

D3.2: PPP Standard Provisions

Guidance on PPP Project Preparation and Procurement
in Romania

REFORM/SC2021/077

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Disclaimer

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PUBLIC-PRIVATE PARTNERSHIP AGREEMENT FOR
[NAME OF PROJECT]

THIS PUBLIC PRIVATE PARTNERSHIP AGREEMENT (the "**Agreement**") is made on [●] 202[●]

BETWEEN:

- (1) [●], as public partner (the "**Public Partner**"), and
- (2) [●] a [limited liability company / joint stock company] duly incorporated and organized under the laws of Romania, with a share capital of RON [●], registered with the [●] Trade Registry under number [●], sole registration code [●], whose registered office is at [●], duly represented by [●], as [●], as special-purpose vehicle for the purpose of this Agreement (the "**Project Company**"),

Each of the Public Partner and the Project Company referred to hereinafter as a "**Party**" and jointly referred to hereinafter as the "**Parties**", and

- (3) [name of first shareholder of the Project Company], a [●] company, duly incorporated and organized under the laws of [●], with a share capital of [●], registered with [●] under number [●], whose registered office is at [●], represented by [●], as [●], [and]
- (4) [insert additional paragraphs for the other shareholders of the Project Company (if any)]

(the Project Company's shareholder(s), as private partner (the "**Private Partner**").

BACKGROUND:

- (A) [This section may contain factual background information on the Agreement (*e.g.*, the context and purpose of the Agreement), information that the Parties might rely on or which may be relevant for the purpose of interpreting the Agreement]
- (B) [●]

IT IS AGREED as follows:

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PART I. GENERAL PROVISIONS

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement (including in its Recitals and Schedules, except for Schedule [●] (*Tender*)), the expressions below have the following meanings:

"Abandonment"	means not carrying out any Works contemplated by the Works Program at the Site for [twenty (20)] consecutive Business Days or during [sixty (60)] Business Days (whether consecutive or not) in any [twelve (12)-month period].
"Access Roads"	means any and all public or private roads referred to as access roads in the Works Program, either permanent or temporary, existing or to be constructed, which are used by the Project Company or the Project Company Related Parties for the transport of the Construction Installation, Installations, other materials or equipment to the locations where the Works are carried out or the Services are provided.
"Additional Maintenance"	has the meaning given in Clause 23.2.3 (<i>Transfer Inspections</i>).
"Additional Transfer Guarantee"	has the meaning given in Clause 23.3 (<i>Transfer Guarantee</i>).
"Adverse Rights"	means any Rights in respect of land that would, if exercised, prevent or disrupt the carrying out of the Works and/or the provision of the Services.
"Affected Party"	means, depending on the case: (a) the Party affected by a Qualifying Change in Law; or (b) the Party affected by a Force Majeure Event.
"Affiliate"	means any person: (a) which a dominant influence can be directly or indirectly exerted upon or: (b) which can exert a dominant influence or: (c) which, following the association with a person, is under the dominant influence of another person. The dominant influence is assumed when a person, either directly or indirectly, owns the majority subscribed registered capital or controls the majority of votes associated to the issued shares or can designate more than half the members of the management, executive or supervisory body.
"Agent"	means [●] in its capacity as agent for the Senior Lenders under the Senior Finance Documents, as it may be replaced from time to time throughout the Contract Period.
"Agreement"	means this agreement as concluded between the Public Partner, the Project Company and the Private Partner (acting only in relation to the undertakings assigned to them under the relevant provisions of this Agreement) on the Date of Contract including all recitals, schedules, annexes, plans, specifications and drawings attached thereto, together with any variations agreed by the Public Partner and the Project Company in accordance with Clause 35 (<i>Change Procedure</i>) or otherwise, as provided for in this Agreement or as agreed by the Parties, under the conditions provided by Law.

"Annual Program"	means a detailed program of works for each Services Year that are necessary in order to satisfy the Services Requirements and Method Statements, submitted in accordance with the requirements of Clause 21 (<i>Services Programs</i>).
"Annual Unitary Charge"	has the meaning given in Schedule [●] (<i>Payment Mechanism</i>).
"Arbitral Tribunal"	has the meaning given in Clause 53.4 (<i>Disputes Resolution Procedure</i>).
"Archaeological Finds"	means all fossils, articles of value or antiquity and structures (including historic road structures and cobbles) or other remains or things of particular geological, historical or archaeological interest or having artistic, historic or monetary value according to the Law, discovered on the Site or in the course of carrying out Operations.
"Archaeological Works"	means the archaeological works as specified in Schedule [●] (<i>Construction and Services Requirements</i>).
"Assets"	means all assets and rights to enable the Public Partner or a successor project company to construct, operate and maintain the Project Facilities in accordance with this Agreement, including assets and rights regarding: (a) any land or buildings; (b) any equipment; (c) any books and records (including operating and maintenance manuals, health and safety manuals and other know-how); (d) any spare parts, tools and other assets (together with any warranties in respect of assets being transferred); (e) any revenues and any other contractual rights; and (f) any intellectual property rights, but excluding the Return Assets and any rights in respect thereof.
"Authorized Functions"	has the meaning given in Clause 30.1 (<i>Authorized Functions</i>).
"Award Procedure"	means the award procedure organized by the Public Partner for the award of this Agreement, as commenced by the contract notice published under no. [●] in the Official Journal of the European Union.
"Base Case Equity IRR"	means the Equity IRR set out in the Original Base Case.
"Bonds"	means the [●] bonds due [●] of the Issuer, issued at [Financial Close], in the aggregate principal amount of [●].
"Business Day"	means a day (other than a Saturday or Sunday) on which banks are open for business in Bucharest.
"Capital Expenditure"	means any expenditure which is treated as capital expenditure in accordance with the Law and generally accepted accounting principles in Romania from time to time.
"Certificate"	means any certificate to be issued pursuant to this Agreement and in particular any certificate listed in Schedule [●] (<i>Construction and Services Requirements</i>).

"Change in Law"	means any change, amendment to, supplementation, suspension or repeal of any Law, or any other event with similar effects, being effected after the Tender Submission Date, including but not limited to: (a) any change, amendment to, supplementation, suspension or repeal of any international conventions, regulations, directives, decisions or other mandatory deeds of any competent EU authority provided that same is directly applicable in Romania or incorporated into Romanian legislation; (b) any change, amendment to, supplementation, suspension or repeal of Romanian laws and/or Government ordinances, including Government emergency ordinances and/or Government decisions or ministerial orders or other legislative items; (c) the adoption of Romanian general administrative acts and/or the issuance of any regulation by any Relevant Authority and/or any act or guideline of any such Relevant Authority and/or any technical requirements, specification or standard required or set by means of a decision of such Relevant Authority; and (d) changes in the interpretation and/or application of any such acts as described in paragraphs (a), (b) and/or (c) pursuant to decisions having general and mandatory application within Romania, passed by the courts of law or other jurisdictional bodies, with final and general mandatory effect in Romania.
"Change of Control"	means any Change of Ownership having the effect that the Private Partner or its Affiliates (or any of them) cease to jointly hold control over the Project Company ("control" being, in relation to the Project Company: (a) the power (based on the shareholding, any representation right, any agreement or otherwise): (i) to exercise or control more than half of the maximum number of votes that may be exercised in the Project Company's general assembly of shareholders; or (ii) to appoint or replace all or the majority of the Project Company's directors or clerks with similar powers; or (iii) to decide on the Project Company's financial and operational policies which the Project Company's directors or clerks with similar powers are bound to observe; or (b) holding more than half of the Project Company's registered share capital (save for that part of the share capital which does not entitle to participate, below a specific value, to the distribution of profit or capital)).
"Change of Ownership"	means: (a) any sale, transfer or disposal of any legal, beneficial or contractual interest in any or all of the shares of the Project Company (including the control over exercise of voting rights inferred on those shares, control over the right to appoint or remove directors or the rights to dividends); and/or (b) any other arrangements that have or may have or which result in the same effect as paragraph (a).
"Claim"	means any claim, demand, proceedings or liability.

"Closing Notice"	means the closing notice having the form and content indicated in Schedule [●] (<i>Closing Notice</i>).
"Commercially Sensitive Information"	means the sub-set of Confidential Information listed in Schedule [●] (<i>Commercially Sensitive Information</i>) in each case for the period specified therein.
"Compensation Event"	means a breach by the Public Partner of any of its obligations or of any warranty under this Agreement or any Relief Event which lasts for a continuous duration of more than [●].
"Confidential Information"	means: (a) information (however it is conveyed or on whatever media it is stored) the disclosure of which would, or would be likely to, prejudice the commercial interests of any person, trade secrets, commercially sensitive intellectual property rights and know-how of either Party, including all personal data and sensitive personal data; and (b) Commercially Sensitive Information. Confidential information should be redacted where appropriate from the relevant document/media so that the remaining information can be disclosed.
"Consents"	means all permissions, consents, approvals, certificates, permits, licenses and authorizations of a Relevant Authority required for the performance of any of the Project Company's obligations under this Agreement.
"Construction Contractor"	means the [joint venture / company] referred to as such on the Date of Contract in Schedule [●] (<i>Details of the Project Company, Private Partner, Construction Contractor and Operator</i>) hired by the Project Company to carry out the Works and any other works the subject of a Proposal and any substitute contractor hired by the Project Company as may be permitted by this Agreement.
"Construction Permit"	means the Consent referred to as such by Law and required for the due performance of construction works, as such is necessary for the purposes of carrying out the construction of the Works or any part thereof in accordance with this Agreement.
"Construction Installation"	means installations, materials and equipment used or to be used by the Construction Contractor in relation to the Works.
"Contaminations"	means any hazardous waste pits, contaminations with hazardous chemical substances, ammunitions or other environment risks caused by man, affecting the Site, provided that data and information thereon were not in the Disclosed Data and, in addition to that, such could not have been reasonably foreseen by an experienced contractor acting in accordance with Good Industry Practice in performing its own site investigations in a competent manner before or after the Date of Contract.
"Contract Period"	means the period commencing on the Date of Contract and expiring on the Expiry Date or on such other date as shall be the Termination Date.
"Contract Year"	means a period of 12 months starting on 1 January, with the exception of the first Contract Year, which shall commence on the Date of Contract and end on the 31 December first occurring thereafter, and the last Contract Year, which

	shall commence on 1 January and end on the Expiry Date or the Termination Date, whichever occurs first.
"Data Room"	means the data room established by the Public Partner during and for the purposes of the Procedure, containing certain materials, documents and data in respect of the Project, the content of which is recorded on a non-rewriteable CD/DVD attached in Schedule [●] (<i>Data Room</i>).
"Date of Contract"	means the date this Agreement is executed by the Parties and the Private Partner.
"Deductions"	means deductions to be made out of the Unitary Charge for unavailability and non-performance related events or for other breaches by the Project Company of the provisions of this Agreement, as set out in Clause 29 (<i>Monitoring of Performance</i>) and described in detail in Schedule [●] (<i>Payment Mechanism</i>).
"Delay Liquidated Damages"	means the amounts payable by the Project Company to the Public Partner under the provisions of this Agreement in the event of delay in achieving Services Commencement, as set out in Clause 15.2 (<i>Delay Liquidated Damages</i>).
"Design and Certification Procedure"	means the procedure set out in Schedule [●] (<i>Design and Certification Procedure</i>).
"Design and Construction Contract"	means the contract entered into between the Project Company and the Construction Contractor for the design and construction of the Works and any other works the subject of a Proposal, copies of which have been initialed by the Parties for the purposes of identification.
"Design and Construction Requirements"	means the standards, specifications, procedures and other requirements for design and construction set out or identified and referred to in Schedule [●] (<i>Construction and Services Requirements</i>) as amended from time to time by any Project Company Change or Public Partner Change.
"Design Data"	means all calculations, designs, design or construction information, standards, specifications, plans, drawings, graphs, sketches, models and other materials, including all eye readable or computer or other machine readable data, used, prepared or to be prepared by or on behalf of the Project Company (and/or any of the Project Company's agents, employees, contractors or sub-contractors of any tier) or the Public Partner relating to the design or construction of the Works or the provision of the Services or any Project Company Change, Public Partner Change or the operation, maintenance or improvement of the Project Facilities.
"Designer"	means the competent entity (including any substitute thereof) which may be appointed in such capacity by the Construction Contractor (or the Construction Contractor if no other entity is appointed in such capacity) to carry out the design of the Works and any other works the subject of a Proposal, in accordance with the Design and Construction Contract.
"Detailed Design"	means the detailed design for the construction of the Works or any part thereof referred to as such by Law in connection with the Construction Permit, to be prepared by the Designer upon the instructions of the Construction Contractor under the Design and Construction Contract, based on the Technical Design, in all cases in accordance with the Design and Certification

	Procedure, so as to allow construction in accordance with the Design and Construction Requirements and Services Requirements.
"Determination"	has the meaning given in Clause 6.5.1 (<i>Decision Making</i>).
"Direct Agreement"	means the direct agreement made between the Public Partner, the Agent and the Project Company prior to or upon the Effective Date, in a form which is substantially similar with the form set out in Schedule [●] (<i>Form of Direct Agreement</i>) or in another form otherwise agreed by the Parties.
"Disclosed Data"	has the meaning given in Clause 40.4.1 (<i>Disclaimer</i>).
"Discriminatory Change in Law"	means a Change in Law, the terms of which expressly [affect][apply to]: (a) the Project and not to similar projects; and/or (b) the Project Company [or its Sub-contractors in their capacity as such] and not to other persons; and/or (c) Parties undertaking PPP projects and not other persons.
"Dispute"	has the meaning given in Clause 53 (<i>Disputes Resolution Procedure</i>).
"Dispute Notice"	has the meaning given in Clause 53 (<i>Disputes Resolution Procedure</i>).
"Disputes Resolution Procedure"	means the procedure set out in Clause 53 (<i>Disputes Resolution Procedure</i>).
"Distribution"	means, whether in cash or in kind, any: (a) dividend or other distribution in respect of share capital; (b) reduction of capital, redemption or purchase of shares or any other reorganization or variation to share capital; (c) payments under any Subordinated Finance Documents; (d) the receipt of any payment, contractual arrangement, transfer of asset and other benefit which is not received in the ordinary course of business and on reasonable commercial terms.
"Effective Date"	means the date on which the conditions precedent set out in Clause 2.3 (<i>Pre-Commencement Period and Conditions Precedent</i>) have been satisfied by the Project Company or waived by the Public Partner, as such date is mentioned in the Closing Notice.
"Effective Date Liability Cap"	means an amount of EUR [●].
"Emergency"	means an event causing or, in the reasonable opinion of the Public Partner, threatening to cause death or injury to any individual, or serious disruption to the lives of a number of people or extensive damage to property, or contamination of the environment, in each case which prevents: (a) the normal operation of the Project Facilities; and/or (b) the Services operating under normal circumstances; and, in each case, requires the mobilization of the emergency services.
"Encumbrance"	means any Rights in respect of land and any mortgage, charge, pledge, lien, assignment, option, right to acquire, right of pre-emption, security interest, and any agreement or arrangement to create any of them.

"Equity and Other Subordinated Funds"	means any financing provided to the Project Company other than Senior Debt.
"Equity IRR"	means the projected blended internal rate of return to the Private Partner and any of their affiliates over the entire Contract Period, having regard to Distributions made and projected to be made.
"Estimate"	has the meaning given in Clause 35.1.3(a) (<i>Public Partner Changes</i>).
"Estimated Change in Project Costs"	means, in relation to Clause 35.1 (<i>Public Partner Changes</i>), Clause 36.1 (<i>Qualifying Change in Law</i>), Clause 37.1 (<i>Compensation Events</i>) and Clause 39 (<i>Material Adverse Government Action</i>), the aggregate of any estimated increase in design and construction costs, maintenance and operating costs and financing costs less the aggregate of any estimated reduction in design and construction costs, maintenance and operating costs and financing costs.
"Event of Default"	shall have the meaning given to it in the Senior Loan Agreement.
"Excusing Cause"	means any of the following: (a) a Compensation Event; (b) a Relief Event; (c) a Force Majeure Event; (d) a Material Adverse Government Action.
"Exempt Refinancing"	means: (a) any Refinancing fully contemplated in the Original Base Case; (b) a change in taxation or in accounting treatment; (c) the exercise of rights, waivers, consents and similar actions which relate to day-to-day administrative and supervisory matters, and which are in respect of: (i) breach of representations and warranties or undertakings; (ii) movement of monies between the Project Accounts in accordance with the terms of the Senior Finance Documents; (iii) late or non-provision of information, consents or licenses; (iv) approval of revised technical and economic assumptions in relation to the Original Base Case; (v) failure by the Project Company to obtain any consent by statutory bodies required by the Senior Finance Documents; or (vi) voting by the Senior Lenders and the voting arrangements between the Senior Lenders in respect of the levels of approval required by them under the Senior Finance Documents; (d) any sale of shares in the Project Company by the Private Partner; (e) [any ordinary market dealings in bonds.]
"Expert"	means any person appointed as such from time to time under and subject to the provisions of the Disputes Resolution Procedure.

"Expiry Date"	means the date occurring upon the expiry of a [30-year] period from the Effective Date or such later date as derived as a result of an Original Services Period Extension.
"Financial Close"	means the date of satisfaction of all conditions precedent set out for the entry into force of the Senior Lenders' obligation to make available the funds necessary for the financing of the Project, as defined in the Senior Loan Agreement.
"Financial Close Bond"	means the unconditional on-demand performance bond issued by [a reputable financial institution having a credit rating of BB+ or better (as rated by Standard & Poor's)] with a value of [●], set up by the Private Partner for the benefit of the Public Partner prior to or upon the Works Commencement Date for a validity period of minimum [●] months from the Date of Contract and which might be released earlier if and where required according to the provisions of this Agreement, for the purposes of guaranteeing the fulfilment by the Project Company of its obligations set out in Clauses 2.6.1, 2.6.2, 2.6.3, 2.6.4 and 2.6.5 (<i>Pre-Commencement Period and Conditions Precedent</i>).
"Financing Agreements"	means all or any of the agreements or instruments to be entered into by the Project Company or any of its Affiliates relating to the financing of the Project, including any agreements or instruments (including bond issues or capital market instruments, if case) to be entered into by the Project Company or any of its Affiliates relating to the rescheduling of their indebtedness or any Refinancing.
"First Services Year"	has the meaning given in the definition of Services Year.
"Force Majeure Event"	has the meaning given in Clause 38.1 (<i>Definition of Force Majeure Event</i>).
"General Change in Law"	means a Change in Law which is not a Discriminatory Change in Law or a Specific Change in Law.
"Good Industry Practice"	means the exercise of that degree of skill, care, prudence and foresight and operating practice which would reasonably and ordinarily be expected from time to time of a skilled and experienced contractor or operator (engaged in the same type of undertaking as that of the Project Company) or any sub-contractor under the same or similar circumstances and conditions.
"Guarantee Inspection"	has the meaning given in Clause 23.2.2 (<i>Transfer Inspections</i>).
"Handback Requirements"	means the requirements set out or identified or referred to in Schedule [●] (<i>Construction and Services Requirements</i>).
"HICP"	means the Euro price index under the official description "harmonized index of consumer prices", applicable to the European Union, as published from time to time on the Eurostat website or such other website pertaining to an equivalent body of the European Union displaying the harmonized indexes of consumer prices applicable for European Union and in the European Union Member States.
"ICC Arbitration Rules"	has the meaning given in Clause 53.4 (<i>Disputes Resolution Procedure</i>).
"Independent Engineer"	means [the joint venture formed by and between [●] / company name] and any replacement thereof under the provisions of Clause 6.1 (<i>Appointment of the Independent Engineer</i>), designated to perform the Independent Engineer's

	functions set out in Schedule [●] (<i>Independent Engineer's Functions</i>) until the Service Commencement Date or Termination Date, whichever occurs earlier.
"Independent Engineer's Agreement"	means the agreement made between the Project Company and the Independent Engineer (with the Public Partner acting as third-party beneficiary alongside the Project Company) for the provision by the Independent Engineer of the Independent Engineer's functions set out in Schedule [●] (<i>Independent Engineer's Functions</i>), as amended or replaced from time to time over the course of the Contract Period.
"Indexed"	has the meaning given in Clause 1.2.2 (<i>Interpretation</i>).
"Initial Equity"	means, as at the Termination Date, the initial equity investment disbursed by the Private Partner plus any such other equity contributions approved by the Public Partner, less the Distributions paid by the Project Company to the Private Partner as at the Termination Date.
"Installations"	means machinery, apparatus and the like intended to form or forming part of the Permanent Works.
"Insurance Term"	means any terms and/or conditions required to be included in a policy of insurance by Clause 24.1 (<i>Insurance</i>) and/or Schedule [●] (<i>Insurance</i>) but excluding any risk.
"Interested Parties"	means those persons who may be affected by the carrying out of the Works and/or the Services or who are duly authorized by a Legal Requirement to review or otherwise take an interest in the Works and/or the Services, including the Relevant Authorities and the Statutory Undertakers.
"Interim Project Report"	means the report submitted in accordance with Clause 27.6.2 (<i>Reports in relation to Senior Lenders</i>) covering, <i>inter alia</i> , details of the Event of Default and how such Event of Default occurred, what, if any steps are being taken to rectify the Event of Default, any other steps that the Senior Lenders are proposing to take and the impact this could have on the continuation of this Agreement.
"Investigation"	means any ground or aerial, physical or geophysical investigation of the conditions of the Site, including the surface and subsoil, or archaeological or ecological survey of the Site, to enable the Works and Services to be designed and constructed with due regard for those conditions and for seismic activity in the region of the Site.
"IRR"	means internal rate of return.
"Issuer"	means [insert company name, registered number and country of registration]. [assuming Issuer is different entity to Project Company].
"Joint Insurance Account"	means the joint bank account in the names of the Public Partner and the Project Company having account number [●] and held with [●], as it may be replaced from time to time throughout the Contract Period.
"Joint Insurance Account Agreement"	means the agreement in, or in substantially the form, set out in Schedule [●] (<i>Joint Insurance Account Agreement</i>), to be concluded prior to or upon the Effective Date.

"Last Services Year"	has the meaning given in the definition of Services Year.
"Law"	means the Constitution of the Romanian State and all laws, Government emergency ordinances, ordinances, Government decisions, regulations, orders, norms, directives, decisions, international treaties and conventions to which Romania is a party, as ratified according to the relevant legal provisions, and any secondary legislation, standards, specifications and orders whether technical or general, issued by any Relevant Authority, or an official interpretation thereof, issued by the legislative or executive bodies or by the courts of law or any other competent authority, in each such case having effect within the Romanian State or any part of the Romanian State (whether emanating from within Romania or from any supra national state or community or union of which Romania may be a member or a part – such as the European Union) which is binding on either Party or otherwise applicable in relation to the Project.
"Legal Requirement"	means the requirement of any Law, or any Law, requirement or demand under the Law of any Relevant Authority which has jurisdiction with regard to any part of the Operations or of any Statutory Undertaker whose systems may be affected by the conduct of any of the Operations.
"Liaison Procedure"	means any of the procedures set out in Schedule [●] (<i>Liaison Procedures</i>) or to be developed pursuant to this Agreement in accordance with such Schedule [●] (<i>Liaison Procedures</i>), as the case may be.
"Long Stop Date"	means the date falling [●] months after the Planned Services Commencement Date as it may be extended from time to time in accordance with Clauses 37.1 (<i>Compensation Events</i>), 37.2 (<i>Relief Events</i>) or 38 (<i>Force Majeure</i>).
"Losses"	means all damages, losses, liabilities, costs, expenses (including legal and other professional charges and expenses), and charges whether arising under statute, contract or otherwise, internal costs or demands.
"Maintenance Works"	means works for the maintenance or repair of the Project Facilities after the Services Commencement Date but excluding any Routine Maintenance.
"Make-Whole Payment"	means: (a) in relation to termination of the Agreement under Clause 43 (<i>Termination on Public Partner Default</i>) [Change in Law] [MAGA], the Make-Whole Payment to be made pursuant to and in accordance with Condition [●] of the Bonds; (b) in relation to termination of the Agreement under Clause 44.2 (<i>Voluntary termination by Public Partner</i>), the modified Make-Whole Payment to be made pursuant to and in accordance with Condition [●] of the Bonds; and (c) in relation to termination of the Agreement in any other circumstances, zero.
"Material Adverse Government Action" or "MAGA"	has the meaning given in Clause 39 (<i>Material Adverse Government Action</i>).

"Method Statement"	means any such method statement submitted by the Project Company as set out in Schedule [●] (<i>Construction and Services Requirements</i>).
"Mobilization Works and Duties"	means those works, services and duties described in Schedule [●] (<i>Mobilization Works and Duties</i>) to be performed by the Project Company before the Works Commencement Date.
"Monthly Payment"	means the payment to be made by the Public Partner to the Project Company on a monthly basis as set out in more detail in Schedule [●] (<i>Payment Mechanism</i>).
"Monthly Report"	has the meaning given in Schedule [●] (<i>Records and Reports</i>).
"Net Present Value"	means the aggregate of the discounted values, calculated as of the estimated date of the Refinancing, of each of the relevant projected Distributions, in each case discounted using the Base Case Equity IRR.
"Notice"	has the meaning given in Clause 48.1 (<i>Requirement for Writing</i>).
"Operating Contract"	means the contract concluded prior to or upon the Effective Date between the Project Company and the Operator for the operation and maintenance of the Project Facilities, based on the heads of terms agreed upon between the Project Company and the Operator and approved by the Public Partner on or before the Date of Contract.
"Operations"	means the activities of the Project Company (and/or any Project Company Related Party) in connection with the performance of any of the obligations of the Project Company under this Agreement (including, but not limited to, the obligations to carry out the Works and Services, and the conduct of any works or operations of the Project Company (and/or any Project Company Related Party) on or in relation to the Project Facilities and/or the Site).
"Operator"	means the person referred to as such on the Date of Contract in Schedule [●] (<i>Details of the Project Company, Private Partner, Construction Contractor and Operator</i>) engaged by the Project Company to procure the provision of the Services (or any of them) and any substitute operator engaged by the Project Company as may be permitted by this Agreement.
"Option Period"	has the meaning given in Clause 24.3.4 (<i>Uninsurable Risks</i>).
"Original Base Case"	means the financial model agreed between the Parties dated [●] for the purpose of, amongst other things, calculating the Unitary Charge as attached in Schedule [●] (<i>Original Base Case</i>) [in hard copy or in electronic form on a non-rewritable storage medium], as updated from time to time in accordance with the terms of this Agreement.
"Original Expiry Date"	means the Expiry Date as at the Effective Date.
"Outstanding Senior Debt"	means the sum of: (a) the total amount outstanding at the Termination Date to the Senior Lenders under any Senior Finance Documents and accrued but unpaid interest and including default interest; plus (b) any winding-up costs, prepayment charges [(including any Make-Whole Payments)] [except on termination for Force Majeure or Project Company Default], costs of terminating any hedging arrangements or

	other breakage costs, payable by the Project Company [or the Issuer] to the Senior Lenders as a result of a prepayment of sums due under the Senior Finance Documents, or, in the case of early termination of interest rate hedging arrangement, as a result of termination of the Agreement, subject to the Project Company[, the Issuer] and the Senior Lenders mitigating all such costs [unless the amount, or the formula for determining the amount of such costs is fixed in advance under the terms of the relevant Senior Finance Documents]; LESS (without double counting): (i) all credit balances held on any bank accounts held by or on behalf of the Project Company [and/or the Issuer] on the Termination Date; (ii) all amounts (including net hedge termination payments) payable by the Senior Lenders to the Project Company as a result of a prepayment of amounts outstanding under the Senior Finance Documents or termination of the Agreement; and (iii) all other amounts received or due to be received by the Senior Lenders on or after the Termination Date and before the date on which compensation is payable by the Public Partner to the Project Company as a result of enforcing any other rights that they may have.
"Original Services Period Extension"	means, in connection with any delay in achieving Services Commencement referred to in Clause 15.2 (<i>Delay Liquidated Damages</i>), such period of time from the Original Expiry Date which is equal to the maximum duration of any of the delays incurred in achieving Services Commencement against the Planned Services Commencement Date, provided that, in any circumstances, the Original Services Period Extension may not be longer than [12] months.
"Original Transfer"	has the meaning given in Clause 47.4.7 (<i>Change of Ownership and Change of Control</i>).
"Payment Report"	has the meaning given in Clause 34.1.2 (<i>Monthly Invoices</i>).
"Performance Bond"	means the performance bond referred to in Clause 15.1 (<i>Performance Bond</i>).
"Permanent Works"	means the Works or any part of the Project Facilities having a permanent function (regardless of the length of the design life of such works) which are existing or are to be or have been designed, constructed and completed by the Project Company in accordance with the Design and Construction Requirements and the Services Requirements.
"Persistent Breach"	means a breach which has given rise to the Public Partner's right to terminate this Agreement accordance with Clause 42.1.2(c) (<i>Persistent Breach</i>).
"Persistent Obstruction"	means any discovery of Archaeological Finds or Contaminations adversely affecting the progress of the Works and which lasts for a continuous period of 12 months, as certified by the Independent Engineer, unless a Public Partner Change or a Project Company Change has been implemented so as to remove or overcome the adverse effects of such occurrences or the Parties have agreed any other measures in this respect.
"Physical Damage Policies"	has the meaning given in Clause 24.2.1 (<i>Reinstatement</i>).

"PI Insurance"	has the meaning given in Clause 24.1.13 (<i>Insurance</i>).
"Planned Effective Date"	means [12] months after the Date of Contract, as such may be extended to [15] months after the Date of Contract pursuant to Clause 2.4 (<i>Pre-Commencement Period and Conditions Precedent</i>) or as otherwise agreed by the Parties.
"Planned Services Commencement Date"	means [30] months after the Works Commencement Date, as such may be extended under the relevant terms of this Agreement.
"Planned Works"	means all works and activities carried out on the Project Facilities that are not defined as Urgent Works, as identified and agreed on the Project Company's Annual Program and which the Project Company can be reasonably expected to plan for, including without limitation Routine Maintenance works, Maintenance Works and all works undertaken by Statutory Undertakers (excluding works of an emergency nature).
"Planning Consents"	means: (a) Urban Planning Certificates which do not require the amendment or issuance of new Urban Plans; or (b) Urban Planning Certificates and amended or new Urban Plans, if the Urban Planning Certificates require the amendment or issuance of new Urban Plans.
"PPP Right(s)"	means the rights granted by the Public Partner to the Project Company as listed in Clause 4.3 of this Agreement, in order to perform the Works and supply the Services, and for no other purposes and activities as may be permitted by this Agreement.
"Pre-Commencement Period"	means the period from the Date of Contract to the Effective Date.
"Pre-Refinancing Equity IRR"	means the Equity IRR calculated immediately prior to any Refinancing, but without taking into account the effect of such Refinancing and using the Original Base Case as updated (including as to the performance of the Project).
"Private Partner"	means the person(s) that signed the Agreement with the Public Partner as well as any person from time to time holding part or all of the share capital in the Project Company.
"Prohibited Act"	has the meaning given in Clause 59 (<i>Corrupt Practices</i>).
"Project"	means [the design, construction, operation and maintenance of the Project Facilities] and the conduct of any other part of the Works and Services during the Contract Period and the financing of such activities.
"Project Accounts"	means accounts referred to in and required to be established under the Senior Finance Documents.
"Project Company Change"	means a variation in the design, quality or quantity of the Works or the Services initiated by the Project Company in accordance with Clause 35.2 (<i>Project Company Changes</i>).
"Project Company Default"	means one of the following events:

- (a) breach by the Project Company of any of its obligations under this Agreement which materially and adversely affects the performance of the Services;
- (b) Persistent Breach;
- (c) [insolvency-related events relevant to the Project Company/Holdco/key Parties].
- (d) breach by the Project Company of Clause 47.5 (*Sub-contracting*);
- (e) breach by the Project Company of Clause 47.3 (*Assignment*);
- (f) breach of Clause 47.4.7 (*Change of Ownership and Change of Control*);
- (g) Abandonment of the Works by the Project Company at any time;
- (h) [failure by the Project Company to commence the Works [at [●] Site] by [specified date]];
- (i) failure by the Project Company to achieve the [Services Commencement Date] by the [Long Stop Date];
- (j) failure by the Project Company to provide [●] available [places/areas/beds/ cells] for a [●] period;
- (k) the accumulation by the Project Company of [●] or more [Unavailability Points] in any [specified period];
- (l) failure by the Project Company to provide [●] available [places/areas] for a [●] period [and accumulation of [●] [Unavailability Points] in respect of the same period];
- (m) subject to Clause 24.3 (*Uninsurable Risks*), a breach by the Project Company of its obligation to take out and maintain [Required Insurances];
- (n) breach of Clause 3.4 (*Refinancing*);
- (o) [breach of Clause 59 (Corrupt Practices)/commission of a [prohibited act] by the Project Company (or Sub-contractor) or their employees acting independently;]
- (p) [sector-specific breaches];
- (q) [social/environmental breaches]; or
- (r) material breach by the Project Company of its [Health and Safety] obligations under Clause [●]/this Agreement which results in the criminal investigation, prosecution and conviction of the Project Company or any Project Company Related Party or the Public Partner under [applicable Health and Safety Regime] (an "**H&S Conviction**"), provided that an H&S Conviction of a Project Company Related Party or the Public Partner shall not constitute a Project Company Default if, within ninety (90) Business Days from the date of the H&S Conviction (whether or not the H&S Conviction is subject to an appeal or any further judicial process), the involvement in the project of each relevant Project Company Related Party (which in the case of an individual director, officer or employee shall be deemed to include the Project Company Related Party of which that person is a director, officer or employee) is terminated and a replacement is appointed by the Project

	Company provided always that, in determining whether to exercise any right of termination or right to require the termination of the engagement of a Project Company Related Party under Clause 42 (<i>Project Company Default</i>), the Public Partner shall: (i) act in a reasonable and proportionate manner having regard to such matters as the gravity of any offense and the identity of the person committing it; and (ii) give all due consideration, where appropriate, to action other than termination of this Agreement.
"Project Company Notice of Change"	has the meaning specified in Clause 35.2.1 (<i>Project Company Changes</i>).
"Project Company Related Party"	means: (a) an officer, servant or agent of the Project Company, or any Affiliate of the Project Company and any officer, servant or agent of such a person; (b) any Sub-contractor of any tier and any of their officers, servants or agents; and (c) any person on or at the Site at the express or implied invitation of the Project Company (other than a Public Partner Related Party).
"Project Company's Representative"	means the person appointed by the Project Company pursuant to Clause 25.2 (<i>Project Company's Representative</i>) or such substitute as may be appointed by the Project Company pursuant to Clause 25.3 (<i>Change of Representatives</i>).
"Project Documents"	means the agreements entered or to be entered into by the Project Company for the performance of the obligations under this Agreement which are listed in Schedule [●] (<i>Project Documents</i>).
"Project Facilities"	means, upon its completion, the [subject matter of the investment project (e.g., the motorway, the hospital, the prison)].
"Project Facilities Closure"	means any partial or total closure or other restriction on the use of the Project Facilities and including, for the avoidance of doubt, any closure required by an Emergency and any closure required for any works by any Relevant Authority or Statutory Undertaker.
"Project Quality Director"	means the person so appointed in accordance with Clause 26.5 (<i>Project Quality Director</i>).
"Proposal"	means a submission made by the Project Company according to, and described in more detail in, Schedule [●] (<i>Construction and Services Requirements</i>).
"Protester"	means any person engaged in protest action against the construction or operation of the Project Facilities or against the construction or operation of facilities similar to the Project Facilities generally or the operation of concession or public-private partnership projects.
"Public Partner Change"	means a change in Works or Services by the Public Partner which the Project Company is obliged to implement under Clause 35.1 (<i>Public Partner Changes</i>).
"Public Partner Default"	means:

	(a) an expropriation, sequestration or requisition of a material part of the Assets and Return Assets and/or shares of the Project Company by the Public Partner [or other governmental entity]; (b) a failure by the Public Partner to make payment of any amount of money exceeding [●] (indexed) that is due and payable by the Public Partner under this Agreement within 30 days of service of a formal written demand by the Project Company, where that amount fell due and payable [two] (or more) months prior to the date of service of the written demand; (c) a breach by the Public Partner of its obligations under this Agreement which substantially frustrates or renders it impossible for the Project Company to perform its obligations under this Agreement for a continuous period of [two] months; (d) [other project-specific key failures]; or (e) [protracted MAGA event/other termination event for which Public Partner bears same risk/responsibility].
"Public Partner Notice of Change"	has the meaning specified in Clause 35.1.2 (<i>Public Partner Changes</i>).
"Public Partner Related Party"	means an officer, agent, contractor, employee or sub-contractor (of any tier) of the Public Partner acting in the course of his office or employment or appointment (as appropriate) but excluding in each case the Project Company and any Project Company Related Party.
"Public Partner's Representative"	means the person that the Public Partner will appoint pursuant to Clause 25.1 (<i>The Public Partner's Representative</i>) in order to perform such functions in relation to the carrying out of this Agreement on behalf of the Public Partner as the Public Partner may decide from time to time or such substitute or substitutes as may be appointed by the Public Partner pursuant to Clause 25.3 (<i>Change of Representatives</i>).
"Qualifying Change in Law"	means: (a) a Discriminatory Change in Law; (b) a Specific Change in Law; or (c) a General Change in Law; which comes into effect during the Services Period and which involves additional capital expenditure for the Project.
"Qualifying Refinancing"	means any Refinancing that will give rise to a Refinancing Gain greater than zero that is not an Exempt Refinancing.
"Quality Documentation"	means the Quality Manuals, quality plans, quality procedures, inspection and test plans, work instructions or like documentation, as appropriate, which describe and define a Quality Management System.
"Quality Management System"	means the organizational structure, procedures, processes and resources for determining and implementing quality policy, as referred to in Schedule [●] (<i>Quality Management</i>).

"Quality Manual"	means any quality manual or procedure referred to in Clause 26.2 (<i>Quality Manuals, Plans and Procedures</i>).
"Quarter"	means a period of 3 calendar months beginning on 1 January, 1 April, 1 July or 1 October.
"Refinancing"	means: (a) any amendment, variation, novation, supplement or replacement of any Senior Finance Documents; (b) the grant of any waiver or consent, or the exercise of any similar right under any Financing Agreement (other than any Senior Finance Documents); (c) the creation of or granting of any form of benefit or interest in either the Senior Finance Documents or the contracts, revenues or assets of the Project Company whether by way of security or otherwise; and (d) any other arrangement having been put in place by the Project Company or by another person which has an effect which is similar to any of (a)-(c) or which has the effect of limiting the Project Company's ability to carry out any of (a)-(c).
"Refinancing Gain"	means a positive amount equal to $(A-B) - C$, where: A = the Net Present Value of Distributions, as projected immediately prior to the Refinancing (taking into account the effect of the Refinancing and using the Original Base Case as updated (including as to the actual past performance of the Project) so as to be current immediately prior to the Refinancing) to be made to the Private Partner or affiliate over the remaining Contract Period following the Refinancing; B = the Net Present Value of Distributions, as projected immediately prior to the Refinancing (but without taking into account the effect of the Refinancing and using the Original Base Case as updated (including as to the actual past performance of the Project) so as to be current immediately prior to the Refinancing) to be made to the Private Partner or affiliate over the remaining Contract Period following the Refinancing; and C = any adjustment required to raise the Pre-Refinancing Equity IRR to the Base Case Equity IRR.
"Registration System"	has the meaning given in Clause 22.2 (<i>Registration and Handling of Notifications</i>).
"Reinstatement Plan"	has the meaning given in Clause 24.2.3(a) (<i>Reinstatement</i>).
"Reinstatement Works"	has the meaning given in Clause 24.2.3(a) (<i>Reinstatement</i>).
"Related Agreements"	has the meaning given in Clause 53.5 (<i>Disputes Resolution Procedure</i>).
"Relevant Authority"	means any of the European Union or national institutions, such as the Parliament, the Government, the ministries, the other relevant bodies of central or local public administration, including the autonomous administrative authorities, as well as other institutions or entities which are part of the central or local administration and have authority over the Project or the Project Company or any other relevant competence or jurisdiction with respect to the

	Project or the Project Company, including the heads of all these authorities, institutions or entities, as mentioned above, but excluding in all cases the courts of law and other jurisdictional bodies.
"Relevant Incident"	has the meaning given in Clause 24.2.3 (<i>Reinstatement</i>).
"Relevant Payment"	has the meaning given in Clause 24.3.4 (<i>Uninsurable Risks</i>).
"Relevant Proceeds"	has the meaning given in Clause 24.2.3(b)(iii) (<i>Reinstatement</i>).
"Relief Event"	means: (a) actions of Protesters as set out in Clause 11.4 (<i>Qualifying Protesters Actions</i>); (b) actions of Trespassers as set out in Clause 11.5 (<i>Qualifying Trespassers Actions</i>); (c) discoveries of Archaeological Finds as set out in Clause 16.5 (<i>Costs</i>); (d) discoveries of Contaminations as set out in Clause 17.2 (<i>Contaminations</i>); (e) any: (i) official or unofficial strike; (ii) lockout; or (iii) other social dispute, whether authorized or not, but only to the extent that such events apply to the entire [insert relevant sector] sector or a significant part of it and not only to the Project Company; (f) [any material failure or shortage of fuel or transport, where such failure or shortage is ongoing for a period in excess of [seven (7)] days or any failure or shortage of power;]
"Remedial Period"	has the meaning given in Clause 29.1.2 (<i>Monitoring of Performance</i>).
"Report"	means any report given in accordance with Clause 27.1 (<i>Required Reports</i>) and "Reports" mean all of them.
"Representative"	means the Public Partner's Representative and/or the Project Company's Representative, as required by the context.
"Required Action"	has the meaning set out in Clause 29.6.3 (<i>Public Partner Step-in Rights</i>).
"Required Insurances"	means the insurances specified in Schedule [●] (<i>Insurance</i>) required to be taken out and maintained by the Project Company under the provisions of this Agreement.
"Return Assets"	means the public assets granted for free to the Project Company and the assets created during the carrying out of the Project, including, without limitation, the Site, the Project Facilities, the Temporary Works, the Installations, and the other assets created pursuant to the Works, such assets being handed back to the Public Partner on the Expiry Date or Termination Date, whichever occurs first.

