50 |  |
| Plastic | 25 |  |
| Metal | 60 |  |
| Glass blocks | 50 |  |
|  | Durys | Wood | 50 |  |
| Plastic | 25 |  |
| Metal | 60 |  |
| Glass b | 25 |  |
|  | Interior finish | Plastering of brick and concrete walls | 50 |  |
| Plastering of wooden walls and partitions | 30 |  |
| Decorative plaster | 60 |  |
| Ceramic tiles | 40 |  |
| Stone slabs | 80 |  |
| Wooden cladding | 40 |  |
| Plastic cladding | 30 |  |
| Metal cladding | 30 |  |
| Wood cork panels | 12 |  |
| Wood fibre panels | 30 |  |
| Particleboard | 30 |  |
| Decorative bricks | 75 |  |
| Gypsum sheets | 30 |  |
|  | Heating | Heating from central systems, block, district, group boiler houses | 30 |  |
| Local heating, local boiler house | 25 |  |
| Furnace | 30 |  |
|  | Water supply | Municipal and local | 30 |  |
|  | Sewage disposal | Municipal and local | 40 |  |
|  | Gas | Natural and liquified | 20 |  |
|  | Hot water |  | 25 |  |
|  | Electricity |  | 30 |  |
|  | Ventilation  Air conditioning |  | 25 |  |

|  |
| --- |
| Notes:  1. The components/structural parts of the components of the Facility shall comply with the qualitative and quantitative requirements and indicators and shall ensure that the Facility, or a component of the Facility can be operated for the periods of use specified in the UAB Sistela ‘[Norms for the Average Useful Life of Buildings (SVN)](https://www.sistela.lt/index.php?id=31&pid=)’. In the case where there are no component/structural parts of the components of parts of the Facility as specified in the standards, the lifetime of such parts shall be applied in accordance with the period specified in Technical Construction Regulation STR 1.12.06:2002 ‘Use and Lifetime of Buildings’. The service life category to be calculated for the structures is 4 (four) according to Table 2.1 of LST EN 1990:2004.  2. Service life of composite/structural parts of sub-elements - the theoretical period of time during which the sub-elements of the Facility Component, under normal use (from the start of operation of the sub-elements until their demolition/write-off/replacement) and taking into account the materials of which they are constructed/manufactured and the local climatic conditions, comply with the essential requirements of the sub-elements.  3. Normal use of the components of the Facility means a set of preventive and other measures to ensure that the component of the Facility meets the requirements of its intended use throughout its lifetime. These measures include cleaning, maintenance, refurbishment, installation and replacement of individual parts of the component of the Facility.  4. The useful life of the components of the Facility during the term of the Agreement shall be calculated from the commencement of operation of the Facility.  5. The useful life of the components of the Facility at the end of the Agreement shall be calculated from the commencement of operation of the Facility on the basis that the Services are provided for a period of twelve (12) years and taking into account the Renovation and Repair Works (replacement or repair of a component of the Facility resulting in an extension of the useful life of a component of the Facility). For example, if the useful life of a component of the Facility is 30 years from the commencement of the operation of the Facility and the total duration of the Services is 12 (twelve) years, the useful life of the component of the Facility at the end of the Agreement shall not be less than 18 (eighteen) years. |

# Annex 10. Direct Agreement

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

**concluded between**

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

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

**on [*...*]**

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

**[*Place*]**

# INTRODUCTION

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

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

and

**[Private partner]**, the company established and operating according to the legislation of the Republic of Lithuania, with the address at [*address*], legal entity code [*legal partner code*], represented by [*position, name, and last name of the representative*], acting according to [*specify the grounds for representation*] (hereinafter – the **Private partner**);

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

**Whereas**:

1. The Private partner and the Public partner concluded the Agreement on [*specify the title*], under which the Private partner undertook to perform Works and provide Services, assume the risks related to that, to properly control and use the Property, and after the expiration of the Agreement return it to the Public partner, as it is specified in the Agreement, also to properly perform his other obligations under the Agreement, and the Public partner undertook to assume the specified risk, to make timely payments performed Works and provided Services, as well as to properly perform his other obligations under the Agreement;
2. The Private Partner and the Funder have entered into a Financing Agreement, as defined below, pursuant to which it is agreed that the Funder will disburse to the Private Partner the funds required for the Investment for the purposes set out in the Financing Agreement, and will assume the Private Partner’s full claim on all current and future payments made by the Public Partner;
3. Parties seek to ensure proper implementation of the Project, even in a situation where the grounds for the termination of the Agreement occurs;
4. The Funder seeks to ensure the recovery of the funding granted to the Private partner from the remuneration paid by the Public partner for the Agreement implementation;

