

**Memorandum of Understanding  
regarding the development, construction, operation and decommission-  
ing of  
Units 3 & 4 of NPP Cernavoda**

by and between,

**(A) Societatea Națională Nuclearelectrică S.A.**, a company managed under the one tier system (*administrată în sistem unitar*) with its corporate headquarters in Bucharest, 65 Polonă Street, sector 1, registered with the Bucharest Trade Registry under no. J40/7403/1998, sole registration number (*CUI*) 10874881, hereinafter referred to as "**SNN**"; on the one hand;

and

**(B) China General Nuclear Power Corporation**, a limited liability company incorporated and existing under the laws of the People's Republic of China, having its legal address at Science and Technology Building Floor 17-19, 1001 Shangbu Zhong Road, Futian District, Shenzhen, 518031, Guangdong Province, the People's Republic of China, registered with number 100000000016944, hereinafter referred to as "**CGN**", on the other hand.

SNN and CGN are hereinafter jointly referred to as the "**Parties**" and individually as a "**Party**".

**Preamble**

**Whereas**, the Romanian Government has approved on 31 July 2014 by a memorandum the strategy for the development of units 3 and 4 of NPP Cernavoda based on CANDU 6 technology (the "**Strategy**") by SNN and a private investor (the "**Project**").

**Whereas**, the general assembly of SNN in its meeting of 22 August 2014 approved the Strategy which includes references to the support mechanisms set out in the Strategy, and authorized the management of SNN to initiate the process for the selection of the private investor for the Project and on 27 August 2014 an international announcement calling for the submission of expressions of interest by potential investors was published.

**Whereas**, CGN has responded to the international announcement regarding the Project in accordance with the Strategy which includes references to the support mechanisms set out in the Strategy, has been designated as Qualified Investor on 9 September 2014 (as defined in the tender dossier made available by SNN to CGN on 10 September 2014, the "**Tender Dossier**") and on 23 September 2014 CGN has submitted the Documentation of Intent to the attention of the Negotiation Commission, which CGN subsequently clarified by letters dated 28 September 2014, 30 September 2014 and 8 October 2014 transmitted in response to the requests for clarifications made by the Negotiation Commission on 26 September 2014, 30 September 2014 and 3 October 2014, respectively (altogether the "**Documentation of Intent**").

**Whereas**, the Documentation of Intent has been accepted together with the related clarified documents as being compliant with the rules and regulations set out in the Tender Dossier, according to the letter issued by the Negotiation Commission on 14 October 2014 whereby CGN was nominated as Selected Investor.

**Whereas**, the *Joint Letter on the Intention to Complete the Project* was signed on 17 October 2014, parties committing themselves to negotiate, without delay and in good faith, the terms of this Memorandum of Understanding with a view to execute this Memorandum of Understanding as soon as feasible.

Now, therefore, the Parties agree, as follows:

## **§1** **Scope of this Memorandum of Understanding**

The scope of this Memorandum of Understanding is to set out the main principles of the future cooperation between the Parties for the purposes of the development and implementation of the Project.

Immediately following the execution of this Memorandum of Understanding, the Parties shall enter into good-faith negotiations regarding the joint venture among the Parties for the purposes of the implementation of the Project (in terms of construction, operation & maintenance and decommissioning), in particular ensuring the pre-requisites for and setting-up a joint venture company ("**JVCo**"), the contributions by the Parties to the JVCo, the future corporate governance in the JVCo, the financing of the JVCo and, thus, the Project, as well as all other aspects relevant for the relationship between the Parties in relation to the Project.

The Parties rely upon the Romanian Government confirming its support for the Project, including the RMM (as defined below) regarding the Project support facilities through the issuance of a letter of support (the "**Letter of Support**") to acknowledge and endorse this Memorandum of Understanding and which is expected to include at least the key requirements listed in Annex .I/C.

