

Dated [●]/[●]/[●]

# Energy Performance Contract with Guaranteed Energy Savings

*in relation to the renovation of [●] infrastructure*

between



as the Provider

and



as the Beneficiary

**This ENERGY PERFORMANCE CONTRACT WITH GUARANTEED ENERGY SAVINGS** (the “**Contract**”) has been entered into pursuant to Sections 17 and 18 of the Act on Energy Efficiency (as defined below) by and between:

(1) [●]<sup>2</sup>  
Registered Office : [●]  
Registration in Register : [●]  
ID No. : [●]  
Tax ID No. : [●]  
VAT ID No. : [●]  
IBAN : [●]  
Registration in RPSP : [●]  
Represented by : [●]  
(the “**Provider**”)

(2) [●]<sup>3</sup>  
Registered Office : [●]  
Registration in Register : [●]  
ID No. : [●]  
Tax ID No. : [●]  
VAT ID No. : [●]  
IBAN : [●]  
Represented by : [●]  
(the “**Beneficiary**”)

(the Provider and the Beneficiary jointly referred to as the “**Parties**” or individually as the “**Party**”)

**Whereas:**

(A) The Beneficiary wishes to permanently achieve energy savings, and thus enhance energy efficiency through (i) the refurbishment and renovation of the Infrastructure (as defined below)

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<sup>1</sup> The footnotes below are based on the relevant provisions set out in Eurostat’s Guide of 8 May 2018: A Guide to the Statistical Treatment of Energy Performance Contracts (the “**Guide**”) and their main purpose is to draw attention to the aspects that are important for ensuring that the Beneficiary’s use of the Provider’s services hereunder has no effect on the Maastricht debt of the Slovak Republic calculated according to the ESA 2010 methodology.

The Guide summarizes various contractual arrangements which are typical for Energy Performance Contracts (“**EPCs**”). As a result, this Contract also includes proposals for potential different arrangements or other mechanisms, as well as several various alternatives set out in square brackets that go beyond the scope of the model contract that could be desirable or applicable in specific cases depending on specific circumstances and the requirements of a specific Beneficiary and which can also be modified or supplemented depending on specific particularities of the relevant Project. If necessary, in individual cases, the related explanations are provided in the relevant footnote.

With regard to the considerable diversity of EPCs in practice, in several cases, where a detailed technical/economic regulation or other regulation is required depending on specific circumstances and requirements of the Beneficiary, the relevant provisions hereof contain a reference to a schedule containing that contractual regulation. This is to ensure that this Contract can apply as a model document to the greatest possible extent for a wide range of public sector entities. However, the relevant footnote includes the basic requirements for such regulation pursuant to the Guide.

The square brackets further indicate the relevant provisions of the Contract or their parts where information must be filled in based on specific circumstances and requirements of the Beneficiary.

<sup>2</sup> Pursuant to the Guide, the Provider must be classified, for statistical purposes, (pursuant to the ESA 2010 methodology) outside the general government sector.

<sup>3</sup> The Guide expects the Beneficiary to be classified inside the general government sector (pursuant to the ESA 2010 methodology). Otherwise, the Contract is not an EPC for the purposes of the Guide.

[including the fitting out of energy generation installations]<sup>4</sup> and (ii) the implementation of energy cost-efficient operation of the Infrastructure [including energy generation installations].<sup>5</sup>

- (B) The Provider provides energy cost-saving solutions and wishes to (i) perform (implement) the Project (as defined below); (ii) provide other necessary services to the Beneficiary in order to achieve long-term energy savings in the Infrastructure pursuant to the Project; and (iii) guarantee the Beneficiary that the agreed savings will be achieved under the Project, including financial compensation in the event of a shortfall or failure to achieve savings under the terms and conditions hereof.<sup>6,7</sup>
- (C) The Parties wish to implement the Project in three phases, i.e., (i) the performance of the Detailed Analysis (as defined below) whose outcome will be the Design (as defined below); (ii) the implementation of the Renovation (as defined below); and (iii) the provision of the Services (as defined below) so that the Beneficiary achieves guaranteed savings, all of the above under the terms and conditions specified herein.

**Now, therefore, the Parties have agreed as follows:**

## **1. Definitions and Interpretation**

- 1.1 Unless this Contract or the context hereof requires otherwise, the capitalized terms used herein shall have the following meaning:

“**Site**” means any and all structural and technology facilities comprising an independent operational or administrative unit owned by the Beneficiary, managed by the Beneficiary or

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<sup>4</sup> Applicable if new equipment for energy generation is installed within the Project. However, it must be noted that the Contract is intended for Projects the purpose of which is to reduce energy consumption and is not intended for Projects where the capital expenditures for energy generation would exceed 50% of the total capital expenditures incurred by the Provider. If the new energy-generation equipment is implemented within the Project, the expected revenues of the Beneficiary from the energy generation must be less than 50% of the expected payments for the guaranteed energy services and the expected revenues of the Provider from the energy generation must be less than the expected payments for the guaranteed energy services from the Beneficiary.

<sup>5</sup> See footnote 4.

<sup>6</sup> The Guide requires that (based on the calculation pursuant to the net present value method (*NPV*)) the amount of the guaranteed savings be higher than the total of: (i) the Payments for GES; and (ii) any “non-refundable” government financing (as the government financing is defined under the Guide) (e.g., contributions to the capital expenditures). Simultaneously, the amount of the guaranteed savings for a year must be higher than the amount of the Payments for GES for the relevant year.

In addition to the energy consumption savings, the following may be included in the calculation of the amount of the guaranteed savings:

- cost savings related to the energy supply (e.g. savings resulting from the reduced environmental commitments or savings resulting from the implementation and operation of on-site energy generation);
- revenues generated from the surplus and sale of on-site energy generation.

If the guaranteed savings are to include revenues generated from the sale of surplus energy (with regard to certain types of EPCs, in relation to which the installation of the facility for the energy generation forms part of the project), such revenues must be less than 50% of the total amount of the guaranteed savings

<sup>7</sup> The Guide is very sensitive about situations where EPC financing is ensured (directly or externally, even if partially) from government budgets. As a result, support by the government sector is significantly limited. If government support is expected for a specific project, the specific situation must be analyzed pursuant to the Guide. However, in general, it can be stated that if the government commitment for the financing of the capital expenditures of the EPC amounts to (i) 50% or more, the EPC must automatically be included in the general government sector; (ii) less than 50% but more than 1/3, it is issue of very high importance to the statistical treatment; (iii) 1/3 but more than 10%, it is issue of high importance to the statistical treatment; or (iv) 10% or less, it is issue of moderate importance to the statistical treatment. As a result, under certain circumstances (especially if other requirements under the Guide are met or other risk factors are not included in the Contract), the government sector may participate up to 50% in the EPC financing. Financing through EU grants constitutes a separate situation. Therefore, the potential financing by the government sector in the particular EPC must be always reviewed in the context of the Guide.

otherwise used by the Beneficiary based on a contractual relationship, located in one spot, which also includes the Infrastructure, and which are specified in Schedule 1 hereto.

“**Copyright Act**” means Act No. 185/2015 Coll., the Copyright Act, as amended.

“**Partial Payment for GES**” has the meaning given to it in Clause 7.2.

“**Partial Reimbursement**” means partial reimbursement of Investment Costs in the amount of EUR [●] (including value added tax).<sup>8</sup> For the avoidance of doubt, the Partial Reimbursements are fixed and (despite the fact that they are deferred payments of the Investment Costs pursuant to the Invoice for Investment Costs) they are interest-free and are not subject to increase as a result of changes to the macroeconomic indicators.

“**Renovation Completion Date**” means a date on which the Acceptance Certificate is executed by the Parties.

“**Renovation Commencement Date**” means a date on which the takeover certificate is executed by the Parties under which the Beneficiary hands the Infrastructure and the Site (or the relevant parts thereof) over to the Provider for the purpose of the implementation of the Renovation or otherwise allows the use of the Infrastructure and the Site (or the relevant parts thereof) for the purpose of the implementation of the Renovation.

“**Confidential Information**” means any and all information and facts obtained or learned by the Parties in any manner upon the execution, performance of, or in relation to, the performance hereof constituting business secrets under the Commercial Code.

“**Invoice for Investment Costs**” means an invoice issued by the Provider no later than as of the Renovation Completion Date for the payment of Investment Costs (for the avoidance of doubt, the Invoice for Investment Costs will be issued by the Provider in respect of the amount of the Investment Costs as set out in the Tender); the Invoice for Investment Costs shall be paid in Partial Reimbursements after the end of the relevant Annual Savings Period (to the extent to which the Provider’s entitlement to a Partial Reimbursement hereunder does not cease to exist).

“**Invoice for Services**” means a settlement invoice issued by the Provider for the payment of the Remuneration for Services after the end of the relevant Annual Savings Period (provided that the Provider is entitled to the Remuneration for Services hereunder).

“**Guaranteed Annual Savings**” means guaranteed annual savings pursuant to Schedule 4 hereto.

“**Works Timetable**” means the timetable for works and supplies pursuant to Schedule 5 hereto that includes the scope of works and supplies to be performed under the Project and the periods during which those works and supplies are to be performed.

“**Assessment Report**” has the meaning given to it in Clause 7.3.

“**Infrastructure**” means structural and/or technology facility(ies) in which the Project is to be implemented, specified in Schedule 1 hereto.

“**Investment Costs**” means investment costs in the amount of EUR [●] (including value added tax) set out in the Tender by the Provider as an amount to be incurred in relation to the Renovation.

“**Final Date**” has the meaning given to it in Clause 14.1.

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<sup>8</sup> The amount is to be determined as a proportion between: (i) the amount of Investment Costs and (ii) the number of Annual Savings Periods.

“**Design**” means the design documentation required for the implementation of the Renovation (which especially includes the design for the building permit (provided that the building permit and the implementation project are required for the implementation of the Renovation), proposal for organizational measures and proposal for changes to working procedures applicable during the Guarantee Period.

“**Unassigned Portion of the Partial Payment for GES**” means a portion of the claim for the payment of the Partial Payment for GES which has not been assigned [to a third party] pursuant to Clause 16.3 (and which, for the avoidance of doubt, remains in each case payable by the Beneficiary to the Provider).

“**Commercial Code**” means Act No. 513/1991 Coll., the Commercial Code, as amended.

“**Guarantee Period**” means the period during which the Provider guarantees the Beneficiary that the Guaranteed Annual Savings will be achieved, commencing on the first day of the first calendar month following the [termination date of the Trial Period]<sup>9</sup> / [Renovation Completion Date] and ending on the Final Date.

“**Renovation Period**” means the period for the performance of works and supplies under the design documentation that forms part of the Design, commencing on the Renovation Commencement Date and ending on the Renovation Completion Date.

“**Preparation Period**” means the period commencing on the execution date hereof and ending on the Renovation Commencement Date during which the Provider will perform the Detailed Analysis and prepare the Design.

“**Renovation**” means works and supplies pursuant to the design documentation which forms part of the Design to be performed by the Provider during the Renovation Period; whereas the scope of the Renovation (including the amount of the relevant investment costs) and target parameters of the Renovation are specified in Schedule 6 hereto.

“**Renovated Assets**” means machines, devices, equipment and/or any parts of the Infrastructure supplied, installed and/or modified by the Provider during the Renovation, including any works implemented by the Provider during the Renovation that require structural alterations of the Infrastructure. The Renovated Assets are specified in Schedule 6 hereto.

“**Remuneration for Services**” means the Provider’s remuneration for the provision of Services hereunder amounting to EUR [●] (including value added tax) for an Annual Savings Period (or in the relevant reduced amount pursuant to the provisions hereof). [If during the Guarantee Period the percentage change in the single index of consumer prices of the eurozone, published by Eurostat (or any index replacing such index) for the relevant calendar year falling entirely within the Guarantee Period exceeds [●]%, the Provider shall be entitled to proportionally increase the amount of the Remuneration for Services [corresponding to the relevant percentage change]/[to the extent to which the relevant percentage change exceeds [●]%, which will be effective for the following Annual Savings Period. The Provider shall be obliged to deliver a notice regarding such increase to the Beneficiary no later than 60 days after Eurostat’s publication of the relevant percentage change in the single index of consumer prices of the eurozone for the relevant calendar year; otherwise, it will lose its entitlement to increase the Remuneration for Services.]<sup>10</sup>

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<sup>9</sup> If it is agreed that the Trial Period will apply.

<sup>10</sup> The indexation method can also be determined in another manner according to the requirements of the Parties or it can be completely excluded.  
Pursuant to the Guide, the relevant index, based on which the indexation has been agreed, must be generally recognised in the Slovak Republic or in the energy services sector.

**“Documents”** means the following documents required for the preparation of the Design provided by the Beneficiary as a (public) authority in a (public) procurement:

- (a) documents required for the preparation of a tender or submission or to evidence compliance with the conditions for participation, especially a contract notice, notice used as a call for tenders, design contest notice, invitation to tender, tender documents, tender terms and conditions, information document and other supporting documentation;
- (b) documents containing a description of the existing (structural and/or technological) conditions and energy system of the Infrastructure prepared by the Beneficiary or its external advisor prior to the execution hereof which may also contain an interim submission or several variant interim submissions in order to achieve energy savings in the Infrastructure; and
- (c) any other documents provided by the Beneficiary to the Provider during the period for the submission of tenders;

that are specified in Schedule 2 hereto.

