

**DATED [●]**

**THE REPUBLIC OF LITHUANIA**

and

**[SPV OF HITACHI, LTD.]**

and

**[PCO]**

---

**CONCESSION AGREEMENT WITH THE  
STRATEGIC INVESTOR AND PROJECT  
COMPANY IN RELATION TO THE  
VISAGINAS NEW NUCLEAR POWER  
PLANT PROJECT**

---

## TABLE OF CONTENTS

PART 1: PRELIMINARY AND TERM .....	5
1. DEFINITIONS AND INTERPRETATION .....	5
2. AWARD OF CONCESSION AND TERM .....	7
3. SCOPE OF THE CONCESSION .....	7
4. THE RELATIONSHIP: PARTNERING PRINCIPLES.....	8
5. STRATEGIC INVESTOR'S OBLIGATIONS .....	11
6. PCO OBLIGATIONS .....	11
7. ROL OBLIGATIONS .....	13
8. CHANGES TO THE SHAREHOLDERS' AGREEMENT .....	14
PART 2: SHAREHOLDINGS IN THE PCO .....	15
9. SHAREHOLDINGS IN THE PCO.....	15
PART 3: GENERAL OBLIGATIONS.....	16
10. OUTSOURCING/SUBCONTRACTING.....	16
PART 4: PROJECT MANAGEMENT .....	17
11. REPORTS AND MONITORING .....	17
12. REGULATORY INTERFACE.....	19
PART 5: CONFIDENTIALITY AND PUBLICITY .....	20
13. CONFIDENTIALITY .....	20
14. PUBLICITY .....	25
PART 6: NUCLEAR, LIABILITY AND INSURANCE .....	26
15. NUCLEAR.....	26
16. LIABILITY .....	26
17. DAMAGES ARE INSUFFICIENT COMPENSATION AND EQUITABLE REMEDIES ARE TO BE AVAILABLE .....	32
18. INSURANCE .....	32
PART 7: TERMINATION .....	33
19. APPLICATION OF CLAUSES 19 TO 26 INCLUSIVE: TERMINATION.....	33
20. ROL EVENT.....	35
21. PCO DEFAULT .....	37
22. STRATEGIC INVESTOR DEFAULT .....	38
23. NON-DEFAULT TERMINATION .....	40
24. DAMAGES FOR TERMINATION.....	41
25. ROL'S THIRD PARTY RIGHTS UNDER THE SHAREHOLDERS' AGREEMENT .....	43
26. ROL EVENT MANDATORY TRANSFER OF SHARES .....	43
PART 8: GENERAL PROVISIONS .....	48
27. SURVIVAL, RIGHTS AND OBLIGATIONS.....	48

28.	WARRANTIES.....	49
29.	FORCE MAJEURE.....	51
30.	ASSIGNMENT .....	52
31.	RESTRICTIONS ON TRANSFER OF SHARES AND CHANGE OF CONTROL.....	53
32.	SHAREHOLDER PUT OPTION .....	55
33.	NOTICES .....	57
34.	ENTIRE AGREEMENT .....	59
35.	VARIATION AND WAIVER .....	59
36.	COUNTERPARTS.....	60
37.	SEVERABILITY .....	60
38.	COSTS AND EXPENSES .....	60
39.	INTEREST TO RUN ON DEFAULT .....	60
40.	CONTRACTS (RIGHTS OF THIRD PARTIES) ACT.....	60
41.	NO PARTNERSHIP/AGENCY .....	61
42.	CO-OPERATION IN RELATION TO THE POWER AT COST STRUCTURE .....	61
43.	LANGUAGE.....	62
44.	GOVERNING LAW .....	62
45.	DISPUTE RESOLUTION PROCEDURE AND ARBITRATION .....	62
46.	SOVEREIGN IMMUNITY WAIVER .....	66
SCHEDULE 1	Definitions.....	68
SCHEDULE 2	Access Road Works .....	86
SCHEDULE 3	Initial Shareholders' Details and Shareholding .....	99
SCHEDULE 4	National Security Criteria .....	100
SCHEDULE 5	Site .....	101
SCHEDULE 6	Decommissioning and Waste Funding Principles.....	103
SCHEDULE 7	LIV IP .....	109
SCHEDULE 8	Fundamental Change .....	113
SCHEDULE 9	Invested Capital Statement .....	119

**THIS AGREEMENT** is made on [●]

**BETWEEN**

- (1) The **REPUBLIC OF LITHUANIA**, acting through the Ministry of Energy of the Republic of Lithuania (the "**RoL**");
- (2) [**SPV OF HITACHI, LTD.**], a company registered and incorporated in [●] [under [company number] whose address is at [●]] (the "**Strategic Investor**"); and
- (3) [**The PCO**], a company registered and incorporated in the Republic of Lithuania [under [company number] whose address is at [●]] (the "**PCO**"),

each a "**Party**" and together the "**Parties**".

**RECITALS**

- (A) In the National Energy Strategy of Lithuania dated 18 January 2007, the RoL reconfirmed the Republic of Lithuania's long-term commitment to nuclear generation. The strategic aims of the Republic of Lithuania include the construction and commissioning of a new nuclear power plant.
- (B) The MoE, on behalf of the RoL, ran an open competitive tender process under the Law on Concessions to identify a strategic investor to take an interest in a new nuclear power plant project-implementing company to be established to develop, construct, operate and decommission a new nuclear power plant. A notice commencing the tender process was published in the Official Journal of the European Union on 10 December 2009 (No. 2009/S 238-340935). The tender process ended on 3 January 2011 when the entity identified as the potential preferred bidder withdrew from the process and no other suitable tenders had been submitted. The MoE on behalf of the RoL (as the Concession-granting authority), in accordance with the Law on Concessions, adopted a decision (effective as of 14 January 2011) to proceed with direct negotiations with potential strategic investors.
- (C) Under the direct negotiations process, an open competitive process was conducted on the same qualification and evaluation terms as the prior tender process. Following evaluation of the bids received under the direct negotiations process, Hitachi, Ltd.'s bid on behalf of the Strategic Investor was evaluated as being the most economically advantageous, and Hitachi, Ltd. and the Republic of Lithuania, represented by the MoE, entered into an exclusivity arrangement under which Hitachi, Ltd. was granted an exclusive right to negotiate the terms on which the Strategic Investor would participate and provide investment in the concessionaire project-implementing company (being the PCO). The RoL and the Strategic Investor have negotiated this Concession Agreement pursuant to the terms of that exclusivity arrangement. It was agreed that, subject to the terms of this Concession Agreement, the Strategic Investor or one or more of its Associated Companies nominated by the Strategic Investor shall be awarded the right to: (1) enter into the EPC Contract with the PCO for, subject and without prejudice to the terms of the EPC Contract from time to time, the development and construction of a 1350MW (gross) class advanced boiling water reactor (the "**Visaginas New Nuclear Power Plant**" or "**NNPP**"); and (2) if, subject to the terms of this Concession Agreement, required by the PCO (and available under the O&M Support Terms), provide, in relation to the NNPP, operation and maintenance support services pursuant to an O&M Support Contract and/or, if, subject to the terms of this Concession Agreement, required by the PCO (and available under the Nuclear Fuel Supply Terms), provide in relation to the NNPP, nuclear fuel supply and related services pursuant to a Fuel Supply Contract.

- (D) The RoL, the Strategic Investor and the PCO have agreed this Concession Agreement following the direct negotiations process and the RoL is awarding the Concession to the PCO in accordance with the terms of this Concession Agreement with the intention that such award shall support the Republic of Lithuania's objective of achieving the integration of its electricity transmission system into the continental European transmission network and contribute to the diversification of primary energy resources available to the Republic of Lithuania, improve the Republic of Lithuania's security of energy supply and contribute to and improve the diversification of primary energy resources in the wider Baltic region (as referred to in the joint communiqué between the ministers of the Republics of Lithuania, Latvia, Estonia and Poland made in the presence of the European Commission on 31 May 2010).
- (E) In compliance with the Law on Concessions and in accordance with the terms of this Concession Agreement, the RoL awards hereunder the right to the PCO, and the PCO will be obliged hereunder, in each case subject to the terms and conditions set out in this Concession Agreement, to design, finance, develop, construct, test, commission, operate, maintain and decommission the Visaginas New Nuclear Power Plant at the Site (including by way of any works and services to be provided under any Ancillary Contract or under any other contracts) (the "**Concession**").
- (F) The PCO is the concessionaire for all purposes under the Law on Concessions.
- (G) The Strategic Investor and the Lithuanian Investor have also agreed the Shareholders' Agreement with the Regional Partners in relation to their participation in the Project and investment into the PCO. It is anticipated that there may also be Third Party investors during the Contract Term, such Third Party investors to be introduced, approved and to take Shares in accordance with the terms of this Concession Agreement and the Shareholders' Agreement.
- (H) The Strategic Investor is obliged hereunder to invest in the PCO in accordance with the terms of the Shareholders' Agreement and to comply with its obligations under this Concession Agreement.

**THE PARTIES HEREBY AGREE AS FOLLOWS:**

**PART 1: PRELIMINARY AND TERM**

**1. DEFINITIONS AND INTERPRETATION**

**1.1 Definitions**

Unless otherwise defined in this Concession Agreement, terms defined in Schedule 1 (*Definitions*) shall apply to this Concession Agreement.

**1.2 Interpretation**

In this Concession Agreement, except where the context or the express provisions otherwise require:

1.2.1 without prejudice to the application of the provisions relating to Pre-FID Fundamental Change or Clause 29 (*Force Majeure*) (including the definition of Force Majeure Event), reference to any law, code, enactment, rules, statutory provision or subordinate legislation shall include a reference to any law, code, rule, order, regulation, instrument or subordinate legislation made under the relevant enactment or statutory provision and is a reference to that law, code, rule, enactment, statutory provision or subordinate legislation as from time to time amended, consolidated, modified, re-enacted or replaced;

1.2.2 words in the singular shall include the plural and vice versa;

- 1.2.3 references to one gender include other genders;
- 1.2.4 a reference to a "person" shall include a reference to an individual, a firm, a body corporate, an unincorporated association, a government department, a governmental body, an authority, an agency, a partnership or to an individual's executors or administrators;
- 1.2.5 any reference to this Concession Agreement includes the Schedules to it (and any schedules, appendices or annexes to such Schedules) each of which forms part of this Concession Agreement for all purposes;
- 1.2.6 a reference to a Clause, Sub-clause or Schedule (other than to a schedule to a statutory provision) shall be a reference to a clause, sub-clause or schedule (as the case may be) of, or to, this Concession Agreement and all references to Parts, Sections, Paragraphs, Appendices and Annexes are references to parts, sections, paragraphs, appendices and annexes of, or to, the Schedules;
- 1.2.7 if a period of time is specified as from, following, after or within a certain period of time of a given Calendar Day or Business Day, or from, following, after or within a certain period of time of the Calendar Day or Business Day of an act or event, it shall be calculated exclusive of that Calendar Day or Business Day;
- 1.2.8 references to any English legal term for any action, remedy, method of judicial proceeding, legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates to the English legal term in that jurisdiction and references to any English statute or enactment (other than the reference to the Companies Act 2006 in Clause 31 (*Restrictions on transfer of shares and change of control*)) shall be deemed to include any equivalent or analogous laws or rules in any other jurisdiction;
- 1.2.9 references to writing shall include any modes of reproducing words in any legible form but shall exclude email except where permitted by Clause 33.2.1 (*Notices by Email*);
- 1.2.10 a reference to "includes" or "including" shall mean "includes without limitation" or "including without limitation";
- 1.2.11 the contents page, headings and sub-headings in this Concession Agreement are for convenience only and shall not be taken into consideration in the interpretation or construction of this Concession Agreement;
- 1.2.12 references to this "Concession Agreement" (or "this Agreement") include this Concession Agreement as amended or supplemented in accordance with its terms;
- 1.2.13 references in this Concession Agreement to any agreement, procedure, document or other instrument (other than as contemplated by Clause 1.2.1 (*Interpretation*)) shall be deemed to be references to that agreement, procedure, document or instrument as from time to time amended, varied, supplemented, substituted, novated or assigned;
- 1.2.14 any reference to a public organisation or body shall be deemed to include a reference to any successor to such public organisation or body or any organisation or entity which has taken over the functions or responsibilities of such public organisation or body;
- 1.2.15 all monetary amounts are expressed in Euros;

- 1.2.16 any references in this Concession Agreement to a Party providing its consent or approval shall be deemed to be a reference to prior written consent or approval;
- 1.2.17 a reference to the "Site" shall include any part of the Site; and
- 1.2.18 "liability" means any liability, whether pursuant to a claim for contribution or under statute, tort (including but not limited to liability for negligence), contract, strict liability or otherwise (save that any exclusions or limitations of liability shall not apply in respect of fraud), and "liable" shall be construed accordingly.

## **2. AWARD OF CONCESSION AND TERM**

- 2.1 The Parties acknowledge that, provided that all Parties have executed this Concession Agreement, by its entry into this Concession Agreement, the RoL has awarded the Concession to the PCO and the RoL agrees that, immediately following the execution of this Concession Agreement by all the Parties, the MoE on behalf of the RoL shall issue a notice about the decision to conclude the Concession Agreement and confirm the award of the Concession in the Official Gazette under Article 19 of the Law on Concessions.
- 2.2 This Concession Agreement shall commence on the Concession Date and shall remain in full force and effect until either:
  - 2.2.1 if the PCO elects to carry out (or procure the carrying out of) the decommissioning of the NNPP, the completion of the Decommissioning Phase; or
  - 2.2.2 if the PCO elects not to carry out (or procure the carrying out of) the decommissioning of the NNPP, the commencement of the Decommissioning Phase,(subject, in either case, to earlier termination in accordance with its terms) (the "**Contract Term**").

## **3. SCOPE OF THE CONCESSION**

- 3.1 The Parties acknowledge that, together with the award of the Concession:
  - 3.1.1 the RoL awards to the PCO and the Strategic Investor (as applicable) the right for the PCO to enter into the EPC Contract with the EPC Contractor; and
  - 3.1.2 the RoL awards to the PCO and the Strategic Investor (as applicable) the right for:
    - (A) the PCO to engage the O&M Support Contractor to provide operation and maintenance support services pursuant to an O&M Support Contract; and
    - (B) the PCO to engage the Nuclear Fuel Supplier to provide nuclear fuel supply and related services pursuant to a Fuel Supply Contract,and
    - (C) if the PCO and the Strategic Investor wish together to exercise the option for the PCO to engage the O&M Support Contractor, they shall exercise this right no later than midnight (Lithuanian time) on the date specified in the O&M Support Terms (or such later date as the PCO and the Strategic Investor otherwise agree in writing in advance); and
    - (D) if the PCO wishes to enter into a Fuel Supply Contract, it shall exercise its right no later than midnight (Lithuanian time) on the date specified in the Nuclear Fuel Supply Terms (or such later date as the PCO and Strategic Investor otherwise agree in writing in advance),

and if the PCO and the Strategic Investor, or the PCO, as applicable, have not exercised their rights to enter into either or both of the O&M Support Contract and the Fuel Supply Contract by the relevant date, such right(s) shall lapse in respect of the relevant contract.

- 3.2 The Parties acknowledge that:
- 3.2.1 under the EPC Contract (or any contract which is ancillary to it), the EPC Contractor shall undertake or procure the design, development, manufacture, supply, construction and testing of the NNPP and support the PCO in accordance with the EPC Contract in the commissioning of the NNPP (together with the provision of certain manuals, spare parts, the initial nuclear fuel load (if any and on such terms) and such other nuclear fuel (if any and on such terms) as the parties to the EPC Contract may agree) on the terms agreed in or pursuant to the EPC Contract;
  - 3.2.2 under any O&M Support Contract, the O&M Support Contractor shall provide a range of services to assist the PCO in relation to the operation and maintenance of the NNPP (including training) on the terms (and for the price) agreed in or pursuant to such O&M Support Contract; and
  - 3.2.3 under any Fuel Supply Contract, the Nuclear Fuel Supplier shall provide a range of nuclear fuel related services which may include the sourcing of uranics, enrichment services and core design services, the fabrication of fuel rods and fuel assemblies and the delivery of fuel assemblies to the Site, on terms and for the price agreed in or pursuant to such Fuel Supply Contract.
- 3.3 The Parties acknowledge and agree that the RoL may also, if agreed with the PCO, grant additional contracts or rights to the Strategic Investor or an Associated Company (or Associated Companies) nominated by the Strategic Investor (and, if not Hitachi-GE Nuclear Energy, Ltd. and not guaranteed by Hitachi-GE Nuclear Energy, Ltd. or Hitachi, Ltd., having been accepted by the RoL in advance in writing) to provide services to the PCO subject to agreement in writing from the Strategic Investor and the PCO.
- 3.4 The PCO shall be the owner of the NNPP, the Site (from the date it is contributed by the Lithuanian Investor as anticipated by Clause 7.1 (*Nature of RoL's obligations*)) and related physical infrastructure and other assets developed by the PCO, except where the PCO agrees otherwise with any Third Party or the Strategic Investor that such Third Party or the Strategic Investor should own the relevant asset or where it is otherwise required by applicable Law. The PCO shall be the owner of electricity generated by the NNPP save to the extent required by applicable Law.

#### **4. THE RELATIONSHIP: PARTNERING PRINCIPLES**

- 4.1 In working together to achieve the objectives of this Concession Agreement, the RoL, the PCO and the Strategic Investor will act consistently with, and have regard to, the following principles:
- 4.1.1 to work together in an open and honest environment and to act in a co-operative and non-adversarial manner (but without prejudice to any Party's right to take such action as it considers necessary to enforce or defend its rights);
  - 4.1.2 to foster a sound safety culture;
  - 4.1.3 to the extent compliant with and allowed by applicable law, to co-operate to seek to ensure the readiness of the regional industry (including the Baltic States) to participate in the Project;



- 4.1.4 in the case of the Strategic Investor, to utilise and, in the case of the Parties, to work together best to take advantage of, such skills and experience as the Hitachi, Ltd. Group has from time to time to provide strategic guidance to the PCO on the technical project development of the NNPP;
- 4.1.5 in the case of the Strategic Investor, to utilise and, in the case of the Parties, to work together to best take advantage of, such skills and experience as the Hitachi, Ltd. Group has from time to time to provide access for the PCO and its Shareholders to the Japan Bank for International Cooperation, Nippon Export and Investment Insurance, Mizuho Corporate Bank and the Export-Import Bank of the United States and to work together with those institutions to maximise the amount of financing (on acceptable terms) that may be available (and subsequently committed) from those institutions for the Project up to either the date of financial close or FID, whichever is later;
- 4.1.6 to work together to seek to achieve the following milestones (recognising that the dates below are included on the assumption that the first LNTP is issued on the Concession Date and that the ability to meet these milestones may be significantly affected by the scope and timing of works and services agreed to be provided by the EPC Contractor in the period prior to FID and the timing and performance of Regulators, other public authorities and other Third Parties, as well as the Parties):
- (A) completing the price firming process under the EPC Contract to facilitate the Shareholders to take a positive FID as soon as possible after the Concession Date;
  - (B) obtaining a Construction and Operation Licence by no later than 31 July 2015;
  - (C) First Concrete by 31 July 2016; and
  - (D) a Commercial Operation Date that occurs between 31 December 2020 and 31 December 2022 (inclusive of those dates);
- 4.1.7 in the case of the RoL, to support, insofar as it is able, the establishment and maintenance of arrangements under which the transmission system operator for the electricity system in the Republic of Lithuania does not discriminate against the NNPP, the PCO, the Shareholders, or those who purchase electricity produced by the NNPP or from the Strategic Investor and, in the case of the RoL, to facilitate, in parallel to the Project, the transmission system operators for the electricity systems of Lithuania, Latvia and/or Estonia entering into arrangements between them for the procurement of reserve power and their recovery of associated costs in order to maintain reliable and secure electricity systems in those countries; and
- 4.1.8 in the case of the RoL, to support, in so far as it is able, the planning and implementation of the transmission capacity and dispatch arrangements within the Republic of Lithuania so that they do not discriminate against the export of power generated by the NNPP to jurisdictions outside that of the Republic of Lithuania.
- 4.2 The Parties shall, from the Concession Date until the date on which a positive FID or a final negative FID is taken, cooperate and work together with the aim of developing certain arrangements (which will apply from no later than, and shall include, the date on which a positive FID is taken) to facilitate a positive FID being taken, including separate agreements:

- 4.2.1 with regard to the Parties' obligations and liability in respect of the Access Road Works;
- 4.2.2 in relation to the period after a positive FID is taken, which, amongst other things, may address:
- (A) those circumstances that may result in the Shareholders having the right to require the RoL (or its nominee) to purchase their Shares for an agreed fair value or lead to other agreed consequences;
  - (B) those circumstances that may result in the RoL (or its nominee) having the right to purchase the Shares from the Shareholders for an agreed fair value (which may be determined in a different way from that in Clause 4.2.2(A)) or lead to other agreed consequences; and/or
  - (C) those circumstances that may result in the payment of Wasted Costs or Retendering Costs (as applicable) by the RoL to the Strategic Investor or by the Strategic Investor to the RoL.
- 4.2.3 in relation to the circumstances in and terms on which the consent of the Strategic Investor may be required for the transfer of Shares by the RoL or a RoL Nominee (or any subsequent owner of Shares previously owned by the RoL or a RoL Nominee) to a Competitor or entity in which a Competitor has an interest, taking into account the foreseeable privatisation context in the region;
- 4.2.4 in relation to protection and compensation rights which may be available to the PCO and/or the Shareholders from the RoL in respect of certain discriminatory or fundamental changes in law and on the occurrence of certain other events or changes in circumstances (anticipated to include appropriate mechanisms for notifying, agreeing and providing such protection);
- 4.2.5 in relation to protection and compensation rights which may be available to the Indemnified Persons referred to in Clause 16.5.3 (*Breach of warranty*) in respect of the RoL's and the PCO's compliance with all applicable Law and procedures regarding the Strategic Investor's selection and the award of, and entry into, the Concession Agreement and each Ancillary Contract from time to time;
- 4.2.6 in relation to protection and compensation rights which may be available to the Nuclear Indemnified Parties referred to in Clause 15.2 (*Nuclear*) and other members of the supply chain for the Project with respect to nuclear liability;
- 4.2.7 in relation to any arrangements with respect to nuclear liability between the RoL and one or more of the governments of the Baltic States relating to the costs of damage incurred in those Baltic States;
- 4.2.8 in relation to any rights to which the RoL may be entitled to cause certain rights of the Strategic Investor under the Shareholders' Agreement and related agreements to be reduced or extinguished in the event of any breach by the Strategic Investor of the obligation described in Clause 31.4 (*Strategic Investor transfer of ownership restrictions*);
- 4.2.9 in relation to protection and compensation rights which may be available to the PCO and/or the Shareholders from the RoL in respect of any request, any holding, and any determination or consequences that result from any referendum in Lithuania; and
- 4.2.10 in relation to certain additional support to be given by the RoL to the Project and to the PCO and/or its Shareholders.

#### 4.3 **Standards of Performance**

The PCO shall perform its obligations under this Concession Agreement:

- 4.3.1 with all due regard to safety and security; and
- 4.3.2 in a transparent and co-operative manner with the RoL and the Regulators, provided that it shall not be obliged to act in a manner contrary to its own interests or those of any of the Shareholders.

### 5. **STRATEGIC INVESTOR'S OBLIGATIONS**

5.1 The Strategic Investor shall:

- 5.1.1 comply with all applicable Law in performing its obligations under this Concession Agreement; and
- 5.1.2 from the Investment Date, ensure that it has, in the reasonable opinion of the RoL, the resources to perform its obligations under this Concession Agreement or, if not, shall promptly, following a written request by the RoL, provide a guarantee and indemnity from Hitachi, Ltd. substantially in the form agreed between the RoL and Hitachi, Ltd.

5.2 The Strategic Investor agrees and undertakes that each of the parties (other than the PCO) to the EPC Contract and each other Ancillary Contract are at the Concession Date, or shall be on the relevant execution date of the Ancillary Contract, an Associated Company of the Strategic Investor, and shall remain an Associated Company of the Strategic Investor until the date which is the earlier of:

- 5.2.1
  - (A) in respect of the EPC Contract, the date upon which the last defects liability period expires under the EPC Contract;
  - (B) in respect of any other Ancillary Contract, the date upon which it no longer has, or may have, any performance (and not, for the avoidance of doubt, payment) obligations under the relevant Ancillary Contract; and

5.2.2 the date upon which the Strategic Investor ceases to be a Party to this Concession Agreement.

5.3 Subject to and in accordance with the terms of the Shareholders' Agreement and/or any other agreement between the Shareholders, the Strategic Investor shall invest twenty per cent (20%) of the total investment in the PCO by the Shareholders.

### 6. **PCO OBLIGATIONS**

#### **Nature of PCO's obligations**

6.1 The PCO shall:

- 6.1.1 comply with all applicable Law, including Environmental Regulations, in relation to its performance of the Concession;
- 6.1.2 take all reasonable steps to comply with its obligations (or remedy any breach in respect of such obligations), from time to time, under any Ancillary Contract to the extent required to ensure that no Ancillary Contract becomes terminable by any counterparty to that Ancillary Contract for breach by the PCO;
- 6.1.3 if a positive FID is adopted by the Shareholders, subject to the terms of the EPC Contract relating to force majeure, issue the Full Notice to Proceed within ninety (90) Calendar Days after the date of the positive FID;

- 6.1.4 perform, or procure the performance of, the designing, developing, financing, constructing, testing and commissioning of the NNPP in such manner as the PCO determines;
- 6.1.5 act as the operator and maintainer, or procure the operation and maintenance, of the NNPP in such manner as the PCO determines;
- 6.1.6 comply with its obligations under applicable Law in relation to:
  - (A) the funding of radioactive waste management and decommissioning (such applicable Law reflecting the Decommissioning and Waste Funding Principles as developed and agreed between the Parties);
  - (B) if relevant because the PCO has elected to decommission, the decommissioning of the NNPP; and
  - (C) if relevant because the PCO has elected not to decommission, transfer of the Site to the RoL;
- 6.1.7 procure that the EPC Contractor provides:
  - (A) an advance payment guarantee in respect of any advance payments to be made under the EPC Contract, except where and to the extent that the parties to the EPC Contract have agreed under the EPC Contract that an advance payment guarantee will not be needed in respect of any elements of the price under the EPC Contract which are to be paid in advance;
  - (B) a performance bond as security for the EPC Contractor's obligations under the EPC Contract; and
  - (C) a parent company guarantee in respect of the EPC Contractor's performance of its obligations under the EPC Contract, and any further or revised bonds or guarantees which the EPC Contractor is required to provide under the EPC Contract,

in each case when required to be provided by the EPC Contractor in accordance with and subject to the terms of the EPC Contract;
- 6.1.8 use all reasonable endeavours to procure that the Shareholders take a final FID (whether positive or negative) by the earlier of 31 December 2015 or the date thirty three (33) Months after the date of the issuance of the first LNTP, or such later date as the RoL may agree (acting reasonably taking into account the prevailing circumstances including the PCO's view on behalf of the Shareholders of when a FID is likely to be taken should the date in this Clause 6.1.8 be extended); and
- 6.1.9 if the milestones set out in Clause 4.1.6 (*The Relationship: Partnering Principles*) are not achieved, or not likely to be achieved, consult with the RoL as soon as reasonably practicable in relation to the actions the PCO intends to take.

## 6.2 PCO Responsibilities

The subcontracting or delegation of any of the PCO's obligations under this Concession Agreement (including to the Strategic Investor or any Associated Company of the Strategic Investor) shall not relieve or excuse the PCO from any obligation or liability under this Concession Agreement, nor shall performance of the PCO's obligations be affected by the appointment by the PCO of any Subcontractor or its or their subcontractors or any delegation of its duties under this Concession Agreement. Under this Concession Agreement (without prejudice to Clause 24.2 (*Damages Payable by the Strategic Investor in respect of Wasted Costs or Retendering Costs*)), as between the Parties, the PCO shall be

responsible for the failure of its Subcontractors and its or their sub-subcontractors to comply with the terms of the relevant Subcontract as though those acts or omissions were acts or omissions of the PCO.

### 6.3 **Enforcement of PCO and Strategic Investor obligations**

6.3.1 The Strategic Investor acknowledges and agrees that it shall not be entitled to enforce any obligations of the PCO under this Concession Agreement save for under Clause 15.1 (*Nuclear*).

6.3.2 The PCO acknowledges and agrees that it shall not be entitled to enforce any obligations of the Strategic Investor under this Concession Agreement.

## 7. **ROL OBLIGATIONS**

### 7.1 **Nature of RoL's obligations**

The RoL shall:

7.1.1 procure that the Lithuanian Investor:

(A) contributes ownership title in, and any agreed access rights to, the Site to the PCO; and

(B) transfers or licenses (or procures the transfer or licensing of) the LIV IP to the PCO,

at the time (which shall not be earlier than the date on which the Shareholders take a positive FID) and on the terms to be agreed before the date on which the Shareholders take a positive FID, in each case as between the Lithuanian Investor and the PCO (each acting reasonably), save that it is acknowledged and agreed by the Parties that the aggregate value attributable to the Site and the LIV IP shall be no less than fifty million Euros (€50,000,000) (indexed from 1 January 2011 at the indexation rate); and

7.1.2 perform (or procure the performance of) the obligations in Schedule 2 (*Access Road Works*) in relation to the works required to the permanent main haul road from Klaipėda seaport to the Site.

### 7.2 **RoL Responsibilities**

The subcontracting or delegation of any of the RoL's obligations under this Concession Agreement shall not relieve or excuse the RoL from any obligation or liability under this Concession Agreement, nor shall performance of the RoL's obligations be affected by the appointment by the RoL of any subcontractor or its or their subcontractors or delegation of its duties under this Concession Agreement. Under this Concession Agreement, as between the Parties, the RoL shall be responsible for the acts and omissions of its subcontractors and the acts and omissions of their sub-subcontractors as though those acts or omissions were acts or omissions of the RoL.

### 7.3 **RoL Nominee**

Save as otherwise consented to by the Strategic Investor, the RoL shall ensure that:

7.3.1 all Shares owned at any time by the RoL or any RoL Nominee shall not be transferred, whether by the RoL, a RoL Nominee or any subsequent owner of the Shares which were once owned by the Lithuanian Investor, the RoL or a RoL Nominee to any Competitor or any person in which a Competitor is a direct or indirect shareholder; and

7.3.2 a Competitor does not become a direct or indirect legal or beneficial owner of any shares in a RoL Nominee.

**8. CHANGES TO THE SHAREHOLDERS' AGREEMENT**

8.1 The PCO agrees that it shall not (without first obtaining the consent of the RoL, such consent not to be unreasonably withheld, including as to the terms or conditions of any amendment or waiver) agree to any amendment to, or waiver of, any term of the Shareholders' Agreement (including any related terms, definitions or interpretation provisions used in, or affecting, such term) in circumstances where:

8.1.1 such amendment or waiver materially affects any contractual third party right of the RoL under the Shareholders' Agreement; or

8.1.2 such amendment or waiver affects the definition in the Shareholders' Agreement of "Prohibited Change of Control", "Relevant Obligations", "Credit Payment" or "Competitor".

## **PART 2: SHAREHOLDINGS IN THE PCO**

### **9. SHAREHOLDINGS IN THE PCO**

Details of the initial Shareholders of the PCO are set out in Schedule 3 (*Initial Shareholders' Details and Shareholding*). This Clause 9 (*Shareholdings in the PCO*) is without prejudice to the exercise of any rights to subscribe for or to transfer any Shares in accordance with and subject to the terms of the Shareholders' Agreement and this Concession Agreement (including Clause 26 (*RoL Event Mandatory Transfer of Shares*), Clause 31 (*Restrictions on Transfer of Shares and Change of Control*) and Clause 32 (*Shareholder Put Option*)).

### **PART 3: GENERAL OBLIGATIONS**

#### **10. OUTSOURCING/SUBCONTRACTING**

##### **10.1 Subcontracting**

10.1.1 Subject to Clause 10.1.2 below, the PCO shall ensure that under each Key Subcontract, the relevant Key Subcontractor shall not be entitled to terminate or amend the relevant Key Subcontract as a result of any change in the ownership, management or Control of the PCO to the RoL or a RoL Nominee.

10.1.2 Where the PCO proposes to enter into a Key Subcontract on the basis of the Key Subcontractor's standard terms which are inconsistent with the requirements of Clause 10.1.1, the PCO shall not be in breach of Clause 10.1.1 if it has used all reasonable endeavours to comply with the requirements of Clause 10.1.1.

##### **10.2 Outsourcing**

Provided that a positive FID is taken, the Strategic Investor shall procure that, as at COD, those of its Associated Companies that are party to an Ancillary Contract(s) shall have outsourced to Third Parties no less than ten per cent (10%) of the aggregate value of the works or services or any combination thereof performed in aggregate under all Ancillary Contracts. This obligation shall not apply if the EPC Contract is terminated before COD.



## PART 4: PROJECT MANAGEMENT

### 11. REPORTS AND MONITORING

#### 11.1 Project Management

11.1.1 Subject to Clauses 11.1.4 and 13 (*Confidentiality*), the PCO shall provide to the MoE, on behalf of the RoL:

(A) every three (3) Months commencing on the date six (6) Months after the Investment Date and until COD, a report (the "**Pre-COD Report**") in relation to the following:

(1) the progress of the Project in accordance with the Development Timetable and any programme (including in relation to any key dates or milestones set out in the EPC Contract and any milestone set out in Clauses 4.1.6 (*The Relationship: Partnering Principles*) and 6.1.8 (*PCO Obligations*)), together with any material information regarding the performance of the Strategic Investor's obligations and the PCO's obligations under this Concession Agreement and the performance of any Key Subcontracts (as applicable in relation to each of them);

(2) information in relation to any material matters which will or may be reasonably considered to be likely to lead to a delay of the achievement of any key dates or milestones set out in the EPC Contract and any milestone set out in Clauses 4.1.6 (*The Relationship: Partnering Principles*) and 6.1.8 (*PCO Obligations*), together with such supporting information and in such detail as the RoL may reasonably request or require in order to enable the RoL to form a reasonable understanding of the issue(s) arising and any related cause of such delay; and

(3) any other material information which the RoL may reasonably request, and

(B) every six (6) Months commencing on the date six (6) Months after COD, a report (the "**Post-COD Report**"), in relation to material operational and (if the PCO elects to carry out the decommissioning of the NNPP) decommissioning related matters relevant to the Project,

(the Post-COD Reports and Pre-COD Reports being the "**Reports**" and each a "**Report**"), each Report in the form and to a level of detail to be agreed (within one (1) Month of the Investment Date or COD, as applicable) between the PCO and the RoL each acting reasonably.