Starting from the Strategy, the *Documentation of Intent* submitted by CGN on 23 September 2014 (as subsequently clarified), the *Joint Letter on the Intention to Complete the Project* signed on 17 October 2014 and this Memorandum of Understanding, the Parties shall finally agree on the terms and conditions of the agreement governing the legal relationship among the Parties in relation to the Project (the "**Investors Agreement**") and the Articles of Association of the JVCo (the "**Articles of Association**" or "**AoA**") and any other documents necessary for the appropriate implementation of the Project (together the "**Investment Documents**").

The Parties envisage that the Investment Documents will be finalized and signed as foreseen in section §11.2 herein below.

## §2 Incorporation of the Joint Venture, Participations

- (1) Following the execution of the Investors Agreement, based on the agreed AoA, the Parties shall set-up the JVCo pursuant to art. 50 of the Romanian Law no. 137/2002<sup>1</sup>, respectively in the form of a Romanian joint-stock company in which CGN will hold a stake of at least 51% and which will take over the value of SNN's investment in its subsidiary EnergoNuclear S.A. ("**EN**"), as contemplated herein below. The JVCo will be the precursory company of the future IPP-company (Independent Power Producer – IPP), and will be established for an initial duration of two (2) years which duration can be modified by agreement of the Parties depending on the date when the final investment decision ("**FID**") shall be made. JVCo (and/or IPP) shall be the sole platform of the Parties to develop the Project during the respective phase. The main purpose of JVCo is to allow the Parties, through the JVCo platform, to (i) enter into good faith negotiations with a view to determine a joint strategy in order to seek appropriate support mechanisms for the Project for the purpose of ensuring its feasibility and bankability (the "**Risk Mitigation Mechanism**" or "**RMM**"), including a contract for difference ("**CfD**") scheme, with the observance of the principles set out in the Strategy; (ii) re-verify the feasibility of the Project, including but not limited from a commercial and legal perspective, under current conditions; (iii) evaluate the existing assets for the Project; (iv) identify and proceed with the pre-project activities of the Project, defined in the indicative list attached hereto as Annex .A ; (v) perform all other agreed steps with a view to reach the FID by the Parties, in order to move to the construction phase of the Project, respectively the IPP stage.
- (2) The capital structure and the individual contributions to the JVCo will follow the principles set out in Chapter V of the Strategy. It is a paramount principle for the Project that at any time throughout the lifetime of the Project, the participation of CGN, directly or indirectly, in the share capital of JVCo (and, thus, subsequently in the JVCo as IPP) corresponds to at least 51%. The Parties envisage at the date hereof that the participation of SNN (and, if applicable, aggregated with the participation otherwise held by the Romanian State) shall not fall below 30%, as long as all the existing assets owned by SNN, EN and the Romanian State related to the Project (including heavy water, nuclear fuel, etc.) shall be brought and remain as in kind contribution to the JVCo.
- (3) SNN hereby agrees that CGN and/or, if the case, its subsidiary(ies) may set up an SPV in Romania which will be controlled at all times by CGN and that such SPV (on behalf of and authorized by CGN) will set up the JVCo together with SNN in the place of CGN, under the same terms set out herein for CGN. If this will be the case, CGN shall issue a parent company guarantee letter in order to ensure the comfort with respect to the obligations and liabilities under the agreements signed and undertaken by such SPV in place of CGN for the Project, as if CGN was a party itself to such undertaken obligations and/or a debtor with respect to such undertaken liabilities, but in no event should CGN be held liable for any obligations or liabilities other than those undertaken by the SPV specifically in relation to the Project.

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<sup>1</sup> Law no. 137/2002 on measures for the acceleration of privatization, published in the Romanian Official Gazette Part I no. 215 of 28.03.2002, as amended to date.