**“Payments for GES”** means payments made by the Beneficiary to the Provider in accordance with Article 7 hereof the purpose of which is (i) the gradual payment of the Invoice for Investment Costs; and (ii) the payment of individual Invoices for Services.

**“Detailed Analysis”** means a detailed analysis of the Infrastructure’s energy system and its use/operation to the extent according to the Provider’s needs in order to (i) verify the accuracy of the Documents; (ii) obtain a more detailed picture and summary of energy savings alternatives; and (iii) prepare the Design.

**“Tender”** means a tender submitted by the Beneficiary in the Public Procurement set out in Schedule 3 hereto.

**“Permits”** means any decisions of the public authorities whose content is related to, or required for, the Renovation, in particular but not limited to, a building permit and occupancy permit, as well as statements of the government authorities and other affected authorities and organizations which were underlying documents for the issuance of those decisions.

**“Rights Related to the Provision of Services”** means any and all legal relations, rights and obligations, including economic rights, use rights, rights arising from easements, approvals, permits, licenses, authorizations, and any other rights acquired by the Provider or in relation to which the Provider is a party, in relation to the provision of Services hereunder (however, obligations will only include such obligations which usually exist in relation to the provision of services similar to the Services hereunder). These especially include the rights or legal relations under energy supply agreements, legal relations between the Provider and third parties provided that these rights or legal relations are directly connected with the provision of Services, and any other rights or legal relations whose transfer or assignment is required for the proper operation and provision of the Services by the Beneficiary or a third party designated by it after the termination or early termination of this Contract (however, any agreements entered into with third parties in relation to the operation or provision of the Services containing unusual contractual terms and conditions or an inappropriate price for the performance provided by a third party or that would not allow the termination of the agreement with a third party entered into for a period of more than one year without a reason in an ordinary notice period shall not be deemed to be Rights Related to the Provision of Services). For the avoidance of doubt, permits, authorizations and consents in relation to the provision of Services that are issued by public authorities or require a special registration or proceedings pursuant to the Relevant Regulations related to regulated energy activities which are always related to a specific person

or entity for which they are issued shall not be included in the Rights Related to the Provision of Services.

“**Savings Excess**” means a positive difference between the Actual Annual Savings and Guaranteed Annual Savings.

“**Relevant Regulations**” means generally binding legal regulations of the Slovak Republic and European Union, the relevant quality standards, technical standards, security and other standards (including any standards to which the Documents refer) applying to the Provider’s relevant activities or their outcome hereunder.

“**Project**” means any and all acts and actions which the Parties are obliged or entitled to take hereunder during its implementation within:

- (a) the Preparation Period;
- (b) the Renovation Period; [and]
- (c) the [Trial Period; and]<sup>11</sup>
- (d) the Guarantee Period.

“**Acceptance Certificate**” means a written certificate regarding the implementation of the Renovation by virtue of which the Parties confirm that the Renovation has been implemented in accordance with its target parameters specified in Schedule 6 hereto under which the Renovated Assets will be handed and taken over in accordance with Clause 6.7, and whose part/annexes shall in particular include the following:

- (a) test reports required pursuant to the Documents and/or Schedule 6 hereto;
- (b) a list of detected minor defects of the Renovation which by their nature do not prevent the Guaranteed Annual Savings from being achieved, together with the period for their rectification;
- (c) a record of training the relevant employees of the Beneficiary (designated by the Beneficiary) who will (with the Beneficiary’s assistance during the operation of the Renovated Assets) operate or otherwise use the Renovated Assets;
- (d) other documents required pursuant to Schedule 6 hereto.

“**Relevant Amount**” has the meaning given in Clause 7.10(c).

“**Relevant Difference**” has the meaning given in Clause 7.8(c).

“**Annual Savings Period**” means each relevant period of twelve (12) consecutive months during the Guarantee Period, with the first Annual Savings Period commencing on the date of the commencement of the Guarantee Period.

“**Annual Settlement**” has the meaning given in Clause 7.6.

“**SIEA**” means the Slovak Innovation and Energy Agency.

[“**Trial Period**” means the period of [●]<sup>12</sup> commencing on the date following the Renovation Completion Date and during which the Provider will perform the optimization of the set-up of

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<sup>11</sup> If it is agreed that the Trial Period will apply.

<sup>12</sup> It is possible to agree on the Trial Period in the Contract in order to optimize the set-up of the Renovated Assets according to the manner of and requirements on their use. The Provider shall not be obliged to achieve the Guaranteed Annual Savings, it shall not be entitled to the Payments for GES and the mechanism for the reduction of the Payments for GES shall not apply during the Trial Period. In accordance with the Guide, it is possible to agree on a three-month Trial Period

the Renovated Assets in respect of the manner of and requirements on use of the Renovated Assets (for the avoidance of doubt, the Provider shall not be obliged to achieve the Guaranteed Annual Savings and shall not be entitled to Payments for GES during this period).]

“**Actual Annual Savings**” means the total amount of savings actually achieved during the Annual Savings Period calculated according to the procedure specified in Schedule 4 hereto.

“**Services**” means energy services with guaranteed energy savings and other related services provided by the Provider to the Beneficiary hereunder and specified in Schedule 8 hereto.

“**Subcontractor**” has the meaning given in Clause 3.6.

“**General Government Sector Entity**” means an entity registered in the Register of Organizations maintained by the Statistical Office of the Slovak Republic pursuant to Sections 19 to 21 of Act No. 540/2001 Coll. on State Statistics, as amended, and included in the general government sector in accordance with a unified methodology applicable to the European Union.

[“**Public Procurement**” means the public procurement for contract No. [●], the contract notice of which was published in Official Journal for Public Procurement No. [●] dated [●]<sup>13</sup> as a result of which this Contract has been executed].

“**Savings Shortfall**” means a negative difference between the Actual Annual Savings and Guaranteed Annual Savings.

“**Force Majeure**” means an obstacle occurring independently of the will of the obliged Party that prevents it from performing its obligations if the obliged Party cannot reasonably be expected to avoid or overcome such obstacle or its consequences and it could not have foreseen such event at the time when its obligation arose; for the purposes hereof, Force Majeure shall mean solely the following circumstances (in each case provided that they meet the abovementioned conditions): war, sabotage, a terrorist act, blockade, strike, epidemic, nuclear explosion, radiation, chemical or biological contamination, plane crash and natural disasters (earthquakes, landslides, fires, floods, storms, windstorms, volcanic eruptions, avalanches, hailstorms, droughts). For the avoidance of doubt, changes of an economic, political, financial or currency nature, change of the economic conditions of any Party or Subcontractor, or failure or refusal to issue any decision by the public authority shall never be considered a Force Majeure event.

“**Act on Energy Efficiency**” means Act No. 321/2014 Coll. on Energy Efficiency and on Changes and Amendments to Certain Laws, as amended.

“**Public Procurement Act**” means Act No. 343/ Coll. on Public Procurement and on Changes and Amendments to Certain Laws, as amended.

“**Reducing Amount**” has the meaning given in Clause 5.6.

1.2 Unless otherwise provided herein or if the context requires otherwise, in interpreting this Contract:

- (a) words denoting the singular include the plural and vice versa;
- (b) references to an Article, Clause or Schedule shall be construed as references to an Article, Clause or Schedule of this Contract;

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in relation to the eight-year term of the Contract or in the event of a longer term of the Contract, it is possible to agree on a proportionally longer Trial Period.

<sup>13</sup> The relevant public procurement based on which the Contract is executed must be specified.

- (c) headings and table of contents are inserted for convenience of reference only and have no influence on the interpretation hereof; and
- (d) references to any legal regulation or its relevant provision shall include references to such legal regulation or its relevant provision as it may, from time to time, be amended, supplemented or re-enacted after the execution of this Contract, and legal regulations or their relevant provisions which wholly or partially replace such legal regulation or its relevant provisions after the execution of this Contract.

## **2. Subject of the Contract**

2.1 The subject of this Contract is the obligation:

- (a) of the Provider to implement the Project with due care and under the terms and conditions specified herein; and
- (b) of the Beneficiary to make the regular Payments for GES and the remuneration for Savings Excess to the Provider under the terms and conditions specified herein.

2.2 Within the implementation of the Project and under the terms and conditions specified herein, the Provider agrees to:

- (a) perform the Detailed Analysis and prepare the Design during the Preparation Period;
- (b) perform the Renovation during the Renovation Period; and
- (c) provide the Service during the [Trial Period and]<sup>14</sup> the Guarantee Period.

## **3. Provider's Obligations During the Preparation Period and the Renovation Period**

3.1 During the Preparation Period, and no later than by the deadlines designated in the Works Timetable, the Provider shall:

- (a) perform the Detailed Analysis and prepare the Design in accordance with the Relevant Regulations (unless the quality requirements are stipulated in the Relevant Regulations, the Provider shall act in accordance with an internationally accepted quality level which allows the proper preparation of the Design) and Documents; and
- (b) deliver the prepared Design to the Beneficiary for its approval;

and in order to obtain the Permits by the deadline specified in the Works Timetable, the Provider shall be allowed to deliver only a part of the Design to the Beneficiary for its approval to the extent required for the issuance of a building permit for the implementation of the Renovation (i.e., especially the design for the building permit), and it will provide the remaining part of the Design (i.e., especially the implementation project) to the Beneficiary for its approval in accordance with the Works Timetable.

The Provider will bear all the costs it incurs in relation to the performance of the Detailed Analysis and the preparation of the Design.

Should any error, omission, ambiguity, discrepancy, deficiency or any other defects be detected in the Provider's Design, they shall be rectified at the Provider's expense, notwithstanding the Beneficiary's consents or approvals.

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<sup>14</sup> If it is agreed that the Trial Period will apply.

[If based on the Detailed Analysis the Provider identified the need to supplement or extend the Renovation design specified in the Provider's Tender in order to achieve the Guaranteed Annual Savings, it may request the Beneficiary in writing to accept such more advantageous solution differently or beyond the scope of designs referred to in the Provider's Tender. Additional designs of the Provider under this Clause may not change the Documents or be in conflict with them. If the Beneficiary gives its written consent to such Provider's request pursuant to the preceding sentence (however, it shall not be obliged to do so) and agrees that the Design will in certain part change the original Renovation design pursuant to the Provider's Tender (or the extent of the Renovation according to Schedule 6 hereto) or go beyond the framework of such design (or the extent of the Renovation according to Schedule 6 hereto), notwithstanding anything to the contrary herein, the Provider shall not be deemed to be in breach of this Contract if it asks the Beneficiary to approve within the Design such approved changes by the Beneficiary as opposed to the Provider's Tender. Once the Beneficiary has approved such changes, it may not reject them in the submitted Design. The Parties shall execute the amendment hereto with regard to the more advantageous solution which differs or goes beyond the designs referred to in the Provider's Tender (or the extent of the Renovation according to Schedule 6 hereto) immediately after the approval of the Design by the Provider.]<sup>15</sup>

3.2 During the Renovation Period, the Provider agrees to:

- (a) implement the Renovation in a due and timely manner and with due care, and in accordance with (i) the Design approved by the Beneficiary; (ii) the Works Timetable; (iii) the Relevant Regulations (and unless the quality requirements are stipulated in the Relevant Regulations, the Provider shall act in accordance with an internationally accepted quality level which allows the proper implementation of the Renovation); (iv) the Tender; (v) the Documents; as well as (vi) the building permit if it is required for the implementation of the Renovation, and any other relevant Permits;
- (b) implement the Renovation in order to achieve the Guaranteed Annual Savings and, if applicable, also to satisfy other criteria related to energy savings in the scope defined in Schedule 4 hereto;
- (c) supervise and manage the implementation of the Renovation with due care; the Provider shall be solely liable for construction techniques, methods, procedures, processes and for the coordination of all parts of the implementation of the Project;
- (d) proceed so that exclusively suitable and eligible products or parts complying with technical and security requirements pursuant to the Relevant Regulations are used by it for the implementation of the Project;
- (e) ensure all supplies and works and pay its Subcontractors or third parties in due time all costs for the works, materials, equipment and devices required for the proper implementation and completion of the Renovation;
- (f) [ensure that any and all Permits are obtained and if the Provider is not able to ensure such Permit on its own, to cooperate with the Beneficiary in order to ensure any and all Permits required for a successful implementation of the Renovation in accordance with the Relevant Regulations applicable for the implementation of the Renovation; if the Provider shall ensure that the Permits are obtained, the Beneficiary shall be obliged to provide the necessary cooperation to the Provider (and the provision of such necessary

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<sup>15</sup> The given provision may be included only if the Public Procurement allows the tenderers to propose the scope of the Renovation beyond Schedule 6 already in their tenders.

cooperation includes the granting of the required powers of attorney to the Provider to the necessary extent);]<sup>16</sup>