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

## Definitions used in the agreement and interpretation thereof

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

|  |  |
| --- | --- |
| **Necessary period** | means a period the counting of which begins from the day of notice about the termination of the Agreement, and which:   1. expires after 20 (twenty) days during the operation phase; 2. after the Commencement of Operation expires after 90 (ninety) days; |
| **Financing Agreement** | Means the Credit Agreement No. [-] dated 20[-] [-] [-] between the Private Partner and the Funder (as amended and supplemented) |
| **Representative** | means:   1. the Funder and / or his subsidiaries and / or other companies associated to the Funder; 2. administrator, managing administrator, and administrator or manager of the Private partner; 3. a person, who is directly or indirectly managed or controlled by the Funder and / or any other main creditor; or 4. Any other person, approved by the Public partner (such approval should not be unreasonably rejected or withheld); |
| **Date of the Step-In** | means the date on which the Funder starts any actions, described in Clause 4.5 of this Agreement; |
| **Period of the Step-In** | means (depending on which ends sooner) the period from the Step-In date till:   1. Date of the Step-Out; 2. Date of the termination of the Agreement, because of a violation in accordance with Clause 5 of this Agreement; and 3. expiration of the Agreement; 4. the proper performance of the Private Partner’s obligations under the Financing Agreement; |
| **Liquid Market** | Means that there are parties in the market that are suitable, willing to participate and provide services specified in the Agreement (at least two parties, each of which can be appointed as a Suitable substitute); |
| **Date of the Step-Out** | means the date that comes after 30 (thirty) days pass after the notice was delivered according to Clause 6 of this Agreement (Step-Out); |
| **Notice about the termination of the Agreement** | means the notice of the Public partner to the Investor according to Clause 3 of this Agreement; |
| **Private partner’s failure to perform obligations** | Private partner’s failure to perform the obligations under the Agreement, or improper performance thereof is deemed a material violation of the Agreement. |
| **Transfer of claim rights** | means a method of securing the obligations of a Private Partner whereby the Private Partner transfers to the Investor, as of the date of signature of this Agreement, a claim to all current or future payments of the Public Partner without the separate consent of the Public Partner; |
| **Agreement** | means the partnership agreement between the Public Partner and the Private Partner on *[insert name and number]* on *[insert date]*; |
| **Suitable substitute** | means a person, approved by the Public partner (such approval cannot be unreasonably rejected or withheld), who:   1. has a legal capacity, competence, and authority to become the Party to the Agreement, and to perform the obligations of the Private partner under the Agreement; and 2. employs persons with the suitable qualification, experience, and technical competence, who are able to use the sources of the resources (including financial assets, and subcontracting agreements), and who are fully competent to perform the obligations of the Private partner under the Agreement. |

* 1. If based on the context, a term in the Agreement is not used otherwise:
     1. words in masculine also include words used in feminine and vice-versa;
     2. words in singular form also include plural form and vice-versa;
     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;
     4. references to the Agreement mean references to its annexes as well;
     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;
     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;
     7. the titles of paragraphs and other provisions are used for convenience only and have no affect on the interpretation of the Agreement.

## Consent to Transfer of Claim, other consents and obligations

* 1. The Public Partner confirms that it consents to the transfer of claim in favour of the Investor in accordance with Clause 8 of this Agreement ("Transfer of Claim") in order to enforce the Private Partner’s obligations under the Financing Agreement, which limits the Private Partner’s rights under the Agreement.
  2. The Public Partner confirms that it has not received notice of any other security other than the security provided for in the Agreement, and the Private Partner has notified the Public Partner of its provision to the Investor.
  3. The Public Partner further confirms that:
     1. is aware of, and does not oppose, the Investor pledging all of the Private Partner’s shares to the Funder as security for the Private Partner’s obligations to the Funder; and
     2. agrees that the Private Partner, in order to secure the fulfilment of its obligations to the Funder and in accordance with the Law of the Republic of Lithuania on Financial Security Arrangements, shall provide the Funder with a financial security in the amount of not less than EUR [*specify the amount*] together with a transfer of ownership.
  4. If the Private Partner is not in full compliance with its obligations under the Financing Agreement, the Public Partner and the Private Partner undertake not to modify the terms of the Agreement without the prior written consent of the Funder, except for changes of a technical nature which do not affect the financial terms of the Agreement, and the procedure for settlements under the Agreement as well as not to modify the Financial Operating Model.