- (4) The JVCo will be initially established exclusively by way of cash contributions (*aport in numerar*) by SNN and CGN, resulting in a contribution in the share capital of JVCo of 49% by SNN and of 51% by CGN, it being understood that SNN shall contribute to the share capital of the JVCo with cash to the extent necessary, and *pro rata* with their respective participations in the JVCo (i.e., SNN with 49% and, respectively, CGN with 51%), SNN's contribution at this incorporation stage being in any event capped to a total amount of EUR 2,000,000.00. Without limiting the generality of the aforesaid, the Investors Agreement will contain a breakdown/calendar of the initial and the subsequent cash contributions by CGN and SNN to the share capital of JVCo so that JVCo may be able to carry out the tasks it was entrusted with. SNN expressly consents upon and shall correspondently approve within the shareholder resolution as set out in Section §6 (5) below, that CGN shall bring equity contributions in JVCo in the forms permitted by the Romanian legislation, including for the purposes of ensuring an optimal tax structure. For the avoidance of any doubt, throughout the entire duration of the Project, CGN and the SPV shall be entitled to bringing funds into the Project as CGN and/or the SPV deem(s) appropriate through any form of financing permitted under the Romanian law, including but not limited to shareholder loans granted by CGN and/or the SPV to the JVCo. Key terms of such financing shall be further developed in the Investment Documents.
- (5) Subsequent to the establishment of JVCo, CGN and SNN shall ensure that SNN is able to recover in full the value of its investment in EN. For the purpose of this Memorandum of Understanding, the Parties acknowledge that the full value of the investment in EN made by SNN is the higher among (a) the subscribed and paid share capital of EN as of 31 December 2014, which is 146,152,998 RON and (b) the merger through absorption value of EN (determined in accordance with the legal provisions in force). The following mechanism is currently being proposed by SNN to this end:

(i) JVCo – EN merger

After the set-up of JVCo, EN shall merge with JVCo and be absorbed by JVCo and, consequently, SNN's stake in the share capital of the JVCo will increase by the value of the net contribution of EN to JVCo. As an effect of the merger, EN's entire personnel shall be transferred to JVCo, according to the applicable law. SNN shall be responsible and shall indemnify JVCo and/or CGN for all of the liabilities and obligations attributable to EN which are not disclosed to CGN and not reflected in the evaluation issued by the third independent party as set out in Section §5 below.

(ii) Increase of share capital with a potential share premium

Conditioned upon and on or about the same time with the merger pursuant to point (i) above, JVCo's share capital will be increased by way of a cash contribution made by CGN immediately following the effectiveness of the merger in order to re-establish the pre-merger shareholding structure of JVCo (49% owned by SNN and 51% by CGN). The share capital increase shall be with share premium, with the purpose of allowing positive differences that may appear between the full value of EN (as defined in point 5) and the merger through absorption value of EN (determined in accordance with the legal provisions in force) be finally brought to the share capital of JVCo as SNN contribution through the mechanism described in point (iii) below.

(iii) Share capital increase by including a potential premium in the share capital

JVCo's share capital will be increased by converting the potential share premium from the previous capital increase (point (ii) above) into the share capital of JVCo.

Following this increase, CGN will maintain 51% of the share capital and SNN will remain at 49%.

In this regard, after implementation of the above steps, SNN will own in JVCo, in addition to the shares corresponding to the initial cash contribution, shares with a nominal value equal to the share capital of EN as at the date of 31 December 2014, without any cash consideration in exchange for those shares.

The Parties agree to consider and include in the Investors Agreement either this mechanism proposed by SNN or any alternative mechanism, which is in line with the principles stated herein above (i.e., the incorporation of the full value of EN into the JVCo and the recovery of such value by SNN through a corresponding number of shares that reflects such value and allows SNN to maintain its initial stake of 49% into the JVCo immediately after the incorporation of EN into the JVCo), requires minimum cash contributions and ensures cost optimisation in the best interest of the Project.

- (6) Subject to Section §8 below, the Parties acknowledge and commit themselves to observe the rights and obligations of the Romanian State (*statul român*) as provided for in the Strategy, in particular as regards the right to adhere to JVCo and, thus, to become a shareholder of JVCo in accordance with the applicable items of the Strategy.
- (7) The Parties agree that the FID may occur no later than by the expiry of the duration of JVCo. Once the FID has been made by the Parties, each Party may terminate the Investors Agreement according to the exit mechanism, which shall be discussed further by both Parties (and the Romanian State in its capacity as shareholder of JVCo, as the case may be) and included in the Investors Agreement.