- (g) maintain the Beneficiary's Infrastructure and Site and their surroundings free of the accumulation of waste resulting from the implementation of the Renovation, and to remove any such waste material from the Infrastructure, Site and their surroundings from time to time; if required by the Beneficiary, the waste material shall be temporarily deposited in the agreed place; if the Beneficiary declares it to be unnecessary, the Provider shall dispose of it in accordance with the Relevant Regulations at its own expense;
- (h) ensure that the requirements of the Relevant Regulations related to the safety and health at work, hygiene rules, environmental protection and fire protection, as well as other requirements under the Relevant Regulations related to the implementation of the Renovation are complied with;
- (i) [take security measures (including measures for the security and guarding of the Site and the Infrastructure (or the relevant parts thereof) that have been handed over to the Provider in the form of a written certificate), and other necessary measures in order to prevent damage, injury or loss resulting from the implementation of the Renovation.]<sup>17</sup>

- 3.3 The Provider agrees to keep a site/assembly logbook regarding the works it performs starting from the Renovation Commencement Date. Any and all facts decisive for the performance of the Contract shall be recorded in the site/assembly logbook, in particular the handover of constructional preparedness, records prepared by the Beneficiary's technical supervisors, information regarding work progress, etc. The site/assembly logbook must be permanently present on the construction site during the implementation of the Renovation. The Beneficiary shall be obliged to monitor the content of the logbook and enter its statements (approval, comments, etc.). The Provider will stop maintain the logbook upon the completion of the Renovation based on the Acceptance Certificate. If the works are suspended because the Provider cannot continue the works for circumstances for which it is not responsible, the Provider shall document the stage of the progress of the Renovation in the site/assembly logbook. The records in the site logbook that could affect the contractual obligations of the Beneficiary or the Provider under this Contract shall be submitted by the employees authorized to make a record in the site/assembly logbook to the relevant department within their organization for the purpose of potential negotiations for changing the affected parts hereof.
- 3.4 The Provider shall allow the Beneficiary to inspect the performance of its obligations from time to time during the implementation of the Renovation. The Provider shall in particular schedule inspections in accordance with the Works Timetable, invite the Beneficiary's authorized persons to participate in them and keep minutes of them.
- 3.5 During the Renovation Period, the Provider shall train the Beneficiary's employees or persons designated by it who, according to their job positions or the contractual relations with the Beneficiary, will participate in operating the Renovated Assets.
- 3.6 The Parties have agreed that the Provider shall be entitled to subcontract the performance of its obligations hereunder to eligible and professionally qualified natural persons and legal entities

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<sup>16</sup> The issue regarding the scope of permits for which the Provider assumes liability is project-specific and should be determined in more detail depending on the nature of the Project. Pursuant to the Guide, the risk of obtaining permits requiring acts of the Beneficiary that cannot be obtained independently by the Provider (for reasons not related to the Provider's omissions) can be allocated to the Beneficiary.

<sup>17</sup> The regulation of the liability for the security and guarding of the Site and the Infrastructure is project-specific and it can be modified in a different way with regard to the particularities of the Project (however, if the Site is handed over to the Provider in the Renovation phase, it is appropriate to allocate this liability to the Provider).

(the “**Subcontractors**”); however, it shall be liable for their performance hereunder in the same manner as if such performance had been provided by itself. The Provider shall ensure that, no later than at the moment of the performance of the Contract, the Subcontractors meet the requirements pursuant to Section 32(1) of the Public Procurement Act and submit the documents pursuant to Section 32(2) of the Public Procurement Act, and shall further ensure that the Subcontractors contractually commit to the same obligation in relation to their direct or indirect subcontractors so that the requirements pursuant to Section 32(1) of the Public Procurement Act are met and the documents pursuant to Section 32(2) of the Public Procurement Act are submitted in respect of the entire chain of subcontractors no later than at the moment of the performance of the Contract. The list of Subcontractors is attached as Schedule 7 hereto. The list of Subcontractors shall include the scope of performance by each Subcontractor and information regarding the person authorized to act on behalf of the Subcontractor, such as the name and surname, residence address, and date of birth. If during the performance of the Contract the Provider wishes to change or supplement its Subcontractors, each such Subcontractor must be able to perform the relevant part of the Contract in the same quality as the original Subcontractor. No Subcontractor can be changed or supplemented without the Beneficiary’s consent, such consent not to be unreasonably withheld by the Beneficiary; the reason for withholding such consent includes (without limitation) the failure to meet the terms and conditions hereof in respect of the proposed Subcontractor. For the avoidance of doubt, the Parties have agreed that no amendment hereto is required in order to change or supplement the Subcontractors if the procedure pursuant to this Clause is followed. After a change of Subcontractors has been approved, the Parties shall update Schedule 7 hereto by inserting the relevant information.

- 3.7 After the implementation of the Renovation in compliance with the target parameters of the Renovation specified in Schedule 6<sup>18</sup> hereto, the Provider shall deliver to the Beneficiary a written notice in which it will request that the Beneficiary execute the Acceptance Certificate [and, if applicable, also the takeover of the Infrastructure and the Site (or parts thereof) in the form of a written certificate], along with documents which according to Schedule 6 hereto prove that the target parameters of the Renovation referred to in Schedule 6 have been met. The Renovation shall be deemed to be implemented and the Renovation Period shall be deemed to be completed upon the execution of the Acceptance Certificate by the Parties.
- 3.8 On the Renovation Completion Date, the Provider shall also deliver the following documents to the Beneficiary (to the extent to which it is applicable and provided that they have not been attached as annexes to the Acceptance Certificate) along with the execution and handover of the Acceptance Certificate:
- (a) two (2) counterparts of the design documentation – actual condition (as-built);
  - (b) a list of Renovated Assets and for each such Renovated Asset:
    - (i) certificate of quality and completeness;
    - (ii) attestations required in the Slovak Republic;
    - (iii) review reports required in the Slovak Republic;

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<sup>18</sup> The Guide requires that such technical parameters/criteria used for determining whether the Renovation is complete: (i) be defined objectively and clearly in the Contract (i.e. they may not be left open to the discretion of either Party or to negotiation between the Parties during the term of the Contract); and (ii) must sufficiently prove that the Renovated Assets will achieve the required standards during their operation (i.e. they must require the Renovated Assets to be in a condition that enables them to perform to the standards set out in the Contract). Depending on the EPC type, these criteria may include the performance of functional tests or other tests required by the legal regulations. Since this is project-specific content of the Contract, it is appropriate to specify it with regard to the specific nature of the Project in the relevant Schedule to the Contract in which the scope of the Renovation is specified, in each case in compliance with the requirements of the Guide.

- (iv) records regarding the training of the Beneficiary's employees or persons designated by it who, according to their job positions or the contractual relations with the Beneficiary, will participate in operating the relevant Renovated Assets;
- (v) manuals for assembly, maintenance and operation;
- (c) the Invoice for Investment Costs; and
- (d) certificates of quality for the used materials and structures, certificates of materials and products subject to the obligatory certification, energy performance certificates and review reports.

3.9 [The Parties have agreed that<sup>19</sup>

- (a) if the Provider fails to deliver to the Beneficiary for approval the Design [or its relevant part (if the deadline for implementation in relation to this part is determined in the Works Timetable)] prepared in accordance with the terms and conditions hereof by the deadline determined in the Works Timetable, the Beneficiary shall be entitled to the payment of a contractual penalty by the Provider in the amount of EUR [●] per each day of delay [in relation to each individual event of delay].
- (b) if the Provider fails to complete the implementation of the Renovation [or its relevant part or phase (if the deadline for implementation in relation to this part or phase is determined in the Works Timetable)] in accordance with the terms and conditions hereof by the deadline determined in the Works Timetable, the Beneficiary shall be entitled to the payment of a contractual penalty by the Provider in the amount of EUR [●] per each day of delay [in relation to each individual event of delay];
- (c) if the Provider is in delay with the payment of costs for works, materials, equipment and devices required for the proper performance and completion of the Renovation in relation to its Subcontractors or third parties whose entitlement to the payment has been established in relation to the proper performance of the subject hereof in respect of the implementation of the Renovation, and the Provider fails to meet its obligation within an additional reasonable period after receipt of the Beneficiary's written notice, the Beneficiary shall be entitled to the payment of a contractual penalty by the Provider in the amount of [0.1] % of each such delayed payment per each day of delay for each individual event of delay;
- (d) if the Provider breaches its obligation to maintain the Beneficiary's Infrastructure and Site and their surroundings free of the accumulation of waste resulting from the implementation of the Renovation, and to remove any such waste material from the Infrastructure, Site and their surroundings from time to time or temporarily deposit it in the agreed place in accordance with the terms and conditions hereof or dispose of it in accordance with the Relevant Regulations at its own expense in accordance with the terms and conditions hereof, the Beneficiary shall be entitled to the payment of a contractual penalty by the Provider in the amount of EUR [●] in relation to each individual event of default;
- (e) if the Provider or any person engaged by the Provider in performing the subject of this Contract in respect of the implementation breaches any requirement under the Relevant Regulations applying to the safety and health protection at work, hygiene regulations, environmental regulations and fire regulations as well as other requirements under the Relevant Regulations applying to the implementation of the Renovation, the

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<sup>19</sup> Since the scope and amount of the agreed contractual penalties related to the implementation of the Renovation is project-specific, the particularities of the Project must be taken into account when determining their extent and amount.

Beneficiary shall be entitled to the payment of a contractual penalty by the Provider in the amount of EUR [●] in relation to each individual event of default;

[The aggregate amount of contractual penalties which the Provider shall be obliged to pay the Beneficiary under this Clause 3.9 may not exceed EUR [●].]<sup>20</sup>

- 3.10 If during the Renovation any hazardous substance is discovered in the Infrastructure or the Site or hidden deficiencies of the Infrastructure or the Site (such as hidden defects of the structures) whose existence or consequences (i) have a material adverse effect on the implementation of the Renovation; (ii) which could have not been reasonably foreseen by the Provider even when exercising due care, as an experienced provider of services in the scope of the subject hereof, taking into account the level of the due diligence of the relevant facts which the Provider could have and should have conducted prior to the execution of this Contract with regard to the circumstances of the Project; and (iii) are not attributable to the Provider, the Provider shall be entitled to interrupt the Renovation (or the relevant part thereof) until the Beneficiary, at its own expense, examines, cleans up or removes such hazardous substances or deficiencies of the Infrastructure or the Site. In the event of such interruption, the relevant period referred to in the Works Timetable shall be extended appropriately with regard to the scope and the nature of the part of the works to which such interruption refers.

#### **4. The Guarantee**

- 4.1 The Provider guarantees that the Renovated Assets, as well as any works performed by the Provider or its Subcontractors during the Renovation shall be free of any functional defects and shall be in accordance with the terms and conditions hereof, as well as the Relevant Regulations, during the guarantee period commencing on the Renovation Completion Date and terminating upon lapse of the last day of the Guarantee Period. If during such guarantee period any defect of any part of the Renovation is detected, the Provider shall at its own expense repair or, at its own discretion, replace such part.
- 4.2 A guarantee for quality is not provided for natural wear and tear to the extent to which such natural wear and tear does not constitute an obstacle to achieving the Guaranteed Annual Savings or the damage occurred:
- (a) due to the fact that the Beneficiary makes on its own, or through a third party not expressly authorized by the Provider, modifications or repairs of the Renovation or any part thereof without the previous written consent of the Beneficiary;
  - (b) due to the fact that the Renovation or any part thereof has been damaged (i) by the Beneficiary or a third party to whom the Beneficiary allowed access to the Infrastructure and/or the Renovated Assets; (ii) as a result of the Beneficiary's breach of its obligations; or (iii) as a result of Force Majeure; or
  - (c) as a result of the use of the documents received from the Beneficiary if the Provider could have not detected their unsuitability, even when exercising due care, as an experienced provider of services in the scope of the subject hereof, taking into account the level of the due diligence of the relevant facts which the Provider could have and should have conducted prior to the execution of this Contract or at the moment when those documents were received with regard to the circumstances of the Project. Upon delivery of the documents from the Beneficiary, the Provider shall be obliged to report the deficiencies of those documents without undue delay, which the Provider, as an experienced provider of services hereunder should have detected if it exercised due care.

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<sup>20</sup> Depending on the nature of the Project, it is possible to agree on the maximum limit of the aggregate amount of contractual penalties that can be claimed against the Provider in respect of the implementation of the Renovation.

- 4.3 Rights related to the liability for defects must be exercised within the guarantee period; otherwise, they expire.
- 4.4 [The Provider shall be obliged to rectify any defect after receiving notification regarding the defect from the Beneficiary, i.e., to repair the defective part of the Renovation or replace the defective part of the Renovation with a new one or to supply the missing part of the Renovation: (i) with regard to [defects having a material adverse effect on the operability of the Infrastructure or the Site], [without undue delay after the Beneficiary's notification]; and (ii) with regard to other defects within the period agreed in writing between the Provider and the Beneficiary; and if the Beneficiary and the Provider fail to agree in writing on such period within [five (5)] days following the date of the Beneficiary's defect notification, within a reasonable (in respect of the nature and scope of the defect) period determined and notified to the Provider by the Beneficiary in writing.]<sup>21</sup>
- 4.5 Any and all costs related to the rectification of the defects in the Renovation, to which a guarantee for quality refers pursuant to this Article 4 (for the avoidance of doubt, including any and all costs incurred by the Beneficiary as a result of restrictions in the use of the Infrastructure and/or the Site related to the rectification of the defects in the Renovation) shall be borne by and paid by the Provider.
- 4.6 If the Provider fails to rectify the defects within the period under Clause 4.4, the Beneficiary shall be entitled to rectify the defects on its own or through a third party at the Provider's expense.