"Review Procedure"	means the procedure whereby submissions are made to the Independent Engineer or to the Public Partner as set out in Schedule [●] (<i>Review Procedure</i>).
"Rights in respect of land"	means any right over or in respect of or otherwise relating in any way to land, whether temporary, revocable, legal, contractual or otherwise of whatever nature.
"Routine Maintenance"	means work which is short term or cyclic in nature and necessary to keep the Project Facilities in good and safe working order, including without limitation [examples: minor repairs to all elements of the Project Facilities, cleansing, verge and horticultural maintenance and inspections and surveys associated with any of the foregoing including repair of potholes, ruts, steps, spalled joints, areas of cracking, crazing and/or fretting].
"Schedule"	means Schedules 1 to [●] to this Agreement and any other schedule which might be concluded by the Parties in connection with this Agreement.
"Schedule of Project Facilities Closures"	means a schedule submitted by the Project Company under Clause 21.2.1 (or any revision thereof submitted under Clause 21.2.2 or Clause 21.2.3 (<i>Submission of Annual Programs</i>)) indicating the period or periods during which the Project Company plans to effect or otherwise reasonably foresees any Project Facilities Closure (including for the avoidance of doubt any Project Facilities Closure in respect of any works by any Relevant Authority or Statutory Undertaker).
"Senior Debt"	means the financing provided by the Senior Lenders under the Senior Finance Documents.
"Senior Debt Rate"	means the non-default interest rate as defined by the Senior Finance Documents or such other lower rate as the Parties may agree.
"Senior Finance Documents"	means the finance documents entered into between the Senior Lenders and the Project Company for the purpose of financing the Project, including the Senior Loan Agreement(s) [insert defined terms for relevant bond financing documents to include bond trust deed, subscription agreement (terms and conditions of the bond) and security documents].
"Senior Lender"	means a person providing finance to the Project Company under the Senior Finance Documents.
"Senior Lenders' Technical Adviser"	means any adviser appointed by the Senior Lenders for the purposes of providing technical advice or reports in accordance with the Senior Finance Documents.
"Senior Loan Agreement"	means the credit facility agreements to be executed by the Project Company with the Senior Lenders prior to or upon the Effective Date with the prior written consent of the Public Partner (to be identified upon the Effective Date) or as amended with the prior written approval of the Public Partner pursuant to Clause 3.3 (<i>Changes to Project Documents and Financing Agreements</i>).
"Services Commencement"	means the commencement of the Services in respect of the Project Facilities.
"Services Commencement Certificate"	means the certificate to be issued by the Independent Engineer pursuant to Clause 19.3 (<i>Services Commencement Certificate</i>).

"Services Commencement Date"	means the date of Services Commencement which, for the avoidance of doubt, shall be as specified in the Services Commencement Certificate.
"Services Period"	means the period from the Services Commencement Date until the earlier to occur of the Expiry Date and the Termination Date.
"Services Requirements"	means the standards, specifications, procedures and other requirements for the operation, maintenance, measurement and monitoring of the Project Facilities set out or identified or referred to in Schedule [●] (<i>Construction and Services Requirements</i>), as amended from time to time in accordance with Clause 35.1 (<i>Public Partner Changes</i>) and Clause 35.2 (<i>Project Company Changes</i>).
"Services Year"	means a period of 12 months starting on 1 January, with the exception of the First Services Year, which shall commence on the Services Commencement Date and end on the 31 December first occurring thereafter (the "First Services Year"), and the last Services Year, which shall commence on 1 January and end on the Termination Date or on the Expiry Date, whichever will occur first (the "Last Services Year").
"Services"	means the activities of or required of the Project Company (and/or any Project Company Related Party) in connection with the performance of any obligations of the Project Company under this Agreement, and the conduct of any works or operations of the Project Company (and/or any Project Company Related Party) on or in relation to the Project Facilities, in all cases with the objective of delivering the Services Requirements but, for the avoidance of doubt, excluding the Works.
"Services Monitoring"	has the meaning given in Clause 22.1 (<i>Quality Control</i>).
"Services Monitoring Plan"	has the meaning given in Clause 22.1 (<i>Quality Control</i>).
"Site"	means, subject to Clause 10.7 (<i>Boundaries of Site</i>), land, spaces, roads and any surface required for the Project Facilities shown or identified as such on the Date of Contract on the drawings listed in Schedule [●] (<i>Project Facilities</i>), as this may be amended throughout the Contract Period in accordance with this Agreement.
"Site Materials"	has the meaning given in Clause 10.10 (<i>Disposal of Materials</i>).
"Snagging Items"	means minor defects, differences or omissions which do not prevent or impair the safe operation and use of the Project Facilities according to their purpose and under the terms and conditions of this Agreement and which do not prevent the Independent Engineer from issuing a Works Completion Certificate as provided in Clause 18.1.2(b) (<i>Works Completion Certificate</i>).
"Snagging List"	means the list of the relevant Snagging Items as referred to in Clause 18.1.2(b) (<i>Works Completion Certificate</i>).
"Specific Change in Law"	means any Change in Law which specifically refers to: (i) the provision of [services the same as or similar to the Services] and/or: (ii) the holding of shares in companies whose main business is providing [services the same as or similar to the Services]

"Statutory Undertaker"	means any provider of Utilities which, according to the Law, benefits of rights of passage and rights to perform works in relation to placing parts of Utilities or inspecting, maintaining, adjusting, repairing, altering or renewing parts of Utilities, changing the position of such parts of Utilities or removing them, or works required for or incidental to any such works (including, in particular, breaking up or opening the carriageway, or any sewer, drain or tunnel under it, or tunnelling or boring under the carriageway).
"Sub-Contractor"	means any person directly engaged by the Project Company from time to time as may be permitted by this Agreement to procure the provision of the Works and/or the Services (or any of them) and references to sub-contractors means sub-contractors (of any tier) of the Project Company.
"Sub-Contractor Breakage Costs"	means the value of Losses that have been or will be reasonably and properly incurred by the Project Company as a direct result of the termination of the Agreement, but only to the extent that: (a) the Losses are incurred in connection with the Project and in respect of the provision of services or the completion of works, including: (i) any materials or goods ordered or Sub-contracts placed that cannot be cancelled without such Losses being incurred; (ii) any expenditure incurred in anticipation of the provision of services or the completion of works in the future; (iii) the cost of demobilization including the cost of any relocation of equipment used in connection with the Project; and (iv) redundancy payments; (b) the Losses are incurred under arrangements and/or agreements that are consistent with terms that have been entered into in the ordinary course of business and on reasonable commercial terms, excluding loss of profits calculated over a period which is longer than [one (1) year] after the Termination Date; and (c) the Project Company and the relevant Sub-contractor have each used their reasonable endeavors to mitigate the Losses.
"Sub-Contracts"	means the contracts entered into between the Project Company and the Sub-Contractors.
"Subordinated Finance Documents"	means any agreements under which the Private Partner or its shareholders make(s) subordinated debt available to the Project Company.
"Suitable Substitute Project Company"	means a person selected in compliance with the applicable Laws and the provisions of the Direct Agreement, as: (a) having the legal capacity, power and authority to become a party to and perform the obligations of the Project Company under this Agreement; and (b) employing persons with appropriate qualifications, experience and technical competence and having the resources (including committed financial resources) that are sufficient to enable it to perform the obligations of the Project Company under this Agreement.

"Tax"	means any kind of tax, duty, levy or other charge (other than VAT) whether or not similar to any in force at the Date of Contract and imposed by a Relevant Authority.
"Technical Design"	means the technical design for the construction of the Works or any part thereof referred to as such by Law in connection with the Construction Permit, to be developed from the Tender by the Designer upon the instructions of the Construction Contractor under the Design and Construction Contract, in all cases in accordance with the Design and Certification Procedure, so as to allow construction in accordance with the Design and Construction Requirements and Services Requirements.
"Technical Dispute"	has the meaning given in Clause 53 (<i>Disputes Resolution Procedure</i>).
"Technical Standards"	means all technical norms, standards and specifications issued by a Relevant Authority from time to time in respect of the design, construction, operation or maintenance of [facilities such as the Project Facilities], as set out in more detail in Schedule [●] (<i>Construction and Services Requirements</i>).
"Temporary Works"	means all works and things of a temporary nature of every kind required in or about the execution and completion of the Permanent Works or of capital works in connection with the operation, maintenance or improvement of the Project Facilities.
"Tender"	means the best and final offer submitted by the Private Partner in the final stage of the Award Procedure, attached hereto as Schedule [●] (<i>Tender</i>).
"Tender Submission Date"	means [●].
"Termination Date"	means any date of early termination of this Agreement in accordance with Clauses 2.5 (<i>Pre-Commencement Period and Conditions Precedent</i>), 42 (<i>Project Company Default</i>), 43 (<i>Public Partner Default</i>), 44 (<i>Other Events of Termination</i>), 38.3 (<i>Termination due to Prolonged Force Majeure</i>) or 59.2 (<i>Termination for Corrupt Gifts and Fraud</i>).
"Termination Sum"	means any compensation payable by the Public Partner to the Project Company on an early termination of this Agreement under Clause 46 (<i>Compensation on Termination</i>).
"TPL Risk"	means a risk which is required to be insured under the third-party liability insurance policy.
"Transfer Certificate"	means the certificate issued by the Public Partner in accordance with the procedure set out in Clause 23.4 (<i>Transfer Certificate</i>).
"Transfer Guarantee"	has the meaning given in Clause 23.3 (<i>Transfer Guarantee</i>).
"Transfer Requirements"	has the meaning given in Clause 23.1 (<i>Conditions for Transfer</i>).
"Trespasser"	means any person (other than a Protester), including nomads and travelers, present on such portions of the Site which have been handed over by the Public Partner to the Project Company from time to time for the purposes of this Agreement, who is not entitled to be on such portions of the Site.
"Unavailability Incident"	means the Project Facilities Closures occurred during the Services Period, for any other reason than a Permitted Closure, as described in more detail in

	Schedule [●] (<i>Payment Mechanism</i>), which entails the application of Unavailability Points, as such term relate to the number of points set out in the same Schedule [●] (<i>Payment Mechanism</i>) for the corresponding Unavailability Incident, which shall be further converted into Unavailability Points Deductions.
"Uninsurable"	means, in relation to a risk, either that: (a) insurance is not available to the Project Company in respect of the Project in the European Union insurance market with reputable insurers of good standing in respect of that risk; or (b) the insurance premium payable for insuring that risk is at such a level that the risk is not generally being insured against in the European Union insurance market with reputable insurers of good standing by project Companies.
"Unitary Charge"	means the unitary charge owed and payable by the Public Partner to the Project Company throughout the Services Period in consideration of the Project Facilities being available to Users and set out in the form of Annual Unitary Charge, as provided for in this Agreement and as it may be adjusted pursuant to the provisions of this Agreement and in accordance with Schedule [●] (<i>Financial Adjustments</i>).
"Urban Planning Certificates"	means the urban planning certificates referred to as such by Law, issued by the local authorities with powers and responsibilities on the administrative territories where the Project Facilities are situated, which are necessary for the purposes of obtaining the Construction Permit and which may either require the amendment or the issuance of new Urban Plans or not.
"Urban Plans"	means the local urbanism plans referred to as such by Law, approved by the local authorities with powers and responsibilities on the administrative territories where the Project Facilities are situated, approving the planning of the construction/upgrade/enhancement of the Project Facilities.
"Urgent Works"	means all works and activities carried out on the Project Facilities in connection with Emergencies, Incidents and other occurrences that require immediate or urgent repair, as specified in more detail in Schedule [●] (<i>Construction and Services Requirements</i>), and works of an emergency nature undertaken by Statutory Undertakers.
"User(s)"	means the users of the Project Facilities.
"User Tariff"	means the tariff which is payable by the Users in consideration of their usage of the Project Facilities, as such is set, collected and as it may be amended in accordance with this Agreement.
"User Tariff Revenues"	means all revenues actually received by or on behalf of the Project Company in connection with the practicing of User Tariffs for the use of the Project Facilities.
"User Tariff Services"	means the element of the Services relating to tariffing of Users as set out below: (a) the setting of the tariff(s);

	(b) tariff collection; (c) violation processing; (d) User Tariff Revenue handling and accounting; and (e) customer service and support provided to Users.
"Utilities"	means the utilities networks such as water, sewerage, electricity, gas, thermal power and electronic communications, existing in/on the Site and include any pipes, electric or electronic communications cables, sewer, underwater conduits, thermal power, gas or gathering lines, networks consisting thereof or any other device or equipment which is a component of the power, water, gas, thermal power, sewage and electronic communications networks, or which is required for the operation thereof.
"VAT"	means any value added taxes.
"Warning Notice"	has the meaning given in Clause 29.4 (<i>Warning Notices</i>).
"Works"	means the Permanent Works (including the Installations) and the Temporary Works required in accordance with the Design and Construction Requirements and the Method Statements for the design, construction, testing and completion of the Project Facilities, including, in connection therewith, [●] and archaeological and ecological works.
"Works Commencement Certificate"	means the certificate to be issued by the Independent Engineer pursuant to Clause 9.2 (<i>Estimated Date of Satisfaction</i>).
"Works Commencement Date"	means the date specified as such in the Works Commencement Certificate.
"Works Completion Certificate"	means the certificate issued by the Independent Engineer pursuant to Clause 18.1 (<i>Works Completion Certificate</i>).
"Works Completion Date"	means the date mentioned as such in the Works Completion Certificate where the whole of the Works are deemed to be completed (either fully or subject to Snagging Items, as the case may be) under the terms of this Agreement.
"Works Period"	means the period from the Works Commencement Date until the Works Completion Date or the Termination Date, whichever occurs first.
"Works Program"	means the detailed program of design, investigations, construction and related works, to be submitted by the Project Company in accordance with Clause 13.1 (<i>Scope</i>) or any amended or varied version thereof substituted in accordance with Clause 13.3 (<i>Variations to the Works Program</i>).
"Year"	means a calendar year.

1.2 Interpretation

1.2.1 In this Agreement, except where the context otherwise requires:

- (a) the masculine includes the feminine and vice versa;

- (b) the singular includes the plural and vice versa;
- (c) a reference in this Agreement to any clause, sub-clause, paragraph, schedule or annex is, except where it is expressly stated to the contrary, a reference to such clause, sub-clause, paragraph, schedule or annex of this Agreement;
- (d) save where otherwise provided in this Agreement, any reference to this Agreement or to any other document shall include any permitted variation, amendment or supplement to such document;
- (e) any reference to any enactment, order, regulation or other similar instrument shall be construed as a reference to the enactment, order, regulation or instrument (including any EU instrument) as amended, replaced, consolidated or re-enacted;
- (f) references to the Private Partner shall be construed as references to any and all of the Project Company's shareholders;
- (g) a reference to a person means a reference to any natural person or legal entity, Romanian or foreign, public or private, such as undertakings, companies or partnerships and their successors and permitted assignees or transferees and a reference to a public body means a reference to a public body of Romania;
- (h) the words "includes" or "including" shall be construed without limitation;
- (i) headings are for convenience of reference only; and
- (j) references to days shall be deemed as references to calendar days, and if the last day of a period is not a Business Day, such period shall be deemed to expire on the next Business Day.

1.2.2 References to amounts expressed to be "**Indexed**" are:

- (a) in respect of the indexation of the Unitary Charge, references to such amounts as indexed in accordance with the indexation formulas and mechanisms set out in Schedule [●] (*Payment Mechanism*);
- (b) [in respect of the indexation of amounts other than those referred to under paragraph (a), references to such amounts multiplied by:

$$\frac{\text{Index}_1}{\text{Index}_2}$$

where Index₁ is the value of HICP most recently published prior to the relevant calculation date, while Index₂ is the value of HICP on the Tender Submission Date (or on any other date expressly set out herein).]

1.2.3 Wherever this Agreement obliges the Public Partner to pay any amount to the Project Company in respect of any costs, expenses, fees, charges, liabilities, Losses, Claims or other sums incurred by the Project Company:

- (a) such obligation shall be construed as applying only to so much of such sums as have been properly incurred on an arm's length commercial basis or, where not incurred on an arm's length commercial basis (including where the payment is made to the Construction Contractor, the Operator or to another Affiliate of the Project Company), so much of them as are proper and reasonable; and
 - (b) the Project Company shall, where requested by the Public Partner, provide supporting evidence of such costs, expenses, fees, charges, liabilities, Losses, Claims or other sums.
- 1.2.4 The Public Partner shall not be imputed with knowledge of any fact, matter or thing unless that fact, matter or thing is within the knowledge of those of its servants or agents (including the Public Partner's Representative) who have responsibilities in connection with the performance of the Works, the conduct of the Services or otherwise in relation to the Project.
- 1.2.5 Any reference to the statutory duties or functions of the Public Partner shall be a reference to such duties or functions (including powers and discretions) from time to time.
- 1.2.6 Any disclaimer, waiver or limitation of liability set out in this Agreement is and shall be construed as a disclaimer, waiver or limitation of liability save for any liability which may occur as a result of willful misconduct or gross negligence of either Party (including of any person for whom that Party is responsible) and the Parties hereby agree that no provision of this Agreement may be relied on for waiving or limiting the liability of that Party for willful misconduct or gross negligence.
- 1.2.7 The Parties acknowledge that each of them has had the opportunity to take legal advice concerning this Agreement, and agree that no provision or word used in this Agreement shall be interpreted to the disadvantage of either Party because that Party was responsible for or participated in the preparation or drafting of this Agreement or any part of it.
- 1.2.8 The Parties agree that they shall always act in good faith to fulfil their obligations hereunder, and this however shall not affect the Public Partner's right to take measures and/or consent to a document or a course of action at its sole discretion, where and as provided herein.
- 1.2.9 Notwithstanding any other provision of this Agreement, no Party shall be entitled to recover compensation or make a claim under this Agreement in respect of any Loss that it has incurred to the extent that it has already been compensated in respect of that Loss whether by way of insurance or otherwise.

1.3 Language

- 1.3.1 This Agreement has been executed in both Romanian language and English language, both languages being equally authoritative.
- 1.3.2 All correspondence, drawings, Design Data, test reports, certificates, specifications and information shall be entirely in Romanian. All operating and maintenance instructions, name and rating plates, identification labels and other written and printed matter required

for the Services shall be in Romanian, as shall instructions and notices to the public and staff and all other signing and information notices.

- 1.3.3 Parties may agree that specific documents from those set out in Clause 1.3.2 (*Language*) may be prepared in English and, in this case, translated in Romanian. In case of any inconsistencies, the Romanian version shall prevail.

1.4 Duration

- 1.4.1 The Contract Period commences on the Date of Contract.
- 1.4.2 The Pre-Commencement Period will commence on the Date of Contract and terminate on the earlier of:
- (a) the Effective Date; or
 - (b) the Termination Date.
- 1.4.3 The Works Period will commence on the Works Commencement Date and terminate on the earlier of:
- (a) the Works Completion Date; or
 - (b) the Termination Date.
- 1.4.4 The Services Period will commence on the Services Commencement Date and terminate on the earlier of:
- (a) the Expiry Date; or
 - (b) the Termination Date.

2 PRE-COMMENCEMENT PERIOD AND CONDITIONS PRECEDENT

- 2.1 During the Pre-Commencement Period, the Parties shall perform their relevant obligations as provided for under this Agreement.
- 2.2 Without prejudice to any other obligations set out under this Agreement, the Parties shall take the following measures and fulfil the following obligations for the purposes of achieving the Effective Date:
- 2.2.1 The Parties shall use their best efforts and endeavors to reach Financial Close;
 - 2.2.2 The Project Company shall execute the Project Documents;
 - 2.2.3 The Project Company shall execute the Financing Agreements and shall fulfil or procure the waiver of the conditions precedent required under the Senior Finance Documents for the availability of funds to the Project Company and for the Financial Close to occur which are under the Project Company's control;

- 2.2.4 The Project Company shall take out the Required Insurances as specified in Part 1 of Schedule [●] (*Insurance*), further to such insurances having been reviewed and approved by the Public Partner pursuant to Clause 24.1.2 (*Insurance*);
- 2.2.5 The Project Company shall use its best efforts, and the Public Partner shall support such efforts, to procure that the identity of the Independent Engineer is approved by the Senior Lenders;
- 2.2.6 The Project Company shall procure that the Private Partner provide to the Project Company the amount of Equity and Other Subordinated Funds required to be provided pursuant to Schedule [●] (*Initial Equity and Other Subordinated Funds*);
- 2.2.7 The Public Partner shall deliver the Site to the Project Company;
- 2.2.8 The Public Partner shall deliver to the Project Company the Planning Consents for the construction of the Works, duly issued and in full force and effect;
- 2.2.9 The Parties shall execute the Direct Agreement and the Joint Insurance Account Agreement with all relevant counterparties.

2.3 The Effective Date shall occur subject to the following conditions being fulfilled:

- 2.3.1 The Public Partner having received from the Senior Lenders a notice confirming that the Financial Close has occurred;
- 2.3.2 The Public Partner having received the Performance Bond in compliance with the requirements in Clause 15.1 (*Performance Bond*).

2.4 If by the Planned Effective Date the conditions set out in Clauses 2.3.1 and 2.3.2 (*Pre-Commencement Period and Conditions Precedent*) have not been satisfied or waived, the Parties agree to convene promptly to examine in good faith any measures which may reasonably be taken (including, as appropriate, any change to the Planned Effective Date) in accordance with the Law and taking into consideration the reasonable interests of the Parties so as to allow the fulfilment of this Agreement.

2.5 If the Parties fail to reach agreement on the measures as set out in Clause 2.4 (*Pre-Commencement Period and Conditions Precedent*) within [120] days from the date either Party has requested the other Party to convene, then either Party is entitled to unilaterally terminate this Agreement by a minimum [15-day] written notice to the other Party and to the Private Partner and this Agreement shall automatically terminate on the date specified in such termination notice which date shall not be later than [●] days from the date of the notice.

2.6 If this Agreement is terminated pursuant to Clause 2.5 (*Pre-Commencement Period and Conditions Precedent*), the Public Partner shall be entitled to call the Financial Close Bond if the Project Company has failed to fulfil one or several of the following obligations:

- 2.6.1 the obligation to execute the Project Documents, as set out in Clause 2.2.2 (*Pre-Commencement Period and Conditions Precedent*);
- 2.6.2 the obligation to take out the Required Insurances, as set out in Clause 2.2.4 (*Pre-Commencement Period and Conditions Precedent*);

- 2.6.3 the obligation to procure that the Private Partner provide the Project Company the amount of Equity and Other Subordinated Funds, as set out in Clause 2.2.6 (*Pre-Commencement Period and Conditions Precedent*);
- 2.6.4 the obligation to execute either of the Direct Agreement and the Joint Insurance Account Agreement, as set out in Clause 2.2.9 (*Pre-Commencement Period and Conditions Precedent*);
- 2.6.5 the obligation to provide, or to procure that the Construction Contractor provides to the Public Partner the Performance Bond, as set out in Clause 2.3.2 (*Pre-Commencement Period and Conditions Precedent*).

2.7 The Parties hereby expressly and irrevocably agree that the amount of the Financial Close Bond is a fair and equitable pre-estimate of all losses and damages incurred by the Public Partner in connection with the Project as a result of the Project Company's failure to fulfil its obligations referred to in Clauses 2.6.1, 2.6.2, 2.6.3, 2.6.4 and 2.6.5 (*Pre-Commencement Period and Conditions Precedent*) and the Parties further agree that such amount is not in any way excessive and may not be construed as excessive by reference to all relevant circumstances of the Project.

2.8 If the conditions precedent indicated in Clause 2.3 (*Pre-Commencement Period and Conditions Precedent*) are satisfied by the Planned Effective Date, as extended pursuant to Clause 2.4 (*Pre-Commencement Period and Conditions Precedent*), if applicable, or as otherwise agreed by the Parties, the Parties shall promptly convene and shall sign the Closing Notice. The Party refusing to sign the Closing Notice, when invited by the other Party in accordance with the provisions of this Clause 2.8 (*Pre-Commencement Period and Conditions Precedent*) and of Clause 48 (*Notices*), shall be liable for all damages caused by such refusal.

2.9 The Public Partner shall release the Financial Close Bond within [15] days as of the Effective Date.

3 DOCUMENTATION

3.1 Ambiguities

In the case of any ambiguity or discrepancy between the provisions in the main body of this Agreement and those in any Schedule or between the provisions of any Schedules and in the absence of express provisions stating which of the ambiguous or discrepant provisions shall prevail, the following prevailing order shall apply:

- 3.1.1 In case of any ambiguity or inconsistency between the provisions of the main body of this Agreement and the provisions of any Schedule, the provisions of the main body of this Agreement shall prevail;
- 3.1.2 In case of any ambiguity or inconsistency between the provisions of different Schedules, the provisions of the Schedule which mostly relates to the subject-matters referred to by the provisions in question shall prevail upon the provisions of other Schedules;
- 3.1.3 If neither Schedule mostly relates to the subject-matters referred to by the provisions in question, the applicable provisions shall be established by taking into account the overall interpretation of the relevant provisions of the main body of this Agreement and the Schedules.

3.2 Project Documents and Financing Agreements

- 3.2.1 Prior to the Effective Date, the Project Company shall submit to the Public Partner for review and consent the Project Documents (as listed in Schedule [●]) and the Financing Agreements before such Project Documents and Financing Agreements are executed.
- 3.2.2 The Public Partner shall review and consent to the Project Documents and the Financing Agreements referred to under Clause 3.2.1 (*Project Documents and Financing Agreements*) by taking into consideration the following criteria:
- (a) The Project Documents and Financing Agreements shall be based on market practice and concluded on reasonable commercial terms, shall be compliant with the Tender and shall have regard to the objective of minimizing to the greatest possible extent the Public Partner's liabilities on termination of this Agreement;
 - (b) The Financing Agreements shall take utmost account of the provisions of this Agreement;
 - (c) The Public Partner shall review the Project Documents according to the Review Procedure.

3.3 Changes to Project Documents and Financing Agreements

- 3.3.1 If at any time an amendment is made to any Project Document or Financing Agreement or the Project Company enters into a new Project Document or Financing Agreement (or any agreement which affects the interpretation or application of any Project Document or Financing Agreement), the Project Company shall deliver to the Public Partner a copy of each such amendment or agreement within [10] Business Days of the date of its signing, certified as a true copy by an officer of the Project Company.
- 3.3.2 The Project Company shall perform its obligations under and observe all the provisions of the Project Documents and shall not:
- (a) terminate or agree to the termination of all or part of any Project Document;
 - (b) make or agree to any material variation to any Project Document;
 - (c) in any material respect depart from its obligations or waive or allow to lapse any rights it may have, or procure that any counterparty to a Project Document in any material respect departs from its obligations or waives or allows to lapse any rights it may have, under any Project Document; or
 - (d) enter into (or permit the entry into by any other person of) any agreement replacing all or part of (or otherwise materially and adversely affecting the interpretation of) any Project Document,

unless the proposed course of action (and any relevant documentation) has been submitted to the Public Partner for review and there has been no objection made by the Public Partner within [●] Business Days of receipt by the Public Partner of such submission and that the Project Company has complied with the provisions of Clause 47 (*Assignment*,

Change in Control and Sub-Contracting). The Public Partner may only make objection on the basis specified in the Review Procedure.

- 3.3.3 The Project Company shall not, without the prior written consent of the Public Partner, enter into new Financing Agreements or terminate, amend, or waive its rights under the Financing Agreements if the same may reasonably be expected to have a material adverse effect on the ability of the Project Company to perform its obligations under the Project Documents or this Agreement.
- 3.3.4 No amendment, waiver or exercise of a right under any Financing Agreement or Project Document shall have the effect of increasing the Public Partner's liabilities on early termination of this Agreement unless the Project Company has obtained the prior written consent of the Public Partner to such increased liability for the purposes of this Clause 3.3.4. In the event of any conflict between the provisions of this Clause 3.3.4 and any other provision of this Agreement, the provisions of this Clause 3.3.4 shall prevail unless such other provision contains an explicit derogation from this Clause 3.3.4.
- 3.3.5 Any amendment or variation of any Financing Agreement which constitutes a Refinancing shall be carried out in accordance with the provisions of Clause 3.4 (*Refinancing*).

3.4 Refinancing

- 3.4.1 The Project Company shall promptly provide the Public Partner with full details in relation to any contemplated Refinancing, which shall include the proposed changes to the Original Base Case, a justification of the assumptions on which it is based, the proposed contractual documentation and any other information that the Public Partner may reasonably request in relation to that Refinancing.
- 3.4.2 The Public Partner shall, at all times, have unrestricted rights to audit the Original Base Case used (or proposed to be used) in relation to a Refinancing.
- 3.4.3 The Project Company shall obtain the Public Partner's prior written consent in relation to any Qualifying Refinancing.
- 3.4.4 The Public Partner shall be entitled to receive a [●] share of any Refinancing Gain in a Qualifying Refinancing.
- 3.4.5 The Public Partner shall have the right to elect to receive its share of any Refinancing Gain in a Qualifying Refinancing as:
 - (a) a lump-sum payment which amount shall not exceed the relevant Distribution made on or about the date of the Refinancing and shall be due on the date immediately after the date of the relevant Distribution; or
 - (b) [an increase of any fee payable by the Project Company to the Public Partner over the remaining Agreement period/or a reduction of the Unitary Charge to be paid by the Public Partner to the Project Company over the remaining Agreement period][by reduced User Tariffs]; or
 - (c) [a combination of both].

- 3.4.6 The Project Company shall pay, on behalf of the Public Partner, all reasonable costs of external advisers appointed by the Public Partner in relation to a Refinancing or potential refinancing and the calculation of a Refinancing Gain (any amount so paid shall be deducted when calculating Refinancing Gain).

4 THE PROJECT

4.1 Provision of Works and Services

Subject to and in accordance with the provisions of this Agreement, the Project Company shall:

- 4.1.1 design, construct, complete, commission and test the Works;
- 4.1.2 provide the Services during the Services Period;
- 4.1.3 conduct the other Operations during the Contract Period; and
- 4.1.4 finance the activities referred to in Clauses 4.1.1 to 4.1.3 (*Provision of Works and Services*)

at its own cost and risk without recourse to public funds (other than as expressly provided in this Agreement) [or to Government or Public Partner guarantees].

4.2 Sole Business

The Project Company shall not engage in any business or activity other than the business or activity included in, or otherwise required to enable the Project Company to conduct, the Operations.

4.3 PPP Right(s)

Subject to and in accordance with the provisions of this Agreement, the Public Partner grants to the Project Company:

- 4.3.1 [Example provision for use in motorway projects: The exclusive right (including the right to contract out according to the terms and conditions hereof) to design, finance, build, complete, contract, test, reinstate, maintain and operate the Project Facilities, to provide the Services and perform the other Operations, the Project Company enjoying to this effect a concession right.]
- 4.3.2 [Insert other rights granted by the Public Partner to the Project Company (e.g., concessions, superficies, rights of use, the access right provided under Clause 10.1 (*Access for Project Company*)).]

4.4 Improvements

The Project Company may, if it thinks fit, improve the Project Facilities, subject to and in accordance with the provisions of this Agreement, in particular Clause 35.2 (*Project Company Changes*).

4.5 Public Use

From the Services Commencement Date, the Project Company shall open and, subject to Clause 21.2 (*Submission of Annual Programs*), keep open the Project Facilities for public use.

4.6 Standard of Performance

The Project Company shall at its own cost and risk be solely responsible for procuring that the Operations are at all times performed:

- 4.6.1 in accordance with the Design and Construction Requirements and/or Services Requirements (as relevant) and the Method Statements;
- 4.6.2 in an efficient, effective and safe manner and in accordance with Good Industry Practice and the Quality Documentation;
- 4.6.3 in a manner that is not likely to be injurious to health or to cause damage to property or environment;
- 4.6.4 in compliance with the Technical Standards;
- 4.6.5 in such manner as to enable the Public Partner to discharge its statutory duties in relation to the Project and as not to detract from the image and reputation of the Public Partner;
- 4.6.6 with proper liaison with all parties affected by the Works and/or the Services;
- 4.6.7 in a manner which interfaces co-operatively with other contractors engaged by the Public Partner, other central or local authorities with powers and responsibilities in relation to the Project;
- 4.6.8 in compliance with all applicable Legal Requirements and Consents; and
- 4.6.9 in a manner which minimizes the Public Partner's liability to third parties in relation to the exercise or breach of the Public Partner's functions in relation to the Project.

4.7 Co-operation

Each Party shall co-operate with the other in the exercise and performance of their respective rights and obligations under this Agreement.

4.8 Discrimination

- 4.8.1 In carrying out the Project, the Project Company shall not discriminate directly or indirectly or by way of victimization or harassment, against any person on grounds of color, race, nationality, or ethnic or national origins or on any other ground the purpose or effect of which is to restrict or to prevent the recognition, the use or the exercise, under conditions of equality, of human rights and fundamental freedoms or of rights recognized under the Law.
- 4.8.2 In the event that the Project Company enters into any Sub-Contract in connection with this Agreement, it shall impose obligations on its Sub-Contractors in terms substantially similar to those imposed on it pursuant to this Clause 4.8 (*Discrimination*).

5 ORIGINAL BASE CASE

5.1 Errors in the Original Base Case

The Project Company shall bear the entire risk of any errors in or omissions from the Original Base Case and shall not be entitled to any compensation from or other redress against the Public Partner in relation to any loss or damage that it suffers in consequence of such error or omission.

6 INDEPENDENT ENGINEER

6.1 Appointment of the Independent Engineer

6.1.1 The Independent Engineer shall be selected by the Project Company following a competitive selection procedure, conducted in compliance with the Law and the Legal Requirements to the extent applicable to the Project Company. Subject to a prior notice to the Project Company pursuant to Clause 6.1.2 (*Appointment of the Independent Engineer*), the Public Partner may supervise and contribute to the selection procedure of the Independent Engineer, including (without being limited to) by giving its consent on the terms of reference of the selection procedure, [appointing half of the members of any committee, commission or other body appointed to act in connection with the selection of the Independent Engineer]. The Independent Engineer shall be a[n internationally] well reputed person, outside any conflict of interests, with significant experience in the construction and operation of investment projects of a similar nature to the Project and shall act as Independent Engineer and perform the Independent Engineer's functions as set out in Schedule [●] (*Independent Engineer's Functions*). The Project Company shall procure that the identity of the Independent Engineer is approved by the Senior Lenders.

6.1.2 For the purposes of the Public Partner exercising its supervision rights provided for by Clause 6.1.1 (*Appointment of the Independent Engineer*), the Public Partner shall send a notice to the Project Company informing on whether it wishes to exercise such supervision rights and, in the affirmative, describing in detail the manner how the Public Partner intends to supervise and contribute to the procedure for the selection of the Independent Engineer within [●] days from the date of this Agreement or, in the case of a replacement Independent Engineer, the date the Parties have agreed on or acknowledged the termination of the previous Independent Engineer's Agreement.

6.2 Costs of the Independent Engineer

6.2.1 Each of the Project Company and the Public Partner shall bear its own costs and expenses relating to the selection and the appointment of any Independent Engineer.

6.2.2 Half of the amount of the consideration payable to the Independent Engineer for its services provided under the Independent Engineer's Agreement shall be borne by the Project Company, while the Public Partner shall contribute with the other half of the amount of such consideration throughout the entire term of the Independent Engineer's Agreement. The Public Partner shall pay its contribution to the consideration for the services provided by the Independent Engineer under the Independent Engineer's Agreement and shall exercise such rights in connection with the carrying out of the Independent Engineer's Agreement as set out in Schedule [●] (*Independent Engineer Terms and Conditions*). The

Project Company shall, within [●] days from the execution of the Independent Engineer's Agreement, execute the deed of assignment referred to in Schedule [●] (*Deed of Assignment*) whereby any and all rights and receivables of the Project Company in respect of the Public Partner's contribution to the consideration due to the Independent Engineer under the Independent Engineer's Agreement are assigned to the Independent Engineer so as to enable a direct payment of such contribution to be made by the Public Partner to the Independent Engineer.

- 6.2.3 In the event that the Project Company fails to pay on time the fees owed to the Independent Engineer, the Public Partner shall be entitled to pay such fees on behalf of the Project Company and set-off the respective amount plus interest at the level set out in Clause 34.5.1 (*Interest on Late Payments*) against the Monthly Payment.
- 6.2.4 In the event that the Public Partner fails to pay on time its contribution to the consideration of the services performed by the Independent Engineer under the Independent Engineer's Agreement, the Project Company shall pay such fees on the Public Partner's behalf as set out in Schedule [●] (*Independent Engineer Terms and Conditions*) and add the amount of such paid fees plus interest at the level set out in Clause 34.5.1 (*Interest on Late Payments*), to the next Monthly Payment.
- 6.2.5 In case of any appointment of an Independent Engineer after the Date of Contract, the deed of assignment referred to in Schedule [●] (*Deed of Assignment*) shall be executed by the Project Company and the Independent Engineer so appointed upon the date the Independent Engineer's Agreement is executed.

6.3 Independent Engineer's Agreement

- 6.3.1 The Independent Engineer's Agreement provides and shall at all times provide for the performance by the Independent Engineer of the Independent Engineer's functions and responsibilities as set out in Schedule [●] (*Independent Engineer's Functions*). The Independent Engineer shall act independently, diligently, professionally and in an objective and impartial manner in fulfilling its functions and duties. Neither of the Parties shall be liable to the Independent Engineer or to any other public or private entity for any of the Independent Engineer's actions, measures, deeds, documents, determinations and/or omissions which would be contrary to or in conflict with the provisions of this Agreement, the Independent Engineer's Agreement and/or the Law.
- 6.3.2 The Independent Engineer's Agreement (as may be amended or replaced throughout the Contract Period) provides and shall at all times provide for the appointment of the Independent Engineer until the Services Commencement Date.
- 6.3.3 The Independent Engineer's Agreement provides and shall at all times provide for the right of the Independent Engineer to request access to any documents from the Public Partner (via the Project Company) and from the Project Company which the Independent Engineer may consider necessary in order to perform its functions and responsibilities in a proper and professional manner, as well as the right of the Independent Engineer to have access to locations belonging to the Public Partner (via the Project Company) and to the Project Company, to conduct investigations and audits on such matters in relation to the Project

as the Independent Engineer considers necessary for the proper performance of its functions and responsibilities as set out in Schedule [●] (*Independent Engineer's Functions*).

6.4 Consultation Rights and Reporting

- 6.4.1 The Parties shall be entitled to consult with the Independent Engineer on any matter relating to the Works, to the initial Annual Program and to the Services Commencement.
- 6.4.2 In respect of any reports and information to be supplied by the Independent Engineer to the Public Partner, the Project Company shall be entitled to review and comment on all such reports and information before such reports and information are sent to the Public Partner.
- 6.4.3 The Independent Engineer's Agreement may provide that the Independent Engineer shall provide reports and information to the Senior Lenders or the Agent to the extent such reports and information are in relation with the functions and duties of the Independent Engineer as performed under this Agreement and the Independent Engineer's Agreement. In respect of any such reports and information to be supplied by the Independent Engineer to the Senior Lenders or the Agent, both the Project Company and the Public Partner shall be entitled to review and comment on all such reports and information, before such reports and information are sent by the Independent Engineer to the Senior Lenders or the Agent. The Independent Engineer shall take such comments into account (as far as appropriate) prior to submitting the relevant reports and information to the Senior Lenders or the Agent.

6.5 Decision Making

- 6.5.1 Wherever under this Agreement and in accordance with the terms of the Independent Engineer's Agreement the Independent Engineer is required to exercise its discretion by giving or issuing any decision, opinion, consent, certificate or certification or determination or expressing its satisfaction, approval or no objection, or otherwise giving instructions or taking action which may affect the rights and obligations of the Parties (each, a "**Determination**"), the Independent Engineer shall exercise such discretion impartially within the terms of this Agreement and of the Independent Engineer's Agreement and having regard to all the circumstances. Prior to any such exercise of discretion, the Independent Engineer shall afford the Parties a reasonable opportunity to express their respective views with respect to the subject matter of the Determination in accordance with the terms of the Independent Engineer's Agreement and shall make the Determination as soon as practicable and in any event within [30] days as of the date the Independent Engineer is notified to this effect by either Party, save where other periods for making the Determination are expressly specified by the provisions of this Agreement and save as specified in Clause 6.5.2 (*Decision Making*).
- 6.5.2 In the event that the Independent Engineer has comments regarding the Determination, including reasons for delaying or withholding the Determination, the same shall be communicated to the Parties within the period specified in Clause 6.5.1 (*Decision Making*) or by other provisions of this Agreement, together with an indication of the due date by which potential changes should be made so that the Independent Engineer is able to make the Determination within an additional period the same with the period specified in Clause 6.5.1 (*Decision Making*) or by other provisions of this Agreement.

- 6.5.3 Any Determination made by the Independent Engineer in accordance with the terms of this Agreement shall be binding upon the Parties who shall act in accordance therewith unless and until overruled or modified by the Expert or the Arbitration Tribunal, as the case may be.
- 6.5.4 Any Party who disagrees with a Determination made by the Independent Engineer or the withholding by the Independent Engineer of a Determination may, within [15] days from the receipt of the communication of the Determination or the decision to withhold the Determination, submit the subject matter of the Determination to the Expert or the Arbitration Tribunal, as the case may be, pursuant to Clause 53 (*Disputes Resolution Procedure*).