### § 3

#### Project Characteristics

The Parties hereby agree to work jointly towards the implementation of the Project on the basis of the benchmarks attached hereto as Annex ./B, being however understood that, during the Project development phase, certain adjustments to the expected Project Characteristics listed in Annex ./B may occur, as agreed upon at that time by the Parties.

### § 4

#### Project Phases

- (1) The Parties envisage that the Project will be carried out in five major phases:
- **Preliminary Phase:** Immediately after the signing date of the Memorandum of Understanding, the Parties shall initiate the negotiations of the Investors Agreement and Articles of Association, as well as any other necessary Investment Documents. The preliminary time-line for the execution of the Investors Agreement and Articles of Association is set out in Section § 11 hereof.

Prior to the incorporation of the JVCo, the Parties shall provide mutual assistance, undertake all related legal procedures, submit the notification of the Project to the Superior Council for State Defense (*Consiliul Suprem de Aparare a Tarii*) and obtain any necessary clearance, if required under the applicable law. SNN, as the local partner ultimately controlled by the Romanian State, will lead, with the full support of CGN, the entire process of documents preparation, submission and obtaining clearances (as the case may be).

- **Phase 1** - From the execution of the Investors Agreement and the Articles of Association of JVCo until the FID by the Parties:

This phase shall in particular comprise the development phase of the Project until FID, during which matters which are necessary to implement the Project (such as feasibility study, RMM, etc.) will need to be agreed between the Parties (and/or their respective affiliates) and authorities. An indicative list of activities to be performed by the JVCo during Phase 1 is attached hereto as Annex ./A.

This phase shall involve, among others, the setting-up of the JVCo, the transfer of SNN's investment in EN to JVCo as contemplated above, the transfer of SNN's permits/authorizations/licenses associated with the Project to JVCo and the valuation of the existing assets of SNN and the Romanian State related to the Project (including heavy water, nuclear fuel, etc.), representing SNN's and the Romanian State's future in-kind contribution to the capital of the JVCo, a contribution that will be evaluated in accordance with Romanian law; it also involves the negotiation of the participation of the Romanian State in the JVCo by way of a contribution in kind as set out in the Strategy, as well as such as other matters agreed in the Investors Agreement.

The activity list for Phase 1 shall be agreed upon and attached to the business plan (and, thus, the Investors Agreement, to which the business plan shall be appended as an annex).

- **Phase 2** - From the FID to the commercial operation date ("COD"):

This phase shall involve the contribution in-kind of SNN and the Romanian State to the capital of the JVCo.

This phase shall in particular comprise the construction phase and the testing, including the first fuel load, the operation preparation, until the commissioning into function of the Project for commercial operation.

The Parties agree that the JVCo will implement any procurement procedure permitted under the Romanian and European legislation which shall not prejudice the rights of CGN and of the consortium led or supported by CGN (and/or its affiliates) to participate and be selected under such procedure.

CGN acknowledges the technical capabilities and interest of the local subcontractors to be subcontracted a portion of the EPC contract in accordance with the applicable law. The scope of localization will be further developed and agreed by JVCo in line

with the Strategy.

- **Phase 3 – Commercial operation after COD:**

Latest from this moment onwards the operation and maintenance of the Project shall be carried out by a specialized operation and maintenance company, which shall be capable to assume and be responsible for nuclear liability in accordance with the Strategy.

SNN acknowledges the technical capabilities and interest of CGN to subcontract portions of the O&M contract in accordance with the applicable law. The scope of such O&M contract shall be further developed and agreed.

- **Phase 4- Decommissioning**

Decommissioning starts at the time of the permanent shutdown of the reactors and shall be performed in accordance with the applicable law.