11.1.2 Subject to Clauses 11.1.4 and 13 (*Confidentiality*), if reasonably requested by the MoE, on behalf of the RoL, after the Investment Date, senior officers of the PCO shall attend and participate in meetings with the MoE, for and on behalf of the RoL, and such other government bodies in connection with the Project as the MoE, for and on behalf of the RoL, may reasonably require.

11.1.3 Subject to Clauses 11.1.4 and 13 (*Confidentiality*), the PCO shall provide the RoL with any additional information the RoL may reasonably request to clarify any information included or referred to in a Report provided that any such request is made by the RoL within one (1) Month after the date on which the RoL receives the relevant Report.

11.1.4 Nothing in this Clause 11.1 (*Project Management*), Clause 11.3 (*Notification of a decision not to proceed to any further LNTP phase*), Clause 11.4.2 (*Notification of taking FID*) or Clause 12 (*Regulatory Interface*) shall oblige the PCO to disclose information which:

- (A) the PCO must keep confidential as a matter of applicable law in respect of safety and security matters;
- (B) is the subject of a duty or undertaking of confidentiality between the PCO and a Third Party or the Strategic Investor under any contract or otherwise where to disclose such information would be a breach by the PCO of such duty or undertaking of confidentiality, provided that, if the PCO may be entitled to disclose such information with the consent of such Third Party or the Strategic Investor (as appropriate), the PCO shall use reasonable endeavours to obtain such consent;
- (C) is commercially sensitive to the PCO or the Strategic Investor or constitutes confidential information for the purposes of Clause 13.2 (*Confidential Information*); or
- (D) is legally privileged (or which the PCO reasonably asserts is legally privileged).

## 11.2 **Inspection**

The Parties acknowledge that VATESI has the right under applicable Law to inspect the NNPP, including for the purposes of fulfilling the RoL's rights of inspection as granting authority under the Law on Concessions.

## 11.3 **Notification of a decision not to proceed to any further LNTP phase**

11.3.1 If after the first LNTP phase, the Shareholders decide that the PCO will not proceed to any further LNTP phase (if any) and such decision is final, the PCO shall notify the MoE on behalf of the RoL as soon as possible following the taking of such decision.

11.3.2 If such a decision has been taken, Clause 23.2.1 (*Termination following a negative FID or decision not to proceed to any further LNTP phase*) shall apply and, subject to Clauses 11.1.4 (*Project Management*) and 13 (*Confidentiality*), the PCO shall provide the MoE on behalf of the RoL with reasonable details in respect of the reasons for such decision.

11.3.3 The final decision not to proceed to any further LNTP phase (if any) shall be deemed to be a final negative FID (as defined in Clause 11.4.1) and references to notification to the RoL of a final negative FID pursuant to Clause 11.4 (*Notification of taking FID*) shall be deemed to include the deemed final negative FID under this Clause 11.3 (*Notification of a decision not to proceed to any further LNTP phase*).

## 11.4 **Notification of taking FID**

11.4.1 If the Shareholders take:

- (A) a negative FID which they conclude is final and they conclude that no further FID(s) will be taken (a "**final negative FID**"); or
- (B) a positive FID,

the PCO shall notify the MoE on behalf of the RoL as soon as possible following the taking of such FID.

- 11.4.2 If a final negative FID has been taken, Clause 23.2.2 (*Termination following a negative FID or decision not to proceed to any further LNTP phase*) shall apply and, subject to Clauses 11.1.4 (*Project Management*) and 13 (*Confidentiality*), the PCO shall provide the MoE on behalf of the RoL with reasonable details in respect of why a final negative FID has been taken.

## **12. REGULATORY INTERFACE**

- 12.1 Save where prohibited by applicable law, including any Regulatory Requirements, and subject to Clauses 11.1.4 (*Project Management*) and 13 (*Confidentiality*) and Clause 12.3 below, the PCO shall, after the Investment Date, promptly notify the MoE, for and on behalf of the RoL, in writing of any material action by a Regulator (including any suspension notices, enforcement notices and/or material amendments required to relevant procedures) in relation to the Project.
- 12.2 Save where prohibited by applicable law, including any Regulatory Requirements, and subject to Clauses 11.1.4 (*Project Management*) and 13 (*Confidentiality*) and Clause 12.3 below, the MoE, for and on behalf of the RoL, shall, after the Investment Date, be entitled to require discussions with the PCO, whether by way of meetings or otherwise, to understand the circumstances that have prompted such action from any Regulator.
- 12.3 For the purposes of this Clause 12 (*Regulatory Interface*), references to "Regulator" shall mean only those Lithuanian Regulators who have statutory authority to oversee and regulate the undertaking of any of the design, construction, testing, commissioning, operation, maintenance and/or decommissioning of the NNPP.

## PART 5: CONFIDENTIALITY AND PUBLICITY

### 13. CONFIDENTIALITY

#### 13.1 Parties

The Parties acknowledge and agree that:

- 13.1.1 Clauses 13.2 (*Confidential Information*) to 13.11 (*Loss*) (inclusive) shall apply as between: (1) the RoL and the PCO; and (2) the RoL and the Strategic Investor, and shall not apply as between the PCO and the Strategic Investor and references to "Party", "Recipient" or "Disclosing Party" shall be construed accordingly;
- 13.1.2 for the purposes of this Clause 13 (*Confidentiality*) only (other than Clause 13.9 (*Highly Sensitive Information*)), each reference to the RoL shall:
  - (A) where the RoL is the Recipient (other than under Clause 13.6 (*Liability*)), be deemed to be a reference to the MoE and not a reference to any other RoL entity (as defined in Clause 13.10 (*RoL entity*) below); and
  - (B) in relation to disclosure (and liability for such disclosure including under Clause 13.6 (*Liability*)) of such information provided to or obtained by the MoE, references shall be to the RoL; and
- 13.1.3 notwithstanding the foregoing, the RoL remains fully liable for the actions and inactions of the MoE as though they were the actions or inactions of the RoL in connection with this Clause 13 (*Confidentiality*).

#### 13.2 Confidential Information

Subject to Clauses 13.3 (*Exclusions*) and 13.4 (*Permitted Disclosure*), each Party (the "**Recipient**") undertakes to the other Party (the "**Disclosing Party**") that (unless the prior written consent of the Disclosing Party shall first have been obtained) the Recipient shall, and shall procure that its officers, employees, advisors, representatives and agents shall, keep confidential and not by failure to exercise due care or otherwise by any act or omission disclose to any person whatsoever, or use or exploit for its or their own purposes or the purposes of any other person (whether commercial or otherwise), any of the confidential information of the Disclosing Party. For the purposes of this Clause 13 (*Confidentiality*) and subject to Clause 13.3 (*Exclusions*), "confidential information" means:

- 13.2.1 any agreement or arrangement contemplated by this Concession Agreement whether that agreement or arrangement is provided directly or indirectly through the Strategic Investor, the PCO or otherwise, provided that, in relation to the Ancillary Contracts and the Shareholders' Agreement, each of the PCO and the Strategic Investor shall be considered to be the Disclosing Party irrespective of who makes the disclosure;
- 13.2.2 information of whatever nature concerning the business, finances, assets, liabilities, dealings, transactions, know-how, customers, suppliers, processes or affairs of the Disclosing Party;
- 13.2.3 information of whatever nature concerning the business, finances, assets, liabilities, dealings, transactions, know-how, customers, suppliers, processes or affairs of any member of the Hitachi, Ltd. Group or GE-Hitachi Nuclear Energy Americas LLC or Global Nuclear Fuel – Americas, LLC, whether that information was provided directly or indirectly through the Strategic Investor, the PCO or otherwise and in relation to such information the Strategic Investor shall

be considered to be the Disclosing Party irrespective of who makes the disclosure;

- 13.2.4 Highly Sensitive Information, whether that information was provided directly or indirectly through the Strategic Investor, the PCO or otherwise and in relation to such information the Strategic Investor shall be considered to be the Disclosing Party irrespective of who makes the disclosure;
- 13.2.5 any documents, materials and other information which is expressly indicated to be confidential or is imparted by the Disclosing Party to the Recipient in circumstances importing an obligation of confidence and any Reports provided under Clause 11 (*Reports and Monitoring*); and
- 13.2.6 information of whatever nature relating to the negotiation of agreements in relation to the Project following the Concession Date to the extent that such negotiations are not subject to the terms of any other confidentiality undertaking entered into after the Concession Date between the RoL and the PCO or between the Strategic Investor and the RoL and in relation to such information which also falls within either of Clauses 13.2.3 or 13.2.4 above, the Strategic Investor shall be considered to be the Disclosing Party irrespective of who makes the disclosure,

and which the Recipient may from time to time receive or obtain (orally or in writing or in disk or electronic form) as a result of entering into, or performing its obligations pursuant to, this Concession Agreement or (in relation only to the RoL and its receipt of or obtaining Highly Sensitive Information) otherwise.

### 13.3 Exclusions

Notwithstanding Clause 13.2 (*Confidential Information*), confidential information shall not include:

- 13.3.1 information which is in the public domain other than as a result of a breach of this Concession Agreement by the Recipient and for these purposes the knowledge of any RoL entity shall not be considered to be public domain;
- 13.3.2 information which is disclosed to the Recipient by a Third Party (other than a RoL entity) who is not in breach of any undertaking or duty as to confidentiality, whether express or implied, in relation to that information;
- 13.3.3 information which the Recipient can prove that it lawfully possessed (other than from a RoL entity) prior to obtaining it from the Disclosing Party and such information was not subject to any undertaking or duty as to confidentiality, whether express or implied;
- 13.3.4 this Concession Agreement itself and its existence; and
- 13.3.5 the existence of any Project Agreement other than the Concession Agreement.

### 13.4 Permitted Disclosure

Subject to Clause 13.9 (*Highly Sensitive Information*), the consent referred to in Clause 13.2 (*Confidential Information*) shall not be required for disclosure by the Recipient of any confidential information:

- 13.4.1 to its officers, employees, representatives and agents or to its Associated Companies and their officers, employees, representatives and agents, in each case to the extent that:
  - (A) such disclosure is for the purposes of the Project or in relation to matters contemplated by this Concession Agreement;

(B) those officers, employees, representatives and agents need to know the relevant confidential information in order to perform their duties in connection with the Project; or

(C) such disclosure is required to enable the Recipient to carry out its obligations or exercise its rights under this Concession Agreement,

and who shall in each case be made aware by the Recipient of its obligations under this Concession Agreement and who shall be required by the Recipient to observe the same restrictions on the use of the relevant information as are contained in this Clause 13 (*Confidentiality*);

13.4.2 where the RoL is the Recipient, to the Parliament and the Government of the Republic of Lithuania, including all ministries and ministers, and each of their respective officers, employees, representatives and agents, in each case to the extent reasonably necessary:

(A) to comply with the Government of the Republic of Lithuania's statutory functions and duties;

(B) for the implementation of any relevant policy of the Government of the Republic of Lithuania;

(C) for the purposes of national security or safety; or

(D) for the purposes of approving or issuing opinions in connection with this Concession Agreement and the Project,

and who shall in each case be made aware by the Recipient of its obligations under this Concession Agreement and who shall be required by the Recipient to observe the same restrictions on the use of the relevant information as are contained in this Clause 13 (*Confidentiality*);

13.4.3 subject to Clause 13.5, to its professional advisers who are bound to the Recipient by a duty of confidence which applies to any information disclosed;

13.4.4 subject to Clause 13.5, to its insurers upon obtaining an undertaking of confidentiality for the benefit of the Recipient equivalent to that contained in this Clause 13 (*Confidentiality*);

13.4.5 subject to Clause 13.5, to potential or actual Financiers upon obtaining an undertaking of confidentiality for the benefit of the Recipient equivalent to that contained in this Clause 13 (*Confidentiality*);

13.4.6 to Shareholders, a direct or indirect investor in the PCO (other than a direct or indirect investor in a RoL Nominee) or persons with whom the PCO and/or any Shareholder(s) are in discussions in relation to becoming a Shareholder or a direct or indirect investor in the PCO (other than a direct or indirect investor in a RoL Nominee) upon obtaining an undertaking of confidentiality for the benefit of the Recipient equivalent to that contained in this Clause 13 (*Confidentiality*);

13.4.7 to the minimum extent required by applicable law (including to any Regulator) or by the regulations of any stock exchange or regulatory or supervisory authority to which the Recipient or any of its Associated Companies is subject or pursuant to any binding order of any court of competent jurisdiction or other Competent Authority or tribunal;

13.4.8 to a court or tribunal in relation to any Dispute or in relation to any claim in connection with the Project made under an Investment Protection Treaty; or

13.4.9 to the Parliament and the Government of the Republic of Latvia and the Parliament and the Government of the Republic of Estonia (as applicable), including all ministries and ministers, and each of their respective officers, employees, representatives and agents ("**Regional Partner Government**") (whether directly or via the Shareholders), in each case to the extent reasonably necessary:

- (A) to comply with the statutory functions and duties of the Regional Partner Government;
- (B) for the implementation of any relevant policy of the Regional Partner Government;
- (C) for the purposes of national security or safety; or
- (D) for the purposes of approving or issuing opinions in connection with this Concession Agreement and the Project,

and who shall in each case be made aware of the Recipient's obligations under this Concession Agreement and who shall be required by the Recipient to observe the same restrictions on the use of the relevant information as are contained in this Clause 13 (*Confidentiality*).

13.5 Any disclosure of confidential information by a Recipient to its professional advisers, insurers or any Financiers under Clauses 13.4.3, 13.4.4 and 13.4.5 respectively shall be limited to the extent that:

13.5.1 such disclosure is for the purposes of the Project or in relation to matters contemplated by this Concession Agreement; and

13.5.2 those professional advisers, insurers or Financiers (as applicable) need to know the relevant confidential information in order to perform their current or future obligations or duties to the Recipient.

### 13.6 **Liability**

Each Recipient shall be fully responsible for, and liable to the Disclosing Party for, any further disclosure of a Disclosing Party's confidential information made by a Third Party recipient (and any of their recipients) as though such disclosure were made by the Recipient under this Concession Agreement. For the avoidance of doubt, any person who receives confidential information pursuant to Clause 13.4 (*Permitted Disclosure*) (including any RoL entity) shall be a "**Third Party recipient**".

### 13.7 **Consent**

If a Recipient requests the Disclosing Party's consent to disclose any of the Disclosing Party's confidential information that consent shall not be unreasonably withheld or delayed. This Clause 13.7 (*Consent*) shall not apply to Highly Sensitive Information.

13.8 If any Recipient becomes required, in circumstances contemplated by Clauses 13.4.7 (*Permitted Disclosure*) or 13.9.1(B) (*Highly Sensitive Information*) to disclose any confidential information (including Highly Sensitive Information), the Recipient shall, to the extent permissible by applicable law:

13.8.1 give to the Disclosing Party such notice as is reasonably practical in the circumstances of such disclosure;

13.8.2 cooperate with the Disclosing Party (having due regard to the Disclosing Party's views) and take such steps as the Disclosing Party may reasonably require in

order to enable it to mitigate the effects of, or avoid the requirements for, any such disclosure; and

- 13.8.3 in consultation with the Disclosing Party, take such measures as are reasonably practicable to minimise the extent of any such disclosure, including by disclosing the minimum amount of confidential information required to comply with such law, regulation or order.

### 13.9 **Highly Sensitive Information**

- 13.9.1 Notwithstanding any other provision of this Concession Agreement, the Parties agree and acknowledge that neither the PCO nor the Strategic Investor shall be required, whether as part of a report or otherwise, to provide the RoL with any Highly Sensitive Information under this Concession Agreement or otherwise (except to the extent required by applicable Law including where lawfully compelled by any Lithuanian Regulator). To the extent that the RoL (including, for the avoidance of doubt, each RoL entity) is provided with Highly Sensitive Information, the RoL (including, for the avoidance of doubt, each RoL entity), notwithstanding Clause 13.4 (*Permitted Disclosure*), shall not disclose that Highly Sensitive Information to any other person unless:

- (A) the RoL has first consulted with the Strategic Investor regarding such disclosure and obtained the prior consent of the Strategic Investor; or
- (B) disclosure is required by applicable Law (including where lawfully required by any Regulator).

- 13.9.2 For the avoidance of doubt, and subject to Clause 13.9.3, the RoL agrees that it will be liable for any disclosure of any Highly Sensitive Information by any RoL entity where such disclosure is not permitted by Clause 13.9.1, irrespective of how such RoL entity obtained the Highly Sensitive Information.

- 13.9.3 The Strategic Investor (or the PCO) may inform the MoE or any other RoL entity that any particular information is Highly Sensitive Information at the time of, or at any time after, such information is disclosed to such other RoL entity and the RoL shall only be liable for any disclosure of Highly Sensitive Information if the MoE or such other RoL entity has been informed, prior to that disclosure, that the particular information is Highly Sensitive Information.

- 13.9.4 If the MoE or another RoL entity obtains Highly Sensitive Information (including through any voluntary disclosure by the Strategic Investor or the PCO) and MoE or such other RoL entity is informed that the relevant information is Highly Sensitive Information and/or such information is marked with the words (or words to the effect of) "Highly Sensitive Information subject to a confidentiality undertaking under the Concession Agreement", then, for the purposes of any subsequent disclosure by the MoE or such RoL entity, the Strategic Investor (or the PCO) shall be deemed to have informed any subsequent recipients that the information is Highly Sensitive Information.

### 13.10 **RoL entity**

For the purposes of this Clause 13 (*Confidentiality*), "**RoL entity**" shall mean the Parliament of the Republic of Lithuania (including any member of the Parliament), the Government of the Republic of Lithuania (including any prime minister, minister or vice-minister), the President of the Republic of Lithuania (and the Office of the President) and any subdivision of the legal entity that is the Republic of Lithuania including all departments, commissions, boards, bureaux, ministries, inspectorates, each Lithuanian



Regulator, agencies, offices or other instrumentalities and each of their respective officers, employees, representatives and agents whether or not having rights as a legal person.

**13.11 Loss**

13.11.1 If the RoL is liable under Clause 13.9 (*Highly Sensitive Information*) other than in respect of a disclosure by the MoE or a disclosure of information (including Highly Sensitive Information) originally provided to the MoE, direct losses of the type set out in Clauses 16.3.1(B), 16.3.1(C), 16.3.1(D) and 16.3.1(E) (*Limitation of Liability*) shall not be excluded.

13.11.2 If the RoL is liable under this Clause 13 (*Confidentiality*) save as contemplated in Clause 13.11.1, losses (whether direct or indirect) of the type set out in Clauses 16.3.1(A) to 16.3.1(F) (*Limitation of Liability*) (inclusive) shall not be excluded.

**13.12 Third Party Loss**

In addition to the above, the RoL shall have obligations of confidentiality to members of the Hitachi, Ltd. Group, GE-Hitachi Nuclear Energy Americas LLC and Global Nuclear Fuel-Americas, LLC on the same terms (to apply *mutatis mutandis*) as its obligations to the Strategic Investor under this Clause 13 (*Confidentiality*).

**13.13 Freedom of Information**

The Parties agree, and the RoL shall ensure, that no member of the public shall be entitled to receive all or any information provided to the RoL (including, for the avoidance of doubt, any RoL entity and any recipient of information pursuant to Clause 13.4.2 (*Permitted Disclosure*)) in connection with the Project pursuant to any applicable Law relating to or in connection with freedom of information. The foregoing shall be without prejudice to the right of the RoL to disclose information in connection with the Project subject to and fully in compliance with this Clause 13 (*Confidentiality*).

**14. PUBLICITY**

Subject to the provisions of Clause 13 (*Confidentiality*), each Party may make such disclosures or announcements concerning the terms or the subject matter of this Concession Agreement or the Project as they wish.

## **PART 6: NUCLEAR, LIABILITY AND INSURANCE**

### **15. NUCLEAR**

- 15.1 The RoL and the PCO each irrevocably and unconditionally acknowledges and agrees that, notwithstanding any provision to the contrary in this Concession Agreement, any Ancillary Contract, the Shareholders' Agreement, any subcontract (of any tier relating to any of the foregoing) or any other contract between the RoL or the PCO (as the case may be) and one or more Project Participants or their Related Persons in relation to or in connection with the Project, no such contract or any other contract in writing provides for or shall provide for a right of recourse which would be permitted under Article X(a) of the Vienna Convention 1963 or the Amended Vienna Convention or Article 10(a) of the Annex to the Convention on Supplementary Compensation.
- 15.2 The RoL shall indemnify on demand and hold harmless each member of the Hitachi, Ltd. Group, GE-Hitachi Nuclear Energy Americas LLC and Global Nuclear Fuel-Americas, LLC (the "**Nuclear Indemnified Parties**") from and against any and all Claims (whether or not successful, compromised or settled) which may be instituted, made, threatened, alleged, asserted or established (each a "**Relevant Nuclear Claim**") from time to time in any jurisdiction against or otherwise involving a Nuclear Indemnified Party and for all Losses which a Nuclear Indemnified Party may suffer or incur from time to time (including all Losses incurred in disputing any Relevant Nuclear Claim and/or in bringing a Relevant Nuclear Claim under this Clause 15.2 (*Nuclear*) and/or in seeking advice regarding any Relevant Nuclear Claim or in any way related to or in connection with the indemnity in this Clause 15.2 (*Nuclear*)), in any such case arising out of, based upon, in connection with or to any extent as a consequence of, the use by any person of any work product or other deliverables provided by or on behalf of any Ancillary Contractor pursuant to an Ancillary Contract to the extent that such use occurs on or after the date (if any) on which the RoL and/or one or more RoL Nominees and/or any subsequent owner(s) of Shares which were once owned by the Lithuanian Investor, the RoL or a RoL Nominee first becomes the owner of all of the Shares which are not then owned by the Lithuanian Investor.
- 15.3 The indemnity in Clause 15.2 (*Nuclear*) shall not apply in respect of Relevant Nuclear Claims or Losses of any Nuclear Indemnified Party to the extent that such Relevant Nuclear Claims or Losses arise as a consequence of the use of any such work product or other deliverable(s):
- 15.3.1 by that Nuclear Indemnified Party; or
  - 15.3.2 by any person who is a Shareholder at the Concession Date (other than the Lithuanian Investor); or
  - 15.3.3 by any Third Party that receives, whether directly or indirectly, such work product or other deliverable(s) from a Nuclear Indemnified Party where such work product or other deliverable(s) were originally provided by a Nuclear Indemnified Party for a purpose which is not related to the Project.
- 15.4 This indemnity shall terminate automatically if a positive FID is taken by the Shareholders (as notified to the RoL pursuant to Clause 11.4 (*Notification of taking FID*)).

### **16. LIABILITY**

#### **16.1 Liability pursuant to Clause 4 (*The Relationship: Partnering Principles*)**

Save for, and without prejudice to, Clause 6.1.9 (*PCO's obligations*), which shall be a binding obligation, Clause 4 (*The Relationship: Partnering Principles*) shall not create (and is not intended to create) legally binding rights and obligations for any Party and no Party

shall be liable to any other Party under this Concession Agreement or otherwise and this Concession Agreement may not be terminated in relation to any breach or non-performance of all or any part of Clause 4 (*The Relationship: Partnering Principles*). Accordingly, the Parties acknowledge and agree that no part of Clause 4 (*The Relationship: Partnering Principles*) shall or is intended to prevent any Party from exercising any right, seeking or enforcing performance of any obligation, and is without prejudice to any rights and obligations, under this Concession Agreement. Furthermore, save in respect of Clause 6.1.9 (*PCO's obligations*), it is agreed and acknowledged that the provisions of Clause 4 (*The Relationship: Partnering Principles*) shall not be relevant to the construction or interpretation of any other provision of this Concession Agreement.

## 16.2 Interaction between Claims under the Concession Agreement and Claims under Investment Protection Treaties

### Level of compensation in the Concession Agreement to be considered by investment tribunals

16.2.1 If a Party seeks relief under any applicable Investment Protection Treaty in respect of an event for which it would also be entitled to redress under this Concession Agreement, when deciding the level of compensation to be awarded to the relevant Party, any arbitral tribunal seized of such a Claim shall be guided by any relevant levels of compensation agreed in Clause 16.3 (*Limitation of Liability*), Clause 24.1 (*Damages Payable by the RoL in respect of Wasted Costs*) and Clause 26 (*RoL Event Mandatory Transfer of Shares*).

### Concurrent Claims

16.2.2 Where a particular circumstance gives rise to Dispute, as defined in Clause 45.1 (*Dispute Resolution Procedure and Arbitration*), for which a Party may initiate international arbitration proceedings under an Investment Protection Treaty (a "**Treaty Claim**") or make a Claim under the Concession Agreement (a "**Contract Claim**"):

- (A) the relevant Party may, at its election, bring the Treaty Claim and the Contract Claim under a single arbitration proceeding in accordance with the ICSID Convention and the Parties hereby agree that such Claims may be heard concurrently in the same proceedings by the same arbitral tribunal;
- (B) if the relevant Party does not bring the Treaty Claim and the Contract Claim under a single proceeding at the Centre, then, to the extent permitted by law, if:
  - (1) the relevant Party first makes a Contract Claim, it shall not be entitled to bring a Treaty Claim to the extent that the relief sought in any Treaty Claim directly or indirectly seeks the enforcement of the specified consequences in Clause 16.3 (*Limitation of Liability*), Clause 24.1 (*Damages Payable by the RoL in respect of Wasted Costs*) and Clause 26 (*RoL Event Mandatory Transfer of Shares*), but not otherwise, until the arbitral tribunal constituted to determine the Contract Claim issues its final award or the proceedings are otherwise terminated; and
  - (2) the relevant Party first makes a Treaty Claim, it shall not be entitled to bring a Contract Claim to the extent that the relief sought in the Treaty Claim directly or indirectly seeks the enforcement of the same specified consequences as would be

invoked in the Contract Claim, but not otherwise, until the arbitral tribunal constituted to determine the Treaty Claim issues its final award or the proceedings are otherwise terminated;

- (C) if the relevant Party brings a Treaty Claim and a Contract Claim under a single proceeding at the Centre, but for any reason those Claims cannot be heard in a single proceeding and by the same tribunal, the relevant Party may bring separate proceedings in relation to those Claims.

### 16.3 Limitation of Liability

16.3.1 Subject to Clause 13.11 (*Loss*) and Clause 16.3.3 and except where such losses are caused by a Party's fraud or deliberate default, the Parties shall have no liability under this Concession Agreement in any circumstances whatsoever in respect of any actual or expected:

- (A) special, indirect or consequential loss;
- (B) loss of profit;
- (C) loss of revenue, loss of goodwill, loss of opportunity or loss of business;
- (D) increased costs or expenses;
- (E) wasted expenditure including pre-contract expenditure (except as expressly provided for in Clause 24 (*Damages for Termination*)); or
- (F) punitive damages,

which may be sustained or claimed by any Party under or in connection with this Concession Agreement. For the avoidance of doubt, the losses referred to in Clauses 16.3.1(B), (C), (D) and (E) include both indirect and direct loss.

16.3.2 Subject to Clause 16.3.3:

- (A) the RoL shall have no liability under or in connection with this Concession Agreement whatsoever for any Claim in relation to Clause 7.1 (*Nature of RoL's obligations*) or 42.2 (*Co-operation in relation to the Power at Cost Structure*);
- (B) without prejudice to Clause 19.2.6 (*Sole remedies for RoL Event, PCO Default, and Strategic Investor Default*), the PCO shall have no liability under or in connection with this Concession Agreement whatsoever save in respect of all successful Claims against it in relation to Clauses 13 (*Confidentiality*), 28 (*Warranties*) and 30 (*Assignment*);
- (C) without prejudice to Clause 19.2.5 (*Sole remedies for RoL Event, PCO Default, and Strategic Investor Default*), the Strategic Investor shall have no liability under or in connection with this Concession Agreement whatsoever save in respect of all successful Claims against it in relation to Clauses 13 (*Confidentiality*), 24.2 (*Damages Payable by the Strategic Investor in respect of Wasted Costs or Retendering Costs*), 28 (*Warranties*) and 30 (*Assignment*).

16.3.3 The limitations on liability set out in this Clause 16.3 (*Limitation of Liability*) shall not exclude or limit:

- (A) any Party's liability to an individual (or to the estate of a deceased individual) for the death of, or personal injury sustained by, such individual to the extent such death or personal injury was caused by that

Party's negligence, or the negligence of that Party's employees, agents or subcontractors (as applicable);

- (B) any Party's liability to the extent any such limitation or exclusion of liability would be in contravention of applicable law;
- (C) any Party's obligation to pay any amount due and payable under or in connection with Clause 24 (*Damages for Termination*);
- (D) the RoL's liabilities in respect of its obligations to make the payments referred to in Clause 26 (*RoL Event Mandatory Transfer of Shares*) or Clause 32 (*Shareholder Put Option*) either under those Clauses or Clause 16.5 (*Breach of warranty*); and
- (E) the RoL's liabilities in respect of its obligations under or in connection with Clause 7.3 (*RoL Nominee*), Clause 15 (*Nuclear*), Clause 16.5.1 and Clause 16.5.3 (*Breach of warranty*).

#### 16.4 General

- 16.4.1 Nothing in this Clause 16 (*Liability*) restricts or limits the general obligation at law of each of the Parties to mitigate any Losses which they may suffer or incur as a consequence of any breach of any provision of this Concession Agreement.
- 16.4.2 This Clause 16 (*Liability*) applies notwithstanding any other provision of this Concession Agreement to the contrary and shall not cease to have effect as a consequence of any rescission or termination of any other provisions of this Concession Agreement.

#### 16.5 Breach of warranty

The other provisions of this Clause 16.5 (*Breach of warranty*) are subject to Clause 16.5.9.

##### 16.5.1 If:

- (A) this Concession Agreement could have been terminable for a RoL Event but for this Concession Agreement having been determined by a competent court or pursuant to the Dispute Resolution Procedure to be void, ineffective or unenforceable (in each case in whole or in part); and/or
- (B) an Exiting Shareholder would have had a right to payment pursuant to Clause 26.4 (*Payment of the Mandatory Transfer Price*) but for this Concession Agreement having been determined by a competent court or pursuant to the Dispute Resolution Procedure to be void, ineffective or unenforceable (in each case in whole or in part); and/or
- (C) pursuant to Clause 20.2 (*Termination for a RoL Event*), this Concession Agreement has terminated for a RoL Event of the type set out in Clause 20.1.1 (*Events of RoL Event*) and Clause 26.4 (*Payment of the Mandatory Transfer Price*) has been determined by a competent court or pursuant to the Dispute Resolution Procedure to be void, ineffective or unenforceable (in each case in whole or in part),

the RoL shall indemnify each of the Shareholders for a sum equal to the amounts which would otherwise, but for the determination that this Concession Agreement and/or the right to payment pursuant to Clause 26.4 (*Payment of the Mandatory Transfer Price*) is void, ineffective or unenforceable (in each case in whole or in part), be due and payable to that Shareholder under Clause 26.4 (*Payment of the Mandatory Transfer Price*).

16.5.2 If it has been agreed or determined pursuant to Clause 20.2 (*Termination for a RoL Event*) that this Concession Agreement is to be terminated or has terminated for a RoL Event of the type set out in Clause 20.1.1 (*Events of RoL Event*) or if the RoL has served a termination notice under Clause 16.5.7, Clause 16.5.3 shall cease to apply solely in respect of losses directly relating to the value of the Shares.