PART II. MOBILIZATION, WORKS COMMENCEMENT AND SITE

7 ACCESS

7.1 The Public Partner shall make available to the Project Company:

7.1.1 *[Example provision: the Site [on the Date of Contract];*

7.1.2 *[Insert other assets needing to be made available by the Public Partner to the Project Company and the relevant date/deadline].*

7.2 From the *[Date of Contract]* and until the end of the Contract Period, the Public Partner shall make the Site available to the Project Company and the Project Company Related Parties for the purposes of carrying out the Mobilization Works and Duties and other works pursuant to Clause 8 (*Mobilization*) or, as provided for in Clause 10.1 (*Access for Project Company*), as shall be required for the carrying out of the Works and, following the Services Commencement Date, the Services.

7.3 On the *[Date of Contract]*, the Parties shall sign minutes to account for the handover of the Site *[and other assets]* from the Public Partner to the Project Company in the form set out in Schedule *[●]* (*Handover Minutes*).

7.4 The Project Company shall have access to the necessary portions of the Site in order to perform Investigations under the terms and conditions provided for by Law and by this Agreement.

8 MOBILIZATION

8.1 Site Inspection

8.1.1 Without limitation to any other provision of this Agreement (including without limitation Clause 40.4.2 (*Disclaimer*)), but without prejudice to the provisions of Clause 37 (*Compensation Events and Relief Events*), on the Effective Date, the Project Company shall be deemed to have, and warrants that it has:

- (a) inspected and examined to its satisfaction the Site and their surroundings and, where applicable, any existing structures or works on, over or under the Site;
- (b) satisfied itself as to the nature of the climatic, hydrological, ecological, environmental and general conditions of the Site, the nature of the ground and subsoil, the form and nature of the Site, the risk of injury or damage to property adjacent to or affecting the Site and to occupiers of such property, the nature of the materials (whether natural or otherwise) to be excavated, and the nature of the design, work, Installations and materials necessary for the execution of the Works and provision of the Services;
- (c) satisfied itself as to:
 - (i) the means of communication with and access to and through the Site, the accommodation it may require and the adequacy of the rights of access set out in Clause 10.1 (*Access for Project Company*) for those purposes; and

- (ii) the possibility of interference by persons (other than the Public Partner and other than persons claiming rights or title for the Public Partner) with access to or use of the Site under any Legal Requirement;
 - (iii) the precautions and times and methods of working necessary to prevent any nuisance or interference, whether public or private, being caused to any third parties; and
 - (iv) the assets to which it will acquire rights and the nature and extent of the risks assumed by it under this Agreement;
- (d) gathered all information necessary to perform its obligations under this Agreement and other obligations assumed, including:
 - (i) information as to the nature, location and condition of the land (including hydrological, geological, geo-technical and sub-surface conditions); and
 - (ii) information relating to areas of archaeological scientific or natural interest, local conditions and facilities and the quality of existing structures.
- (e) thoroughly examined, checked and satisfied itself as to the adequacy, correctness and suitability of all Design Data made available to the Project Company by the Public Partner and which the Project Company has adopted or made use of in satisfying the Design and Construction Requirements and the Services Requirements or which the Project Company intends to adopt or make use of;
- (f) has conducted its own analysis and review of the other materials, documents and data referred to in Clause 40.4.1 (*Disclaimer*) which bear on any of the matters referred to in Clauses 8.1.1(a), 8.1.1(b) and 8.1.1(c) (*Site Inspection*); and
- (g) generally obtained for itself all necessary information as to the risks, contingencies and all other circumstances which may influence or affect its ability to satisfy the Design and Construction Requirements and the Services Requirements and its obligation to carry out the Works and the Services.

8.1.2 The provisions of any sub-clause of this Clause 8.1 (*Site Inspection*) shall be without limitation to the provisions of any other sub-clause of this Clause 8.1 (*Site Inspection*).

8.2 No Relief

The Project Company shall not in any way be relieved from any obligation under this Agreement nor shall it be entitled to claim against the Public Partner on grounds that any information, whether obtained from the Public Partner or otherwise (including information made available by the Public Partner) is incorrect or insufficient and shall make its own enquiries as to the accuracy and adequacy of that information.

8.3 Investigations and Surveys

8.3.1 The Project Company shall promptly notify the Independent Engineer, with a copy to the Public Partner, in accordance with the Review Procedure, of any Investigation (other than

those forming part of the Mobilization Works and Duties) which it is intending to carry out before the Works Commencement Date.

- 8.3.2 At the reasonable request of the Project Company, the Public Partner shall use its reasonable endeavors to procure, to the extent possible through the proper exercise of its powers under any relevant Law, access to such parts of the Site which are still to be made available to the Project Company pursuant to Clause 7 (*Access*) as the Project Company may reasonably require for the purpose of carrying out the Investigations referred to in Clause 7.4 (*Access*), provided that for the avoidance of doubt, the Public Partner shall have no obligation to procure access to any land outside of the Site.
- 8.3.3 Any access given by the Public Partner under this Clause 8.3 (*Investigations and Surveys*) shall be for the particular activity only and shall not grant or be deemed to grant any legal or other interest in land.
- 8.3.4 Before the Works Commencement Date, the Project Company may carry out any Investigation which forms part of the Mobilization Works and Duties or which has been notified to the Independent Engineer, with a copy to the Public Partner, pursuant to Clause 8.3.1 (*Investigations and Surveys*), provided that prior to commencing any such Investigation the Project Company shall have provided to the Independent Engineer, with a copy to the Public Partner, such evidence as the Independent Engineer may reasonably require that the Project Company is properly covered by all relevant insurances in order to carry out the Mobilization Works and Duties and, in addition to that, no objections have been made by the Independent Engineer to the Investigations notified by the Project Company pursuant to Clause 8.3.1 (*Investigations and Surveys*) on the grounds set out in Schedule [●] (*Review Procedure*).
- 8.3.5 The Project Company shall, upon request, promptly provide the Independent Engineer and the Public Partner with copies of all information, records and test results (including any interpretation of such test results) resulting from the Investigations referred to in Clause 8.3.4 (*Investigations and Surveys*).

8.4 Other Mobilization Works and Duties

Before the Works Commencement Date the Project Company may mobilize such resources and carry out such further design and other works (other than works subject to Clause 8.3 (*Investigations and Surveys*) or Clause 8.5 (*Works by Relevant Authorities and Statutory Undertakers*)) and/or activities, at its own cost and expense, as shall be appropriate having regard to the expected date for satisfaction of the conditions referred to in Clause 9.1 (*Conditions to Works Commencement*), provided that:

- 8.4.1 the Project Company shall have provided to the Independent Engineer, with a copy to the Public Partner, such evidence as the Independent Engineer may reasonably require that the Project Company is properly covered by all relevant insurances in order to carry out such further design and other works and/or activities as envisaged by this Clause 8.4 (*Other Mobilization Works and Duties*); and
- 8.4.2 this Clause 8.4 (*Other Mobilization Works and Duties*) shall not authorize the doing of anything which would affect the physical integrity of the Site.

8.5 Works by Relevant Authorities and Statutory Undertakers

- 8.5.1 If the Project Company wishes before the Works Commencement Date to have any works carried out on the Site by any Relevant Authority or Statutory Undertaker (other than Mobilization Works and Duties), then the Project Company shall give notice of such intended works to the Independent Engineer, with a copy to the Public Partner, under the Review Procedure.
- 8.5.2 The Project Company may procure that the works described in Clause 8.5.1 (*Works by Relevant Authorities and Statutory Undertakers*) are carried out, provided that there has been no objection to such works in accordance with the Review Procedure and the Project Company shall have provided to the Independent Engineer, with a copy to the Public Partner, such evidence as the Independent Engineer may reasonably require that any insurance specified in Clause 24 (*Insurance*) has been effected.
- 8.5.3 The Independent Engineer shall be entitled to object to the works described in a notice given pursuant to Clause 8.5.1 (*Works by Relevant Authorities and Statutory Undertakers*) on the grounds set out in Schedule [●] (*Review Procedure*).
- 8.5.4 The Project Company shall not agree to any variation to the terms of the agreements under which the works described in Clause 8.5.1 (*Works by Relevant Authorities and Statutory Undertakers*) are to be executed unless and until such varied terms are notified to the Independent Engineer, with a copy to the Public Partner, under the Review Procedure and no objection thereto has been made on the grounds set out in Schedule [●] (*Review Procedure*).
- 8.5.5 The Project Company shall bear the cost of the carrying out of the works described in this Clause 8.5 (*Works by Relevant Authorities and Statutory Undertakers*).

9 WORKS COMMENCEMENT CERTIFICATE

9.1 Conditions to Works Commencement

The following shall be conditions to the issue of the Works Commencement Certificate:

- 9.1.1 the Effective Date has occurred;
- 9.1.2 the Consents required by the Law for the performance of the Works have been duly obtained and are in full force and effect;
- 9.1.3 the initial Works Program has been supplied to the Independent Engineer, with a copy to the Public Partner, and no objection thereupon has been made under the Review Procedure;
- 9.1.4 the Project Company has duly complied with its obligations under Clause 24 (*Insurance*);
- 9.1.5 the Project Company has taken any and all measures required according to any Legal Requirement in order to comply with the labor health and safety norms on the Site, as requested by Law prior to the Works Commencement Date; and

- 9.1.6 the Project Company has carried out and completed the Mobilization Works and Duties and notified such to the Independent Engineer, with a copy to the Public Partner.

9.2 Estimated Date of Satisfaction

Prior to the issue of the Works Commencement Certificate, the Project Company shall keep the Independent Engineer and the Public Partner advised by notice of its estimate of the date for satisfaction of the conditions referred to in Clause 9.1 (*Conditions to Works Commencement*) and shall include in any such notice reasonable detail of the circumstances taken into account on making such estimate, provided that any such notice shall be for information and planning purposes only and shall not be binding on the Project Company or the Public Partner for any purpose.

9.3 Works Commencement Certificate

- 9.3.1 Subject to the Independent Engineer having received satisfactory evidence as it may reasonably require from the Project Company and the Public Partner that all the conditions referred to in Clause 9.1 (*Conditions to Works Commencement*) have been satisfied, the Independent Engineer shall issue the Works Commencement Certificate no later than [5] Business Days after the date on which such satisfactory evidence has been received and shall deliver it to the Project Company, with a copy to the Public Partner.
- 9.3.2 The Works Commencement Certificate shall state the Works Commencement Date which, for the avoidance of doubt, shall be determined by the Project Company and which in any event shall be no later than [2 weeks] after the issue of the Works Commencement Certificate.

10 SITE FOR PROJECT FACILITIES

10.1 Access for Project Company

Subject to the conditions set out in Clause 9.1 (*Conditions to Works Commencement*) having been and remaining satisfied, the Public Partner shall from the Works Commencement Date until the end of the Contract Period make available to the Project Company and the Project Company Related Parties access to so much of the Site as shall be required according to the Works Program for the carrying out of the Works and, following the Services Commencement Date, the Services.

10.2 Limitations

- 10.2.1 The PPP Right(s), including the rights of access referred to in Clause 10.1 (*Access for Project Company*), shall subsist for the purposes of carrying out the Works and, following the Services Commencement Date, the Services under the terms and conditions of this Agreement and for no other purpose.
- 10.2.2 Without prejudice to the generality of Clause 10.2.1 (*Limitations*), any access given under Clause 10.1 (*Access for Project Company*) shall be subject to:
- (a) any restrictions provided for by Law relating to the use of land;
 - (b) any requirement for planning consent;

- (c) the rights of access referred to in Clause 50 (*Rights of Access*);
- (d) subject to the provisions of Clauses 50.3 (*Rights of Access*), the right of any Statutory Undertaker or Relevant Authority under any Law or Legal Requirement to have access to the Site for the purposes of carrying out or procuring the carrying out of works or for other specific purpose;
- (e) after the Services Commencement Date, the right of Users or of the public to use the Project Facilities[, subject to the payment of the User Tariff], if and where required by Law and this Agreement; and
- (f) the provisions of Clause 11 (*Security of the Site*),

and the right of access granted by the Public Partner in respect of such land shall be construed to be limited accordingly.

- 10.2.3 Without prejudice to the generality of Clause 10.2.1 (*Limitations*) where land forming part of the Site has been acquired by compulsory purchase for a specified purpose and such purpose has been notified to the Project Company, such land shall not be used by the Project Company other than for activities which are necessary for the achievement of such specified purpose and the right of access granted by the Public Partner in respect of such land shall be construed to be limited accordingly.

10.3 Additional Access

- 10.3.1 Any request by the Project Company that the Public Partner exercise in respect of any land outside the Site any power of entry under any Law (to the extent that the exercise of such power of entry is necessary to enable the Project Company to perform its obligations under this Agreement) shall be dealt with in accordance with Clause 31 (*Statutory Powers*), and the Project Company shall bear all costs and charges in respect of any Losses or Claims arising from such entry.
- 10.3.2 Save as provided in Clause 10.3.1 (*Additional Access*), the Project Company shall procure, and shall bear all costs and charges in respect of any Losses or Claim arising from, any access to any land required in addition to that required to be provided by the Public Partner pursuant to Clause 10.1 (*Access for Project Company*).

10.4 Access Roads

- 10.4.1 [In order to comply with its obligations under this Agreement, the Project Company has access to the Site and may use the Access Roads for this purpose.]
- 10.4.2 The Project Company shall use every reasonable means to prevent any of the Access Roads from being damaged or injured by any traffic of the Project Company or any Project Company Related Parties and, in particular, shall select routes, choose and use vehicles and restrict to distribute loads so that any such extraordinary traffic as will inevitably arise from the moving of materials, Installations, Construction Installation or Temporary Works from or to the Site shall be limited, as far as reasonably possible, and so that no unnecessary damage or injury may be occasioned to such Access Roads.

10.4.3 The right of the Project Company and any Project Company Related Parties to use the Access Roads for the purposes set out in this Agreement shall be subject always to the Project Company's obligations to comply with any Law and Legal Requirements and in respect of ensuring that such Access Roads are sufficiently strong or strengthening such Access Roads and remedying damage thereto as required by this Agreement. Upon the commencement by the Project Company or any Project Company Related Party of using such Access Roads for the purposes of carrying out the Works, the Independent Engineer shall carry out an inspection and shall document the repair condition of such Access Roads at that time.

10.4.4 Upon completion of the Works, the Project Company shall ensure that the Access Roads shall be in a repair condition which is at least the same than that noted by the Independent Engineer in Clause 10.4.3, as such condition shall be certified by the Independent Engineer.]

10.5 Rights in Site

10.5.1 Save for the PPP Right(s) and any rights deriving therefrom, the Project Company shall not acquire any other right in respect of land in, on, under or over the Site.

10.5.2 The Project Company covenants that, except as otherwise provided in this Agreement or agreed by the Parties, throughout the Contract Period it will not dispose of or grant or agree to dispose of or to grant any present or future right(s) or interest(s) in any part of the Site to any third party in any manner whatsoever.

10.5.3 The Project Company hereby acknowledges and agrees that, without prejudice to its rights under this Agreement, the Project Company has no ownership title in the Site. The Parties hereby agree and acknowledge that ownership title to the constructions erected within the Site by the Project Company, including the Works, the Project Facilities and all permanent structures related to or made use of in connection therewith and fixed to the land, shall vest in the Public Partner and such assets shall be handed back, according to the provisions of this Agreement, by the Project Company upon the Expiry Date or the Termination Date, whichever occurs earlier, as Return Assets.

10.6 Observance by Project Company

The Project Company shall observe and comply with the terms and conditions of any Rights in respect of land relating to the Site to the extent such Rights in respect of land are allowed to subsist or to operate pursuant to the terms of this Agreement.

10.7 Boundaries of Site

The boundaries of the Site are listed in Schedule [●] (*Project Facilities*).

10.8 Alteration of the Extent of the Site

10.8.1 The Project Company shall ensure, when, inter alia, preparing the Technical Design and the Detailed Design, that the Permanent Works will be constructed within the boundaries of the Site as they are listed in Schedule [●] (*Project Facilities*) and no alteration of the extent of the Site shall be made other than further to a Public Partner Change or a Project Company Change or as allowed in Schedule [●] (*Construction and Services Requirements*).

- 10.8.2 Subject to the provisions of Clause 35.1 (*Public Partner Changes*), the Public Partner shall be entitled (as between the Public Partner and the Project Company) to exclude any part of the Site from the land on which the Works or, following the Services Commencement Date, the Services are to be carried out or to make additions to the Site so as to extend the boundary of the Site on which the Works or, following the Services Commencement Date, the Services are to be carried out.
- 10.8.3 If the Public Partner exercises the rights referred to in Clause 10.8.2 (*Alteration of the Extent of the Site*) then the Parties shall use their reasonable endeavors to agree any revisions to drawings in Schedule [●] (*Project Facilities*) necessary to reflect such exclusion or addition and if they are unable to reach agreement within [90] days then either Party may refer the Dispute for resolution under the Disputes Resolution Procedure. During the course of any Dispute the Project Company shall provide the Works and Services according to the provisions of this Agreement.

10.9 Site Clearance

The Parties hereby expressly agree and consent that any and all portions of the Site shall be made available to the Project Company as they are according to the handover minutes referred to in Clause 7.3 and the Project Company shall be responsible at its own cost and risk (except as otherwise provided for in this Agreement) for:

- 10.9.1 the removal of all structures, buildings, trees, ammunitions and similar impediments hindering construction on the Site;
- 10.9.2 procuring the clearance, relocation and diversion of all Utilities, which may be affected by the Works or the Services.

10.10 Disposal of Materials

The Project Company may only excavate, extract, dispose of, exploit or otherwise deal with any materials, including without limitation any soil, aggregates, rocks, coal, minerals or other deposits, excavated, arising or produced in connection with the carrying out of the Works or, following the Services Commencement Date, the Services on the Site (but excluding any Archaeological Finds) (together, "**Site Materials**"):

- 10.10.1 if and to the extent that, in the case of excavation or extraction of Site Materials, such excavation or extraction is necessary for the purpose of carrying out of the Works or, following the Services Commencement Date, the Services in accordance with the Design and Construction Requirements or Services Requirements (as relevant);
- 10.10.2 subject to the rights of any third party, whether being rights in or to the Site Materials, Rights in respect of land or otherwise; and
- 10.10.3 subject to any limitation, restriction or condition, whether pursuant to any Law or otherwise, applying to or affecting the right to undertake any such excavation, extraction, disposal, exploitation or other dealing.

11 SECURITY OF THE SITE

11.1 Responsibility for Protesters and Trespassers

Save to the extent the events set out in this Clause 11 (*Security of the Site*) qualify as Relief Events or Compensation Events under the provisions of this Agreement, the Public Partner shall not be responsible for:

- 11.1.1 the presence on or around or entry on to or around the Site (or such parts of the Site which are delivered to the Project Company from time to time under the terms of this Agreement) of; or
- 11.1.2 any other interference with or affecting the Site (or such parts of the Site which are delivered to the Project Company from time to time under the terms of this Agreement) or the vicinity of them; or
- 11.1.3 any other interference with the Works or, following the Services Commencement Date, the Services

by or caused by, any Protester or Trespasser nor for any act, omission or default of any such person at any time from the date the relevant portions of the Site are delivered by the Public Partner to the Project Company under the terms of this Agreement until the earlier to occur of the Termination Date and the Expiry Date. The presence on or around or entry on to or around the Site (or such parts of the Site which are delivered by the Public Partner to the Project Company from time to time under the terms of this Agreement) of, or any other interference with or affecting the Site (or such parts of the Site which are delivered by the Public Partner to the Project Company from time to time under the terms of this Agreement) or the vicinity of them or any other interference with the Works or, following the Services Commencement Date, the Services by or caused by, any Protester or Trespasser and any lawful or unlawful activities of any such person shall not be a breach of the obligations of the Public Partner under Clause 8 (*Mobilization*) or 10 (*Site for Project Facilities*) to make available to the Project Company access to the Site, nor a breach of any other obligation or warranty of the Public Partner under this Agreement, but such may however qualify as Relief Events or Compensation Events under the provisions of this Agreement.

11.2 Project Company to Bear Loss

- 11.2.1 As between the Public Partner and the Project Company, the Project Company shall bear, without recourse to the Public Partner (other than as provided for in Clause 40 (*Compensation Events and Relief Events*)), any Losses suffered by any person on the Site (or such parts of the Site which are delivered to the Project Company from time to time under the terms of this Agreement) or the vicinity thereof which is caused by any Protester or Trespasser, including without limitation any damage to property, any personal injury or death, and any loss of income (including without limitation any reduction in Monthly Payments).
- 11.2.2 For the avoidance of doubt, nothing in Clause 11.2.1 (*Project Company to Bear Loss*) shall affect:
 - (a) any right of the Public Partner to make or recover pursuant to any Claim against any Protester or Trespasser for damage suffered by the Public Partner, its agents or

contractors (other than the Project Company or any Project Company Related Party) or sub-contractors of any tier or any employees of any of them, or

- (b) any right of the Project Company to make or recover pursuant to any Claim against any Protester or Trespasser for damage suffered by the Project Company or any Project Company Related Party.

11.3 No Payments to Protesters and Trespassers

The Project Company shall not give directly or indirectly to any Protester or Trespasser any inducement, monetary or otherwise, with a view to encouraging, avoiding, limiting or influencing the manner of protest activities by that Protester or Trespasser or by other Protesters or Trespassers.

11.4 Qualifying Protesters Actions

[If, throughout the Contract Period, actions of Protesters occur which adversely and materially affect:

11.4.1 the progress of the Works for a duration which in aggregate (*i.e.*, computed by reference to a series of actions of Protesters) is longer than [7] days in any one Contract Year as against the Works Program, as such may have been varied and/or revised in accordance with this Agreement; or

11.4.2 the provision of the Services in accordance with the terms of this Agreement for a duration which in aggregate (*i.e.*, computed by reference to a series of actions of Protesters) is longer than [7] days in one Services Year,

such become a Compensation Event.]

11.5 Qualifying Trespassers Actions

[If, throughout the Contract Period, an action of Trespassers occurs which adversely and materially affects the progress of the Works for a duration which is longer than [7] days as against the Works Program, as such Works Program may have been varied and/or revised in accordance with this Agreement, such becomes a Relief Event.]

PART III. WORKS

12 DESIGN AND CONSTRUCTION

12.1 Responsibility

The Project Company shall be responsible for the design, construction, completion, commissioning and testing of the Works, which shall be carried out in strict accordance with the Design and Construction Requirements, the Method Statements, the Design and Certification Procedure and the Review Procedure and in such manner as to procure satisfaction of the Design and Construction Requirements.

12.2 Design and Certification Procedure

12.2.1 The Project Company shall procure that the Designer shall prepare or supervise the preparation of all Design Data in respect of the Works (including without limitation the Technical Design and the Detailed Design) in accordance with the Design and Construction Requirements and shall comply with the Design and Certification Procedure.

12.2.2 The Project Company shall procure that the certification and the checking procedures referred to in the Design and Certification Procedure are complied with by the appropriate persons referred to therein, including but not limited to the Designer and any independent team or engineer within the Designer, as the case may be, and that such persons are at all relevant times duly authorized to carry out such procedures and to sign the relevant Certificates, as the case may be.

12.2.3 Without limitation to Clause 52.1 (*Project Company's Responsibility*), any failure by any person referred to in the Design and Certification Procedure to fulfil the obligations required of them under the Design and Certification Procedure shall be a breach of the Project Company's obligations under this Agreement.

12.2.4 The Project Company shall carry out the Works in accordance with the Technical Design, the Detailed Design and the other Design Data and, for the avoidance of doubt, Design Data the subject of a Certificate which has been submitted to the Independent Engineer in accordance with the Design and Certification Procedure and the Review Procedure and for which no objection has been made shall not be departed from otherwise than pursuant to a Project Company Change or Public Partner Change.

12.3 Review Procedure

The Project Company shall not commence or permit the commencement of construction of any part of the Works (including the construction or implementation of any Temporary Works) until the Technical Design, the Detailed Design, all other relevant Design Data and all relevant Certificates required in respect of such part of the Works have either been not objected to by the Independent Engineer pursuant to the Review Procedure and/or issued in accordance with Schedule [●] (*Construction and Services Requirements*). Relevant Certificates shall include, without limitation, the Certificates referred to under the Design and Certification Procedure.

12.4 Safety and Security on the Site

The Project Company shall throughout the progress of the Works have full regard for the safety of all persons on the Site (whether lawfully or not) and shall keep the Site and the Works in an orderly state appropriate to the avoidance of danger to such persons. Without limitation to Clause 11 (*Security of the Site*) the Project Company shall take such measures as are reasonably required to prevent the trespass onto the Site of any persons[or livestock] not entitled to be there including, without limitation, fencing of the Site where appropriate.

12.5 Health and Safety

The Project Company shall observe at all times, before the Works Commencement Date and thereafter during the Works Period, any Legal Requirements on labor health and safety applicable in connection with the Mobilization Works and Duties and with the Works.

13 WORKS PROGRAM

13.1 Scope

- 13.1.1 Within [●] days from the Date of Contract, the Project Company shall deliver to the Independent Engineer, with a copy to the Public Partner, a copy of the initial Works Program, in accordance with the Review Procedure
- 13.1.2 The Works Program shall set out the timetable in which the Project Company intends to carry out the investigations, design, construction, commissioning, testing and other works required for the Works. The Works Program must be designed to demonstrate that the Project Company will be carrying out the Works in a manner which will meet the Design and Construction Requirements and the Method Statements.
- 13.1.3 The Project Company shall review and update the Works Program as necessary to ensure that there is a compliant Works Program at all times until the Works Completion Certificate is granted.
- 13.1.4 Where reviews and updates to the Works Program are required to ensure compliance, they shall be submitted to the Independent Engineer, with a copy to the Public Partner, in accordance with the Review Procedure.

13.2 Progress against the Works Program

- 13.2.1 Should it appear to the Independent Engineer, the Public Partner or the Project Company at any time that the actual progress of the Works does not conform with the Works Program then, within [●] days of becoming aware of the same, the Project Company shall:
 - (a) submit to the Independent Engineer, with a copy to the Public Partner, a report identifying the reasons for such non-conformity; and
 - (b) submit to the Independent Engineer, with a copy to the Public Partner, in accordance with the Review Procedure, a revised Works Program which shall demonstrate that the Project Company will comply with the Design and Construction Requirements.

- 13.2.2 The revised Works Program shall be implemented subject to there being no objection thereupon by the Independent Engineer.
- 13.2.3 The Independent Engineer shall be entitled to raise comments in respect of any revised Works Program on the grounds set out in Schedule [●] (*Review Procedure*).

13.3 Variations to the Works Program

- 13.3.1 If the Project Company wishes to make any amendment to the Works Program, other than further to the application of Clause 13.2 (*Progress against the Works Program*), the Project Company shall:
- (a) submit to the Independent Engineer, with a copy to the Public Partner, a report identifying the reasons for such amendment; and
 - (b) submit to the Independent Engineer, with a copy to the Public Partner, in accordance with the Review Procedure, a revised version of the Works Program which shall demonstrate that the Project Company will comply with the Design and Construction Requirements.
- 13.3.2 Any variation to the Works Program shall be implemented subject to there being no objection thereupon by the Independent Engineer.
- 13.3.3 The Independent Engineer shall be entitled to raise comments in respect of the proposed varied Works Program on the grounds set out in Schedule [●] (*Review Procedure*).

13.4 Content of Works Program

The initial Works Program and any revised or varied Works Program shall:

- 13.4.1 be in accordance with Good Industry Practice;
- 13.4.2 be in sufficient detail so as to enable the Independent Engineer and the Public Partner to appropriately monitor and supervise its fulfilment; and
- 13.4.3 provide for the Works to be commenced and pursued in accordance with Clause 13.5 (*Achievement of Completion*).

13.5 Achievement of Completion

The Project Company shall commence the Works promptly following the Works Commencement Date and shall diligently thereafter pursue the Works to procure that they are completed as soon as reasonably practicable to such standard as would require the issue of a Works Completion Certificate and so as to allow Services Commencement no later than the Planned Services Commencement Date.

14 DELAY

14.1 Notice

If at any time and due to any event, the Project Company becomes aware that completion by the Project Company of those obligations to be completed by the Planned Services Commencement

Date is likely to be delayed, the Project Company shall notify the Independent Engineer, with a copy to the Public Partner, of the effect specifying:

- 14.1.1 the reason for the delay or the likely delay;
- 14.1.2 an estimate of the likely effect of the delay to the Planned Services Commencement Date (taking into account any measures that the Project Company proposes to adopt to mitigate the consequences of the delay in accordance with Clause 14.3 (*Duty to Mitigate*)).

14.2 Supply of Information

Following service of a notice by the Project Company pursuant to Clause 14.1 (*Notice*) the Project Company shall promptly supply to the Independent Engineer, with a copy to the Public Partner, any further information relating to the delay which:

- 14.2.1 is received by the Project Company; or
- 14.2.2 is reasonably requested by the Independent Engineer.

14.3 Duty to Mitigate

The Project Company shall take all reasonable steps to mitigate the consequences of any delay which is the subject of a notice pursuant to Clause 14.1 (*Notice*).

14.4 Time for Completion of the Works

If any anticipated failure by the Project Company to complete all of its obligations referred to in Clause 14.1 (*Notice*) by the Planned Services Commencement Date is notified to the Independent Engineer, with a copy to the Public Partner, by the Project Company as being in the Project Company's reasonable opinion attributable to:

- (a) a Compensation Event, then the provisions of Clause 37.1 (*Compensation Events*) shall apply; or
- (b) a Relief Event, then the provisions of Clause 37.2 (*Relief Events*) shall apply; or
- (c) a Force Majeure Event, then the provisions of Clause 38 (*Force Majeure*) shall apply; or
- (d) a Material Adverse Government Action, then the provisions of Clause 39 (*Material Adverse Government Action*) shall apply.

14.5 Persistent Obstructions

- 14.5.1 If any Persistent Obstruction occurs and such occurrence is certified by the Independent Engineer, either Party is entitled to unilaterally terminate this Agreement by giving written termination notice to the other Party stating that this Agreement will terminate on the date specified in such termination notice, but no earlier than [30] days from receipt of the termination notice.
- 14.5.2 For all purposes of this Agreement, termination of this Agreement pursuant to this Clause 14.5 (*Persistent Obstructions*) shall be subject to the provisions of this Agreement which

apply to termination of this Agreement pursuant to Clause 38.3 (*Termination due to Prolonged Force Majeure*), including in respect of the compensation on termination which is payable as set out in Clause 46.3 (*Compensation on Termination for Force Majeure [or Uninsurability]*).

15 GUARANTEES FOR COMPLETION

15.1 Performance Bond

[Prior to or upon the Effective Date, the Project Company shall provide (or procure that the Construction Contractor provides) to the Public Partner the Performance Bond, which shall comply with the following criteria:

15.1.1 it shall be an unconditional, on-demand performance bond issued by [a reputable financial institution having a credit rating of [BB+] or better (as rated by Standard & Poor's)];

15.1.2 the amount of the Performance Bond shall be EUR [●];

15.1.3 unless called upon by the Public Partner for the Project Company's breach of its obligations to perform the Works in accordance with this Agreement, the Performance Bond shall be released within 14 days from the date of the Works Completion Certificate.]

15.2 Delay Liquidated Damages

15.2.1 [In the event the Project Company is unable to achieve Services Commencement on the Planned Services Commencement Date, the Project Company shall pay to the Public Partner Delay Liquidated Damages equal to [●]% of the value of the Works which are delayed, for each day of delay, as of the Planned Services Commencement Date, until the earlier of:

(i) Services Commencement Date; or

(ii) Termination Date.

15.2.2 In any event, the amount of Delay Liquidated Damages payable in consideration of the Works that are delayed, as calculated in accordance with Clause 15.2.1, may not exceed [●] of the value of the Works.

15.2.3 The total amount of Delay Liquidated Damages calculated pursuant to Clause 15.2.1 and Clause 15.2.2 as being due and payable to the Public Partner shall be:

(a) deducted by the Public Partner from the following Monthly Payment(s) if this Agreement is not terminated; or

(b) paid to the Public Partner upon termination of this Agreement as a result of the Public Partner calling the Performance Bond (unless the Performance Bond had been previously released pursuant to Clause 15.1.3 (*Performance Bond*)); or

(c) taken into consideration and deducted when calculating any Termination Sum payable by the Public Partner to the Project Company.]

16 ARCHAEOLOGICAL FINDS

16.1 Ownership

- 16.1.1 As between the Public Partner and the Project Company, all Archaeological Finds which may be found on or at the Site shall become, upon discovery, the absolute property of the Public Partner.
- 16.1.2 Without prejudice to the application of Clause 16.1.1 (*Ownership*), Archaeological Finds that are found on or at the Site shall become, upon discovery, the public or private property of the State of Romania, where the conditions provided by Law for such ownership are complied with.

16.2 Archaeological Works

- 16.2.1 The Project Company shall procure that any archaeological surveys or inspections of the Site shall be performed in accordance with the Works Program, the Design and Construction Requirements and Good Industry Practice.
- 16.2.2 The Project Company shall undertake such further archaeological surveys, consultations and works as may be required by the Ministry of Culture and the Independent Engineer to record or survey any matters of archaeological interest or to preserve the integrity of any Archaeological Finds.
- 16.2.3 The Project Company shall carry out the Archaeological Works and acknowledges that in carrying out the Archaeological Works which the Public Partner expects the Project Company to carry out in any event, regardless of the discovery of Archaeological Finds, no time extensions and/or cost increases are allowed.

16.3 Disposal

Upon discovery of any item referred to under Clause 16.1 (*Ownership*) during the course of the Works, the Project Company shall:

- 16.3.1 immediately inform the relevant department within the Ministry of Culture and the Independent Engineer, with a copy to the Public Partner, of such discovery;
- 16.3.2 take all reasonable precautions to prevent the removal of, or damage to, any such Archaeological Finds and shall comply with all Legal Requirements and carry out any orders or instructions of the Ministry of Culture or the Independent Engineer regarding the examination and disposal of the same; and
- 16.3.3 take all necessary steps to preserve the object in the same position and condition in which it was found.

16.4 Action

- 16.4.1 In the event of a discovery of Archaeological Finds, the Independent Engineer shall promptly issue an instruction to the Project Company in accordance with the provisions of the Independent Engineer's Agreement specifying what action the Independent Engineer

requires the Project Company to take in accordance with the Law in relation to such discovery.

- 16.4.2 The Project Company shall promptly and diligently comply with any instruction issued by the Independent Engineer referred to in Clause 16.4.1 (*Action*).
- 16.4.3 The Project Company shall also comply with any Legal Requirement, including, without limitation, those issued by the Ministry of Culture, with respect to the preservation of such discovery and to any action that may be taken with respect thereto.
- 16.4.4 The Project Company shall allow the Independent Engineer, representatives of the Public Partner or of any Relevant Authority to enter the Site for the purposes of removal or disposal of such discovery provided that such entry is properly authorized under the Law and it shall be subject to the Independent Engineer, the representatives of the Public Partner or of any Relevant Authority complying with all relevant safety procedures, which shall include any relevant health and safety plans for construction of the Project Facilities and any reasonable directions with regard to site safety that may be issued by the Project Company.

16.5 Costs

- 16.5.1 If:
 - (a) there will be a material delay in or material increase in the cost of the execution of the Works as a consequence of compliance with Clause 16.3 (*Disposal*) (and for the avoidance of doubt, the Works include the Archaeological Works which the Public Partner expects the Project Company to carry out in any event); and
 - (b) only provided that the cumulated effects of the discovery in question and/or any previous discovery or series of discoveries of Archaeological Finds adversely affect (or have already adversely affected) the progress of the Works for a duration which in aggregate is longer than [●] days as against the Works Program, as such may have been varied and/or revised in accordance with this Agreement,

such becomes a Compensation Event, subject always to the Public Partner's right to request a Public Partner Change pursuant to Clause 35.1 (*Public Partner Changes*).

17 SITE CONDITIONS

17.1 Project Company's Risk

Save as otherwise expressly provided in this Agreement, the Project Company shall bear all risk and costs with regard to:

- 17.1.1 any weather conditions;
- 17.1.2 any pollution, contamination or other damage to the Site;

- 17.1.3 the physical conditions or obstructions on the Site (both above ground and subsurface and whether artificial or not) whether foreseen or unforeseen which are encountered in connection with the Works or otherwise.

17.2 Contaminations

- 17.2.1 As soon as practicable after the Project Company having discovered any Contamination (and, for the purposes of this Agreement, a Contamination is considered as such by reference to either one or several contaminations provided that such is/are located in an homogenous area on the Site) during the course of the Works it shall notify the Independent Engineer and the Public Partner.

- 17.2.2 Upon discovery of any such Contamination the Project Company shall:

- (a) subject to compliance with any Law and Legal Requirements, as soon as practicable, commence and further carry on and complete all necessary activities in connection with clearing, treating or otherwise dealing with the Contamination; and
- (b) use properly qualified Sub-Contractors to clear, treat or otherwise deal with the Contamination,

so as to remove the adverse effects of the Contamination.

- 17.2.3 If:

- (a) there will be a material delay in or material increase in the cost of the execution of the Works as a consequence of compliance with Clause 17.2.2 (*Contaminations*); and
- (b) only provided that:
 - (i) the cumulated effects of the occurrence in question and/or any previous discovery or series of discoveries of Contaminations adversely affect (or have already adversely affected) the progress of the Works for a duration which in aggregate is longer than [●] days as against the Works Program, as such may have been varied and/or revised in accordance with this Agreement, and
 - (ii) the total costs associated with the activities referred to under Clause 17.2.2 (*Contaminations*) (for the avoidance of doubt, by reference to the occurrence in question and/or all such previously discovered Contaminations in the aggregate) have reached the threshold of EUR [●] (Indexed), which threshold is in all cases borne by the Project Company,

such becomes a Compensation Event, subject always to the Public Partner's right to request a Public Partner Change pursuant to Clause 35.1 (*Public Partner Changes*).

18 INSPECTION AND COMPLETION

18.1 Works Completion Certificate

- 18.1.1 Not earlier than [●] Business Days (and not later than [●] Business Days) prior to the date upon which the Project Company expects that the Works will be completed or partially (but

substantially) completed to such extent that the Project Facilities shall be suitable and safe for Services Commencement, the Project Company shall issue to the Independent Engineer, with a copy to the Public Partner, a notice to that effect.

- 18.1.2 Upon the Project Company confirming completion as aforesaid, the Independent Engineer shall within [●] Business Days of receipt of such confirmation commence an inspection of such Works and shall, within [●] Business Days of the commencement of such inspection, either:
- (a) issue the Works Completion Certificate and deliver it to the Project Company, with a copy to the Public Partner; or
 - (b) issue the Works Completion Certificate subject to Snagging Items and deliver it to the Project Company, with a copy to the Public Partner, together with the Snagging List; or
 - (c) notify the Project Company in writing, with a copy to the Public Partner, of its decision not to issue the Works Completion Certificate and state the reasons for such decision.
- 18.1.3 The Independent Engineer may refuse to issue the Works Completion Certificate if:
- (a) the Works have not been completed in all material respects in accordance with the Design and Construction Requirements;
 - (b) the Works have not been completed to such an extent that the Project Facilities are suitable and safe for Services Commencement;
 - (c) the Independent Engineer believes on reasonable grounds that any part of the Project Facilities will be closed at any time in the next [●] months in order to complete the Works to the standard required for the Works Completion Certificate;
 - (d) there has been and continues to be material non-compliance with the Design and Certification Procedure;
 - (e) satisfactory evidence of compliance with Clause 24 (*Insurance*) has not been adduced.
- 18.1.4 In the event the Independent Engineer issues the Works Completion Certificate subject to Snagging Items according to Clause 18.1.2(b) (*Works Completion Certificate*), the Project Company shall make good each Snagging Item included in the Snagging List within [●] days or another period as the Independent Engineer may consider as reasonable on issuing the Works Completion Certificate from the date the Works Completion Certificate is issued. The Independent Engineer shall inspect and certify the rectification of the Snagging Items by issuing a Certificate for such purpose, sent to the Project Company, with a copy to the Public Partner. If the Project Company fails to rectify any Snagging Item by the date set out in this Clause 18.1.4, the Public Partner shall be entitled to effect such repairs as may be necessary and recover the costs of doing so from the Project Company by a reduction in the Monthly Payment within the limits and conditions provided for in Schedule [●] (*Payment Mechanism*).

- 18.1.5 In the event of service of a notice by the Independent Engineer under Clause 18.1.2(c) (*Works Completion Certificate*) and following completion by the Project Company of such further works or other measures necessary or appropriate to remedy or remove the cause of the refusal to issue a Works Completion Certificate, the Project Company may give notice to the Independent Engineer, with a copy to the Public Partner, that such further works have been completed or measures taken and the Independent Engineer shall inspect such further works or measures within [●] Business Days of such notice and the provisions of Clauses 18.1.2-18.1.5 (*Works Completion Certificate*) shall thereafter apply to such notice *mutatis mutandis*.
- 18.1.6 The issue of the Works Completion Certificate shall be without prejudice to:
- (a) the obligation of the Project Company to operate and maintain the Project Facilities subject to and in accordance with this Agreement; and
 - (b) any warranties given by the Project Company under this Agreement.
- 18.1.7 Prior to the issue of the Works Completion Certificate, the Project Company (and the Public Partner, if and to the extent required) shall comply with any Legal Requirement relevant for the reception of works similar to the Works in Romania.

18.2 Disputed Certificate

- 18.2.1 If there shall be any Dispute as to whether a Works Completion Certificate is required to be issued in accordance with the terms of this Clause 18 (*Inspection and Completion*), then either the Public Partner or the Project Company may refer such Dispute for resolution under the Disputes Resolution Procedure.
- 18.2.2 The issues for resolution in any such referral to the Disputes Resolution Procedure shall be:
- (a) whether the Works Completion Certificate was required to be issued in accordance with the terms of this Clause 18 (*Inspection and Completion*);
 - (b) if so, the date on which such Works Completion Certificate should have been issued; and
 - (c) any related procedural or substantive issues.