- (1) The Investors Agreement shall provide for a mechanism to adjust the organizational structure of JVCo and in particular JVCo's staff according to the evolution of these phases. The Parties shall be allowed to second key personnel to the JVCo, details of which shall be further developed and agreed in the Investment Documents.
- (2) The Parties agree that acquiring the necessary permits, authorizations and regulatory approvals and the entry into force and effect of an appropriate RMM (including CfD scheme) are conditions precedent for FID and the implementation of the Project. The Parties will therefore use all their effort to have the Project notified as soon as practicable to the European Commission and other governmental bodies, if necessary, in accordance with point 6.15 of the Strategy and obtain the required approvals for the RMM.

## **§5**

### **Valuation of Existing Assets**

- (1) The valuation of SNN's assets and of the Romanian State's assets which are to be brought as in-kind contribution to the JVCo according to the Strategy shall be made in accordance with Romanian law and international valuation standards and/or comparable to the open market conditions, by way of an independent appraiser agreed by both Parties and appointed in accordance with the applicable legal provisions. The terms of reference and the valuation methods used in the valuation report will be agreed by the Parties, within the legal framework applicable to such transactions.
- (2) In case there is a material difference between the value of the assets to be contributed by SNN and/or the Romanian State resulting from an independent appraisal and the value invested by SNN/Romanian State in those assets, the Parties and the Romanian State shall further discuss this matter and seek to identify mutually appropriate solutions.

## §6 Corporate Governance

(1) JVCo shall have the following corporate governance structure:

- a. the general assembly of shareholders (*adunarea generala*), which shall consist of CGN or its designated affiliate, SNN and, following its adherence, the Romanian State;
- b. the board of directors (*consiliu de administratie*), consisting of 7 (or any other uneven number, as agreed from time to time by the Parties, but no less than 7) members including a president and a vice-president; and
- c. the executive management (*directori executivi*), which shall manage the day-to-day business of JVCo.

(2) General Assembly of Shareholders:

- a. To the extent allowed by the Romanian law, the general assembly of shareholders shall adopt decisions with the votes representing 50% of the share capital of JVCo plus one vote, with the exception of the "**Reserved Matters**" set out in paragraph (5) below, which shall be further detailed by the Parties in the Investors Agreement, and for which 90% of the voting rights is required, provided that the shareholding structure is composed only of CGN, SNN and/or the Romanian State.

(3) Board of Directors:

- a. CGN shall at all times have the right to nominate (and request for the revocation of) the majority of the board of directors on a pro rata basis, in accordance with its participation stake in the JVCo, including the president of the board of directors. SNN (together with the Romanian State, as of its adherence to the JVCo) shall have the right to nominate (and request for the revocation of) its members of the board of directors on a pro rata basis, in accordance with its participation stake in the JVCo. In this context, pro rata basis means that each shareholder shall have the right to nominate (and request for the revocation of) a number of directors equal to: the total number of the directors of the board in accordance with the bylaws of the JVCo multiplied by the percentage (stakes) owned by the respective shareholder of the JVCo which result shall be rounded to the nearest whole number. For the purpose of this calculation, the Romanian State and SNN shall be considered as one and the same shareholder but may act independently of each other.
- b. The decisions in the Board of Directors shall be made with the vote of the majority (more than 50%) of the directors of the JVCo, with the exception of reserved matters to be agreed by the Parties in the Investors Agreement, for which a qualified majority is required, as set out in the Investment Documents.

(4) Executive Management and Internal Audit:

The Executive Management and Internal Audit shall be recommended by CGN and SNN and appointed or dismissed by the Board of Directors, according to the provisions of the AoA.

- (5) JVCo will have a corporate governance structure set out in its Articles of Association, which shall ensure that (i) JVCo can be fully consolidated in the group accounts of CGN in accordance with IFRS 10; and (ii) SNN (and, after its adherence, the Romanian state) have the minority rights available under Romanian law, as further detailed in the Investors Agreement, and in particular, but not limited to a list of reserved matters (the "**Reserved Matters**") to be defined and agreed between the Parties in the Investment Documents, for which a qualified majority of 90% of the voting rights is required.
- (6) The Parties agree to submit any divergence as to whether certain minority protection rights for SNN would conflict with the agreed principle that the JVCo shall be fully consolidated in the group accounts of CGN in accordance with IFRS 10 to a jointly appointed accounting firm of international reputation for resolution.