## **5. The Provider's Obligations During the [Trial Period and]<sup>22</sup> the Guarantee Period**

- 5.1 During the [Trial Period and]<sup>23</sup> and the Guarantee Period, the Provider agrees to provide the Services to the Beneficiary in a due and timely manner and with due care and in accordance with (i) the Works Timetable; (ii) the Relevant Regulations (unless the quality requirements are stipulated in the Relevant Regulations, the Provider shall act in accordance with an internationally accepted quality level which allows the proper provision of the Services); (iii) the Design; and (iv) the Tender.
- 5.2 [If the Provider at its discretion decides that it is necessary to supplement the Renovation in order to achieve the Guaranteed Annual Savings and to perform additional works and install additional components during the [Trial Period and]<sup>24</sup> the Guarantee Period, the Provider shall be entitled to implement such installations at its own expense and under the same provisions as are applicable for the implementation of the Renovation during the Renovation Period. In addition, the Provider shall be entitled to replace the interchangeable parts or equipment at its own expense if such interchangeable parts or equipment is functional and possesses the same or better quality than the replaced parts and equipment. The same guarantees shall apply to any and all supplements and replacements as to original parts and equipment. The Provider shall only be entitled to make any changes pursuant to this Clause 5.2 with the Beneficiary's previous written consent; the reason for withholding such consent includes (without limitation) the

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<sup>21</sup> Since the periods for rectification of defects are project-specific, the particularities of the Project should be taken into consideration when they are agreed on in the contract. Different rectification periods can be agreed on for various types of defects.

<sup>22</sup> If it is agreed that the Trial Period will apply.

<sup>23</sup> If it is agreed that the Trial Period will apply.

<sup>24</sup> If it is agreed that the Trial Period will apply.

material adverse effect of the proposed changes on the operation of the Infrastructure or the Site or the Beneficiary's activities.]<sup>25</sup>

- 5.3 During the [Trial Period and]<sup>26</sup> the Guarantee Period, the Provider shall document the changes in the Infrastructure and its use/operation and approve these entries in due time with the Beneficiary.
- 5.4 During the [Trial Period and]<sup>27</sup> the Guarantee Period, the Provider shall be obliged to provide the Services (including the provision of maintenance of the Renovated Assets) in accordance with the Relevant Regulations and shall be fully liable for the functionality and smooth running of all Renovated Assets so that the Guaranteed Annual Savings are achieved.
- 5.5 The Provider shall be obliged to monitor the condition of the Renovated Assets and the fulfilment of requirements for a minimum amount of the Guaranteed Annual Savings and notify the Beneficiary of the outcome of such monitoring under the terms and conditions, and in the scope and periods referred to in Schedule 9 hereto. Notwithstanding the above, the Beneficiary shall also be entitled to inspect the proper maintenance of the Renovated Assets by the Provider and the condition of the Renovated Assets from time to time and monitor whether the requirements for the minimum amount of the Guaranteed Annual Savings have been met; however, any inspection or monitoring by the Beneficiary will have no effect on the Provider's liability for the compliance with the Guaranteed Annual Savings. Detailed terms and conditions, scope and timeframe of the preventive inspections, monitoring and submission of information to the Beneficiary under this Clause 5.5 are specified in Schedule 9 hereto.<sup>28</sup>
- 5.6 The Parties have agreed that if during the Guarantee Period, the Provider
- (a) breaches the obligation to rectify the defect in the Renovation within the period under Clause 4.4, the relevant Payment for GES shall be automatically reduced by EUR [●] per each such breach;
  - (b) breaches the obligation to monitor the condition of the Renovated Assets and the fulfilment of requirements for a minimum amount of the Guaranteed Annual Savings or to notify the Beneficiary of the outcome of such monitoring under the terms and conditions, in the scope and periods in accordance with Clause 5.5 in conjunction with Schedule 9 hereto, the relevant Payment for GES shall be automatically reduced by EUR [●] per each such breach;

(the total reduction of the Payment for GES resulting from the breach of obligations by the Provider in the relevant Annual Savings Period, the "**Reducing Amount**")[, and the maximum amount of the Reducing Amount resulting from the breaches by the Provider that occurred in the individual Annual Savings Period, amounts to EUR [●].]<sup>29</sup> The Provider shall

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<sup>25</sup> If the Beneficiary does not wish to grant such scope of rights to the Provider, this provision can be deleted or more significantly limited.

<sup>26</sup> If it is agreed that the Trial Period will apply.

<sup>27</sup> If it is agreed that the Trial Period will apply.

<sup>28</sup> Pursuant to the Guide, the monitoring process must be defined sufficiently, objectively and in detail. The setting of the monitoring process can vary from case to case and can be adjusted with reference to the relevant technical standards (as an example International Performance Measurement and Verification Protocol (IPMPV) is stated in the Guide) or relevant regulations, specific rules of the manufacturer and frequently also the specific monitoring plan. Since this is project-specific content of the Contract, it is appropriate to specify it with regard to the specific nature of the Project in the relevant Schedule to the Contract defining the monitoring process (e.g., attaching the monitoring plan, by reference to technical standards/specific regulations or through the Parties' own determination of the monitoring process), in each case in accordance with the requirements of the Guide.

<sup>29</sup> The Guide allows the parties to agree on the limitation of the liability resulting from the breach of the required standards for the provision of the guaranteed energy services (except for liability for the achievement of the Guaranteed Annual Savings in respect of which the limitation of the Provider's liability may not be agreed on).

be obliged to settle with the Beneficiary the reduction of the payment for GES by the Reducing Amount in accordance with the conditions referred to in Article 7.

- 5.7 [Pursuant to a special written agreement, the Parties may agree on the provision of other performances and services by the Provider to the Beneficiary beyond the scope of this Contract in relation to the Infrastructure.]<sup>30</sup>

## **6. Rights and Obligations of the Beneficiary**

- 6.1 The Beneficiary agrees to provide cooperation to the Provider necessary for the proper implementation of the Project by the Provider during the term hereof. The Beneficiary agrees to notify the Provider in writing of any intentions and activities related to the Infrastructure and its use that could have an effect on the performance of obligations and the achievement of the Guaranteed Annual Savings by the Provider as agreed herein.
- 6.2 The Beneficiary agrees to allow the Provider to access the Infrastructure and the Site and take any and all required acts for the purpose of the performance of the Detailed Analysis and provide it any other cooperation and ensure the conditions for the implementation of measures for the proper preparation of the Design, implementation of the Renovation, and the provision of Services hereunder. The Beneficiary also agrees to provide and submit to the Provider and/or its Subcontractors any required information related to the condition and operation of the Infrastructure requested by the Provider for the purpose and in the scope necessary for the performance of its obligations hereunder during the entire term hereof.
- 6.3 The Beneficiary shall be obliged to give its consent to the Design or its relevant part to the Provider within [one month] after the delivery of the Design or its relevant part pursuant to Clause 3.1(b) hereof. The Beneficiary shall be entitled to refuse to give its consent to the Design or its relevant part, however only if the Design or its relevant part does not comply with the requirements hereunder (including as a result of its non-compliance with the Relevant Regulations); in such case, the Beneficiary shall be entitled to request that the Provider adjust the Design or its relevant part, and the Provider shall be obliged to [immediately] re-submit the adjusted Design or its relevant part to the Beneficiary for approval.
- 6.4 [If a building permit is required for the implementation of the Renovation, the Beneficiary, as the contractor, agrees to request that the relevant building authority issue a building permit that will determine the requirements for the implementation of the Renovation without undue delay, however, no later than [●] days after the date on which it has taken over the Design or its relevant part from the Provider to the extent required for the issuance of a building permit for the implementation of the Renovation (i.e., especially the design for the building permit) pursuant to Clause 3.1(b) hereof. The obligation pursuant to the preceding sentence shall not apply if the Beneficiary refuses to give its consent to the Provider in accordance with Clause 6.3 hereof.]<sup>31</sup>
- 6.5 The Beneficiary agrees to provide its cooperation to the Provider during the implementation of the Renovation to the following extent:
- (a) To the extent necessary for the implementation of the Renovation, the Beneficiary agrees to hand over the Infrastructure and the Site (or the parts thereof, if applicable) to the Provider in order to commence the Renovation within the period determined in the Works Timetable. The Parties shall execute a handover certificate regarding the handover of the Infrastructure and the Site (or the parts thereof, if applicable).

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<sup>30</sup> Applicable if the Provider also provides other services beyond the scope of the subject of the Contract (such as operation of the installed Renovated Assets, cleaning or guarding the Infrastructure, etc.).

<sup>31</sup> See the preceding footnote 16 in respect of the liability regarding the permits. If the Provider is to ensure the building permit, this Clause must be deleted.

- (b) When arranging the activities in the Infrastructure, it shall arrange for the vacation of premises and/or facilities in the Infrastructure to the greatest possible extent so that the Renovation can be implemented in accordance with the Works Timetable. The Beneficiary shall be responsible and ensure that the proper course of the construction and assembly works by the Provider is not disturbed by unauthorized acts of third parties; this shall not apply if and to the extent to which the Infrastructure and the Site (or the parts thereof, if applicable) have been handed over to the Provider pursuant to letter (a), when the Provider is liable for the protection of such Infrastructure and the Site (or the parts thereof, if applicable) against the unauthorized acts by third parties.
- (c) [Special obligations of the Beneficiary during its provision of cooperation to the Provider are specified in Schedule [●] hereto].<sup>32</sup>
- 6.6 If the Renovation meets the target parameters of the Renovation specified in Schedule 6 hereto, the Beneficiary shall be obliged to execute the Acceptance Certificate within [7 business days] following a day on which the Provider has requested it in writing to do so. If the Beneficiary notifies the Provider of the defects due to which the Renovation does not meet the target parameters of the Renovation specified in Schedule 6 hereto, the Provider shall be obliged to immediately take measures to rectify such deficiencies and after their rectification, to again request the Beneficiary in writing to sign the Acceptance Certificate in accordance with the terms and conditions hereof.
- 6.7 The ownership of any and all Renovated Assets as well as any other components installed during the Renovation shall be transferred to the Beneficiary by their handover and takeover on the Renovation Completion Date, except for those Renovated Assets whose ownership was transferred to the Beneficiary at the moment when they became part of the Infrastructure, directly by the operation of law.
- 6.8 [If an occupancy (or other) permit is required for the use of the Renovation, the Beneficiary agrees to request that the competent building (or other) authority issue the concerned decision immediately after the Renovation Completion Date.]<sup>33</sup>
- 6.9 The Beneficiary shall be liable for the Infrastructure and the Site (to the extent to which they are operated by the Beneficiary and in each case except for the Renovated Assets) being maintained with due prudential care in good condition during the entire term hereof. Any and all construction, assembly and maintenance activities required during the term hereof and not related to the Renovation or the provision of Services shall be performed by the Beneficiary at its expense. These activities shall always be performed in accordance with the Relevant Regulations.
- 6.10 To the extent to which the relevant information could not have been obtained by the Provider as a result of its own activities during the performance of this Contract, the Beneficiary shall be obliged to notify the Provider of any changes of circumstances that it is aware of, and that could result in the recalculation of the Guaranteed Annual Savings pursuant to Schedule 4 hereto (such as changes to the use of the Infrastructure, changes to the working schedule, changes in the number of persons using the Infrastructure, disruption of the Infrastructure, and the Beneficiary's activities pursuant to Clause 6.9 that could have a material effect on energy consumption, etc.)

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<sup>32</sup> These may include various obligations of the Beneficiary's cooperation, such as ensuring the energy supplies (in particular electricity and water supply and drainage (sewage system)), the possibility to use sanitary facilities or dressing rooms, provision of premises for storing materials, etc. Since this is project-specific content of the Contract, it is appropriate to specify it with regard to the specific nature of the Project in the relevant Schedule to the Contract.

<sup>33</sup> See footnote 16 above in respect of the liability regarding permits. If the Provider is to ensure the occupancy permit, this Clause must be deleted.