PART IV. SERVICES

19 SERVICE COMMENCEMENT

19.1 Conditions to Services Commencement

The following shall be conditions to the issue of the Services Commencement Certificate:

- 19.1.1 the Works Completion Certificate has been issued according to Clause 18.1 (*Works Completion Certificate*);
- 19.1.2 the initial Annual Program in respect of the Services for the First Services Year and next succeeding Services Year (as specified in Clause 21.2 (*Submission of Annual Programs*)) has been supplied to the Independent Engineer, with a copy to the Public Partner, and no objection thereupon has been made under the Review Procedure; and
- 19.1.3 the Project Company has duly complied with its obligations under Clause 24 (*Insurance*).

19.2 Estimated Date of Satisfaction

Prior to the issue of the Services Commencement Certificate, the Project Company shall keep the Public Partner and the Independent Engineer advised by notice of its estimate of the date of satisfaction of each of the conditions referred to in Clause 19.1 (*Conditions to Services Commencement*) and shall include in any such notice reasonable detail of the circumstances taken into account in making the estimate, provided that any such notice shall be for information and planning purposes only and shall not be binding on the Project Company for any purpose.

19.3 Services Commencement Certificate

- 19.3.1 Subject to the Independent Engineer having received satisfactory evidence as it may reasonably require from the Project Company and the Public Partner that all conditions referred to in Clause 19.1 (*Conditions to Services Commencement*) have been satisfied, the Independent Engineer shall issue the Services Commencement Certificate and shall deliver it to the Project Company, with a copy to the Public Partner.
- 19.3.2 The Services Commencement Certificate shall state the Services Commencement Date, which, for the avoidance of doubt, shall be determined by the Project Company and which shall in any event be no later than [2] weeks after the issue of the Services Commencement Certificate.
- 19.3.3 If the Project Company intends for the Services Commencement Date to precede the Planned Services Commencement Date by more than [•] days, the Independent Engineer shall not issue the Services Commencement Certificate unless it is provided by the Project Company with satisfactory evidence that, in addition to the fulfilment of all conditions referred to in Clause 19.1 (*Conditions to Services Commencement*), the Project Company has obtained the Public Partner's express prior consent for Services Commencement to occur at such early date. The issuing of the aforementioned consent shall be at the absolute discretion of the Public Partner.

19.4 Early Services Commencement and Late Services Commencement

- 19.4.1 The Parties hereby agree and confirm that, in the event Services Commencement occurs prior to the Planned Services Commencement Date, the Unitary Charge shall be paid by the Public Partner as provided for in Schedule [●] (*Payment Mechanism*) by considering the Services Commencement Date as being the Planned Services Commencement Date.
- 19.4.2 The Parties hereby agree and confirm that, in the event referred to in Clause 15.2 (*Delay Liquidated Damages*), where Services Commencement is achieved later than the Planned Services Commencement Date, an Original Services Period Extension shall automatically occur upon the Services Commencement Date. During such Original Services Period Extension, the Public Partner shall pay the Project Company the Unitary Charge and other amounts in consideration of the provision of the Services as set out in Schedule [●] (*Payment Mechanism*).

20 SERVICES

20.1 Provision of the Services

- 20.1.1 Save to the extent that it is prohibited from so doing by reason of a breach by the Public Partner of its obligations under Clause 10.1 (*Access for Project Company*), the Project Company shall provide the Services with respect to the Project Facilities from the Services Commencement Date and throughout the remaining of the Contract Period.
- 20.1.2 The Project Company shall ensure, subject to Clause 20.1.1 (*Provision of the Services*), on a continuing basis, that at all times its maintenance and operating procedures are sufficient to ensure that:
- (a) the Services are continuously available;
 - (b) the Services comply with the Services Requirements and the Return Assets are kept in good structural and decorative order (subject to fair wear and tear) in accordance with this Agreement;
 - (c) it can maintain the design intention of the Return Assets to achieve their full working life; and
 - (d) the Project Facilities are handed back to the Public Partner on the Expiry Date in a condition complying with the requirements of this Agreement and the Handback Requirements.

20.2 Responsibility for the Maintenance Works and Routine Maintenance Works

The Project Company shall be responsible for carrying out Maintenance Works and Routine Maintenance in strict accordance with the Services Requirements (subject to Clause 35.1 (*Public Partner Changes*) and to Clause 35.2 (*Project Company Changes*)).

20.3 Design and Certification Requirements

- 20.3.1 The Project Company shall procure that the checking and certification procedures referred to in the Design and Certification Procedure are complied with by the appropriate persons referred to therein and that such persons are at all relevant times duly authorized to carry out such procedures and to sign the relevant Certificates, as the case may be.
- 20.3.2 Without limitation to Clause 52.1 (*Project Company's Responsibility*), any failure by any person referred to in the Design and Certification Procedure to fulfil the obligations required of them under the Design and Certification Procedure shall be a breach of the Project Company's obligations under this Agreement.
- 20.3.3 Design Data the subject of a Certificate which has been submitted to the Independent Engineer in accordance with the Design and Certification Procedure and the Review Procedure and for which no objection has been made shall not be departed from otherwise than pursuant to a Project Company Change or a Public Partner Change.

20.4 Health, Safety and Site Security

The Project Company shall, throughout the Services Period, have full regard for the safety of all persons on the Site (whether they are present thereon lawfully or not), observe any Legal Requirements on labor health and safety applicable in connection with the Services and keep the Site and the works in connection with the repair, maintenance or improvement of the Project Facilities in an orderly state appropriate to the avoidance of danger to such persons. The Project Company shall take such measures as are reasonably required to prevent the trespass onto the Site of any persons or livestock not entitled to be there.

20.5 Emergencies and Liaison

- 20.5.1 The Parties shall develop Liaison Procedures in accordance with the provisions of Schedule [●] (*Liaison Procedures*) at such time as might be required for a proper performance by the Project Company of its obligations under this Agreement, but no later than the Effective Date.
- 20.5.2 Whenever the Project Company is required by this Agreement to take any action in accordance with the Liaison Procedures, it shall take such action in accordance with the procedures set out in or agreed in accordance with the provisions of Schedule [●] (*Liaison Procedures*).
- 20.5.3 Notwithstanding any other provision of this Agreement, the Project Company shall and shall be entitled to take (at its own cost) such steps as necessary in an Emergency for the protection of the public, but subject always to the provisions of the Liaison Procedures.

20.6 Trials

Any study or trial for purposes of research initiated by the Public Partner, whether conducted by the Public Partner and/or by a contractor or other designee of the Public Partner, shall be conducted in such manner as to minimize the loss of availability of the Project Facilities and no such study or trial shall, without the consent of the Project Company, substantially affect the physical integrity of the Project Facilities and shall not give rise to any deductions from the Unitary Charge.

21 ANNUAL PROGRAMS

21.1 Scope of Annual Program

21.1.1 The Annual Program shall set out:

- (a) the timetable in which the Project Company intends to carry out the Services including all Planned Works in the current Services Year and must be designed to demonstrate that the Project Company will be carrying out the Services in a manner which will meet the Services Requirements and the Method Statements and so as to minimize disruption to the Project Facilities;
- (b) a Schedule of Project Facilities Closures clearly establishing the Project Facilities Closures required to enable the Project Company to comply with the timetable specified in Clause 21.1.1(a) (*Scope of Annual Program*) prepared in accordance with Clause 21.2 (*Submission of Annual Programs*); and
- (c) details of any other constraints.

21.1.2 The Project Company shall review and update the Annual Program as necessary to ensure that there is a compliant Annual Program at all times.

21.1.3 Where reviews and updates to the Annual Program are required to ensure compliance, then they shall be submitted to the Public Partner, in accordance with the Review Procedure.

21.2 Submission of Annual Programs

21.2.1 Not later than [01 April] in each Services Year after the First Services Year, the Project Company shall submit to the Public Partner, in accordance with the Review Procedure, an Annual Program for the next succeeding Services Year. Any such Annual Program shall give details of the proposed start and end dates for each period of Project Facilities Closure and the works to be carried out.

21.2.2 Not later than [30] Business Days prior to the commencement of any Quarter, the Project Company may submit to the Public Partner, in accordance with the Review Procedure, a revision of the Schedule of Project Facilities Closures submitted pursuant to Clause 21.2.1 (*Submission of Annual Programs*) showing proposed revisions to the periods of Project Facilities Closure in respect of such Quarter. If there is no objection to any such revision in accordance with the Review Procedure, then it shall replace the annual Schedule of Project Facilities Closures in respect of such Quarter.

21.2.3 The Public Partner may raise comments in respect of any period of Project Facilities Closure requested in a Schedule of Project Facilities Closures submitted by the Project Company pursuant to Clause 21.2.1 (*Submission of Annual Programs*) or Clause 21.2.2 (*Submission of Annual Programs*) in accordance with Schedule [●] (*Review Procedure*). In such event, the Public Partner shall notify the Project Company and shall indicate the reasons and, in the case of an objection pursuant to Schedule [●] (*Review Procedure*), an appropriate duration for such Project Facilities Closure and in any other case a period when the unacceptable period can be re-scheduled, on the basis that each such re-scheduled period shall be as close as reasonably practicable to the requested period of Project Facilities Closure and of

equal duration or, if the Project Company has indicated another period and/or duration that would be preferable to it and that is acceptable to the Public Partner's Representative, such other period and/or duration. The Project Company shall thereupon amend the relevant Schedule of Project Facilities Closures accordingly and re-submit the same to the Public Partner, in accordance with the Review Procedure.

- 21.2.4 The Project Company shall not effect any Project Facilities Closures save:
- (a) in accordance with a Schedule of Project Facilities Closures to which no objection has been made under the Review Procedure;
 - (b) in accordance with the procedures set out in Clause 21.2.7 (*Submission of Annual Programs*); or
 - (c) in an Emergency, in accordance with Clause 21.2.8 (*Submission of Annual Programs*).
- 21.2.5 The Project Company shall not effect any Project Facilities Closure without first obtaining any Consent in respect of such Project Facilities Closure necessary under any Law.
- 21.2.6 The Public Partner may, upon [90] days prior written notice, require the Project Company to re-schedule a period of Project Facilities Closure on a Schedule of Project Facilities Closures to which there has been no objection in accordance with the Review Procedure if due to a change in any circumstances such re-scheduling is necessary to satisfy the standards set out in Schedule [●] (*Review Procedure*), provided, however, that the Public Partner may not require:
- (a) that such period of Project Facilities Closure be brought forward by more than [60] days from the scheduled date of commencement of such period of Project Facilities Closure; or
 - (b) that a period of Project Facilities Closure be deferred by more than [60] days from the scheduled date of commencement of such period of Project Facilities Closure.
- 21.2.7 If the need arises for Urgent Works (not being in connection with an Emergency) requiring Project Facilities Closures otherwise than in accordance with an approved Schedule of Project Facilities Closures, the Project Company shall advise the Public Partner, of such need and request approval of the proposed commencement date and estimated duration of the requisite Project Facilities Closures. The Public Partner's approval of such works shall not be unreasonably withheld or delayed, having regard to the factors set out in Schedule [●] (*Review Procedure*).
- 21.2.8 If as a result of an Emergency the need arises for unprogrammed maintenance or repair works requiring Project Facilities Closures otherwise than in accordance with an approved Schedule of Project Facilities Closures, the Project Company may effect such Project Facilities Closures, provided that the Project Company shall as soon as reasonably practicable advise the Public Partner, of such closure and the reasons therefor and shall take all reasonable steps to minimize the duration of such Project Facilities Closure.

21.3 Progress against the Annual Program

- 21.3.1 Should it appear to the Public Partner or to the Project Company at any time that the actual provision of the Services does not conform with the Annual Program or any revisions are required to the Schedule of Project Facilities Closures then, within [28] days of becoming aware of the same, the Project Company shall:
- (a) submit to the Public Partner, a report identifying the reasons for such non-conformity; and
 - (b) submit to the Public Partner, in accordance with the Review Procedure, a revised Annual Program, which shall demonstrate that the Project Company will meet the Services Requirements and Method Statements as appropriate.
- 21.3.2 The revised Annual Program shall be implemented subject to there being no objection thereupon by the Public Partner.
- 21.3.3 The Public Partner shall be entitled to raise comments in respect of any revised Annual Program on the grounds set out in Schedule [●] (*Review Procedure*).

21.4 Variations to the Annual Program

- 21.4.1 If the Project Company wishes to make any amendment to the Annual Program the Project Company shall:
- (a) submit to the Public Partner a report identifying the reasons for such amendment; and
 - (b) submit to the Public Partner, in accordance with the Review Procedure, a revised version of the Annual Program which shall demonstrate that the Project Company will meet the Services Requirements and the Method Statements as appropriate.
- 21.4.2 Any variation to the Annual Program shall be implemented subject to there being no objection thereupon by the Public Partner.
- 21.4.3 The Public Partner shall be entitled to raise comments in respect of any varied Annual Program on the grounds set out in Schedule [●] (*Review Procedure*).

21.5 Annual Program

The initial Annual Program and any revised or varied Annual Program shall:

- 21.5.1 be in accordance with Good Industry Practice;
- 21.5.2 be in sufficient detail so as to enable the Public Partner to appropriately monitor and supervise the fulfilment thereof; and
- 21.5.3 provide for the Services to meet the Services Requirements and Method Statements.

22 QUALITY CONTROL AND CHECKS

22.1 Quality control

- 22.1.1 The Project Company is responsible for the quality, quality control and timely execution of the Services, as well as for the quality of the Project Documents.
- 22.1.2 To ensure this, the Project Company must set up and maintain a Quality Management System in accordance with Clause 26.1 (*Quality Management Systems and Documentation*) that applies to the Services, (including the Services undertaken by Sub-Contractors and other agents) and the procedures that the Project Company will follow in organizing, managing and controlling the implementation of the Agreement and ensuring the required quality.
- 22.1.3 The Project Company must draw up a management plan describing the Quality Management System (including a monitoring plan describing how the Project Company will monitor whether the relevant requirements of the Services Requirements as set out in Schedule [●] (*Construction and Services Requirements*) are complied with (the “**Services Monitoring**”)), and submit it to the Public Partner for acceptance in accordance with the Review Procedure (the “**Services Monitoring Plan**”).
- 22.1.4 In the performance of the Services, the Project Company must always comply with the Services Monitoring Plan, and ensure compliance by its Sub-Contractors and other agents.
- 22.1.5 The Project Company remains solely responsible for any errors, omissions, mistakes or defects in the Project Documents and/or in any planned or performed Services, and any review, inspection, assessment or acceptance by the Public Partner does not affect the Project Company’s responsibility.

22.2 Registration and Handling of Notifications

The Project Company will set up a system for the registration and handling of complaints, requests, information requests and malfunction reports in which the Project Company will register all such matters (the “**Registration System**”).

22.3 Periodic measurements

- 22.3.1 Except as regards the Project Company’s specific measurement obligations as set out in the Services Requirements as set out in Schedule [●] (*Construction and Services Requirements*), the Project Company must, from the Services Commencement Date, carry out periodic measurements at least every three months to assess the extent to which it is in compliance with its relevant obligations under the Services Requirements. These periodic measurements must be performed according to the Services Monitoring Plan, and the results must be processed as soon as possible in the Registration System and immediately notified to the Public Partner.
- 22.3.2 The Project Company must draw up measurement protocols for the performance and timing of the periodic measurements referred to in Clause 22.3.1 and include these measurement protocols in the Services Monitoring Plan.

22.4 Inspections

- 22.4.1 The Public Partner (or its Representative) may at any time carry out announced or unannounced inspections to assess whether the Project Company is complying with its obligations under the Agreement.
- 22.4.2 The Project Company must provide the Public Partner access to the locations where the Services are being prepared or performed and provide them with all information reasonably requested.
- 22.4.3 When carrying out an inspection, the Public Partner must endeavor to minimize any hindrance to the performance of the Services.
- 22.4.4 The Public Partner shall provide the Project Company with the results of the inspection as soon as possible, and the Project Company shall process the results as a report in the Registration System as soon as possible and at the latest within [●] Business Days.
- 22.4.5 The Public Partner is not required to notify the Project Company of any shortcomings identified by the inspection results and an inspection does not imply approval or acceptance of the Services.
- 22.4.6 The cost of an inspection is at the Public Partner's expense, except in the case of an inspection announced at least 2 (two) Business Days in advance, where the cost will be at the Project Company's expense (subject to a maximum of [specify amount]) if any items are identified which were not yet recorded in the Registration System and incur an aggregate Deduction of at least [specify amount].

22.5 Monitoring report

Within [●] Business Days after the start of a month, the Project Company must provide the Public Partner with a report of the Monitoring results during the previous month.

23 SURVEYS ON TERMINATION

23.1 Conditions for Transfer

- 23.1.1 The Project Company must ensure that, at the Expiry Date (or the Termination Date whichever occurs first), the Project Facilities comply with the Services Requirements as set out in Schedule [●] (*Construction and Services Requirements*) (the "**Transfer Requirements**").
- 23.1.2 The Project Company must, from 1 (one) year before the Expiry Date, until one year thereafter, provide all reasonable assistance to the Public Partner and/or, at its request, to its nominees, in order for maintenance to be continued without interruption after the Expiry Date and to allow the proper transfer of maintenance to the Public Partner and/or its nominees.
- 23.1.3 To this end, the Project Company will (*inter alia*) ensure a thorough and comprehensive transfer of knowledge relating to the Services, to the extent reasonably necessary to enable

the Public Partner and/or its nominees to maintain the Project Facilities after the Expiry Date. This knowledge transfer will include at least the following activities:

- (i) training the employees of the Public Partner and/or its nominees in performing the maintenance;
- (ii) providing the Public Partner and/or its nominees with such information about the Services as is reasonably required to enable them to carry out maintenance after the Expiry Date in a way which minimizes any inconvenience to the Public Partner's operations;
- (iii) providing information about the profiles and skills of staff, potential agents and other resources used by the Private Partner for the Services, as may be required for the Public Partner and/or its nominees to carry out maintenance after the Expiry Date; and
- (iv) providing reasonable access to the relevant personnel of the Private Partner or its agents for at least one year after the Expiry Date.

23.2 Transfer Inspections

- 23.2.1 In view of the provisions in Clause 23.1, the Public Partner and the Project Company must inspect the Project Facilities jointly, led by an independent and impartial expert appointed by agreement of both Parties (acting reasonably). The independent expert's costs will be borne by the Project Company. In the absence of agreement within 40 Business Days after a Party has requested an inspection in accordance with this Clause 23.2, the independent expert shall be appointed in accordance with Clause 53 (*Disputes Resolution Procedure*).
- 23.2.2 The first inspection must take place no earlier than 120 months and no later than 114 months before the Expiry Date. A follow-up inspection must be carried out at least every 24 months. An inspection must take place no earlier than 36 months and no later than 24 months before the Expiry Date (the "**Guarantee Inspection**"). The last inspection must take place no earlier than six months and no later than four months before the Expiry Date, unless otherwise agreed by the Parties.
- 23.2.3 The inspections take place at the request of the Project Company. If the Public Partner wishes an additional inspection, possibly by another independent and impartial expert, it will pay for the associated costs. Any request for an inspection must be made in writing to the other Party no later than 20 Business Days before the inspection.
- 23.2.4 Within 20 Business Days after each inspection, the independent expert must provide both Parties with a summary of the maintenance to be performed in addition to the Services/ included in the Services Requirements as set out in Schedule [●] (*Construction and Services Requirements*), so that the Project Facilities will meet the Transfer Requirements at the Expiry Date (the "**Additional Maintenance**"), supplemented with a schedule for the implementation of this Additional Maintenance and a statement of the costs involved.
- 23.2.5 Each Party may verify whether the summary, schedule and statement of costs (payable by the Project Company) regarding the Additional Maintenance are realistic, correct and

complete. Either Party may, within 15 Business Days of their receipt request the independent expert to provide clarification or to carry out additional investigations into the Additional Maintenance and provide a supplementary summary with a schedule and statement of costs, in each case within 20 Business Days of the request. If either Party then wants to contest such clarification or supplementary summary, it must institute a dispute pursuant to Clause 53 (*Disputes Resolution Procedure*) within 15 Business Days after the expiry of such 20 Business Days period.

23.3 Transfer Guarantee

23.3.1 If the Guarantee Inspection indicates that Additional Maintenance is required, the Project Company must, for the purpose of ensuring compliance with its obligations under this Agreement and within 25 Business Days of receipt of the Additional Maintenance summary, provide a guarantee for an amount equal to the cost of such Additional Maintenance as demonstrated by the statement of costs referred to in Clause 23.2.4 (*Transfer Inspections*). The guarantee must be issued by a credit institution acceptable to the Public Partner and be in the form set out in Schedule [●] or such other similar form approved by the Public Partner (the "**Transfer Guarantee**").

23.3.2 If, as a result of subsequent inspections, it appears from:

- (i) the summary in accordance with Clause 23.2.4 (*Transfer Inspections*), as clarified or adjusted pursuant to Clause 23.2.5 (*Transfer Inspections*), or from
- (ii) the outcome of a procedure as referred to in Clause 53 (*Disputes Resolution Procedure*),

that:

- (a) Additional Maintenance is required, and that
- (b) the cost of it exceeds the maximum amount of the outstanding Transfer Guarantee,

then the Project Company must provide an additional guarantee, within 20 Business Days, for an amount equal to that difference, issued by a credit institution acceptable to the Public Partner and in the form set out in Schedule [●] or such other similar form approved in advance by the Public Partner ("**Additional Transfer Guarantee**").

23.3.3 If a subsequent inspection or outcome of a Disputes Resolution Procedure shows that the Additional Maintenance cost is lower than the total amount of the outstanding Transfer Guarantee (and, if applicable, Additional Transfer Guarantee(s)), then the Public Partner, at the Project Company's request, will notify the issuer(s) of the relevant guarantee(s) that such outstanding amounts shall be reduced by an amount(s) which results in the total outstanding amount being reduced by an amount equal to the difference.

23.3.4 The Transfer Guarantee and Additional Transfer Guarantee(s) shall be valid for two years. Three months prior to the expiry of any Transfer Guarantee (and, if applicable, any Additional Transfer Guarantee(s)), the Project Company must extend (or provide a replacement of each guarantee) for one year, failing which the Public Partner will be entitled to call on the relevant guarantee.

23.4 Transfer certificate

- 23.4.1 No later than two months prior to the Expiry Date, the Project Company shall submit a report to the Public Partner indicating that the Transfer Requirements have been met, or will have been met by the Expiry Date.
- 23.4.2 The Expiry Date inspection for the issue of the Transfer Certificate shall be conducted in the presence of the Project Company, or following a minimum of ten (10) Business Days' notice to the Project Company.
- 23.4.3 If the Transfer Requirements have been met, the Public Partner will deliver the Transfer Certificate to the Project Company on the Expiry Date. If the Transfer Requirements have not been met, the Public Partner will deliver a refusal report to the Project Company as soon as reasonably practicable on or before the Expiry Date.
- 23.4.4 If a refusal report is delivered, the Project Company shall, without notice and in all cases within the reasonable period set by the Public Partner in the refusal report, ensure that the Project Facilities are brought up to conformity with what is required in order for the Transfer Certificate to be delivered.
- 23.4.5 Following its actions in accordance with Clause 23.4.4 (*Transfer certificate*), the Project Company will notify the Public Partner when it believes the Transfer Requirements have been met. Within 15 calendar days following receipt of this notification, the Transfer Certificate will be delivered by the Public Partner, or a second refusal report will be delivered to the Project Company. Unless the Project Company does not dispute the grounds of refusal, the Project Company must lodge a dispute pursuant to Clause 53 (*Disputes Resolution Procedure*) within 15 calendar days of receipt, failing which the Project Company will be deemed to have agreed to the grounds of refusal.
- 23.4.6 The Public Partner will issue the Transfer Certificate on the Expiry Date if:
- (i) the Public Partner has determined that the Transfer Requirements have been met;
 - (ii) the Project Company has transferred all the guarantees provided to the Project Company by any agents in connection with the performance of the Services to the Public Partner;
 - (iii) subject to the provisions of Clause 49 (*Consents*), the Project Company has provided all Consents to the Public Partner, and the Project Company has taken all reasonable steps to transfer the Consents (if necessary) to the Public Partner, or its nominee;
 - (iv) the Project Company has complied with the requirements of Clause 23.2.2 (*Transfer Inspections*) and 23.1.3 (*Conditions for Transfer*); and
 - (v) the Project Company has provided the Public Partner with the documents, information and cooperation referred to in Clause 49 (*Consents*).
- 23.4.7 Within 14 calendar days after the issue of the Transfer Certificate, the Public Partner shall, at the Project Company's request, inform the issuer(s) of the Transfer Guarantee and/or the

Additional Transfer Guarantee(s) of the expiry of the relevant guarantee(s) and return the originals to the issuer(s), subject to Clause 23.4.9 (*Transfer certificate*).

- 23.4.8 The Public Partner may refuse to provide the Transfer Certificate if at the Expiry Date all the conditions mentioned in Clause 23.4.6 (*Transfer certificate*) have not been met.
- 23.4.9 When the Project Company has fulfilled its obligations in Clause 23.4.6 (*Transfer certificate*), or only minor deviations are established which are limited in number and unlikely to cause interference with the use, operation, life-span, safety or security of the Project Facilities, the Public Partner will deliver the Transfer Certificate subject to a deduction reflecting such deviations and/or an obligation on the Project Company to remedy such deviations within a period to be determined by the Public Partner.
- 23.4.10 If the Transfer Certificate is delivered subject to a deduction and/or an obligation as set out in Clause 23.4.9 (*Transfer certificate*), the Transfer Guarantee (or where applicable, the Additional Transfer Guarantee(s)) will only be reduced to a total amount equaling twice the cost necessary to remedy such deviations, or the net termination compensation to be paid will be reduced by such amount. This amount (or as applicable, the Transfer Guarantee and/or Additional Transfer Guarantee(s)) shall be released within 20 Business Days if and to the extent it is determined that the deviations have been resolved.
- 23.4.11 On the Expiry Date, the Agreement will terminate, without prejudice to the obligations contained in Clause 23.1.2 (*Conditions for Transfer*) and 23.1.3 (*Conditions for Transfer*).

PART V. INSURANCE

24 INSURANCE

24.1 Insurance

- 24.1.1 The Project Company shall take out and thereafter maintain or procure the maintenance of the insurances described in Schedule [●] (*Insurance*) and any other insurances as may be required by Law. These insurances must be effective in each case not later than the date on which the relevant risk commences.
- 24.1.2 The proposed terms and conditions of any insurance referred to in Clause 24.1.1 (*Insurance*) shall be submitted to the Public Partner under the Review Procedure prior to the Project Company taking out or renewing such insurance. The Public Partner may raise comments on such proposed terms and conditions on the grounds set out in Schedule [●] (*Review Procedure*).
- 24.1.3 No Party shall take any action or fail to take any reasonable action, or (insofar as it is reasonably within its power) permit anything to occur in relation to it, which would entitle any insurer to refuse to pay any claim under any insurance policy in which that Party is an insured, a co-insured or additional insured person.
- 24.1.4 With the exception of any insurances required by Law, the insurances referred to in Clause 24.1.1 (*Insurance*) shall:
- (a) subject to Clause 24.1.5 (*Insurance*), name the Project Company and the Senior Lenders as co-insured with any other party maintaining the insurance;
 - (b) contain a clause waiving the insurers' subrogation rights against the Public Partner, its employees and agents;
 - (c) provide for [30] days prior written notice of their cancellation, non-renewal or amendment to be given to the Public Partner; and
 - (d) in respect of the Physical Damage Policies, provide for payment of any proceeds to be made by insurers in accordance with Clause 24.2 (*Reinstatement*).
- 24.1.5 Wherever possible, the insurances referred to in Clause 24.1.1 (*Insurance*) shall name the Public Partner as a co-insured for its separate interest.
- 24.1.6 The Project Company shall provide to the Public Partner:
- (a) copies on request of all insurance policies referred to in Clause 24.1.1 (*Insurance*) (together with any other information reasonably requested by the Public Partner relating to such insurance policies) and the Public Partner shall be entitled to inspect them during ordinary business hours; and
 - (b) evidence that the premiums payable under all insurance policies have been paid and that the insurances are in full force and effect in accordance with the requirements of this Clause 24.1 (*Insurance*) and Schedule [●] (*Insurance*).

- 24.1.7 Renewal certificates in relation to the insurances referred to in Clause 24.1.1 (*Insurance*) shall be obtained as and when necessary and copies (certified in a manner acceptable to the Public Partner) shall be forwarded to the Public Partner as soon as possible but in any event on or before the renewal date.
- 24.1.8 If the Project Company is in breach of Clause 24.1.1 (*Insurance*), the Public Partner may pay any premiums required to keep such insurance in force or procure itself such insurance and may in either case recover such amounts from the Project Company on written demand, including by deduction from the Monthly Payment.
- 24.1.9 The Project Company shall give the Public Partner notification within [30] days after any claim in excess of EUR [●] (Indexed) on any of the insurance policies referred to in this Clause 24.1 (*Insurance*) accompanied by full details of the incident giving rise to the claim.
- 24.1.10 Neither failure to comply nor full compliance with the insurance provisions of this Agreement shall limit or relieve the Project Company of its liabilities and obligations under this Agreement.
- 24.1.11 The insurance premiums for the insurances referred to in Clause 24.1.1 (*Insurance*) shall be the responsibility of the Project Company.
- 24.1.12 The insurances referred to in this Clause 24.1 (*Insurance*) shall be effected with [insurers having a credit rating of BB+ or better (as rated by Standard & Poor's)], as approved by the Public Partner (such approval not to be unreasonably withheld or delayed).
- 24.1.13 Save in respect of Clauses 24.1.1, 24.1.3, 24.1.6 and 24.1.7 (*Insurance*) the provisions of this Clause 24.1 (*Insurance*) shall not apply to professional indemnity insurance of the Construction Contractor ("**PI Insurance**"), and in respect of PI Insurance, the Project Company undertakes to provide evidence satisfactory to the Public Partner (as and when reasonably required by the Public Partner) of the PI Insurance being in full force and effect from the date of commencing the design activities under this Agreement until the date occurring upon the expiry of a 3-year period from and including the completion of the Works (such evidence to include details of the cover), including confirmation of territorial limits, indemnity limit (which shall be a minimum of EUR [●]) for any one claim and in the aggregate (subject to one automatic reinstatement of the aggregate indemnity limit), levels of excess, insurers and policy number.
- 24.1.14 In addition, to the extent that the following does not constitute a breach of the PI Insurance terms and conditions, the Project Company undertakes (and agrees to procure that its Sub-Contractor(s) undertake(s)) to:
- (a) provide the Public Partner with copies of all notices under the PI Insurance relative to the Project (save where the claim is made by the Public Partner);
 - (b) provide the Public Partner with notice of:
 - (i) any cancellation of the PI Insurance not less than twenty ([20]) Business Days prior to the relevant cancellation date;

- (ii) any material changes to or suspension of cover relevant to the Project not less than twenty ([20]) Business Days prior to the relevant change or suspension;
 - (iii) any event of which it becomes aware, or of which it could reasonably be expected to become aware, which may vitiate the PI Insurance relevant to the Project;
 - (iv) any act, omission or event which may adversely affect the terms and scope of the PI Insurance relevant to the Project or invalidate or render it unenforceable;
- (c) provide such information to the Public Partner as the Public Partner may reasonably require in relation to any claim or circumstance notified to it under the PI Insurance in respect of the Project and any potential breach of the aggregate limit of the policy (save where such claim is made by the Public Partner);
- (d) disclose to the relevant insurers:
 - (i) any matters which could reasonably be expected to be material in the context of the Project; and
 - (ii) any of the other insurances required to be maintained under this Clause 24 (*Insurance*);
- (e) include the interests (if any) of the Public Partner in any claim or circumstances notified under the PI Insurance relative to the Project and provide a copy of such notification to the Public Partner.

24.2 Reinstatement

- 24.2.1 All insurance proceeds received under any policy referred to under Schedule [●] (*Insurance*) (the "**Physical Damage Policies**") shall be applied to repair, reinstate or replace each part or parts of the Project Facilities in respect of which the proceeds were received.
- 24.2.2 All insurance proceeds paid under any Physical Damage Policy in respect of a single event (or series of related events) in an amount in excess of EUR [●] (Indexed) shall be paid into the Joint Insurance Account.
- 24.2.3 Where a claim is made or proceeds of insurance are received or are receivable under any Physical Damage Policy in respect of a single event (or a series of related events) (the "**Relevant Incident**") in an amount in excess of EUR [●] (Indexed):
 - (a) the Project Company shall deliver as soon as practicable to the Public Partner (whenever the claim does not relate to the Works) or (whenever the claim relates to the Works) to the Independent Engineer, with a copy to the Public Partner, and in any event within 30 days after the making of the claim, a plan prepared by the Project Company for the carrying out of the works necessary (the "**Reinstatement Works**") to repair, reinstate or replace (the "**Reinstatement Plan**") the assets which are the subject of the relevant claim or claims in accordance with Clause 24.2.4 (*Reinstatement*). The Reinstatement Plan shall set out:

- (i) the identity of the person proposed to effect the Reinstatement Works (unless such person is the Construction Contractor), which shall be subject to the prior written consent of the Public Partner; and
 - (ii) the proposed terms and timetable upon which the Reinstatement Works are to be effected (including the date that the Project will become fully operational), the final terms of which shall be subject to the prior approval of the Public Partner (whenever the claim does not relate to the Works) or of the Independent Engineer (whenever the claim relates to the Works) under the Review Procedure;
- (b) provided that the Public Partner (whenever the claim does not relate to the Works) or Independent Engineer (whenever the claim relates to the Works) is satisfied that the Reinstatement Plan will enable the Project Company to comply with Clause 24.2.4 (*Reinstatement*) within a reasonable timescale:
 - (i) the Reinstatement Plan will be adopted;
 - (ii) the Project Company shall enter into contractual arrangements to effect the Reinstatement Works with the person identified in the approved Reinstatement Plan;
 - (iii) prior to the earlier to occur of the Termination Date or the Expiry Date, any amounts standing to the credit of the Joint Insurance Account (the "**Relevant Proceeds**") (together with any interest accrued) may be withdrawn by the Project Company from the Joint Insurance Account as required to enable it to make payments in accordance with the terms of the contractual arrangements referred to in Clause 24.2.3(b)(ii) (*Reinstatement*), and to meet any other reasonable costs and expenses of the Project Company for the sole purpose of funding the Reinstatement Works. Following the earlier to occur of the Termination Date and the Expiry Date, the Public Partner may withdraw amounts standing to the credit of the Joint Insurance Account for the purposes of funding any Reinstatement Works;
 - (iv) the Public Partner agrees and undertakes that, subject to compliance by the Project Company with its obligations under this Clause, and provided that the Project Company procures that the Reinstatement Works are carried out and completed in accordance with the contractual arrangements referred to in Clause 24.2.3(b)(ii) (*Reinstatement*), it shall not exercise any right which it might otherwise have to terminate this Agreement by virtue of the event which gave rise to the claim for the Relevant Proceeds;
 - (v) the Public Partner undertakes to use reasonable endeavors to assist the Project Company in carrying out the Reinstatement Plan;
 - (vi) after the Reinstatement Plan approved by the Public Partner (whenever the claim does not relate to the Works) or by the Independent Engineer (whenever the claim relates to the Works) has been implemented to the reasonable satisfaction of the Public Partner (whenever the claim does not relate to the

Works) or of the Independent Engineer (whenever the claim relates to the Works) and in accordance with Clause 24.2.4 (*Reinstatement*), the Public Partner shall permit withdrawal by the Project Company of any Relevant Proceeds then held in the Joint Insurance Account that have not been paid under Clause 24.2.3(b)(iii) (*Reinstatement*), in respect of the Relevant Incident, together with any interest accrued; and

- (vii) subject to the provisions of Clause 41.1.3 (*Project Company's Indemnities*), the Project Company shall be solely responsible for the payment of any deficiency.

24.2.4 Where insurance proceeds are to be used, in accordance with this Agreement, to repair, reinstate or replace any (part) of the Project Facilities, the Project Company shall carry out the work in accordance with the Design and Construction Requirements, so that on completion of the work the provisions of this Agreement are complied with.

24.3 Uninsurable Risks

24.3.1 Nothing in this Clause 24 (*Insurance*) shall oblige the Project Company to take out insurance in respect of a risk which is Uninsurable save where the predominant cause of the risk being Uninsurable is any act(s) or omission(s) of the Project Company or a Project Company Related Party.

24.3.2 If a risk usually covered by contractors' "all risks" insurance, property damage insurance, third party liability insurance, delay in startup and business interruption insurance (but not loss of profit) or insurances required by Law in each case required under this Agreement becomes Uninsurable then:

- (a) the Project Company shall notify the Public Partner of any risk becoming Uninsurable within [5] days of becoming aware of the same and in any event at least [5] days before expiry or cancellation of any existing insurance in respect of that risk; and
- (b) if both Parties agree, or it is determined in accordance with Clause 53 (*Disputes Resolution Procedure*) that the risk is Uninsurable and that:
 - (i) the risk being Uninsurable is not caused by the actions of the Project Company or any Project Company Related Party; and
 - (ii) the Project Company has demonstrated to the Public Partner that the Project Company and a prudent board of directors of a company operating the same or substantially similar projects in the European Union to that operated by the Project Company would in similar circumstances (in the absence of the type of relief envisaged by this Clause 24.3 (*Uninsurable Risks*)) be acting reasonably and in the best interests of the company if they resolved to cease to operate such businesses as a result of that risk becoming Uninsurable, taking into account *inter alia* (and without limitation) the likelihood of the Uninsurable risk occurring (if it has not already occurred), the financial consequences for such company if such Uninsurable risk did occur (or has occurred) and other mitigants against such consequences which may be available to such company;

the Parties shall meet to discuss the means by which the risk should be managed or shared (including considering the issue of self-insurance by either Party).

- 24.3.3 If the requirements of Clause 24.3.2 (*Uninsurable Risks*) are satisfied, but the Parties cannot agree as to how to manage or share the risk, then:
- (a) in respect of third party liability insurance only, the Public Partner shall (at the Public Partner's option) either pay to the Project Company an amount equal to the amount calculated in accordance with Clause 46.3 (*Compensation on Termination for Force Majeure [or Uninsurability]*) and this Agreement will terminate, or elect to allow this Agreement to continue and Clause 24.3.3(b) shall thereafter apply in respect of such risk; and
 - (b) in respect of contractors' "all risks" insurance, property damage insurance, third party liability insurance (if the Public Partner elects to allow the Agreement to continue in accordance with Clause 24.3.3(a)), delay in startup and business interruption (but not loss of profits) or insurances required by Law, this Agreement shall continue and on the occurrence of the risk (but only for as long as such risk remains Uninsurable) the Public Partner shall (at the Public Partner's option) pay to the Project Company either an amount equal to insurance proceeds that would have been payable had the relevant insurance continued to be available and this Agreement will continue, or an amount equal to the amount calculated in accordance with Clause 46.3 (*Compensation on Termination for Force Majeure [or Uninsurability]*) plus (in relation to third party liability insurance only) the amount of insurance proceeds that would have been payable, whereupon this Agreement will terminate; and
 - (c) where, pursuant to Clauses 24.3.3(a) and/or (b), this Agreement continues, then the Unitary Charge shall be reduced in each year for which the relevant insurance is not maintained by an amount equal to the premium paid (or which would have been paid) by the Project Company in respect of the relevant risk in the year prior to it becoming Uninsurable (Indexed from the date that the risk becomes Uninsurable). Where the risk is Uninsurable for part of a year only the reduction in the Unitary Charge shall be pro-rated to the number of months for which the risk is Uninsurable; and
 - (d) where, pursuant to Clause 24.3.3(a) and/or (b), this Agreement continues, the Project Company shall approach the insurance market at least every four months to establish whether the risk remains Uninsurable. As soon as the Project Company is aware that the risk is no longer Uninsurable, the Project Company shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) for such risk in accordance with this Agreement and provide the Public Partner with reasonable evidence of the existence of such insurance; and
 - (e) in respect of any period between the Public Partner receiving notification in accordance with Clause 24.3.2(a) that a TPL Risk has become Uninsurable and the Public Partner's notification to the Project Company in accordance with Clause 24.3.3(a) in respect of such risk then, provided it is ultimately agreed or determined that the requirements of Clause 24.3.2(b) are satisfied in respect of the Uninsurable

TPL Risk and subject to Clause 24.3.3(f), Clause 24.3.3(b) shall apply in respect of the occurrence of the Uninsurable TPL Risk during such period unless the Parties otherwise agree how to manage the risk during this period; and

- (f) Clause 24.3.3(e) shall only apply provided the Project Company does not unreasonably materially delay:
 - (i) agreement and/or determination in accordance with the Disputes Resolution Procedure as to whether the requirements of Clause 24.3.2(b) are satisfied in respect of the Uninsurable TPL Risk; and/or
 - (ii) meeting with the Public Partner to discuss the means by which the risk should be managed.

24.3.4 If, pursuant to Clause 24.3.3(a) (*Uninsurable Risks*), the Public Partner elects to make payment to the Project Company (such that the Agreement will terminate) (the “**Relevant Payment**”), the Project Company shall have the option (exercisable in writing within [20] Business Days of the date of such election by the Public Partner (the “**Option Period**”)) to pay the Public Partner, on or before the end of the Option Period, an amount equal to the insurance proceeds that would have been payable had the relevant risk not become Uninsurable, in which case this Agreement will continue (and the Relevant Payment will not be made by the Public Partner), and the Project Company's payment shall be applied for the same purpose and in the same manner as insurance proceeds would have been applied had the relevant risk not become Uninsurable.

24.4 Unavailability of Insurance Terms or Conditions

24.4.1 If, upon the renewal of any insurance which the Project Company is required to maintain or to procure the maintenance of pursuant to this Agreement:

- (a) any Insurance Term is not available to the Project Company in the European Union insurance market with reputable insurers of good standing; and/or
- (b) the insurance premium payable for insurance incorporating such Insurance Term is such that the Insurance Term is not generally being incorporated in insurance procured in the European Union insurance market with reputable insurers of good standing by PPP project companies in the European Union,

(other than, in each case, by reason of one or more actions of the Project Company and/or any Project Company Related Party) then Clause 24.4.2 shall apply.