16.5.3

- (A) Subject to Clause 16.5.4, the RoL shall indemnify and hold harmless the PCO, the Strategic Investor, Global Nuclear Fuel-Americas, LLC and any Associated Company of the Strategic Investor which is party to an Ancillary Contract (each an "**Indemnified Person**") from and against any and all Claims (whether or not successful, compromised or settled) which may be instituted, made, threatened, alleged, asserted or established (each a "**Relevant Claim**") from time to time in any jurisdiction against or otherwise involving an Indemnified Person and from all Losses which an Indemnified Person may suffer or incur from time to time (including all Losses incurred in relation to any amounts clawed back or otherwise being required to be returned under applicable Law and/or in disputing any Relevant Claim and/or in bringing a claim under this Clause and/or in seeking advice regarding any Relevant Claim or in any way related to or in connection with the indemnity in this Clause), in any such case arising out of, based upon or in connection with, whether directly or indirectly, any:
- (1) breach or failure to observe by the RoL of the RoL's obligations under all applicable Laws and regulations (including European Union law and any procedures for competitive bidding in the field of public works concessions) in relation to the selection of the Strategic Investor, the award of the Concession, the entry into and/or award of the Concession Agreement and/or the entry into and/or the award of the Ancillary Contracts and/or any variation of a Project Agreement; or
  - (2) breach of (and/or the facts or circumstances giving rise to a breach of) the warranty provided under Clause 28.1.2 (*Warranties*).
- (B) If any of the PCO, the Shareholders (or any of their Associated Companies), the Strategic Investor (or any of its Associated Companies), Global Nuclear Fuel-Americas, LLC (or its Associated Companies) and any member of the Hitachi, Ltd. Group challenges (the "**Challenging Entity**") the RoL's observation of the RoL's obligations under all applicable Laws and regulations (including European Union law and any procedures for competitive bidding in the field of public works concessions) in relation to the selection of the Strategic Investor, the award of the Concession, the entry into and/or the award of the Concession Agreement and/or the entry into and/or the award of the Ancillary Contracts and/or any variation of a Project Agreement, an Indemnified Person shall not be entitled to claim under the indemnity in Clause 16.5.3(A) if:
- (1) the Indemnified Person is also the Challenging Entity; or

- (2) the Indemnified Person is an Associated Company of the Challenging Entity.
  - (C) Without prejudice to their contractual rights under the relevant Ancillary Contract, if any Ancillary Contract or this Concession Agreement is challenged but is not or has not yet been declared void, ineffective or unenforceable by any competent court or pursuant to any other dispute forum, Global Nuclear Fuel-Americas, LLC and any Associated Company of the Strategic Investor which is party to an Ancillary Contract shall not be entitled to claim under the indemnity in Clause 16.5.3(A) unless and until it has a Loss in respect of the relevant Ancillary Contract being declared void, ineffective or unenforceable, other than in respect of any Loss in relation to any amounts which have been clawed back or otherwise required to be returned under applicable Law.
  - (D) If Global Nuclear Fuel-Americas, LLC or any Associated Company of the Strategic Investor which is party to an Ancillary Contract is entitled to claim under the indemnity in Clause 16.5.3(A) for Losses in respect of any Ancillary Contract being declared void, ineffective or unenforceable by any competent court or pursuant to any other dispute forum, it shall not be entitled to claim under the indemnity in Clause 16.5.3(A) for any greater sum than:
    - (1) is or would have (had the relevant Ancillary Contract not been declared void, ineffective or unenforceable) been payable to it under the relevant Ancillary Contract at that point in time if that Ancillary Contract had been terminated for PCO default (without prejudice to the right under the indemnity in Clause 16.5.3(A) to claim the Losses incurred in disputing any Relevant Claim, bringing a claim or seeking advice); and
    - (2) has been clawed back or otherwise required to be returned under applicable Law (to the extent not included in Clause 16.5.3(D)(1)).
- 16.5.4 The liability of the RoL under or in respect of the indemnity under Clause 16.5.3 (*Breach of warranty*) shall be reduced to the extent that the Indemnified Person (whether or not a Party) has not taken all reasonable steps to mitigate its Loss (provided that the costs of such mitigation shall be recoverable under that indemnity).
- 16.5.5 Neither the PCO nor the Strategic Investor shall have any liability for any act, omission, decision, breach or failure to observe by the RoL in respect of the RoL's obligations to comply with all applicable Laws and regulations (including European Union law and any procedures for competitive bidding in the field of public works concessions).
- 16.5.6 The indemnities in Clauses 16.5.1 and 16.5.3 and the right to terminate under Clause 20.1.1 and be paid in respect of that termination under Clause 26.4 (*Payment of the Mandatory Transfer Price*) shall be the sole remedy of the PCO and the Shareholders (as applicable) for breach of the warranty in Clause 28.1.2 (*Warranties*).
- 16.5.7 If, during the period from the Concession Date until the date on which a positive FID or a final negative FID is taken (as notified to the RoL pursuant to Clause 11.4 (*Notification of taking FID*)), any person (including any Party) makes

any Claim under Clause 16.5.3, the RoL shall, for so long as any Claim under Clause 16.5.3 subsists, and at any point in that period, be entitled to terminate this Concession Agreement. If the RoL wishes to exercise such right to terminate, it shall serve notice on the PCO (copied to the Strategic Investor), notifying the PCO that the RoL has elected to terminate this Concession Agreement.

16.5.8 If the RoL issues a notice pursuant to Clause 16.5.7, then Clauses 16.5.1 (*Breach of warranty*), 20.3 (*Consequences of a RoL Event*), 20.4 (*Mitigation following a RoL Event*) and 26 (*RoL Event and Mandatory Transfer of Shares*) shall apply *mutatis mutandis*.

16.5.9

(A) The warranty given in Clause 28.1.2 shall cease to apply automatically if the Shareholders take a final negative FID or a positive FID (as notified to the RoL pursuant to Clause 11.4 (*Notification of taking FID*)).

(B) Without prejudice to any accrued rights in respect of the indemnities given in Clauses 16.5.1 and 16.5.3 (whether or not known or then claimed) in respect of facts, circumstances, actions or inactions (including where giving rise to any subsequent claw back of any payment or any other requirement to return a payment under applicable Law) which commenced or occurred before the Shareholders take a positive FID or a final negative FID (as notified to the RoL pursuant to Clause 11.4 (*Notification of taking FID*)), such indemnities shall terminate automatically if the Shareholders take a final negative FID or positive FID.

(C) Clause 16.5.7 shall cease to apply automatically if the Shareholders take a final negative FID or a positive FID (as notified to the RoL pursuant to Clause 11.4 (*Notification of taking FID*)).

## **17. DAMAGES ARE INSUFFICIENT COMPENSATION AND EQUITABLE REMEDIES ARE TO BE AVAILABLE**

17.1 Without prejudice to any other rights or remedies that the Parties may have, the Parties acknowledge and agree that damages alone might not be an adequate remedy for any breach by them of Clause 13 (*Confidentiality*) and that the remedies of injunction and specific performance as well as any equitable relief for any threatened or actual breach of Clause 13 (*Confidentiality*) by any Party may be more appropriate remedies.

17.2 The Parties agree that they shall not exercise the remedies of injunction and specific performance in respect of Clauses 4 (*The Relationship: Partnering Principles*), 5 (*Strategic Investor's Obligations*), 6 (*PCO Obligations*) and 18 (*Insurance*).

## **18. INSURANCE**

The PCO shall take out and maintain, or procure the maintenance of, the Required Insurances to the extent available in the market. If such Required Insurances are not available or readily available in the market, the PCO shall use reasonable endeavours to negotiate the provision of such insurance or seek alternative means of providing such Required Insurances.



## **PART 7: TERMINATION**

### **19. APPLICATION OF CLAUSES 19 TO 26 INCLUSIVE: TERMINATION**

#### **19.1 Termination**

19.1.1 Subject to Clause 2.2 (*Award of Concession and Term*), this Concession Agreement shall only be capable of termination in accordance with:

- (A) any of the provisions referred to in Clause 19.1.2; or
- (B) Clause 23.1 (*Termination by Agreement of the Parties*),

and the provisions referred to in Clauses 19.1.1(A) and 19.1.1(B) state fully all rights of any Party to terminate this Concession Agreement and any other right of termination which any Party would otherwise have had by virtue of common law (including termination for repudiatory breach), in equity, statute or otherwise is excluded.

19.1.2 In the period from the Concession Date until the date on which a positive FID or a final negative FID is taken (as notified to the RoL pursuant to Clause 11.4 (*Notification of taking FID*)), this Concession Agreement may:

- (A) be terminated by the RoL in accordance with Clause 21.3.1 (*Consequences of a PCO Default*); or
- (B) be terminated in accordance with Clause 16.5.7 (*Breach of warranty*); or
- (C) terminate automatically in accordance with Clauses 23.2 (*Termination following a negative FID or decision not to proceed to any further LNTP phase*) or 26.5 (*Termination and further provisions*).

19.1.3 In the period from the Concession Date until the date on which a positive FID or final negative FID is taken (as notified to the RoL pursuant to Clause 11.4 (*Notification of taking FID*)), the rights and obligations of the Strategic Investor under this Concession Agreement may be terminated in accordance with Clause 22.2 (*Termination of the Strategic Investor's rights and obligations*) and, should such a termination occur, this Concession Agreement shall continue in full force and effect as between the RoL and the PCO.

19.1.4 The rights and obligations of the Strategic Investor under this Concession Agreement may be terminated at any time in accordance with Clause 23.3 (*Termination in respect of the Strategic Investor due to Strategic Investor exit from Shareholding*) and, should such a termination occur, this Concession Agreement shall continue in full force and effect as between the RoL and the PCO.

19.1.5 For the avoidance of doubt, following a positive FID, this Concession Agreement may only be terminated in accordance with Clause 23.1 (*Termination by Agreement of the Parties*).

#### **19.2 Sole remedies for RoL Event, PCO Default, and Strategic Investor Default**

19.2.1 The limitations in this Clause 19.2 are without prejudice to (i) any rights or remedies under any Investment Protection Treaty (but subject to Clause 16.2 (*Interaction between Claims under the Concession Agreement and Claims under Investment Protection Treaties*)); and (ii) subject to Clause 17 (*Damages are insufficient compensation and equitable remedies are to be available*), any right to injunctive relief and specific performance in respect of enforcing the remedies

referred to in this Clause 19.2 (*Sole remedies for RoL Event, PCO Default and Strategic Investor Default*).

19.2.2 Without prejudice to the indemnities in Clause 16.5 (*Breach of warranty*), the sole remedy of the Strategic Investor for a RoL Event shall be:

- (A) where the RoL Event is or includes breach of a payment obligation (including under an indemnity), to enforce and receive payment of the relevant sum;
- (B) its right for payment by the RoL of Wasted Costs in accordance with Clause 24.1 (*Damages Payable by the RoL in respect of Wasted Costs*);
- (C) the payment by the RoL to the Strategic Investor of the Mandatory Transfer Price for the transfer of its Shareholder's Interest in accordance with Clause 26.4 (*Payment of the Mandatory Transfer Price*); and
- (D) if there is a RoL Event under Clause 20.1.3 (*Events of RoL Event*) which includes a repudiatory breach of Clause 13 (*Confidentiality*) by the RoL, a Claim in respect of such breach,

and the Strategic Investor shall have no additional right or remedy against the RoL for a RoL Event arising by common law (including termination for repudiatory breach), in equity, by statute or otherwise.

19.2.3 Without prejudice to Clause 19.2.2 and the indemnities in Clause 16.5 (*Breach of warranty*), the sole remedy and exclusive right of any Shareholder for a RoL Event shall be the payment by the RoL to that Shareholder of the Mandatory Transfer Price for the transfer of its Shareholder's Interest in accordance with Clause 26.4 (*Payment of the Mandatory Transfer Price*) and each Shareholder shall have no additional right or remedy against the RoL for a RoL Event arising by common law (including termination for repudiatory breach), in equity, by statute or otherwise. This Clause 19.2.3 shall not apply to the Strategic Investor; the Strategic Investor's rights and remedies are as set out in Clause 19.2.2.

19.2.4 Without prejudice to the indemnities in Clause 16.5 (*Breach of warranty*), the sole remedies of the PCO for a RoL Event shall be:

- (A) its right to serve a RoL Event Notice under Clause 20.2.1 (*Termination for a RoL Event*);
- (B) the PCO's right under Clause 20.2 (*Termination for a RoL Event*) to refer the matter to be determined in accordance with the Dispute Resolution Procedure;
- (C) where the RoL Event is or includes breach of a payment obligation (including under an indemnity), to enforce and receive payment of the relevant sum; and
- (D) if there is a RoL Event under Clause 20.1.3 which includes a repudiatory breach of Clause 13 (*Confidentiality*) by the RoL, a Claim in respect of such breach,

and the PCO shall have no additional right or remedy against the RoL for a RoL Event arising by common law (including termination for repudiatory breach), in equity, by statute or otherwise.

19.2.5 The sole remedies and exclusive rights of the RoL against the Strategic Investor for a Strategic Investor Default shall be:

- (A) termination of the Strategic Investor's rights and obligations under this Concession Agreement in accordance with Clause 22.2 (*Termination of the Strategic Investor's rights and obligations*);
- (B) following termination of this Concession Agreement in accordance with Clause 22.2 (*Termination of the Strategic Investor's rights and obligations*), the payment by the Strategic Investor of Wasted Costs or Retendering Costs under Clause 24.2 (*Damages Payable by the Strategic Investor in respect of Wasted Costs or Retendering Costs*); and
- (C) following termination of the Strategic Investor's rights and obligations for a Strategic Investor Default under Clause 22.1.1 (*Breach of Strategic Investor Obligations*), which includes a material breach of Clause 13 (*Confidentiality*) by the Strategic Investor, a Claim in respect of such breach,

and the RoL shall have no additional right or remedy against the Strategic Investor for a Strategic Investor Default arising by common law (including termination for repudiatory breach), in equity, by statute or otherwise.

19.2.6 Without prejudice to any Claim the RoL may have against the Strategic Investor for the payment of Wasted Costs or Retendering Costs under Clause 21.3 (*Consequences of a PCO Default*) and Clause 24.2 (*Damages Payable by the Strategic Investor in respect of Wasted Costs or Retendering Costs*) in respect of specified PCO Defaults, the sole remedy and exclusive right of the RoL against the PCO for any PCO Default shall be termination of this Concession Agreement under Clause 21 (*PCO Default*) and the RoL shall have no additional right or remedy against the PCO for a PCO Default arising by common law (including termination for repudiatory breach), in equity, by statute or otherwise.

## **20. ROL EVENT**

### **20.1 Events of RoL Event**

Each of the following events shall be a RoL Event:

20.1.1 if there is an action, suit or proceeding brought by a Third Party Claimant to a Competent Authority challenging the selection of the Strategic Investor by the RoL and/or the entry by the RoL into and/or the award (as appropriate) of the Concession and/or this Concession Agreement and/or the award and/or the entry into of any Ancillary Contract and/or the issuance of any LNTP or FNTP and/or any amendment or variation of this Concession Agreement or any Ancillary Contract, on the basis that either the RoL or the PCO has not acted in full compliance with all applicable Law and procedures and:

- (A) such action, suit or proceeding is not withdrawn or dismissed within three (3) Months of its commencement; and/or
- (B) the amounts payable by the RoL under Clause 16.5.3 (*Breach of warranty*) are greater than five million Euros (€5,000,000);

20.1.2 the occurrence of a Pre-FID Fundamental Change;

20.1.3 the RoL commits a repudiatory breach of this Concession Agreement and such repudiatory breach does not also constitute a RoL Event under Clause 20.1.1; or

20.1.4 failure by the RoL to make any undisputed payment for a sum over five million Euros (€5,000,000) (indexed at the indexation rate) within sixty (60) Calendar Days of such sum being due and payable.

## 20.2 Termination for a RoL Event

20.2.1 In the event that the PCO serves on the RoL a notice asserting the occurrence of a RoL Event (the "**RoL Event Notice**"), such notice shall:

- (A) specify the type of RoL Event asserted by reference to Clause 20.1 (*Events of Default*), giving reasonable details thereof; and
- (B) specify which Shareholder(s) voted in favour of the issuance of a RoL Event Notice by the PCO and which of those Shareholder(s) wishes to exercise its respective buy-out rights in accordance with the Shareholders' Agreement (each, an "**Exiting Shareholder**").

20.2.2 As soon as practicable and, in any event, within five (5) Business Days after receipt of the RoL Event Notice, the PCO and the RoL shall discuss, together with any Exiting Shareholder wishing to participate in such discussion, and attempt all to agree whether the RoL Event asserted in that RoL Event Notice has occurred.

20.2.3 Subject to Clause 20.2.4, if within fifteen (15) Business Days of the date of service of the RoL Event Notice, the PCO, the RoL and any Exiting Shareholder that participates in the discussions referred to in Clause 20.2.2 are unable to agree whether the RoL Event asserted in the RoL Event Notice has occurred, the RoL, the PCO or any Exiting Shareholder that has participated in the discussion referred to in Clause 20.2.2, may within a further ten (10) Business Days refer the matter to be determined in accordance with the Dispute Resolution Procedure.

20.2.4 Upon written notice to the PCO under the Shareholders' Agreement by any Exiting Shareholder (given within ten (10) Business Days of the expiry of the ten (10) Business Day period referred to in Clause 20.2.3), the PCO shall refer the matter to be determined in accordance with the Dispute Resolution Procedure.

20.2.5 If it is agreed or determined that the RoL Event set out in the RoL Event Notice has occurred and such RoL Event is subsisting, then Clause 20.3 (*Consequences of a RoL Event*) shall apply.

## 20.3 Consequences of a RoL Event

20.3.1 If it is agreed or determined in accordance with Clause 20.2 (*Termination for a RoL Event*) that a RoL Event has occurred then following a period of forty five (45) Business Days of that agreement or determination, Clause 26 (*RoL Event Mandatory Transfer of Shares*) shall apply.

20.3.2 If this Concession Agreement is terminated under Clause 26.5.1 (*Termination and further provisions*) or the Strategic Investor's Shareholder's Interest is acquired by the RoL or a RoL Nominee under Clause 26.4 (*Payment of the Mandatory Transfer Price*) or the Strategic Investor's Relevant Obligations under the Shareholders' Agreement cease to apply, then Clause 24.1 (*Damages Payable by the RoL in respect of Wasted Costs*) shall apply.

## 20.4 Mitigation following a RoL Event

If it is agreed or determined in accordance with Clause 20.2 (*Termination for a RoL Event*) that a RoL Event has occurred and each of the Shareholders other than the Lithuanian Investor is an Exiting Shareholder, the PCO shall from that time, at the expense of the RoL

(such amounts to be paid in advance), until the last transfer of an Exiting Shareholder's Shareholder's Interests is completed in accordance with Clause 26.4 (*Payment of the Mandatory Transfer Price*) take all reasonable steps which the RoL may reasonably request (the RoL taking into account that the Concession Agreement may not ultimately terminate) to mitigate any liabilities which it may accrue in connection with the termination and ensure that it does not incur or accelerate the incurrence under any Related Agreements or otherwise of any third party liability which might reasonably be avoided or delayed.

## **21. PCO DEFAULT**

### **21.1 Events of PCO Default**

Abandonment shall be the only PCO Default.

### **21.2 Termination for PCO Default**

21.2.1 If the RoL believes that a PCO Default has occurred, the RoL may serve on the PCO a notice asserting the occurrence of such default (the "**PCO Default Notice**"), and shall copy the PCO Default Notice to the Strategic Investor. The PCO Default Notice shall specify the type of PCO Default that is asserted by reference to Clause 21.1 (*Events of PCO Default*), giving reasonable details thereof.

21.2.2 As soon as practicable and, in any event, within five (5) Business Days after receipt of the PCO Default Notice, the RoL and the PCO shall discuss and attempt to agree whether the PCO Default asserted in the PCO Default Notice has occurred.

21.2.3 If, within fifteen (15) Business Days of the date of service of the PCO Default Notice, the RoL and the PCO are unable to agree whether the PCO Default asserted in the PCO Default Notice has occurred, the RoL or the PCO may refer the matter to be determined in accordance with the Dispute Resolution Procedure.

21.2.4 If it is agreed or determined that the PCO Default set out in the PCO Default Notice has occurred and such PCO Default is subsisting, the RoL shall be entitled to terminate this Concession Agreement in accordance with Clause 21.3 (*Consequences of a PCO Default*).

### **21.3 Consequences of a PCO Default**

21.3.1 If it is agreed or determined in accordance with Clause 21.2 (*Termination for PCO Default*) that a PCO Default has occurred, the RoL shall be entitled to terminate this Concession Agreement by giving notice to the other Parties of the date of such termination, being a date no fewer than twenty five (25) Business Days after the date of the agreement or determination that a PCO Default has occurred, and this Concession Agreement shall terminate on the date set out in such termination notice.

21.3.2 On and in respect of termination of this Concession Agreement under Clause 21.3.1, Clause 25 (*RoL's third party rights under the Shareholders' Agreement*) shall apply.

21.3.3 If this Concession Agreement is terminated under Clause 21.3.1 where the PCO Default is directly caused by and originates from:

- (A) the termination of the EPC Contract for an EPC Contractor Default under the terms of the EPC Contract; or

- (B) after the Investment Date, the Strategic Investor having committed a funding default under the Shareholders' Agreement and the Strategic Investor not having remedied that funding default within the period provided by the Shareholders' Agreement following the Strategic Investor's receipt of a default notice,

Clause 24.2 (*Damages Payable by the Strategic Investor in respect of Wasted Costs or Retendering Costs*) shall apply.

#### 21.4 **Other Consequences of Termination for PCO Default**

21.4.1 If it is agreed or determined in accordance with Clause 21.2 (*Termination for PCO Default*) that a PCO Default has occurred and the RoL has served a PCO Default Notice, the PCO shall from that time, subject to Clause 21.4.2:

- (A) take all reasonable steps to mitigate any liabilities which may accrue to the PCO in connection with such termination of this Concession Agreement; and

- (B) except as it is otherwise bound to do so by any Related Agreement or applicable law, not sell, dispose of, or transfer or cause a diminution in value of any of its material assets without the RoL's prior written consent,

until the RoL, having exercised its rights in accordance with Clause 25.1 (*RoL's third party rights under the Shareholders' Agreement*) to require each Shareholder to transfer its Shareholder's Interest to the RoL in accordance with the Shareholders' Agreement, has completed such transfer, or any such rights having lapsed in accordance with the Shareholders' Agreement.

21.4.2 If the RoL has exercised its third party rights under the Shareholders' Agreement to require all Shareholders (including the Strategic Investor) to transfer all but not part of their Shareholder's Interests to the RoL (or a RoL Nominee) under Clause 25 (*RoL's third party rights under the Shareholders' Agreement*), then the actions to be taken by the PCO under Clause 21.4.1 shall include the exercise by the PCO of any rights it has under any Related Agreements as may be reasonably requested by the RoL in writing from time to time.

## 22. **STRATEGIC INVESTOR DEFAULT**

### 22.1 Events of Strategic Investor Default

Each of the following events shall be a Strategic Investor Default:

#### **Breach of Strategic Investor Obligations**

22.1.1 after the Investment Date, a material breach by the Strategic Investor of any of its obligations under this Concession Agreement where such breach materially and adversely affects the performance of this Concession Agreement, including a repudiatory breach by the Strategic Investor of this Concession Agreement;

#### **Winding Up of the Strategic Investor**

22.1.2 the shareholders of the Strategic Investor adopt a decision to liquidate the Strategic Investor or the Strategic Investor is otherwise liquidated;

#### **Buy Out of the Strategic Investor**

22.1.3 the Strategic Investor has committed a funding default under the Shareholders' Agreement after the Investment Date, and the transfer of the Strategic Investor's Shares to the other Shareholders or a permitted third party transferee in

accordance with the buy-out provisions in the Shareholders' Agreement as a direct result of that funding default has been completed; or

**Failure to remain an Associated Company of Hitachi, Ltd. and invalid transfer of shares in the Strategic Investor**

22.1.4 the Strategic Investor is in breach of any of its obligations under Clauses 31.4.1 or 31.4.2 (*Strategic Investor transfer of ownership restrictions*).

**22.2 Termination of the Strategic Investor's rights and obligations**

22.2.1 In the case of a Strategic Investor Default contemplated by:

(A) Clause 22.1.1 (*Breach of Strategic Investor Obligations*) or Clause 22.1.4 (*Failure to remain an Associated Company of Hitachi, Ltd. and Invalid transfer of shares in the Strategic Investor*), Clauses 22.2.2 to 22.2.7 (inclusive) shall apply;

(B) Clause 22.1.2 (*Winding Up of the Strategic Investor*), the RoL may (in consultation with the PCO and subject to compliance by the RoL with Clause 22.2.7) within twenty (20) Business Days of becoming aware of the relevant Strategic Investor Default terminate the Strategic Investor's rights and obligations under this Concession Agreement, either with immediate effect or on such period of notice not exceeding ten (10) Business Days as the RoL reasonably determines to be appropriate by serving a termination notice on the Strategic Investor and the Concession Agreement shall continue in full force and effect as between the RoL and the PCO; the RoL shall copy any such termination notice to the PCO; or

(C) Clause 22.1.3 (*Buy Out of the Strategic Investor*), the Strategic Investor's rights and obligations under this Concession Agreement shall terminate automatically upon the completion of the transfer of the Strategic Investor's Shares to the other Shareholders or a permitted third party transferee in accordance with the buy-out provisions on default in the Shareholders' Agreement.

22.2.2 Prior to serving a Strategic Investor Default Notice (as defined in Clause 22.2.3), the RoL shall consult with the PCO in respect of the relevant Strategic Investor Default and may, to the extent the RoL acting reasonably determines necessary, request information from the PCO (which the PCO shall provide) in connection with that Strategic Investor Default.

22.2.3 If the RoL believes that a Strategic Investor Default under Clause 22.1.1 (*Breach of Strategic Investor Obligations*) or Clause 22.1.4 (*Failure to remain an Associated Company of Hitachi, Ltd. and Invalid transfer of shares in the Strategic Investor*) has occurred, the RoL may serve on the Strategic Investor a notice asserting the occurrence of a Strategic Investor Default (the "**Strategic Investor Default Notice**"), and shall copy the Strategic Investor Default Notice to the PCO. The Strategic Investor Default Notice shall specify the type of Strategic Investor Default, giving reasonable details thereof.

22.2.4 As soon as practicable and, in any event, within five (5) Business Days after receipt of the Strategic Investor Default Notice, the RoL and the Strategic Investor shall discuss and attempt to agree whether the Strategic Investor Default asserted in that Strategic Investor Default Notice has occurred. The RoL shall consult with the PCO in respect of the discussions between the RoL and the

Strategic Investor and the PCO shall take part in the discussions if so requested by the RoL or if the PCO so desires.

- 22.2.5 If, within fifteen (15) Business Days of the date of service of the Strategic Investor Default Notice, the RoL and the Strategic Investor are unable to agree whether the Strategic Investor Default asserted in the Strategic Investor Default Notice has occurred, the RoL or the Strategic Investor may refer the matter to be determined in accordance with the Dispute Resolution Procedure.
- 22.2.6 If it is agreed or determined that the Strategic Investor Default set out in the Strategic Investor Default Notice has occurred and such Strategic Investor Default is subsisting, then the RoL may (acting reasonably in consultation with the PCO and subject to compliance by the RoL with Clause 22.2.7) terminate the Strategic Investor's rights and obligations under this Concession Agreement with immediate effect or on such period of notice not exceeding ten (10) Business Days as the RoL reasonably determines appropriate by serving a termination notice on the Strategic Investor. The RoL shall copy any such termination notice to the PCO.
- 22.2.7 Prior to exercising its right to terminate the Strategic Investor's rights and obligations under this Concession Agreement under Clauses 22.2.1(B) or 22.2.6, the RoL shall obtain the consent of the PCO to such proposed termination and any termination notice given by the RoL under Clauses 22.2.1(B) or 22.2.6 shall be ineffective if the consent of the PCO to such proposed termination was not so obtained.

### 22.3 **Consequences of Termination**

- 22.3.1 If the Strategic Investor's rights and obligations under this Concession Agreement are terminated under Clause 22.2 (*Termination of the Strategic Investor's rights and obligations*), Clause 24.2 (*Damages Payable by the Strategic Investor in respect of Wasted Costs or Retendering Costs*) shall apply.
- 22.3.2 Notwithstanding the termination of the Strategic Investor's rights and obligations under this Concession Agreement, this Concession Agreement shall continue in full force and effect as between the RoL and the PCO.

## 23. **NON-DEFAULT TERMINATION**

### 23.1 **Termination by Agreement of the Parties**

At any time (including for the avoidance of doubt after a positive FID), the Parties shall be entitled to terminate this Concession Agreement by agreement if all (but not some) of the Parties agree in writing, specifying the reason for termination, the consequences of termination, and the date when termination shall take effect.

### 23.2 **Termination following a negative FID or decision not to proceed to any further LNTP phase**

- 23.2.1 This Concession Agreement shall terminate automatically with immediate effect if the PCO notifies the RoL in accordance with Clause 11.3 (*Notification of a decision not to proceed to any further LNTP phase*) that the PCO has decided not to proceed to any further LNTP phase.
- 23.2.2 This Concession Agreement shall terminate automatically with immediate effect if the PCO notifies the RoL in accordance with Clause 11.4 (*Notification of taking FID*) that a final negative FID has been taken.



**23.3 Termination in respect of the Strategic Investor due to Strategic Investor exit from Shareholding**

The Strategic Investor's rights and obligations under this Concession Agreement shall terminate automatically on the date on which its Relevant Obligations under the Shareholders' Agreement cease to apply, however the Concession Agreement shall continue in full force and effect as between the RoL and the PCO.

**23.4 RoL Call Option on Non-Default Termination**

If the Concession Agreement is terminated under Clauses 23.1 (*Termination by Agreement of the Parties*) (if expressly agreed by the Parties as part of that termination by agreement) or 23.2 (*Termination following a negative FID or decision not to proceed to any further LNTP phase*), Clause 25 (*RoL's third party rights under the Shareholders' Agreement*) shall apply.

**23.5 Consequences of Non-Default Termination**

23.5.1 The RoL shall have no liability to the PCO or the Strategic Investor as a consequence of the termination of this Concession Agreement in accordance with this Clause 23 (*Non-Default Termination*) other than its liability to the Strategic Investor (as a Shareholder) pursuant to Clauses 23.4 (*RoL Call Option on Non-Default Termination*) and 25 (*RoL's third party rights under the Shareholders' Agreement*) or as otherwise agreed between the Parties.

23.5.2 If the RoL has exercised its third party rights under the Shareholders' Agreement to require the Shareholders (including the Strategic Investor) to transfer all but not part of their Shares to the RoL or a RoL Nominee under Clauses 23.4 (*RoL Call Option on Non-Default Termination*) and 25 (*RoL's third party rights under the Shareholders' Agreement*), then the RoL may request that the PCO (at the RoL's expense, such amounts to be paid in advance) takes reasonable steps to mitigate any liabilities which it may accrue in connection with the termination which may include the exercise by the PCO of any rights it has under any Related Agreements as may be reasonably requested by the RoL in writing from time to time.

**24. DAMAGES FOR TERMINATION**

**24.1 Damages Payable by the RoL in respect of Wasted Costs**

24.1.1 If:

- (A) this Concession Agreement is terminated under Clause 26.5.1 (*Termination and further provisions*);
- (B) the Strategic Investor is an Exiting Shareholder and is entitled to have its Shareholder's Interest acquired by the RoL or a RoL Nominee under Clause 26.4.1 (*Payment of the Mandatory Transfer Price*); or
- (C) the Strategic Investor's Relevant Obligations under the Shareholders' Agreement cease to apply:

then:

- (1) the Strategic Investor may, within two (2) Months of the date of termination or entitlement (as applicable), invoice the RoL for the Strategic Investor's Wasted Costs together with supporting documentary evidence (in a form and detail satisfactory to the RoL acting reasonably) for all Wasted Costs claimed; and

- (2) the RoL shall, subject to Clause 24.1.2 and to the extent the Wasted Costs are agreed or determined amounts, pay to the Strategic Investor the invoiced Wasted Costs on or before the date falling two (2) Months after receiving the invoice for the Strategic Investor's Wasted Costs.

24.1.2 The RoL's maximum liability for Wasted Costs payable under Clause 24.1.1 shall not exceed the amount of ten million Euros (€10,000,000).

**24.2 Damages Payable by the Strategic Investor in respect of Wasted Costs or Retendering Costs**

24.2.1 If:

- (A) the Strategic Investor's rights and obligations under this Concession Agreement are terminated under Clause 22.2 (*Termination of the Strategic Investor's rights and obligations*); or
- (B) this Concession Agreement is terminated in its entirety under Clause 21.2 (*Termination for PCO Default*) for a PCO Default caused by an event set out in Clause 21.3.3 (*Consequences of a PCO Default*),

the RoL may elect (in its sole discretion) whether or not to commence a Retender Process.

24.2.2 If under Clause 24.2.1:

- (A) the RoL elects to commence a Retender Process within twenty four (24) Months after termination:
  - (1) the RoL may, within two (2) Months of that election, invoice the Strategic Investor for the RoL's Retendering Costs together with supporting documentary evidence (in a form and detail satisfactory to the Strategic Investor acting reasonably) for all Retendering Costs claimed; and
  - (2) the Strategic Investor shall, subject to Clause 24.2.3 and to the extent the Retendering Costs are agreed or determined amounts, pay to the RoL the invoiced Retendering Costs on or before the date falling two (2) Months after receiving an invoice for the same from the RoL; or
- (B) the RoL elects not to commence a Retender Process within twenty four (24) Months after termination:
  - (1) the RoL may, within two (2) Months of that election, invoice the Strategic Investor for the RoL's Wasted Costs together with supporting documentary evidence (in a form and detail satisfactory to the Strategic Investor acting reasonably) for all Wasted Costs claimed; and
  - (2) the Strategic Investor shall, subject to Clause 24.2.3 and to the extent the Wasted Costs are agreed or determined amounts, pay to the RoL the invoiced Wasted Costs on or before the date falling two (2) Months after receiving an invoice for the same from the RoL.

24.2.3 The Strategic Investor's maximum liability for Wasted Costs or Retendering Costs (as applicable) payable in accordance with Clause 24.2.2 shall not exceed

the amount of ten million Euros (€10,000,000). For the avoidance of doubt, the RoL may not claim both Wasted Costs and Retendering Costs.

#### 24.3 Disputes

Any disagreement between the RoL and the Strategic Investor in respect of the quantum or evidence to support a claim by the Strategic Investor for Wasted Costs under Clause 24.1 (*Damages Payable by the RoL in respect of Wasted Costs*) or a claim by the RoL for Retendering Costs or Wasted Costs under Clause 24.2 (*Damages Payable by the Strategic Investor in respect of Wasted Costs or Retendering Costs*) may be referred by either Party to be determined in accordance with the Dispute Resolution Procedure.

### 25. ROL'S THIRD PARTY RIGHTS UNDER THE SHAREHOLDERS' AGREEMENT

25.1 On termination of this Concession Agreement under Clause 21.2 (*Termination for PCO Default*) or Clause 23.2 (*Termination following a negative FID or decision not to proceed to any further LNTP phase*) the Parties:

25.1.1 acknowledge that the RoL will have certain third party rights under the Shareholders' Agreement to require all or some, as the case may be, of the Shareholders (including the Strategic Investor) to transfer their Shareholders' Interests as it stands from time to time, to the RoL or a RoL Nominee; and

25.1.2 agree that the sums payable by the RoL in the event of an exercise by it of any of the rights referred to in Clause 25.1.1 shall be determined pursuant to a valuation procedure described in the Shareholders' Agreement and those sums shall not exceed such sums as would be payable by the RoL to each Shareholder for its respective Shareholder's Interest in accordance with Clause 26.4 (*Payment of the Mandatory Transfer Price*).