## **§7** **Share Transfers**

(1) **Transfers to third parties**

- (i) The Parties agree that their shares in JVCo and their participation in the joint venture may only be, directly or indirectly transferred to a third party,
- a) upon the prior written approval by the respective other Party; and
  - b) under the condition that the transferee executes an agreement with the transferor confirming that it unconditionally and absolutely agrees to be bound by the terms and conditions of the Investors Agreement and the Articles of Association (including the rights and obligations of the transferor) as a condition of the transfer of shares.

The Articles of Association of the JVCo shall stipulate that any transfer made without prior approval of the respective other Party shall be without effect.

- (ii) Any Party will benefit from a right of first refusal in case of a transfer of shares to third parties envisaged by another Party.
- (iii) The Parties shall discuss and seek to identify mutually acceptable solutions in the Investment Documents for the event that SNN and/or the Romanian State intends to transfer any participation in the JVCo to a third party, other than a State-owned company, public authority or institution, and CGN does not exercise its right of first refusal.
- (iv) The procedure for issuance of the approval and for exercising the rights herein above shall be set out in the Investors Agreement and/or the Articles of Association.

## **(2) Transfers to affiliates**

Without limiting the generality of the aforesaid, a transfer of shares in JVCo and/or of rights and obligations in this Memorandum of Understanding or the Investment Documents to

- a) an affiliate of the respective Party, or
- b) the Romanian State,

shall be allowed under this Section §7 without limitation, but shall require a prior written notification and guarantee, acceptable to the respective other Party, from the transferor stating its successors will comply with the Articles of Association and the Investors Agreement and be capable to fulfill its liabilities and obligations in the Articles of Association and the Investors Agreement to the other Party.

In the event that the transferee ceases to be an affiliate of the transferor, then it shall be the duty of the transferee and of the transferor to notify the other Parties of such event and to procure that the shares concerned are forthwith transferred back to the transferor or an affiliate thereof provided always that the transferor or the affiliate thereof meets the conditions in paragraph (2) of this Section §7.

## **§8**

### **Commitment to the Strategy**

- (1) The Parties hereby reconfirm their commitment to implement the Project on the basis of the Strategy.
- (2) The Parties agree to seek ways and cooperate in order to meet the requirements of feasibility and bankability for the Project.

## **§9**

### **Termination of the Joint Venture**

The Parties acknowledge that termination clauses are typical of this type of joint venture, and exit events and remedy mechanisms shall be discussed and agreed in the Investment Documents, without limitations on this type of termination events which may include the following:

- (1) The Project has not been approved by the relevant authorities in order for it to enter into force (eventually, subject to certain conditions);
- (2) The debt financing required to finance the Project has not been secured;
- (3) JVCo loses the right to implement the Project and/or loses the ownership of the Project;
- (4) RMM is not approved and implemented or any of the items of the activity list for Phase 1 set out in Annex A is not completed;
- (5) The Project has not obtained from the competent Romanian and/or EU authorities (other than as contemplated under point (1) above) all other permits, authorizations and regulatory approvals necessary for the performance of the Project;
- (6) The EPC contract associated with the Project has not been awarded for any reason;
- (7) The EPC contract is terminated, or the construction of the Project is involuntarily terminated or suspended for a certain period of time;

- (8) Change in law with material adverse impact on the Project.

### **§10**

#### **Good faith negotiations**

The Parties hereby reconfirm their commitment to implement the Project in accordance with all applicable national and EU laws. In case any competent (regulatory) authority recommends the Parties to reconsider any part of Project documentation and/or requires amending the Project structure, including but not limited to this Memorandum of Understanding and the Strategy, the Parties will in good faith re-negotiate such provision(s) to accommodate the requirements mandated by the competent (regulatory) authority.