24.4.2 If it is agreed or determined that Clause 24.4.1 (*Unavailability of Insurance Terms or Conditions*) applies, then the Public Partner shall waive the Project Company's obligations in Clause 24 (*Insurance*) and/or Schedule [●] (*Insurance*) in respect of that particular Insurance Term and the Project Company shall not be considered in breach of its obligations regarding the maintenance of insurance pursuant to this Agreement as a result of the failure to maintain insurance incorporating such Insurance Term for so long as the relevant circumstances described in Clause 24.4.1 (*Unavailability of Insurance Terms or Conditions*) continue to apply to such Insurance Term.

- 24.4.3 To the extent that the Parties agree (acting reasonably), or it is determined pursuant to the Disputes Resolution Procedure, that an alternative or replacement term and/or condition of insurance is available to the Project Company in the European Union insurance market with reputable insurers of good standing which, if included in the relevant insurance policy, would fully or partially address the Project Company's inability to maintain or procure the maintenance of insurance with the relevant Insurance Term, at a cost which PPP project companies in the European Union are (at such time) generally prepared to pay, the Project Company shall maintain or procure the maintenance of insurance including such alternative or replacement term and/or condition. Notwithstanding any other provision of this Agreement, the costs of such insurance shall be subject to the premium costs sharing mechanism set out in Schedule [●] (*Insurance Premium Risk Sharing Schedule*).
- 24.4.4 The Project Company shall notify the Public Partner as soon as reasonably practicable and, in any event, within [●] days of becoming aware that Clause 24.4.1(a) and/or Clause 24.4.1(b) are likely to apply or (on expiry of the relevant insurance then in place) do apply in respect of an Insurance Term (irrespective of the reason for the same). The Project Company shall provide the Public Partner with such information as the Public Partner reasonably requests regarding the unavailability of the Insurance Term and the Parties shall meet to discuss the means by which such unavailability should be managed as soon as is reasonably practicable.
- 24.4.5 In the event that Clause 24.4.1(a) and/or Clause 24.4.1(b) apply in respect of an Insurance Term (irrespective of the reasons for the same), the Project Company shall approach the insurance market at least every 4 months to establish whether Clause 24.4.1(a) and/or Clause 24.4.1(b) remain applicable to the Insurance Term. As soon as the Project Company is aware that Clause 24.4.1(a) and/or Clause 24.4.1(b) has ceased to apply to the Insurance Term, the Project Company shall take out and maintain or procure the taking out and maintenance of insurance (to be incepted as soon as is reasonably practicable) incorporating such Insurance Term in accordance with this Agreement and Clause 24.4.5 shall not any longer apply in respect of the reduction of the Annual Unitary Charge.

24.5 Insurance Premium Risk Sharing

The Parties shall comply with the provisions of Schedule [●] (*Insurance Premium Risk Sharing*).

PART VI. RELATIONSHIPS AND MONITORING

25 REPRESENTATIVES

25.1 The Public Partner's Representative

- 25.1.1 The Public Partner shall appoint a competent and qualified person as the Public Partner's Representative to act as its agent in connection with the Works and Services. The Public Partner's Representative shall exercise such functions in respect of this Agreement as the Public Partner may notify to the Project Company from time to time.
- 25.1.2 During any period when there is no Public Partner Representative, the Public Partner shall carry out the functions which would otherwise be performed by the Public Partner's Representative.
- 25.1.3 Except as expressly stated in this Agreement, the Public Partner's Representative shall have no authority to relieve the Project Company of any of its obligations under this Agreement.
- 25.1.4 Except as notified by the Public Partner to the Project Company in writing, the Project Company shall be entitled to treat any act of the Public Partner's Representative in the exercise of the functions referred to in Clause 25.1.1 (*The Public Partner's Representative*) as being expressly authorized by the Public Partner and the Project Company shall not be required to determine whether an express authority has in fact been given.
- 25.1.5 Any decision by any Public Partner Representative is specific to the circumstances to which it relates, and shall not be construed as binding on, or limiting any other decision to be made by, that or any other Public Partner Representative, whether in the same or similar circumstances or otherwise.

25.2 Project Company's Representative

- 25.2.1 The Project Company shall appoint a competent and qualified person to act as its agent in connection with the carrying out of this Agreement.
- 25.2.2 The Project Company's Representative shall have full authority to act on behalf of the Project Company for all purposes of this Agreement. The Public Partner and the Public Partner's Representative shall be entitled to treat any act of the Project Company's Representative in connection with this Agreement as being expressly authorized by the Project Company and the Public Partner and the Public Partner's Representative shall not be required to determine whether an express authority has in fact been given.

25.3 Change of Representatives

The Public Partner and the Project Company may at any time and from time to time by notice to the other Party terminate the appointment of any Representative or appoint 1 (one) or more substitute Representatives. Any such notice shall specify the date on which such termination or substitution shall have effect.

26 QUALITY MANAGEMENT

26.1 Quality Management Systems and Documentation

- 26.1.1 The Project Company shall procure that all aspects of the Works and the Services are the subject of Quality Management Systems which comply with the provisions of this Clause 26 (*Quality Management*).
- 26.1.2 The Quality Management Systems referred to in Clause 26.1.1 (*Quality Management Systems and Documentation*) shall comply with:
- (a) Schedule [●] (*Quality Management*); and
 - (b) Good Industry Practice,
- and shall be reflected in appropriate Quality Documentation which complies with the requirements set out in Schedule [●] (*Quality Management*).
- 26.1.3 Without limitation to the generality of Clause 26.1.2 (*Quality Management Systems and Documentation*), there shall be Quality Documentation for the Project Company describing its Quality Management System for all aspects of the Works and Services and meeting the requirements set out in Schedule [●] (*Quality Management*).
- 26.1.4 The Project Company shall not commence or permit the commencement of any aspect of the Works or Services before:
- (a) those parts of the Quality Documentation which concern such aspect of the Works has been submitted to the Independent Engineer, with a copy to the Public Partner and/or
 - (b) those parts of the Quality Documentation which concern such aspect of the Services has been submitted to the Public Partner
- under the Review Procedure and there has been no objection thereto from the Independent Engineer and/or from the Public Partner in accordance with the Review Procedure (on the grounds set out in Schedule [●] (*Review Procedure*)).
- 26.1.5 The Project Company shall, and shall procure that the Designer, Construction Contractor and Operator shall, comply with their respective Quality Documentation.
- 26.1.6 The Project Company shall submit any proposed changes or additions to or revisions of any of the Quality Documentation:
- (a) to the independent Engineer, with a copy to the Public Partner, in the case of Quality Documentation which concerns Works, and/or
 - (b) to the Public Partner, in the case of Quality Documentation which concerns Services
- in accordance with the Review Procedure and no such changes, additions or revisions shall be given effect unless there has been no objection thereto from the Independent Engineer

and/or from the Public Partner in accordance with the Review Procedure (on the grounds set out in Schedule [●] (*Review Procedure*)).

26.1.7 Without limitation to the generality of Clause 26.1.6 (*Quality Management Systems and Documentation*), the Project Company shall from time to time submit any changes to any of the Quality Documentation required for such Quality Documentation to continue to reflect Quality Management Systems which comply with the requirements set out in Clause 26.1.2 (*Quality Management Systems and Documentation*):

- (a) to the Independent Engineer, with a copy to the Public Partner in the case of Quality Documentation which concerns Works (up until the Works Completion Date), and/or (as the case may be),
- (b) to the Public Partner, in the case of Quality Documentation which concerns Services,

in accordance with the Review Procedure. The Independent Engineer and/or the Public Partner (as the case may be) may object to any such proposed change on the grounds set out in Schedule [●] (*Review Procedure*).

26.1.8 If the Project Company fails to propose any change required pursuant to Clause 26.1.7(a) (*Quality Management Systems and Documentation*), then the Public Partner may propose such change to the Independent Engineer, with a copy to the Project Company, and it shall be dealt with in accordance with the Review Procedure as though it had been proposed by the Project Company. If the Project Company fails to propose any change required pursuant to Clause 26.1.7(b) (*Quality Management Systems and Documentation*), then the Public Partner may consider such change to have been proposed by the Project Company prior to the date on which the change became required.

26.1.9 If there is no objection under the Review Procedure to a part of the Quality Documentation referred to in Clause 26.1.4 (*Quality Management Systems and Documentation*) or a change, addition or revision proposed pursuant to Clause 26.1.6, Clause 26.1.7 or Clause 26.1.8 (*Quality Management Systems and Documentation*), then the Quality Documentation shall be amended to incorporate such part, change, addition or revision.

26.2 Quality Manuals, Plans and Procedures

If any Quality Documentation refers to, relies on or incorporates any Quality Manual, plan, procedure or like document then such Quality Manual, plan, procedure or other document or the relevant parts thereof shall (unless the Independent Engineer and/or the Public Partner otherwise agrees) be submitted:

- (a) to the Independent Engineer, with a copy to the Public Partner (in the case of Quality Documentation which concerns Works), or
- (b) to the Public Partner (in the case of Quality Documentation which concerns Services),

at the time that the relevant Quality Documentation or part of or change, addition or revision to the Quality Documentation is submitted in accordance with the Review Procedure, and the contents of such Quality Manual, plan, procedure or other document shall be taken into account in the

consideration of the relevant Quality Documentation or part of or change, addition or revision to the Quality Documentation in accordance with the Review Procedure. The Independent Engineer or the Public Partner (depending on the subject matter of the Quality Documentation) may require the amendment of any such Quality Manual, plan, procedure or other document to the extent necessary to enable the relevant Quality Documentation to satisfy the requirements of Clause 26.1.2 (*Quality Management Systems and Documentation*).

26.3 Additional Information

Notwithstanding any other provision of this Clause 26 (*Quality Management*), the Project Company shall provide:

- (a) to the Independent Engineer, with a copy to the Public Partner (in the case of Quality Documentation which concerns Works) or
- (b) to the Public Partner (in the case of Quality Documentation which concerns Services),

such information as the Independent Engineer or the Public Partner (depending on the subject matter of the Quality Documentation) may reasonably require to demonstrate compliance with this Clause 26 (*Quality Management*) and the provisions of Schedule [●] (*Quality Management*).

26.4 Testing

- 26.4.1 Where the Project Company is required by Law, Technical Standards or by the Design and Construction Requirements to carry out any calibration, sample, test or trial, such calibration, sample, test or trial shall be carried out by the relevant sub-contractor in accordance with the following provisions of this Clause 26.4 (*Testing*).
- 26.4.2 All on-site and off-site calibrations, samples, tests and trials shall be carried out by laboratories accredited by the relevant bodies for such calibrations, samples, tests and trials.
- 26.4.3 The Project Company shall be responsible, for any remedial work required as a result of any failure to pass any calibration, sample, test or trial required in accordance with this Agreement.

26.5 Project Quality Director

The Project Company shall at all times maintain a Project Quality Director, who shall, irrespective of his other responsibilities, have defined authority for ensuring the establishment and maintenance of the Project Company's Quality Management System and reporting on the performance of the Project Company's Quality Management System. Without limitation to the foregoing, the job specification and responsibilities of the Project Quality Director shall include:

- 26.5.1 ensuring the effective operation of the Project Company's Quality Management System;
- 26.5.2 auditing the Project Company's Quality Management System referred to in Clause 26.1.1 (*Quality Management Systems and Documentation*) at regular intervals and reporting the findings of such audits:

- (a) to the Independent Engineer, with a copy to the Public Partner (up until the issuing of the Service Commencement Certificate) or:
 - (b) to the Public Partner (as of the issuing of the Service Commencement Certificate);
- 26.5.3 reviewing all Quality Management Systems referred to in Clause 26.1.1 (*Quality Management Systems and Documentation*) at intervals agreed with:
 - (a) the Independent Engineer and the Public Partner (up until the issuing of the Service Commencement Certificate) or with:
 - (b) the Public Partner (after the issuing of the Service Commencement Certificate),

to ensure their continued suitability and effectiveness;
- 26.5.4 liaising with the Independent Engineer and/or the Public Partner on all matters relating to quality management; and
- 26.5.5 ensuring that relevant quality records are retained for the retention periods required by Clause 28 (*Records*).

26.6 Quality Monitoring

Without prejudice to Clause 29 (*Monitoring of Performance*), the Public Partner and/or (up until the issuing of the Service Commencement Certificate) the Independent Engineer may carry out audits of the Quality Management Systems referred in Clause 26.1.1 (*Quality Management Systems and Documentation*) (including without limitation all Quality Documentation) at approximate intervals of [3] months and may carry out other periodic monitoring, spot checks and auditing of such Quality Management Systems. The Independent Engineer and/or the Public Partner shall notify the Project Company of any adverse findings and may request that a non-compliance be recorded and processed in accordance with the Quality Management System referred to in Clause 26.1.1 (*Quality Management Systems and Documentation*).

27 REPORTS AND INFORMATION

27.1 Required Reports

The Project Company shall submit to the Public Partner (with a copy to the Independent Engineer, in the case of reports covering matters related to the Works), the reports specified in Schedule [●] (*Records and Reports*) in such numbers as provided therein which reports shall, at the request of the Public Partner (and/or, in the case of reports covering matters related to the Works, of the Independent Engineer), be accompanied by a copy of such report or any part thereof in such form and compatible with such software as the Public Partner (or, as the case may be, the Independent Engineer) shall reasonably require.

27.2 Format

The proposed format of all Reports shall be submitted by the Project Company to the Independent Engineer (in the case of reports covering matters related to the Works) or to the Public Partner (in the case of reports not covering matters related to the Works) under the Review Procedure.

27.3 Further Information

Notwithstanding the submission of the Reports, the Project Company shall at any time and its own cost provide to the Public Partner (or, as the case may be, to the Independent Engineer) such information with respect to the Project as the Public Partner (or, as the case may be, the Independent Engineer) may reasonably require.

27.4 Objections to Reports

- 27.4.1 If the Public Partner (or, as the case may be, the Independent Engineer) considers that a Report either has not been compiled in accordance with the provisions of this Agreement or has been based on erroneous information or data, then the Public Partner (or, as the case may be, the Independent Engineer, with a copy to the Public Partner) may serve a notice to that effect on the Project Company within [28] days of receipt of such Report objecting to such Report.
- 27.4.2 If any objection is raised in accordance with Clause 27.4.1 (*Objections to Reports*), the Project Company shall promptly resolve the objection.
- 27.4.3 If any such objection has not been resolved by agreement between the Public Partner and the Project Company, within [14] days after the service of such notice, then either of them may refer the matter to the Disputes Resolution Procedure.

27.5 Revisions to Reports

If either:

- 27.5.1 the resolution (whether in accordance with Clause 27.4.2 or with Clause 27.4.3, in the latter instance either by agreement or determination under the Disputes Resolution Procedure) of any objection made pursuant to Clause 27.4.1 (*Objections to Reports*); or
- 27.5.2 the correction of any calculation pursuant to Clause 34.4 (*Disputed Amounts*)

requires any revision or adjustment to any Report, then the Project Company shall as soon as practicable issue revised versions of each affected Report and such revised Report shall for all purposes of this Agreement take the place of the original Report.

27.6 Reports in relation to Senior Lenders

- 27.6.1 The Project Company shall:
 - (a) provide to the Public Partner at the end of each Quarter a document listing all information provided by it to the Senior Lenders during the respective Quarter and, at the request of the Public Partner, provide to the Public Partner any information provided by it to the Senior Lenders during the Contract Period and any other information relating to the Project that the Public Partner may reasonably require including, if requested, any Senior Lenders' Technical Adviser's report disclosed to the Project Company (on a non-reliance basis towards the Public Partner);

- (b) provide to the Public Partner copies of its annual report and accounts within [30] days of publication;
- (c) provide to the Public Partner a copy of the financial model of the Senior Lenders, as such is referred to in the Senior Finance Documents at Financial Close and (as the same may be amended) within [30] days of any amendment thereto;
- (d) promptly upon the occurrence of an Event of Default notify the Public Partner of such Event of Default; and
- (e) use all reasonable endeavors to assist the Public Partner in its preparation of any report required by any Relevant Authority, from time to time.

27.6.2 The Public Partner may, in the circumstances referred to in Clause 27.6.1(d) (regardless of whether the Senior Lenders have exercised any enforcement or similar rights under the Senior Finance Documents), require the Project Company to provide an Interim Project Report and to attend, and use all reasonable endeavors to ensure that the Senior Lenders attend, such meetings as the Public Partner may convene to discuss such Interim Project Report and the circumstances giving rise to it.

28 RECORDS

28.1 Required Records

28.1.1 The Project Company shall maintain and update those records relating to the Project in accordance with this Clause 28 (*Records*).

28.1.2 The Project Company shall:

- (a) at all times maintain a full record of particulars of the costs of carrying out the Works and performing the Services, including those relating to the design, construction, maintenance, operation and finance;
- (b) when requested by the Public Partner, provide a summary of any of the costs referred to in Clause 28.1.2(a), including details of any funds held by the Project Company specifically to cover such costs, in such form and detail as the Public Partner may reasonably require to enable the Public Partner to monitor the performance by the Project Company of its obligations under this Agreement; and
- (c) provide such facilities as the Public Partner may reasonably require for its representatives to visit any place where the records are held and examine the records maintained under this Clause 28 (*Records*).

28.1.3 Compliance with the above shall require the Project Company to keep (and where appropriate to procure that the sub-contractors shall keep) books of account in accordance with best accountancy practice with respect to this Agreement showing in detail:

- (a) administrative overheads;
- (b) payments made to Sub-Contractors and to any other sub-contractors;

- (c) capital and revenue expenditure;
- (d) such other items as the Public Partner may reasonably require to conduct cost audits for verification of cost expenditure or estimated expenditure, for the purpose of Clause 35 (*Change Procedure*), Clause 36.1 (*Qualifying Change in Law*) and Clause 37 (*Compensation Events and Relief Events*)

and the Project Company shall have (and procure that the Sub-Contractors shall have) the books of account evidencing the items listed in Clauses 28.1.3(a) to 28.1.3(d) available for inspection by the Public Partner (and any expert) upon reasonable notice, and shall present a report of these to the Public Partner as and when requested.

28.1.4 The Project Company shall maintain or procure that the following are maintained:

- (a) a full record of all incidents relating to health, safety and security which occur during the Contract Period;
- (b) full records of all maintenance procedures carried out during the Contract Period; and
- (c) the records referred to in Schedule [●] (*Records and Reports*);

and the Project Company shall have such items available for inspection by the Public Partner upon reasonable notice, and shall present a report of them to the Public Partner as and when requested, upon reasonable notice.

28.1.5 The Public Partner shall be entitled at its own cost within [180] days after the Services Commencement Date to deliver up to the Project Company the existing records of the Public Partner (or copies thereof) in respect of the Project Facilities or any part thereof. In such event, the Project Company shall retain such records in safe storage at its own cost and such records shall thereafter be treated for all purposes as though they were part of the records referred to in Clause 28.1.4(c) (*Required Records*).

28.1.6 Upon termination of this Agreement, and in the event that the Public Partner wishes to enter into another contract for the remainder of the object of this Agreement, the Project Company shall (and shall ensure that the Sub-Contractors will) comply with all reasonable requests of the Public Partner to provide information relating to the Project Company's costs incurred in relation to the Project.

28.2 Audit

The records referred to in Clause 28.1 (*Required Records*) shall be kept in good order and in such form as to be capable of being audited (including by electronic means) by the Public Partner, the Independent Engineer or any other Relevant Authority acting according to a Legal Requirement. The Project Company shall make such records available for inspection by the Public Partner, the Independent Engineer or any other Relevant Authority acting according to a Legal Requirement, at all reasonable times.

28.3 Copies

The Public Partner and the Independent Engineer shall be entitled to take copies of all such records at the Project Company's cost and for that purpose to use such copying facilities as are maintained at the place where the records are kept.

28.4 Retention of Records

- 28.4.1 Without prejudice to any Legal Requirement, all records referred to in Clause 28.1 (*Required Records*) shall be retained for no less than the period specified in respect of such records in Schedule [●] (*Records and Reports*) or, if no such period is specified, a period of 7 years after the end of the year to which such records relate.
- 28.4.2 Where the period for the retention of any records (as set out against the relevant class of records in Schedule [●] (*Records and Reports*) or according to Clause 28.4.1 (*Retention of Records*)) has expired, then the Project Company shall notify the Public Partner as to what it intends to do with such records. If it intends to dispose of them or subsequently decides to dispose of them, the Project Company shall notify the Public Partner, and if the Public Partner shall within [30] days of such notice elect to receive those records or any part of them the Project Company, at its own cost, shall deliver up such records to the Public Partner in the manner and at such location as the Public Partner shall reasonably specify.
- 28.4.3 Upon the expiry or termination for whatever reason of this Agreement, the Project Company shall at its own cost deliver up to the Public Partner in the manner and at such location as the Public Partner shall reasonably specify all such records as are referred to in Clause 28.1 (*Required Records*) which were in existence at the Expiry Date or at the Termination Date, as the case may be (or, where those records are required by Law to remain with the Project Company, copies thereof) or such part of such records as the Public Partner may by notice to the Project Company specify. The Public Partner shall make available to the Project Company all the records the Project Company delivers up pursuant to this Clause 28.4.3 (*Retention of Records*), subject to reasonable notice.
- 28.4.4 The Project Company shall retain in safe storage for a period of not less than 5 years following the Expiry Date or the Termination Date, as the case may be, all such records as are referred to in Clause 28.4.3 (*Retention of Records*) which the Public Partner does not require to be delivered up to it. The costs of retaining those records in safe storage shall be borne:
- (a) by the Project Company where the termination arises as a result of a Project Company Default;
 - (b) by the Public Partner where the termination arises as a result of a Public Partner Default; and
 - (c) in cases of termination other than those governed by Clauses 28.4.4(a) and 28.4.4(b) (*Retention of Records*), by the Project Company and the Public Partner in equal proportions.

28.5 Computer Records

To the extent that the records of the Project Company are to be created or maintained on a computer or other electronic storage device, then the Project Company shall submit to the Public Partner, under the Review Procedure, the format for such records and a procedure for back-up and off-site storage for copies of such records and shall adhere to such approved format and procedure and shall cause the Construction Contractor, the Designer, the Operator and its or their sub-contractors to implement and adhere to such approved procedure.

29 MONITORING OF PERFORMANCE

29.1 Breach of this Agreement

29.1.1 The Project Company shall notify the Public Partner (and, whenever the Works are concerned, the Independent Engineer) of the occurrence of any breach of its obligations under this Agreement as soon as practicable after it becomes aware of such matter but, in any case, within [7] days of such matter becoming apparent to the Project Company or, if earlier, of the date upon which the same ought reasonably to have become apparent to the Project Company.

29.1.2 If at any time the Public Partner (or, whenever the Works are concerned, the Independent Engineer) is of the opinion that the Project Company has failed to perform any of its obligations under this Agreement (whether or not such failure has been notified under Clause 29.1.1 (*Breach of this Agreement*)) and such failure is capable of remedy, then the Public Partner or the Independent Engineer (as relevant) may serve a notice on the Project Company requiring the Project Company (at its own cost and expense) to remedy such failure (and any damage resulting from such failure) within a reasonable period (the "**Remedial Period**") and for the avoidance of doubt a failure to perform shall include a failure to remedy as required by this Clause 29.1.2 (*Breach of this Agreement*).

29.2 Deductions

29.2.1 If at any time during the Services Period:

- (a) any Report indicates or the Public Partner is notified or otherwise becomes aware that the Project Company has failed to perform any of its obligations under this Agreement; or
- (b) the Public Partner or the Independent Engineer serves a notice under Clause 29.1.2 (*Breach of this Agreement*) and the Project Company fails to remedy the failure within the Remedial Period,

then the Public Partner may (without prejudice to any other right or remedy available to the Public Partner) by notice to the Project Company apply Deductions calculated in accordance with the provisions of Schedule [●] (*Payment Mechanism*).

29.2.2 Where a failure occurs pursuant to Clause 29.2.1 (*Deductions*) which would entitle the Public Partner to apply Deductions for more than one breach of the provisions of Schedule [●] (*Payment Mechanism*), then, subject to the provisions of Clause 29.2.3 (*Deductions*), and provided that such breaches stem from the same failure event, the Public Partner shall only

apply Deductions in consideration of the breach which attracts the greatest amount of Deductions for that failure.

- 29.2.3 Deductions shall be applied for more than one breach arising from the same failure where the Public Partner reasonably believes that the safety of members of the public, services users, employees, sub-contractors, client representatives and other key stakeholders has been compromised by the actions of the Project Company or Project Company Related Parties. In such circumstances, for each safety-related breach identified pursuant to Schedule [●] (*Payment Mechanism*), Deductions will be applied, in addition to the greatest amount of Deductions which can be applied for the non-safety related breach arising from the failure event.
- 29.2.4 The Project Company may within [28] days of receipt of any notice pursuant to Clause 29.2.1 (*Deductions*) object to the application of any such Deduction. If the Public Partner and the Project Company are unable to reach agreement on any such matter within [7] days of such objection by the Project Company, either may refer the Dispute for resolution under the Disputes Resolution Procedure. For the avoidance of doubt, the procedure in this Clause 29.2.4 shall not apply in relation to the withholdings made by the Public Partner from the Unitary Charge in the event referred to in Clause 18.1.4 (*Works Completion Certificate*) within the limits and conditions provided for in Schedule [●] (*Payment Mechanism*).

29.3 Unavailability

If at any time during the Services Period an Unavailability Incident occurs under the circumstances described in Schedule [●] (*Payment Mechanism*), such occurrence shall entitle the Public Partner to apply to the Project Company Deductions in consideration of the said Unavailability Incident, as set out in Schedule [●] (*Payment Mechanism*). The provisions of Clauses 29.2.1 to 29.2.4 (*Deductions*) shall apply *mutatis mutandis* for Unavailability Incidents and the related Deductions.

29.4 Warning Notices

Without prejudice to any other right or remedy available to the Public Partner, if at any time the level of Deductions applied to the Project Company has reached the threshold of [●]% of the Annual Unitary Charge or greater in any two consecutive Services Years, then the Public Partner may give written notice (a "**Warning Notice**") to the Project Company setting out in general terms the matter or matters giving rise to such notice and containing a reminder to the Project Company of the implications of such notice. Any such notice shall state on its face that it is a Warning Notice and shall be duly signed on behalf of the Public Partner.

29.5 Increased Monitoring

In the event of the Project Company either:

- 29.5.1 incurring Deductions in excess of [●]% of the Annual Unitary Charge in any two consecutive Services Years; or
- 29.5.2 receiving more than 1 Warning Notice in any three consecutive Services Years,

the Public Partner may (without prejudice to any other right or remedy available to the Public Partner), by notice to the Project Company, increase the level of monitoring of the Project Company by the

Public Partner until such time as the Project Company shall have demonstrated to the reasonable satisfaction of the Public Partner that it will perform and is capable of performing its obligations under this Agreement. The notice to the Project Company shall specify the additional measures to be taken by the Public Partner in monitoring the Project Company in response to the matters which led to such Deductions being imposed or Warning Notice sent. The Project Company shall compensate the Public Partner for all reasonable and documented costs incurred by it as a result of such increased level of monitoring (including, without limitation, the relevant administrative expenses of the Public Partner, including an appropriate sum in respect of general staff costs and overheads).

29.6 Public Partner Step-in Rights

29.6.1 If the Public Partner reasonably believes that it needs to take action in connection with the Services:

- (a) because a serious risk exists to the health or safety of persons or property or to the environment; and/or
- (b) to discharge a statutory duty; and/or
- (c) because an Emergency has arisen; and/or
- (d) in any other instance where this is required for an [overriding public interest reason (e.g., the affordability of the User Tariffs by the Users, the necessity to ensure unrestricted access to a certain public service, national security)],

then the Public Partner shall be entitled to take action in accordance with Clauses 29.6.2 to 29.6.9 (*Public Partner Step-in Rights*).

29.6.2 If Clause 29.6.1 (*Public Partner Step-in Rights*) applies and the Public Partner wishes to take action, the Public Partner shall notify in writing the Project Company, with a copy to the Private Partner and to the Senior Lenders (and, whenever the Works are concerned, to the Independent Engineer), of the following:

- (a) the action it wishes to take;
- (b) the reason for such action;
- (c) the date it wishes to commence such action;
- (d) the time period which it believes will be necessary for such action; and
- (e) to the extent practicable, the effect on the Project Company and its obligation to provide the Services during the period such action is being taken.

29.6.3 Following service of such notice, the Public Partner shall take such action as notified under Clause 29.6.2 (*Public Partner Step-in Rights*) and any consequential additional action as it reasonably believes is necessary (together, the "**Required Action**") in accordance with the provisions of this Agreement.

- 29.6.4 The Project Company shall give all reasonable assistance to the Public Partner while it is taking such Required Action, including:
- (a) granting such access rights as are necessary and take all action that is necessarily required by the Public Partner to assist the Public Partner in exercising its rights under this Clause 29.6.3 (*Public Partner Step-in Rights*);
 - (b) providing sufficient resources, including personnel, to assist the Public Partner in exercising its rights under this Clause 29.6.3 (*Public Partner Step-in Rights*);
 - (c) not doing anything to hinder, disrupt or prevent the Public Partner in exercising its rights under this Clause 29.6.3 (*Public Partner Step-in Rights*).
- 29.6.5 The Public Partner shall provide the Project Company with notice of completion of the Required Action and shall use reasonable endeavors to provide such advance notice, as is reasonably practicable, of its anticipated completion.
- 29.6.6 Where the Required Action has been taken otherwise than as a result of a breach by the Project Company, the Public Partner shall undertake the Required Action in accordance with Good Industry Practice and shall compensate the Project Company in respect of the effects of the step-in so as to leave the Project Company in the same position that it would have been had no step-in occurred. The Project Company acknowledges and agrees that the Public Partner is not obliged to exercise its rights under Clause 29.6.3 (*Public Partner Step-in Rights*) and, if it exercises its rights under Clause 29.6.3 (*Public Partner Step-in Rights*), it is not obliged to cure any breach, or to overcome or mitigate the event (or any consequences of the event) that gave rise to such exercise.
- 29.6.7 Where the Public Partner has exercised its rights under Clause 29.6.3 (*Public Partner Step-in Rights*) as a consequence of a Force Majeure Event, a Material Adverse Government Action or a Qualifying Change in Law, the exercise by the Public Partner of those rights will be a Force Majeure Event, a Material Adverse Government Action or a Qualifying Change in Law.
- 29.6.8 Where the Required Action has been taken otherwise than as a result of a breach by the Project Company, then for so long as and to the extent that the Required Action is taken, and this prevents the Project Company from providing any part of the Services:
- (a) the Project Company shall be relieved from its obligations to provide such part of the Services to the extent the Public Partner has expressly relieved it from its obligations; and
 - (b) in the operating phase, in respect of the period in which the Public Partner is taking the Required Action, the Unitary Charge due from the Public Partner to the Project Company shall equal the amount the Project Company would receive if it were satisfying all its obligations and providing the Services affected by the Required Action in full over that period, less, without double counting:
 - (i) deductions for operating cost savings the Project Company makes during the step-in period;

- (ii) unavailability or performance deductions to be made in respect of parts of the Services still provided by the Project Company and unaffected by the Public Partner's step-in,

[and the Public Partner shall pay to the Project Company an additional amount which shall equal the Project Company's share of the Third-Party Revenues that the Project Company was not able to collect over that period.]

- (c) in the construction phase, [drafting to reflect Public Partner's agreed liabilities owed to the Project Company and to cross-reference where applicable to other clauses in the Agreement dealing with compensation mechanics for Project Company no fault events; plus, ability to set off];

and provided that the Project Company provides the Public Partner with reasonable assistance in accordance with Clause 29.6.4 (*Public Partner Step-in Rights*) (such assistance to be at the expense of the Public Partner to the extent incremental costs are incurred by the Project Company that are not already taken into account).

29.6.9 Where the Required Action has been taken as a result of a breach of the Project Company, then for so long as and to the extent that the Required Action is taken, and this prevents the Project Company from providing any part of the Services:

- (a) the Project Company shall be relieved from its obligations to provide such part of the Services to the extent the Public Partner has expressly relieved it from its obligations; and either
- (b) in the operating phase, in respect of the period in which the Public Partner is taking the Required Action, the Unitary Charge due from the Public Partner to the Project Company shall equal the amount the Project Company would receive if it were satisfying [all] its [affected][unaffected] obligations and providing the Services [affected][unaffected] by the Required Action in full over that period, less (without double counting):
 - (i) deductions for any operating cost savings the Project Company makes during the step-in period as reasonably estimated by the Public Partner;
 - (ii) an amount equal to all the Public Partner's costs [and losses incurred] in taking the required action; and
 - (iii) unavailability or performance deductions to be made in respect of parts of the Services still provided by the Project Company and unaffected by the Public Partner's step-in;

[and the Public Partner shall pay to the Project Company an additional amount which shall equal the Project Company's share of the User Tariff Revenues that the Project Company was not able to collect over that period,] or:

- (c) in the construction phase, [drafting to reflect Project Company's agreed liabilities owed to the Public Partner and any construction cost savings and to cross-reference

where applicable to other clauses in the Agreement dealing with compensation on Project Company fault events; plus ability to set off],

and provided that the Project Company provides the Public Partner with reasonable assistance in accordance with Clause 29.6.4 (*Public Partner Step-in Rights*) (such assistance to be at the expense of the Public Partner).

29.6.10 [The Public Partner may cease to exercise its rights under this Clause 29.6 (*Public Partner Step-in Rights*) in whole or part upon giving a minimum of [5 (five)] Business Days' notice to the Project Company and shall use reasonable endeavors to provide as much advance notice as is reasonably practicable.]

29.6.11 [If the Public Partner ceases to exercise its rights under this Clause 29.6 (*Public Partner Step-in Rights*) in accordance with Clause 29.6.10 (*Public Partner Step-in Rights*), the Project Company must [immediately] [within [●] Business Days] recommence performing any obligations suspended due to the exercise by the Public Partner of those rights and the Public Partner must give reasonable assistance to the Project Company to ensure that the transition is effected as smoothly as possible (at the Project Company's cost and expense in the case of a step-in falling under the scope of Clause 29.6.9 (*Public Partner Step-in Rights*))].

29.7 Removal of Personnel

The Public Partner (or, whenever the Works are concerned, the Independent Engineer, with a copy to the Public Partner) may require the Project Company, to remove forthwith from the Site any Project Company Related Party who, in the opinion of the Public Partner (or of the Independent Engineer, as the case may be), misconducts itself or is incompetent or negligent in the proper performance of its duties carried out in connection with the Project, or who breaches the Law or disturbs public order, and such person shall not be again allowed upon the Site in connection with the Works or Services carried out by the Project Company without the consent of the Public Partner.

30 AUTHORIZED FUNCTIONS

30.1 Subject to the provisions of this Clause 30 (*Authorized Functions*) and without prejudice to the application of any relevant provisions of this Agreement concerning the Project Company's responsibility for the proper performance of its obligations under this Agreement, the Project Company is hereby authorized to exercise for the purposes of performing the Operations in accordance with the provisions of this Agreement each of the functions listed in Schedule [●] (*Authorized Functions and Services*) and, to the extent permitted by Law, any other functions which are the same as or similar to the functions exercised by the Public Partner in relation to the facilities such as the Project Facilities (the "**Authorized Functions**").

30.2 The authorization under this Clause 30 (*Authorized Functions*) shall be effective from the Effective Date.

30.3 The Project Company shall exercise properly and fully each of the Authorized Functions in respect of the performance of the Operations on the Site for as long as the authorization made under this Clause 30 (*Authorized Functions*) is effective.

- 30.4** If at any time the authorization under this Clause 30 (*Authorized Functions*) expires or otherwise ceases in respect of any of the Authorized Functions, the Project Company shall be released from exercising and shall not exercise the relevant Authorized Function. Save in the event of a breach by the Project Company of the provisions of this Agreement having caused the expiry or cessation of the relevant Authorized Function, the Project Company shall be relieved from all Deductions and other deductions attributable to such expiry or cessation.
- 30.5** The authorization made under this Clause 30 (*Authorized Functions*) in respect of each and every Authorized Function is made on the following terms:
- 30.5.1 it shall be non-assignable; and
- 30.5.2 the Project Company shall not delegate any such Authorized Function but, for the avoidance of doubt, shall be entitled to require its Sub-contractors to provide services or to perform works or other activities in relation thereto.
- 30.6** In exercising the Authorized Functions, the Project Company shall act in accordance with the principles of administrative law which govern the conduct of the Public Partner for similar functions and shall obey all relevant Legal Requirements. However, the Project Company shall not be responsible for complying with any instruction given by the Public Partner or as a result of any failure by the Public Partner to issue any instructions in relation to the exercise by the Project Company of such Authorized Functions in accordance with this Clause 30 (*Authorized Functions*), it being understood that, unless required by Law, the Public Partner shall be under no obligation to issue any instruction to the Project Company for the purposes of the Project Company exercising the Authorized Functions.
- 30.7** For so long as any authorization under this Clause 30 (*Authorized Functions*) is effective, the Project Company shall include in the Monthly Report details of all actions taken by the Project Company pursuant to the Authorized Functions, including without limitation details of:
- 30.7.1 all notices given and received;
- 30.7.2 all directions, authorizations and consents given to third parties;
- 30.7.3 all agreements, commitments or compromises reached with third parties and Relevant Authorities; and
- 30.7.4 any legal proceedings commenced or proposed.
- 30.8** Without prejudice to the generality of Clause 30.7 (*Authorized Functions*), the Project Company shall provide the Public Partner with copies of all authorizations, consents and directions given by the Project Company and all notices given and received by the Project Company pursuant to the exercise of the Authorized Functions.
- 30.9** Any authorization under this Clause 30 (*Authorized Functions*) shall cease automatically on the Termination Date or the Expiry Date, whichever occurs earlier.
- 30.10** On the expiry or cessation of an authorization under this Clause 30 (*Authorized Functions*), the Project Company shall take such actions as are necessary for the efficient transfer of any such function to such persons as the Public Partner may designate.

- 30.11** The Project Company shall take such actions as are appropriate to inform all Interested Parties of its role pursuant to this Clause 30 (*Authorized Functions*).

31 STATUTORY POWERS

- 31.1** Whenever the exercise by the Public Partner of any statutory power (including by issuing any order, decision or regulation as allowed by Law) is essential to enable the Project Company to perform any obligation under this Agreement, the provisions of this Clause 31 (*Statutory Powers*) shall apply
- 31.2** If the Project Company believes that the exercise by the Public Partner of any statutory power is essential to enable the Project Company to perform any obligation under this Agreement, the Project Company shall give notice to that effect to the Public Partner.
- 31.3** Any notice given by the Project Company in accordance with Clause 31.2 (*Statutory Powers*) shall:
- 31.3.1 clearly specify the action/measure requested of the Public Partner, the duty of the Project Company under this Agreement in respect of which such action/measure is requested and the reasons why such action/measure by the Public Partner is required;
 - 31.3.2 indicate the time by which the requested action/measure is required; and
 - 31.3.3 set out any recommendation by the Project Company in respect of the requested action/measure.
- 31.4** Within [7] days after receipt of a notice given in accordance with Clause 31.2 (*Statutory Powers*), the Public Partner shall acknowledge receipt of such notice and shall give its good faith estimate of the date on which it will respond on the merits of the request, provided that no such estimate shall be binding on the Public Partner.
- 31.5** The Public Partner shall respond to the merits of the request contained in the notice given in accordance with Clause 31.2 (*Statutory Powers*) as soon as reasonably practicable in the circumstances, taking into consideration, *inter alia*, any requirement for consultation with the public or other Interested Parties in connection with such request.
- 31.6** The Public Partner shall consider on its merits in accordance with its statutory duties any request for action/measure contained in a notice given in accordance with Clause 31.2 (*Statutory Powers*). Without in any way limiting the discretion of the Public Partner in responding to any such request, the Public Partner shall, in reaching any such decision, give consideration, *inter alia*, to the matters set out in Clause 31.7 (*Statutory Powers*). The decision of the Public Partner on the merits of the request shall not be subject to review under the Disputes Resolution Procedure.
- 31.7** The considerations referred to in Clause 31.6 (*Statutory Powers*) are the following:
- 31.7.1 whether the Public Partner has the statutory power to take the action/measure requested;
 - 31.7.2 whether there is any alternative course available to the Project Company (and the cost of such alternative course) which would not require action/measure by the Public Partner;
 - 31.7.3 the effect the requested action/measure would have on the interests of any third parties; and

31.7.4 whether the action/measure requested would have any implications for safety either of any third parties or members of the public.

31.8 Subject to Clause 31.9 (*Statutory Powers*), if, in the exercise of its discretion, the Public Partner refuses to take the action/measure requested, then the Project Company may defer the matter to the Disputes Resolution Procedure. The Project Company shall be relieved from liability under this Agreement to the extent that, further to the completion of the Disputes Resolution Procedure, it is found that, by reason of such refusal, the Project Company is not able to perform the obligations identified in the request contained in the notice given in accordance with Clause 31.2 (*Statutory Powers*).

31.9 The Project Company shall be relieved of its liability in accordance with Clause 31.8 (*Statutory Powers*) only if it has taken all steps necessary to mitigate the effects of the refusal of the Public Partner to take the requested action.

31.10 If, further to the completion of the Disputes Resolution Procedure, it is found that failure by the Public Partner to take any action requested in a notice given in accordance with Clause 31.2 (*Statutory Powers*) renders impossible (and not merely more expensive) the Project Company's performance of this Agreement (as a whole) or has a fundamental effect on the rights or obligations of the Project Company under this Agreement, then following:

31.10.1 consultation for a period of not less than [120] days from the date of the Public Partner's response under Clause 31.5 (*Statutory Powers*) to reach a solution acceptable to both Parties; and

31.10.2 (if applicable) such period as is reasonably necessary for the implementation of such solution,

the Project Company shall be entitled to terminate this Agreement and the provisions of Clause 46.1 (*Compensation on Public Partner Default, Material Adverse Government Action, Change in Law or Voluntary Termination*) shall apply.