### 26. ROL EVENT MANDATORY TRANSFER OF SHARES

#### 26.1 PCO to deliver Invested Capital Statement

26.1.1 The PCO shall, within ten (10) Business Days of the expiry of the period in Clause 20.3.1 (*Consequences of a RoL Event*), notify the RoL of the composition of the capital of the PCO by delivering to the RoL a completed Invested Capital Statement stating the total Invested Capital in respect of each Exiting Shareholder as at the Calculation Date.

26.1.2 The Parties agree and acknowledge that each Exiting Shareholder shall, in accordance with the requirements of the Shareholders' Agreement, provide the PCO promptly with any information the PCO may reasonably require in order to provide the RoL with the Invested Capital Statement in accordance with Clause 26.1.1.

#### 26.2 Calculation and notification of Mandatory Transfer Price

No more than ten (10) Business Days after the date of the notification of the Invested Capital Statement pursuant to Clause 26.1, the RoL shall:

26.2.1 determine its calculation of the price payable to each Exiting Shareholder cited in the RoL Event Notice as wishing to exercise its buyout rights in respect of its Shareholder's Interest (the "**Mandatory Transfer Price**") represented by "x" below and calculated as follows:

$$x = a + (a_1 \times b \times c_1) + (a_2 \times b \times c_2) \dots - d$$

where:

$a$  = Invested Capital (and  $a_n$  = each Tranche thereof, disregarding any return of Share capital to an Exiting Shareholder (in the case of a Subscription Payment) or a repayment or prepayment to an Exiting Shareholder by the PCO of the principal amount of any Shareholder Loan (in the case of a Principal Amount) which occurs prior to the Calculation Date)

$b$  = a margin of 5% per annum (calculated on the basis of a 360-day year) applicable to each Tranche (the "**Margin**")

$c_n$  = (i) the number of Calendar Days comprising the period from the date on which the PCO received the relevant Tranche of Invested Capital to the Calculation Date, as the case may be, divided by (ii) 360

$d$  = the aggregate amount of (i) any distribution of income or profit paid in cash or cash equivalents by the PCO and received by the relevant Exiting Shareholder in respect of any Tranche of Shares issued to such Exiting Shareholder in consideration for its Subscription Payments, and (ii) any Return Amount

"**Return Amount**" means if:

- (A) any Tranche of Invested Capital is the subject of (i) a return of Share capital to an Exiting Shareholder (in the case of a Subscription Payment), (ii) a repayment or prepayment to an Exiting Shareholder by the PCO of the principal amount of any Shareholder Loan (in the case of a Principal Amount), or (iii) a payment of any interest in cash or cash equivalent by the PCO and received by the relevant Exiting Shareholder (in the case of a Principal Amount) an amount equal to the aggregate of (in respect of each such return, repayment, prepayment or interest payment):

$$e \times f \times g$$

where:

$e$  = is the amount of the relevant return, repayment, prepayment or interest payment received by the Exiting Shareholder;

$f$  = is the Margin; and

$g$  = is the number of Calendar Days comprising the period from the date on which the Exiting Shareholder received the relevant return, repayment, prepayment or interest payment to the Calculation Date, divided by 360; or

- (B) otherwise, zero,

and

26.2.2 notify the PCO of its calculation of the Mandatory Transfer Price in respect of each Exiting Shareholder's Shareholder's Interest,

and the PCO shall within five (5) Business Days notify the Exiting Shareholder of the Mandatory Transfer Price as determined by the RoL and notified to the PCO in accordance with this Clause 26.2.

## 26.3 Disputing the Mandatory Transfer Price

26.3.1 If, having been notified by the PCO of the RoL's calculation of the Mandatory Transfer Price in respect of its Shareholder's Interest pursuant to Clause 26.2.2 (*Calculation and notification of Mandatory Transfer Price*), an Exiting

Shareholder notifies the PCO that it wishes to challenge its notified Mandatory Transfer Price, the PCO shall within twenty (20) Business Days of such Exiting Shareholder's notification issue to the RoL a Notice of Dispute in accordance with the Dispute Resolution Procedure. If no such notice is served by an Exiting Shareholder on the PCO within twenty (20) Business Days of that Exiting Shareholder being notified by the PCO of the RoL's calculation of its Mandatory Transfer Price, the PCO shall notify the RoL of such fact and the Mandatory Transfer Price for that Exiting Shareholder shall be deemed to be the RoL's calculation thereof.

26.3.2 Subject to Clause 26.4.4 (*Payment of the Mandatory Transfer Price*), in the event of service by the PCO of a Notice of Dispute in accordance with Clause 26.3.1, the RoL's payment obligation under Clause 26.4 (*Payment of the Mandatory Transfer Price*) to that Exiting Shareholder shall be suspended, until the earlier of:

- (A) a final determination of the Mandatory Transfer Price in accordance with the Dispute Resolution Procedure; or
- (B) the RoL and that Exiting Shareholder agreeing in writing the Mandatory Transfer Price in respect of such Exiting Shareholder's Shareholder's Interest.

#### 26.4 **Payment of the Mandatory Transfer Price**

26.4.1 The RoL shall pay:

- (A) the Mandatory Transfer Price; and
- (B) the Supplementary Margin,

to the Exiting Shareholder by no later than ten (10) Business Days after the date on which either (i) the RoL and the Exiting Shareholder agree (or are deemed to have agreed) the Mandatory Transfer Price in each case in accordance with Clause 26.3, or (ii) subject to Clause 26.4.4, the Mandatory Transfer Price is finally determined in accordance with the Dispute Resolution Procedure and Clause 26.3.1, save in the event that a Voluntary Encumbrance remains in place on the expiry of such period, in which case, no later than ten (10) Business Days after the release of such Voluntary Encumbrance.

26.4.2 The Parties acknowledge that in accordance with the Shareholders' Agreement, each Exiting Shareholder shall, within ten (10) Business Days after the date on which either (i) the RoL and the Exiting Shareholder agree (or are deemed to have agreed) the Mandatory Transfer Price in each case in accordance with Clause 26.3.1 or (ii) subject to Clause 26.4.4 the Mandatory Transfer Price is finally determined in accordance with the Dispute Resolution Procedure in accordance with Clause 26.3.1, and in each case upon payment of the Mandatory Transfer Price and the Supplementary Margin, do everything within its power to transfer its Shareholder's Interests to the RoL or the RoL Nominee. If an Exiting Shareholder cannot complete such transfer of its Shareholder's Interest (or any part thereof) owing to any Voluntary Encumbrance, the Parties acknowledge that it will be required by the Shareholders' Agreement to hold on trust for the RoL its Shareholders' Interest pending release of any Voluntary Encumbrance. The terms of this trust will be set out in the Shareholders' Agreement.

26.4.3 For the avoidance of doubt, the Mandatory Transfer Price and the Supplementary Margin shall be due and payable by the RoL under Clause 26.4.1 notwithstanding

any restriction or impediment on the ability of an Exiting Shareholder to transfer its Shareholder's Interest (or any part thereof) to the RoL or the RoL Nominee (other than, as described in Clauses 26.4.1 and 26.4.2, owing to any Voluntary Encumbrance over the Exiting Shareholder's Shareholder's Interest). The Parties acknowledge that in accordance with the Shareholders' Agreement, there shall be no obligation on the relevant Exiting Shareholder to refund, reimburse or compensate the RoL in the event of any delay in or impossibility of transferring its Shareholder's Interest pursuant to this Clause 26 provided that the Exiting Shareholder has complied with its obligations under Clause 26.4.2.

26.4.4 Following the service of a Notice of Dispute, the RoL shall pay the portion of the Mandatory Transfer Price and the respective Supplementary Margin to that Exiting Shareholder that is agreed by the RoL and that Exiting Shareholder within ten (10) Business Days of the date on which the RoL and the Exiting Shareholder agree such portion. The obligation of the RoL to pay any additional amount and any respective Supplementary Margin shall only arise following determination being made pursuant to the Dispute Resolution Procedure or the RoL and the relevant Exiting Shareholder reaching agreement in relation to that additional amount.

26.4.5 The Mandatory Transfer Price and the Supplementary Margin shall be paid in Euros, free and clear of all deductions or withholdings by the RoL of any kind, except for those required by Law, and if any deduction or withholding by the RoL must be made by Law, the RoL will pay that additional amount which is necessary to ensure that each Exiting Shareholder receives a net amount equal to the full Mandatory Transfer Price and the Supplementary Margin which it would have received if the payment had been made without the deduction or withholding by the RoL.

26.4.6 Subject to Clause 26.4.7, the RoL shall pay to an Exiting Shareholder:

- (A) an amount equal to amount, if any, of Lithuanian Tax due from the Exiting Shareholder as a result of the RoL's payment to it of the Mandatory Transfer Price, any amount pursuant to Clause 26.4.5 and the Supplementary Margin;
- (B) an amount equal to the amount, if any, of all Lithuanian stamp duty, registration or other similar Lithuanian Taxes due and payable by the Exiting Shareholder in respect of the transfer of its Shareholder's Interest to the RoL or a RoL Nominee; and
- (C) an amount equal to the amount, if any, of any Lithuanian VAT due as a result of (i) the RoL's payment to it of the Mandatory Transfer Price, any amount pursuant to Clause 26.4.5 and the Supplementary Margin (and the Parties acknowledge that the Mandatory Transfer Price, any amount pursuant to Clause 26.4.5 and the Supplementary Margin is exclusive of any VAT in Lithuania), (ii) a full or partial termination of this Concession Agreement, or (iii) the transfer to the RoL or a RoL Nominee of the Exiting Shareholder's Shareholder's Interest,

such payment by the RoL of any amount required under Clause 26.4.7 (A), (B) or (C) being payable prior to the date on which the relevant Lithuanian Tax, stamp duty, registration, or other similar Lithuanian Tax or Lithuanian VAT becomes payable by such Exiting Shareholder.

26.4.7 If the RoL disputes any amount in a demand received by it under Clause 26.4.6 it shall make payment of any undisputed amount in the demand on or before the due date for such amount under that demand and shall issue a Notice of Dispute to the relevant Exiting Shareholder specifying the amount in dispute and shall not be obliged to pay such disputed amount until the dispute is resolved in accordance with the Dispute Resolution Procedure or otherwise by agreement between the RoL and the relevant Exiting Shareholder.

**26.5 Termination and further provisions**

26.5.1 If all Shareholders are Exiting Shareholders, this Concession Agreement shall terminate automatically upon the completion of the transfer of the last Exiting Shareholder's Shareholder's Interest to the RoL. Where any Exiting Shareholder's Shareholder's Interest has been settled on trust under Clause 26.4 (*Payment of the Mandatory Transfer Price*), the transfer of such Exiting Shareholder's Shareholder's Interest shall be deemed to be completed six (6) Months after the date of its settlement on trust.

26.5.2 The PCO shall take such action as is within its powers and may be required to give effect to the provisions of this Clause 26 (*RoL Event Mandatory Transfer of Shares*).

26.5.3 The RoL shall indemnify on demand and hold harmless each Exiting Shareholder from payments it makes in response to a call for funding, or requested by way of such a call but not yet made, (which, if made, would constitute either a Principal Amount or a Subscription Payment) notified in either case by the PCO to such an Exiting Shareholder in accordance with the Shareholders' Agreement during the period from the date of the agreement or determination that a RoL Event has occurred under Clause 20.2 until the date on which the Exiting Shareholder ceases to hold any Shares.

## **PART 8: GENERAL PROVISIONS**

### **27. SURVIVAL, RIGHTS AND OBLIGATIONS**

#### **27.1 Termination of the Concession Agreement**

Notwithstanding any other provisions of this Concession Agreement (including any provision that provides for the termination of any rights or obligations of any Party), if this Concession Agreement is terminated in respect of all Parties for any reason (including, for the avoidance of doubt, as a result of repudiatory breach):

27.1.1 this Clause 27.1 and the following provisions of this Concession Agreement (and any defined terms, Clauses and/or Schedules, Appendices and Annexes referred to in them and/or necessary in order to give effect to them) including all rights and obligations arising under those provisions will survive such termination of this Concession Agreement:

(A) Clauses 1 (*Definitions and Interpretation*), 6.2 (*PCO Responsibilities*), 6.3 (*Enforcement of PCO and Strategic Investor Obligations*), 7.2 (*RoL Responsibilities*), 7.3 (*RoL Nominee*), 8.1 (*Changes to the Shareholders' Agreement*), 11.1.3 (*Project Management*), 11.3.2 (*Notification of a decision not to proceed to any further LNTP phase*), 11.4.2 (*Notification of taking FID*), 13 (*Confidentiality*), 14 (*Publicity*), 15.1, 15.2, 15.3 (*Nuclear*), 16 (*Liability*), 17 (*Damages are Insufficient Compensation and Equitable Remedies are to be Available*), 19 (*Application of Clauses 19 to 26 Inclusive: Termination*), 20.3 (*Consequences of a RoL Event*), 20.4 (*Mitigation following a RoL Event*), 21.3 (*Consequences of a PCO Default*), 21.4 (*Other Consequences of Termination for PCO Default*), 23.1 (*Termination by Agreement of the Parties*), 23.4 (*RoL Call Option on Non-Default Termination*), 23.5 (*Consequences of Non-Default Termination*), 24 (*Damages for Termination*), 25 (*RoL's Third Party Rights under the Shareholders' Agreement*), 26 (*RoL Event Mandatory Transfer of Shares*), 28.1.3 (*Warranties*), 29 (*Force Majeure*), 30 (*Assignment*), 32 (*Shareholder Put Option*), 33 (*Notices*), 34 (*Entire Agreement*), 35 (*Variation and Waiver*), 37 (*Severability*), 38 (*Costs and Expenses*), 39 (*Interest to Run on Default*), 40 (*Contracts (Rights of Third Parties) Act*), 41 (*No Partnership/Agency*), 43 (*Language*), 44 (*Governing Law*), 45 (*Dispute Resolution and Arbitration*) and 46 (*Sovereign Immunity Waiver*); and

(B) any other provisions of this Concession Agreement which expressly survive termination of the Concession Agreement or which are required to give effect to such termination or the consequences of such termination;

27.1.2 save as expressly provided in this Concession Agreement, upon termination of this Concession Agreement (for whatever cause) any accrued rights or obligations to which the Parties may be entitled or be subject to before the date of such termination will remain in full force and effect; and

27.1.3 save as provided for in this Clause 27 (*Survival, Rights and Obligations*), all rights and obligations of each Party under this Concession Agreement will cease and be of no further force or effect upon termination of this Concession Agreement.



## 27.2 Strategic Investor's rights and obligations cease

Notwithstanding any other provision of this Concession Agreement (including any provision that provides for termination of any rights or obligations of any Party), if the Strategic Investor's rights and obligations under this Concession Agreement are terminated (including, for the avoidance of doubt, as a result of a repudiatory breach) under Clause 22.2 (*Termination of the Strategic Investor's rights and obligations*) or Clause 23.3 (*Termination in respect of the Strategic Investor due to Strategic Investor exit from Shareholding*):

27.2.1 this Clause 27.2 and the following provisions of this Concession Agreement (and any defined terms, Clauses and/or Schedules, Appendices and Annexes referred to in them and/or necessary in order to give effect to them) including all rights and obligations of the Strategic Investor arising under those provisions will survive:

- (A) Clauses 1 (*Definitions and Interpretation*), 6.2 (*PCO Responsibilities*), 6.3 (*Enforcement of PCO and Strategic Investor Obligations*), 7.2 (*RoL Responsibilities*), 7.3 (*RoL Nominee*), 13 (*Confidentiality*), 14 (*Publicity*), 15.1, 15.2, 15.3 (*Nuclear*), 16 (*Liability*), 17 (*Damages are Insufficient Compensation and Equitable Remedies are to be Available*), 19 (*Application of Clauses 19 to 26 Inclusive: Termination*), 20.3 (*Consequences of a RoL Event*), 22.3 (*Consequences of Termination*), 23.5 (*Consequences of Non-Default Termination*), 24 (*Damages for Termination*), 25 (*RoL's Third Party Rights under the Shareholders' Agreement*), 26 (*RoL Event Mandatory Transfer of Shares*), 28.1.3 (*Warranties*), 29 (*Force Majeure*), 30 (*Assignment*), 32 (*Shareholder Put Option*), 33 (*Notices*), 34 (*Entire Agreement*), 35 (*Variation and Waiver*), 37 (*Severability*), 38 (*Costs and Expenses*), 39 (*Interest to Run on Default*), 40 (*Contracts (Rights of Third Parties) Act*), 41 (*No Partnership/Agency*), 43 (*Language*), 44 (*Governing Law*), 45 (*Dispute Resolution and Arbitration*) and 46 (*Sovereign Immunity Waiver*); and
- (B) any other provisions of this Concession Agreement which expressly survive termination of the Concession Agreement in respect of the Strategic Investor's rights and obligations or which are required to give effect to such termination or the consequences of such termination;

27.2.2 save as expressly provided in this Concession Agreement, upon termination of this Concession Agreement in respect of the Strategic Investor's rights and obligations (for whatever cause) any accrued rights or obligations to which the Parties may be entitled or be subject to before the date of such termination will remain in full force and effect; and

27.2.3 save as provided for in this Clause 27.2 (*Survival, Rights and Obligations*), all rights and obligations of the Strategic Investor under this Concession Agreement will cease and be of no further force or effect upon termination of this Concession Agreement in respect of the Strategic Investor's rights and obligations only.

## 28. WARRANTIES

### 28.1

28.1.1 Each Party represents, warrants and undertakes to the other Parties that, as at the Concession Date and the Investment Date (but, in respect of the PCO only, subject to the PCO obtaining any necessary Consents or third party approvals

(including approvals of the Shareholders) required either by Law, this Concession Agreement or the Shareholders' Agreement to exercise its rights or comply with its obligations under this Concession Agreement):

- (A) it has the legal right and full power and authority to enter into, and exercise its rights and perform its obligations under, this Concession Agreement;
- (B) save as provided for in this Concession Agreement, all actions required by it to authorise the execution and delivery of, and to exercise its rights and perform its obligations under, this Concession Agreement have been duly taken and this Concession Agreement shall constitute binding obligations upon it;
- (C) the execution and delivery of, and the exercise by it of its rights, and the performance by it of its obligations, under this Concession Agreement do not and shall not:
  - (1) constitute a default under any provision of any agreement or instrument to which it is a party;
  - (2) result in a breach of any provision of its memorandum or articles of association (or equivalent documents); or
  - (3) result in a breach of any lien, lease, order, judgment, award, injunction, decree, ordinance or regulation or any other restriction of any kind or character by which it is bound; and
- (D) save as provided in, or obtained prior to the execution of, this Concession Agreement, no Consent of any government agency or other person is required by it for entry into this Concession Agreement.

28.1.2 Subject and without prejudice to Clause 16.5.9(A), the RoL represents and warrants that:

- (A) on the Concession Date and each day after the Concession Date (by reference to the facts and circumstances then existing), the Strategic Investor has been selected, the Concession has been awarded and this Concession Agreement has been entered into and/or awarded (as appropriate);
- (B) on each of the dates on which each Ancillary Contract is entered into and each day thereafter (by reference to the facts and circumstances then existing) (as applicable for each Ancillary Contract), each Ancillary Contract has been entered into and/or awarded,

by the RoL and the PCO in full compliance with all applicable Law and procedures relating to procurement and competitive bidding and the RoL acknowledges that the PCO and the Strategic Investor enter into this Concession Agreement and undertake the Project in reliance on this repeating representation and warranty.

28.1.3 The RoL:

- (A) represents and warrants on the Concession Date and on each day after the Concession Date (by reference to the facts and circumstances then existing) that the central bank of Lithuania (*Lietuvos bankas*) has a different legal and juridical personality from that of the RoL such that its

assets are not available for the satisfaction of any successful claim against the RoL; and

- (B) undertakes that it shall not transfer any of the RoL's assets to the central bank of Lithuania (*Lietuvos bankas*) for the sole purpose of avoiding such assets being available for the satisfaction of any Claim against it.

## **29. FORCE MAJEURE**

### **29.1 Performance of Obligations**

Subject to Clause 29.2 (*Notification and Mitigation*), if an Affected Party is, or could reasonably be expected to be, materially hindered, prevented or delayed from performing any of its obligations under this Concession Agreement (other than an obligation to pay any sum due) by reason of a Force Majeure Event or the consequences of that Force Majeure Event, such obligations shall be suspended (to the extent affected) for a period equal to the duration of the Force Majeure Event and its consequences.

### **29.2 Notification and Mitigation**

29.2.1 The Affected Party shall, promptly on becoming aware of a Force Majeure Event, notify the other Parties of:

- (A) the nature of the Force Majeure Event relied on;
- (B) the estimated effect of the Force Majeure Event on the Affected Party's ability to perform its obligations under this Concession Agreement (including any effect on the Affected Party's ability to achieve any key dates or milestones under this Concession Agreement);
- (C) any action proposed to mitigate its effect; and
- (D) the period for which it is estimated the Force Majeure Event and its consequences will continue.

29.2.2 As soon as reasonably practicable following notification pursuant to Clause 29.2.1, the Parties shall consult with each other and use all reasonable endeavours to agree whether any extension(s) of time in relation to any key dates or milestones under this Concession Agreement are required (having regard to the nature of the Force Majeure Event and its consequences and their effect on performance of the relevant obligations) and, if so, what the extension(s) will be, and appropriate arrangements to mitigate the effects of the Force Majeure Event and its consequences and facilitate the resumption of any affected obligations. If the Parties cannot agree on any of the foregoing matters, the issue can be referred by any Party to the Dispute Resolution Procedure for determination.

29.2.3 The Affected Party shall:

- (A) use all reasonable endeavours to minimise the effects of the Force Majeure Event on the performance of its obligations under this Concession Agreement;
- (B) provide to the non-Affected Party written reports as often as reasonably required by the non-Affected Party containing information as to the circumstances of the Affected Party's progress in minimising the effects of the Force Majeure Event and indicating when it is estimated that performance of any affected obligations will resume;

- (C) so far as is reasonably practicable, provide any information relating to the Force Majeure Event and its effects as any other Party may reasonably request; and
  - (D) (without prejudice to any applicable law and/or Regulatory Requirement) make any alternative arrangements for resuming the performance of its obligations as may be practicable without incurring material additional expense.
- 29.2.4 Where the Affected Party is the PCO, the PCO shall at all times during which a Force Majeure Event is subsisting take all steps reasonably necessary in accordance with Good Industry Practice to overcome or minimise the consequences of the Force Majeure Event.
- 29.2.5 If the RoL or the Strategic Investor is the Affected Party, it shall at all times during which a Force Majeure Event is subsisting take all steps reasonably necessary to overcome or minimise the consequences of the Force Majeure Event.
- 29.2.6 As soon as reasonably practicable after the cessation of the consequences of a Force Majeure Event, the Affected Party shall notify the other Parties that the Force Majeure Event has ended and (without prejudice to any applicable law, including any Regulatory Requirements) shall resume the full performance of its obligations under this Concession Agreement as soon as is reasonably practicable (subject to any agreement or, if necessary, further agreement pursuant to Clause 29.2.7, between the Parties as to the extension(s) of time, having regard to the nature of the Force Majeure Event and its effect on performance of the relevant obligations).
- 29.2.7 If any extension of time has been agreed or determined pursuant to Clause 29.2.2 and, following the cessation of the consequences of the Force Majeure Event, any of the Parties consider that the duration of the extension of time should be revisited and extended further, the Parties shall consult each other and use all reasonable endeavours to agree what the extension(s) of time in relation to any key dates or milestones should have been and, if the Parties cannot agree on what any extension(s) of time should have been, the issue can be referred by any Party to the Dispute Resolution Procedure for determination.
- 29.2.8 For the avoidance of doubt, save to the extent stipulated in this Clause 29 (*Force Majeure*), no Party shall be released from any of its obligations under this Concession Agreement as a result of the occurrence of a Force Majeure Event (subject to any agreement between the Parties as to the extension(s) of time, having regard to the nature of the Force Majeure Event and its effect on performance of the relevant obligations).

### **30. ASSIGNMENT**

- 30.1 The RoL may not assign (whether absolutely or by way of security and whether in whole or in part), transfer, pledge (*jkeitimas*), mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of, or rights under, this Concession Agreement (each of the above a "**dealing**") without the prior written consent of each of the Strategic Investor and the PCO and any purported dealing in contravention of this Clause 30 (*Assignment*) shall be ineffective.
- 30.2 Subject to Clause 30.5, the PCO may not assign (whether absolutely or by way of security and whether in whole or in part), transfer, pledge (*jkeitimas*), mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of, or rights under, this

Concession Agreement (each of the above a "**dealing**") without the prior written consent of the RoL and any purported dealing in contravention of this Clause 30 (*Assignment*) shall be ineffective.

- 30.3 Subject to Clause 30.5, the Strategic Investor may not assign (whether absolutely or by way of security and whether in whole or in part), transfer, pledge (*ikeitimas*), mortgage, charge or otherwise dispose in any manner whatsoever of the benefit of, or rights under, this Concession Agreement (each of the above a "**dealing**") without the prior written consent of the RoL (subject to the compliance by the RoL with Clause 30.4), and any purported dealing in contravention of this Clause 30 (*Assignment*) shall be ineffective.
- 30.4 Prior to giving its consent under Clause 30.3, but without prejudice to Clause 30.5, the RoL shall seek the consent of the PCO to the proposed dealing by the Strategic Investor (and any consent purported to be given by the RoL under Clause 30.3 shall be ineffective if the consent of the PCO is not so obtained).
- 30.5 The RoL hereby consents to any assignment (by way of security) or the grant of other security interests to a Financier of the benefit, or rights, of the Strategic Investor and/or the PCO under this Concession Agreement. The RoL agrees that, if so requested by the Strategic Investor and/or the PCO (each acting reasonably), it will enter into discussions in relation to direct agreements with applicable Financiers of, or direct or indirect equity investors in, the Strategic Investor and/or the PCO.
- 30.6 The terms of this Concession Agreement shall be binding on any permitted successors and assigns and shall inure to the benefit of and be enforceable by the other Parties and their respective permitted successors and assigns.

### **31. RESTRICTIONS ON TRANSFER OF SHARES AND CHANGE OF CONTROL**

#### **31.1 Restriction**

The PCO undertakes to the RoL not to register a transfer of Shares by a Shareholder unless the intended transferee either:

- 31.1.1 has been approved by the Strategic Companies Commission in relation to the National Security Criteria if such approval is required by applicable Law; or
- 31.1.2 is the RoL (or a RoL Nominee).

#### **31.2 Rights granted to the RoL in relation to Share Transfer and Prohibited Change of Control under the Shareholders' Agreement**

- 31.2.1 The Parties acknowledge the option granted in the Shareholders' Agreement to the RoL (as a third party) to acquire the Shareholder's Interests of a Shareholder in the event that a Prohibited Change of Control affects such a Shareholder.
- 31.2.2 The Parties further acknowledge that, pursuant to the Shareholders' Agreement and if required by applicable Law from time to time, a Shareholder intending to transfer any of its Shares (a "**Transferring Shareholder**") shall be required to promptly notify:
- (A) the PCO and provide it with all relevant information of the intended transfer for the PCO to notify the Strategic Companies Commission by means of a SCC Transfer Notice; and
  - (B) the RoL of the intended transfer by means of a related Transfer Notice, which shall include the Transfer Price.

### 31.3 **Review and determination of proposed transfer against National Security Criteria**

Upon receipt of an SCC Transfer Notice by the Strategic Companies Commission, delivered pursuant to and satisfying the information requirements of the Shareholders' Agreement and applicable Law, the RoL shall use its reasonable endeavours to procure that the Strategic Companies Commission:

- 31.3.1 considers without delay whether the National Security Criteria are satisfied in relation to the transferee identified in the SCC Transfer Notice; and
- 31.3.2 notifies its decision to the Transferring Shareholder as soon as reasonably practicable and in any event not later than within two (2) Months of receipt of the SCC Transfer Notice (or such shorter period as required by Law).

### 31.4 **Strategic Investor transfer of ownership restrictions**

31.4.1 The Strategic Investor shall procure that:

- (A) it remains an Associated Company of Hitachi, Ltd.;
- (B) no person owns (disregarding any security interest granted by any person) directly or indirectly the shares of the Strategic Investor in issue from time to time unless such person is one or more of:
  - (1) Hitachi, Ltd. or an Associated Company of Hitachi, Ltd.;
  - (2) a Japanese Company;
  - (3) an American Company;
  - (4) an EPC Sub-Contractor; or
  - (5) a person to whom the RoL has consented in writing in advance,

provided that in the case of (3) and (4) above, the relevant person is not, at the date on which it first owns (disregarding any security interest granted by any person) directly or indirectly any shares of the Strategic Investor, a member of a Restricted Group,

where for the purposes of this Clause 31.4 (*Strategic Investor transfer of ownership restrictions*):

**"Japanese Company"** means a company, body corporate or other legal person of any kind formed under the laws of Japan and at least one of its headquarters, principal place of business, or place of central management and control is situated in Japan, together with any wholly-owned direct or indirect subsidiaries thereof;

**"American Company"** means a company or body corporate or other legal person of any kind formed under the laws of any of the States of the United States of America or the District of Columbia and at least one of its headquarters, principal place of business, or place of central management and control is situated in the United States, together with any wholly-owned direct or indirect subsidiaries thereof;

**"EPC Sub-Contractor"** means any person who is or is anticipated to be (i) a party to a contract with the EPC Contractor in connection with the Project and provides, pursuant to such contract, material work, goods or services to the EPC Contractor in connection with the Project; (ii) an Associated Company of a person covered by (i) above; or (iii) a direct or indirect supplier of material work, goods or services to a person covered by either (i) or (ii) above (material work, goods or services being that which has, or is anticipated to have, a value in excess of €50,000,000);

**"Restricted Group"** means an Ultimate Holding Company and each of its Associated Companies the principal business activity of which (taken together) is generating, supplying, transmitting or distributing electricity, regardless in each case of the geographical location in which any such activities are carried out; and

**"Ultimate Holding Company"** means a body corporate which does not have a holding company (where holding company has the meaning given to it in section 1159 of the Companies Act 2006).

31.4.2 The Strategic Investor undertakes not to register any transfer of Strategic Investor Shares by any Strategic Investor Shareholder if it is aware, after due enquiry, that such transfer would constitute a breach by it of Clause 31.4.1. The Strategic Investor shall, within twenty (20) Business Days of receiving a written request from the RoL, provide the RoL with a certified copy of the register of members (*akcininkų asmeninių vertybinių popierių sąskaitos*) of the Strategic Investor.

## **32. SHAREHOLDER PUT OPTION**

### **32.1 National Security Criteria Put Option**

32.1.1 If the Strategic Companies Commission determines that a proposed transferee identified to it in an SCC Transfer Notice does not satisfy the National Security Criteria (and a refusal by the Strategic Companies Commission to determine or a failure by the Strategic Companies Commission to make a determination within two (2) months of receipt of the SCC Transfer Notice shall be considered to be a determination that a proposed transferee does not satisfy the National Security Criteria), but in each case either:

- (A) the proposed transferee is a Shareholder;
- (B) the Contractual National Security Criteria are satisfied; or
- (C) a determination is made under the Dispute Resolution Procedure that the Contractual National Security Criteria are satisfied,

then subject to each Shareholder's pre-emption right in the Shareholders' Agreement, the RoL shall, within two (2) Months of (i) the determination of the Strategic Companies Commission in the case of (A) or (B), and (ii) the determination under the Dispute Resolution Procedure in the case of (C), offer to purchase from the Transferring Shareholder on the same terms as those specified in the related Transfer Notice (including the Transfer Price), all the Transferring Interest in respect of which any pre-emption rights of any Shareholders have not been exercised in accordance with the Shareholders' Agreement (the "**RoL NSC Offer**"). Where the RoL fails to make a RoL NSC Offer to a Transferring Shareholder in respect of such whole or partial Transferring Interest within two (2) Months of the relevant determination, the RoL shall be deemed to have made a RoL NSC Offer to such Shareholder immediately upon the expiry of that two (2) Month period.

- 32.1.2 The remaining provisions of this Clause 32.1 (*National Security Criteria Put Option*) are subject to the Transferring Shareholder providing notice to the RoL that it either accepts or rejects the RoL NSC Offer (a "**Transfer Decision Notice**") within twenty (20) Business Days of the date of the RoL NSC Offer ("**Transfer Decision Period**").
- 32.1.3 If the Transferring Shareholder has provided the RoL with a Transfer Decision Notice during the Transfer Decision Period accepting the RoL NSC Offer, the RoL shall, within ten (10) Business Days of the service of the Transfer Decision Notice pay the Transfer Price to the Transferring Shareholder subject to:
- (A) the Transferring Shareholder having completed the transfer of its Transferring Interest to the RoL (or the RoL Nominee) in accordance with the Shareholders' Agreement; or
  - (B) where the Transferring Shareholder's ability to transfer its Shareholder's Interest to the RoL (or the RoL Nominee) cannot be completed in accordance with the Shareholders' Agreement owing to an Encumbrance (save an Encumbrance voluntarily entered into) or a regulatory impediment, such Transferring Shareholder has delivered to the RoL a duly executed deed of the Transferring Shareholder declaring and settling its Shareholder's Interest on trust for RoL (or the RoL Nominee) until such time as a transfer of its Shareholder's Interest to the RoL (or the RoL Nominee) can be completed.
- 32.1.4 If the Transferring Shareholder does not give a Transfer Decision Notice during the Transfer Decision Period, or the Transferring Shareholder gives a Transfer Decision Notice during the Transfer Decision Period rejecting the RoL NSC Offer, the RoL NSC Offer shall lapse and the RoL shall be under no obligation to purchase or offer to purchase such Transferring Interest from the Transferring Shareholder.
- 32.1.5 The PCO shall take such action within its power as may be required to give effect to the provisions of this Clause 32 (*Shareholder Put Option*).
- 32.1.6 Without prejudice to any other rights or remedies, either pursuant to this Concession Agreement or otherwise, including in respect of fraud, in the event that within six (6) Months from the date of a transfer of a Transferring Interest to the RoL pursuant to this Clause 32 (*Shareholder Put Option*) it transpires that any of the Contractual National Security Criteria have not been satisfied, the Parties agree that the relevant Transferring Shareholder, at the option of the RoL, shall be



required by the Shareholders' Agreement to re-acquire the Transferring Interest at the Transfer Price plus interest calculated in accordance with Clause 39 (*Interest to Run on Default*) from the date that the original Transfer Price was paid to the Transferring Shareholder in accordance with this clause.