### **§11**

#### **Term/Termination**

- (1) This Memorandum of Understanding enters into force on the date of its signature by both Parties.
- (2) The Parties agree to adhere to the following preliminary time-line with a view to reaching the execution of the Investment Documents:
- a) SNN shall provide a first draft of the Investment Documents, especially Investors Agreement and AoA, within 2 (two) weeks from the execution of this Memorandum of Understanding;
  - b) Parties shall negotiate the Investment Documents, especially Investors Agreement and AoA, and shall make best efforts to reach agreement on a final form thereof within 8 (eight) weeks from the date SNN provided a fair and adequate draft of the Investment Documents; and
  - c) Parties shall make best efforts to obtain statutory approvals from the competent decision-making bodies within 6 (six) weeks after agreement has been reached on the Investment Documents, especially Investors Agreement and AoA.
- (3) Each Party is entitled to terminate this Memorandum of Understanding with no indemnification whatsoever by simple written notice to the respective other Party in case agreement on the Investment Documents has not been reached by the Parties within 6 (six) months after the execution of this Memorandum of Understanding and to the extent that the delay was not caused by such Party. CGN is entitled to terminating this Memorandum of Understanding in case that the Romanian Government has not issued the Letter of Support to acknowledge and endorse this Memorandum of Understanding and which is expected to include at least the key requirements listed in Annex ./C hereto (as described in Section §1 above), within 45 (forty-five) days from the signing of this Memorandum of Understanding or the issued Letter of Support becomes invalid or inapplicable after its issuance and before the signing of the Investment Documents.
- (4) In case this Memorandum of Understanding is terminated in accordance with paragraph (3) above and provided that under the terms of the Tender Dossier SNN is not entitled to draw under the two letter of bank guarantee submitted by CGN, within 10 days from such termination, SNN shall have the obligation to return to CGN the two letters of bank guarantee submitted on behalf of CGN with SNN in the tender procedure.

- (5) The provisions of §12 of this Memorandum of Understanding shall survive a termination of this Memorandum of Understanding.

**§12**  
**Miscellaneous**

- (1) The obligations set out under this Memorandum of Understanding are binding upon each Party and the Parties agree and acknowledge that this Memorandum of Understanding, subject to paragraph (2) below, constitutes a binding agreement among them.
- (2) Nothing in this Memorandum of Understanding may actually be construed as an obligation on behalf of either Party to actually form the joint venture, incorporate JVCo or to actually implement the Project with the other Party prior to the due execution of the Investors Agreement by both Parties.
- (3) The terms of the confidentiality letter executed among the Parties on 8 September 2014 shall apply *mutatis mutandis* to this Memorandum of Understanding.
- (4) No amendment, modification, alteration or variation of the Memorandum of Understanding shall be valid unless it is in writing and signed by or on behalf of each of the Parties.
- (5) Each Party shall pay the fees and expenses incurred by it in respect of legal, tax and other advice in connection with, or in anticipation of the negotiations, preparation and execution of this Memorandum of Understanding, the preparation of the participation in the Project (due diligence, negotiations of the Investors Agreement and other preparatory matters) and the implementation of the Project.
- (6) This Memorandum of Understanding and the relationship between the Parties shall be governed by, and interpreted in accordance with, the substantive laws of Romania (including all obligations deriving from Romania's status as a member state of the European Union), excluding its conflict of law rules.
- (7) Any and all disputes arising out of or in connection with this Memorandum of Understanding, including, without limitation, a dispute as to the conclusion, validity or existence of this Agreement, shall be finally and exclusively resolved and settled under the Rules of Arbitration of the International Chamber of Commerce, Paris, France (the "**Rules**"), by three (3) arbitrators appointed in accordance with the Rules. The language of the arbitration shall be English. The seat of the arbitration shall be Vienna, Republic of Austria. Any award and/or final decision of the arbitrators shall include a decision on costs, including, without limitation, fees of counsel. Each of the Parties agrees not to resist the enforcement of any arbitration award obtained in connection with this Memorandum of Understanding other than as expressly permitted by the law applicable to it.

**The representative on behalf of  
S.N. Nuclearelectrica S.A.**

**The representative on behalf of  
China General Nuclear  
Power Corporation**