- 6.11 The issuance of the confirmation or any other approval or consent of the Beneficiary in respect of any activities of the Provider hereunder does not release the Provider from any liability, especially not the liability for the achievement of the Guaranteed Annual Savings.
- 6.12 [The Beneficiary shall be entitled to request that the Provider change the scope of the subject of the performance hereunder and enter into an amendment to this Contract in which the relevant provisions hereof would be changed according to the Beneficiary's requirements provided that such change is in compliance with the Relevant Regulations (for the avoidance of doubt, including the Public Procurement Act). The Provider shall be obliged to accept the Beneficiary's request no later than [one month after the delivery of such request from the Beneficiary] and to enter into the relevant Amendment, except if the proposed change is in conflict with the Relevant Regulations (for the avoidance of doubt, including the Public Procurement Act). If a change of this Contract is made based on a unilateral request of the Beneficiary under this Clause 6.12, the Provider shall be entitled to reimbursement of its direct expenses and reasonable profit, which the Provider is obliged to calculate in a reasonable period determined by the Beneficiary if the Beneficiary requests it to do so (even if the Beneficiary has not yet requested it to change the subject of this Contract pursuant to the first sentence of this Clause 6.12).]<sup>34</sup>
- 6.13 [In order to secure the Provider's performance of its obligations under this Contract, the Provider shall be obliged to ensure at its own expense that a [bank guarantee] [or] [guarantor's statement] is issued in favor of the Beneficiary [by a bank or a branch of a foreign bank approved in advance by the Beneficiary] [or] [by [●]] with content acceptable for, and approved by, the Beneficiary in advance, and [such bank guarantee] [or] [guarantor's statement]:
- (a) shall secure the performance of any and all obligations of the Provider pursuant to this Contract or the obligations that will arise as a result of the breach of obligation of its provisions or the provisions of the Relevant Regulations [during the Preparation Period and the Renovation Period] in the amount [corresponding to 10% of the total amount of the Investment Costs];
  - (b) shall be valid for the period which shall be terminated [upon lapse of the Renovation Completion Date];
  - (c) shall be submitted by the Provider to the Beneficiary no later than [5] days after the execution hereof;
  - (d) shall be due and payable unconditionally, at first demand and without any objections, and when making its claim the Beneficiary shall not be obliged to submit any documents to prove the failure of the Provider to perform its obligations.

Should the Provider fail to perform any of its obligations under this Clause 6.13, the Beneficiary shall be entitled to withdraw from this Contract.]<sup>35</sup>

## **7. The Payments for GES and the Provider's Guarantee for Energy Savings**

- 7.1 From the first date of the Guarantee Period and under the terms and conditions agreed herein, the Beneficiary shall be obliged to make the Payments for GES to the Provider. The amount of the Payments for GES may be reduced in accordance with the requirements referred to in Clause 5.6 and this Article 7.

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<sup>34</sup> The Guide allows the parties to agree on a unilateral right of the Beneficiary to request changes to the Contract and the determination of the corresponding right of the Provider to compensation.

<sup>35</sup> The provision regarding securing the obligations of the Provider (in the form of a bank guarantee or a guarantee by the parent company) is project-specific and its required wording should take into account the risk profile of the relevant Project from the Beneficiary's perspective.

- 7.2 The Beneficiary shall make the Payments for GES in respect of each [quarterly] / [monthly] period of each Annual Savings Period in regular [quarterly] / [monthly] payments amounting to the total of
- (a) [1/4 (one fourth)] [1/12 (one twelfth)] of the Partial Reimbursement; and
  - (b) [1/4 (one fourth)] [1/12 (one twelfth)] of the Remuneration for Services

(the “**Partial Payment for GES**”). The Partial Payment for GES shall be payable within the period of thirty (30) days following the end of the relevant [quarterly] / [monthly] period of the relevant Annual Savings Period.

- 7.3 After the end of each Annual Savings Period, the Provider shall prepare a report in which
- (a) it will assess the outcome of the achievement of the Guaranteed Annual Savings [and, if applicable, also of other values to increase the energy efficiency contemplated by this Contract (pursuant to Schedule 4 hereto)], and the Provider shall be especially obliged to indicate in such report the amount of the Savings Shortfall or the Savings Excess, if any, in the relevant Annual Savings Period; and
  - (b) if required, it will provide recommendations for the further procedure and a proposal of measures to increase the achievement of the Guaranteed Annual Savings [and, if applicable, also of other values to increase the energy efficiency contemplated by this Contract (pursuant to Schedule 4 hereto)]

(the “**Assessment Report**”). The Provider shall be obliged to submit the Assessment Report to the Beneficiary within [four weeks] following the end of the relevant Annual Savings Period for its approval, and the Beneficiary shall be obliged to approve the Assessment Report or notify the Provider of any discrepancies identified by it in the Assessment Report within two weeks after its delivery. If any discrepancies are identified by the Beneficiary in the Assessment Report, the Provider shall be obliged to rectify them without undue delay and send the rectified Assessment Report to the Beneficiary for its additional approval; and the Beneficiary shall be obliged to approve such rectified Assessment Report without undue delay (provided that the Provider has rectified all identified discrepancies). If, despite this fact, the Parties do not reach an agreement on the content of the Assessment Report, the Parties agree to negotiate in good faith in order to resolve their contradictory positions so that the Assessment Report could be approved by the Beneficiary as soon as possible. [If the Parties do not reach an agreement on the content of the Assessment Report within [two (2)] weeks of its delivery for additional approval, the Parties shall proceed in accordance with Clauses 20.7 and 20.8.]<sup>36</sup>

- 7.4 If the approved Assessment Report indicates that the Savings Shortfall has occurred during the relevant Annual Savings Period, the Provider’s entitlement to the Payments for GES in respect of the relevant Annual Savings Period shall be automatically reduced by the financial amount of the Savings Shortfall calculated on the basis of data and procedure referred to in Schedule 4 hereto. The Provider shall be obliged to settle with the Beneficiary such reduction of the Payment for GES by the financial amount of the Savings Shortfall in accordance with the provisions of Clauses 7.7 to 7.10.
- 7.5 If the approved Assessment Report indicates that the Savings Excess has occurred during the relevant Annual Savings Period, the Provider shall be entitled to the remuneration in the amount of [2/3]<sup>37</sup> of the financial amount of the Savings Excess calculated on the basis of data and the

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<sup>36</sup> For situations where a dispute regarding the contents of the Assessment Report arises, the parties may provide for an alternative out-of-court dispute resolution scheme involving an independent expert. The particulars of such alternative dispute resolution scheme should take into account the nature and value of the particular project.

<sup>37</sup> Pursuant to the Guide, this is the minimum amount of compensation to be paid to the Provider for the Savings Excess.

procedure referred to in Schedule 4 hereto. The Beneficiary shall be obliged to pay such remuneration to the Provider on the basis of the invoice issued by the Provider within a due date of sixty (60) days after the approval of the Annual Settlement under Clause 7.6.

- 7.6 No later than two weeks after the approval of the Assessment Report pursuant to Clause 7.3, the Provider shall prepare and submit to the Beneficiary a written settlement in respect of the relevant Annual Savings Period for approval (the “**Annual Settlement**”) in which it shall:
- (a) state the amount of the Partial Payments for GES received by the Provider from the Beneficiary in respect of the relevant Annual Savings Period; and
  - (b) state the amount of the Reducing Amount which the Provider is obliged to settle with the Beneficiary in respect of the relevant Annual Savings Period under Clause 5.6;
  - (c) state the amount of the reduction of the Payment for GES which the Provider is obliged to settle with the Beneficiary in respect of the relevant Annual Savings Period under Clause 7.4;
  - (d) propose the total final amount of the Payments for GES for the relevant Annual Savings Period (the “**Final Amount of the Payments for GES**”) pursuant to the following rules:
    - (i) if during the relevant Annual Savings Period, no Savings Shortfall and no reduction of the Payments for GES by the Reducing Amount has occurred pursuant to Clause 5.6, the Final Amount of the Payments for GES shall equal to the total amount of the Partial Payments for GES for the relevant Annual Savings Period;
    - (ii) if during the relevant Annual Savings Period, the Savings Shortfall has occurred, and as a result also the Payments for GES pursuant to Clause 7.4 have been reduced and/or the Payments for GES have been reduced by the Reducing Amount pursuant to Clause 5.6, the Final Amount of the Payments for GES shall be calculated as the difference between (X) the total amount of the Partial Payments for GES for the relevant Annual Savings Period and (Y) the total of the financial amount of the Savings Shortfall and the Reducing Amount for the relevant Annual Savings Period, (and if the value of the Final Amount of the Payments for GES calculated under this Clause in respect of the relevant Annual Savings Period is negative, the Beneficiary shall also be entitled to the payment of the amount of the absolute value (i.e., expressed in positive numbers) of such Final Amount of the Payments for GES in respect of the relevant Annual Savings Period by the Provider);
  - (e) state the amount of the Provider’s entitlement to remuneration in the amount of  $\frac{2}{3}$  of the financial value of the Savings Excess which the Beneficiary is obliged to pay to the Provider in respect of the relevant Annual Savings Period under Clause 7.5.

The Beneficiary shall be obliged to approve the Annual Settlement or notify the Provider of any discrepancies identified by it in the Annual Settlement within two weeks after its delivery. If any discrepancies are identified by the Beneficiary in the Annual Settlement, the Provider shall be obliged to rectify them without undue delay and send the rectified Annual Settlement to the Beneficiary for its additional approval, and the Beneficiary shall be obliged to approve the rectified Annual Settlement without undue delay. If despite this fact the Parties do not reach an agreement on the content of the Annual Settlement, the Parties agree to negotiate in good faith in order to resolve their contradictory positions so that the Annual Settlement could be approved by the Beneficiary as soon as possible.

- 7.7 If the Final Amount of the Payments for GES is approved in the amount under Clause 7.6(d)(i), then in respect of the relevant Annual Savings Period:

- (a) the Provider shall be entitled to the payment of the Partial Reimbursement in full, and the paid Partial Payments for GES shall be applied for the payment of the Invoice for Investment Costs (or the relevant Partial Reimbursement in full); and
  - (b) the Provider shall be entitled to the payment of the Remuneration for Services in full (however, not in a higher amount than the relevant portion of the paid Partial Payments for GES), and the paid Partial Payments for GES shall be applied for the payment of the Remuneration for Services in full.
- 7.8 If the reduced amount of the Final Amount of the Payments for GES is approved under Clause 7.6(d)(ii), and the Final Amount of the Payments for GES is higher than the relevant Partial Reimbursement, then in respect of the relevant Annual Savings Period:
- (a) the Provider shall be entitled to the payment of the Partial Reimbursement in full, and the paid Partial Payments for GES shall be applied for the payment of the Invoice for Investment Costs (or the relevant Partial Reimbursement in full);
  - (b) the Provider shall be entitled to the payment of the Remuneration for Services only in the amount of the difference between (i) the Final Amount of the Payments for GES and (ii) the Partial Reimbursement, and the relevant part of the paid Partial Payments for GES shall be applied for the payment of such determined Remuneration for Services;
  - (c) the Beneficiary shall be entitled to the payment of the difference between (X) the total amount of the paid Partial Payments for GES and (Y) the Final Amount of the Payments for GES (the “**Relevant Difference**”) by the Provider that shall be settled as follows:
    - (i) the Beneficiary’s entitlement to the payment of the amount of the Relevant Difference (or its relevant portion) by the Provider shall be set off against the Provider’s entitlement(s) to the payment of the Unassigned Portion of the Partial Payments for GES by the Beneficiary in the Annual Savings Period which follows after the relevant Annual Savings Period in respect of which the entitlement to the payment of the amount of the Relevant Difference has arisen;
    - (ii) the Provider shall pay the Beneficiary the portion of the amount of the Relevant Difference the entitlement to the payment of which shall not cease to exist by virtue of the set-off under paragraph (i) above within the due date of thirty (30) days after the end of the Annual Savings Period which follows the relevant Annual Savings Period in respect of which the entitlement to the payment of the amount of the Relevant Difference has arisen.
- 7.9 If the reduced amount of the Final Amount of the Payments for GES is approved under Clause 7.6(d)(ii), and the Final Amount of the Payments for GES shall equal or be lower than the relevant Partial Reimbursement (however, the value of the Final Amount of the Payments for GES is positive), then in respect of the relevant Annual Savings Period:
- (a) the Provider shall only be entitled to the payment of a portion of the Partial Reimbursement in the amount of the approved Final Amount of the Payments for GES (and the entitlement to the payment of the remaining portion of the Partial Reimbursement ceases to exist), and the relevant portion of the paid Partial Payments for GES shall be applied for the payment of such determined portion of the Partial Reimbursement (and the Provider shall issue a rectified settlement Invoice for Investment Costs (or a credit note) for this purpose);
  - (b) the Provider shall not be entitled to the payment of the Remuneration for Services, not even partially; and

- (c) the Beneficiary shall be entitled to the payment of the Relevant Difference by the Provider that shall be settled as follows:
  - (i) the Beneficiary's entitlement to the payment of the amount of the Relevant Difference (or its relevant portion) by the Provider shall be set off against the Provider's entitlement(s) to the payment of the Unassigned Portion of the Partial Payments for GES by the Beneficiary in the Annual Savings Period which follows after the relevant Annual Savings Period in respect of which the entitlement to the payment of the amount of the Relevant Difference has arisen;
  - (ii) the Provider shall pay the Beneficiary the portion of the amount of the Relevant Difference the entitlement to the payment of which shall not cease to exist by virtue of set-off under paragraph 7.8(c)(i) above within the due date of thirty (30) days after the end of the Annual Savings Period which follows the relevant Annual Savings Period in respect of which the entitlement to the payment of the amount of the Relevant Difference has arisen.