### **33. NOTICES**

#### **33.1 Notices in Writing**

Unless permitted to be sent, and sent, by email under Clause 33.2 (*Notices by Email*), any notice under and in connection with this Concession Agreement:

33.1.1 shall be in writing and shall be in the English language;

33.1.2 shall be left at the address of the addressee or sent by pre-paid recorded delivery to the address of the addressee or sent by facsimile to the facsimile number of the addressee in each case which is specified in this Clause 33.1.2 in relation to the Party to whom the notice is addressed, and marked for the attention of the person so specified and/or marked for the attention of such other person as the relevant Party may from time to time specify by notice given in accordance with Clause 33.3 (*Change in Notice Details*). For the purposes of this Clause 33.1.2, the relevant details of each Party at the Concession Date are:

#### **RoL**

Address:

Facsimile:

Attention:

#### **Strategic Investor**

Address:

Facsimile:

Attention:

#### **PCO**

Address:

Facsimile:

Attention:

33.1.3 shall, in the absence of evidence of earlier receipt, take effect from the time that each notice is deemed to be received which, subject to Clause 33.1.4, shall be deemed to be:

(A) in the case of a notice left at the address of the addressee, upon delivery at that address;

(B) in the case of a posted letter, on the fifth (5<sup>th</sup>) Calendar Day after posting if posted within the European Union or on the fourteenth (14<sup>th</sup>) Calendar Day after posting if posted from/to outside the European Union; and

(C) in the case of a facsimile, on production of a transmission report from the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient provided that a confirmatory copy of such facsimile has been sent by post

in accordance with this Clause 33.1 within twenty-four (24) hours of such transmission; and

- 33.1.4 which are received or deemed to be received under Clause 33.1.3 on a Calendar Day which is not a Business Day, or after 5.00 pm on any Business Day, shall be deemed to be received at 9.00 am on the following Business Day. References to time in this Clause 33.1.4 are to local time in the country of the addressee.

### 33.2 Notices by Email

- 33.2.1 Any notification or provision of information pursuant to Clauses 12.1 and 12.2 (*Regulatory Interface*) shall be permitted (but not required) to be sent by email.

- 33.2.2 If a notice, as permitted by Clause 33.2.1, is sent by email it shall be in the English language and shall be sent from and to the following representatives of the Parties only at the email address which is specified in this Clause 33.2.2. For the purposes of this Clause 33.2.2, the relevant details of each Party as at the Concession Date are:

#### **RoL**

Name/Position/Department:

Email address:

#### **Strategic Investor:**

Name/Position/Department:

Email address:

#### **PCO:**

Name/Position/Department:

Email address:

- 33.2.3 Any notice given by email under this Clause 33.2 (*Notices by Email*) shall, subject to Clause 33.2.4, be deemed to be received when the email is first stored in the recipient's email box. The place of receipt of the email shall be deemed to be the postal address nominated by the recipient Party in Clause 33.1.2.

- 33.2.4 Any notice given by email under this Clause 33.2 (*Notices by Email*) which is deemed to be received in accordance with Clause 33.2.3 on a Calendar Day which is not a Business Day, or after 5 p.m. on any Business Day, shall be deemed to be received at 9.00am on the following Business Day. References to time in this Clause 33.2.4 are to local time in the country of the place of receipt.

### 33.3 Change in Notice Details

Each Party undertakes to notify the other Parties by notice served in accordance with Clause 33.1 (*Notices in Writing*) if the addressee, address, facsimile number or email address (as applicable) specified in Clauses 33.1.2 and/or 33.2.2 is no longer appropriate and to provide new replacement details for the service of notices. The new details provided under this Clause 33.3 shall, in respect of each of the other Parties individually, be deemed to replace the details listed at Clauses 33.1.2 and/or 33.2.2 (as applicable) from the date of receipt of the notice by that other Party.

### 33.4 Communication with the RoL

Any communication or document to be made or delivered to the RoL in accordance with this Concession Agreement shall be sent to the MoE which, subject and without prejudice

to the foregoing provisions of this Clause 33 (*Notices*), shall be deemed to have received and accepted such communication or document on behalf of the RoL.

#### **34. ENTIRE AGREEMENT**

34.1 Without prejudice to any terms of the exclusivity arrangement referred to in Recital (C) which are expressed to remain in force following termination of that arrangement, each of the Parties to this Concession Agreement confirms that this Concession Agreement and the applicable terms of the Shareholders' Agreement represents the entire understanding between the three of them, and constitutes the whole agreement between the three of them, in relation to the subject matter of the Concession and supersedes any previous agreement between the Parties with respect thereto and, without prejudice to the generality of the foregoing, excludes any warranty, condition or other undertaking implied at law or by custom, usage or course of dealing.

34.2 Each Party confirms that:

34.2.1 in entering into this Concession Agreement it has not relied on any representation, warranty, assurance, covenant, indemnity, undertaking or commitment which is not expressly set out in this Concession Agreement; and

34.2.2 in any event, without prejudice to any liability for fraudulent misrepresentation or fraudulent misstatement or any rights and remedies under any Investment Protection Treaty, the only rights or remedies in relation to any representation, warranty, assurance, covenant, indemnity, undertaking or commitment given or action taken in connection with the Concession are pursuant to this Concession Agreement, and for the avoidance of doubt and without limitation, no Party has any other right or remedy (whether by way of a claim for contribution or otherwise) in tort (including negligence) or for misrepresentation (whether negligent or otherwise, and whether made prior to, and/or in, this Concession Agreement).

#### **35. VARIATION AND WAIVER**

35.1 The Parties may vary this Concession Agreement at any time provided that the variation is set out in writing and is signed by or on behalf of each of the Parties to this Concession Agreement. The expression "variation" includes any variation, supplement, deletion or replacement, however effected.

35.2 Except as otherwise expressly provided in this Concession Agreement, the rights and remedies of the Parties will not be affected by any failure to exercise or delay in exercising any right or remedy or by the giving of any indulgence by any other Party or by anything whatsoever except a specific waiver or release in writing and any such waiver or release will not prejudice or affect any other rights or remedies of the Parties. No single or partial exercise of any right or remedy will prevent any further or other exercise thereof or the exercise of any other right or remedy.

35.3 For the avoidance of doubt, on and following a termination of the rights and obligations of the Strategic Investor in accordance with Clauses 22.2 (*Termination of the Strategic Investor's rights and obligations*) or 23.3 (*Termination in respect of the Strategic Investor due to Strategic Investor exit from Shareholding*), the agreement of the Strategic Investor is required for any variation of any of the provisions referred to in Clause 27.2 (*Strategic Investor's rights and obligations cease*).

**36. COUNTERPARTS**

This Concession Agreement may be executed in any number of counterparts and by the Parties to it on separate counterparts, each of which when so executed and delivered will be an original, but all the counterparts will together constitute one and the same instrument.

**37. SEVERABILITY**

If any provision or part of this Concession Agreement is void or unenforceable due to any applicable law it will be deemed to be deleted and the remaining provisions of this Concession Agreement will continue in full force and effect. If any invalid, unenforceable or illegal provision of this Concession Agreement would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary agreed between the Parties to make it legal, valid and enforceable.

**38. COSTS AND EXPENSES**

Without prejudice to Clause 24 (*Damages for Termination*) each Party shall meet its own costs and expenses, including fees and expenses of its legal advisers, incurred in the preparation of this Concession Agreement.

**39. INTEREST TO RUN ON DEFAULT**

If any Party fails to pay any amount due and payable by it under this Concession Agreement or under any judgment or award in connection with this Concession Agreement, that Party shall, in addition to such amount, be liable to pay to the Party or Parties to whom the same was due, interest (which shall accrue from Calendar Day to Calendar Day) on such overdue amount from the due date until the date of actual payment, after as well as before judgment or award, at EURIBOR plus four and a half per cent (4.5%) per annum.

**40. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT**

40.1 With the exception of the rights of:

40.1.1 any Third Party Nuclear Indemnified Party to enforce the terms set out in Clauses 15.1 and 15.2 (*Nuclear*);

40.1.2 any member of the Hitachi, Ltd. Group, GE-Hitachi Nuclear Energy Americas LLC and Global Nuclear Fuel-Americas, LLC to enforce the terms set out in Clause 13.12 (*Third Party Loss*);

40.1.3 any Third Party Shareholder (as an Exiting Shareholder) to enforce the terms set out in:

(A) Clause 16.5.1 (*Breach of Warranty*);

(B) Clauses 20.2.2, 20.2.3 and 20.2.4 (*Termination for a RoL Event*); and

(C) Clause 26 (*RoL Event Mandatory Transfer of Shares*);

40.1.4 Global Nuclear Fuel – Americas, LLC and any Associated Company of the Strategic Investor which is a party to an Ancillary Contract to enforce the terms set out in Clause 16.5.3 (*Breach of Warranty*); and

40.1.5 any Third Party Shareholder (as a Transferring Shareholder) to enforce the terms set out in Clause 32 (*Shareholder Put Option*),

and subject to Clauses 40.2 and 40.4 below, no term of this Concession Agreement is enforceable under the Contract (Rights of Third Parties) Act 1999 by a person who is not a Party.

- 40.2 Save where any proposed amendment would affect the rights of the Shareholders (as Exiting Shareholders or Transferring Shareholders) in Clause 26 (*RoL Event Mandatory Transfer of Shares*) or Clause 32 (*Shareholder Put Option*), the consent of any Third Party shall not be required for any amendment to, or rescission of, this Concession Agreement.
- 40.3 For the avoidance of doubt, and notwithstanding any termination of the Strategic Investor's rights and obligations hereunder, where this Concession Agreement provides a right for a Shareholder, the Strategic Investor shall be entitled to enforce such right as a Party to this Concession Agreement and not as a Third Party under the Contract (Rights of Third Parties) Act 1999.
- 40.4 The rights of the Third Parties referred to in Clause 40.1 may not be assigned absolutely without the prior written consent of all the Parties, other than by way of security, and for the avoidance of doubt, such rights may also be pledged (*ikeistas*), mortgaged, charged or otherwise made the subject of a security interest without consent.

#### **41. NO PARTNERSHIP/AGENCY**

It is not the intention of the Parties to create, nor shall this Concession Agreement or any document referred to in it or any arrangement contemplated by it be deemed or construed to create, a partnership between any of the Parties. The execution, completion or implementation of this Concession Agreement shall not, and shall not be deemed or construed to, confer on any of the Parties the power to act as agent for any other Party, and no Party shall have the authority to act in the name or on behalf of or otherwise to bind any other Party in any way, and nor shall any Party have the power to pledge the credit of any other Party.

#### **42. CO-OPERATION IN RELATION TO THE POWER AT COST STRUCTURE**

- 42.1 The Parties acknowledge and agree that the PCO and the Shareholders are participating in the Project on the assumption that, subject to applicable Law, each Shareholder shall be entitled to purchase from the PCO, and the PCO shall be entitled to sell to each Shareholder, electricity generated by the NNPP for a price which reflects the costs incurred by the PCO related to the electricity generation and without any profit margin in fact or implied for the purposes of taxation pro-rata to the relevant Shareholder's shareholding in the PCO (the "**Offtake Right**").
- 42.2 If, after the Concession Date, a Competent Authority:
- 42.2.1 determines that the assumption in Clause 42.1 in respect of the Offtake Right is invalid; or
  - 42.2.2 otherwise makes a determination which results in the Offtake Right no longer being available to or capable of being implemented by the PCO and the Shareholders,

the RoL shall if requested by the PCO in writing, provide such assistance to the PCO as is reasonable in the circumstances (with the RoL taking into account the prevailing circumstances at the time including the PCO's position on the likelihood and timing of the Shareholders taking a FID if such assistance were to be given) to put in place a mutually agreeable alternative structure for the Project which will, to the extent possible and permissible by Law, achieve materially the same effect as the Offtake Right for the benefit of the PCO and the Shareholders.

**43. LANGUAGE**

- 43.1 This Concession Agreement has been prepared and executed in the English and Lithuanian languages. In the event of any difference in meaning between the two (2) versions, the English language version will prevail.
- 43.2 All communications and deliverables provided for, required by, or made in connection with this Concession Agreement will be in the English language.

**44. GOVERNING LAW**

This Concession Agreement (including Clause 45 (*Dispute Resolution Procedure and Arbitration*)) and any non-contractual obligations arising out of, or in connection with it, shall be governed by English law.

**45. DISPUTE RESOLUTION PROCEDURE AND ARBITRATION**

- 45.1 Any dispute, claim, difference or controversy arising out of, relating to or having any connection with this Concession Agreement, including any dispute as to its existence, validity, interpretation, performance, breach or termination or the consequences of its nullity (a "**Dispute**"), shall be resolved in accordance with the procedure in this Clause 45 (*Dispute Resolution Procedure and Arbitration*).
- 45.2 The party raising any Dispute shall first serve written notification of the Dispute to the other party in accordance with Clause 45.6 (a "**Notice of Dispute**"). The Notice of Dispute shall briefly describe the nature and circumstances of the Dispute.
- 45.3 The parties shall take reasonable measures to resolve the Dispute amicably. If the relevant parties have not reached an amicable agreement after one (1) Month of the date of service of the Notice of Dispute, unless the parties to the Dispute mutually agree to an extension the parties agree and consent that such Dispute shall be referred to and finally resolved by arbitration in accordance with Clause 45.4 (*ICSID Arbitration*) and only if the jurisdiction of International Centre for Settlement of Investment Disputes (the "**Centre**") is not available, then the Dispute shall be referred to arbitration in accordance with Clause 45.5 (*LCIA Arbitration*).

**45.4 ICSID Arbitration**

45.4.1 The Parties hereby consent to submit to the Centre any Dispute for settlement by arbitration pursuant to the Convention on the Settlement of Investment Disputes between States and Nationals of other States, done at Washington, 18 March 1965 (the "**ICSID Convention**").

45.4.2 It is further hereby agreed that:

- (A) this Concession Agreement is an "investment" for the purposes of Article 25 of the ICSID Convention;
- (B) any Dispute shall be deemed to be a "legal dispute arising directly out of an investment", for the purposes of Article 25(1) of the ICSID Convention; and
- (C) the PCO and the Strategic Investor are a "national of another Contracting State" for purposes of Article 25(2)(b) of the ICSID Convention.

45.4.3 The consent given in this Clause 45 (*Dispute Resolution Procedure and Arbitration*) shall be considered to satisfy the requirement for:

- (A) "consent in writing" of the parties to a dispute for purposes of Article 25 of the ICSID Convention; and

(B) an "agreement in writing" for the purposes of Article II of the New York Convention.

45.4.4 In the event of arbitration under the ICSID Convention, all hearings shall be held in London, England unless the disputing parties agree otherwise.

#### 45.5 LCIA Arbitration

45.5.1 If the jurisdiction of the Centre is not available for the determination of a Dispute, any Dispute shall be referred to and finally resolved by arbitration under the LCIA Arbitration Rules (for the purpose of this Clause 45.5 (*LCIA Arbitration*), the "**Rules**").

45.5.2 The Rules are incorporated by reference into this Clause 45.5 (*LCIA Arbitration*) and capitalised terms used in this Clause 45.5 (*LCIA Arbitration*) which are not otherwise defined in this Concession Agreement have the meaning given to them in the Rules.

45.5.3 The seat or legal place of arbitration shall be London, England.

45.5.4 The number of arbitrators shall be three. Each party shall nominate one arbitrator and the two arbitrators nominated by the parties shall (in consultation with the party which nominated him or her) within twenty (20) Business Days of the appointment of the second arbitrator agree upon a third arbitrator who shall act as chairman of the tribunal. If no agreement is reached within twenty (20) Business Days of the appointment of the second arbitrator, the LCIA Court shall nominate and appoint a third arbitrator to act as chairman of the tribunal.

45.5.5 If there are multiple claimants and/or multiple respondents, all claimants and/or all respondents shall attempt to agree upon their respective appointment(s). If there are multiple claimants and they fail to make a joint appointment of an arbitrator in their request for arbitration, an arbitrator shall be appointed on their behalf by the LCIA Court in accordance with the Rules. If there are multiple respondents and they fail to nominate an arbitrator within twenty (20) Business Days from the date of service of the request for arbitration on them, an arbitrator shall be appointed on their behalf by the LCIA Court in accordance with the Rules. In such circumstances, any existing nomination or confirmation of the arbitrator chosen by the party or parties on the other side of the proposed arbitration shall be unaffected, and the remaining arbitrator shall be appointed in accordance with the Rules. The two arbitrators nominated by the parties (or by the LCIA Court) shall within twenty (20) Business Days of the appointment of the second arbitrator agree upon a third arbitrator who shall act as chairman of the tribunal. If no agreement is reached within twenty (20) Business Days of the appointment of the second arbitrator, the LCIA Court shall nominate and appoint a third arbitrator to act as chairman of the tribunal.

45.5.6 Each Party expressly agrees and consents to this procedure for nominating and appointing the arbitral tribunal; and to the extent it is not permitted to choose its own arbitrator pursuant to this Clause, irrevocably and unconditionally waives any right to choose its own arbitrator.

45.5.7 The jurisdiction of the English courts under section 45 and section 69 of the Arbitration Act 1996 is excluded.

45.5.8 If arbitral proceedings have already been commenced under Clause 45.5 (*LCIA Arbitration*) or any Related Agreement under a corresponding LCIA provision (a "**Pre-Existing Arbitration**"), and a Party or a party to a Related Agreement

contends that a dispute has arisen relating to issues which are substantially related to and/or involve the same parties as issues to be determined in a Pre-Existing Arbitration (a "**Related Dispute**"), then that party may seek to refer the relevant dispute to the arbitral tribunal in the Pre-Existing Arbitration. The Parties agree that the arbitral tribunal in the Pre-Existing Arbitration shall have the discretion, taking into account the interests of justice and efficiency, the stage of the proceedings and all other relevant circumstances, to determine the Related Dispute in the Pre-Existing Arbitration upon such terms or conditions as the arbitral tribunal thinks fit.

- 45.5.9 If more than one arbitration is commenced under Clause 45.5 (*LCIA Arbitration*) and any Related Agreement and any Party contends that two or more arbitrations are substantially related and/or involve the same parties and that the issues should be heard in one proceeding, the arbitral tribunal appointed in the first-filed of such proceedings shall have the power to determine, taking into account the interests of justice and efficiency, the stage of the proceedings and all other relevant circumstances, whether the whole or part of the matters at issue should be consolidated before that arbitral tribunal upon such terms or conditions as the arbitral tribunal thinks fit. In that case, the arbitral tribunal appointed in the second arbitration, or in a subsequent arbitration, shall have the power to suspend its proceedings.
- 45.5.10 Subject to Clauses 45.3 and 45.4 (*ICSID Arbitration*), if the jurisdiction of the Centre is not available and a Dispute is referred to arbitration under Clause 45.5 (*LCIA Arbitration*), the Dispute may be disposed of in the same arbitration proceedings as any other dispute arising under another Related Agreement, even in the presence of parties other than the Parties to this Agreement.
- 45.5.11 Any respondent named in a request for arbitration may join any other party to any arbitral proceedings under this Agreement, provided that:
- (A) such joinder is based upon a dispute substantially related to the Dispute referred to arbitration under Clause 45.5 (*LCIA Arbitration*) or a Related Dispute in the relevant request for arbitration; and
  - (B) such joinder is made by written notice to the LCIA Court and to all other Parties within either twenty (20) Business Days from the receipt by such respondent of the relevant request for arbitration or such longer time as may be determined by the LCIA Court or the arbitrators.
- 45.5.12 The arbitral tribunal in the relevant arbitration shall have the power to determine whether such joinder is appropriate taking into account the interests of justice and efficiency and all other relevant circumstances.
- 45.5.13 Each of the Parties hereby consents to be joined to arbitration proceedings in relation to any Dispute referred to arbitration under Clause 45.5 (*LCIA Arbitration*) or any Related Dispute at the request of a party to that Dispute following any party's request for joinder of parties or consolidation of disputes or arbitral proceedings.
- 45.5.14 Any joined party may make a counterclaim against any party, provided that:
- (A) such counterclaim is based upon a Dispute or a Related Dispute substantially related to the dispute in issue, in the relevant request for arbitration; and



(B) such counterclaim is made by written notice to the LCIA Court and to all other parties within either twenty (20) Business Days from the receipt by such party of the relevant notice of arbitration or such longer time as may be determined by the LCIA Court or the arbitrators.

45.5.15 Any joined party shall be bound by any award rendered by the arbitral tribunal even if such party chooses not to participate in the arbitral proceedings.

45.5.16 The Parties agree that in the event of any joinder or consolidation of proceedings, at the application of any party to the proceedings, the Parties may ask the LCIA Court to fix separate advances on costs in respect of each claim, counterclaim or cross-claim in the proceedings, and the Parties hereby give their consent to any such application.

#### 45.6 Notices

45.6.1 The language used in the arbitral proceedings referred to in this Clause 45 (*Dispute Resolution Procedure and Arbitration*) shall be English. All documents submitted in connection with the proceedings shall be in the English language, or, if in another language, accompanied by an English translation.

45.6.2 Service of a Notice of Dispute made pursuant to this Clause 45 (*Dispute Resolution Procedure and Arbitration*) shall be by registered post at the address given for the sending of notices under this Concession Agreement at Clause 33.1 (*Notices*).

#### 45.7 Service of Process

45.7.1 The RoL irrevocably appoints the Embassy of the Republic of Lithuania to the United Kingdom of Great Britain and Northern Ireland to the court of St. James's for the time being as its agent under this Concession Agreement for service of process in any proceedings before the English courts in support of arbitration, including proceedings to enforce, recognise or execute any arbitral award rendered by an arbitral tribunal. If any person appointed as process agent is unable under this Clause 45.7 (*Service of Process*) for any reason to so act, the RoL must immediately appoint another agent. Failing this, the claimant in those proceedings (or claimants jointly) may appoint another process agent for this purpose.

45.7.2 The PCO irrevocably appoints [●] as its agent under this Concession Agreement for service of process in any proceedings before the English courts in support of arbitration, including proceedings to enforce, recognise or execute any arbitral award rendered by a tribunal. If any person appointed as process agent is unable under this Clause 45.7 (*Service of Process*) for any reason to so act, the PCO must immediately appoint another agent. Failing this, the claimant in those proceedings (or claimants jointly) may appoint another process agent for this purpose.

45.7.3 The Strategic Investor irrevocably appoints [●] as its agent under this Concession Agreement for service of process in any proceedings before the English courts in support of arbitration, including proceedings to enforce, recognise or execute any arbitral award rendered by a tribunal. If any person appointed as process agent is unable under this Clause 45.7 (*Service of Process*) for any reason to so act, the Strategic Investor must immediately appoint another agent. Failing this, the claimant in those proceedings (or claimants jointly) may appoint another process agent for this purpose.

45.7.4 The Parties agree that failure by a process agent to notify of any process will not invalidate the relevant proceedings. This Clause 45.7 (*Service of Process*) does not affect any other method of service allowed by law.

#### **46. SOVEREIGN IMMUNITY WAIVER**

46.1 The RoL irrevocably and unconditionally waives any and all claims to immunity in regard to any arbitration proceedings and any court proceedings in any jurisdiction in support of arbitration, including proceedings to enforce, recognise or execute any arbitral award rendered by a tribunal constituted pursuant to this Concession Agreement, including immunity from service of process and immunity from the jurisdiction of any court, and immunity from execution in respect of any of its assets with the exception of Excepted Property (as defined below).

46.2 For the avoidance of any doubt, the RoL irrevocably and unconditionally: (i) submits to the jurisdiction of the English courts and the courts of any other jurisdiction in relation to the recognition of any judgment or order of the English courts in support of any arbitration in respect of any Dispute and in relation to the recognition of any arbitral award in respect of any Dispute, and (ii) consents for the purpose of the State Immunity Act 1978 of the United Kingdom and waives its right to claim immunity from execution in relation to the enforcement of any order or judgment in support of an arbitration in respect of any Dispute or any award made or given in connection with any Dispute and the giving of any relief in the English courts and the courts of any other jurisdiction in support of an arbitration in respect of any Dispute whether before or after a final arbitral award including:

46.2.1 relief by way of interim or final injunction or order for specific performance or recovery of any property other than Excepted Property;

46.2.2 attachment of its assets other than Excepted Property;

46.2.3 enforcement or execution against any property, revenues or other assets other than Excepted Property; and

46.2.4 any other relief available under applicable law in relation to its assets other than Excepted Property.

46.3 "**Excepted Property**" means:

46.3.1 premises of the mission as defined in the Vienna Convention on Diplomatic Relations signed in 1961;

46.3.2 consular premises as defined in the Vienna Convention on Consular Relations signed in 1963;

46.3.3 property, including any bank account, which is used or intended for use in the performance of the functions of the diplomatic mission of the State or its consular posts, special missions, missions to international organisations or delegations to organs of international organisations or to international conferences;

46.3.4 property of a military character or used or intended for use in the performance of military functions;

46.3.5 property of the central bank or other monetary authority of the State;

46.3.6 property forming part of the cultural heritage of the State or part of its archives and not placed or intended to be placed on sale; and

46.3.7 property forming part of an exhibition of objects of scientific, cultural or historical interest and not placed or intended to be placed on sale.

46.4 For the avoidance of any doubt, the Parties expressly acknowledge and confirm that this Concession Agreement is a commercial rather than a public or governmental act.

**IN WITNESS** of which the Parties have executed this Concession Agreement on the date first above mentioned

**SIGNED** by **THE REPUBLIC OF** )  
**LITHUANIA** acting by **THE MINISTRY OF** )  
**ENERGY** )

**SIGNED** by [●] )  
[●], as [●] [attorney] )  
for and on behalf of )  
**[SPV OF HITACHI, LTD.]** )  
[(in exercise of a power of attorney )  
dated [●])] )

**SIGNED** by [●] )  
[●], as [●] [attorney] )  
for and on behalf of the **PCO** )  
[(in exercise of a power of attorney )  
dated [●])] )

**SCHEDULE 1**  
**DEFINITIONS**

**DEFINITIONS**

**"Abandonment"**

means, in the period from the Concession Date until the date on which a positive FID or a final negative FID is taken, the occurrence of any of the following events:

- (A)
  - (1) the Shareholders adopt a decision to liquidate the PCO;
  - (2) a court ruling to initiate bankruptcy proceedings in respect of the PCO comes into effect and which proceedings are not withdrawn or dismissed within twenty (20) Business Days of such court ruling; or
  - (3) any creditor(s) of the PCO (other than the RoL or any Associated Company of the RoL) adopt a decision to initiate out-of-court bankruptcy proceedings against the PCO and:
    - (i) which decision is not withdrawn prior to the commencement of such out-of-court bankruptcy proceedings; or
    - (ii) if proceedings are commenced pursuant to such decision, such proceedings are not frivolous or vexatious or withdrawn or dismissed within twenty (20) Business Days of their commencement; or
- (B) other than as a result of a Force Majeure Event or applicable law (save where such applicable law, including any Regulatory Requirement is in response to an act or omission of the PCO or any of its Subcontractors), neither a positive nor negative FID has been taken by the Shareholders by the earlier of 31 December 2015 or by the date thirty three (33) Months after the date of the issuance of the first LNTP or such later date as may have been agreed by the RoL;
- (C) the PCO commits a repudiatory breach of this Concession Agreement,

other than where such event is as a direct result of a RoL Event or any failure of the RoL to meet its obligations under this Concession Agreement;

**"Access Road"**

has the meaning given to it in Paragraph 1 (*Definitions and Interpretation*) of Schedule 2 (*Road Access Works*);

**"Access Road Construction Contracts"**

means any construction contract, professional appointment or similar or related agreement entered into by or on behalf of the

	RoL with a Third Party in connection with the design, construction or maintenance of the Access Road Works;
<b>"Access Road Works"</b>	has the meaning given to it in Paragraph 1 ( <i>Definitions and Interpretation</i> ) of Schedule 2 ( <i>Access Road Works</i> );
<b>"Affected Party"</b>	means the Party or Parties affected by a Force Majeure Event;
<b>"Amended Vienna Convention"</b>	means the Vienna Convention on Civil Liability for Nuclear Damage 1963 as amended by the Vienna Protocol;
<b>"American Company"</b>	has the meaning given to it in Clause 31.4.1 ( <i>Strategic Investor transfer of ownership restrictions</i> );
<b>"Ancillary Contract"</b>	means the EPC Contract and, if applicable, the O&M Support Contract and/or Fuel Supply Contract and <b>"Ancillary Contracts"</b> shall be construed accordingly;
<b>"Ancillary Contractor"</b>	means any contractor providing works or services which is a party to an Ancillary Contract;
<b>"Associated Company"</b>	means any Formation which directly or indirectly Controls, is Controlled by, or is under common Control with the relevant entity (and, where the relevant entity is a consortium, any member of the consortium);
<b>"Business Day"</b>	means a Calendar Day other than a Saturday, Sunday or a legal or bank holiday in Lithuania;
<b>"Calculation Date"</b>	means for the purpose of the calculation of Invested Capital and the proportion of the Invested Capital Statement under Clause 26 ( <i>RoL Event Mandatory Transfer of Shares</i> ), the date on which the relevant RoL Event is agreed or determined to have occurred under Clause 20.2 ( <i>Termination for a RoL Event</i> );
<b>"Calendar Day"</b>	means a period of twenty-four (24) hours ending at twelve (12) midnight;
<b>"Centre"</b>	has the meaning given to it in Clause 45.3 ( <i>Dispute Resolution Procedure and Arbitration</i> );
<b>"Challenging Entity"</b>	has the meaning given to it in Clause 16.5.3(B) ( <i>Breach of warranty</i> );
<b>"Claim"</b>	means any claim, demand, action or suit, cause of action or proceeding under or in connection with this Concession Agreement;
<b>"COD" or "Commercial Operation Date"</b>	means the date that the NNPP begins generating electricity for export to the national transmission grid for commercial purposes (and not solely for the purposes of testing the completed NNPP);
<b>"Competent Authority"</b>	means any national or supra-national agency, authority, inspectorate at the international, European Union, State or

municipal level, court or tribunal of the European Union or the Republic of Lithuania or any part of it which has jurisdiction over all or any part of the PCO, the PCO Assets, the Shares and/or the Project;

"Competitor"	has the meaning given to it in the Shareholders' Agreement;
"Concession"	has the meaning given to it in Recital E;
"Concession Date"	means the date of this Concession Agreement being also the date on which the RoL awards the Concession to the PCO;
"Consents"	means any authorisation, consent, licence, permit, permission, order, agreement, notice or other form of approval by or with any Competent Authority which is required by Law, relating to the acquisition, ownership, occupation, construction, start-up, commissioning, testing, fuelling, operation, repair, decommissioning or maintenance of the NNPP (including the Construction and Operation Licence) and, without prejudice to the generality of the foregoing, shall include any condition precedent or other requirement of any Competent Authority which must as a matter of Law be satisfied prior to the grant, issuance, renewal, variation, extension, continuation and/or reconfirmation of any such authorisation, consent, licence, permit, permission, order, agreement, notice or other form of approval (including the Construction and Operation Licence);
"Construction and Operation Licence"	means a licence granted under the Law on Nuclear Safety on the Republic of Lithuania of 28 June 2011, No. XI-1539 to construct and operate nuclear energy object(s);
"Contract Claim"	has the meaning given to it in Clause 16.2.2 ( <i>Concurrent Claims</i> );
"Contract Term"	has the meaning given to it in Clause 2.2 ( <i>Award of Concession and Term</i> );
"Contractual National Security Criteria"	means the criteria set out in Schedule 4 ( <i>National Security Criteria</i> );
"Control"	including, with its correlative meanings, " <b>Controlled by</b> " and " <b>under common Control with</b> " means:  (A) the power (whether directly or indirectly, and whether by the ownership of share capital, the possession of voting power, contract or otherwise): (i) to appoint and/or remove all or such of the members of the board of directors or other governing body of a person as are able to cast a majority of the votes capable of being cast by the members of that board or body; and/or (ii) to control the policies and affairs of that person, in both cases in all, or substantially all, matters; or  (B) the holding and/or possession of the beneficial interest in and/or the ability to exercise the voting rights applicable

to shares or other securities in any person (whether directly or by means of holding such interests in one or more other persons) which confer in aggregate on the holders thereof 50 per cent or more of the total voting rights exercisable at general meetings of that person on all, or substantially all, matters.