## Notice about the termination of the agreement and the existing obligations

* 1. The Public partner undertakes not to terminate the Agreement or not to issue a notice about the termination of the Agreement because of i) the circumstances dependant on the Private partner, ii) without the Parties’ fault, iii) due to the Force Majeure, without providing the Funder with a minimum Necessary period by dispatching an advance written notice to the Funder with the suggested date for the termination of the Agreement and the grounds for the termination of the Agreement explained at length (**Notice of the termination of the Agreement**).
  2. No later than 30 (thirty) days after the Notice of the termination of the agreement, the Public partner undertakes to present a report to the Funder providing the information about any amount, which is owed by the Private partner to the Public partner, and about all other obligations or duties that are not performed, which are known to the Public partner at the moment of the Notice of the termination of the agreement and / or which will become due during the Necessary period.

## Illiquid market

* 1. At any time during the Necessary period, the Funder has the right to submit a written notice ("Notice about an illiquid market") to the Public partner, listing in it the reasons as to why the Funder believes that the Liquid market does not exist.
  2. Within the period of 14 days (inclusive) from the receipt of the Notice about the illiquid market, the Public partner has to inform the Funder of his opinion, whether the liquid market exists or not. If the Public partner believes that the market is liquid, in such case it must state in the notice the reasons based on which the Public partner thinks so. If the parties disagree upon whether the Liquid market exists or not, either party has the right to initiate a resolution of a dispute in a manner specified in Clause 13 of the Agreement.
  3. If the parties amicably agree or after the dispute is resolved, and it becomes apparent that the Liquid market does not exist, the Agreement may expire / or be terminated according to the terms specified in it.
  4. If any dispute, arising from Clause 4 of this Agreement is being resolved according to Clause 13 of the Agreement, the Necessary period is extended for the period of the dispute examination.
  5. During the period, while the Private partner is not performing its obligations, Force majeure circumstances continue to exist (regardless of whether it received the Notice about the termination of the agreement), or during the Necessary period, the Funder may appoint a Representative to perform the obligations of the Private partner and assume the rights under the Agreement, together with or separately of the Private partner. The Funder has to inform the Public partner about any actions specified in this paragraph at least 5 (five) days in advance. For the sake of clarity, the Parties confirm their understanding that in any event the Funder shall have the right, but not the obligation, to appoint a Representative or a suitable substitute.

## Step-In Period

* 1. The Public Partner shall not have the right to terminate the Agreement during the Step-in Period, except as provided in Clause 5.2 of the Agreement.
  2. The Public Partner shall have the right to terminate the Contract by giving written notice to the Private Partner, the Funder and the appointed Representative (if the Funder and the Representative are not identical):
     1. if any amount of the Obligations specified in the notice referred to in Clause 3.2 of this Agreement has not been paid to the Public Partner within 20 (twenty) days after the last day of the Necessary Period;
     2. if amounts which were not notified to the Funder at the time of the Termination Notice or the Private Partner Failure to Comply with its obligations subsequently become due and payable, but are not paid within a period of 30 (thirty) days inclusive from the date on which the Funder and the Agent (if the Funder and the Agent are not identical) were notified of such amounts.
  3. During the Step-In period the Public partner consults not with the Private partner, but with the Funder and the appointed Representative (if the Funder and the Representative are not identical). The Investor shall have the right to participate in the consultations of the Public Partner with the Funder and the Representative (if the Funder and the Representative are not identical) but only with the prior written consent of the Funder.
  4. During the Step-In period the Representative is responsible for all of its actions, performed when it is acting as the Representative in a way in which the Private partner would act according to the terms specified in the Agreement. In the event that no Representative or Suitable Substitute is appointed, the Private Partner shall remain responsible for the performance of their obligations under the Agreement.