7.10 If the negative value of the Final Amount of the Payments for GES is approved pursuant to Clause 7.6(d)(ii), then in respect of the relevant Annual Savings Period:

- (a) the Provider shall not be entitled to the payment of the relevant Partial Reimbursement, not even partially, and the entitlement to the payment of the relevant Partial Reimbursement shall cease to exist (and the Provider shall issue a rectified settlement Invoice for Investment Costs (or a credit note) for this purpose);
- (b) the Provider shall not be entitled to the payment of the Remuneration for Services, not even partially; and
- (c) the Beneficiary shall be entitled to the payment of the amount corresponding to the total of (X) the total amount of the paid Partial Payments for GES and (X) the amount of the absolute value (i.e., expressed in positive numbers) of such Final Amount of the Payments for GES (the "**Relevant Amount**") by the Provider which shall be settled as follows:
  - (i) the Beneficiary's entitlement to the payment of the Relevant Amount (or its relevant portion) by the Provider shall be set off against the Provider's entitlement(s) to the payment of the Unassigned Portion of the Partial Payments for GES by the Beneficiary in the Annual Savings Period which follows after the relevant Annual Savings Period in respect of which the entitlement to the payment of the Relevant Amount has arisen;
  - (ii) the Provider shall pay the Beneficiary the portion of the Relevant Amount the entitlement to the payment of which shall not cease to exist by virtue of set-off under paragraph 7.8(c)(i) above within the due date of thirty (30) days after the end of the Annual Savings Period which follows the relevant Annual Savings Period in respect of which the entitlement to the payment of the Relevant Amount has arisen.

## 8. Financing of the Project

- 8.1 Costs for the implementation of the Renovation and the provision of Services shall be borne by the Provider, which shall ensure the financing of the Renovation and the provision of Services from its own or external resources.
- 8.2 If the Provider intends to use resources other than its own for the financing of the Renovation, it represents that:

- (a) it has carried out all activities required to secure those funds up to the date of the execution hereof, and agrees to act so that those financial resources are provided;
  - (b) it [does not use] / [or uses not more than [●]% of the amount of the Investment Costs] financial resources that can be deemed to be government financing pursuant to the Eurostat Guide of May 5, 2018: “A Guide to the Statistical Treatment of Energy Performance Contracts”<sup>38</sup> for the performance of its obligations hereunder.
- 8.3 If the Provider’s representation under Clause 8.2(b) is or becomes untrue during the term hereof, the Beneficiary shall be entitled to withdraw from this Contract.
- 8.4 The Beneficiary agrees to make the Payments for GES in accordance with the terms and conditions of this Contract.
- 8.5 If the financing of the Renovation and the provision of Services is ensured by the Provider from external resources, the Beneficiary shall be obliged to make all of its payments in favor of the Provider to the account designated by the entity providing such financing upon the Provider’s request.

## **9. [Insurance**

- 9.1 The Beneficiary agrees to enter into an insurance policy for the insurance of the Infrastructure up to the amount of EUR [●] at its own expense and have it in place during the term hereof. The insurance of the Infrastructure must also include insurance against damage and destruction resulting from a natural disaster without any limitation. The Beneficiary agrees to submit the insurance documents proving that its obligation under this Clause 9.1 has been met without undue delay at the request of the Provider.
- 9.2 As of the date of the execution hereof, the Provider shall be obliged to have in place the following insurance:
- (a) Until the Renovation Completion Date, to have in place an insurance policy for professional liability insurance [during the implementation of the Project]<sup>39</sup> with the insured amount of not less than EUR [●]<sup>40</sup>.
  - (b) During the entire [Trial Period and] the Guarantee Period to have in place an insurance policy for professional liability insurance [during the implementation of the Project] with the insured amount of not less than EUR [●].<sup>41</sup>
- 9.3 The Provider agrees to submit the insurance documents proving that its obligation under Clause 9.2 has been met without undue delay at the request of the Beneficiary.]<sup>42</sup>

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<sup>38</sup> See footnote 7.

<sup>39</sup> It can be required that the insurance be exclusively related to the activities connected with this Project (i.e., general insurance of the Provider will not be accepted).

<sup>40</sup> Primarily, this is a commercial issue. However, such amount should correspond approximately to the amount of the Investment Costs or can be slightly higher.

<sup>41</sup> Primarily, this is a commercial issue. However, such amount should correspond approximately to the amount of 1/3 of the Investment Costs or can be slightly higher.

<sup>42</sup> The scope of insurances can be amended as necessary. In respect of the insurance, the Guide excludes the possibility that the insurance would also cover the risks arising from the Provider’s activities (i.e., insurance of the functionality of the Renovated Assets, etc.). Depending on the requirements of the financing entities, specific terms and conditions and procedures in respect of the insurance events may be agreed on, including the obligations related to the use of the insurance benefits and the blocking of the insurance benefits in favor of the financing entity, etc.

## **10. Representations and Warranties**

10.1 The Provider represents and warrants to the Beneficiary that:

- (a) it carries out business in the field of the provision of energy services and holds all authorizations required for the performance of this Contract;
- (b) it holds certificates and other permits or documents proving that it meets the requirements of the technical and professional qualifications that were stipulated in the Public Procurement and/or submitted by the Provider in its Tender;
- (c) it has sufficient human and financial resources to perform its obligations hereunder;
- (d) it has full power and authority to enter into this Contract and any other related documents and consummate the transactions contemplated herein, and this Contract and any documents entered into or executed by the Provider in relation to this Contract constitute valid obligations and are enforceable against the Provider;
- (e) it does not have any overdue payments, has not cancelled or suspended any payments of its debts, and there are no circumstances requiring or enabling the initiation of bankruptcy or restructuring proceedings over the Provider's assets, and it has not adopted any decision leading to the winding up of the Provider with liquidation;
- (f) prior to the execution hereof, it has reviewed the Documents with due care as an experienced provider of services related to the subject of this Contract taking into account the level of due diligence of the relevant facts that the Provider could have and should have conducted prior to the execution hereof with regard to the circumstances of the Project;
- (g) it is not a General Government Sector Entity;
- (h) the execution of this Contract is in compliance with the legal regulations which are binding for the Provider and any internal documents of the Provider, as well as any and all contracts, agreements and valid judicial, arbitration or administrative decisions which are binding on it.

10.2 The Beneficiary represents and warrants to the Provider that:

- (a) it is the exclusive owner of the Infrastructure or, if it is not the exclusive owner of the Infrastructure, it is entitled to use and dispose of the same (i) pursuant to generally binding legal regulations; or (ii) under an agreement to the extent required for the execution hereof;
- (b) the execution of this Contract is in compliance with the legal regulations which are binding for the Beneficiary and any internal documents of the Beneficiary primarily, but without limitation related to the Infrastructure, original energy system of the Infrastructure, assets or disposal of the managed assets, as well as any and all contracts, agreements, and valid judicial, arbitration or administrative decisions which are binding on it;
- (c) it is a General Government Sector Entity;
- (d) [there are no circumstances requiring or enabling the imposition of the forced administration over the Beneficiary];
- (e) in the event of assignment of any rights and obligations from this Contract by the Beneficiary pursuant to Clause 16.2 hereof, no material deterioration of the performance of obligations under this Contract by the Beneficiary and/or by the

assignee of such rights and obligations will occur as a result of such assignment of any rights and obligations from this Contract by the Beneficiary;]

(f) to the Beneficiary's knowledge at the moment of their provision to the Provider, the information provided by the Beneficiary under this Contract and the Documents are accurate and precise in all material aspects, and the Beneficiary is aware that the Provider will implement the Project after their review with due care as an experienced provider of services related to the subject of this Contract taking into account the level of due diligence of the relevant facts that the Provider could have and should have conducted prior to the execution hereof with regard to the circumstances of the Project.

10.3 Each Party shall be obliged to notify the other Party without undue delay that (i) any of its representations under this Contract is no longer complete, true and/or accurate, and/or (ii) facts exist based on which it could be reasonably expected that any of its representations and warranties under this Contract could become incomplete, untrue and/or inaccurate or that there is a threat that this Contract would be breached by the concerned Party.

10.4 For the avoidance of doubt, if any of the representations and warranties of a Party under this Contract is proven to be untrue or becomes untrue during the term hereof, it shall be deemed to be a breach of this Contract.

## **11. Indemnities and Sanctions**

11.1 If a Party breaches any of its obligations, it agrees to indemnify the other Party against damage incurred by the other Party in relation to, or as a result of, the breach of the obligations by the breaching Party in accordance with the provisions of Section 373 *et seq.* of the Commercial Code.

11.2 Sanctions imposed on by the competent authority resulting from the failure to comply with the Relevant Regulations by the Provider during the performance of this Contract shall be borne by the Provider in full. However, if a sanction (e.g., a sanction for breach of the prohibition to accept work or services pursuant to Section 7b(5) of Act No. 82/2005 Coll. on Illegal Work and Illegal Employment, as amended, or a sanction for the breach of any other Relevant Regulations) is imposed by the competent authority directly on the Beneficiary as a result of the Provider's breach of its obligations, the Provider shall be obliged to indemnify the Beneficiary for the amount of the imposed sanction in full; this shall be without prejudice to the Beneficiary's entitlement to the payment of any contractual penalty or claim for indemnification of other damage resulting from and/or in relation to the imposition of a penalty on the Beneficiary.

11.3 In addition to the contractual penalty to which it is entitled pursuant to the relevant provisions hereof, the Beneficiary shall be entitled to claim from the Provider full compensation for damage incurred by the breach of the obligation to which such contractual penalty refers to.

11.4 If a Party fails to pay its monetary obligation under this Contract in due time, the other Party shall be entitled to claim default interest from the Party in delay in the amount of [●]% of the outstanding amount per each day of delay until the entire outstanding amount is paid.

## **12. Force Majeure**

12.1 The Parties shall be relieved from the liability for partial or complete non-performance of their obligations hereunder if such non-performance is caused by Force Majeure.

12.2 The Party affected by Force Majeure shall be obliged to notify the other Party in writing of this fact without undue delay and request it to enter into negotiations. Upon request, the Party referring to Force Majeure shall provide credible evidence of such fact to the other Party.

- 12.3 Unless the Parties agree otherwise, after the occurrence of a Force Majeure event, they shall continue to perform their obligations hereunder to the extent reasonably possible and may seek alternative means to perform this Contract not prevented by the circumstance of the Force Majeure event.

### **13. Changes in Laws**

- 13.1 Especially with respect to the long-term nature of the obligations established by this Contract, the Parties have agreed that if during the performance of this Contract a change in laws occurs that

- (a) was not and could not have been foreseeable at the time of the execution of the Contract;
- (b) is not a change in laws of a general nature, i.e., it does not comprehensively refer to the entire business environment (e.g., changes to tax rates, etc.);
- (c) will not make the performance of this Contract possible without changing its content or under which the performance of the Contract without changing its content would be in conflict with such new laws;

any Party shall be entitled to request a reasonable change to this Contract in the form of entering into an amendment so that the Contract is in compliance with the law and with the original intention of the Parties when entering into this Contract. For this purpose, the Parties shall be obliged to enter into mutual negotiations regarding amending the Contract at the request of any Party.

### **14. Term and Early Termination of the Contract**

- 14.1 This Contract is being entered into for a definite period of time, from its effective date until the lapse of [●]<sup>43</sup> years from the initial date of the Guarantee Period (the “**Final Date**”).

- 14.2 This Contract may be terminated early by:

- (a) the agreement of the Parties;
- (b) withdrawal from the Contract by the relevant party in accordance with the terms and conditions hereof;
- (c) termination of the Contract by the Beneficiary in accordance with the terms and conditions hereof.

- 14.3 Each Party shall be entitled to withdraw from this Contract in writing (i) in cases expressly set out herein, as well as (ii) if the other Party substantially breaches its contractual obligations (including if any representation or warranty given by a Party herein is or is proven to be untrue under Clause 10.4 and such fact has a material adverse effect on the performance of the subject hereof), where such breach is rectifiable and the breaching Party fails to remedy such breach even within an additional reasonable time limit provided by the other Party.

- 14.4 [Either Party may also withdraw from this Contract in writing if it is no longer possible to continue to perform this Contract due to (i) an event of Force Majeure which persists for at least [●]; or (ii) the fact that the Parties did not enter into a new contract between the Parties under

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<sup>43</sup> Within the meaning of the Guide, the Contract must be entered into for a minimum of 8 years.

Clause 13.1 even within [●] months from the enactment of amendments to legal regulations referred to in Clause 13.1].<sup>44</sup>

14.5 [The Beneficiary may also terminate this Contract without a reason. The notice period shall be two months starting from the first day of a month following delivery of the notice to the Provider.<sup>45</sup> The Provider may also terminate this Contract, if:

- (i) the assignment of a part of the Provider's entitlement to the Partial Payments for GES pursuant to Clause 16.3 hereof or of the entitlement to the compensation pursuant to Clause 15.3 hereof based on a contract concluded between the Provider as the assignor and the third party as the assignee has occurred (the "Assignment Agreement") and, at the same time,
- (ii) the third party has terminated the Assignment Agreement or has withdrawn from it or it has been agreed between the Provider and the third party to terminate the Assignment Agreement on the ground that an assignment of rights and obligations from this Contract by the Beneficiary has occurred or is to occur pursuant to Clause 16.2 hereof.

The notice period shall be one month starting from the first day of a month following delivery of the notice to the Beneficiary.]

14.6 Withdrawal from the Contract [or a notice of termination of this Contract] shall only have future effect whereas any performance by the Parties before the withdrawal date [or termination date], as well as any claims arising on their part as a result of performance of this Contract before the withdrawal date [or termination date], shall remain unaffected by such withdrawal [or termination.