For the avoidance of doubt, the appointment of a receiver, receiver and manager, administrative receiver, administrator, liquidator, insolvency official or similar in any jurisdiction in respect of any person or the property of any person (or the exercise by any such receiver, receiver and manager, administrative receiver, administrator, liquidator, insolvency official or similar, of any of its powers other than a power of sale in respect of relevant shares or securities) shall not be considered to alter who Controls such person;

<b>"Convention on Supplementary Compensation"</b>	means the Convention on Supplementary Compensation for Nuclear Damage 1997;
<b>"Credit Payments"</b>	has the meaning given to it in the Shareholders' Agreement;
<b>"Decommissioning Phase"</b>	means the period from and including the date that the decommissioning of the NNPP in accordance with applicable Law commences;
<b>"Decommissioning and Waste Funding Principles"</b>	means the principles set out in Schedule 6 ( <i>Decommissioning and Waste Funding Principles</i> );
<b>"Development Timetable"</b>	means the overall timetable for the development of the Project as prepared by the PCO;
<b>"Disclosing Party"</b>	has the meaning given to it in Clause 13.2 ( <i>Confidential Information</i> );
<b>"Dispute"</b>	has the meaning given to it in the Dispute Resolution Procedure in Clause 45 ( <i>Dispute Resolution Procedure and Arbitration</i> );
<b>"Dispute Resolution Procedure"</b>	means the dispute resolution procedure set out in Clause 45 ( <i>Dispute Resolution Procedure and Arbitration</i> );
<b>"Eesti Energia"</b>	[means Eesti Energia AS, a company incorporated under the laws of Estonia with registration number 10421629 whose registered office is at: Laki tn. 24, 12915 Tallinn, Estonia;]
<b>"Encumbrance"</b>	means any charge, mortgage, lien, option, equity, power of sale, hypothecation, usufruct, retained title, right of pre-emption, right of first refusal or other third party right in the nature of a security interest or an agreement, arrangement or obligation to create any of the foregoing;

<b>"Energy Charter Treaty"</b>	means the Energy Charter Treaty as opened for signature in Lisbon on 17 December 1994 and in force as of 16 April 1998;
<b>"Energy Charter Treaty Replacement"</b>	has the meaning given to it in Paragraph 1.3 of Schedule 8 ( <i>Fundamental Change</i> );
<b>"ENSREG"</b>	means the European Nuclear Safety Regulators Group and/or any organisation which has taken over, or carries out on behalf of the ENSREG, all or part of the functions or responsibilities of the ENSREG;
<b>"Environment"</b>	means air (including air within buildings and air within other natural or man-made structures above or below ground), water (including territorial and coastal and inland waters, groundwater and water within any natural or man-made structure) and land (including land under water, surface land and sub-surface land) and any organisms or ecosystems supported by the air, water or land;
<b>"Environmental Regulations"</b>	means each applicable Law relating to the pollution or protection of the Environment, or human health and safety, or the generation, transportation, storage, treatment, disposal or presence of any Hazardous Substance;
<b>"EPC Contract"</b>	means any engineering, procurement and construction contract under which the EPC Contractor will provide engineering, procurement and construction services, support services and, if agreed under the terms of that contract, certain fuel services to the PCO for the purposes of the Project;
<b>"EPC Contractor"</b>	means any one or more Associated Companies of the Strategic Investor, which may be or include Hitachi-GE Nuclear Energy, Ltd., (the identity of which, if not Hitachi-GE Nuclear Energy, Ltd. or not guaranteed by Hitachi-GE Nuclear Energy, Ltd. or Hitachi, Ltd. (in a form accepted by the PCO) shall be subject to acceptance by the RoL) that enters into an EPC Contract with the PCO;
<b>"EPC Contractor Default"</b>	means where the EPC Contractor is in breach or default of the EPC Contract and such breach entitles the PCO to terminate the EPC Contract;
<b>"EPC Sub-Contractor"</b>	has the meaning given to it in Clause 31.4.1 ( <i>Strategic Investor transfer of ownership restrictions</i> );
<b>"EURATOM"</b>	means the European Atomic Energy Community and/or any organisation which has taken over, or carries out on behalf of the EURATOM, all or part of the functions or responsibilities of the EURATOM;
<b>"EURIBOR"</b>	means, in relation to an overdue amount, the percentage rate equal to the six (6) Month Euro Interbank Offered Rate determined by the Banking Federation of the European Union displayed on the



	appropriate page of the Reuters screen at 11.00 a.m. on the date on which such amount became due;
<b>"Excepted Property"</b>	has the meaning given to it in Clause 46.3 ( <i>Sovereign Immunity Waiver</i> );
<b>"Exiting Shareholder"</b>	has the meaning given to it in Clause 20.2.1 ( <i>Termination for a RoL Event</i> );
<b>"FID"</b>	means a final investment decision in relation to the Project as provided for in the Shareholders' Agreement and " <b>positive FID</b> " shall be construed as a final investment decision to proceed with the Project and " <b>negative FID</b> " shall be construed as a final investment decision not to proceed with the Project;
<b>"final negative FID"</b>	has the meaning given to it in Clause 11.4.1 ( <i>Notification of taking FID</i> );
<b>"Financier"</b>	means: <ul style="list-style-type: none"> <li>(A) any person who provides, commits to provide, underwrites, insures and/or guarantees any direct or indirect financial accommodation (including, without limitation, loans, securities, letters of credit, performance guarantees, other documentary credits, derivatives or other forms of financial indebtedness) to or for the account of the PCO or any Shareholder(s); and</li> <li>(B) any agent or trustee on behalf of any of the persons referred to in paragraph (A) above; and</li> <li>(C) any rating agency who may issue a public or private rating in respect of any such financial accommodation;</li> </ul>
<b>"First Concrete"</b>	means the commencement of the first reactor building structural concrete pour by the EPC Contractor in accordance with the EPC Contract and as shown on the Development Timetable;
<b>"Force Majeure Event"</b>	means any act, event or occurrence affecting any Party's performance of its obligations under this Concession Agreement, the cause of which is not of such Party's making nor within that Party's reasonable control (and, in relation to the PCO having acted in accordance with Good Industry Practice or, in relation to the RoL having acted in a reasonable and prudent manner to avoid such act, event or occurrence), including (to the extent not of that Party's making nor within that Party's reasonable control): <ul style="list-style-type: none"> <li>(A) epidemic, war, hostilities (whether or not war has been declared), blockades, terrorist acts or acts of any civil or military authority;</li> <li>(B) riot, insurrection, civil commotion, public disobedience, public demonstration, sabotage or acts of vandalism;</li> <li>(C) acts of God including fire, flood, earthquake, adverse weather, meteorological and sea conditions, landslides,</li> </ul>

	lightning, volcanic eruption or explosion;
	(D) impact from aircraft or things falling from aircraft;
	(E) any strike, lock-out, trade dispute or other labour disruptions (i) not involving solely the personnel or subcontractors of that Party; and (ii) not originating with that Party's personnel or subcontractors or the personnel or subcontractors of any Associated Company of that Party; or
	(F) any ionising radiation, contamination by radioactivity, radioactive, chemical or biological contamination;
<b>"Formation"</b>	means any company, partnership, limited liability partnership, trust, fund or other entity (whether being a legal person or not);
<b>"Fuel Supply Contract"</b>	means any nuclear fuel supply and related services contract which may be entered into by the PCO and the Nuclear Fuel Supplier as contemplated by the Nuclear Fuel Supply Terms;
<b>"Full Notice to Proceed" or "FNTP"</b>	means the "FNTP" or Full Notice to Proceed issued under the EPC Contract;
<b>"GE-Hitachi Nuclear Energy Americas LLC"</b>	means a company registered and incorporated in [●] [under company number [●]] whose address is at [●];
<b>"Global Nuclear Fuel-Americas, LLC"</b>	means a company registered and incorporated in [●] [under company number [●]] whose address is at [●];
<b>"Good Industry Practice"</b>	means exercising the degree of skill and care, diligence, prudence and foresight which would reasonably and ordinarily be expected of a skilled and experienced contractor, owner or operator (as applicable) engaged in activities: <ul style="list-style-type: none"> <li>(A) as applicable to the PCO (i) of a similar nature, scope, value and complexity to the Concession activities and under the same or similar circumstances, (ii) in relation to the maintenance and operation of a new nuclear power plant of a similar nature, scope, value and complexity to the completed NNPP, and (iii) in relation to clean-up and/or decommissioning activities of a nuclear site and new nuclear power plant of a similar nature, scope, value and complexity to the completed NNPP; and</li> <li>(B) as applicable to the RoL, activities of a similar nature, scope, value and complexity to the design, construction and maintenance of the Access Road,</li> </ul> in each case (as applicable), where such contractor, owner or operator (as applicable) is seeking to comply with its contractual obligations, including in relation to all applicable Laws, Consents, codes of practice and standards;
<b>"Hazardous Substance"</b>	means any natural or artificial substance or thing (whether in solid, liquid or gaseous form) which is (alone or in combination)

capable of causing harm to the Environment or harm to human health;

**"Highly Sensitive Information"**

means:

- (A) information relating to the design and construction of all or any part of a Hitachi, Ltd., Hitachi-GE Nuclear Energy, Ltd., GE-Hitachi Nuclear Energy Americas LLC or one of their Associated Company's ABWR nuclear power plants;
- (B) information relating to the design or manufacturing of any nuclear fuel by Global Nuclear Fuel – Americas, LLC; and
- (C) pricing information to be provided by the EPC Contractor, the Nuclear Fuel Supplier and/or the O&M Support Contractor under or in connection with the EPC Contract, the Fuel Supply Contract and/or the O&M Support Contract, but not for the avoidance of doubt information in respect of the overall price relating to (i) the LNTP and FNTP phases under the EPC Contract, (ii) the Fuel Supply Contract, or (iii) the O&M Support Contract;

**"Hitachi-GE Nuclear Energy, Ltd."**

means a company registered and incorporated in [●] [under company number [●]] whose address is at [●];

**"Hitachi, Ltd."**

means a company registered and incorporated in [●] [under company number [●]] whose address is at [●] being the [ultimate] parent company of the Strategic Investor;

**"Hitachi, Ltd. Group"**

means Hitachi, Ltd. and its Associated Companies;

**"IAEA"**

means the International Atomic Energy Agency and/or any organisation which has taken over, or carries out on behalf of the IAEA, all or part of the functions or responsibilities of the IAEA;

**"IAEA Agreement"**

means the Agreement on the Privileges and Immunities of the International Atomic Energy Agency of 1967;

**"IAEA Statute"**

means the Statute of the International Atomic Energy Agency of 1956;

**"ICSID Convention"**

has the meaning given to it in Clause 45.4.1 (*ICSID Arbitration*);

**"Indemnified Person"**

has the meaning given to it in Clause 16.5.3 (*Breach of warranty*);

**"indexation rate"**

means the Production Price Index for Lithuania, published by EUROSTAT;

**"Individual"**

means a physical person who is a director, officer, partner, member, employee and/or consultant of a Project Participant or a Related Person;

<b>"Intellectual Property Rights"</b>	<p>means any and all worldwide:</p> <ul style="list-style-type: none"> <li>(A) patent rights and inventions (whether patentable or not), including all patent applications and disclosures thereto, design rights, utility models, copyrights and neighbouring rights and related rights (including rights in software), moral rights, mask work rights, semiconductor topography rights, database rights, trade marks, trade names, business names, domain names and know-how;</li> <li>(B) applications for registration and the right to apply for registration thereto; and</li> <li>(C) other intellectual property, industrial property or proprietary rights of a corresponding or similar nature recognised in any country or jurisdiction worldwide,</li> </ul> <p>in each case regardless of whether existing under statute, common law or equity, whether registered or unregistered, and all tangible embodiments thereof;</p>
<b>"Invested Capital"</b>	<p>means in respect of each Exiting Shareholder the aggregate on the Calculation Date of (i) the capital sums invested by that Exiting Shareholder in the PCO by way of either Subscription Payments or Principal Amounts and (ii) Credit Payments in respect of that Exiting Shareholder;</p>
<b>"Invested Capital Statement"</b>	<p>means the table in agreed form set out in Schedule 9 (<i>Invested Capital Statement</i>);</p>
<b>"Investment Date"</b>	<p>means the date on which the Shareholders fund the PCO pursuant to the Shareholders' Agreement in order to provide it with the funding required for the first LNTP;</p>
<b>"Investment Protection Treaty"</b>	<p>means any investment protection treaty between the RoL and one or more other countries (and includes the Energy Charter Treaty);</p>
<b>"Japanese Company"</b>	<p>has the meaning given to it in Clause 31.4.1 (<i>Strategic Investor transfer of ownership restrictions</i>);</p>
<b>"Joint Protocol"</b>	<p>means the Joint Protocol Relating to the Application of the Vienna Convention and the Paris Convention of 1988;</p>
<b>"Key Subcontractor"</b>	<p>means an entity who enters into any Key Subcontract with the PCO;</p>
<b>"Key Subcontract"</b>	<p>means a Subcontract which is of material importance to the performance of the Concession, whether because it is of significant value, key to the performance of the PCO's obligations under this Concession Agreement (including a Subcontract with a key technology provider, a supplier of key materials or a key development works contractor), relates to goods or services where there are limited alternative sources or otherwise (and includes</p>

	any Ancillary Contract);
<b>"Latvenergo"</b>	[means Latvenergo AS, a company incorporated under the laws of Latvia with registration number 40003032949 whose registered office is at: Pulkveža Brieža iela 12, Rīga, LV-1230, Latvia;]
<b>"Law"</b>	means: <ul style="list-style-type: none"> <li>(A) any law passed by the Parliament of the Republic of Lithuania;</li> <li>(B) any resolution passed by the Government of the Republic of Lithuania that has the force of the law;</li> <li>(C) any Regulatory Requirement;</li> <li>(D) any decision, order, resolution, regulation, rule, notice adopted at the State or municipal level within the Republic of Lithuania that has the force of the law;</li> <li>(E) the Lithuanian Constitution;</li> <li>(F) any stock exchange regulation, court practices and rulings within the Republic of Lithuania that have the force of law; and</li> <li>(G) any EU law, treaties or other international law acts, in each case as effective in the Republic of Lithuania;</li> </ul>
<b>"Law on Concessions"</b>	means the Law on Concessions of the Republic of Lithuania of 24 June 2003, No. IX-1647 (as amended);
<b>"liability"</b>	has the meaning given to it in Clause 1.2.18;
<b>"Limited Notice to Proceed" or "LNTP"</b>	means the "LNTP" or Limited Notice to Proceed issued under the EPC Contract;
<b>"Lithuanian Constitution"</b>	means the Constitution of the Republic of Lithuania adopted by citizens of the Republic of Lithuania under the referendum of 25 <sup>th</sup> October 1992 (as amended from time to time);
<b>"Lithuanian Investor"</b>	means UAB "Visagino atominė elektrinė", a company registered and incorporated in Lithuania under company number 301844044 whose address is at Žvejų g. 14, LT-09310 Vilnius, Lithuania;
<b>"LIV IP"</b>	means all Intellectual Property Rights in the studies and reports relating to the Project as set out in Schedule 7 ( <i>LIV IP</i> );
<b>"Losses"</b>	means all losses, damages, liabilities, costs and expenses (including reasonable legal fees and expenses) and "Loss" shall be construed accordingly;
<b>"Mandatory Transfer Price"</b>	has the meaning given to it in Clause 26.2 ( <i>Calculation and notification of Mandatory Transfer Price</i> );
<b>"Margin"</b>	has the meaning given to it in Clause 26.2.1 ( <i>Calculation and notification of Mandatory Transfer Price</i> );

<b>"MoE"</b>	means the Ministry of Energy of the Republic of Lithuania;
<b>"Month"</b>	means a calendar month which is a period of time consisting of thirty (30) Calendar Days if the period commences in April, June, September and November, and thirty one (31) Calendar Days if it commences in any other month excepting February when it consists of twenty-eight (28) Calendar Days or twenty-nine (29) Calendar Days in a leap year and <b>"Monthly"</b> shall be construed accordingly;
<b>"National Security Criteria"</b>	means the criteria indicated in Part 10, Article 7 and Article 8 of the Law on Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises of Importance to Ensuring National Security of the Republic of Lithuania of 21 July 2009, No. XI-375 and such criteria that substitute or amend the former from time to time;
<b>"New York Convention"</b>	means the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958;
<b>"New York Convention Replacement"</b>	has the meaning given to it in Paragraph 1.4 of Schedule 8 ( <i>Fundamental Change</i> );
<b>"NNPP"</b>	has the meaning given to it in Recital C;
<b>"non-Affected Party"</b>	means the Party or Parties not affected by a Force Majeure Event;
<b>"Non-EEA State"</b>	shall mean, from time to time, any State that has not acceded to the European Economic Area as a full member;
<b>"Non-NATO State"</b>	shall mean, from time to time, any State that has not acceded to the North Atlantic Treaty Organisation as a full member;
<b>"Non-Proliferation Treaty"</b>	means the Treaty on the Non Proliferation of Nuclear Weapons of 1968;
<b>"Notice of Dispute"</b>	has the meaning given to it in Clause 45.2 ( <i>Dispute Resolution Procedure and Arbitration</i> );
<b>"Nuclear Fuel Supplier"</b>	means an Associated Company of the Strategic Investor (the identity of which, if not Hitachi-GE Nuclear Energy, Ltd. and not guaranteed by Hitachi-GE Nuclear Energy, Ltd. or Hitachi, Ltd. (in a form accepted by the PCO) shall be subject to acceptance by the RoL) which enters into the Fuel Supply Contract;
<b>"Nuclear Fuel Supply Terms"</b>	means the terms (in the form of an initialled termsheet) agreed in principle on or about the Concession Date between the PCO and the Nuclear Fuel Supplier in relation to the supply of nuclear fuel and related services to the PCO by the Nuclear Fuel Supplier;
<b>"Nuclear Indemnified Parties"</b>	has the meaning given to it in Clause 15.2 ( <i>Nuclear</i> );

<b>"Nuclear Safety Treaty"</b>	means (a) the Convention on Early Notification of a Nuclear Accident of 1986; (b) the Convention on Nuclear Safety of 1994; (c) the Convention on Assistance in the Case of a Nuclear Accident or Radiological Emergency of 1986; (d) the Convention on the Physical Protection of Nuclear Material of 1980; or (e) the Joint Convention on the Safety of Spent Fuel Management and on the Safety of Radioactive Waste Management of 1997, and <b>"Nuclear Safety Treaties"</b> shall mean all or any of them;
<b>"O&amp;M Support Contract"</b>	means any operations and maintenance support services contract which may be entered into by the PCO and the O&M Support Contractor as contemplated by the O&M Support Terms;
<b>"O&amp;M Support Contractor"</b>	means an Associated Company of the Strategic Investor (the identity of which, if not Hitachi-GE Nuclear Energy, Ltd. and not guaranteed by Hitachi-GE Nuclear Energy, Ltd. or Hitachi, Ltd. (in a form accepted by the PCO) shall be subject to acceptance by the RoL) which enters into the O&M Support Contract;
<b>"O&amp;M Support Terms"</b>	means the terms (in the form of an initialled termsheet) agreed in principle on or about the Concession Date between the PCO and the O&M Support Contractor or the Strategic Investor on behalf of the O&M Support Contractor in relation to the provision of operations and maintenance support services to the PCO by the O&M Support Contractor;
<b>"Official Gazette"</b>	means Official Gazette of the Republic of Lithuania ( <i>Valstybės žinios</i> ), including the supplementary issue Information Notices ( <i>Informaciniai pranešimai</i> );
<b>"Offtake Right"</b>	has the meaning given to it in Clause 42.1 ( <i>Further Assurances and Co-operation in relation to the Power at Cost Structure</i> );
<b>"PCO Assets"</b>	means all assets owned by the PCO to the extent that the same are used or required for the performance by the PCO of the Concession and its obligations under this Concession Agreement;
<b>"PCO Default"</b>	has the meaning given to it in Clause 21 ( <i>PCO Default</i> );
<b>"PCO Default Notice"</b>	has the meaning given to it in Clause 21.2.1 ( <i>Termination for PCO Default</i> );
<b>"Post-COD Report"</b>	has the meaning given to it in Clause 11.1.1(B) ( <i>Project Management</i> );
<b>"Pre-COD Report"</b>	has the meaning given to it in Clause 11.1.1(A) ( <i>Project Management</i> );
<b>"Pre-Existing Arbitration"</b>	has the meaning given to it in Clause 45.5.8 ( <i>LCIA Arbitration</i> );
<b>"Pre-FID Fundamental Change"</b>	has the meaning given to it in Paragraph 1 ( <i>Pre-FID Fundamental Changes</i> ) of Schedule 8 ( <i>Fundamental Change</i> );

<b>"Principal Amount"</b>	shall mean in respect of a Shareholder any amount of principal drawn down by the PCO from that Shareholder under a Shareholder Loan, excluding any amount of interest paid in kind and capitalised as principal under that Shareholder Loan, less any amount of such draw down principal repaid or prepaid by the PCO to such Shareholder;
<b>"Principles, Standards or Guidelines"</b>	has the meaning given to it in Paragraph 2.1.4(B) of Schedule 8 ( <i>Fundamental Change</i> );
<b>"Prohibited Change of Control"</b>	has the meaning given to it in the Shareholders' Agreement;
<b>"Project"</b>	means the design, development, manufacture, supply, construction, operation and decommissioning of the NNPP;
<b>"Project Agreements"</b>	means this Concession Agreement, the Ancillary Contracts and the Shareholders' Agreement, and <b>"Project Agreement"</b> shall be construed accordingly;
<b>"Project Participants"</b>	<p>means each of:</p> <ul style="list-style-type: none"> <li>(A) Hitachi, Ltd.;</li> <li>(B) the Strategic Investor, the EPC Contractor, the O&amp;M Support Contractor and the Nuclear Fuel Supplier;</li> <li>(C) any sub-contractor (of any type and tier) or supplier (of any type and tier) of any of the entities referred to in paragraph (B) above;</li> <li>(D) any Financier;</li> <li>(E) the advisers or agents of any of the entities referenced in paragraph (A), (B), (C) (above) and (F) (below); and</li> <li>(F) the Associated Companies of each of the entities or persons referred to in paragraphs (A), (B), (C), (D) and (E) above,</li> </ul> <p>and once a person is or becomes a Project Participant it shall remain a Project Participant notwithstanding that it may subsequently cease to meet any or all of the criteria referred to above;</p>
<b>"Recipient"</b>	has the meaning given to it in Clause 13.2 ( <i>Confidentiality</i> );
<b>"Recommended Measure(s)"</b>	has the meaning given to it in Paragraph 2.1.5 of Schedule 8 ( <i>Fundamental Change</i> );
<b>"Regional Partner"</b>	shall be such of Latvenergo AS and Eesti Energia AS and PGE Polska Grupa Energetyczna S.A. and any other key partners of the Republic of Lithuania from time to time which may, subject to agreement in accordance with the Shareholders' Agreement and applicable Law, participate in the Project as a Shareholder, and <b>"Regional Partners"</b> will be construed accordingly;



<b>"Regulators"</b>	means the State Nuclear Power Safety Inspectorate ( <i>Valstybinė atominės energetikos saugos inspekcija VATESI</i> ), the State Territorial Planning and Construction Inspectorate under the Ministry of Environment ( <i>Valstybinė teritorijų planavimo ir statybos inspekcija prie Aplinkos ministerijos</i> ) and Utena Region Environmental Protection Department of the Ministry of Environment of the Republic of Lithuania ( <i>Lietuvos Respublikos aplinkos ministerijos Utenos regiono aplinkos apsaugos departamentas</i> ) and others specific to the relevant Party's obligations under this Concession Agreement and as applicable in the relevant jurisdiction (including in relation to international waters) where that Party's obligations under this Concession Agreement are carried out and <b>"Regulator"</b> shall mean any one of them;
<b>"Regulatory Requirement"</b>	means any legally enforceable requirement of any Regulator in Lithuania;
<b>"Related Agreement"</b>	means any agreement entered into by any Party, including any such agreement with any Third Party, as may be required for the Project, but shall exclude the Access Road Construction Contracts;
<b>"Related Dispute"</b>	has the meaning given to it in Clause 45.5.8 ( <i>LCIA Arbitration</i> );
<b>"Related Persons"</b>	means: <ul style="list-style-type: none"> <li>(A) the Ultimate Holding Company of any Project Participant;</li> <li>(B) the Associated Companies of any entity within paragraph (A) above; and</li> <li>(C) Individuals,</li> </ul> and that once an entity is or becomes a Related Person it shall remain a Related Person notwithstanding that it may subsequently cease to meet any or all of the criteria referred to above. It is acknowledged that The General Electric Company is a Related Person;
<b>"Relevant Claim"</b>	has the meaning given to it in Clause 16.5.3 ( <i>Breach of warranty</i> );
<b>"Relevant Obligations"</b>	shall have the meaning given to it in the Shareholders' Agreement;
<b>"Replacement Measure"</b>	has the meaning given to it in Paragraph 3 of Schedule 8 ( <i>Fundamental Change</i> );
<b>"Report"</b>	has the meaning given to it in Clause 11.1.1 ( <i>Project Management</i> );
<b>"Required Insurances"</b>	means those insurances required to be taken out and held by Law;
<b>"Restricted Group"</b>	has the meaning given to it in Clause 31.4.1 ( <i>Strategic Investor transfer of ownership restrictions</i> );

<b>"Retender Process"</b>	means any reasonable process initiated by the RoL to retender the Concession (and/or any of the unperformed works and services provided under any one or more of the Ancillary Contracts) and/or to retender the Strategic Investor's role in the Concession;
<b>"Retendering Costs"</b>	means those reasonable costs and expenses reasonably and properly incurred by the RoL and/or its nominee directly in connection with undertaking a Retender Process;
<b>"RoL entity"</b>	has the meaning given to it in Clause 13.10 ( <i>RoL entity</i> );
<b>"RoL Event"</b>	means any of the events described in Clause 20.1 ( <i>Events of RoL Event</i> );
<b>"RoL Event Notice"</b>	has the meaning given to it in Clause 20.2.1 ( <i>Termination for a RoL Event</i> );
<b>"RoL Nominee"</b>	means any Lithuanian company nominated by the RoL which is not a Competitor and which does not have a Competitor as a direct or indirect legal or beneficial owner of any of its shares;
<b>"RoL NSC Offer"</b>	has the meaning given to it in Clause 32.1.1 ( <i>National Security Criteria Put Option</i> );
<b>"Rules"</b>	has the meaning given to it in Clause 45.5.1 ( <i>LCIA Arbitration</i> );
<b>"SCC Transfer Notice"</b>	means a notice sent to the Strategic Companies Commission pursuant to the Shareholders' Agreement and applicable Law in relation to an intended transfer by a Shareholder of all or any of its Shares;
<b>"Shares"</b>	means all or any of the share capital of any class in the PCO;
<b>"Shareholder Loan"</b>	means, in respect of a Shareholder, any loan made to the PCO by that Shareholder in accordance with the Shareholders' Agreement;
<b>"Shareholders"</b>	means the holders of the Shares from time to time, the initial holders being those set out in Schedule 3 ( <i>Initial Shareholders' Details and Shareholding</i> );
<b>"Shareholders' Agreement"</b>	means the agreement in force from time to time to which all of the Shareholders are party in relation to (inter alia) their investment in, and the governance and funding of, the PCO which includes a term explicitly identifying such agreement as the "Shareholders' Agreement" for the purposes of this Concession Agreement;
<b>"Shareholder's Interest"</b>	means, in respect of a Shareholder, its Shares and Shareholder Loans;
<b>"Site"</b>	has the meaning given to it in Schedule 5 ( <i>Site</i> );
<b>"Specified Nuclear Treaty Replacement"</b>	has the meaning given to it in Paragraph 1.2 of Schedule 8 ( <i>Fundamental Change</i> );

<b>"Strategic Companies Commission"</b>	means the Commission for Assessment of Compliance to the Interests of National Security of Potential Members of Companies of Strategic or Significant Importance to National Security ( <i>Strateginę ar svarbią reikšmę nacionaliniam saugumui turinčių įmonių potencialių dalyvių atitikties nacionalinio saugumo interesams įvertinimo komisija</i> ) as indicated in Part 3, Article 7 of the Law on Enterprises and Facilities of Strategic Importance to National Security and Other Enterprises of Importance to Ensuring National Security of 21 July 2009, No. XI-375 as amended, any successors thereof and any bodies to which functions thereof are transferred in part or in full;
<b>"Strategic Investor Default"</b>	has the meaning given to it in Clause 22.1 ( <i>Strategic Investor Default</i> );
<b>"Strategic Investor Default Notice"</b>	has the meaning given to it in Clause 22.2.3 ( <i>Termination of the Strategic Investor's rights and obligations</i> );
<b>"Strategic Investor Shareholder"</b>	means the legal or beneficial owner of any Strategic Investor Shares from time to time;
<b>"Strategic Investor Shares"</b>	means all or any of the share capital of any class in the Strategic Investor;
<b>"Subcontract"</b>	means any agreement entered into by the PCO in connection with the performance of its obligations under this Concession Agreement or in relation to carrying out the Concession including any Ancillary Contract and any agreement entered into between the PCO and any Key Subcontractor;
<b>"Subcontractor"</b>	means any person who has entered into a Subcontract with the PCO including the EPC Contractor and any O&M Support Contractor, Nuclear Fuel Supplier and/or Key Subcontractor;
<b>"Subscription Payments"</b>	shall mean the payments received by the PCO from a Shareholder in subscription for Shares (whether in partial or full payment up of nominal value, and whether in respect of nominal value or Share premium) issued by the PCO to such Shareholder, less any amounts of such Share capital returned to such Shareholder by the PCO;
<b>"Supplementary Margin"</b>	means an amount equal to the Invested Capital as agreed or finally determined under Clause 26.3 ( <i>Disputing the Mandatory Transfer Price</i> ), <i>multiplied by</i> <ul style="list-style-type: none"> <li>(i) the Margin, <i>multiplied by</i></li> <li>(ii) the number of Calendar Days comprising the period from the Calculation Date to the date on which the payment of the Mandatory Transfer Price (or part thereof) is made under Clause 26.4, <i>divided by</i></li> <li>(iii) 360, <i>less</i></li> <li>(iv) the aggregate of any (a) interest paid in cash or cash</li> </ul>

equivalent by the PCO and received by the relevant Exiting Shareholder, in respect of any Tranche of a Shareholder Loan comprising Invested Capital, and (b) any distribution of income or profit paid in cash or cash equivalents by the PCO and received by the relevant Exiting Shareholder in respect of any Tranche of Shares issued to such Exiting Shareholder in consideration for its Subscription Payments, in each case ((a) and (b)) during the period referred to in (ii) above;

<b>"Tax"</b>	means any of the following tax, levy, impost, duty, charge or withholding of a similar nature, including any penalty or interest payable in connection with any failure to pay or delay in paying any of the same;
<b>"Tender Process"</b>	means the process by which the MoE, on behalf of the RoL, sought to identify an investor to take an interest in a new nuclear power plant project-implementing company pursuant to the notice published in the Official Journal of the EU on 10 December 2009 (No. 2009/S 238-340935);
<b>"Third Party"</b>	means any person other than the Parties;
<b>"Third Party Claimant"</b>	means any Third Party other than: <ul style="list-style-type: none"><li>(A) any Shareholder;</li><li>(B) any party to an Ancillary Contract or any subcontractor (of any types and tier) or supplier (of any type and tier) of any Ancillary Contractor under an Ancillary Contract; and</li><li>(C) any Associated Company of any entity referred to in paragraphs (A) and (B) above;</li></ul>
<b>"Third Party recipient"</b>	has the meaning given to it in Clause 13.6 ( <i>Liability</i> );
<b>"Tranche"</b>	means each separate payment being a Subscription Payment, Principal Amount, or Credit Payment;
<b>"Transfer Decision Notice"</b>	has the meaning given to it in Clause 32.1.2 ( <i>National Security Criteria Put Option</i> );
<b>"Transfer Decision Period"</b>	has the meaning given to it in Clause 32.1.2 ( <i>National Security Criteria Put Option</i> );
<b>"Transfer Notice"</b>	means the transfer notice issued by any Shareholder(s) under the Shareholders' Agreement;
<b>"Transfer Price"</b>	shall mean the cash consideration offered by a transferee to a Transferring Shareholder determined in accordance with the Shareholders' Agreement;
<b>"Transferring Shareholder"</b>	has the meaning given to it in Clause 31.2.2 ( <i>Rights granted to the RoL in relation to Share Transfers and Prohibited Change of Control under the Shareholders' Agreement</i> );

<b>"Transferring Interest"</b>	means in respect of a Transferring Shareholder its Shares, and any rights and interests under any Shareholder Loan;
<b>"Transnational Laws"</b>	has the meaning given to it in Paragraph 2.1.4(B) of Schedule 8 ( <i>Fundamental Change</i> );
<b>"Treaty Claim"</b>	has the meaning given to it in Clause 16.2.2 ( <i>Concurrent Claims</i> );
<b>"Ultimate Holding Company"</b>	has the meaning given to it in Clause 31.4.1 ( <i>Strategic Investor transfer of ownership restrictions</i> );
<b>"VATESI"</b>	means the State Nuclear Power Safety Inspectorate (Valstybinė atominės energetikos saugos inspekcija);
<b>"Visaginas New Nuclear Power Plant"</b>	has the meaning given to it in Recital C;
<b>"Vienna Convention 1963"</b>	means the Vienna Convention on Civil Liability for Nuclear Damage of 1963;
<b>"Vienna Protocol"</b>	means the Protocol to Amend the Vienna Convention on Civil Liability for Nuclear Damage of 1997;
<b>"Voluntary Encumbrance"</b>	means in respect of an Exiting Shareholder an Encumbrance put in place by, or resulting from the action, initiative or consent of, such Exiting Shareholder, over such Exiting Shareholder's Shareholder's Interest or any part thereof;
<b>"Wasted Costs"</b>	<p>means:</p> <p>(A) in respect of the RoL, those reasonable costs and expenses reasonably and properly incurred by the RoL or on behalf of the RoL by the Lithuanian Investor; or</p> <p>(B) in respect of the Strategic Investor, those reasonable costs and expenses reasonably and properly incurred by the Strategic Investor or on behalf of the Strategic Investor by an Associated Company of the Strategic Investor,</p> <p>during the period from (and including) 14 July 2011 up to (and including) the Concession Date in connection with the Tender Process, including the costs and expenses of activities, works or services performed to progress the Project and the costs and expenses incurred in negotiating this Concession Agreement and each of the Ancillary Contracts; and</p>
<b>"WENRA"</b>	means the Western European Nuclear Regulators' Association and/or any organisation which has taken over, or carries out on behalf of the WENRA, all or part of the functions or responsibilities of the WENRA.