## Step-Out

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

## Novation

* 1. Based on Clause 7.2 of this Agreement, during the period, when the Private partner or the Investor is not performing its obligations, or during the Step-In period, the Funder may organize the transfer of the Private partner’s rights and obligations to the Suitable substitute, the Novation, based on the Agreement by submitting a written notice to the Public partner and to any of the appointed Representatives, no less than 30 (thirty) days in advance.
  2. The Public partner informs the Funder about the suitability of the person to whom the Funder proposes to transfer the rights and obligations of the Private partner under the Agreement, 30 (thirty) days after the receipt of all sufficient information requested by the Public partner in order to decide, whether the person to whom the rights and obligations will be transferred is the Suitable substitute.
  3. The Public partner cannot unreasonably withhold or delay its decision regarding the suitability of a person to whom the rights and obligations will be transferred to be a Suitable Substitute.
  4. When any transfer of rights and obligations comes into effect according to Clause 7.1 of this Agreement:
     1. The Private partner is released of all obligations that arise from the Agreement from the date when the Suitable substitute overtakes all rights and obligations;
     2. Any existing ground for the termination of the Agreement is deemed by the Public partner as having no effect and any notice of termination of the Agreement is automatically recalled; and
     3. The direct agreement between the Public partner and the Funder comes into effect for the new Suitable substitute under the same conditions and grounds as in this Agreement

## The transfer of the rights of claim

* 1. The Private partner, seeking to ensure own obligations under the Financing agreement, unconditionally and irrevocably transfers to the Funder all its existing and future rights of claim (hereinafter, Rights of Claim) to all present and future payments, which the Public partner obliged to pay to the Private partner under the Agreement, including but not limited to:
     1. payments by the Public Partner, i.e. the Fee and other amounts payable in respect of the Agreement;
     2. the compensation payable by the Public Partner in the event of termination of the Agreement;
     3. any other rights of the Private Partner in relation to the Private Partner’s receivables (e.g. the right to claim liquidated damages).
  2. The right of the Funder to receive payments (or any part thereof) from the Public Partner which the Private Partner transfers to the Funder shall arise as soon as the Private Partner has a corresponding right to receive payments from the Public Partner.
  3. The Transferred Claim, other than the Claim for compensation payable by the Public Partner in the event of termination of the Agreement, shall be transferred to the Funder from the moment when, in the event of the occurrence of the situation provided for in Clause 8 of the Agreement, the Funder’s right to require the Public Partner to make all payments of the Public Partner to the Funder in the manner and within the timeframe specified in the Agreement arises, and the Funder and/or the Private Partner gives the relevant instructions to the Public Partner for the payment to the account of the Funder. The Transferred Claim shall pass to the Funder without any further action by the Private Partner.
  4. The Transferred Claim for compensation payable by the Public Partner in the event of termination of the Agreement shall pass to the Funder as from the date of this Agreement. The Parties agree that in all cases (without a separate request from the Funder or any further action by the Funder and/or the Private Partner) the Public Partner’s Termination Compensation shall be paid directly to the Funder’s bank account no. [-], with the reference "[-]" in the details of payment.
  5. The Funder shall become entitled to require the Public Partner to make all payments directly to the Funder (except the compensation payable by the Public Partner in the event of termination of the Agreement, which shall in all cases be payable directly to the Funder) when Private Partner becoming entitled to receive payments from the Public Partner and the Private Partner’s failure to make any payments under the Financing Agreement for more than thirty (30) days (the Repayment of the Loan or any part thereof, interest, administration fee and other payments by the Private Partner Beneficiary to the Funder as provided for in the Financing Agreement) or when the Funder requires the Private Partner to repay to the Funder part or all of the outstanding credit. This right of the Funder shall not exclude the right to require the Private Partner to duly make such payments to the Funder in accordance with the Financing Agreement. This Funder’s right is multiple, i.e. the Funder shall have the right, on the grounds set out in this clause, to make an unlimited number of requests to the Public Partner to make payments to the Funder.
  6. The Funder shall have the discretion to decide not to exercise the right provided for in Clause 8.5 of the Agreement and to decide when to exercise such right. The exercise of the Funder’ rights referred to in this Clause shall in no way exclude or restrict the Funders’ ability to exercise all other rights provided for in the Financing Agreement and/or the legislation, including the right of the Funders set out in the Financing Agreement to realise, in the order of their choice, the collateral securing the fulfilment of the Private Partner’s obligations under the Financing Agreement.
  7. The Funder shall exercise the right set out in Clause 8.5 of the Agreement by giving the Public Partner a written instruction to make all payments directly to the Funder, where the Private Partner has a corresponding right to receive payments from the Public Partner, in which case the Public Partner shall pay all payments, on the date of receipt of such instruction, directly to the Funder’s bank account No. [-], details of payment [-].
  8. The Public Partner declares that it agrees to the transfer of the claim rights referred to in Clause 8 of the Agreement and has been duly informed of the transfer of the rights.
  9. Upon exercise of the transferred claim rights, the amounts received by the Funder from the Public Partner shall be used to repay the indebtedness of the Private Partner to the Funder. No additional compensation shall be payable to the Private Partner for the transfer of claim rights under the Agreement.
  10. In any event, the Funder may not exercise the rights transferred to it to a greater extent than is necessary for the performance of the Private Partner’s obligations (including the payment of liquidated damages and the indemnification of losses incurred by the creditor) under the Financing Agreement.
  11. The Private partner warrants and represents, that the rights of claim transferred under this Agreement are valid. In order to avoid any doubts, the Private partner does not warrant and is not responsible for: (i) the Public partner’s failure or avoidance to perform its obligations under the Agreement; (ii) any warranty, guarantee, or representation of the Public partner or the third party in connection with the Agreement; (iii) the financial state or the credit risk of the Public partner or any third party; or (iv) the inspection of the property or the financial statements of the Public partner.
  12. The Funder warrants and represents, that it is fully aware of the economic-financial state of the Public partner, as well as the totality of all other facts and aspects to such extent, which in its opinion is required for the conclusion and performance of this Agreement, and that during the conclusion of this Agreement it does not refer to any warranties or representations made by the Private partner or its representatives that are not included in this Agreement. Costs associated with the transfer of Claim Rights, if any, shall be borne by the Private Partner.
  13. From moment of transfer of the rights of claim under this Agreement, the Funder assumes full responsibility for the proper formalising of the transfer of the rights of claim, exercising thereof, and /or enforced performance.