## 15. Settlement upon Termination of the Contract <sup>46</sup>

15.1 The Parties have agreed that if this Contract is duly terminated on the Final Date, the following conditions shall apply:

(a) In relation to the Renovated Assets, it has been agreed that:

- (i) No later than within [6] months before the Final Date, the Provider shall procure at its own expense through an expert with the relevant qualifications selected with the Beneficiary's consent that an audit of energy efficiency of the Infrastructure is conducted, which shall examine the technical condition of the Renovated Assets, examine the remaining technical life of the Renovated Assets and their value, and shall hand over the same to the Beneficiary for approval.

If the Beneficiary identifies any discrepancies in the audit referred to in this Clause, the Provider shall without any undue delay remedy the same and send the Beneficiary the corrected audit for additional approval; the Beneficiary shall approve such corrected audit without any undue delay. If the Parties still fail to agree on the content of the audit under this Clause, they agree to

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<sup>44</sup> The Guide allows (but does not require) the existence of such reason for early termination of the Contract.

<sup>45</sup> The Guide allows (but does not require) the Beneficiary to terminate the Contract also at any time without a reason. However, special attention should be paid to the compensation for the Provider. In other words, in such case the Provider's compensation will be determined as a substantially higher amount because, in so doing, the Beneficiary will in fact be granted an unlimited right (without any fault on the part of the Provider) not to use the Provider in the course of the Guarantee Period, i.e., when the Provider starts to earn a return on its investment and generates profit.

<sup>46</sup> The contract termination mechanism is a project-specific and its setting should take into account the particularities of the Project.

negotiate in good faith in order to resolve their contradictory positions so that the audit under this Clause could be approved by the Beneficiary no later than on the Final Date.

- (ii) If the technical condition of the Renovated Assets is in worse condition which they would have been in if the Provider had duly performed their maintenance in accordance with this Contract, the Provider shall be obliged to ensure at its own expense no later than the Final Date that all required repairs are performed and other measures are taken to bring the Renovated Assets into condition which they would have been in if the Provider properly performed their maintenance in accordance with this Contract.
  - (iii) No later than on the Final Date, the Provider shall return any documentation related to the Renovated Assets (which has not been delivered to the Beneficiary during the term hereof) to the Beneficiary.
- (b) In relation to the Rights Related to the Provision of Services, it is understood that:
- (i) If the Beneficiary so requests, an audit of all Rights Related to the Provision of Services shall be carried out subject to terms and conditions similar to those referred to in Clause 15.1(a)(i).
  - (ii) Where the law permits, the Beneficiary (or a third party appointed thereby) shall assume free of charge all Rights Related to the Provision of Services on the part of the Provider. The Provider shall ensure (where the law permits) that the assumption by the Beneficiary (or a third party appointed thereby) of the Rights Related to the Provision of Services on the part of the Provider in relation to such rights does not give rise to any possibility of termination of obligations or weaken the position of the Beneficiary (or a third party appointed thereby) by other parties to the contracts setting out the Rights Related to the Provision of Services. This shall include, *inter alia*, the Provider's undertaking that, where permitted by law, it shall ensure that third parties to the Rights Related to the Provision of Services shall agree not to deny their consent to the assumption by the Beneficiary or a third party appointed thereby of the Rights Related to the Provision of Services referred to in this paragraph. For the avoidance of doubt, if the law prohibits the scope of securing the continuity of the Rights Related to the Provision of Services described in this paragraph, the Provider shall not be held liable for any possible termination of obligations in relation to the Rights Related to the Provision of Services by third parties.
  - (iii) No later than the Final Date, the Provider shall provide the Beneficiary with all documents necessary for the provision of the Services and the transfer of the Rights Related to the Provision of Services. The Provider shall provide the Beneficiary mainly with all the relevant offtake and supply agreements.
- (c) As part of its cooperation, the Provider shall (beyond the initial training within the meaning of the Acceptance Certificate) train the Beneficiary's staff (or, as the case may be, a third party appointed by the Beneficiary) as to the proper service and operation of the Renovated Assets and the overall technical and administrative securing of operation of the Infrastructure.
- (d) The provisions of this Contract that refer to the claims (including their settlement) that have arisen in relation to the performance of the subject of this Contract before its termination, the provisions regarding the dispute resolution between the parties, as well as other provisions which according to the manifested will of the Parties or with regard to their nature shall also survive after the termination hereof (for the avoidance of

doubt, including, but not limited to the relevant provisions of Article 7, Article 11 and Articles 15 to 20), shall also remain in force after the termination hereof until any claims of the Parties related to this Contract have been settled in full.

- 15.2 Considering the long-term nature of the obligations set out herein, other details of the termination of the provision of the Services shall be agreed upon individually by the Parties in good faith with reference to both Parties' obligation to collaborate and provide each other with cooperation in order to achieve the purpose hereof.
- 15.3 The Parties have agreed that the following conditions shall apply in the event of early termination hereof:
- (a) The provisions dealing with settlement under Clause 15.1 (except as defined below) shall apply reasonably to the mutual settlement of the Parties, just as in the event of regular termination of the Contract on the Final Date. Differently from Clause 15.1, the Parties have agreed that:
- (i) provided that the title to the Renovated Assets has not been transferred to the Beneficiary (i.e., the Contract is terminated before the Renovation Completion Date), and provided that the Parties do not agree otherwise, the Provider shall remove all components and parts of the Renovated Assets from the Infrastructure and/or the Site as well as other components installed by the Provider, and return the Infrastructure and/or the Site to its original condition (and if it is not possible, to compensate the Beneficiary for any costs that will have to incur in order to restore the operability of the Infrastructure and/or the Site at least to the extent which corresponds to the original condition) no later than within [one month] from when the early termination of the Contract has become effective;
- (ii) if early termination of the Contract occurs due to the Beneficiary's withdrawal pursuant to Clause 14.3 as a result of a breach of the Provider's obligations,
- the Beneficiary shall pay the Provider compensation [equal to the book value of the capital expenditure for the Renovation incurred as of the date the withdrawal from the Contract becomes effective, less all remediation costs (including all costs for the termination/repair and operation of the Renovated Assets, as well as the increased costs for the repair, operation and maintenance of the Renovated Assets resulting from the breach of obligations by the Provider or resulting from the early termination hereof) of the Beneficiary], which shall be calculated in accordance with the rules set out in Schedule [●] hereto.<sup>47</sup>
- (iii) If early termination of the Contract occurs due to withdrawal by the Provider in accordance with Clause 14.3 as a result of the breach of the Beneficiary's obligations [or upon notice by the Beneficiary in accordance with Clause 14.5],
- the Beneficiary shall pay the Provider compensation [equal to the sum of (i) the capital expenditure for the Renovation incurred as of the effective date of withdrawal from the Contract [or notice by the Beneficiary under Clause 14.5], (ii) increased costs of the Provider attributed to the occurrence of mandatory payments by the Provider in favor of third parties (to the extent in which the amount of such payments

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<sup>47</sup> EPCs normally stipulate that in the event of early termination of a contract the Provider is entitled to certain financial settlement - compensation. The Guide contains detailed rules and multiple possible alternatives as to how to set up a mechanism for such compensation. Depending on the specific circumstances, it may be suitable to define precise economic rules to calculate the compensation in a separate technical Schedule, in each case in accordance with the requirements of the Guide.

is the market value) and (iii) lost profits of the Provider], which shall be calculated using the rules set out in Schedule [●] hereto.<sup>48</sup>

- (iv) If early termination of the Contract occurs upon withdrawal by either Party under Clause 14.4, notice by the Provider under Clause 14.5 or based on the agreement of the Parties,
    - the Beneficiary shall pay the Provider compensation [equal to the sum of (i) the capital expenditure for the Renovation incurred as of the effective date of withdrawal from the Contract and (ii) increased costs of the Provider attributed to the occurrence of mandatory payments by the Provider in favor of third parties (to the extent in which the amount of such payments is the market value)], which shall be calculated using the rules set out in Schedule [●] hereto.<sup>49</sup>
  - (v) The Beneficiary shall pay the compensation referred to in any of the paragraphs above in equal monthly installments for [●] from the effective date of termination of the Contract, unless otherwise agreed with the Provider.
  - (vi) For the avoidance of doubt, the Parties represent that the payment of any compensation referred to in the paragraphs above shall have no effect on any claims that the Beneficiary has or might have against the Provider based on facts occurring before the termination of the Contract.
  - (vii) In the event of any dispute between the Parties as to determination of the amount of compensation under the previous paragraphs, the Parties shall proceed in accordance with Clauses 20.7 and 20.8.
  - (viii) Any compensation that is to be paid out in accordance with the previous paragraphs is exclusively an obligations arising from this Contract. The Parties consider the right to compensation referred to in the paragraphs above to be the Provider's only entitlement regarding the Beneficiary in connection with the early termination of this Contract (for the avoidance of doubt, this is without prejudice to 14.6).
  - (ix) In the event of early termination of the Contract upon withdrawal by either Party under Clause 14.4, any compensation that is to be paid out in accordance with the previous paragraphs must exclude any amounts that the Provider is able to recover under the insurances required under the terms of this Contract.
- (b) The Provider shall complete all the scheduled activities by the effective date of early termination of the Contract. Furthermore, the Provider shall perform any and all acts aimed at averting any damage to the Renovated Assets and all acts that may reasonably be demanded to avert any damage to the property of the Beneficiary and third parties in connection with the termination of the Services.
  - (c) If the Contract is terminated early during [the Trial Period or] the Guarantee Period, the Provider shall provide the Beneficiary with all the necessary cooperation required to maintain proper operation of the Renovated Assets and provision of the Services.

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<sup>48</sup> Depending on the specific circumstances, it may be desirable to define precise economic rules to determine the amount of compensation in a separate technical Schedule.

<sup>49</sup> Depending on the specific circumstances, it may be desirable to define precise economic rules to determine the amount of compensation in a separate technical Schedule.

- (d) The Parties have expressly agreed that the provisions of Section 351 of the Commercial Code shall not apply to early termination of this Contract and shall be fully replaced by the provisions of Clause 14.6 and this Clause 15.3.

## **16. Assignment of the Contract**

- 16.1 Except as provided in this Article 16, neither Party may assign any of its rights and obligations arising herefrom without the prior written consent of the other Party.
- 16.2 The Beneficiary may assign any rights and transfer any obligations from this Contract. If the Provider's cooperation is required for such assignment of rights and/or transfer of obligations, the Provider agrees to promptly provide such cooperation upon the Beneficiary's request.
- 16.3 The Provider may assign to [a third party]<sup>50</sup> (i) a part of its entitlement to the Partial Payments for GES under this Contract, but at all times not more than [80%]<sup>51</sup> of the amount of the Partial Payments for GES made by the Beneficiary under the relevant provisions and subject to the terms of this Contract and (ii) the entitlement to the compensation pursuant to Clause 15.3 hereof. Such assignment of the part of the entitlement of the Provider to the payment of the Partial Payments for GES or the entitlement to the compensation pursuant to Clause 15.3 hereof under the previous sentence may in no way deteriorate the Beneficiary's position under this Contract in relation to the remaining scope of rights and obligations of the Parties hereunder. For the avoidance of doubt, in the event of such assignment:
- (a) such assignment may in no way limit any entitlements of the Beneficiary against the Provider related to the Savings Shortfall;
  - (b) the Beneficiary may set off entitlements of the Beneficiary against the Provider related to the Savings Shortfall against entitlements of the Provider for payment of the Unassigned Portion of the Partial Payment for GES (i.e. against the portion of the claim for the payment of the Partial Payment for GES that is payable by the Beneficiary to the Partner);
  - (c) this provision is without prejudice to Clauses 14 and 15 hereof and the Beneficiary will not be liable to make any Partial Payments for GES in respect of any period after termination of this Contract.

## **17. Protection of Information**

- 17.1 The Parties agree to keep Confidential Information confidential and use the same solely to perform the Contract, not to provide and disclose the Confidential Information to third parties, and adopt all measures necessary to protect and secure the Confidential Information against its publication or disclosure to third parties. This provision shall not apply to the disclosure of information if:
- (a) the body of the Contract or other information that was obtained for public resources or are related to the use of public funds and which are published by the Beneficiary for transparency;
  - (b) it is necessary for the performance of a Party's obligations under this Contract,

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<sup>50</sup> Usually, a bank or another financial institution providing the services of purchase of the receivables of the Provider.

<sup>51</sup> Pursuant to the Guide, in the event of factoring, a certain part of the payments for the guaranteed energy services must remain due and payable towards the Provider and thus allow that the entitlements of the Beneficiary related to the failure to achieve the guaranteed savings be set off against the Provider.

- (c) a Party is obligated to do so under a legal regulation or under an enforceable decision, measure or request by the relevant public authority,
- (d) it is necessary in judicial, arbitration, administrative and other similar proceedings,
- (e) the third party recipient is a legal or tax advisor, auditor, bank, foreign bank branch, their advisors or any other advisor to a Party who is bound by a statutory or contractually agreed confidentiality obligation in relation to the provided or disclosed information,
- (f) the third party recipient is a person who controls or is controlled by a Party in accordance with the relevant provisions of the Commercial Code.

17.2 The Parties have agreed that the contents of the Contract, including the content of all its Schedules, are public and shall not be subject to the information protection provisions set out in Clause 17.1 hereof.