**SCHEDULE 2**  
**ACCESS ROAD WORKS**

**1. DEFINITIONS AND INTERPRETATION**

In this Schedule:

- 1.1 unless the context otherwise requires, the following words and phrases shall have the following meanings:

"**Access Road**" means the road commencing at Klaipeda seaport pier and ending at the boundary to the Construction Site, and which is intended for the transportation of equipment and materials in connection with the Project;

"**Access Road Route**" has the meaning specified in paragraph 2.3;

"**Access Road Specification**" has the meaning specified in paragraph 2.1.1;

"**Access Road Works**" means all works required to the Access Road so that it complies with the Access Road Specification; and

- 1.2 for the purposes of this Schedule, references to the RoL shall include the RoL acting through state institutions or agencies or other entities of state administration.

**2. DESIGN, CONSTRUCTION AND MAINTENANCE OF THE ACCESS ROAD WORKS**

**2.1 General**

2.1.1 A copy of the functional specification for the construction, maintenance, repair and upgrade works required to the Access Road in order to facilitate the Project (the "**Access Road Specification**") is appended at Annex B to this Schedule.

2.1.2 The RoL intends to develop the design, to undertake the construction, and thereafter to maintain the Access Road in accordance with the Access Road Specification if a positive FID for the Project is taken by the Shareholders.

**2.2 Target Date for the completion of the Access Road Works**

2.2.1 Without prejudice to the remainder of this Schedule, the RoL confirms that it intends to develop the design of the Access Road on the assumption that the Access Road Works will need to be completed by 31 December 2015.

2.2.2 The RoL and the PCO will, after the Concession Date, negotiate in good faith in order to agree before FID a target date for the completion of the Access Road Works which shall apply if a positive FID for the Project is taken by the Shareholders.

**2.3 Route for the Access Road**

A plan which shows the proposed course of the Access Road has been appended at Annex A to this Schedule (the "**Access Road Route**"). The Access Road Route currently provides two options for the exit route (shown in red and blue) from Klaipeda seaport. The Parties acknowledge that one of the proposed options for the exit route will need to be selected by the later of 31 December 2012 and the date which falls sixty (60) Calendar Days after the date of the issue of the first Limited Notice to Proceed under the EPC Contract.

2.4 **Liability and Other Matters**

- 2.4.1 It is acknowledged by the Parties that the arrangements in respect of the Access Road Works are still being developed, and that the RoL and the PCO shall therefore negotiate in good faith in order to reach a separate agreement relating to the liability regime for the Access Road Works which shall apply if a positive FID for the Project is taken by the Shareholders.
- 2.4.2 Notwithstanding any other provision of this Concession Agreement, it is acknowledged and agreed that no Party shall have any liability in connection with the Access Road Works other than as may subsequently be agreed in writing pursuant to paragraph 2.4.1.

Annex A to Schedule 2  
Plan showing the route of the Access Road Works





**Annex B to Schedule 2**  
**Access Road Specification**

TABLE OF CONTENTS

101.	PROJECT INFORMATION	87
102.	SCOPE OF WORK	87
103.	LITHUANIAN ROAD BOUNDING PARAMETERS	89
104.	HEAVY HAUL TRANSPORTER VEHICLE AND EQUIPMENT PAYLOAD DATA	89
105.	HEAVY HAUL TRIP DATA	91
106.	ROADWAY DESIGN CRITERIA	91
107.	BRIDGE DESIGN CRITERIA	91
108.	STANDARDS AND CODES REFERENCES	92
109.	SURVEY INFORMATION	92
110.	STOPPING AREA AND OVERTAKING ZONE REQUIREMENTS	92
111.	SUBMITTALS	92
112.	GEOTECHNICAL INFORMATION	93
113.	SERVICES AND INFORMATION PROVIDED BY OTHERS	93
114.	DEFINITIONS	93
115.	CORRESPONDENCE	94
116.	DRAWINGS AND DATA	94

## ACCESS ROAD SPECIFICATION

### 101. PROJECT INFORMATION

101.1 Owner: Republic of Lithuania (RoL)

101.2 Name of Project: Visaginas Nuclear Power Plant (VNPP)

101.3 Location of Project: Lithuania

### 102. SCOPE OF WORK

#### 102.1 Project Background:

- a. As part of the Visaginas Nuclear Power Plant project in Lithuania, a corridor has been identified as a heavy haul corridor that will be used to transport and deliver nuclear facility equipment to the project site, as indicated in Article 116.1.a. The equipment exceeds typical highway restrictions and limitations for weight, width, and height, and a specialized heavy haul transporter vehicle operated by a qualified contractor will be required to haul the equipment.
- b. The corridor originates in the city of Klaipeda, Lithuania, on the Baltic Sea, where the equipment will be offloaded from heavy lift shipping vessels and transferred to heavy haul transporter vehicles, and continues for approximately 550 kilometers to the project site located in Visaginas. The limits of Work defined in this Specification are from Klaipeda port pier to the boundary of the VNPP construction site.
- c. The corridor was identified and selected primarily to utilize public roads suitable for heavy haul transportation and to avoid fixed overhead obstructions; however, the corridor poses several unique challenges to improve and upgrade the infrastructure in order to achieve a serviceable haul road.

102.2 Each segment of the corridor shall be evaluated to verify viability and determine the necessary improvements to meet the criteria specified herein. Each evaluation shall include a condition assessment that determines the load carrying characteristics, geometric parameters, physical barriers and constraints to be altered. The evaluations shall include data collection and gathering design input consisting of, but not limited to, the following:

- a. Perform geotechnical investigation to determine existing soil strength and soil quality values that will be used for determining existing and for designing new pavements and structures.
- b. Perform structural evaluation and assessment of bridges and culverts to determine integrity and load rating.
- c. Perform topographic surveying and mapping to accurately document existing surface features and overhead obstructions, and to verify property limits and ownership, where warranted.
- d. Perform subsurface utility surveying and mapping to identify and document utility crossings along the heavy haul corridor and within road/structure improvement areas.
- d1. Evaluate and record environmental conditions where required as part of the permitting process.
- e. The existing road and infrastructure conditions along the corridor vary significantly, and include asphalt paved highways, municipal streets, and unsurfaced trails as identified in Articles 116.1.b, c, d and j. The full extent of overall design work will be confirmed after

the condition assessment and improvement evaluation phases, however based on initial reconnaissance information the work shall include the following Design Activities:

- e1. Design road structural section upgrades and improvements to increase the load carrying capacity and stability as necessary to meet the minimum criteria specified herein.
  - e2. Design road intersection modifications, and improve horizontal and vertical alignment along the corridor to provide sufficient width, grade, and curvature to satisfy the combined heavy haul transporter vehicle and equipment dimensions (as defined in transportation schemes), turning movements, and operating requirements.
  - e3. Design permanent modifications and improvements for existing bridge and culvert crossings to stabilize, stiffen, and reinforce superstructure and substructure elements to withstand design heavy haul loads and to satisfy transporter dimensions and operating requirements.
  - e4. Design new bridges, culverts, and buried utility protection systems where existing bridges, culverts and utilities are not capable of supporting design heavy haul loads.
  - e5. Design relocations and/or alterations for overhead obstructions, including traffic sign trusses and utility crossing bridges, truss mounted traffic signals, and low voltage electric cables (4kV and 10kV).
  - e6. Identify relocation and/or alteration requirements for overhead obstructions and traffic control appurtenances that will be relocated, including high voltage electric transmission lines (35kV, 110kV, and 330kV), light poles and/or lighting mast arms, post mounted traffic signals, and post-mounted traffic control signs.
  - e7. Develop stopping areas along the heavy haul transporter corridor to be used for fueling and vehicle maintenance (maintenance performed by the heavy haul transporter vehicle personnel).
  - e8. Develop overtaking zones or traffic bypass plans along the heavy haul transport corridor to be used to minimize traffic congestion.
  - e9. The Design Consultant shall prepare deliverables consisting of technical specifications and design drawings to identify the material quality and installation requirements for the Design Activities specified above to be used for construction, permitting, scheduling, and cost estimating. The deliverables shall meet both local, state, and national codes, standards, and regulations within Lithuania and Lithuanian road bounding parameters defined in Article 103 and the combined heavy haul transporter vehicle and equipment requirements defined in Article 104.
  - e10. The Owner may prepare a pre-haul test plan for portions of the heavy haul corridor to be performed after construction improvements are completed to verify that the as-constructed heavy haul road is able to withstand anticipated live loads from the heavy haul transporter.
- 102.3 To support the required design and engineering, this Functional Technical Specification has been prepared to define the overall objective of the project, and to identify the minimum requirements and criteria that shall be used by a qualified Design Consultant to design the heavy haul road.
- 102.4 This Specification may not be all inclusive, and the expectation is that the knowledge and experience of the Design Consultant will supplement the requirements defined in this Specification. This Specification is intended for the evaluation of existing facilities and the design of upgrades, modifications, and alterations for the heavy haul road construction upgrades: this Specification is not intended to meet the long term design criteria of the haul road after completion of the project, nor to meet the long term design criteria of the local

and national governing agencies; however, at a minimum the existing functional classification of each road segment that is modified in any way shall continue to meet current functionality with regard to traffic use and safety, utility easement and ownership, and storm water drainage and conveyance.

102.5 This Specification covers the requirements and criteria for performing a detailed corridor investigation and roadway/bridge design. The scope shall include verification of design inputs, environmental impact assessment, preparing preliminary and final documents for review, permitting support, developing cost estimates, and preparing a detailed schedule covering design, permitting, and construction.

102.6 Design Consultant Requirements and Qualifications:

- a. Design Consultant will be selected by the RoL, and shall demonstrate competency by having previous experience in projects with similar magnitude and character involving infrastructure assessment, design of highways and bridges, buried and overhead utility relocations, and associated permitting, construction, cost estimating, and scheduling.
- b. Design Consultant shall possess experience in roadway design, including horizontal and vertical geometric alignment, structural thickness design, safety, and traffic control.
- c. Design Consultant shall possess experience in bridge design of multiple span structures and segmental bridges, and in bridge assessment and modification.
- d. Design Consultant shall possess experience in geotechnical design and analysis for road pavements, bridges, and structural foundations.
- e. Design Consultant shall possess experience in hydrology and hydraulic analysis relating to bridges, including flood evaluation and routing, scour analysis, water surface modeling, and storm water management regulations.

102.7 The Work shall conform to the requirements of this Specification and shall be performed and supervised by personnel who are experienced and knowledgeable in the type of work to be performed. The Work shall be performed exclusively by the Design Consultant's trained and competent personnel or, where authorized, that of its subcontractors.

102.8 The Design Consultant, at the Owner's request, shall provide the Owner with any and all information pertaining to the Work including design documents, construction documents, schedule information, etc.

103. LITHUANIAN ROAD BOUNDING PARAMETERS

103.1 Maximum road width in straight road sections identified in Article 116.1. k 9.5 m:

- a. 6.5 meters asphalt paved with 0.25 meter compacted gravel shoulders
- b. 1.25 compacted road side
- c. There shall be no gap between asphalt covered and compacted road side areas.

103.2 Maximum road ground bearing pressure for 103.1 a.. as identified in Article 116.1. k:

- a. 4.4 metric tons load per square meter
- b. 10 metric tons load per axle

103.3 Maximum ground bearing pressure as identified in Article 116.1. h:

- a. 1.800 ton, being the sum of combined heavy haul transporter vehicle and equipment

104. HEAVY HAUL TRANSPORTER VEHICLE AND EQUIPMENT PAYLOAD DATA

- 104.1 The heavy haul transport vehicle will be a modular, multi-axle rubber tire vehicle designed specifically for transporting the equipment. The heavy haul transporter arrangement will vary based on the type of equipment being transported, however the largest, bounding arrangement for RPV will consist of two coupled self-propelled trailers, each with a turntable supporting the equipment load, pulled by two prime movers, and pushed by two additional prime movers. The following information shall be considered the largest-maximum bounding dimensional data as identified in Article 116.1. e, h, i, l and n, with supplemental information on bounding obstacle parameters provided in Article 116.1. m:
- a. Overall transport vehicle length: 115.6 m (two trailers and four prime movers)
  - b. Maximum Trailer length: 33 m (each). 69 m for two (2) transporters including connector
  - c. Maximum Trailer width: 6.300 m
  - d. Maximum Trailer bed height: 1.19 m
  - e. Minimum ground clearance: 0.94 m
  - f. Number of axles: 88 per platform, per each trailer
  - g. Number of axle lines: 22 axles at 1.5 meters per platform, per each trailer
  - h. Number of tires per axle: 16
  - i. Axle spacing: 1.5 m
  - j. RPV width path: 10 m, 5 m on each side of the center of the road, measured 7.7 m from grade  
RPV height path: 13 m,
  - k. RPV pedestal No.3 height path: 17 m
  - l. Trailer width path (no obstacles): 8 m
- 104.2 RPV Equipment Payload: the number described below through a. to b. subject to change due to design progress.
- a. Maximum payload weight: approximately 1004 metric tons
  - b. Maximum rigging/support frame weight: approximately 136 metric tons
  - c. Maximum payload width: 9.2 meters, measured 7.707 meters from grade
  - d. Maximum payload height: 12.207 meters from grade
- 104.3 Gross Operating Weight of Heavy Haul Transporter:
- a. The gross operating weight of the combined heavy haul transporter vehicle and equipment: no more than 1800 metric tons
  - b. Ground bearing pressure: 4.4 metric tons per square meter
- 104.4 The heavy haul transporter has the following operational characteristics:
- a. Operating speed: 10 – 25 kilometers per hour (for reference purposes)
  - b. RPV Minimum inner turning radius: 13.5 meters
  - c. RPV Minimum outer turning radius: 33.5 meters
- 104.5 Heavy Haul Road Geometric Requirements for straight road sections and corners:
- a. Maximum slope: less than 8 percent, on dry pavement
  - b. RPV Minimum curvature radius for vertical slope: greater than 340.5 m
  - c. RPV Minimum length of relaxation slopes: greater than 27.3 m
  - d. Traversal inclines:

- d1. Minimum traversal incline for straight-line is 2.5 %; Maximum traversal incline for straight-line is 4.0 %
- d2. Minimum traversal incline for curve-line is 2.5 %; Maximum traversal incline for curve-line is 4.0 %;
- d3. Minimum traversal incline for crossroad is 2.5 %; Maximum traversal incline for crossroad is 4.0 %.

104.6 Temporary Support Vehicle Information:

- a. The movement of the heavy haul transporter will be accompanied en-route by support vehicles to ensure safety of the crew and public, provide security, perform routine maintenance, and to manage emergencies as they arise. The type of support vehicles anticipated will be determined by the heavy haul transport company.

105. HEAVY HAUL TRIP DATA

105.1 The following information shall be used in establishing the load repetitions for pavement and bridge design with appropriate margin:

- a. The preliminary total number of heavy haul transporter trips anticipated as described in Article 116.1.a.
- b. The Owner will provide the Design Consultant with a final list upon receipt from EPC Contractor.

106. ROADWAY DESIGN CRITERIA

106.1 All road segments shall be inspected and evaluated to determine the condition and serviceability to support the transporter loads for the term of the transporter moves. All deficiencies shall be documented in a report with recommendations for repairs or demolition and rebuilding.

106.2 Road structural layers shall be determined through a geotechnical investigation by obtaining pavement cores and soil borings, or by other acceptable methods, to determine thickness, type, and condition of layers present in the structural section that may include asphalt, concrete, aggregate base, and to determine the soil subgrade properties.

106.3 Road pavement shall be analyzed and upgraded or reconstructed, as necessary, to withstand the heavy haul transporter loads and loading repetitions in accordance with the Functional Technical Specifications defined in this document and meet the requirements of European Union norms and Lithuanian laws.

106.4 Road alignment geometric parameters shall be modified as necessary to meet the requirements described in Article 103 and 104 in order to provide sufficient passage for combined heavy haul transporter vehicle and equipment, and also meet Lithuanian road safety requirements.

107. BRIDGE DESIGN CRITERIA

107.1 All bridges shall be inspected and evaluated to determine their condition and serviceability load rating capacity to support the combined heavy haul transporter vehicle and equipment for the term of the transporter moves. All deficiencies shall be documented in a report with recommendations for repairs or demolition and rebuilding.

107.2 Bridges and culverts shall be designed in accordance with the Functional Technical Specifications defined in this document and meet the requirements of European Union norms and Lithuanian laws.

- a. Concrete and steel decks shall meet the requirements of all local and government regulations.
- b. Parapets and guard rails shall be designed to meet the Functional Technical Specifications defined in Articles 103 and 104.

#### 108. STANDARDS AND CODES REFERENCES

108.1 The following design standards and codes as applicable to the work to be performed, from the Lithuanian Road Administration, Lithuanian Association of Surveyors, the Lithuanian Standards Board, and from other jurisdictional authorities.

#### 109. SURVEY INFORMATION

109.1 The Design Consultant shall prepare a topographic survey of the heavy haul transporter corridor where required to obtain accurate locations and elevations of existing features (pavement limits and grade, trees, signs, culverts, etc.) that require modification or alteration of the corridor. The survey shall be of sufficient detail and limits as necessary to meet the intended design purpose.

#### 110. STOPPING AREA AND OVERTAKING ZONE REQUIREMENTS

110.1 Stopping areas are required for periodic heavy haul transporter vehicles stops that will be used for vehicle maintenance and refueling, provide a safe location to allow for inclement weather to pass, and for operator rest. The following criteria shall be used for the layout and design of the stopping areas along the heavy haul transporter corridor.

- a. The stopping area shall be located directly adjacent to the heavy haul road, and provide sufficient space for support vehicles and smaller heavy haul transporters: large transporters will stop and remain on the heavy haul road and not utilize the stopping area.
- b. The location, size, and exact number of stopping areas shall be coordinated with the Owner during the detailed design phase.
- c. The stopping areas shall be compacted to meet the combined heavy haul transport vehicle and equipment load requirements.
- d. Trees surrounding the stopping areas shall be preserved to the fullest extent possible.

110.2 Overtaking zones or traffic bypasses shall be appropriately identified and/or located, with Owner's acceptance, to allow passage of vehicles around the heavy haul transporter vehicle to limit traffic congestion to the greatest extent practical.

#### 111. SUBMITTALS

111.1 Submittals required with proposal:

- a. Key Personnel: Name and resume of Project Manager and Project Lead Engineer identified to work on this project, having at least five years of supervisory experience with highway and road projects of similar size and/or scope.
- b. Project Experience: Description of the company's recent work history over the last five years for projects of similar magnitude and scope. For each project, include a brief description of work scope.
- c. References: Name and current phone number of professional references, from recent projects that include condition assessment, evaluation, design, and permitting for road and bridge related projects.

112. GEOTECHNICAL INFORMATION

- 112.1 A subsurface investigation program shall be performed along the heavy haul transporter corridor where it is necessary to obtain subsurface information in accordance with Lithuanian laws.
- 112.2 The following are the minimum requirements for road sections that consist of asphalt pavement:
- a. Soil borings shall be obtained in sufficient depth, quantity, and frequency to obtain reasonable pavement and subgrade soil information that allows accurate assessment of the pavement loading capacity and design of modified or new pavement structural layers in accordance with Lithuanian laws.
- 112.3 The following are the minimum requirements where new bridges are to be constructed or existing bridges need to be upgraded:
- a. Soil borings shall be obtained in sufficient depth, quantity, and frequency to obtain required subsoil parameters to design bridge modifications or design new bridges in accordance with Lithuanian laws.

113. SERVICES AND INFORMATION PROVIDED BY OTHERS

- 113.1 The initial selection of the heavy haul corridor has been investigated and evaluated by the Owner, as identified in Articles 116.1.b, c, d and j, and shall be used as the primary input for establishing the corridor of the heavy haul transporter.
- 113.2 The heavy haul transporter arrangement (length, number of axles, etc.) for each piece of equipment to be hauled as identified in Article 116.1.a will be prepared by EPC Contractor and will not exceed the bounding road parameters specified in Article 103.1.
- 113.3 Heavy haul transporter maintenance, repair, and fueling will be performed by the Heavy Haul Transporter Company.
- 113.4 Relocation and/or alteration, and restoration of roadside obstructions that include electric transmission lines (35kV, 110kV, and 330kV), light poles and/or lighting mast arms, post mounted traffic signals, post-mounted traffic control signs, etc., shall be considered in the haul road improvements and shall be performed if necessary..
- 113.5 The Scope of Work covered by this Functional Technical Specification is limited to the heavy haul road between Klaipeda port pier and the boundary of the VNPP construction site, and improvements beyond these limits, if necessary, will be provided by Others.

114. DEFINITIONS

- 114.1 Whenever the following terms appear in the Contract Documents, they shall mean the following:
- a. Design Consultant - means the firm, company, organization retained by Owner to perform the Work covered by this Specification
  - b. Work - means documentation preparation and submittal, procurement, labor, services, equipment, material, construction and maintenance work as set forth in the Contract Documents
  - c. Contract Documents - means all Drawings, Data, Specifications, Addenda and Revisions thereto; Purchase Orders and Supplements to the Purchase Order; Design Consultant's Drawings as accepted by Owner; and all documents which are a part of the Contract



- d. Heavy Haul Transport Company - means the entity responsible for providing heavy haul transporter equipment, supervision, and labor to transport the equipment along the heavy haul corridor defined herein
- e. Others - means any firm exclusive of the Design Consultant
- f. Indicated - means as shown, noted, called for, or specified on the Drawings and Data
- g. Provide - means furnish, perform and install and when applicable place in successful operation

115. CORRESPONDENCE

115.1 Address and submit correspondence, reports and related documents to the following:

- a. Owner contact: VAE  
 Technical Contact: To be determined  
 Contractual Contact: To be determined

116. DRAWINGS AND DATA

116.1 The following Drawings and Data prepared and/or supplied by the Owner, Owner's Engineer, or Hitachi-GE Nuclear Energy/ Hitachi Transport Systems, unless otherwise indicated, form a part hereof:

- a. Major Component Packing List for VPN, CNJ-LT-G001\_R2\_Major Component Packing List 20111228, Hitachi-GE Nuclear Energy, Ltd (this information must be used only for reference purposes, and is subject to revision).
- b. Route Survey of the Lithuanian Road Network, Summary Report, prepared by Visagino Atomine Elektrine (VAE), 2011.
- c. Survey Results and Recommendations Report, prepared by Hitachi Transport Systems, Ltd., 2011 (this information must be used only for reference purposes, and is subject to revision).
- d. Difficult Turns Report, prepared by Hitachi Transport Systems, Ltd., 2011 (this information must be used only for reference purposes, and is subject to revision).
- e. Transport Arrangement RPV, 0010053120-NL03-D-T1, Sheet 1, Revision 0, (this information must be used only for reference purposes, and is subject to revision).
- f. General Arrangement Platform Trailers RPV, 0010053120-NL03-D-G01, Sheet 1, Revision 0, (this information must be used only for reference purposes, and is subject to revision).
- g. General Arrangement Discharge at Klaipeda Port RPV, 0010053120-NL03-D-G02, Sheet 1, Revision 0, (this information must be used only for reference purposes, and is subject to revision).
- h. Functional Requirements for the Access Road, Hitachi-GE Nuclear Energy, Ltd., April 25, 2012.
- i. Hitachi-GE Nuclear Energy Letter XE-LT-0156, Rev.0, February 24, 2012.
- j. VAE Detailed road survey maps (Difficult turns VH-12022701, February 27, 2012 and Straight part of route VH-12030501, March 5, 2012).
- k. Republic of Lithuania bounding road parameters VH-12031401, March 14, 2012.
- l. Hitachi-GE Nuclear Energy Letter XE-LT-0161, Rev.0, February 27, 2012.
- m. Bounding obstacles parameters VH-12031402, March 14, 2012.

- n. Transport Arrangement RPV pedestal No. 3, 0010053120-D-T03, Sheet 1, Revision 0, (this information must be used only for reference purposes, and is subject to revision).
- o. Hitachi-GE Nuclear Energy Letter XL-LT-0029, Rev.0, March 29, 2012.

**SCHEDULE 3**  
**INITIAL SHAREHOLDERS' DETAILS AND SHAREHOLDING**

<b>Shareholder</b>	<b>Potential shareholding</b>
Lithuanian Investor	38%
Strategic Investor	20%
Latvenergo AS	20%
Eesti Energia AS	22%

**SCHEDULE 4**  
**NATIONAL SECURITY CRITERIA**

1. None of the transferee or any of its Associated Companies, either individually or collectively:
  - 1.1 controls, directly or indirectly, whether by virtue of a State-granted right or as a matter of fact, the importation from any Non-NATO State or Non-EEA State into the Republic of Lithuania of one third or more of the total volume of any type of fossil fuel imported into the Republic of Lithuania;
  - 1.2 effectively controls fossil fuel supply infrastructure in any Non-NATO State or Non-EEA State, which effective control enables the transferee or any of its Associated Companies (either individually or collectively) as the case may be to reduce the supply of any type of fossil fuel imported into the Republic of Lithuania by 33 per cent. or more of the total imported volume;
  - 1.3 controls, directly or indirectly, whether by virtue of a State-granted right or as a matter of fact, the importation into the Republic of Lithuania from any Non-NATO State or Non-EEA State of one third or more of the total of electricity imported into the Republic of Lithuania; or
  - 1.4 controls electricity transmission infrastructure in any Non-NATO State or Non-EEA State, which control enables the transferee or any of its Associated Companies (either individually or collectively) as the case may be to reduce the supply of electricity imported into the Republic of Lithuania by 33 per cent. or more of the total imported volume,  
and the proportions referred to in this Paragraph 1 shall be calculated by reference to the 12-month period preceding the date on which the relevant Transfer Notice is issued by the Transferring Shareholder.
2. None of the transferee or any of its Associated Companies has been convicted as part of a properly convened process as a result of its direct or indirect relationship with organised criminal groups, special services or groups of foreign states which have connections to international terrorist organisations.

## SCHEDULE 5

### SITE

1. Subject to Paragraph 2 of this Schedule 5 (*Site*), the "**Site**" shall be the eastern site (including the infrastructure on the site) as more specifically described in Part I of this Schedule 5 (*Site*).
2. If, following the Concession Date, the site described in Part I of this Schedule 5 (*Site*) is considered by the PCO (acting reasonably) to be unsuitable for the Project, the PCO shall notify the RoL as soon as practicable, and in any event no later than eighteen (18) Months after the Investment Date, that the "**Site**" shall instead be the western site (including the infrastructure on the western site) as more specifically described in Part II of this Schedule 5 (*Site*).

### PART I

#### EASTERN SITE

No.	Unique/Cadastral No.	Area (ha)	Purpose/Type of Use
1.	4400-2110-7279 4535/0003:7 Karlu k.v.	212.4183	Other, territories for industry and storage objects (for construction of industry and storage companies)
2.	4400-2110-7380 4535/0002:19 Karlu k.v.	28.9150	
3.	4400-2110-7024 4535/0002:17 Karlu k.v.	11.9552	Other, territories for engineering infrastructure (for corridors of communication and infrastructure networks)
4.	4400-2110-7446 4535/0002:20 Karlu k.v.	34.4229	

The infrastructure on the eastern site comprises the Cooling Water Facilities located on the land plot unique No. 4400-2110-7446, cadastral No. 4535/0002:20 Karlu k.v.

### PART II

#### WESTERN SITE

No.	Unique/Cadastral No.	Area (ha)	Purpose/Type of Use
1.	4400-2110-8854 4535/0002:22 Karlu k.v.	63.6512	Other, territories for industry and storage objects (for construction of industry and storage companies)
2.	4400-2110-7598 4535/0002:21 Karlu k.v.	29.7316	Other, type of use not specified
3.	4400-2103-1594 4535/0002:16 Karlu k.v.	10.6823	Other, territories for industry and storage objects (for construction of industry and storage companies)
4.	4400-2110-9138 4535/0002:23 Karlu k.v.	9.4718	Other, territories for engineering infrastructure (for corridors of communication and infrastructure networks)
5.	4400-2110-7446 4535/0002:20 Karlu k.v.	34.4229	

The infrastructure on the western site comprises the Cooling Water Facilities located on the land plot unique No. 4400-2110-7446, cadastral No. 4535/0002:20 Karlu k.v., the land plot unique No. 4400-2110-9138, cadastral No. 4535/0002:23 Karlu k.v. (which can serve for connection to the Cooling Water Facilities) and transmission lines.

**SCHEDULE 6**  
**DECOMMISSIONING AND WASTE FUNDING PRINCIPLES**

- (1) The decommissioning and radioactive waste management and disposal for the Visaginas New Nuclear Power Plant (NNPP) shall be based on a “polluter pays” principle and established in accordance with the principles and procedures set out herein.
- (2) RoL shall ensure that any Laws applicable to the decommissioning of the NNPP and/or the management or disposal of radioactive waste originating from the NNPP are consistent with the Decommissioning and Waste Management Principles (as defined below) and the other provisions of this Schedule 6.

**Decommissioning and Waste Management Arrangements**

- (3) The detailed procedures, methods and outcomes for the decommissioning of the NNPP and management and disposal of radioactive waste during the period from first criticality of the NNPP until the completion of all decommissioning works together with the method for estimating and revising the costs of decommissioning and planning for expenditure shall be set out in detailed decommissioning and waste management provisions (the “**Decommissioning and Waste Management Arrangements**”) in accordance with this Schedule 6.
- (4) The PCO shall be responsible for the preparation of the Decommissioning and Waste Management Arrangements in a manner which is consistent with the Decommissioning and Waste Management Principles (as defined below).
- (5) The Decommissioning and Waste Management Arrangements shall be submitted by the PCO to the Supervising Authority (as defined below) for review. The Supervising Authority shall be established, resourced and staffed and will conduct its activities in a manner consistent with the Commission Recommendation of 24 October 2006 on the management of financial resources for the decommissioning of nuclear installations, spent fuel and radioactive waste (2006/851/Euratom) and the Guide to the Commission Recommendation on the management of financial resources for the decommissioning of nuclear installations, spent fuel and radioactive waste (2006/851/Euratom) (both together - the “**Commission Requirements**”) and the principles set out herein.
- (6) The arrangements for the funding of decommissioning of the NNPP and the funding of management and disposal of radioactive waste shall be carried out in accordance with the Decommissioning and Waste Management Arrangements (as revised from time to time in accordance with this Schedule 6).
- (7) No Law will provide for any project participant or direct or indirect investor in the PCO to have any liability to any person in connection with the matters referred to in paragraph 6.
- (8) The PCO shall maintain and update the Decommissioning and Waste Management Arrangements to ensure continuing compliance with the Decommissioning and Waste Management Principles (as defined below).
- (9) The Decommissioning and Waste Management Arrangements and the cost estimates contained therein shall be updated every five years and whenever information becomes available to the PCO which will result in a material change to the Decommissioning and Waste Management Arrangements or the estimated costs of decommissioning the NNPP. The adequacy of the fund's assets shall be assessed annually.

## **Decommissioning and Waste Management Principles**

- (10) The principles for the decommissioning of the NNPP and the management and disposal of radioactive waste shall include the following matters:
- a sufficiently high certainty basis for estimating the cost and a method for its determination;
  - clear division of rights, responsibilities and liabilities in relation to fund management;
  - regular contributions to the Fund by the PCO, subject to paragraph 7, as the PCO is the only private sector party which will be required by applicable law to make contributions to the Fund or for the implementation of decommissioning and waste management arrangements;
  - a mechanism for a conservative estimation and independent verification of growth assumptions of the Fund;
  - a mechanism and a sufficient prudent timescale for correction of any underfunding or overfunding of the Fund;
  - regular updates of the Decommissioning and Waste Management Arrangements, the cost estimates of the respective arrangements; fund performance, its financial assumptions, adequacy and contribution levels;
  - a price firming process for the calculation of costs for management and final disposal of waste from the Ignalina NPP and Visaginas NNPP (subject to an agreement between the parties in accordance with paragraph 15 of this Schedule 6)
- (11) Decommissioning and waste management and disposal methods and procedures shall be based on the most up-to-date available knowledge of the state of the plant and up-to-date and proven technologies and methods at each of the reviews referred to in paragraph 9.
- (12) The costs of decommissioning, waste management and disposal shall be estimated on a transparent basis and the methods and procedures used for estimating costs shall ensure a sufficiently high certainty as to the projected future costs of decommissioning at all stages throughout the expected operating life of the NNPP.
- (13) There shall be a clear division of rights, responsibilities and liabilities between the RoL and the PCO with respect to decommissioning, waste management and disposal based on the principles set out herein.
- (14) Without limiting the operation of paragraph 15, the PCO may elect at its option (to the extent in accordance with applicable Law and regulation) that the final disposal of spent nuclear fuel and other high level waste shall be achieved by one of:
- construction and operation of a national geological disposal facility in Lithuania;
  - to the extent permitted by Law and to the extent feasible, disposal of spent nuclear fuel and other high level waste into a geological disposal facility developed on a regional (international) level;
  - reprocessing of spent nuclear fuel and consequent disposal of reprocessed waste or by-products of reprocessing in a national or regional (international) geological disposal facility; or
  - a combination of any or all of the above.
- (15) The parties acknowledge that if RoL intends to construct and operate a geological disposal facility in Lithuania for the final disposal of spent nuclear fuel and other high level waste



originating from the Ignalina NPP (the “Shared Facility”), then the PCO may elect, at its option, to explore options with the RoL to utilise the Shared Facility for the final disposal of spent nuclear fuel and other high level waste originating from the Visaginas New Nuclear Power Plant. If the PCO and RoL agree, acting reasonably, to use the Shared Facility for the final disposal of spent nuclear fuel and other high level waste originating from the Visaginas New Nuclear Power Plant, then RoL and the PCO shall share the costs associated with the development and use of that Shared Facility on an equitable basis and shall have regard to any cost savings derived from the synergies between the final disposal of spent nuclear fuel and other high level waste originating from the Ignalina NPP and the Visaginas New Nuclear Power Plant. The PCO’s contribution with respect to such cost sharing as described in this paragraph 15 shall be pro rata to the quantity and nature of spent fuel and other high level waste to be deposited and storage space to be used in connection with the final disposal of spent nuclear fuel and other high level waste originating from the Visaginas New Nuclear Power Plant.