## Warranties and representations

* 1. The Funder undertakes to inform the Public partner in advance of the expected recovery from the shares of the Private partner. Prior written notice of the Funder to the Public partner must be submitted no later than 30 (thirty) days before the expected recovery, specifying the size of the Private partner’s debt to the Investor.
  2. By signing this Agreement, the Funder warrants and represents that it does not object to the possibility of the temporary taking over the performance of the obligations of the Private partner by the Public partner, specified in the Agreement, and such case the Funder will not exercise the opportunity of Step-In until the period for the performance of the obligations of the Private partner overtaken by the Public partner will expire.
  3. The Public partner confirms that it will perform any actions, which may be necessary in order to ensure that actions specified in the Agreement will be performed, i.e. that any Novation (Clause 7 of the Agreement), the transfer of the rights and obligations to the Representative "Step-in" (Clause 4.5 of the Agreement), Step-Out (Clause 6 of the Agreement), including the signing of any transfer documents, submission of any notices, warnings during registrations, etc., which in every case may be required by the Funder, the Representative, or Private partner. The Private Partner undertakes to reimburse the Public Partner for the costs incurred in carrying out the actions referred to in Clause 9.3.

## Notices

* 1. In order to be considered as properly delivered and would cause envisaged consequences, the Agreement related notices must be executed in writing in Lithuanian (or to be translated to it, the translation confirmed by the signature and the seal of the translator) and:
     1. delivered under signature, or
     2. sent via registered prepaid mail, or
     3. dispatching by courier service, or
     4. sent via email.
  2. All Agreement related reports are to be sent to the Parties at the following addresses:

|  |  |
| --- | --- |
| **Party** | **Contact details** |
| **[*to the Public partner*]** | **To: [*name, last name of the person responsible*]**  **Address: [*address*]**  **E-mail address:** |
| **[*to the Funder*]** | **To: [*name, last name of the person responsible*]**  **Address: [*address*]**  **E-mail address:** |
| ***[to the Private partner]*** | **To: [*name, last name of the person responsible*]**  **Address: [*address*]**  **E-mail address No.:** |

* 1. The Parties without delay, but no later than within 5 (five) days, inform each other and other stakeholders about the changes of the contact details. Notices that are delivered according to the available contact details prior to such notification, are considered to be delivered properly.
  2. The Funder shall process personal data in accordance with the Principles of Personal Data Processing approved by it, which are available at the customer service units of the Funder and on the website. The Funder shall have the right to transfer personal data to third parties in the cases and according to the procedure provided for in the Financing Agreement, the Principles of Personal Data Processing and the Funder’s General Terms and Conditions of Customer Service and Service Provision.