PART VII. USER TARIFFS

32 USER TARIFFS

32.1 User Tariffs

32.1.1 [On and from the Services Commencement Date up to and on the Expiry Date or the Termination Date, whichever occurs first, the Project Company shall apply and shall be entitled to charge the User Tariffs, in accordance with the terms of this Agreement, the Project Documents, the Law and any Legal Requirements.

32.1.2 Subject to Clause 32.2 (*Changes to the User Tariffs*), the Project Company shall:

- (a) impose User Tariffs upon the Users;
- (b) establish, modify and adjust the rate of such User Tariffs; and
- (c) collect, process and contribute to the enforcement by the Public Partner of the User Tariffs,

in accordance with this Agreement and Schedule [●] (*Payment Mechanism*), the Services Requirements, the Law and all Legal Requirements and Good Industry Practice.

32.1.3 The Project Company shall not:

- (a) on and from the Services Commencement Date, impose any User Tariff in relation to the use of the Project Facilities otherwise than as set forth in Schedule [●] (*Payment Mechanism*); or
- (b) impose any tariff, fee, charge or other amount other than the User Tariff.

32.1.4 If the Project Company sets or collects User Tariffs which do not comply with Schedule [●] (*Payment Mechanism*) or the Law or the Legal Requirements, and this results in any over pricing of the Users, the Project Company shall be liable for all Losses or Claims, including any Users' requests for reimbursement, as a result of the User Tariffs having been set or collected in breach of this Agreement, the Law, and/or the Legal Requirements.]

32.2 Changes to the User Tariffs

[As of [one year] after the Tender Submission Date, the User Tariffs shall be adjusted in accordance with Schedule [●] (*Payment Mechanism*).]

32.3 User Tariffs Handling, Collection and Enforcement

32.3.1 [The Project Company shall be responsible for carrying out the User Tariff Services.

32.3.2 The Project Company shall be entitled to collect the User Tariff Revenues. As between the Public Partner and the Project Company, the Public Partner shall be entitled to deduct the User Tariff Revenues collected or deemed to be collected by the Project Company from the Unitary Charge, as set out in more detail in Schedule [●] (*Payment Mechanism*).]

PART VIII. PAYMENT

33 CALCULATION OF PAYMENTS

33.1 Payment Mechanism

Payments shall, subject to Clause 33.2 (*Excusing Causes*), be calculated in accordance with Schedule [●] (*Payment Mechanism*).

33.2 Excusing Causes

If an Excusing Cause interferes (or has interfered) adversely with, or causes (or has caused) a failure of, the performance of the Services and/or causes (or has caused) the application of Deductions and provided that the effect of such Excusing Cause is claimed by the Project Company to the Public Partner, within [10] Business Days of the date on which the Project Company became aware (or ought reasonably to have become so aware) of the occurrence of the Excusing Cause, then (subject to Clauses 33.3 (*Insured Exposure*) and 33.4 (*Mitigation*)), to the extent it is determined by the Public Partner that the event(s) which the claim is based on is/are an Excusing Cause and such failure or interference or application of Deductions arises (or has arisen) as a result of such Excusing Cause:

33.2.1 such failure by the Project Company to perform, and any poor performance of, any affected part of the Services shall not constitute (and shall not have constituted) a breach of the provisions of this Agreement by the Project Company;

33.2.2 such interference shall be taken account of in measuring the performance of any affected part of the Services in accordance with the payment mechanism set out in Schedule [●] (*Payment Mechanism*), which shall be operated (or shall have been operated) as though the relevant Services had been performed free from such adverse interference; and

33.2.3 any such Deductions shall not apply (or shall have not been applied),

so that the Project Company shall be entitled (and shall have been entitled) to payment under this Agreement as if there had been no such interference with the Services.

33.3 Insured Exposure

Without prejudice to Clause 24 (*Insurance*), the Project Company shall not be entitled to any payment which would not have been due under this Agreement but for Clause 33.2 (*Excusing Causes*) to the extent that the Project Company is or should be able to recover under any policy of insurance required to be maintained by the Project Company or any Project Company Related Party in accordance with this Agreement (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Project Company (or any Project Company Related Party), including but not limited to non-disclosure or under-insurance) or any other policy of insurance which the Project Company has taken out and maintained.

33.4 Mitigation of Excusing Cause

The Project Company shall take all reasonable steps to mitigate the consequences of an Excusing Cause on the Project Company's ability to perform the Services under this Agreement. To the extent

that the Project Company does not take such steps, the Project Company shall not be entitled to, and shall not receive, the relief specified in Clause 33.2 (*Excusing Causes*).

34 INVOICING AND PAYMENT

34.1 Monthly Invoices

34.1.1 From the Services Commencement Date, the Public Partner shall pay to the Project Company the Monthly Payment in accordance with Schedule [●] (*Payment Mechanism*).

34.1.2 Within [20] days following the last day of each month in each Services Year, the Project Company shall deliver to the Public Partner a report setting out the payments payable in respect of such month (the "**Payment Report**"). The Payment Report shall show:

- (a) the Monthly Payment for the relevant month;
- (b) any other amount due from the Public Partner to the Project Company under this Agreement;
- (c) each Deduction from the Unitary Charge calculated in accordance with Schedule [●] (*Payment Mechanism*);
- (d) any allowances or amounts owing from the Project Company to the Public Partner pursuant to this Agreement;
- (e) any VAT payable for the relevant month;
- (f) any adjustments to reflect previous over-payments and/or under-payments (each adjustment stated separately);
- (g) any adjustments to reflect changes in the exchange rate according to Clause 34.3.2 (*Payments*);
- (h) any other amount due and payable from one Party to the other under this Agreement;
- (i) any interest payable in respect of any amounts owed; and
- (j) the net amount owing by the Public Partner to the Project Company or by the Project Company to the Public Partner.

34.1.3 The Payment Report delivered pursuant to Clause 34.1.2 (*Monthly Invoices*) shall be accompanied by a performance period report for the relevant month prepared by the Project Company which details the performance for the relevant month and by other work papers clearly setting out the derivation of the Monthly Payment, and all other charges and any adjustments. The said documents shall illustrate, *inter alia*, the calculation of each element provided in the Payment Report, as indicated in Clause 34.1.2 (*Monthly Invoices*), and if there are any amounts due and owing on which interest is being charged, the amount of interest.

- 34.1.4 If the Payment Report delivered pursuant to Clause 34.1.2 (*Monthly Invoices*) shows a net amount owing by the Public Partner to the Project Company, the Project Company shall be entitled to issue an invoice to the Public Partner in respect of such amount (which invoice shall separately identify any additional VAT payable by the Public Partner). If the Payment Report shows a net amount owing by the Project Company to the Public Partner, the Public Partner shall issue an invoice or all other necessary accounting and tax documents according to the Law, and take all necessary measures so as to receive the payment of such amount, promptly following its receipt of such report.

34.2 Due Date for Payments

- 34.2.1 Without prejudice to Clause 34.4 (*Disputed Amounts*), the Public Partner shall pay to the Project Company the amount of an invoice issued by the Project Company pursuant to Clause 34.1.4 (*Monthly Invoices*) not later than [60] days after the date the Public Partner has received the said invoice.
- 34.2.2 Without prejudice to Clause 34.4 (*Disputed Amounts*), the Project Company shall pay to the Public Partner the amount ascertained to be owed by the Project Company to the Public Partner pursuant to Clause 34.1.4 (*Monthly Invoices*) not later than [60] days after the date the Project Company has received from the Public Partner the relevant invoice or other accounting and tax documents according to the Law to enable the Project Company to effect payments.
- 34.2.3 Should the original due date for any payment pursuant to this Agreement not be a Business Day, then the due date shall be the Business Day next following the original due date.

34.3 Payments

- 34.3.1 Unless and to the extent otherwise provided in the Direct Agreement, all payments under this Agreement shall be made in RON, in accordance with Schedule [●] (*Payment Mechanism*).
- 34.3.2 Payments of amounts which are set in EUR shall be made in RON at the RON/EUR exchange rate published by the National Bank of Romania for the invoice date to the bank account of the recipient specified in the invoice or another supporting document, quoting the invoice or supporting document number against which payment is made. The next following invoice issued by the Project Company or the invoice or other supporting document issued by the Public Partner, as the case may be, shall include an item for adjustment for variation of the exchange rate and the net amounts shall be adjusted by adding or subtracting the amounts resulting from the balance between: (i) the RON/EUR exchange rate as of the issuance date of the previous invoice (or other supporting document) and: (ii) the RON/EUR exchange rate as of the payment date of the previous invoice (or other supporting document) or as of the due date of such previous invoice (or supporting document), if such was not paid on time.

34.4 Disputed Amounts

- 34.4.1 Either Party shall have the right to dispute, in good faith, any amount specified in an invoice or in any other supporting document referred to in this Agreement. The Party disputing

any such amount shall pay the undisputed part of the invoice or supporting document and shall be entitled to withhold the balance pending resolution of the Dispute.

- 34.4.2 The Parties shall use all reasonable endeavors to resolve such Dispute in within [30] days of the Dispute arising. If they fail so to resolve it, either Party may refer the matter to the Disputes Resolution Procedure.
- 34.4.3 If, following resolution of the Dispute, amounts included in an invoice (or in another supporting document) are required to be amended, the Project Company shall withdraw the original invoice (or the Public Partner shall withdraw the original invoice or other supporting document) and issue a replacement invoice (or the Public Partner shall issue a replacement invoice or other replacement supporting document) reflecting such amended amount. Any unpaid balance shall be paid by the Public Partner to the Project Company (or by the Project Company to the Public Partner), together with interest thereon at the rate set forth in Clause 34.5.1 (*Interest on Late Payments*), calculated from the original due date or the date resulted further to the application of Clause 34.2.3 (*Due Date for Payments*) forthwith after receipt by it of the replacement invoice (or other replacement supporting document).

34.5 Interest on Late Payments

- 34.5.1 Unless otherwise provided for in this Agreement, the Parties will pay interest on any unpaid amount under this Agreement from the due date of payment until the payment date at a rate equal to [9%] per annum.
- 34.5.2 For the avoidance of doubt, the interest rate set out in Clause 34.5.1 (*Interest on Late Payments*) shall apply to any amounts which should have been paid by either Party to the other according to the provisions of this Agreement to the extent a determination to this effect is made pursuant to the Disputes Resolution Procedure or otherwise at a later stage, including without limitation in respect of amounts of Deductions or other deductions which were wrongly applied or, conversely, which were wrongly not applied but should have been applied, from the date the relevant amount (had Deductions or other deductions not been applied) was due and payable by the Public Partner or the excess amount has been received by the Project Company.

34.6 Satisfaction of Obligation

If the calculation of any amounts payable by the Public Partner under this Agreement would (otherwise than for this Clause 34.6 (*Satisfaction of Obligation*)) require the Public Partner to pay an amount to more than one person or more than once within the same provision or under more than one provision of this Agreement, in respect of the same costs, expense, liability or obligation, the Public Partner's obligations in respect thereof shall be discharged if and to the extent that payment of such amount is paid once only.

34.7 Set-Off

- 34.7.1 The Project Company shall not be entitled to retain or set off any amount due to the Public Partner by it, but the Public Partner, without prejudice to the provisions set forth under Clause 46.6 (*Set off on Termination*), may retain or set off any amount owed to it by the

Project Company under this Agreement which has fallen due and payable against any amount due to the Project Company under this Agreement.

- 34.7.2 If the payment or deduction of any amount referred to in Clause 34.7.1 (*Set-Off*) is disputed, then any undisputed part of that amount shall be paid and the disputed part shall be dealt with in accordance with Clause 53 (*Disputes Resolution Procedure*). The provisions of Clause 34.5.2 (*Interest on Late Payments*) shall accordingly apply.

34.8 Examination of Records

Without limitation to Clause 28.2 (*Audit*), the Public Partner shall have the right, upon giving the Project Company reasonable notice and at its own expense, to examine the books and records of the Project Company relative to this Agreement to the extent necessary to verify the accuracy of any accounting statement, charge, computation or claim made pursuant to any of the provisions of this Agreement, provided that:

- 34.8.1 such books and records need not (unless the same contain information relating to a good faith Dispute) be preserved longer than the period specified in respect of such books or records in Schedule [●] (*Records and Reports*) or (if no such period is so specified) a period of 7 years after the end of the Contract Year to which such books or records refer;
- 34.8.2 if any such examination reveals any inaccuracy in any invoice made, the necessary adjustments in such invoice and payment shall be made within [14] days after the date that such inaccuracy is established by agreement or adjudication and the provisions of Clause 34.5.2 (*Interest on Late Payments*) shall accordingly apply; and
- 34.8.3 such right to examine must be exercised within the period specified for retention of such books or records in Schedule [●] (*Records and Reports*) or (if no such period is so specified) a period of 7 years after the end of the Contract Year to which the books or records being examined refer.

34.9 Sole Remedy

- 34.9.1 Subject to:
- (a) any other express right of the Public Partner pursuant to this Agreement; and
 - (b) the Public Partner's right to claim, on or after termination of this Agreement, the amount of its reasonable costs, losses, damages and expenses suffered or incurred by it as a result of rectifying or mitigating the effects of any breach of this Agreement by the Project Company, save to the extent that the same has already been recovered by the Public Partner pursuant to this Agreement or has been taken into account to calculate any compensation payable by the Public Partner pursuant to Clauses 46.1 (*Compensation on Public Partner Default, Material Adverse Government Action, Change in Law or Voluntary Termination*), 46.2 (*Compensation Project Company Default Termination*) or Clause 46.3 (*Compensation on Termination for Force Majeure [or Uninsurability]*);

the sole remedy of the Public Partner in respect of a failure to provide the Services in accordance with this Agreement shall be the application of Deductions according to the provisions of this Agreement and of Schedule [●] (*Payment Mechanism*).

- 34.9.2 Nothing in this Clause 34.9 (*Sole Remedy*) shall prevent, limit or restrict the right of the Public Partner to request either the performance of the obligations alleged to be breached by the Project Company or the termination of this Agreement (if and to the extent such right of option exists), to use the failure to perform by the Project Company as a defense in respect of the fulfilment by the Public Partner of its own obligations or to seek any other judicial and/or out of court remedies which do not involve the payment of damages by the Project Company to the Public Partner.

PART IX. CHANGE, LIABILITIES AND TERMINATION

35 CHANGE PROCEDURE

35.1 Public Partner Changes

- 35.1.1 The Public Partner has the right to propose changes in the Works and/or the Services in accordance with this Clause 35.1 (*Public Partner Changes*). The Public Partner shall not propose a change in the Works and/or the Services which:
- (a) requires the Works and/or the Services to be performed in a way that infringes any Law, Technical Standards or is inconsistent with Good Industry Practice;
 - (b) would cause any Consent to be revoked (or a new Consent required to implement the relevant change in the Works and/or the Services to be unobtainable);
 - (c) would materially adversely affect the Project Company's ability to deliver the Works and/or the Services;
 - (d) materially and adversely affect the health and safety of any person;
 - (e) would require the Project Company to implement the change in the Works and/or the Services in an unreasonable period of time;
 - (f) would, if implemented, materially and adversely change the nature of the Project (including risk profile);
- and/or
- (g) the Public Partner does not have the legal power or capacity (including where there is a prohibition or restriction under the Law) to require the implementation of.
- 35.1.2 If the Public Partner requires a change in the Works and/or Services, it must serve a notice on the Project Company (with a copy to the Independent Engineer, whenever the Works are concerned), detailing the requested change (the "**Public Partner Notice of Change**").
- 35.1.3 The Public Partner Notice of Change shall:
- (a) set out the change in the Works and/or the Services required in sufficient detail to enable the Project Company to calculate and provide the Estimated Change in Project Costs in accordance with Clause 35.1.4 (*Public Partner Changes*) (the "**Estimate**");
 - (b) in the event that the change will require Capital Expenditure, state whether the Public Partner intends to pay to the Project Company the costs involved in implementing the change or whether the Public Partner requires the Project Company to use its reasonable efforts to obtain funding in accordance with Clause 35.1.14 (*Public Partner Changes*); and

- (c) require the Project Company to provide the Public Partner with the Estimate within [21] days of receipt of the Public Partner Notice of Change.
- 35.1.4 If the Public Partner does not confirm in writing the Estimate (as modified) within [30] days of the contents of the Estimate having been agreed in accordance with Clause 35.1.7 or determined pursuant to Clause 35.1.10 or Clause 53 (*Disputes Resolution Procedure*), the Public Partner Notice of Change shall be deemed to have been withdrawn. Where there is such a withdrawal (either pursuant to Clause 35.1.13 or Clause 35.1.11(b) (*Public Partner Changes*)) the Public Partner shall pay to the Project Company the reasonable additional third-party costs incurred by the Project Company in preparing such Estimate provided that:
 - (a) the Project Company has used all reasonable endeavors to submit a reasonably priced Estimate;
 - (b) the Project Company has made available to the Public Partner a cost breakdown of the Estimate including an estimate of third-party costs to be incurred by the Public Partner if the Public Partner Notice of Change is withdrawn or deemed to be withdrawn;
 - (c) the Public Partner has:
 - (i) approved the estimate of third-party costs referred to in Clause 35.1.13(b) (*Public Partner Changes*) and the type of third-party prior to any third-party costs being incurred; and
 - (ii) agreed that, given the nature of the proposed change, it is reasonable to expect the relevant third-party to incur costs in preparing the Estimate on the basis of the extent of the proposed change to the Services or the Works and the work required in submitting an accurate Estimate in compliance with this Clause 35.1 (*Public Partner Changes*); and
- 35.1.5 the Project Company has provided the Public Partner with such evidence as it may reasonably require in order to verify the additional third-party costs incurred by the Project Company.
- 35.1.6 As soon as practicable and in any event within [21] days after having received a Public Partner Notice of Change, the Project Company shall, subject to Clause 35.1.12, deliver the Estimate to the Public Partner (with a copy to the Independent Engineer, whenever the Estimate concerns the Works). The Estimate shall include the opinion of the Project Company on:
 - (a) a detailed timetable for implementation of the change in the Works and/or the Services;
 - (b) whether relief from compliance with obligations is required, including the obligations of the Project Company to achieve the Planned Services Commencement Date during the implementation of the change in the Works and meet the Services Requirements during the implementation of the change in the Services;
 - (c) any impact on the provision of the Works and/or the Services;

- (d) any amendment required to this Agreement and/or any Project Document as a result of the change in the Works and/or the Services;
 - (e) any Estimated Change in Project Costs that results from the change in the Works and/or the Services taking into account the Capital Expenditure referred to in paragraph (g) and other estimated changes in costs;
 - (f) any gain or loss of revenue that results from the change in the Works and/or the Services;
 - (g) any Capital Expenditure that is required or no longer required as a result of the change in the Works and/or the Services;
 - (h) any regulatory approvals which are required; and
 - (i) the proposed method of certification of any construction or operational aspects of the Works and/or the Services required by the change in the Works and/or the Services if not covered by the procedures specified in Clause 12.2 (*Design and Certification Procedure*) and/or Clause 20.3 (*Design and Certification Requirements*).
- 35.1.7 As soon as practicable after the Public Partner receives the Estimate, the Parties shall discuss and agree the issues set out in the Estimate, including:
- (a) providing evidence that the Project Company has used reasonable endeavors (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimize any increase in costs and maximize any reduction in costs;
 - (b) demonstrating how any Capital Expenditure to be incurred or avoided is being measured in a cost-effective manner; and
 - (c) demonstrating that any expenditure that has been avoided, which was anticipated to be incurred to replace or maintain Assets or Return Assets that have been affected by the Public Partner Change concerned, has been taken into account in the amount which, in the Project Company's opinion, has resulted or is required under Clauses 35.1.6(e) and/or 35.1.6(g) (*Public Partner Changes*).
- 35.1.8 In such discussions, the Public Partner may modify the Public Partner Notice of Change and (if the estimated increase in Capital Expenditure in respect of the change in the Works and/or the Services is expected to exceed EUR [●] (Indexed)) the Public Partner may require the Project Company to reasonably prove that the prices for the relevant capital works are in line with the international market standards at the relevant time. In each case, the Project Company shall, as soon as practicable, and in any event not more than [14] days after receipt of such modification, notify the Public Partner of any consequential changes to the Estimate.
- 35.1.9 The Project Company shall comply with Good Industry Practice with the objective of ensuring that it obtains best value for money (taking into account all relevant circumstances including, in particular, the requirement that the Project Company should not be worse off as a result of the implementation of the change in the Works and/or the Services) when

procuring any work, services, supplies, materials or equipment required in relation to the change in the Works and/or the Services.

- 35.1.10 If the Estimate concerns the Works and the Parties cannot agree on its contents, then the matter shall be referred to the Independent Engineer for determination. If either Party disagrees with the determination of the Independent Engineer, or if the Estimate does not concern the Works, then the dispute will be determined in accordance with Clause 53 (*Disputes Resolution Procedure*).
- 35.1.11 As soon as practicable after the contents of the Estimate have been agreed or otherwise determined pursuant to Clause 35.1.10 (*Public Partner Changes*) and/or Clause 53 (*Disputes Resolution Procedure*), the Public Partner shall:
- (a) confirm in writing the Estimate (as modified) to the Project Company (with a copy to the Independent Engineer, whenever the Estimate concerns the Works); or
 - (b) withdraw the Public Partner Notice of Change.
- 35.1.12 Notwithstanding the other provisions of this Clause 35.1 (*Public Partner Changes*):
- (a) if, on receipt of the Public Partner Notice of Change pursuant to Clause 35.1.1, the Project Company is of the opinion that such change in the Works and/or the Services is likely to not meet the requirements in Clause 35.1.1, it shall, as soon as practicable and in any event within [21] days after having received the Public Partner Notice of Change, serve a notice on the Public Partner stating its opinion and the reasons therefor; and
 - (b) the Parties shall meet as soon as practicable and in any event within [10] days of receipt of such notice. If the Parties agree that such change in the Works and/or the Services does not meet the requirements in Clause 35.1.1, the Public Partner Notice of Change shall be withdrawn. If the Parties are unable to agree on this matter in respect of a change in the Works, either Party may refer the matter to the Independent Engineer for determination. If either Party disagrees with the determination of the Independent Engineer or if the Parties are unable to agree on this matter in respect of a change in the Services, then the dispute will be determined in accordance with Clause 53 (*Disputes Resolution Procedure*). If it is determined by the Independent Engineer or in accordance with Clause 53 (*Disputes Resolution Procedure*) that the change in the Works and/or the Services does not meet the requirements in Clause 35.1.1 (*Public Partner Changes*), the Public Partner Notice of Change shall be deemed to have been withdrawn.
- 35.1.13 If the Public Partner does not confirm in writing the Estimate (as modified) within [30] days of the contents of the Estimate having been agreed in accordance with Clause 35.1.7 or determined pursuant to Clause 35.1.10 or Clause 53 (*Disputes Resolution Procedure*), the Public Partner Notice of Change shall be deemed to have been withdrawn. Where there is such a withdrawal (either pursuant to this Clause 35.1.13 or Clause 35.1.11(b) (*Public Partner Changes*)), the Public Partner shall pay to the Project Company the reasonable additional third-party costs incurred by the Project Company in preparing such Estimate provided that:

- (a) the Project Company has used all reasonable endeavors to submit a reasonably priced Estimate;
 - (b) the Project Company has made available to the Public Partner a cost breakdown of the Estimate including an estimate of third-party costs to be incurred by the Public Partner if the Public Partner Notice of Change is withdrawn or deemed to be withdrawn;
 - (c) the Public Partner has:
 - (i) approved the estimate of third-party costs referred to in Clause 35.1.13(b) (*Public Partner Changes*) and the type of third-party prior to any third-party costs being incurred; and
 - (ii) agreed that, given the nature of the proposed change, it is reasonable to expect the relevant third-party to incur costs in preparing the Estimate on the basis of the extent of the proposed change to the Services or the Works and the work required in submitting an accurate Estimate in compliance with this Clause 35.1 (*Public Partner Changes*); and
 - (d) the Project Company has provided the Public Partner with such evidence as it may reasonably require in order to verify the additional third-party costs incurred by the Project Company.
- 35.1.14 In the event that the Estimate (as modified) involves estimated Capital Expenditure then (unless the Public Partner has elected to fund such costs in accordance with Clause 35.1.3(b) (*Public Partner Changes*)) the Project Company shall use its reasonable endeavors to obtain funding for the whole of the estimated Capital Expenditure, on terms reasonably satisfactory to it and the Public Partner.
- 35.1.15 If the Project Company has used its reasonable endeavors to obtain funding for the whole of the estimated Capital Expenditure, but has been unable to do so within [60] days of the date that the Public Partner confirmed the Estimate, then the Project Company shall have no obligation to carry out the change in the Works and/or the Services, unless the Public Partner agrees within [20] days of the end of such period to pay the costs for which funding is not available on the basis provided in Clause 35.1.18 (*Public Partner Changes*).
- 35.1.16 The Public Partner may, at any time following the date on which the Estimate is confirmed, agree to meet all or, to the extent the Project Company has obtained funding for part of the Capital Expenditure, the remaining part of the estimated Capital Expenditure.
- 35.1.17 In the event that the Estimate has been confirmed by the Public Partner, then the adjustment to the Unitary Charge shall be as provided in Schedule [●] (*Financial Adjustments*).
- 35.1.18 Where the Public Partner agrees to pay the costs for which funding is not available pursuant to Clause 35.1.15 (*Public Partner Changes*):
- (a) the Public Partner and the Project Company shall agree (and shall enter into any agreements to amend this Agreement or any relevant Project Document or otherwise

as might be necessary to give effect to and/or to document the change in the Works and/or the Services):

- (i) a payment schedule in respect of the payment of such sum reflecting the amount and timing of the costs to be incurred by the Project Company in carrying out the change in the Works and/or the Services to the extent borne by the Public Partner; and
- (ii) where payment for part of the change in the Works and/or the Services reflects the carrying out of, or specific progress towards, an element within the change in the Works and/or the Services, an objective means of providing evidence confirming that the part of the change in the Works and/or the Services corresponding to each occasion when payment is due under the payment schedule appears to have been duly carried out,

(such payment schedule and evidence to be determined by the Independent Engineer or, further on, in accordance with Clause 53 (*Disputes Resolution Procedure*) in the event of the Public Partner and the Project Company failing to agree as to its terms);

- (b) the Public Partner shall make payment to the Project Company within [60] days of receipt by the Public Partner of invoices presented to the Public Partner (in accordance with the agreed payment schedule (accompanied by evidence (where applicable) that the relevant part of the change in Works and/or the Services has been carried out; and
- (c) if payment is not made in accordance with Clause 35.1.18(b) (*Public Partner Changes*), the Public Partner shall pay interest to the Project Company on the amount unpaid from the due date until paid at the default rate set out in Clause 34.5.1 (*Interest on Late Payments*).

35.2 Project Company Changes

35.2.1 If the Project Company wishes to introduce a change in the Works and/or the Services, it must serve a notice on the Public Partner (with a copy to the Independent Engineer, whenever the change concerns the Works), providing details of such change (the "**Project Company Notice of Change**").

35.2.2 The Project Company Notice of Change must:

- (a) set out the proposed change in the Works and/or the Services in sufficient detail to enable the Public Partner (and, as the case may be, the Independent Engineer) to evaluate it in full;
- (b) specify the Project Company's reasons for proposing the change in the Works and/or the Services;
- (c) request the Public Partner to consult with the Project Company with a view to deciding whether to agree to the change in the Works and/or the Services and, if so, what consequential changes the Public Partner requires as a result;

- (d) indicate any implications of the change in the Works and/or the Services on this Agreement and any of its terms;
 - (e) indicate, in particular, whether a variation to the Unitary Charge or another payment mechanism is proposed (and, if so, give a detailed cost estimate of such proposed change or mechanism); and
 - (f) indicate if there are any dates by which a decision by the Public Partner is critical.
- 35.2.3 The Independent Engineer shall evaluate the Project Company Notice of Change which concerns the Works under the Review Procedure, without prejudice to the Public Partner's right to accept or reject the Project Company Notice of Change.
- 35.2.4 The Public Partner shall evaluate the Project Company's proposed change in the Works and/or the Services according to the Review Procedure, in good faith, taking into account all relevant issues, including whether:
- (a) a change in the Unitary Charge will occur or another payment mechanism will be implemented;
 - (b) the change affects the quality of the Works and/or the Services or the likelihood of successful delivery of the Works and/or the Services;
 - (c) the change will interfere with the relationship of the Public Partner with third parties;
 - (d) the financial strength of the Project Company is sufficient to perform the changed Works and/or the Services;
 - (e) the residual value of the Project Facilities is reduced; or
 - (f) the change materially affects the risks or costs to which the Public Partner is exposed.
- 35.2.5 As soon as practicable after receiving the Project Company Notice of Change, the Parties (with the assistance and support of the Independent Engineer, whenever the Project Company Notice of Change concerns the Works), shall meet and discuss the matter referred to in it. During their discussions, the Public Partner may propose modifications or accept or reject the Project Company Notice of Change.
- 35.2.6 If the Public Partner accepts the Project Company Notice of Change (with or without modification), the relevant change in the Works and/or the Services shall be implemented within [30] days of the Public Partner's acceptance. Within this period, the Parties (with the assistance and support of the Independent Engineer, whenever the Project Company Notice of Change concerns the Works), shall consult and agree the remaining details as soon as practicable and the Parties shall enter into any documents to amend this Agreement or any relevant Project Document or otherwise which are necessary to give effect to or to document the change in the Works and/or the Services.
- 35.2.7 If the Public Partner rejects the Project Company Notice of Change, it shall not be obliged to give its reasons for such a rejection.

- 35.2.8 Unless the Public Partner's acceptance specifically agrees to an increase in the Unitary Charge, there shall be no increase in the Unitary Charge as a result of a change in the Works and/or the Services proposed by the Project Company.
- 35.2.9 If the change in the Works and/or the Services proposed by the Project Company causes or will cause the Project Company's costs or those of a Sub-Contractor to decrease, there shall be a decrease in the Unitary Charge such that [75%] of the savings shall be the benefit of the Public Partner and the other [25%] of the savings shall be retained by the Project Company, provided that the amount of any such savings is determined after deducting the reasonable costs of the Project Company incurred in preparing the Project Company Notice of Change.

36 CHANGE IN LAW

36.1 Qualifying Change in Law

- 36.1.1 If a Qualifying Change in Law occurs or is shortly to occur, then either Party may, within [(30) thirty] Business Days starting from the day it was aware (or should have been aware) of the Qualifying Change in Law, notify the other Party to express an opinion on its likely effects, giving details of its opinion of:
- (a) any necessary change in the obligations of the Project Company;
 - (b) whether any changes are required to the terms of this Agreement to deal with the Qualifying Change in Law, including any necessary Public Partner change;
 - (c) whether relief from compliance with obligations is required, including the obligation of the Project Company to achieve any contractual deadline and/or meet any contractual performance requirement during the implementation of any relevant Qualifying Change in Law;
 - (d) any (positive or negative) change of revenue that will directly result from the relevant Qualifying Change in Law;
 - (e) any (positive or negative) estimated change in the costs of the Project that will directly result from the Qualifying Change in Law; or
 - (f) any capital expenditure that is required or no longer required as a result of a Qualifying Change in Law taking effect during the operation period of this Agreement.
- 36.1.2 As soon as practicable and in any event within [(30) thirty] Business Days after receipt of any notice from the Affected Party, the Public Partner and the Project Company shall discuss and agree the issues referred to in Clause 36.1.1 (*Qualifying Change in Law*) and any ways in which either Party can, if applicable, mitigate the effect of the Qualifying Change in Law, including, in relation to the Project Company:
- (a) providing evidence that the Project Company has used reasonable endeavors (including (where practicable) the use of competitive quotes) to oblige its Sub-Contractors to minimize any increase in costs and maximize any reduction in costs;

- (b) demonstrating how any capital expenditure to be incurred or avoided is being measured in a cost-effective manner, including showing that when such expenditure is incurred or would have been incurred, Changes in Law at that time have been taken into account by the Project Company;
- (c) giving evidence as to how the Qualifying Change in Law has affected prices charged by any businesses similar to the Project; and
- (d) demonstrating that any expenditure that has been avoided on account of the Qualifying Change in Law has been taken into account in the amount which in its opinion has resulted or is required under Clauses 36.1.1 (e) or 36.1.1 (f) (*Qualifying Change in Law*), provided that if the Parties cannot agree on the effects of the Qualifying Change in Law, the matter shall be referred for determination in accordance with Clause 53 (*Disputes Resolution Procedure*).

36.2 Consequences of a Qualifying Change in Law

36.2.1 If the Parties have followed the procedure set out under Clauses 36.1.1 and 36.1.2 (*Qualifying Change in Law*), then:

- (a) the Affected Party shall be excused from the performance of its obligations under the Agreement to the extent it is prevented, hindered or delayed in such performance by reason of the Qualifying Change in Law;
- (b) if the Qualifying Change in Law has occurred before the Services Commencement Date, the Planned Services Commencement Date shall be postponed to take into account the effect of such Qualifying Change in Law; and
- (c) the Parties shall agree on the amount and payment of any compensation to reflect the Estimated Change in Project Costs as adjusted to take into account the actual increase or reduction in costs reasonably incurred or obtained as a result of the Qualifying Change in Law, [provided that no compensation shall be made in relation to a Qualifying Change in Law under this clause unless the claiming Party can demonstrate that the aggregate impact of all Qualifying Changes in Law that have occurred during [insert relevant period in time, e.g., calendar year] exceeds [insert amount]], as follows:
 - (i) in the case of an additional cost being incurred or revenue being lost by the Project Company:
 - (i.1) on or before the Services Commencement Date; or
 - (i.2) as a result of Capital Expenditure being incurred by the Project Company at any time,

the Public Partner shall compensate the Project Company for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred [and, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated)] within [90] days

of its receipt of a written demand by the Project Company supported by all relevant information;

- (ii) in the case of payment of compensation for the Estimated Change in Project Costs [and/or without double counting, loss of revenue] that does not result in Capital Expenditure being incurred by the Project Company referred to in Clause 36.2.1(c)(i)(i.2) (*Consequences of a Qualifying Change in Law*), but which reflects a change in the costs being incurred by the Project Company after the Services Commencement Date, the Public Partner shall compensate the Project Company in accordance with Schedule [●] (*Financial Adjustments*) by an adjustment to the Unitary Charge.

36.2.2 In the event that the notice and relevant information are not provided within the periods referred to under Clause 36.1.1 (*Qualifying Change in Law*), the Affected Party shall not be entitled to any compensation or relief from its obligations under the Agreement in respect of the period for which the information is delayed.

36.3 Termination due to a Qualifying Change in Law

If a Qualifying Change in Law:

- (a) results in the Project Company not being able to achieve the Services Commencement Date within [●] months after the Planned Services Commencement Date; or
- (b) prevents a Party from performing its material obligations under this Agreement for a period of [●] consecutive days; or
- (c) results in performance of the Agreement being illegal and such illegality cannot be remedied by a [Public Partner] change,

either Party may in its discretion terminate this Agreement by issuing a written termination notice which shall take effect [(30) thirty] calendar days after receipt of such termination notice. If, at the end of this [(30) thirty]-day period, the Qualifying Change in Law continues, the Agreement shall be terminated pursuant to this Clause 36.3 (*Termination due to a Qualifying Change in Law*) and the Project Company shall be entitled to the compensation set out under Clause 46.1 (*Compensation on Public Partner Default, Material Adverse Government Action, Change in Law or Voluntary Termination*).

37 COMPENSATION EVENTS AND RELIEF EVENTS

37.1 Compensation Events

37.1.1 If, as a direct result of the occurrence of a Compensation Event:

- (a) the Project Company is unable to achieve completion of the Works on or before the Planned Services Commencement Date or, following the Planned Services Commencement Date, before the Long Stop Date; and/or
- (b) the Project Company is unable to comply with its obligations under this Agreement; and/or

- (c) the Project Company incurs costs or loses revenue

then the Project Company is entitled to apply for relief from its obligations and/or claim compensation under this Agreement.

37.1.2 Subject to Clause 37.1.4 (*Compensation Events*), to obtain relief and/or claim compensation the Project Company must:

- (a) as soon as practicable, and in any event within [21] days after it became aware that the Compensation Event has caused or is likely to cause delay, breach of an obligation under this Agreement and/or the Project Company to incur costs or lose revenue, give to the Independent Engineer, with a copy to the Public Partner, a notice of its claim for an extension of time with respect to the Planned Services Commencement Date or, following the Planned Services Commencement Date, with respect to the Long Stop Date, payment of compensation and/or relief from its obligations under this Agreement;
- (b) within [14] days of receipt by the Independent Engineer and the Public Partner of the notice referred to in Clause 37.1.2(a) (*Compensation Events*), give to the Independent Engineer, with a copy to the Public Partner, full details of the Compensation Event and the extension of time and/or any Estimated Change in Project Costs and/or loss of revenue claimed; and
- (c) demonstrate to the reasonable satisfaction of the Independent Engineer that:
 - (i) the Compensation Event was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or any delay in achieving the completion of the Works on or before the Planned Services Commencement Date or, following the Planned Services Commencement Date, before the Long Stop Date, and/or breach of the Project Company's obligations under this Agreement; and
 - (ii) the Estimated Change in Project Costs, and/or loss of revenue, time lost, and/or relief from the obligations under this Agreement claimed, could not reasonably be expected to be mitigated or recovered by the Project Company acting in accordance with Good Industry Practice.

37.1.3 In the event that the Project Company has complied with its obligations under Clause 37.1.2 (*Compensation Events*), then:

- (a) in the case of a delay, the Planned Services Commencement Date or, following the Planned Services Commencement Date, the Long Stop Date shall be postponed by such time as shall be reasonable for such a Compensation Event, taking into account the likely effect of delay;
- (b) in the case of an additional cost being incurred or revenue being lost by the Project Company:
 - (i) on or before the Services Commencement Date; or

- (ii) as a result of Capital Expenditure being incurred by the Project Company at any time,

the Public Partner shall compensate the Project Company for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred and, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated) within [90] days of its receipt of a written demand by the Project Company supported by all relevant information, but only provided that the amounts claimed for the Estimated Change in Project Costs and the loss of revenue have been previously approved by the Independent Engineer;

- (c) in the case of payment of compensation for the Estimated Change in Project Costs and/or without double counting, loss of revenue that does not result in Capital Expenditure being incurred by the Project Company referred to in Clause 37.1.3(b)(ii) (*Compensation Events*) but which reflects a change in the costs being incurred by the Project Company after the Services Commencement Date, the Public Partner shall compensate the Project Company in accordance with Clause 37.1.6 (*Compensation Events*) by an adjustment to the Unitary Charge, but only provided that such adjustment has been previously approved by the Independent Engineer; and/or
- (d) the Public Partner shall give the Project Company such relief from its obligations under this Agreement, as is reasonable for such a Compensation Event.

37.1.4 In the event that information is provided after the dates referred to in Clause 37.1.2, then the Project Company shall not be entitled to any extension of time, compensation, or relief from its obligations under this Agreement in respect of the period for which the information is delayed.

37.1.5 If the Parties cannot agree the extent of any compensation, delay incurred, relief from the Project Company's obligations under this Agreement, or the Public Partner disagrees that a Compensation Event has occurred (or as to its consequences), or that the Project Company is entitled to any relief under this clause, or if the Independent Engineer does not approve the amounts claimed by the Project Company for the Estimated Change in Project Costs, the Parties shall resolve the matter in accordance with Clause 53 (*Disputes Resolution Procedure*).

37.1.6 Any payment of compensation referred to in Clause 37.1.3(c) shall be calculated in accordance with Schedule [●] (*Financial Adjustments*).

37.2 Relief Events

37.2.1 If and to the extent that a Relief Event:

- (a) is the direct cause of a delay in achieving the Planned Services Commencement Date or, following the Planned Services Commencement Date, the Long Stop Date; and/or
- (b) adversely affects the ability of the Project Company to perform any of its obligations under this Agreement,

then the Project Company is entitled to apply for relief from any rights of the Public Partner arising under Clause 42 (*Termination by the Public Partner*) and its obligations under this Agreement.

37.2.2 Subject to Clause 37.2.5 (*Relief Events*), to obtain relief the Project Company must:

- (a) as soon as reasonably practicable, and in any event within [14] days after it became aware that the Relief Event has caused or is likely to cause delay and/or adversely affect the ability of the Project Company to perform its other obligations give to the Independent Engineer, with a copy to the Public Partner, a notice of its claim for relief from its obligations under this Agreement, including full details of the nature of the Relief Event, the date of its occurrence and its likely duration;
- (b) within [7] days of receipt by the Independent Engineer and the Public Partner of the notice referred to in Clause 37.2.2(a), give full details of the relief claimed; and
- (c) demonstrate to the reasonable satisfaction of the Independent Engineer that:
 - (i) the Project Company and its sub-contractors could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material expenditure;
 - (ii) the Relief Event directly caused the delay in completion of Works on or before the Planned Services Commencement Date or, following the Planned Services Commencement Date, before the Long Stop Date or the need for relief from other obligations under this Agreement;
 - (iii) the time lost and/or relief from obligations under this Agreement claimed could not reasonably be expected to be mitigated or recovered by the Project Company acting in accordance with Good Industry Practice, without incurring material expenditure; and
 - (iv) the Project Company is using its reasonable endeavors to perform its obligations under this Agreement.

37.2.3 In the event that the Project Company has complied with its obligations under Clause 37.2.2 (*Relief Events*) then:

- (a) the Planned Services Commencement Date or, following the Planned Services Commencement Date, the Long Stop Date shall be postponed by such time as shall be reasonable for such a Relief Event, taking into account the likely effect of delay; and/or
- (b) the Public Partner shall not be entitled to exercise its rights to unilaterally terminate this Agreement under Clause 42 (*Termination by the Public Partner*).