- (16) The PCO may at its option enter into a contract with the body appointed by the Lithuanian State to manage and/or dispose the waste and/or construct appropriate facilities for the purpose of waste management and disposal on its own.
- (17) The waste management and/or disposal fees of the body appointed by the Lithuanian State to manage and/or dispose radioactive waste originating from the NNPP (the Radioactive Waste Manager) shall be cost based reflecting research and development, design, construction, operational, closure and surveillance costs of the management and/or disposal facility. Cost will be defined in the respective contract with the body appointed by the Lithuanian State to exclude profits (but to include indirect costs and overheads to the extent attributable to the relevant action) and shall not provide for any double recovery in respect of the use of generic and/or previously-developed research and development or design costs.
- (18) The final estimate for decommissioning and final waste disposal of the NNPP shall be prepared by the PCO in accordance with the Decommissioning and Waste Management Arrangements 12 months prior to the end of estimated operating life of the NNPP (being 60 years unless extended) at the latest and shall be submitted to the Supervising Authority for review. The PCO shall, by no later than the last day of the operating life of the NNPP, be obliged to make a sufficient contribution to ensure that the Fund meets the final estimate in full discounted on a basis to be agreed taking into account the planned scheduling of the decommissioning works and the fund growth expected over the period of the decommissioning.
- (19) The PCO shall be entitled in its absolute discretion, within one month after the estimate of the final costs of decommissioning has been produced in accordance with paragraph 18, to elect whether to perform (or procure the performance by third party contractor(s)) or not to perform the works in connection with the decommissioning of the NNPP.
- (20) If the PCO elects to perform, or procure the performance, of the works in connection with the decommissioning and waste management and disposal of the NNPP the PCO shall be entitled to have access to all amounts standing to the credit of the Fund subject to prudent verification by Supervising Authority of the use of the Fund strictly for its intended purpose, but shall bear the risk of any funding shortfall provided that any overfunding shall be returned to the PCO.
- (21) If the PCO does not make an election within the time required by paragraph 19, above, it shall be deemed to have elected not to perform the works connected with the decommissioning of the NNPP.

- (22) If, in accordance with this Schedule 6, the PCO elects, or is deemed to have elected, not to perform the works connected with the decommissioning and waste management and disposal of the NNPP, RoL shall be solely responsible for implementing the Decommissioning and Waste Management Arrangements until all decommissioning works have been completed and paragraph 32 of this Schedule 6 shall apply to the costs of decommissioning (and, subject to the compliance of the PCO with paragraph 18, the PCO shall have no liability howsoever arising in respect of the costs of the decommissioning of the NNPP or waste management arrangements).

### **Supervising Authority**

- (23) The Supervising Authority shall be an independent body established by RoL and shall have the roles and responsibilities as described in Commission Requirements. When exercising the powers and carrying out the tasks and duties the Supervising Authority shall not seek or take instructions from the Government, its institutions or other body. The Government, its institutions and other bodies shall undertake to respect this principle and not to seek to influence the Supervising Authority in the performance of the tasks of the Supervising Authority and to provide sufficient funding for the Supervising Authority to carry out its role.
- (24) The Supervising Authority shall be responsible for:
- review the scope of Decommissioning and Waste Management Arrangements, any cost estimates and projections contained therein;
  - review the adequacy of the fixed processes and timescales for determination of adjustments to decommissioning and waste management arrangements, cost estimates and correction of underfunding or overfunding (if necessary); and
  - other functions as set out in the Commission Requirements.

### **The Fund**

- (25) A Fund shall be maintained and operated by the Board of the Fund and funded by the PCO in accordance with this Schedule 6. It will be independent of the RoL, the PCO, its Shareholders and the Custodian Bank referred to in paragraph 26 below and insolvency remote from the PCO, its Shareholders, the RoL and the Custodian Bank.
- (26) The Fund shall be held as a segregated account at an international commercial bank (Custodian Bank). The PCO is eligible to propose candidacies of the Custodian Bank for the approval by the Board of the Fund.
- (27) The Fund shall monitor compliance with the Decommissioning and Waste Management Arrangements and the funds for the future decommissioning of the NNPP and invest them in accordance with the investment strategy proposed by the PCO and approved by the Board of the Fund.
- (28) Funding for the costs of waste management and disposal as established pursuant to the Decommissioning and Waste Management Arrangements shall be contributed by the PCO on the earlier of (a) the date that nuclear fuel is loaded into the NNPP or (b) otherwise as radioactive waste is generated. The PCO shall be obliged to make sufficient contribution to cover the estimated cost discounted on a basis to be agreed taking into account the planned scheduling of the waste management and disposal activities and the fund growth expected over the period of the waste management and disposal activities.
- (29) The PCO shall be obliged to make an annual contribution to the Fund in respect of decommissioning to cover the annual proportion of the total outstanding discounted

decommissioning costs estimated by the PCO under the Decommissioning and Waste Management Arrangements prepared in accordance with this Schedule 6 and discounted on a basis to be agreed taking into account the planned scheduling of the decommissioning works and the fund growth expected over the period of the decommissioning. The PCO is liable to make contributions into the Fund until the Fund meets the final estimate.

- (30) From first criticality, in order to meet the obligations to make contributions to the Fund on a discounted basis during operations and to meet the obligations to fund to the final cost estimate, the PCO shall ensure that appropriate arrangements are in place so that the PCO can meet its obligations in relation to the funding of decommissioning and waste management and disposal costs. From first criticality there shall also be a requirement for the PCO to provide sufficient funding (pursuant to paragraph 7) to put the plant into safe store in case of early shut down on the basis set out in this paragraph 30, and the funding of waste costs for first fuel load on the basis set out in paragraph 28. The amounts for safe store shall be calculated by the PCO and shall cover the costs of the shutdown of the nuclear reactor, removal of the nuclear fuel from the nuclear reactor and placing it into a spent nuclear fuel pools, storage of radioactive waste, including spent nuclear fuel, until the sufficient amount of the resources for full decommissioning shall be accumulated. Funding for the undiscounted safe store costs shall be made in cash contribution on an overnight cost basis.
- (31) In the event of early shutdown of the plant the final estimate of decommissioning and waste management cost in money values of the day shall be prepared by the PCO within 1 year after early shutdown. This final estimate of cost shall be subject to the review of the Supervising Authority in accordance with its role as set out in the Commission Requirements. Any increased costs of early decommissioning and any other shortfalls in the fund as of the date of the early shutdown, discounted on a basis to be agreed taking into account the planned scheduling of the decommissioning and waste management and disposal activities and the fund growth expected over the period of the decommissioning and waste management and disposal activities, must be funded by the PCO unless the early shutdown was politically procured by the Lithuanian State against the will of the PCO.
- (32) Decommissioning costs shall be funded from amounts standing to the credit of the Fund and, except where paragraph 20 of this Schedule 6 applies, the RoL shall bear the sole responsibility, without recourse to the PCO or any other person, for any decommissioning costs which are in excess of the amounts standing to the credit of the Fund provided that any overfunding shall be returned to the RoL.

### **Management of Fund**

- (33) The Fund shall have a Board of the Fund (Board) the members of which shall be nominated by the RoL. The RoL shall not have a right to reject candidate proposed for nomination by the PCO. The Chairman of the Board shall be nominated by the Lithuanian Government. The members of the Board shall be adequately qualified and free from any conflicts of interest.
- (34) The Board shall deal with funds standing to the credit of the Fund in accordance with arrangements set out in this Schedule 6 and the Decommissioning and Waste Management Arrangements and shall otherwise act transparently, independently and fairly and in the best interests of the Fund.
- (35) The Board shall commission and publish to the RoL, the PCO and each Shareholder of the PCO an annual report in accordance with international accounting standards which shall include a balance sheet of the Fund and description on the annual returns of the Fund holdings.

- (36) The Board shall include representatives from Lithuanian Ministry of Energy, Lithuanian Nuclear Regulatory Institution, Lithuanian Financial Regulatory Institution and the PCO. RoL shall have a voting majority in the Board.
- (37) The Fund shall have an auditor, the candidacy of which shall be proposed by the PCO (being an internationally recognised accountancy firm).
- (38) The costs of discharging the Fund's administrative/management duties and functions shall, subject to an efficiency and performance protection for the PCO, be met from the assets of the Fund.
- (39) In order to avoid conflicting use of financial recourses of the Fund, to reach the highest level of the Fund independence from the RoL, the PCO, its Shareholders and the Custodian Bank referred to in paragraph 26 above and to minimise correlation between the Fund performance and the financial status of the RoL, the PCO, its Shareholders and the Custodian Bank referred to in paragraph 26 above, the investments in related parties (mother and/or other group companies) shall not be allowed. This rule shall apply to all classes of securities including direct lending, acquisitions of bonds or stocks and other financial instruments.
- (40) The Fund assets shall be invested in the credible financial assets and the investment strategy shall be conservative to ensure prudent risk exposure and diversification of investment.

#### **Dispute Resolution**

- (41) The final determination in respect of appeals against decisions of the Supervising Authority and/or the Board shall be made where possible by an arbitral tribunal to be agreed or otherwise, as required under Lithuanian law.
- (42) All references to waste management and disposal relate to activities and costs relating to waste management and disposal which are not part of operational waste management.

**SCHEDULE 7**

**LIV IP**

No.	Object	Date	Agreement	Parties
1.	Description of Physical Protection Requirements and Feasibility, Phase 1 Report No (9.17-3)-P17-4/G_2009-176. (LT, EN)	30 January 2009	Agreement on Order of Author's Work No S_113-2009-3 dated 15 January 2009	VAE <u>Vaidas Brasiūnas (Service Provider)</u>
2.	Description of Physical Protection Requirements and Feasibility, Phase 2 Report No G_2009-224 (5.2) (LT, EN)	24 March 2009		
3.	Description of Physical Protection Requirements and Feasibility, Phase 3 Report No G_2009-317 (LT, EN)	19 April 2009		
4.	Possible Means of Equipment of Physical Protection System for Visaginas Power Plant No (9.17.2)-P17-12 (LT)	13 July 2009		
5.	Environmental Impact Assessment Report New Nuclear Power Plant in Lithuania (LT, EN, RU)	27 March 2009	Agreement No 87-08 dated 4 February 2008	<u>AB "Lietuvos energija" Consortium of Poyry Energy Oy and Lietuvos energetikos institutas (Lithuanian Energy Institute) (Service Provider)</u>
			Agreement on Transfer of Consultancy Services Agreement No 951-08 dated 19 November 2008	VAE <u>AB "Lietuvos energija" Poyry Energy Oy and Lietuvos energetikos institutas (Lithuanian Energy Institute) (Service Provider)</u>
6.	Pro-Forma Business Model and Financing Plan (Project White Knight) (EN)	October 2009	Agreement on Provision of Services No S_113-2009-33 dated 19 June 2009	VAE <u>N M Rothschild &amp; Sons Limited (Service Provider)</u> However, the Project White Knight: Baltic Power Market Report has been prepared by NERA Economic Consulting and the Project White Knight Technical Analysis Report – by FICHTNER
7.	Project White Knight: Baltic Power Market Report (EN)	21 August 2009		
8.	Project White Knight Technical Analysis Report No 6757P02/FICHT-5172339-v3 (EN)	July 2009		
9.	Project of "New Nuclear Power Plant Oversized and Super Heavy Load Transportation Route Research" Feasibility Study No 01-02-625	2009	Agreement on Provision of Services No S_113-2009-11 dated 24 March 2009	VAE <u>UAB "Hidroprojektas" (Service Provider)</u>
10.	Selection of Design Solutions of Visaginas Nuclear Power Plant Oversized, Super Heavy and Other Load Transportation Route and their Economic Evaluation: Researches of Lithuanian Road Transport Network, Part 1, No MIS-2010-24-PP-B (LT)	2010	Agreement on Provision of Services No MIS-2010-24 dated 1 April 2010	VAE <u>VĮ Transporto ir kelių tyrimo institutas (Service Provider)</u> <u>UAB "Kelprojektas (Service Provider)</u>
11.	Selection of Design Solutions of Visaginas Nuclear Power Plant Oversized, Super Heavy and Other Load	2011	Agreement on Provision of Services No MIS-2011-29	VAE <u>(VĮ Transporto ir kelių tyrimo institutas (Service</u>

No.	Object	Date	Agreement	Parties
	Transportation Route and their Economic Evaluation: Researches of Lithuanian Road Transport Network, Part 2, No MIS-2011-29-PP-T (LT)		dated 23 May 2011	<u>Provider</u>
12.	Special Communication Plan No 10076 (LT)	10 October 2011	Agreement on Preparation of the Special Communication Plan and Provision of Services Related to it No MIS-2010-47-1 dated 30 August 2010	VAE <u>UAB “Sweco Lietuva”</u> (Service Provider)
13.	Safety Audit of Solutions of Special Plan Related to the Roads of State Importance (LT)	November 2010	Agreement on Provision of Audit Services No MIS-2010-48 dated 2 September 2010	VAE <u>UAB “Strateginio transportavimo sprendimai”</u> (Service Provider)
14.	Selection of Design Solutions of Visaginas Nuclear Power Plant Oversized, Super Heavy and Other Load Transportation Route and their Economic Evaluation: Researches of Inland Water Transport Network in Lithuania (LT)	2011	Agreement on Provision of Services No MIS-2011-05 dated 8 February 2011	VAE <u>UAB “Vilniaus hidroprojektas”</u> (Service Provider)
15.	Renewal and Supplement of Assessment of Potential New Nuclear Power Plant Construction Sites in Respect of External Events No S/17-1219.10.12-G4-V:01 (LT)	20 December 2010	Agreement on Provision of Services No MIS-2010-58 dated 15 October 2010	VAE <u>Lietuvos energetikos institutas</u> (Service Provider)
16.	Investigation of Deep Geological Setting of Potential Construction Sites of Visaginas NPP by Using 2D/3D Seismic Survey (EN)	15 November 2010	Agreement on Provision of Services No 8-50/MIS-2010-31 dated 1 June 2010	VAE Ministry of Energy of the Republic of Lithuania AB Lietuvos elektrinė <u>Lietuvos ir Danijos UAB “Minijos nafta”</u> (Service Provider)
17.	Constructional Remains and Subsurface Geologic Setting Survey of Potential Visaginas NPP Sites Using Electrical Tomography Method (LT, EN)	2009	Service Agreement No. S_113-2009-17 dated 17 April 2009. The agreement was terminated by the agreement of the parties dated 12 June 2009.	VAE <u>UAB “Geobaltic”</u> (Service Provider)
18.	Geotechnical, Geological and Seismological (GG&S) Data Inventory for the Visaginas Sites (EN)	2012	Service Agreement No. MIS-2009-1 dated 31 July 2009	VAE <u>UAB “Eldra”</u> (Service Provider)
19.	Report on Investigations of Contamination with Radionuclides of Potential Plots for a New Nuclear Power Plant (LT, EN)	23 June 2009	Service Agreement No. S_113-2009-13/2009/PES-64 dated 3 April 2009	VAE <u>Radiacinės saugos centras</u> (Service Provider)

No.	Object	Date	Agreement	Parties
20.	Preliminary Ecogeological Survey of Construction Site of New Visaginas NPP (I Var) in Drūkšiniai vil. Visaginas TN No 2031-2009 (LT, EN)	2009	Service Agreement No. S_113-2009-18 dated 28 April 2009	VAE <u>UAB “Geotestus” (Service Provider)</u>
21.	Preparation of Connection of New Nuclear Power Plant to the Transmission Network Infrastructure. Stages for Connection of New Nuclear Power Plant to the Transmission Network (Design Proposals) No 729 – PP – T1 (LT)	2009	Service Agreement No. S_113/17-70-2009-29 dated 19 May 2009	VAE <u>UAB “Energetikos pajėgos” (Service Provider)</u>
22.	Fuel Strategy Report (EN)	August 2009	Agreement No. S_116-2009-15 dated 8 April 2009	VAE <u>TVO Nuclear Services Oy (Service Provider)</u>
23.	Proposal for Radioactive Waste Management Strategy (EN)	September 2009		
24.	Feasibility and Capabilities of the Regional Supply Chain to Support the Visaginas NPP Construction Project (EN)	16 August 2010	Service Agreement No MIS-2010-21 dated 29 March 2010	VAE <u>UAB “Deloitte Lietuva” (Service Provider)</u>
25.	Design Proposals for Removal of Construction Waste from the Construction Site of Visaginas NPP No 7964 (LT, EN)	2010	Service Agreement No 038-09/MIS-2009-16 dated 8 October 2009	VAE <u>AB “Pramprojektas” (Service Provider)</u>
26.	Evaluation of Geological and Seismological Conditions at Potential VAE Sites Using Seismic Exploration Data (Volume 1, Volume 2)	June 2009	Service Agreement No S_113-2009-14 dated 10 April 2009	VAE <u>AB “Geonafta” (Service Provider)</u>
27.	Investigations of Engineering Geological and Geotechnical Conditions of the Potential Construction Sites of Visaginas NPP (Verification Stage and Confirmation Stage)	September 2010	Service Agreement No MIS-2010-1 dated 12 January 2010	VAE <u>UAB “Geotestus” (Service Provider)</u>
28.	Feasibility Study of Use of the Near-Surface Repositories of Short-Lived Radioactive Waste of Very Low, Low and Intermediate Activity (Intended for Radioactive Waste from the Ignalina Nuclear Power Plant) for the Disposal of Radioactive Waste from the Visaginas Nuclear Power Plant (LT, EN)	18 September 2009	N/A	Developed by VAE
29.	Visaginas Nuclear Power Plant Site Evaluation Report (EN)	2 December 2011	N/A	Developed by VAE
30.	Taking Over of the INPP Industrial Area Existing Infrastructure Project P022 (Project First Stage Report) (EN)	2009	N/A	Developed by VAE
31.	Determining Possibilities to Connect to the Engineering Networks No P023-4 (LT)	7 August 2009	N/A	Developed by VAE
32.	Pre-Design Solutions on Supply of Electricity Power to VAE Construction Sites No P037 (LT)	2011	N/A	Developed by VAE

No.	Object	Date	Agreement	Parties
33.	Legal and Regulatory Environment for the New Nuclear Power Plant in Lithuania No (9.13.3)-P13-8 (LT)	10 April 2009	N/A	Developed by VAE
34.	The Lithuanian New Nuclear Power Plant Build Programme (Lithuanian Human Resources Capability and Ability to Participate in the NPP Project) (EN)	2009	N/A	Developed by VAE



**SCHEDULE 8**  
**FUNDAMENTAL CHANGE**

**1. PRE-FID FUNDAMENTAL CHANGES**

Subject to Paragraph 2, the following are "**Pre-FID Fundamental Changes**" and each a "**Pre-FID Fundamental Change**":

**1.1 Changes to laws implemented for the Project**

Repeal of or material amendments to the following laws which have come into force and effect within the Republic of Lithuania:

1.1.1 the Law on Assuming the Essential Property Obligations of the Republic of Lithuania in the Visaginas Nuclear Power Plant Project; and

1.1.2 the Law on the Nuclear Power Plant,

provided that the net effect of the repeal and/or material amendments (when taken into account with any other applicable Laws and/or circumstances, including any amendments to and/or repeal or enactment of any other applicable Laws), excluding the effect of any increase in costs which is not a Significant Increase in Costs, has or will have a very serious adverse effect on the implementation of the Project, or on the operation of the NNPP, or rights of the NNPP to sell electricity generated by the NNPP, or the Shareholders to offtake and/or export electricity generated by the NNPP, when compared to the circumstances in effect as at the Concession Date and the RoL has not remedied such repeal or material amendment or the net fundamental adverse effect of such repeal or material amendment by the earlier of (i) 3 Months following service of a notice on the RoL by the PCO that the Shareholders are prepared to take FID and (ii) 30 June 2015.

For the purposes of this paragraph 1.1, a "**Significant Increase in Costs**" shall mean an increase in the costs of the Project which is, in and of itself (and not only in the context of any incremental change in the costs of the Project), a very significant increase.

**1.2 Withdrawal or denouncement from specified nuclear treaties**

Withdrawal by the RoL from, denouncement by the RoL of, or the material amendment (adversely affecting the implementation), repeal or invalidity of any Law in the Republic of Lithuania implementing or giving effect to, any of the following instruments:

1.2.1 the Non Proliferation Treaty;

1.2.2 the Vienna Convention 1963;

1.2.3 the Vienna Protocol (only from such date as the Vienna Protocol is in force and applicable in, or in respect of, the Republic of Lithuania);

1.2.4 the Convention on Supplementary Compensation (only from such date as the Convention on Supplementary Compensation is in force and applicable in, or in respect of, the Republic of Lithuania);

1.2.5 the Joint Protocol;

1.2.6 the IAEA Statute;

1.2.7 the IAEA Agreement; and/or

1.2.8 any Nuclear Safety Treaty,

where, subject to the provisions below, such withdrawal, denouncement, repeal, material amendment or invalidity shall be a Pre-FID Fundamental Change from the earlier of the date on which the relevant international instrument ceases to be binding and enforceable in

the Republic of Lithuania or the date on which the repeal, material amendment or invalidity occurred:

- (A) provided that such withdrawal, denouncement, repeal, material amendment or invalidity by the RoL is of its own accord and not:
  - (1) as a result of the termination or lapse of or amendment to the relevant international instrument listed; or
  - (2) as a result of a decision or communication of the European Commission or a ruling by the Court of Justice of the European Union requiring or recommending that the RoL (specifically) or (more generally) the European Union Member States withdraw from the relevant international instrument or otherwise ruling that its existence is not in accordance with European Union principles;
- (B) and except where another international instrument or applicable Law applies or is brought into effect in the Republic of Lithuania (prior to, at the same time as, or not later than a reasonable period following, such withdrawal or denouncement and in any event not later than the earlier of (i) three (3) Months following service of a notice on the RoL by the PCO that the Shareholders are prepared to take FID and (ii) 30 June 2015) and:
  - (1) where such international instrument or applicable Law can reasonably be considered to fulfil a substantially similar purpose as the relevant international instrument which the RoL has denounced or from which it has withdrawn or which otherwise is considered by the parties to the replacement international instrument to replace or supersede the replaced international instrument; or
  - (2) if such international instrument or applicable Law fulfils more than one purpose, contains provisions which can reasonably be considered together to fulfil a substantially similar purpose as the relevant international instrument which the RoL has denounced or from which it has withdrawn,

(and such replacing international instrument or applicable Law, in the case of both 1.2.8(B)(1) and 1.2.8(B)(2), shall be a "**Specified Nuclear Treaty Replacement**" and "**Specified Nuclear Treaty Replacements**" shall be construed accordingly).

### 1.3 **Withdrawal from or denouncement of the Energy Charter Treaty**

Withdrawal by the RoL from or denouncement by the RoL of the Energy Charter Treaty:

- 1.3.1 provided that such withdrawal or denouncement by the RoL is of its own accord and not:
  - (A) as a result of the termination or lapse of the Energy Charter Treaty; or
  - (B) as a result of a decision or communication of the European Commission or a ruling by the Court of Justice of the European Union requiring or recommending that the RoL (specifically) or (more generally) the European Union Member States withdraw from the Energy Charter Treaty or otherwise ruling that its existence is not in accordance with European Union principles;

1.3.2 and except where another international instrument or applicable Law applies or is brought into effect in the Republic of Lithuania (before, at the same time as, or not later than a reasonable period following withdrawal from or denouncement of the Energy Charter Treaty and in any event not later than the earlier of (i) three (3) Months following service of a notice on the RoL by the PCO that the Shareholders are prepared to take FID and (ii) 30 June 2015) and:

- (A) where such international instrument or applicable Law can reasonably be considered to fulfil a similar purpose as the Energy Charter Treaty; or
- (B) if such international instrument or applicable Law fulfils more than one purpose, where it contains provisions which can reasonably be considered together to fulfil a similar purpose as the Energy Charter Treaty or which otherwise is considered by the parties to the replacement international instrument to replace or supersede the Energy Charter Treaty,

(and such international instrument or applicable Law, in the case of either (i) or (ii), shall be a "**Energy Charter Treaty Replacement**").

#### 1.4 **Withdrawal or denouncement from the New York Convention**

Withdrawal by the RoL from, denouncement by the RoL of, or the material amendment (adversely affecting the implementation) of, repeal or invalidity of, any Law in the Republic of Lithuania implementing or giving effect to, the New York Convention:

1.4.1 provided that such withdrawal, denouncement, repeal, material amendment and/or invalidity by the RoL is of its own accord and not:

- (A) as a result of the termination or lapse of the New York Convention; or
- (B) as a result of a decision of the European Commission or a ruling by the Court of Justice of the European Union requiring that the RoL (specifically) or (more generally) the European Union Member States withdraw from the New York Convention or otherwise ruling that its existence is not in accordance with European Union principles;

1.4.2 and except where another international instrument or applicable Law applies or is brought into effect in the Republic of Lithuania (before, at the same time as or not later than a reasonable period following, withdrawal from or denouncement of the New York Convention and in any event not later than the earlier of (i) three (3) Months following service of a notice on the RoL by the PCO that the Shareholders are prepared to take FID and (ii) 30 June 2015) and:

- (A) where such international instrument or applicable Law can reasonably be considered to fulfil a substantially similar purpose as the New York Convention; or
- (B) if such treaty, protocol, agreement, convention or applicable Law fulfils more than one purpose, it contains provisions which can reasonably be considered together to fulfil a substantially similar purpose as the New York Convention or which otherwise is considered by the parties to the replacement international instrument to replace or supersede the New York Convention,

(and such international instrument or applicable Law, in the case of either 1.4.2(A) or 1.4.2(B), shall be a "**New York Convention Replacement**"),

and where such withdrawal, denouncement, material amendment, repeal or invalidity shall be a Pre-FID Fundamental Change from the earlier of the date on which the New York

Convention ceases to be applicable in, or in respect of, the Republic of Lithuania or the date on which the repeal, material amendment or invalidity occurred.

## 1.5 Negative Decision on Nuclear Power

A negative decision on nuclear power, being:

1.5.1 a declaration by the RoL of a moratorium on nuclear power, where "**moratorium on nuclear power**" means where the RoL declares a moratorium on the generation of nuclear power which relates to the Visaginas NNPP and which is directly and primarily as a result of a decision of the Parliament of the Republic of Lithuania and provided that:

- (A) such moratorium did not relate, to nor was as a result of:
  - (1) any negligent act or omission, default or breach of the PCO of any of its obligations under this Concession Agreement and/or any applicable Law (as applicable); or
  - (2) a European or international decision to close nuclear power stations of the advanced boiling water reactor type; and/or
- (B) no Regulator has rejected the PCO's nuclear safety case prior to the relevant decision being taken.

1.5.2 the result of any referendum held in the Republic of Lithuania that:

- (A) is to any extent in relation to civilian nuclear power;
- (B) is to any extent in relation to the storage and disposal of nuclear waste (including spent nuclear fuel);
- (C) refers to or affects the Visaginas Nuclear Power Plant, the Project or the Concession;
- (D) refers to Hitachi, Ltd. or any of its Associated Companies, any Shareholder, VATESI or the ABWR; or
- (E) refers to or affects any of the laws or treaties referred to in Paragraph 1.1. or 1.2 of this Schedule 8,

and would or could reasonably be expected to have (if the President or Parliament were to act or not act in accordance with the outcome of the referendum) a material and adverse effect on the Project, the timely performance of the Concession, and/or the likelihood of a positive FID occurring.

## 2. EXCLUSIONS FROM PRE-FID FUNDAMENTAL CHANGES

2.1 Notwithstanding Paragraph 1 of this Schedule 8 (*Fundamental Change*), any of the changes in circumstance referred to in Paragraph 1 above (other than Paragraph 1.5) shall not be a Pre-FID Fundamental Change:

- 2.1.1 if the change requires the same or equivalent action as a change in applicable Law or technical, security or safety requirements in another nuclear installation state that affects the generic reactor design to be used in the Project, taking into account the siting of the Project;
- 2.1.2 where any such change transposes or implements into Law in the Republic of Lithuania or otherwise brings or is a consequence of bringing into force and effect (i) the agreed principles in relation to waste and decommissioning in Schedule 6 (*Decommissioning and Waste Funding Principles*); (ii) the Vienna Protocol; (iii) the Convention on Supplementary Compensation; and/or (iv) any

change associated with the design, construction or maintenance of the Access Road and/or with national sources of project financing;

2.1.3 where any such change, the draft of which, seven (7) Calendar Days or more prior to the Concession Date, is published on the website of any of the Parliament of the Republic of Lithuania, the Government of the Republic of Lithuania, any Ministry, or any Regulator and such change is transposed or implemented into Law in substantially the same way as published;

2.1.4 any change which transposes or implements into national law, or otherwise gives effect to:

(A) any laws, directives, regulations, decisions, standards or requirements which are required under relevant European Union law or required or recommended under international law ("**Transnational Laws**"); or

(B) any requirements, principles, standards or guidelines produced and/or published by the IAEA, WENRA, ENSREG or EURATOM or any other institution which can reasonably be considered to have replaced the IAEA, WENRA, ENSREG or EURATOM ("**Principles, Standards or Guidelines**"),

where such change, together with any other applicable Law, can reasonably be regarded as reflecting all or part of the purpose of the relevant Transnational Laws and/or Principles, Standards or Guidelines;

2.1.5 any change which transposes or implements into national law, or otherwise gives effect to any laws, directives, regulations, decisions, standards or requirements which are recommended by any European Union institution ("**Recommended Measure(s)**"):

(A) where such change can reasonably be considered to reflect all, or part of, the purpose of the Recommended Measure(s) and is reasonably proportionate to, or not substantially more onerous than, the Recommended Measure(s) having regard to:

(1) the Project, including the status, technology and siting of the Project; and

(2) generally applicable standards in the European Union; and/or

(B) where such change can reasonably be considered to reflect all, or part of, the purpose of the Recommended Measure(s) and the manner in which any such Recommended Measure has been implemented in respect of any other European Union nuclear installation and/or implemented or transposed into, or otherwise brought into effect under, the law of any other Member State; or

2.1.6 if and to the extent that the change arises out of a breach by the PCO of any of its obligations under this Concession Agreement, applicable Law or a breach by the PCO or the EPC Contractor of any of their obligations under any relevant Ancillary Contract or applicable Law or any other act or omission of the PCO or the EPC Contractor.

2.2 Notwithstanding Paragraph 1.1 of this Schedule 8 (*Fundamental Change*), Paragraph 1.1 shall not apply to any articles of the Laws referred to at Paragraphs 1.1.1 or 1.1.2 that have not come into force and effect within the Republic of Lithuania unless and until any such article has come into force and effect within the Republic of Lithuania.

**3. EFFECT OF REPLACEMENT SPECIFIED NUCLEAR TREATY,  
REPLACEMENT ENERGY CHARTER TREATY OR REPLACEMENT NEW  
YORK CONVENTION**

If a Specified Nuclear Treaty Replacement, Energy Charter Treaty Replacement and/or New York Convention Replacement is in force in or with respect to the RoL (each a "**Replacement Measure**"), Paragraphs 1.2 (*Withdrawal or denouncement from specified nuclear treaties*), 1.3 (*Withdrawal or denouncement from the Energy Charter Treaty*) or 1.4 (*Withdrawal or denouncement from the New York Convention*) of this Schedule 8 (*Fundamental Change*), as applicable, shall be deemed to refer, *mutatis mutandis*, to the relevant Replacement Measure to the extent that such Replacement Measure, or any provisions together therein, can reasonably be considered to fulfil a substantially similar purpose to the international instrument replaced and the relevant Paragraph shall be deemed no longer to refer to the international instrument replaced by the Replacement Measure.

**SCHEDULE 9**  
**INVESTED CAPITAL STATEMENT**

*To be completed by the PCO in respect of each Exiting Shareholder under Clause 26 and delivered to the RoL. The boxes in Sections 1-3 below are to be expanded as necessary to account for every Tranche of Invested Capital.*

As at \_\_\_\_\_

(Calculation Date)

Invested Capital (x) of \_\_\_\_\_ = € \_\_\_\_\_

Name of Exiting Shareholder

**SECTION 1 – SUBSCRIPTION PAYMENTS**

*Complete a line entry for each Tranche of Subscription Payment made by the Exiting Shareholder*

<i>Date of Subscription Payment</i>	<i>Number of Calendar Days between Subscription Payment and the Calculation Date (c)</i>	<i>Amount of Subscription Payment (€) (a)</i>
<b>TOTAL</b>		

**SECTION 2 – PRINCIPAL AMOUNTS**

*Complete a line entry for each Tranche of Principal Amount drawn down from the Exiting Shareholder*

<i>Date of draw down of Principal Amount</i>	<i>Number of Calendar Days between draw down of Principal Amount and the Calculation Date (c)</i>	<i>Amount of Principal Amount (€) (a)</i>
<b>TOTAL</b>		

**SECTION 3 – CREDIT PAYMENTS**

Complete a line entry for each Tranche of payment made under Exiting Shareholder credit support for PCO obligations

<i>Date of Credit Payment</i>	<i>Number of Calendar Days between Credit Payment and the Calculation Date (c)</i>	<i>Amount of Credit Payment (€) (a)</i>
<b>TOTAL</b>		

**SECTION 4 – INTEREST PAID**

State the total amount of interest paid to the Exiting Shareholder under Shareholder Loans

		<i>Aggregate amount of interest paid (€) (d)</i>

\_\_\_\_\_  
signed for and on behalf of  
the PCO

\_\_\_\_\_  
(Date)