## Amendments

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

## Governing law

* 1. The agreements and the relationships of the Parties that arise from it, as well as interpretation thereof are governed by the legislation of the Republic of Lithuania.
  2. The Agreement and the transactions, performed on the basis of the Agreement, are commercial acts, neither public nor national. Neither of the Parties has the immunity with respect to the Agreement, and if they have one, they waive the immunity from legal processes, arrest, or the execution of court’s decision with respect to itself or its property (in case of the Public partner only against its funds).

## Dispute Resolution

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

## Invalidity of the individual provisions of the agreement

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

## Validity of the Agreement

* 1. The Agreement enters into force on the date on which it is signed by all Parties.
  2. This Agreement is valid until the Public partner will perform all payments to the Private partner which the Public partner must perform under the terms of the Agreement.

SIGNATURES OF THE REPRESENTATIVES OF THE PARTIES:

|  |  |
| --- | --- |
| **on behalf of the Public partner:** | [*Name of public partner*]  [*Address*]  [*legal entity code*]  [*Position, name, last name of representative*] |
|  |  |
| **on behalf of the Private partner:** | [*Name of the private partner*]  [*Address*]  [*legal entity code*]  [*Position, name, last name of representative*] |
|  |  |

# Annex 12. Assessment and acceptance of works. return/transfer of property

The provisions of this Annex shall apply to the assessment by the Public partner of the Design Documentation submitted by the Private partner, the Works carried out on the Facility and the return/transfer of the Facility to the Public partner at the end of the Agreement.

1. **Assessment of the Design Documentation.** 
   1. If the Design Documentation is prepared at different times, it may be submitted to the Public partner in stages.
   2. When submitting the Design Documentation to the Public partner for evaluation and submission of comments and/or proposals, the Private partner shall submit together with the Design Documentation a Scope of Inspection form for the Design Documentation and for the elements of the Facility, drawn up in accordance with the table set out in accordance with the procedure set out in Clause 2.3 of this Annex (the table shall be completed for the elements of the Facility, e.g. on a per-building basis, per structure, etc), confirming the Private partner’s fulfilment of the requirements set out in the Specification, the Tender and the legislation.
   3. During the assessment of the Design Documentation, the verification form (detailing the elements of the Facility, scope) shall be prepared by the commission referred to in Clause 52 of the Agreement in accordance with the model below, no later than 30 (thirty) Business Days prior to the date of submission of the Design Documentation to the Public partner.

Table of the scope of the verification of the design documentation and inspection of the Facility[[4]](#footnote-4)

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Elements of the Object under inspection** | **Scope of inspection** | **Specified in the Specification / Tender *(to be completed by the Private partner)*** | **Designed *(to be completed by the Private partner)*** | **Assessment by the Public partner**  ***(to be completed by the Public partner)*** |
| Buildings, structures, appurtenances, etc. | Quantity, area (sqm) and purpose |  |  |  |
| Parking lot within the site (lot) boundaries | Number of parking spaces |  |  |  |
| Parking lot surface | Surface construction, type, material, area |  |  |  |
| Carriageway | Surface construction, type, material, area |  |  |  |
| Pedestrian walkways | Surface construction, type, material, area |  |  |  |
| Site design (landscaping, lighting, shelters, benches, etc.) | Components, material (type), quantity (area, pieces, etc.), colour |  |  |  |
| Outdoor engineering networks for the site | Name, type, materials, indicators |  |  |  |
| External finishes (plinth, walls, roof, windows, external doors, etc.) | Construction, type, materials, colour |  |  |  |
| Internal finishes (floors, walls, ceilings, doors, etc.) | Construction, type, materials, colour |  |  |  |
| Internal engineering systems of the building | Name, type, materials, indicators |  |  |  |