37.2.4 Nothing in this Clause 37.2 (*Relief Events*) shall affect any entitlement to make Deductions or any other deductions made as a result of the provisions of this Agreement or of Schedule [●] (*Payment Mechanism*) during the period in which a Relief Event is subsisting provided

that any such Deductions shall not accrue towards the thresholds specified at limbs (j) or (k) of the definition of Project Company Default.

- 37.2.5 In the event that information required by Clause 37.2.2 (*Relief Events*) is provided after the dates referred to in Clause 37.2.2 (*Relief Events*), then the Project Company shall not be entitled to any relief during the period for which the information is delayed.
- 37.2.6 The Project Company shall notify the Independent Engineer and the Public Partner if at any time it receives or becomes aware of any further information relating to the Relief Event, giving details of that information to the extent that such information is new or renders information previously submitted materially inaccurate or misleading.
- 37.2.7 If the parties cannot agree the extent of the relief required, or the Public Partner disagrees that a Relief Event has occurred or that the Project Company is entitled to any extension of the Planned Services Commencement Date or, following the Planned Services Commencement Date, the Long Stop Date, the Parties shall resolve the matter in accordance with Clause 53 (*Disputes Resolution Procedure*).

38 FORCE MAJEURE

38.1 Definition of Force Majeure Event

- 38.1.1 In this Agreement, a “**Force Majeure Event**” means any event or circumstance or combination of events or circumstances:
 - (a) beyond the reasonable control of the Party affected by such event, circumstance or combination of events or circumstances (the “**Affected Party**”);
 - (b) which was not foreseeable or, if foreseeable, could not have been prevented or avoided or overcome by the Affected Party having taken all reasonable precautions and due care;
 - (c) which directly causes the Affected Party to be unable to comply with all or a material part of its obligations under this Agreement; and
 - (d) which is not the direct result of a breach by the Affected Party of its obligations under this Agreement or, in respect of the Project Company, under any other Project Document.
- 38.1.2 Force Majeure Events shall be limited to the following circumstances:
 - (a) plague, epidemic and natural disaster, storm, cyclone, typhoon, hurricane, tornado, blizzard, earthquake, volcanic activity, landslide, tsunami, flood, lightning, and drought;
 - (b) fire, explosion, or nuclear, biological or chemical contamination (other than caused by the negligence of the Project Company, its contractors, or any Sub-contractor, supplier or vendor);

- (c) war (whether declared or not), armed conflict (including but not limited to hostile attack, blockade, military embargo), hostilities, invasion, act of a foreign enemy, act of terrorism, sabotage or piracy[, in each case occurring outside Romania];
- (d) civil war, riot, rebellion and revolution, military or usurped power, insurrection, civil commotion or disorder, mob violence, act of civil disobedience[, in each case occurring outside Romania];
- (e) radioactive contamination or ionizing radiation[, occurring outside Romania]; or
- (f) general labor disturbance such as boycotts, strikes and lockouts, go-slow, occupation of factories and premises, excluding similar events which are unique to the Project and specific to the Project Company or to its sub-contractors[, and occurring outside Romania].

38.2 Consequences of Force Majeure Event

38.2.1 If a Force Majeure Event has occurred, the Affected Party shall be entitled to relief from its obligations under the Agreement if it meets the requirements of Clause 38.2.2 (*Consequences of Force Majeure Event*).

38.2.2 To obtain relief under Clause 38.2, the Affected Party must:

- (a) as soon as practicable, and in any event within [●] Business Days after it became aware that the Force Majeure Event has caused or is likely to cause a breach of an obligation under this Agreement, give to the other Party a notice of its claim for relief from its obligations under the Agreement, including:
 - (i) satisfactory evidence of the existence of the Force Majeure Event;
 - (ii) full details of the nature of the Force Majeure Event;
 - (iii) the date of occurrence;
 - (iv) its likely duration; and
 - (v) details of the measures taken to mitigate the effect of the Force Majeure Event.
- (b) within [●] Business Days of receipt of the notice referred to in Clause (a), give to the other Party full details of the relief claimed, as well as information on all actions being taken by the Affected Party to mitigate the consequences of the Force Majeure Event;
- (c) demonstrate to the other Party that:
 - (i) the Affected Party, and its contractors, could not have avoided such occurrence or consequences by steps which they might reasonably be expected to have taken, without incurring material cost;
 - (ii) the Force Majeure Event directly caused the need for the relief claimed;

- (iii) the relief claimed could not reasonably be expected to be mitigated by the Affected Party, including recourse to alternate sources of services, equipment and materials and construction equipment, without incurring material cost; and
 - (iv) the Affected Party is using all reasonable endeavors to perform its affected obligations under this Agreement.
- 38.2.3 If the Affected Party has complied with its obligations under Clause 38.2.2 (*Consequences of Force Majeure Event*), then it shall be excused from the performance of its obligations under this Agreement to the extent it is prevented, hindered or delayed in such performance by reason of the Force Majeure Event.
- 38.2.4 If information required under Clause 38.2.2 (*Consequences of Force Majeure Event*) is provided after the dates referred to in that clause, then the Affected Party shall not be entitled to any relief during the period for which the information is delayed.
- 38.2.5 The Parties shall at all times following the occurrence of a Force Majeure Event use all reasonable endeavors to prevent and mitigate the effects of any delay and the Project Company shall at all times during which a Force Majeure Event is subsisting take all steps in accordance with Good Industry Practice to overcome or minimize the consequences of the Force Majeure Event.
- 38.2.6 The Affected Party shall notify the other Party as soon as practicable after the Force Majeure Event ceases or no longer causes the Affected Party to be unable to comply with the applicable obligations under this Agreement. Following such notification this Agreement shall continue to be performed on the terms existing immediately prior to the occurrence of the Force Majeure Event.

38.3 Termination due to Prolonged Force Majeure

- 38.3.1 If a Force Majeure Event subsists for a continuous period of more than [180-360 calendar] days, either Party may in its discretion terminate this Agreement by issuing a written termination notice to the other Party which shall take effect [(30) thirty] calendar days after its receipt. If, at the end of this [(30) thirty]-day period, the Force Majeure Event continues, the Agreement shall be terminated pursuant to this Clause 38.3 (*Termination due to Prolonged Force Majeure*) and the Project Company shall be entitled to the compensation set out under Clause 46.3 (*Compensation for Termination on Force Majeure [or Uninsurability]*).
- 38.3.2 If the Project Company gives notice to the Public Partner under Clause 38.3 (*Termination due to Prolonged Force Majeure*) that it wishes to terminate the Agreement, then the Public Partner has the option either to accept such notice or to respond in writing on or before the date falling [10] days after the date of its receipt stating that it requires the Agreement to continue. If the Public Partner gives the Project Company such notice, then:
 - (a) the Public Partner shall pay to the Project Company the Unitary Charge from the day after the date on which the Agreement would have terminated under Clause 38.3

(*Termination due to Prolonged Force Majeure*) as if the Services was being fully provided; and

- (b) the Agreement will not terminate until expiry of written notice (of at least [thirty (30)] days) from the Public Partner to the Project Company that it wishes the Agreement to terminate.

39 MATERIAL ADVERSE GOVERNMENT ACTION

39.1 For the purposes of this Agreement, "**Material Adverse Government Action**" means any act or omission by the Public Partner or any Relevant Authority or event set out in Clause 39.2 (*Material Adverse Government Action*), which occurs during the term of this Agreement and which:

- (a) directly causes the Project Company to be unable to comply with all or some of its obligations under the Agreement; and/or
- (b) has a [material] adverse effect meaning a loss or cost in excess of [insert monetary threshold based on Project] on its costs or revenues.

39.2 For the purposes of Clause 39.1 (*Material Adverse Government Action*), any act or omission shall mean and be limited to the following circumstances:

- (a) failure of any Relevant Authority to grant to the Project Company or renew any permit or approval that is required for the purposes of the Project Company's proper performance of its obligations and/or enforcement of its rights under this Agreement, in each case within the required timeframe under the Law, except where such failure results from the Project Company's non-compliance with the Law;
- (b) any act of war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy, blockade, embargo or revolution, [occurring inside Romania];
- (c) radioactive contamination or ionizing radiation, [originating from a source in Romania];
- (d) any riot, insurrection, civil commotion, act or campaign of terrorism, [occurring inside Romania];
- (e) expropriation, compulsory acquisition or nationalization by any Relevant Authority of any asset or right of the Project Company, including any of the shares in the Project Company;
- (f) any act or omission of any Relevant Authority adversely affecting the legality, validity, binding nature or enforceability of this Agreement; and
- (g) [add any event specific to the Project for which the Public Partner/a Relevant Authority is responsible or has contractually agreed not to do, such as failure to construct planned connecting infrastructure, a government-responsibility pollution event, or construction of unauthorized competing infrastructure (e.g., a free road adjacent to the PPP tolled road)].

39.3 If a Material Adverse Government Action occurs, the Project Company:

- (i) shall be excused from the performance of its obligations under the Agreement to the extent that it is prevented, hindered or delayed in such performance by reason of the Material Adverse Government Action; and
- (ii) shall be entitled to compensation under this Agreement, in each case subject to and in accordance with the provisions of this clause.

39.4 To obtain relief pursuant to Clause 39.5 (*Material Adverse Government Action*), the Project Company must:

- (a) as soon as practicable [and in any event within [●] Business Days] after the Project Company becomes aware that the Material Adverse Government Action has occurred, give to the Public Partner a notice of its claim for payment of compensation and/or relief from its obligations under the Agreement, following which the Parties shall consider in good faith any option to mitigate the impact of the Material Adverse Government Action;
- (b) within [●] Business Days of receipt by the Public Partner of the notice referred in Clause 39.4(a) (*Material Adverse Government Action*), give full details of:
 - (i) the Material Adverse Government Action, and
 - (ii) any Estimated Change in Project Costs and/or loss of revenue claimed and/or delay and/or any breach of the Project Company's obligations under this Agreement; and
- (c) demonstrate to the Public Partner that:
 - (i) the Project Company could not avoid such occurrence or consequences by actions which it might reasonably be expected to have taken without incurring [material] costs;
 - (ii) the Material Adverse Government Action was the direct cause of the Estimated Change in Project Costs and/or loss of revenue and/or delay and/or breach of the Project Company's obligations under this Agreement;
 - (iii) time lost and/or relief from the obligations under the Agreement claimed, could not be mitigated or recovered by the Project Company; and
 - (iv) the Project Company is using reasonable endeavors to perform its affected obligations under the Agreement.

39.5 If the Project Company has complied with its obligations under Clause 39.4 (*Material Adverse Government Action*), then the Public Partner shall:

- (a) compensate the Project Company for the Estimated Change in Project Costs, as adjusted to reflect the actual costs reasonably incurred [and loss of revenue], as follows:
 - (i) in the case of an additional cost being incurred or revenue being lost by the Project Company:
 - (i.1) on or before the Services Commencement Date; or

- (i.2) as a result of Capital Expenditure being incurred by the Project Company at any time,

the Public Partner shall compensate the Project Company for the actual Estimated Change in Project Costs as adjusted to reflect the actual costs reasonably incurred [and, without double counting, for revenue actually lost (to the extent it could not reasonably have been mitigated)] within [90] days of its receipt of a written demand by the Project Company supported by all relevant information;

- (ii) in the case of payment of compensation for the Estimated Change in Project Costs [and/or without double counting, loss of revenue] that does not result in Capital Expenditure being incurred by the Project Company referred to in Clause 39.5(a)(i)(i.2) (*Material Adverse Government Action*) but which reflects a change in the costs being incurred by the Project Company after the Services Commencement Date, the Public Partner shall compensate the Project Company in accordance with Schedule [●] (*Financial Adjustments*) by an adjustment to the Unitary Charge.
- (b) give the Project Company such relief from its obligations under this Agreement as is reasonable for such Material Adverse Government Action; [Insert reasonable time period given the level of detail required to be specified in full, e.g., seven business days.] If the Material Adverse Government Action occurs during the Works Period and causes a delay in achieving the Planned Services Commencement Date, such date shall be postponed by such time as is reasonable.

39.6 In the event that information is provided after the dates referred to in Clause 39.4 (*Material Adverse Government Action*), then the Project Company shall not be entitled to any extension of time, compensation or relief from its obligations under this Agreement in respect of the period for which the information is delayed.

39.7 If the Public Partner and the Project Company cannot agree on the extent of any compensation, delay incurred, or relief from the Project Company's obligations under this Agreement, as applicable, or the Public Partner disagrees that a Material Adverse Government Action has occurred, the Parties shall resolve the matter in accordance with Clause 53 (*Disputes Resolution Procedure*).

39.8 If a Material Adverse Government Action subsists for a continuous period of more than [180-360 calendar] days, either Party may in its discretion terminate this Agreement by issuing a written termination notice to the other Party which shall take effect [(30) thirty calendar] days after its receipt. [If, at the end of this [(30) thirty calendar]-day period, the Material Adverse Government Action continues,] the Agreement shall be terminated pursuant to Clause 43 (*Public Partner Default*) and the Project Company shall be entitled to the compensation set out in Clause 46.1 (*Compensation on Public Partner Default, Material Adverse Government Action, Change in Law or Voluntary Termination*).

40 WARRANTIES AND DISCLAIMERS

40.1 Warranties and Undertakings by the Project Company

- 40.1.1 Without prejudice to any warranties or conditions implied by Law, on the Date of Contract the Project Company warrants and undertakes that:

- (a) in carrying out the Works and Services it will fully comply with and meet the Design and Construction Requirements and the Services Requirements and all other requirements of this Agreement;
- (b) any Works or Services the subject of a Proposal will comprise only materials and goods which will be of sound and merchantable quality and have been manufactured or prepared in accordance with the Design and Construction Requirements and the Services Requirements and with the quality assurance procedures established pursuant to Clause 26 (*Quality Management*) and all workmanship shall be in accordance with sound construction practice applicable at the time of construction;
- (c) the Project Company will at all times comply with the requirements of the Public Partner, the Independent Engineer and the Public Partner's Representative, as permitted under this Agreement, and with the requirements of Interested Parties issued as and to the extent allowed by Law and any Legal Requirement;
- (d) any Works or Services the subject of a Proposal when constructed will comply in all respects with the Design and Construction Requirements, the Services Requirements, the design as received in accordance with Clause 12 (*Design and Construction*) or Clause 20 (*Services*) and the Design and Certification Procedure;
- (e) subject to the terms of the Design and Certification Procedure, the design of any Works or Services the subject of a Proposal will be carried out by or under the supervision of the Designer and the persons carrying out any design and/or supervision are suitably qualified and experienced so to do and in particular have adequate previous experience of the part of the design they are carrying out or supervising;
- (f) it is a [●] company duly incorporated and validly existing under the laws of Romania and it shall maintain the corporate capacity and authorization required in order to operate as a Romanian company and to exercise the rights and perform the obligations incumbent on it hereunder;
- (g) it has full power and authority to enter into this Agreement and to carry out the Works and Services;
- (h) the entry into and performance by it of this Agreement do not and will not:
 - (i) conflict with its constitutional documents; or
 - (ii) conflict with any document which is binding upon it or any of its assets to the extent that such conflict would be reasonably likely to have a material adverse effect on the ability of the Project Company to perform its obligations under this Agreement;
- (i) throughout the term of this Agreement its constitutional documents shall not be amended in a manner that:
 - (i) would make unlawful or otherwise be in conflict with the Project Company's further performance of its obligations under this Agreement; and/or

- (ii) would extend the business activities that may be carried out by the Project Company to include activities unrelated to and unnecessary for the exercise of its rights and performance of its obligations hereunder;
 - (j) it shall arrange financing for the Project and shall ensure that it will enter into the Senior Finance Documents under the best terms and conditions offered by the financial market for Romania and it shall procure that the Private Partner shall support the Project Company in this respect;
 - (k) it will not (whether by a single transaction or by a series of transactions whether related or not) sell, transfer, lend or otherwise dispose of (other than by way of security) the whole or any part of its business or Assets which would materially affect the ability of the Project Company to perform its obligations under this Agreement.
- 40.1.2 The warranties and undertakings given by the Project Company under Clause 40.1.1 (*Warranties and Undertakings by the Project Company*) are deemed to be repeated on the Effective Date with reference to the facts and circumstances then subsisting and, in addition to such repeated warranties and undertakings, without prejudice to any warranties or conditions implied by Law, on the Effective Date the Project Company warrants and undertakes that:
- (a) as at the Effective Date, the Financing Agreements are the basis on which the Project Company will finance the Project;
 - (b) as at the Effective Date, each of the Project Documents is in full force and effect and constitutes the valid, binding and enforceable obligations of the parties thereto, the copies of the Project Documents which the Project Company has delivered to the Public Partner are true and complete copies of such documents, and there are no other agreements or documents replacing or relating to any of the Project Documents which would materially affect the interpretation or application of any of the Project Documents.

40.2 Warranties and Undertakings by the Private Partner

Without prejudice to any warranties or conditions implied by Law, on the Date of Contract the Private Partner warrants and undertakes that:

- (a) all information disclosed by or on behalf of the Private Partner to the Public Partner at any time up to the Date of Contract and, in particular, during the Award Procedure, is true, complete and accurate in all material respects and the Private Partner is not aware of any material facts and circumstances not disclosed to the Public Partner which would, if disclosed, be likely to have an adverse effect on the Public Partner's decision (acting reasonably) to award this Agreement to the Private Partner;
- (b) the Project Company has been formed and it shall maintain the corporate capacity and authorization required in order to operate as a Romanian company and to exercise the rights and perform the obligations incumbent on it hereunder;

- (c) prior to or on the Effective Date, it shall provide the Project Company with such amount of Equity and Other Subordinated Funds as set out in Schedule [●] (*Initial Equity and Other Subordinated Funds*).

40.3 Warranties and Undertakings by the Public Partner

Without prejudice to any warranties or conditions implied by Law, the Public Partner warrants and undertakes that:

- 40.3.1 it has full power and authority to enter into this Agreement and to perform its obligations arising hereunder;
- 40.3.2 it organized the Award Procedure according to the Law and it is not aware, to its reasonable knowledge, of any actual or threatened Claims made by any person against any Relevant Authority in relation to the Project [other than those specified in Schedule [●] (*Public Partner's Disclosed Matters*)];
- 40.3.3 it has duly granted to the Project Company the rights and obligations set forth in this Agreement and, under the terms and conditions and to the extent permitted by Law, it shall provide to grant to the Project Company such rights and obligations;
- 40.3.4 from the date portions of the Site are delivered by the Public Partner to the Project Company pursuant to the relevant provisions of this Agreement until the earlier to occur of the Termination Date and the Expiry Date:
 - (a) such portions of the Site will be in the sole legal and beneficial ownership of the Public Partner;
 - (b) such portions of the Site will not be subject to any Adverse Rights or Encumbrances and no one will acquire any Adverse Rights affecting such portions of the Site;
 - (c) there will be no disputes, claims, actions, demands or complaints in respect of such portions of the Site that are outstanding or that are expected by the Public Partner and that would prevent or disrupt the performance of the Works and/or the carrying out of the Services; and
 - (d) no person other than the Project Company will have any right similar with the PPP Right(s) in respect of such portions of the Site.

40.4 Disclaimer

- 40.4.1 The Public Partner has made available to the Project Company prior to the Date of Contract certain materials, documents and data related to the Works and the Services, the Site, records and forecasts and other matters which are or may be relevant to the Project and the obligations undertaken by the Project Company under this Agreement (the "**Disclosed Data**"). The Disclosed Data includes all such materials, documents and data which were provided to the Private Partner in connection with their participation to the Award Procedure (including all such contained in the Data Room), which, for the avoidance of doubt, are considered by the Parties as having been provided also to the Project Company.

- 40.4.2 The Public Partner shall not be liable to the Project Company and/or the Private Partner (whether in contract, tort, by statute or otherwise howsoever and whether or not arising out of any negligence on the part of the Public Partner or any agent, servant or contractor of its) in respect of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy of any kind whatsoever in the Disclosed Data.
- 40.4.3 The Public Partner gives no warranty or undertaking that the Disclosed Data represents all of the information in its possession or power (either during the Award Procedure or at the Date of Contract) relevant or material to the Project or the obligations undertaken by the Project Company under this Agreement. The Public Partner shall not be liable to the Project Company and/or the Private Partner in respect of any failure to disclose or make available (whether before or after the Date of Contract) to the Project Company and/or to the Private Partner any information, documents or data, nor to keep the Disclosed Data up to date, nor to inform the Project Company and/or the Private Partner (whether before or after the Date of Contract) of any inaccuracy, error, omission, unfitness for purpose, defect or inadequacy in the Disclosed Data.
- 40.4.4 On the Effective Date the Project Company acknowledges and confirms that:
- (a) it has conducted its own analysis and review of the Disclosed Data and has satisfied itself as to the accuracy, completeness and fitness for purpose of all such Disclosed Data upon which it places reliance; and
 - (b) it shall not be entitled to make any claim against the Public Partner whether in damages or for extensions of time or additional payments under this Agreement on the grounds of any misunderstanding or misapprehension in respect of the Disclosed Data or the matters referred to in Clause 8.1 (*Site Inspection*) or Clause 40.4.4(a) (*Disclaimer*) or on the grounds that incorrect or insufficient information relating thereto or to the Site was given to it by any person, whether or not in the employ of the Public Partner. Nor shall the Project Company be relieved from any risks or obligations imposed on or undertaken by it under this Agreement on any such ground.

40.5 Public Partner's Design Data

Save as expressly provided in this Agreement, the Project Company shall not seek to recover from the Public Partner, its servants or agents and shall indemnify the Public Partner and its servants and agents against any Loss or Claim which may arise from the adoption, use or application by or on behalf of the Project Company, the Designer, the Construction Contractor, the Operator, or any other person for whom the Project Company is responsible in the design, construction, testing, operation and maintenance of the Project Facilities of any Design Data and other data and documents made available to it or its representatives in connection with the Project by or on behalf of the Public Partner whether before or after the Date of Contract.

40.6 Savings

The warranty by the Project Company under any provision of this Agreement shall be without limitation to any warranty by the Project Company under any other provision of this Agreement.

41 INDEMNITIES

41.1 Project Company's Indemnities

41.1.1 The Project Company shall, subject to Clause 41.1.3 (*Project Company's Indemnities*), be responsible for, and shall release and indemnify the Public Partner or any Public Partner Related Party on demand from and against all liability for:

- (a) death or personal injury;
- (b) loss of or damage to property (including property which is in the ownership or control of the Public Partner and on or adjacent to the Project Facilities); and
- (c) third party actions, claims, demands, costs, charges and expenses against the Public Partner or any Public Partner Related Party (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of, the design, construction, operation or maintenance of the Return Assets or the Assets or the performance or non-performance by the Project Company of its obligations under this Agreement or the presence on the Public Partner's Property or the Project Facilities of the Project Company or any Project Company Related Party.

41.1.2 The Project Company shall, subject to Clause 41.1.3 (*Project Company's Indemnities*), be responsible for, and shall release and indemnify the Public Partner and any Public Partner Related Party, on demand, from and against all liability for Losses arising from third party actions, claims or demands (as described in Clause 41.1.1(c) (*Project Company's Indemnities*)) brought against the Public Partner or any Public Partner Related Party for breach of statutory duty which may arise out of, or in consequence of a breach by the Project Company of its obligations under this Agreement to the extent there are no other remedies available to the Public Partner under this Agreement.

41.1.3 The Project Company shall not be responsible or obliged to indemnify the Public Partner for:

- (a) any of the matters referred to in Clauses 41.1.1 or 41.1.2 (*Project Company's Indemnities*) which arises as a direct result of the Project Company acting on the instruction of the Public Partner;
- (b) any injury, loss, damage, cost and expense caused by the negligence or willful misconduct of the Public Partner or any Public Partner Related Party (other than to the extent such negligence or willful misconduct would not have occurred but for a breach by the Project Company of its obligations under this Agreement) or by the breach by the Public Partner of its obligations under this Agreement.

41.1.4 An indemnity by either Party under any provision of this Agreement shall be without limitation to any indemnity by that Party under any other provision of this Agreement.

41.2 Conduct of Claims Subject to Project Company's Indemnities

- 41.2.1 If the Public Partner receives any notice, demand, letter or other document concerning any Claim from which it appears that the Public Partner is or may become entitled to indemnification under this Agreement, the Public Partner shall give notice in writing to the Project Company as soon as reasonably practicable.
- 41.2.2 Subject to Clauses 41.2.3, 41.2.4 and 41.2.5 (*Conduct of Claims Subject to Project Company's Indemnities*), on the giving of a notice pursuant to Clause 41.2.1 (*Conduct of Claims Subject to Project Company's Indemnities*) the Project Company shall be entitled to and shall resist the Claim in the name of the Public Partner at its own expense and shall have the conduct of any defense, dispute, compromise or appeal of the Claim and of any incidental negotiations, and the Public Partner will give the Project Company all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim.
- 41.2.3 With respect to any Claim subject to Clause 41.2.1 (*Conduct of Claims Subject to Project Company's Indemnities*):
- (a) the Project Company shall keep the Public Partner fully informed and consult with it about the conduct of the Claim;
 - (b) to the extent that the Public Partner is not entitled to be indemnified by the Project Company for all of the liability arising out of the act or omission which is the subject of the Claim, no action shall be taken pursuant to Clause 41.2.1 (*Conduct of Claims Subject to Project Company's Indemnities*) which shall increase the amount of any payment to be made by the Public Partner in respect of that part of the Claim which is not covered by the indemnity from the Project Company; and
 - (c) the Project Company shall not pay or settle such Claim without the consent of the Public Partner, such consent not to be unreasonably withheld or delayed, provided that such consent shall not be required to the payment or settlement of a Claim subject to the indemnity in Clause 41.1.1 or 41.1.2 (*Project Company's Indemnities*) if the Claim is paid or settled in full and the amount of such payment or settlement does not exceed EUR [●] (Indexed).
- 41.2.4 The Public Partner shall be free to pay or settle any Claim on such terms as it may in its absolute discretion think fit and without prejudice to its rights and remedies under this Agreement if:
- (a) within [28] days of the notice from the Public Partner under Clause 41.2.1 (*Conduct of Claims Subject to Project Company's Indemnities*) the Project Company fails to notify the Public Partner of its intention to dispute the Claim; or
 - (b) the Project Company fails to comply in any material respect with the provisions of Clause 41.2.3 (*Conduct of Claims Subject to Project Company's Indemnities*).
- 41.2.5 The Public Partner shall be free at any time to give notice to the Project Company that it is taking over the conduct of any defense, dispute, compromise or appeal of any Claim subject

to Clause 41.2.1 (*Conduct of Claims Subject to Project Company's Indemnities*) or of any incidental negotiations. Upon receipt of such notice, the Project Company shall promptly take all steps necessary to transfer the conduct of such Claim to the Public Partner and shall provide to the Public Partner all reasonable co-operation, access and assistance for the purposes of considering and resisting such Claim. The Project Company shall be released from any indemnification obligation referred to in Clause 41.1 (*Project Company's Indemnities*) further to the Public Partner taking over the conduct of any Claim pursuant to this Clause 41.2.5 (*Conduct of Claims Subject to Project Company's Indemnities*).

42 PROJECT COMPANY DEFAULT

42.1 Persistent Breach

42.1.1 If a particular breach other than any breach for which Deductions could have been applied has continued for more than [60] days or occurred more than [5] times in any [12] month period then the Public Partner may serve a notice on the Project Company:

- (a) specifying that it is a formal warning notice;
- (b) giving reasonable details of the breach; and
- (c) stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.

42.1.2 If, following service of such a warning notice, the breach specified has continued beyond [30 (thirty)] days or recurred in [2] or more months within the [6] month period after the date of service, then the Public Partner may serve another notice on the Project Company:

- (a) specifying that it is a final warning notice;
- (b) stating that the breach specified has been the subject of a warning notice served within the [12] month period prior to the date of service of the final warning notice; and
- (c) stating that if such breach continues for more than [30] days or recurs in [2] or more months within the [6] month period after the date of service of the final warning notice, this Agreement may be terminated.

42.1.3 A warning notice may not be served in respect of any breach which has previously been counted in the making of a separate warning notice.

42.2 Project Company Default Termination

42.2.1 If a Project Company Default has occurred and the Public Partner wishes to terminate this Agreement, it must serve a termination notice on the Project Company.

42.2.2 The termination notice referred to in Clause 42.2.1 (*Project Company Default Termination*) must specify:

- (a) the type and nature of the Project Company Default that has occurred, giving reasonable details; and

- (b) that in the case of any Project Company Default falling under limbs (a), (f), (g), (h) and (m) [material breach, Sub-contractor assignment, change of ownership, insurance] of the definition of Project Company Default this Agreement will terminate [60 (sixty)] days after the date the Project Company received the termination notice, unless:
 - (i) in the case of a breach under limb (a) [material breach] of the definition of Project Company Default the Project Company puts forward an rectification program acceptable to the Public Partner within [30] days after the date the Project Company receives the termination notice (and implements such program in accordance with its terms and rectifies the Project Company Default in accordance with the program); or
 - (ii) the Project Company rectifies the Project Company Default within [60] days after the date the Project Company receives the termination notice; or
- (c) that in the case of any other Project Company Default (not referred to in Clause 42.2.2b) (*Project Company Default Termination*)) this Agreement will terminate on the date falling [30] days after the date the Project Company receives the termination notice.

42.2.3 If the Project Company either rectifies the Project Company Default within the time period specified in the termination notice, or implements the rectification program accepted by the Public Partner, if applicable, in accordance with its terms, the termination notice will be deemed to be revoked and the Agreement will continue.

42.2.4 If

- (i) no acceptable rectification program has been put forward pursuant to Clause 42.2.2(b)(i) (*Project Company Default Termination*) and the Project Company fails to rectify the Project Company Default within the time period specified in the termination notice; or
- (ii) the Project Company fails to rectify the Project Company Default within the time period specified in the termination notice pursuant to Clause 42.2.2(b)(i) (*Project Company Default Termination*),

the Public Partner may give notice stating that the Agreement will, subject to the terms of the Direct Agreement, terminate on the date falling [seven (7)] days after the date of service of such notice.

42.2.5 If the Project Company fails to implement any rectification program in accordance with its terms, the Agreement will, subject to the terms of the Direct Agreement, terminate on the date falling [seven (7)] days after the date of notice from the Public Partner to the Project Company of such failure.

42.3 Savings

The rights of the Public Partner under this Clause 42 (*Project Company Default*) are in addition and without prejudice to any other right the Public Partner may have to claim the amount of any loss or damage suffered by the Public Partner on account of the acts or omissions of the Project Company.

43 PUBLIC PARTNER DEFAULT

43.1 Termination on Public Partner Default

- 43.1.1 If a Public Partner Default has occurred and the Project Company wishes to terminate the Agreement, it must serve a termination notice on the Public Partner within [45] days of becoming aware of the Public Partner Default.
- 43.1.2 The termination notice must specify the type of Public Partner Default which has occurred entitling the Project Company to terminate this Agreement.
- 43.1.3 The Agreement will terminate [45] days after the date the Public Partner receives the termination notice, unless the Public Partner rectifies the Public Partner Default within [30] days of receipt of the termination notice. The Parties will comply with Clause 46.1 (*Compensation on Public Partner Default, Material Adverse Government Action, Change in Law or Voluntary Termination*) and the Handback Requirements.

44 OTHER EVENTS OF TERMINATION

44.1 Expiry of Term

This Agreement shall terminate automatically upon the Expiry Date unless it shall have previously been terminated in accordance with the provisions of this Agreement.

44.2 Voluntary Termination by Public Partner

- 44.2.1 The Public Partner may terminate this Agreement at any time on or before its Expiry Date in accordance with Clauses 44.2.3 to 44.2.4 (*Voluntary Termination by Public Partner*).
- 44.2.2 On termination, the Public Partner shall [have the option to] require the Project Company to transfer its right, title and interest in and to the Assets to the Public Partner or as directed by the Public Partner.
- 44.2.3 If the Public Partner wishes to terminate this Agreement under this Clause 44.2 (*Voluntary Termination by Public Partner*), it must give notice to the Project Company stating:
 - (a) it is terminating the Agreement under Clause 44.2 (Public Partner voluntary termination);
 - (b) the date on which the Agreement will terminate, which must be a minimum of [30] days after the date of receipt of the notice; and
 - (c) [whether it elects to exercise its option under Clause 44.2.2 (*Voluntary Termination by Public Partner*) and, if so,] to whom any relevant transfer(s) are to be made [and

any other requirements] in accordance with the Handback Requirements [and Clause 44.2.2 (*Voluntary Termination by Public Partner*)].

- 44.2.4 If the Public Partner gives notice in accordance with Clause 44.2.3, this Agreement will terminate on the date specified in, and in accordance with, the termination notice referred to in Clause 44.2.3 (*Voluntary Termination by Public Partner*), the Public Partner will pay to the Project Company the Termination Sum in accordance with 46.1 (*Compensation on Public Partner Default, Material Adverse Government Action, Change in Law or Voluntary Termination*) and the Project Company/Parties will comply with the Handback Requirements [and the Public Partner's requirements under this Clause 44.2 (*Voluntary Termination by Public Partner*)].

45 EFFECTS OF TERMINATION

45.1 Transfer of Assets and others

On the termination of this Agreement:

- 45.1.1 the PPP Right(s), including the rights of access under Clause 10.1 (*Access for Project Company*), shall automatically terminate;
- 45.1.2 on Termination Date or Expiry Date, as the case may be, the Return Assets shall automatically transfer to the Public Partner, free of any Encumbrance, and, in the case of termination of this Agreement in accordance with Clause 44.1 (*Expiry of Term*), shall be in the state required in accordance with Clause 22 (*Surveys on Termination*) and the Handback Requirements;
- 45.1.3 if termination occurs prior to the date of issue of the Works Completion Certificate, the Project Company shall transfer to and there shall vest in the Public Partner such part of any works as shall have been carried out and do not already form part of the Project Facilities and, if the Public Partner so elects,
- (a) the Design and Construction Contract shall be novated to the Public Partner (and upon such election the Public Partner shall take all necessary steps as soon as reasonably practicable to procure such novation to the Public Partner) and all Installations and all materials on the Site or adjacent thereto shall remain available to it for the purposes of completing the Works; and
 - (b) the Construction Installation shall remain available to the Public Partner for the purposes of completing the Works for a period of [●] months, [subject to payment therefor of a reasonable hire charge];
- 45.1.4 if the Public Partner so elects, the Operating Contract shall be novated to the Public Partner (and upon such election the Public Partner shall take all necessary steps as soon as reasonably practicable to procure such novation to the Public Partner);
- 45.1.5 the Public Partner shall have an option to purchase from the Project Company or any of its Affiliates at the net book value and free from any Encumbrances all or any part of the Assets, stocks of material, spare parts and other movable property owned by the Project Company or any of its Affiliates and reasonably required in connection with the Project;

- 45.1.6 the Project Company shall deliver to the Public Partner or its designee "as built drawings" showing all alterations made since the commencement of operation for the Project Facilities;
- 45.1.7 the Project Company shall deliver to the Public Partner operation and maintenance manuals for the Project Facilities;
- 45.1.8 the Project Company shall procure that the benefit of all manufacturer's warranties in respect of mechanical and electrical equipment included in the Project Facilities is assigned to the Public Partner;
- 45.1.9 the Project Company shall deliver to the Public Partner or its designee the records referred to in Clause 28.4.3 (*Retention of Records*).

45.2 Transfer of Shares

On the termination of this Agreement, if the Public Partner so elects, the Private Partner shall transfer to the Public Partner all the shares issued by the Project Company, free of charge, if termination occurs on the Expiry Date or against the compensation payable by the Public Partner according to Clauses 46.1 (*Compensation on Public Partner Default, Material Adverse Government Action, Change in Law or Voluntary Termination*), 46.2 (*Compensation on Termination for Project Company Default or for Corrupt Gifts and Fraud*), or 46.3 (*Compensation on Termination for Force Majeure [or Uninsurability]*), as the case may be, if the termination occurs on the Termination Date.

45.3 Handover

On the termination of this Agreement:

- 45.3.1 the Project Company shall cooperate fully with the Public Partner and any successor operator of Project Facilities in order to achieve a smooth transfer of the Project, so as to protect the safety of and avoid undue delay or inconvenience to the members of the public;
- 45.3.2 if required by the Public Partner, the Project Company shall make reasonable arrangements (by reference to the state of the art existing upon the Termination Date or the Expiry Date) for the training (free of charge) of the personnel nominated by the Public Partner to enable them to take over the operation and maintenance of the Project Facilities;
- 45.3.3 the Project Company shall as soon as practicable remove from the Site all Installations, materials, Construction Installation, temporary buildings, spare parts and other property not transferred to or required by the Public Partner pursuant to Clauses 45.1.2 or 45.1.3 (*Transfer of Assets and others*) or acquired or hired by the Public Partner pursuant to Clause 45.1.5 (*Transfer of Assets and others*), and if it has not done so within [28] days after any notice from the Public Partner requiring it to do so the Public Partner may (without being responsible for any Losses) remove and sell any such property and shall hold any proceeds less all costs incurred to the credit of the Project Company; and
- 45.3.4 the Project Company shall as soon as practicable vacate the Site and shall leave the Site in a clean and orderly condition, further to executing a minute ascertaining the handover thereof to the Public Partner.

46 COMPENSATION ON TERMINATION

46.1 Compensation on Public Partner Default, Material Adverse Government Action, Change in Law or Voluntary Termination

If this Agreement is terminated for:

- (i) Public Partner Default in accordance with Clause 43 (*Public Partner Default*),
- (ii) Material Adverse Government Action in accordance with Clause 39 (*Material Adverse Government Action*),
- (iii) Change in Law in accordance with Clause 36 (*Change in Law*) or
- (iv) voluntary termination in accordance with Clause 44.2 (*Voluntary Termination by Public Partner*),

the Public Partner shall pay the Project Company an amount equal to the sum of:

- (a) Outstanding Senior Debt; plus
- (b) redundancy payments for employees of the Project Company that have been or will be reasonably incurred by the Project Company as a direct result of termination of this Agreement; plus
- (c) any Sub-Contractor Breakage Costs; plus
- (d) the net present value of forecast Termination Distributions and interest to be paid and principal to be repaid under the Subordinated Finance Documents as at the Termination Date, based on the Original Base Case, each amount discounted back at the Base Case Equity IRR from the date on which it is shown to be payable in the Original Base Case to the Termination Date.

46.2 Compensation on Project Company Default Termination and on Termination for Corrupt Gifts and Fraud

If the Public Partner terminates this Agreement for Project Company Default in accordance with Clause 42 (*Project Company Default*) or Clause 59.2 (*Termination for Corrupt Gifts and Fraud*), the Public Partner shall pay to the Project Company a compensation amount equal to [●]% of Outstanding Senior Debt.

46.3 Compensation on Termination for Force Majeure [or Uninsurability]

If this Agreement is terminated for Force Majeure in accordance with Clause 38.3 (*Termination due to Prolonged Force Majeure*), the Public Partner shall pay the Project Company an amount equal to the sum of:

- (a) Outstanding Senior Debt, if any; plus
- (b) Initial Equity and any outstanding principal under the Subordinated Finance Documents as at the Termination Date [less any Termination Distributions or subordinated debt interest payments already made]; plus

- (c) redundancy payments for employees of the Project Company that have been or will be reasonably incurred by the Project Company as a direct result of termination of this Agreement; plus
- (d) any Sub-Contractor Breakage Costs.

46.4 Satisfaction in Full

Any payment of compensation shall be in full satisfaction of any claim which can be made against the Public Partner by the Project Company in relation to termination of this Agreement or any Project Document. The compensation payable under Clauses 46.1 (*Compensation on Termination for Public Partner Default, Material Adverse Government Action, Change in Law or Voluntary Termination*), 46.3 (*Compensation on Termination for Force Majeure [or Uninsurability]*) shall be the sole remedy of the Project Company against the Public Partner in respect of termination of this Agreement.

46.5 Gross up of Termination Payments

If any amount of compensation payable by the Public Partner under Clauses 46.1 (*Compensation on Public Partner Default, Material Adverse Government Action, Change in Law or Voluntary Termination*) and 46.3 (*Compensation on Termination for Force Majeure or Unforceability*) is subject to Tax payable to a Relevant Authority in Romania, then the Public Partner shall pay to the Project Company such additional amount as will put the Project Company in the same after Tax position as it would have been had the payment not been subject to Tax, taking account of any relief, allowances deduction, setting off, credit or other facility in respect of Tax (whether available by choice or not) which may be available to the Project Company to reduce the Tax to which the payment is subject.

46.6 Set off on Termination

The Public Partner is entitled to set off any amount owed to it by the Project Company under this Agreement against any payments of termination compensation (whether payable as a lump sum or in instalments) under Clauses 46.1 (*Compensation on Public Partner Default, Material Adverse Government Action, Change in Law or Voluntary Termination*), 46.3 (*Compensation on Termination for Force Majeure [or Uninsurability]*), unless provided that if such an amount were set off, the termination payment made would be in an amount greater than or equal to the Outstanding Senior Debt, at that time.

46.7 Disputed Termination Amounts

- 46.7.1 In the event any part of termination compensation is disputed, the Public Partner shall not be entitled to withhold the entire amount of the termination compensation and shall pay such amount of the termination compensation as is not in dispute.
- 46.7.2 Any Dispute on the amounts of termination compensation shall be settled pursuant to the Disputes Resolution Procedure.

46.8 Method of payment

- 46.8.1 The Public Partner shall pay to the Project Company the Termination Sum together with interest on any Outstanding Senior Debt element of the Termination Sum at the Senior Debt Rate, on or before the date falling [90] days after the Termination Date.

- 46.8.2 If the Public Partner fails to make a payment to the Project Company in accordance with Clauses 46.8.1, the Private Partner may issue a notice to the Public Partner declaring any unpaid and outstanding element of the Outstanding Senior Debt element of the Termination Sum and any accrued but unpaid interest to be immediately due and payable.