## **18. Communication and Authorized Persons**

18.1 For communication for the purposes of the performance of this Contract, the Parties appoint the following contact persons:

(a) the Beneficiary:

In technical matters: [●]  
 E-mail: [●]  
 Telephone: [●]

In contractual matters: [●]  
 E-mail: [●]  
 Telephone: [●]

(b) the Provider:

In technical matters: [●]  
 E-mail: [●]  
 Telephone: [●]

In contractual matters: [●]  
 E-mail: [●]  
 Telephone: [●]

18.2 All notices, requests, demands and other communication required or otherwise contemplated by this Contract shall be made in writing in Slovak and shall be delivered in one or several of the ways described below, and shall be deemed duly delivered if:

- (a) delivered by hand, upon taking or refusing to take delivery;
- (b) sent via electronic mail (e-mail), as soon as the sender's or recipient's electronic mail system sends to the e-mail address of the sender a confirmation of electronic mail delivery to the electronic mail system of the recipient, and if such confirmation is delivered to the address of the sender on a day which is not a business day or on a business day after the regular close of business, the nearest following business day shall be deemed to be the delivery date;

- (c) sent via courier service, as of the fourth business day after being handed over to the courier service for shipment, or in later delivery, as of the date of being delivered to the recipient upon confirmation to the sender by the courier service; or
- (d) sent as registered mail, upon taking or refusing to take delivery or as of the first business day after the post office returns the communication to the sender as undeliverable.

All notices, requests, demands and other communication shall be addressed to the relevant addresses of the Parties' registered office and/or the Parties' addresses given in the heading hereof and/or referred to in Clause 18.1 (or to such other addresses or numbers notified by the Parties to each other under this Clause).

## **19. Intellectual Property Rights to the Project**

- 19.1 If performance under the Contract involves the result of creative work of the author protected as intellectual property within the meaning of Section 3 of the Copyright Act, the Provider grants the Beneficiary an exclusive license (i.e., the Provider agrees not to give consent to its use to another person except upon the written consent of the Beneficiary) unlimited in terms of time and territory for the use of any documentation created by the Provider or any part thereof and for the purpose arising from the Contract to the extent of preparation, implementation, use, operation, maintenance, repair, and adjustment of the Renovation, including copying, public display and public presentation, amendments and the processing of such documentation, whereas any amendments and processing of the documentation and/or its types, parts and levels shall be performed particularly to carry out adjustments and works to the extent of corrections, adjustments, renovation or extension of the Renovation or its part. The Beneficiary may modify, revise or amend such documentation, and by signing this Contract the Provider gives its consent thereto.
- 19.2 Pursuant to Section 72 of the Copyright Act, the Provider hereby gives its express prior consent to the Beneficiary to grant consent to a third party to use the above-mentioned documentation to the extent of the license granted under Clause 19.1, as well as to assign the license.
- 19.3 The license referred to in this Article 19 hereof is granted free of charge.

## **20. Final Provisions**

- 20.1 This Contract shall enter into force upon being signed by the Parties and into effect as of the day following the day of its publication in accordance with Act No. 211/2000 Coll., on Free Access to Information and on Amendments to and of Certain Other Acts, as amended.
- 20.2 The contractual conditions set out in this Contract, including Schedules hereto, constitute the entire agreement between the Parties, and replace all prior agreements and arrangements, whether oral or written, between the Parties in relation to the subject matter hereof.
- 20.3 If a Party does not exercise its authority under this Contract or if it does not demand the performance of any provision hereof from the other Party, it shall not be interpreted as a current or future waiver of such right under this Contract nor shall it affect the Party's ability to subsequently exercise any rights arising herefrom.
- 20.4 To the extent possible, each provision hereof shall be interpreted so as to be effective and valid under current law. If any provision is unenforceable or invalid under current law, it shall not affect the validity or enforceability of the other provisions hereof, which shall continue to be binding and fully valid and effective. In the event of such unenforceability or invalidity, the Parties shall negotiate in good faith to agree on amendments to this Contract required to implement the intents of this Contract necessitated by such invalidity or unenforceability.

- 20.5 This Contract may only be amended or supplemented by means of written amendments signed by the Parties.
- 20.6 The rights and obligations of the Parties under this Contract shall be governed by Slovak law.
- 20.7 The Parties have agreed that in the event of any dispute arising herefrom, Slovak courts shall have jurisdiction to render a final decision subject to the substantive and procedural laws in force in the Slovak Republic.
- 20.8 Nevertheless, before referring their dispute to court, the Parties shall strive to reach an out-of-court settlement and, if such dispute requires a professional assessment in order to get a professional opinion, the Parties may request a SIEA opinion and they agree to treat such opinion as binding.
- 20.9 The following Schedules shall form an integral part hereof.
  - Schedule 1 Infrastructure and the Site
  - Schedule 2 Documents
  - Schedule 3 Tender
  - Schedule 4 Guaranteed Annual Savings and Other Criteria Related to the Energy Savings
  - Schedule 5 Works Timetable
  - Schedule 6 Scope of Renovation and Target Parameters of the Renovation
  - Schedule 7 List of Subcontractors
  - Schedule 8 Services
  - Schedule 9 Intermediate Inspections and Monitoring of the Guaranteed Annual Savings
  - Schedule [●] [List of Beneficiary's Expenses Paid by the Provider]
  - Schedule [●] [Special Obligations of the Beneficiary in Assisting to the Provider]
  - Schedule [●] [Rules for the Calculation of Compensation upon Early Termination]<sup>52</sup>

The Parties declare that they have read and understood this Contract, that the Contract is worded in a definite and comprehensive way, that the content of the Contract is in accordance with their true and free will, and in witness whereof, they affix their signatures below.

In [●], on [●]

[●]

[●]

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[●]

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[●]

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<sup>52</sup> The scope of Schedules will be modified depending on the specific circumstances or non-application of certain concepts in this Contract. In other words, in multiple provisions the option to modify a specific Schedule is open, which means that the list of Schedules may be extended.

**Schedule 1**

**Infrastructure and the Site**

**Schedule 2**

**Documents**

**Schedule 3**

**Tender**

## Schedule 4

### Guaranteed Annual Savings and Other Criteria Related to the Energy Savings

*[The provisions contained in Schedule 4 are project-specific; however, the following matters must be included:*

- *information regarding the actual reference energy consumption expressed in units of energy and monetary terms (including defining the baseline assumptions used when the actual reference energy consumption was determined, such as: climatic conditions, manner of use, setting the standards of internal temperature/humidity);*
- *balance of guaranteed savings and payments over the entire contract period under the scenario in which real savings are 100% of reference energy consumption (repayment calendar)<sup>53</sup>*
- *[provision regarding the amount<sup>54</sup> of the guaranteed energy savings expressed in units of energy and/or monetary terms during the term hereof<sup>55</sup>] and, if applicable [the timetable for the achievement of the amount determined in the Contract for the increase of the energy efficiency, such as increase of the functionality of the assets / increase of the energy efficiency of the assets / increase of the energy economic management of the Infrastructure / reduction of the price for the provided services / reduction of the operating costs and costs for energy<sup>56</sup>]*
- *recalculation of the guaranteed energy savings in the event of changes to the input parameters/assumptions based on which the reference energy consumption and the originally agreed amount of the guaranteed energy savings have been determined, and the changes that may be considered relevant for such recalculation are as follows:*
  - *adjustments to the prices for energy<sup>57</sup> - especially applicable if the savings are expressed in monetary terms;*
  - *so-called routine changes, such as:<sup>58</sup>*

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<sup>53</sup> This is the reference balance of savings and payments. This means that this reference balance shall in no way affect the rights and obligations of the Parties under this Agreement. In the event of differences between this reference balance and other provisions of this Agreement, other provisions of this Agreement shall prevail.

<sup>54</sup> The Guide requires that (based on the calculation pursuant to the net present value method (NPV)) the amount of the guaranteed savings be higher than the total of: (i) the Payments for GES; and (ii) any “non-refundable” government financing (as the government financing is defined under the Guide) (e.g., contributions to the capital expenditures). Simultaneously, the amount of the guaranteed savings for a year must be equal to or higher than the amount of the Payments for GES for the relevant year.

In addition to the energy consumption savings, the following may be included in the calculation of the amount of the guaranteed savings:

- cost savings related to the energy supply (e.g. savings resulting from the reduced environmental commitments or savings resulting from the implementation and operation of on-site energy generation);
- revenues generated from the surplus and sale of on-site energy generation.

If the guaranteed savings are to include revenues generated from the sale of surplus energy (with regard to certain types of EPCs, in relation to which the installation of the facility for the energy generation forms part of the project), such revenues must be less than 50% of the total amount of the guaranteed savings.

<sup>55</sup> If the guaranteed savings are only expressed in energy terms, pursuant to the Guide, the appropriate expected price range must be determined in order to prove that the conditions referred to in footnote 54 have been met.

<sup>56</sup> If other criteria for energy savings have been agreed, this Schedule must define such criteria as well as the deadline for their achievement.

<sup>57</sup> The Guide allows the parties to decide whether the adjustment of energy prices will be regarded as a reason for the recalculation of the amount of the guaranteed savings.

<sup>58</sup> The Guide requires that such determined alternative for the recalculation of the guaranteed savings meet the following requirements: (i) there is a finite number of well-defined events in the contract with regard to which the recalculation may be used; (ii) the events do not include events related to the changes in macro-economic conditions; (iii) the none of these events are attributable to the Provider; (iv) these events could not have been foreseen or estimated (the question of foreseeability depends on project-specific circumstances and the level of due diligence of the relevant facts that could

- *weather changes;*
- *changes of the indoor temperature/humidity (or their standard values);*
- *change in the number of hours/days during which the Infrastructure/Site is being used;*
- *change in the number of occupants/users of the Infrastructure/Site (e.g., as a result of a change to the working schedule);*
- *other project-specific factors;*
- *so-called non-routine changes, such as:*<sup>59</sup>
  - *breach of specific obligations by the Beneficiary (e.g., breach of the obligation to maintain the Site or provide access to the Site to the Provider);*
  - *inaccurate baseline data provided by the Beneficiary;*
  - *adverse Site conditions (e.g., contamination, asbestos, latent defects or deficiencies in the existing Infrastructure);*
  - *additional works carried out by the Beneficiary at the Site;*
  - *changes in law (except for changes in law that are (i) foreseeable at the moment of the execution of the Contract; and/or (ii) of a general nature (such as changes to tax rates, etc.));*
  - *breach of the Beneficiary's obligation to operate the Renovated Assets – failure to meet specific parameters of operation (if applicable);*
  - *significant changes to the Renovated Assets and/or Site by the Beneficiary;*
  - *vacation of the Site by the Beneficiary;*
  - *changes to baseline data of energy (electrical or heat) requirements for the maintenance of the Site;*
  - *non-typical variations in the number of occupants/users;*
  - *other delay, compensation, etc., due to Force Majeure.]*

*[The provisions in this Schedule must also include a detailed method for the calculation of the actual energy savings, and*

- *it can be expressed in units of energy or monetary terms;*
- *it must describe in detail everything that is to be included in the amount of the actual savings; theoretically, in addition to the energy consumption savings, for example, the following can be included:*

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have been reasonably conducted prior to the execution of the Contract); and (v) the recalculation does not compensate for anything other than the direct effects of the events in question.

<sup>59</sup> The Guide requires that such determined alternative for the recalculation of the guaranteed savings meet the following requirements: (i) there is a finite number of well-defined events; (ii) the changes do not include changes in macro-economic conditions; (iii) the changes are not attributable to the Provider; (iv) they could not have been foreseen or estimated. This should be assessed by reference to specific circumstances and requirements for a reasonable level of due diligence of the relevant facts prior to the execution of the Contract; and (v) the recalculation does not compensate for anything other than the direct effects of the events in question.

- *savings of costs related to the supply of energy (for example, savings resulting from the reduced environmental liabilities or savings resulting from the introduction and operation of on-site energy generation)<sup>60</sup>;*
- *revenues generated from the surplus and sale of on-site energy generation.]*

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<sup>60</sup> However, pursuant to the Guide such savings which are related to the reduction of costs not connected to the demand/supply of energy (e.g., savings resulting from the reduced operating costs) should not be included.

**Schedule 5**

**Works Timetable**

## **Schedule 6**

### **Scope of Renovation and Target Parameters of the Renovation**

*[The Schedule should include the scope of Renovation (including the amount of the relevant investment costs) and the target parameters of the Renovation.]*

**Schedule 7**

**List of Subcontractors**

## Schedule 8

### Services<sup>61</sup>

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<sup>61</sup> Pursuant to the Guide, the scope of Services must contain, *inter alia*, the scope and requirements for the performance of maintenance (such as defining of the maintenance plans) that must ensure the ability of the Renovated Assets to achieve the Guaranteed Annual Savings (the Guide requires that the standards to which the Provider is required to maintain the Renovated Assets must, as a minimum, establish conditions in which the Renovated Assets are genuinely capable of delivering the energy consumption and/or cost savings required) . In practice, the relevant scope will take into account the particularities of the relevant Project; it must, however, in each case comply with the requirements of the Guide in relation to the performance of maintenance.

**Schedule 9**

**Interim Inspections and Monitoring of the Guaranteed Annual Savings**