* 1. The Public partner shall inform the Private partner in writing of the evaluation no later than 20 (twenty) Business Days after receipt of the Design Documentation.
  2. If, during the review of the Design Documentation, the Public partner identifies any non-conformities with the Specifications, the Tender or the requirements of the law, the Public partner shall, when submitting its comments, state the arguments on which the comments are based and specify to which Specifications, the Tender or the requirements of the law the Design Documentation or any part of it does not comply.
  3. If the Public partner has no objections to the Design Documentation or any part thereof, the Private partner shall proceed with the Works upon receipt of a response from the Public partner within the time limit set out in Clause 2.4 of this Anne.
  4. If the Public partner has any comments on the Design Documentation or any particular part thereof, the Private partner shall, no later than within ten (10) Business Days after receipt of such comments, revise the Design Documentation or any particular part thereof and submit it to the Public Partner for re-evaluation. If the scope of the revised Design Documentation is significant, the deadline may be extended by 5 (five) Business Days. The letter for such re-evaluation shall be submitted by the Public Partner no later than within 5 (five) Business Days.
  5. In the event that changes to the Specifications or the Tender are necessary to implement the comments of the Public partner, the Parties shall deal with such matters in accordance with the procedures set out in Clauses 17 and/or 37 of the Agreement.
  6. A positive or negative evaluation of Public partner shall not have any direct consequences for the Parties. Failure to receive a written response from the Public Partner within the timeframes set out in Clause 2 of this Annex shall be deemed to be an indication that the Public Partner has no objections to the Project Documentation submitted by the Private Partner.
  7. Disputes regarding the assessment of the Design Documentation shall be resolved in accordance with the procedures set out in Clause 54 of the Agreement.
  8. If the Works comply with the requirements, the Public partner shall, within 5 (five) Business Days of the verification, issue a written Certificate of Approval of the compliance of the Facility with the Specifications and the Tender.

1. **Assessment of the Works carried out.** 
   1. Once the Private Partner has completed the Work on a part of the Works and notified the Public Partner thereof, the Public Partner shall, within 30 (thirty) Business Days of receipt of the Private Partner’s notification of completion of the Work, verify the compliance of the Work with the quantity and quality requirements set out in the Specifications, the Tender, Project documentation. The Private Partner may invite the Public Partner to inspect the completed Works in phases (e.g. individual elements of the Facility), taking into account the deadlines set out in the Work Plan, for which intermediate acts of inspection shall be signed. At least 15 (fifteen) Business Days prior to the commencement of operation of the Facility, the Public partner shall issue the final written Certificate of Approval of the compliance of the Facility with the Specifications, the Tender and Project documentation referred to in Clause 3.4 of this Annex.
   2. Together with the notification of completion of the Facility, the Private Partner shall submit to the Public Partner the table referred to in Clause 3.4 of this Annex (the table shall be completed in respect of the Facility, detailing the elements and scope of the Facility to be inspected (if the Private Partner invites the Public Partner to inspect the Works in stages, the parts of the table referred to in Clause 3.4 of this Annex relevant to the interim acceptance shall be submitted prior to the completion of the Works).
   3. The final inspection form for the Works shall be prepared by the commission referred to in Clause 52 of the Agreement in accordance with the model below (detailing the elements and scope of the inspection) no later than 30 (thirty) Business Days before the end of the performance of the Works.

Table of the scope of inspection of the Works and elements of the Facility*[[5]](#footnote-5)*

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Elements of the Object under inspection** | **Scope of inspection** | **Specified in the Specification / Tender *(to be completed by the Private partner)*** | **Constructed**  ***(to be completed by the Private partner)*** | **Assessment by the Public partner**  ***(to be completed by the Public partner)*** |
| Buildings, structures, appurtenances, etc. | Quantity, area (sqm) and purpose |  |  |  |
| Parking lot within the site (lot) boundaries | Number of parking spaces |  |  |  |
| Parking lot surface | Surface construction, type, material, area |  |  |  |
| Carriageway | Surface construction, type, material, area |  |  |  |
| Pedestrian walkways | Surface construction, type, material, area |  |  |  |
| Site design (landscaping, lighting, shelters, benches, etc.) | Components, material (type), quantity (area, pieces, etc.), colour |  |  |  |
| Outdoor engineering networks for the site | Name, type, materials, indicators |  |  |  |
| External finishes (plinth, walls, roof, windows, external doors, etc.) | Construction, type, materials, colour |  |  |  |
| Internal finishes (floors, walls, ceilings, doors, etc.) | Construction, type, materials, colour |  |  |  |
| Internal engineering systems of the building | Name, type, materials, indicators |  |  |  |