46.9 Agent's Certificate

The Public Partner shall be entitled to rely on the certificate of the Agent as conclusive as to the amount of the Outstanding Senior Debt. The receipt by the Agent of the Outstanding Senior Debt shall discharge the Public Partner's obligations to pay such sums to the Project Company.

PART X. MISCELLANEOUS

47 ASSIGNMENT, CHANGE IN CONTROL AND SUB-CONTRACTING

47.1 Binding on Successors and Assigns

This Agreement shall be binding on and shall ensure to the benefit of the Project Company and the Public Partner and their respective successors and permitted assigns.

47.2 Binding on the Private Partner

47.2.1 This Agreement shall be binding on the Private Partner and its respective successors and assigns solely in what concerns the rights, obligations, warranties and representations which are expressly provided for to the benefit of, or incumbent on, the Private Partner by the provisions of this Agreement.

47.2.2 For the avoidance of any doubt, the rights and obligations of the Private Partner may be exerted/are incumbent only against the Public Partner, but not against the Project Company.

47.2.3 The Private Partner shall be entitled to benefit of and exert against the Public Partner any rights and remedies as provided for in this Agreement and/or by Law but only provided that such are connected with the matters set out in Clause 47.2.1 (*Binding on the Private Partner*) and only if and to the extent such relate solely to the Private Partner, but not also to the Project Company. Likewise, the Public Partner shall be entitled to benefit of and exert against the Private Partner any rights and remedies as provided for in this Agreement and/or by Law but only provided that such are connected with the matters set out in Clause 47.2.1 (*Binding on the Private Partner*) and only if and to the extent such relate solely to the Private Partner, but not also to the Project Company.

47.2.4 The Disputes Resolution Procedure, as set out in Clause 53 (*Disputes Resolution Procedure*) shall apply accordingly in case of any dispute which is similar to a Dispute save only that it arises between the Private Partner and the Public Partner, provided however that such dispute may arise only in the context described in this Clause 47.2 (*Binding on the Private Partner*).

47.2.5 [The aggregate liability of the Private Partner to the Public Partner under or in connection with this Agreement shall not exceed the Effective Date Liability Cap.]

47.3 Assignment

47.3.1 Subject to Clause 47.3.2 (*Assignment*) the Project Company shall not, and shall procure that no Project Company Related Party shall, in any such case without the prior consent of the Public Partner, assign, novate, transfer or create or allow to subsist any Encumbrance or interest in:

- (a) this Agreement, the Design and Construction Contract, the Operating Contract or any other contract entered into by the Project Company in performing its obligations under this Agreement; or

- (b) unless as and to the extent authorized by [relevant clause] of the Direct Agreement, the Joint Insurance Account for any sums or from time to time standing to the credit thereof, or any part thereof or any benefit or interest therein or thereunder.

47.3.2 The provisions of Clause 47.3.1 (*Assignment*) do not apply:

- (a) in relation to the assignment of the benefit of any of the agreements referred to in Clause 47.3.1(a) (*Assignment*) by way of security in accordance with the Senior Finance Documents, provided that in the case of an assignment of the benefit of this Agreement or any part thereof or any benefit or interest therein or thereunder any assignee shall have entered into the Direct Agreement or such other similar agreement in relation to the exercise of its rights as the Public Partner shall require; or
- (b) to the novation of this Agreement to a Suitable Substitute Project Company in accordance with the provisions of the Direct Agreement.

47.3.3 Without prejudice to Clauses 47.5.1, 47.5.2 and 47.5.3 (*Subcontracting*), the Project Company shall procure that:

- (a) the Construction Contractor shall not be permitted to assign the Design and Construction Contract or any part thereof or any benefit or interest therein or thereunder, without the Project Company having obtained the prior consent of the Public Partner;
- (b) the Operator shall not be permitted to assign the Operating Contract or any part thereof or any benefit or interest therein or thereunder without the Project Company having obtained the prior consent of the Public Partner.

47.3.4 The rights and obligations of the Public Partner under this Agreement shall not be assigned, novated or otherwise transferred (whether by virtue of any Law or any scheme pursuant to Law or otherwise) to any person other than to any public body acquiring the whole of this Agreement and having the legal capacity, power and authority to act in connection with the subject-matter of this Agreement and to perform the obligations of the Public Partner under this Agreement.

47.4 Change of Ownership and Change of Control

47.4.1 The Project Company and the Private Partner represent and warrant to the Public Partner that at the Date of Contract the legal and beneficial ownership of the Project Company and of the Private Partner is as set out in Schedule [●] (*Details of the Project Company, the Private Partner, the Construction Contractor and Operator*) and that, other than any Private Partner pre-emption rights, no arrangements are in place that have or may have or result in any sale, transfer or disposal of any legal, beneficial or other interest in any or all of the shares in the Project Company which may be considered in breach of the provisions of this Clause 47.4 (*Change of Ownership and Change of Control*).

47.4.2 The Project Company shall inform the Public Partner, if it becomes aware, of any proposed Change of Ownership prior to its occurrence, or, if it does not have prior information, as

soon as reasonably practicable (and in any event, within [10] days) of any Change of Ownership occurring, and shall provide, with this information, details of the new ownership structure (legal and beneficial) and of the purchase price paid.

- 47.4.3 The Public Partner may, not more than [twice] in any Contract Year, or at any time when a Project Company Default is outstanding, require the Project Company to confirm, as soon as reasonably practicable and in any event within [10] days of receipt of the Public Partner's request for details, whether any Change of Ownership has occurred together with the supplementary information specified in Clause 47.4.2 (*Change of Ownership and Change of Control*).
- 47.4.4 The Project Company's obligations under Clauses 47.4.2 and 47.4.3 (*Change of Ownership and Change of Control*) shall, except where a legal transfer of shares has occurred, be limited to the extent of the Project Company's awareness having made all reasonable enquiry.
- 47.4.5 No Change of Control may occur during the period from the Date of Contract until the date falling [12] months after the Services Commencement Date.
- 47.4.6 Any Change of Control arising as a consequence of:
- (a) the grant or enforcement of security in favor of the Senior Lenders over or in relation to any of the shares of the Project Company, provided that any document conferring security over any shares has been approved by the Public Partner (such approval not to be unreasonably withheld or delayed); or
 - (b) any transfer by the Private Partner to an Affiliate of such transferor,
- shall be disregarded for the purposes of Clause 47.4.5 (*Change of Ownership and Change of Control*).
- 47.4.7 Where Clause 47.4.6(b) (*Change of Ownership and Change of Control*) applies and subsequent to any such transfer (the "**Original Transfer**") the transferee ceases to be an Affiliate of the original transferor, it shall be a breach of this Clause 47.4 (*Change of Ownership and Change of Control*) if the shares or interests which were the subject of the Original Transfer are not within [30] days of the transferee ceasing to be an Affiliate of the original transferor transferred to that original transferor or any Affiliate of such transferor.

47.5 Sub-Contracting

- 47.5.1 The hiring of the following persons shall not be terminated without the prior written approval of the Public Partner given under the Review Procedure to the appointment of any proposed substitute and the terms of hiring of the proposed substitute:
- (a) the Construction Contractor;
 - (b) the Operator.
- 47.5.2 If any of the persons referred to in Clause 47.5.1 (*Sub-Contracting*) shall cease to act at any time, the Project Company shall forthwith appoint a replacement, subject to the prior

approval of the Public Partner given under the Review Procedure both as to the substitute to be appointed and the terms of engagement of the proposed substitute.

- 47.5.3 Without prejudice to any obligation under Clause 26 (*Quality Management*), the Works may be sub-contracted by the Construction Contractor without the consent of the Public Partner, subject always to compliance with the Design and Certification Procedure.
- 47.5.4 Without prejudice to any obligation under Clause 26 (*Quality Management*), the operation and maintenance of the Project Facilities may be sub-contracted by the Operator without the consent of the Public Partner, subject always to compliance with the Design and Certification Procedure.
- 47.5.5 No additional Sub-Contractor than those referred to in Clause 47.5.1 (*Sub-Contracting*) shall carry out any part of the Works or Services until:
- (a) the Public Partner has approved the appointment pursuant to the Review Procedure both as to the person concerned and to the terms of engagement; and
 - (b) the Project Company has provided to the Public Partner a waiver of liability from such Sub-Contractor in relation to the Disclosed Data in a form satisfactory to the Public Partner (acting reasonably).

48 NOTICES

48.1 Requirement for Writing

Wherever in this Agreement provision is made for the giving or issuing of any notice, submission, endorsement, consent, approval, certificate or determination by any person (a "**Notice**"), unless otherwise specified such Notice shall be in writing and the words "notify", "submitted", "endorsed", "consent", "approval", "certify" or "determined" shall be construed accordingly.

48.2 Addresses

Any Notice shall be duly given if signed by or on behalf of a duly authorized officer of the person giving the Notice and left at or sent by recorded delivery post[, by facsimile transmission] or by e-mail to the following addresses:

Public Partner:

[•]

Attention: [•]

Project Company:

[•]

Attention: [•]

Private Partner:



Attention: 

48.3 Changes

Either Party may change its address for notice to another address in Romania by prior notice to the other Party with a copy to the Independent Engineer. The Independent Engineer and the Public Partner's Representative may change their address for notice to another address in Romania by prior notice to the Parties.

48.4 Receipt

Any Notice shall be deemed to have been received:

48.4.1 if sent by hand or recorded delivery post, when delivered;

48.4.2 if sent by facsimile, upon sending, subject to:

- (a) confirmation of uninterrupted transmission by a transmission report; and
- (b) there having been no telephonic communication by the recipient to the sender (any such telephonic communication to be confirmed in writing) that the facsimile has not been received in legible form:
 - (i) within 3 hours after sending, if sent on a Business Day and between the hours of 9.00 a.m. and 4.00 p.m.; or
 - (ii) by noon on the next following Business Day, if sent after 4.00 p.m. on a Business Day but before 9.00 a.m. on the next following Business Day;

48.4.3 if sent by e-mail, when delivered, subject to confirmation of delivery.

48.5 Default

Any Party (and the Private Partner for the matters described in Clause 47.2 (*Binding on the Private Partner*)) shall be automatically deemed in default at such time when performance of its obligations under this Agreement became due. For the avoidance of doubt, notices or other communications that are issued by either Party shall not have the purpose to set in default the other Party (or the Private Partner for the matters described in Clause 47.2 (*Binding on the Private Partner*)) for breaching its obligations under this Agreement.

49 CONSENTS

49.1 Project Company's Consents

49.1.1 Except for the Consents referred to under Clause 49.2.1 (*Public Partner's Consents*), as between the Project Company and the Public Partner, the Project Company is responsible for applying for the issuance or renewal of any Consent required under the Law for performing the Mobilization Works and Duties, the Works, the Services or any other Operations in connection therewith, including payment of all taxes, application and other

fees in respect thereof and the provision of the necessary supporting documents as required by the Law. The Project Company shall apply for the issuance or renewal of the Consents at such time as shall be reasonably necessary, having regard to the Design and Construction Requirements, Works Program, Services Requirements or Annual Program and any other provision of this Agreement and to the relevant provisions of the Law, so as to enable the Project Company to perform its obligations in accordance with the terms of this Agreement.

- 49.1.2 The Project Company shall be responsible for obtaining and renewing in due course the Consents referred to under Clause 49.1.1 (*Project Company's Consents*), all validly issued or renewed and in full force and effect, on or prior to such date as shall be necessary for the Project Company to enable it to perform its obligations in accordance with the terms of this Agreement and for maintaining the Consents referred to under Clause 49.1.1 (*Project Company's Consents*) in full force and effect for as long as it is necessary for the Project Company to perform its obligations under this Agreement, but subject however to Clause 49.1.4 (*Project Company's Consents*).
- 49.1.3 The Public Partner shall provide all such assistance and support to the Project Company as may be reasonably necessary for the Project Company to obtain all the Consents referred to in Clause 49.1.1 (*Project Company's Consents*), provided however that the Public Partner shall not be responsible for obtaining any such Consents. The obligation of the Public Partner set out in this Clause 49.1.3 (*Project Company's Consents*) includes, without being limited to, the obligation of the Public Partner to make available to the Project Company all data and information which are within its responsibility or control and to obtain all Consents referred to in Clause 49.2.1 (*Public Partner's Consents*) which are required for the Project Company to obtain the Consents referred to in Clause 49.1.1 (*Project Company's Consents*).
- 49.1.4 In the event that:
- (a) any Relevant Authority fails or refuses to grant a Consent (or to renew an existing Consent) within the period determined in accordance with the Law, or fails to provide any document or information within the control of the Relevant Authority which is necessary for the issue or renewal of any Consent by another Relevant Authority; or
 - (b) any of the Consents shall not have been validly issued (or renewed) and in full force and effect (including the event where the Consent is issued but imposes additional requirements or obligations than allowed under the Law), as provided for in Clause 49.1.2 (*Project Company's Consents*); or
 - (c) any of the Consents is suspended, cancelled or revoked by any Relevant Authority, otherwise than for the purposes of complying with and/or implementing an enforceable decision of a court of law or other jurisdictional body;
- and
- (d) the Project Company demonstrates that it had satisfied any and all Legal Requirements for the grant, renewal of the relevant Consent or for maintaining it in

full force and effect and should therefore be legally entitled to the issuance, renewal of such Consent or to having the Consent maintained in full force and effect; and

- (e) any of the events listed under paragraphs (a), (b) and (c) are not due to the fault or negligence of the Project Company,

any of the events listed under paragraphs (a), (b) and (c) shall be deemed as a Material Adverse Government Action.

49.2 Public Partner's Consents

- 49.2.1 The Public Partner is responsible for applying for the issuance of the Planning Consents, including payment of all taxes, application and other fees in respect thereof and the provision of the necessary supporting documents as required by the Law. The Public Partner shall apply for the issuance of the Planning Consents if and at such time as shall be reasonably necessary, having regard to the provisions of this Agreement and to the relevant provisions of the Law, so as to enable the Project Company to perform its obligations in accordance with the terms of this Agreement.
- 49.2.2 The Public Partner shall be responsible for obtaining in due course the Consents referred to under Clause 49.2.1 (*Public Partner's Consents*), all validly issued and in full force and effect, on or prior to such date as shall be necessary for the Project Company to enable it to perform its obligations in accordance with the terms of this Agreement, but, in any case, on the Effective Date at the latest and for maintaining the Consents referred to in Clause 49.2.1 (*Public Partner's Consents*) in full force and effect for as long as it is necessary for the Project Company to perform its obligations under this Agreement within the period of their validity.
- 49.2.3 In connection with the issuance of the Planning Consents, the Project Company shall provide all such assistance and support to the Public Partner as may be reasonably necessary for the Public Partner to obtain the Consents referred to in Clause 49.2.1 (*Public Partner's Consents*), provided however that the Project Company shall not be responsible for obtaining any such Consents. The obligation of the Project Company set out in this Clause 49.2.3 (*Public Partner's Consents*) includes, without being limited to, the obligation of the Project Company to make available to the Public Partner all data and information which are within its responsibility or control and to obtain all Consents referred to in Clause 49.1.1 (*Project Company's Consents*) which are required for the Public Partner to obtain the Consents referred to in Clause 49.2.1 (*Public Partner's Consents*).

49.3 Others

- 49.3.1 To the extent permitted under the Law, the Public Partner shall assign (and the Project Company shall accept such assignment, without any consideration in exchange) the rights, benefits and obligations deriving from the Construction Permit, at any time after such are obtained. The Parties shall take all measures and execute all documents and agreements so as to give effect to the assignment referred to in this Clause 49.3.1 (*Others*).

- 49.3.2 The Project Company shall be responsible for implementing all Consents (including those referred to in Clause 49.2 (*Public Partner's Consents*)) in accordance with their respective terms within the period of their validity.
- 49.3.3 If, according to the Law or to any Legal Requirement, the holder of any Consent referred to under Clause 49.1.1 (*Project Company's Consents*) is the Public Partner, the Public Partner and the Project Company shall do all things and acts, including preparing the required powers of attorney, so that the Project Company shall apply for the issuance or renewal and shall obtain such Consent in the name and on behalf of the Public Partner.
- 49.3.4 If, according to the Law, the Public Partner is the issuer of any Consent, the Public Partner shall issue such Consent according to its statutory powers and without considering the provisions of this Agreement, save to the extent required by Law.

50 RIGHTS OF ACCESS

- 50.1** The Project Company shall procure that the Public Partner or a representative or adviser of the Public Partner (when accompanied by a representative of the Public Partner) and the Independent Engineer shall have, at all reasonable times and upon giving reasonable notice, the right (but not so as to delay or impede the progress of the Works, the performance of the Services or of other Operations) to enter onto the Site in order to inspect:
- (a) the state and progress of the Works (and to ascertain whether they are being properly executed), and/or
 - (b) the operation and maintenance of the Project Facilities,
- and to monitor compliance by the Project Company with its obligations under this Agreement.
- 50.2** The Public Partner or a representative or adviser of the Public Partner (when accompanied by a representative of the Public Partner) and the Independent Engineer may at all reasonable times and on reasonable notice enter upon any property used by the Project Company as training or workshop facilities and places where work is being prepared or materials being obtained for the Project for the purposes of inspection and of attending any test or investigation being carried out in respect of the Works or the Services.
- 50.3** The Project Company shall procure that satisfactory facilities are made available to the Public Partner and any representative of the Public Partner and the Independent Engineer and that reasonable assistance is given for the purposes of Clause 50.1 and 50.2 (*Rights of Access*) above, subject to the Project Company's and Sub-Contractor's construction or operational requirements not being adversely affected.
- 50.4** The Public Partner and its representative and the Independent Engineer shall at all times comply with any health and safety requirements when exercising its rights under this Clause 50 (*Rights of Access*).
- 50.5** If the Public Partner or a Public Partner Related Party causes material damage to any Asset in exercising any right under this Clause 50 (*Rights of Access*), then the Public Partner shall be liable to the Project Company for the reasonable costs directly caused by such damage and such damage shall be deemed to be a Compensation Event.

51 INFORMATION AND CONFIDENTIALITY

51.1 Public Relations and Publicity

- 51.1.1 The Project Company shall not by its directors, officers, employees or agents, and shall procure that its Sub-Contractors shall not, communicate with representatives of the press, television, radio or other communications media on any matter concerning the Agreement without the prior written approval of the Public Partner.
- 51.1.2 The Project Company may not represent the views of the Public Partner on any matter, or use the name of the Public Partner in any written material provided to third parties, without the prior written consent of the Public Partner.

51.2 Publication of the Agreement in the public domain

- 51.2.1 The Parties agree that the provisions of this Agreement and of the Project Documents [and [insert any other relevant documents]] shall, subject to Clause 51.3.1 (*Confidentiality*), not be treated as Confidential Information and may be disclosed without restriction and the Project Company acknowledges that the Public Partner, subject to Clause 51.3.1 (*Confidentiality*), is entitled to:
- (a) publish this Agreement [and some of the Project Documents] on a website; and
 - (b) publish (on the internet or otherwise) a summary of the Agreement [and the Project Documents and any associated transaction document] which shall include:
 - (i) the terms and conditions of the Agreement [and the Project Documents and any associated transaction document]; and
 - (ii) any document or information arising out of or connected to the Agreement [and the Project Documents and any associated transaction document], including performance of the Agreement [and the Project Documents and any associated transaction document].
- 51.2.2 The Parties agree that Base Case Equity IRR information shall not be treated as Confidential Information and the Project Company acknowledges that the Public Partner intends to publish such information on a website.
- 51.2.3 The Parties agree that information in respect of any direct or indirect change in ownership which has actually taken place shall not be treated as Confidential Information.

51.3 Confidentiality

- 51.3.1 Clause 51.2.1 (*Publication of the Agreement in the public domain*) shall not apply to Confidential Information which shall, subject to Clause 51.3.3 (*Confidentiality*), be kept confidential for the periods specified in Schedule [●] (*Commercially Sensitive Information*).
- 51.3.2 The Parties shall keep confidential all Confidential Information received by one Party from the other Party relating to this Agreement [and any Project Documents] or the Project and

shall use all reasonable endeavors to prevent their employees and agents from making any disclosure to any person of any such Confidential Information.

51.3.3 Clauses 51.3.1 and 51.3.2 (*Confidentiality*) shall not apply to:

- (a) any disclosure of information that is reasonably required by any person engaged in the performance of their obligations under the Agreement for the performance of those obligations;
- (b) any matter which a Party can demonstrate is already, or becomes, generally available and in the public domain otherwise than as a result of a breach of this Clause 51 (*Information and Confidentiality*);
- (c) any disclosure to enable a determination to be made under Clause 53 (*Disputes Resolution Procedure*) or in connection with a dispute between the Project Company and any of its sub-contractors;
- (d) any disclosure which is required by the Law or by any other obligation (including any order of a court of competent jurisdiction) placed upon the Party making the disclosure or by the rules of any stock exchange or of any Relevant Authority;
- (e) any disclosure of information which is already lawfully in the possession of the receiving Party, prior to its disclosure by the disclosing Party;
- (f) any provision of information to;
 - (i) the Parties' own professional advisers or insurance advisers; and/or
 - (ii) the Senior Lenders or the Senior Lenders' professional advisers or insurance advisers or, where it is proposed that a person should or may provide funds (whether directly or indirectly and whether by loan, equity participation or otherwise) to the Project Company to enable it to carry out its obligations under the Agreement, or may wish to acquire shares in the Project Company in accordance with the provisions of this Agreement to that person or their respective professional advisers but only to the extent reasonably necessary to enable a decision to be taken on the proposal; and/or
 - (iii) international or bilateral financial institutions involved in the Project as Senior Lenders, political risk insurers or guarantors; and/or
 - (iv) any rating agency which may be engaged to provide a rating or rating assessment in relation to any Senior Debt.
- (g) any disclosure by the Public Partner of information relating to the design, construction, operation and maintenance of the Project Facilities and such other information as may be reasonably required for the purpose of conducting a due diligence exercise, to any proposed new Project Company, its advisers and Senior Lenders, should the Public Partner decide to re-award the Agreement or undertake any market testing;

- (h) any registration or recording of the required permits and property registration required;
- (i) any disclosure of information by the Public Partner to any other Relevant Authority or their respective advisers or to any person engaged in providing services to the Public Partner for any purpose related to or ancillary to the Agreement; or
- (j) any disclosure for the purpose of;
 - (i) the examination and certification of the Public Partner's or the Project Company's accounts;
 - (ii) any examination pursuant to [insert reference to any auditing obligations for public contracts] of the economy, efficiency and effectiveness with which the Public Partner has used its resources;
 - (iii) complying with a proper request from either Party's insurance adviser, or insurer on placing or renewing any insurance policies; or
 - (iv) *(without prejudice to the generality of Clause (d))* compliance with [insert reference to any laws requiring disclosure (e.g., environmental laws)].

51.3.4 When disclosure is permitted under Clause 51.3.3, other than Clauses 51.3.3(b), 51.3.3(d), 51.3.3(e), 51.3.3(h) and 51.3.3(j) (*Confidentiality*), the Party providing the information shall ensure that the recipient of the information shall be subject to the same obligation of confidentiality as that contained in this Agreement. [The Project Company shall expressly inform any person to whom it discloses any information under this Clause 51 (*Information and Confidentiality*) of the confidentiality restrictions set out in this Clause 51 (*Information and Confidentiality*) and shall procure its compliance with the terms of this Clause 51 (*Information and Confidentiality*) as if it were Party to this Agreement and the Project Company shall be responsible for any breach by any such person of the provisions of this Clause 51 (*Information and Confidentiality*).]

51.3.5 Where the Project Company, in carrying out its obligations under the Agreement, is provided with information relating to [Users], the Project Company shall not disclose or make use of any such information otherwise than for the purpose for which it was provided, unless the Project Company has obtained the prior written consent of that [User] and has obtained the prior written consent of the Public Partner.

51.3.6 On or before the Expiry Date, the Project Company shall ensure that all documents or computer records in its possession, custody or control, which contain information relating to [Users] including any documents in the possession, custody or control of a Sub-Contractor, are delivered up to the Public Partner.

51.3.7 The provisions of this Clause 51 (*Information and Confidentiality*) are without prejudice to the application of Law no. 182/2002 on the protection of classified information and of any other Laws concerning the protection of classified information.

52 SUB-CONTRACTORS

52.1 Project Company's Responsibility

As between the Parties, the Project Company shall be responsible for the acts, defaults, omissions and neglect of the Sub-Contractors and any other contractor or sub-contractor of the Project Company of any tier and the agents, employees or workmen of any of them as fully as if they were the acts, defaults, omissions or neglect of the Project Company, its agents, employees or work persons.

52.2 Project Company's Knowledge

Without limitation to its actual knowledge, the Project Company shall for all purposes of this Agreement be deemed to have such knowledge in respect of the Project, the Works and the Services as is held (or as ought reasonably to be held) by the Sub-Contractors in the relevant circumstances.

53 DISPUTES RESOLUTION PROCEDURE

53.1 Notification

53.1.1 If any dispute arises out of or in connection with this Agreement, [including any dispute concerning any non-contractual obligations arising out of or in connection with it] (a "**Dispute**"), it shall be resolved in accordance with this Clause 53 (*Disputes Resolution Procedure*).

53.1.2 Either Party may, by notice in writing to the other Party, at the address for sending of notices under this Agreement and in a manner provided by Clause 48 (*Notices*), give notice that a Dispute has arisen ("**Dispute Notice**"). The Dispute Notice shall set out brief details of the nature of the Dispute.

53.2 Negotiation

53.2.1 The Parties shall attempt to settle any Dispute referred to in a Dispute Notice by good faith negotiation. Each Party shall be represented in any negotiation by that Party's [CEO/a person with authority to settle the Dispute]. Such negotiation shall take place within [15 (fifteen)] days of the delivery of the Dispute Notice. Any negotiations shall be confidential and shall be conducted without prejudice to the rights of the Parties in any future proceedings.

53.2.2 Nothing in Clause 53.2.1 (*Negotiation*) will prejudice the right of a Party to seek urgent injunctive or declaratory relief or other urgent relief in respect of a Dispute.

53.3 Expert Determination

53.3.1 Any Dispute arising out of or in connection with Clauses [insert reference to every clause where a Dispute is considered a Technical Dispute] (a "**Technical Dispute**") which is not resolved amicably in accordance with Clause [●], shall be resolved in accordance with Clauses [●]. In any other case, the Dispute shall be resolved in accordance with Clause 53.4 (*International Arbitration*).

- 53.3.2 A Technical Dispute shall be referred, at the request of either Party, to an independent Expert for determination. The Parties shall agree on the appointment of the Expert and shall agree with the Expert the terms of his/ her appointment. If the Parties are unable to agree on the identity of the Expert, or if the person proposed is unable or unwilling to act, then, within [7 (seven)] days of either Party serving details of a suggested expert on the other or the proposed Expert declining to act, either Party shall then be entitled to request that an Expert be appointed by [the International Chamber of Commerce] on the application of a Party. All costs of and associated with the request for the appointment of an Expert by the [International Chamber of Commerce] shall be borne equally between the Parties.
- 53.3.3 The Expert appointed may be an individual, partnership, association or body corporate and shall be generally recognized as an expert in [specify field] and shall have [●] years of experience in that field.
- 53.3.4 The Expert shall act on the following basis:
- (a) on his/her appointment, the Expert shall confirm his/her neutrality, independence and the absence of conflicts in determining the Technical Dispute;
 - (b) the Expert shall act as an expert and not as an arbitrator;
 - (c) the Expert's determination shall (in the absence of manifest error) be final and binding on the Parties and not subject to appeal;
 - (d) the Expert shall decide the procedure to be followed in the determination in accordance with this Agreement and shall be requested to make his/ her determination in writing, with reasons, within [30] days after his/her appointment or as soon as practicable thereafter;
 - (e) any amount payable by one Party to another as a result of the Expert's determination shall be due and payable within [seven] days of the Expert's determination being notified to the Parties or as specified within the determination;
 - (f) any action required by the Expert determination shall be implemented within [14] days following the Expert determination being notified to the Parties or as specified within the determination;
 - (g) the Expert may, if he/she thinks fit, award interest at the rate of [●] on any amount which is determined to be payable (excluding costs) by one Party to the other from the date of [the Dispute Notice] referred to in Clause [●];
 - (h) the costs of the determination, including the fees and expenses of the Expert (but excluding the Parties' own costs which shall be borne by the Party incurring those costs), shall be borne equally by the Parties.
- 53.3.5 The Expert determination and all matters connected with it shall be held in complete confidence by each of the Parties and shall not be disclosed to any other person except:
- (a) to the auditors and to the legal advisers of that Party to whom the confidentiality obligations set out in this Agreement shall extend;

- (b) where that Party is under a legal or regulatory obligation to make such a disclosure, but limited to the extent of that legal obligation; or
- (c) to the extent that it is already in the public domain (other than as a result of a Party's breach of this Agreement); or
- (d) with the prior written consent of the other Party [such consent not to be unreasonably withheld].

53.3.6 The Parties agree to take all reasonable steps to make their employees and agents aware of the terms of Clause 53.3.5 (*Expert Determination*) and to instruct them to observe those terms.

53.3.7 If the Parties fail to agree:

- (a) whether or not a Dispute is a Technical Dispute within [(15) fifteen] days of service of the Dispute Notice;
- (b) whether the Expert's determination was in manifest error or fraudulent; or
- (c) whether a Party has failed to implement fully the Expert's determination,

then the matter shall be resolved in accordance with Clause 53.4 (*International Arbitration*).

53.4 International Arbitration

53.4.1 Any matter provided by Clause 53.3.7 (*Expert Determination*) and any Dispute which is not a Technical Dispute and has not been resolved amicably between the Parties in accordance with Clause 53.3.1 (*Expert Determination*) shall be referred to and finally resolved by arbitration pursuant to the Rules of Arbitration of the International Chamber of Commerce ("**ICC Arbitration Rules**") which are deemed incorporated by reference into this Agreement.

53.4.2 The number of arbitrators shall be three (3) and they shall be appointed in accordance with the ICC Arbitration Rules (the "**Arbitral Tribunal**").

53.4.3 The language of the proceedings shall be [English] and all documents submitted in such proceedings shall be in [English or accompanied by a certified English translation]. The seat of arbitration shall be [insert choice].

53.4.4 The Parties undertake to keep confidential all awards in any arbitration, together with all materials in the proceedings created for the purpose of the arbitration and all other documents produced by another Party in the proceedings not otherwise in the public domain, save:

- (i) with the permission of the Arbitral Tribunal; or
- (ii) to the extent that disclosure may be required of a Party by legal duty or regulatory obligation or to protect or pursue a legal right, or to enforce or challenge an award in bona fide legal proceedings before a state court or other judicial authority.

- 53.4.5 The Arbitral Tribunal shall issue a reasoned award in writing and shall endeavor to do so within ~~[(60) sixty calendar]~~ days from the date of the close of the arbitration hearing. The award of the Arbitral Tribunal shall be final and binding upon the Parties from the date it is made.
- 53.4.6 Judgment on the award of the Arbitral Tribunal may be entered and enforced by any court of competent jurisdiction.
- 53.4.7 Unless otherwise determined by the Arbitral Tribunal, the Arbitrators' fees and associated institutional costs shall be split equally between the Parties.

53.5 Consolidation

In order to facilitate the comprehensive resolution of related disputes, in the event that more than one arbitration is commenced under this Agreement and under ~~[add related agreements]~~, (the "**Related Agreements**"), the Project Company and the Public Partner consent to the consolidation of arbitrations as follows:

- (a) For the purposes of the ICC Arbitration Rules, the arbitration agreement set out in this Agreement and the arbitration agreement contained in each Related Agreement shall together be deemed to be an arbitration agreement that binds each Party to this Agreement and each Party to each Related Agreement;
- (b) Any Party to this Agreement or any Related Agreement may, in accordance with the ICC Arbitration Rules, be joined to any arbitration commenced under this Agreement or any Related Agreement;
- (c) In accordance with the ICC Arbitration Rules, Disputes may be resolved in a single arbitration together with Disputes (as defined in any Related Agreement) arising out of any such Related Agreement;
- (d) Pursuant to Article 10(a) of the ICC Arbitration Rules, the Parties agree to the consolidation of any two or more arbitrations commenced pursuant to this Agreement and/or the arbitration agreement contained in any Related Agreement into a single arbitration, as provided for in the ICC Arbitration Rules;
- (e) Each Party waives any objection, on the basis that a Dispute has been resolved in a manner contemplated in this Clause 53.5 (*Consolidation*), to the validity and/or enforcement of any arbitral award made by an arbitral tribunal following the Dispute being resolved in that manner.

53.6 Continuing Obligations

Performance of this Agreement shall continue during arbitration proceedings or any other disputes resolution mechanism pursuant to this Clause 53 (*Disputes Resolution Procedure*).

53.7 Waiver of Immunity

To the fullest extent permitted by law the Public Partner irrevocably and unconditionally:

- (a) submits to the courts of any jurisdiction in relation to the recognition of any judgment or order of the courts of [jurisdiction of arbitration seat] in support of any arbitration in relation to any Dispute and in relation to the recognition of any arbitral award and waives and agrees not to claim any sovereign or other immunity from the jurisdiction of any court in relation to the recognition of any such judgment or court order or arbitral award and agrees to ensure that no such claim is made on its behalf;
- (b) [consents to the enforcement of any order or judgment in support of arbitration or any award made or given in connection with any Dispute and the giving of any relief in the courts of any other jurisdiction whether before or after final arbitral award including, without limitation:
 - (i) relief by way of interim or final injunction or order for specific performance or recovery of any property;
 - (ii) attachment of its assets; and
 - (iii) enforcement or execution against any property, revenues or other assets whatsoever (irrespective of their use or intended use) and waives and agrees not to claim any sovereign or other immunity from the courts of any other jurisdiction in relation to such enforcement and the giving of such relief (including to the extent that such immunity may be attributed to it), and agrees to ensure that no such claim is made on its behalf.]

54 WHOLE AGREEMENT

- 54.1 This Agreement (including the Schedules) constitutes the whole agreement and understanding of the Parties as to the subject matter hereof and there are no prior or contemporaneous agreements between the Parties with respect thereto. Likewise, there are no secondary elements related to the content of this Agreement which the Parties have left aside in view of future agreements or determinations.
- 54.2 This Agreement is executed by the Parties and the Private Partner in [●] original copies and each original copy so executed shall constitute one valid and binding instrument the same as any other original copy so executed.

55 WAIVER AND SEVERABILITY

- 55.1 No term or provision of this Agreement shall be considered as waived by any Party unless a waiver is given in writing by that Party.
- 55.2 No waiver under Clause 55.1 (*Waiver and Severability*) shall be a waiver of a past or future default or breach, nor shall it amend, delete or add to the terms, conditions or provisions of this Agreement unless (and then only to the extent) expressly stated in that waiver.
- 55.3 If any term, condition or provision contained in this Agreement shall be held to be invalid, unlawful or unenforceable to any extent, such term, condition or provision shall not affect the validity, legality or enforceability of the remaining parts of this Agreement.

56 AGREEMENT

56.1 The Parties and the Private Partner hereby expressly agree and confirm that they have had the full opportunity to review, that they have diligently reviewed, benefited of expert assistance in connection with the Award Procedure and the execution of this Agreement and have fully understood and agreed to the clauses of this Agreement, and that they have had available all the necessary information so as to express a fully valid consent and enter into this Agreement by fully acknowledging the provisions thereof.

56.2 Either Party and the Private Partner hereby confirm that the mutual and corresponding obligations incumbent thereon under this Agreement are fair and equitable considerations as against the obligations undertaken by the other Party and such have been willfully agreed, by reference to the market value, and that it has not acted being constrained and that it has the required experience and knowledge to fully understand the provisions of this Agreement and to enter into this Agreement in consideration of the corresponding obligations of the other Party, which are a proper economic consideration therefor.

57 AMENDMENTS

No amendment to this Agreement shall be binding unless in writing and signed by the duly authorized representatives of the Public Partner and the Project Company and, where applicable, of the Private Partner.

58 CONFLICTS OF INTEREST

The Project Company shall ensure that no conflict of interest arises between its performance of the Works or Services and any other matter in which it may be interested whether directly or indirectly.

59 CORRUPT PRACTICES

59.1 Definition of Prohibited Act

For the purpose of this Clause 59 (*Corrupt Practices*) each of the following is a "**Prohibited Act**":

- 59.1.1 offering, giving or agreeing to give to the Public Partner or any other public body or any person employed by or on behalf of the Public Partner or any other public body any gift or consideration of any kind as an inducement or reward:
 - (a) for doing or not doing (or for having done or not having done) any act in relation to the obtaining or performance of this Agreement or any other contract with the Public Partner or any other public body or any person employed by or on behalf of the Public Partner or any other public body; or
 - (b) for showing or not showing favor or disfavor to any person in relation to this Agreement or any other contract with the Public Partner or any other public body or any person employed by or on behalf of the Public Partner or any other public body;
- 59.1.2 entering into this Agreement or any other contract with the Public Partner or any other public body or any person employed by or on behalf of the Public Partner or any other public body in connection with which commission has been paid or has been agreed to be

paid by the Project Company or on its behalf, or to its knowledge, unless before the relevant contract is entered into particulars of any such commission and of the terms and conditions of any such contract for the payment thereof have been disclosed in writing to the Public Partner;

- 59.1.3 committing any offence sanctioned by the Law with respect to fraud and corruption; or
- 59.1.4 defrauding or attempt to defraud or conspiring to defraud the Public Partner or any other public body or any person employed by or on behalf of the Public Partner or any other public body.

59.2 Termination for Corrupt Gifts and Fraud

- 59.2.1 If the Project Company or any Sub-Contractor or any of its or their authorized agents or shareholders commits any Prohibited Act, then the Public Partner shall be entitled to act in accordance with Clauses 59.2.2 to 59.2.8 (*Termination for Corrupt Gifts and Fraud*).
- 59.2.2 If a Prohibited Act is committed by the Project Company or by an employee not acting independently of the Project Company, then the Public Partner may unilaterally terminate this Agreement by giving a termination notice to the Project Company and this Agreement will automatically terminate on the date specified in the notice of unilateral termination.
- 59.2.3 If the Prohibited Act is committed by an employee of the Project Company acting independently of the Project Company, then the Public Partner may first give a pre-termination notice to the Project Company. Unless within [30] days of receipt of such notice the Project Company terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Services by another person the Public Partner may then give a notice of unilateral termination and this Agreement will automatically terminate on the date specified in the notice of unilateral termination.
- 59.2.4 If the Prohibited Act is committed by a Sub-Contractor or by an employee of that Sub-Contractor not acting independently of that Sub-Contractor, then the Public Partner may first give a pre-termination notice to the Project Company. Unless within [30] days of receipt of such notice the Project Company terminates the relevant Project Document and procures the performance of such part of the Works and/or Services by another person the Public Partner may then give a notice of unilateral termination and this Agreement will automatically terminate on the date specified in the notice of unilateral termination.
- 59.2.5 If the Prohibited Act is committed by an employee of a Sub-Contractor acting independently of that Sub-Contractor, then the Public Partner may first give a pre-termination notice to the Project Company. Unless within [30] days of receipt of such notice the Sub-Contractor terminates the employee's employment and (if necessary) procures the performance of such part of the Works and/or Services by another person the Public Partner may then give a notice of unilateral termination and this Agreement will automatically terminate on the date specified in the notice of unilateral termination.
- 59.2.6 If the Prohibited Act is committed by any other person not specified in Clauses 59.2.2 to 59.2.5 (*Termination for Corrupt Gifts and Fraud*), then the Public Partner may first give a pre-termination notice to the Project Company. Unless within [30] days of receipt of such

notice, the Project Company procures the termination of such person's employment and the appointment of their employer (where not employed by the Project Company or the Sub-Contractors) and, if necessary, procures the performance of such part of the Works and/or Services by another person the Public Partner may then give a notice of unilateral termination and this Agreement will automatically terminate on the date specified in the notice of unilateral termination.

59.2.7 Any notice of unilateral termination under Clause 59.2.2 or pre-termination notice under Clauses 59.2.3 to 59.2.6 (*Termination for Corrupt Gifts and Fraud*) shall specify:

- (a) the nature of the Prohibited Act; and
- (b) the identity of the party whom the Public Partner believes has committed the Prohibited Act.

59.2.8 Any notice of unilateral termination under this Clause 59.2 (*Termination for Corrupt Gifts and Fraud*) shall specify the date on which this Agreement will automatically terminate, in accordance with the applicable provision of this Clause 59.2 (*Termination for Corrupt Gifts and Fraud*).

59.2.9 On termination of this Agreement in accordance with this Clause 59.2 (*Termination for Corrupt Gifts and Fraud*) the Public Partner shall pay to the Project Company the amounts determined in accordance with Clause 46.2 (*Compensation on Project Company Default Termination and on Termination for Corrupt Gifts and Fraud*).

59.3 Project Company Warranty and Undertaking

59.3.1 The Project Company warrants that in entering this Agreement it has not committed any Prohibited Act.

59.3.2 The Project Company undertakes to the Public Partner that it will throughout the duration of this Agreement use all reasonable endeavors to have in place adequate procedures (as required by Law, if case) designed to prevent persons associated with the Project Company from bribing any person with the intention of obtaining or retaining business for the Project Company or with the intention of obtaining or retaining an advantage in the conduct of business for the Project Company.

60 GOVERNING LAW AND JURISDICTION

This Agreement and any non-contractual obligations arising out of or in connection with it are governed by and shall be construed in accordance with the Laws of Romania. Any Disputes shall be settled under the provisions of Clause 53 (*Disputes Resolution Procedure*).

IN WITNESS whereof the Parties hereto and the Private Partner have executed this Agreement on [●], in [●], Romania.

[PUBLIC PARTNER]

[PROJECT COMPANY]

By: [Name & position]

Signature: _____

By: [Name & position]

Signature: _____

[PRIVATE PARTNER]

By: [Name & position]

Signature: _____