* 1. If the Works and the Facility comply with the requirements, including in the case referred to in Clause 3.7 of this Annex, the Public partner shall issue a written confirmation of compliance of the Facility with the Specifications, the Tender and the Design Documentation within 5 (five) Business Days of the completion of the inspection.
  2. If the Works do not comply with the essential requirements set out in the Specifications and/or the Tender, i.e. the functions assigned to it by the legislation of the Republic of Lithuania cannot be performed by the Public Partner at the Facility, or elements of the Facility and/or the Services cannot be provided in full or properly, the Public Partner may refuse to issue the requested approval of the conformity the Facility with the requirements specifying the reasons. In such case, the material non-conformities shall be recorded in a written instrument signed by representatives of the Public Partner and the Private Partner, which shall become an integral part of the Agreement. The issuance of the approval for the compliance of the Facility with the requirements of the Specifications and/or the Tender and the Design Documentation shall be postponed until the Private Partner has corrected the material non-conformities noted. Other non-conformities that do not comply with the above shall be deemed to be minor.
  3. If the Public Partner identifies non-substantial non-conformities of the Facility with the Specifications and/or the Tender or the Design Documentation that do not prevent the Private Partner from completing the Works in accordance with the law, such non-conformities shall be recorded in the Certificate of Compliance of the Facility with the Specifications and/or the Tender, which shall be issued, but shall not suspend the commencement of the operation of the Facility. The Private Partner shall be obliged to rectify such minor non-conformities within a reasonable period of time as specified in the Certificate of Conformity.
  4. Disputes concerning the evaluation of the Works and the Facility shall be settled in accordance with the procedure set out in Clause 54 of the Agreement.

1. **Assessment of the of the Facility to be returned**.
   1. The conformity of the Facility to be returned (transferred) with the requirements of the Agreement shall be assessed in accordance with the procedure set out in Clause 10 of the Agreement.
   2. For the purpose of checking whether the returned (transferred) Facility complies with the requirements of the Agreement, the commission referred to in Clause 52 of the Agreement shall prepare an inspection form in accordance with the model set out below, detailing the elements and scope of the Facility, no later than thirty (30) Business Days prior to the inspection of the condition of the Property as specified in Clause 10.6 of the Agreement:

Table of scope of inspection of elements of the Facility to be returned/transferred[[6]](#footnote-6)

|  |  |  |  |
| --- | --- | --- | --- |
| **Elements of the Object under inspection** | **Scope of inspection** | **Specified in the Specification / Tender *(to be completed by the Private partner)*** | **Assessment by the Public partner**  ***(to be completed by the Public partner)*** |
| Buildings, structures, appurtenances, etc. | Quantity, area (sqm) and purpose |  |  |
| Parking lot within the site (lot) boundaries | Number of parking spaces |  |  |
| Parking lot surface | Surface construction, type, material, area |  |  |
| Carriageway | Surface construction, type, material, area |  |  |
| Pedestrian walkways | Surface construction, type, material, area |  |  |
| Site design (landscaping, lighting, shelters, benches, etc.) | Components, material (type), quantity (area, pieces, etc.), colour |  |  |
| Outdoor engineering networks for the site | Name, type, materials, indicators |  |  |
| External finishes (plinth, walls, roof, windows, external doors, etc.) | Construction, type, materials, colour |  |  |
| Internal finishes (floors, walls, ceilings, doors, etc.) | Construction, type, materials, colour |  |  |
| Internal engineering systems of the building | Name, type, materials, indicators |  |  |

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1. In the case set out in Article 22.4 of the Agreement, the formula applicable shall be PPI = PA x KPT x 0,002 % [↑](#footnote-ref-1)
2. In the case set out in Article 22.4 of the Agreement, the formula FPI = PA x FPT x 0,002 % shall apply [↑](#footnote-ref-2)
3. A deduction shall be applied in accordance with Section 2 of this Appendix, 'Periodicity breaches', periodicity breach code 'VA'. [↑](#footnote-ref-3)
4. The table of the scope of the verification of the design documentation and inspection of the Facility is preliminary and may be supplemented with other elements depending on the actual scope of the verification/inspection. [↑](#footnote-ref-4)
5. The table of the scope of inspection of the Works and elements of the Facility is preliminary and may be supplemented with other elements depending on the actual scope of the inspection. [↑](#footnote-ref-5)
6. The table of the scope of inspection of elements of the Facility to be returned/transferred is preliminary and may be supplemented with other elements depending on the actual scope of the inspection. [↑](#footnote-ref-6)