

## Societatea Națională „Nuclearelectrica” S.A.

Services for carrying out the analysis and awarding the ESG rating and benchmarking services in the category of electrical utilities

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### Sectoral Services Contract

#### Recitals

According to Law no. 99/2016 on sectoral procurement, this Sectoral Services Contract has been concluded, **by and between:**

#### 1. Contracting parties

**SOCIETATEA NATIONALA “NUCLEARELECTRICA” S.A. (SNN)**, with registered offices in Bucharest, Str. Polona nr. 65, sector 1, telephone 021.203.82.00, fax: 021.316.94.00, registered with the National Office of the Trade Register under no. J40/7403/1998, Registration code with the Trade Register (CUI) 10874881, Tax identification code (CIF) RO10874881, IBAN code RO94 RNCB 0072 0497 1852 0001, opened with BCR, Sector 1 Branch, legally represented by Mr. Cosmin Ghita - General Director and Mr. Dan Niculaie Faranga - Financial Director, as **Purchaser**, on one hand,

**and**

..... (*name of the economic operator*), with registered offices in ....., Str. ...., nr. ...., ....., phone ....., fax: ....., registered with the National Office of the Trade Register under no....., Registration code with the Trade Register (CUI) ....., Tax identification code (CIF) RO....., IBAN code ....., opened with ....., legally represented by ..... (*name and position*), as **Provider**, on the other hand,

hereinafter referred to as “**Contracting parties**” or „**Parties**”.

#### 2. Definitions

**2.1** In this Contract, the following terms shall be interpreted as follows:

- a. Sectoral Contract** - this Contract and all annexes hereto;
- b. Purchaser and Provider** - contracting parties, as defined in this Contract;
- c. Price of the Sectoral Contract** - the price payable to the Provider by the Purchaser, based on the Contract, for the full and adequate fulfilment of all obligations undertaken under the Contract;
- d. Services** - activities whose rendering represent the object of the Contract;
- e. Force majeure** - represents a circumstance of external origin, of extraordinary, unpredictable, absolutely invincible and unavoidable nature, which is beyond the control of any party, which is not due to their mistake or fault, and which makes impossible the performance and fulfilment of the Contract, respectively; such events are considered: wars, revolutions, fires, floods or any other natural catastrophes, restrictions arising as a result of a quarantine, embargo, the list is not exhaustive, but declarative. To be considered force majeure, the event must be declared as such by a central or local authority. An event similar to the above which, without creating an impossibility of performance, makes the performance of the obligations of one of the parties extremely onerous is not considered force majeure;
- f. Personal Data** - any information relating to an identified or identifiable natural person ("data subject"); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an

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online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person;

- g. *Processing*** - any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- h. *Personal data breach*** - means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- i. *Controller*** means the natural or legal person, public authority, agency or other body which alone or jointly with others determines the purposes and means of the processing of personal data;
- j. *Processor*** means a natural or legal person, public authority, agency or other body which processes personal data on behalf of the controller.
- l. *ESG*** - Environment, Social, Corporate Governance.

### **3. Interpretation**

**3.1** In this Contract, except as provided otherwise, words in the singular will include the plural, and vice versa, where this is allowed by the context.

**3.2** The term „day” or „days” or any reference to „days” represents calendar days, unless otherwise specified.

### **4. Scope and price of the Contract**

**4.1** The Provider hereby undertakes to provide „**Services for carrying out the analysis and awarding the ESG rating and benchmarking services in the category of electrical utilities**” during the time period agreed and in compliance with the obligations assumed hereunder.

**4.2.** The Purchaser hereby undertakes to pay the price agreed for performance of the contract in accordance with the obligations assumed under Article 8.2.

**4.3.** (1) The price of the contract is **EUR .....** plus the statutory VAT rate, according to the Financial Proposal in Annex # 2 to the contract.

(2) Invoicing and payment shall be made in Lei, applying the NBR exchange rate valid on the date of issue of each invoice [*applicable to economic operators who are residents of Romania*].

(3) The contract price shall be firm and fixed in EUR, and no adjustment/revision thereof during the term of the contract shall be allowed.

**4.4** Special clauses relating to the payment of value added tax (as the case may be):

(1) If, during the term of the Contract, the Provider is declared inactive by the competent authorities, being entered in the Register of inactive/reactivated taxpayers and the Contract continues after the date of entry in the register, the Purchaser shall pay the Provider the amounts due under the Contract from which it shall deduct the following amounts:

- a) the value added tax corresponding to the taxable amount and for which the Purchaser cannot exercise its right of deduction during the period of inactivity of the Provider;
- b) an amount equal to the effect of the non-deductibility of the expenses related to the purchases from the Provider which will be determined by multiplying the corporate income tax rate according to the Fiscal Code with the taxable base, i.e., the value of the purchase from the Provider.

(2) If, during the term of the Contract, the VAT-registered Provider has its VAT registration cancelled by the competent authorities and is entered in the register of taxable persons whose VAT registration has been cancelled and the Contract continues after the date of entry in the register, the Purchaser shall pay the Provider only the value of the services rendered, exclusive of VAT, and the

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value added tax shall be borne by the Provider, since the Purchaser cannot exercise its right of deduction during this period.

If, subsequent to the cancellation of the VAT registration, the Provider reacquires the VAT code including during the period of the previous cancellation of the VAT registration, the Purchaser shall pay to the Provider the VAT amount of the invoices received during the period in which the VAT code was cancelled, provided that the Provider re-invoices for that period, as provided for by the Fiscal Code.

### **5. Term of the Contract**

**5.1** The term of this Contract is **7 months** of the date of its signing by both parties, *i.e.*, of the last signature (in chronological order). The effective period of services provision shall be 6 months.

**5.2** This Contract will continue to produce its effects even after the expiry of the period mentioned in article 5.1 regarding those rights and obligations of the parties, which have arisen during the validity period of the Contract, but whose terms of performance/fulfilment/exercise/validity are fulfilled, regardless of the reason, after the expiry of the period mentioned in article 5.1. Thus, this Contract will produce effects until the fulfilment of all the mutual obligations of the contracting parties, even if the fulfilment of such obligations occurs after the expiry of the period mentioned in article 5.1 or the obligations undertaken in the Contract are not performed according to the Contract, regardless of the reason.

### **6. Documents of the Contract**

**6.1.** The documents of the Contract are:

a) The text of this Contract and its annexes:

c) The Tender Book no. 12288/24.10.2022

Annex # 1;

d) The Tender, formed of the Technical Proposal and the Financial Proposal no. ...

Annex # 2;

d) The conditions for lodging the performance security in the form of a security instrument

Annex # 3.1;

d) The Performance Security

Annex # 3.2;

g) Non-disclosure agreement

Annex # 4;

h) The list of subcontractors and, as the case may be, of the contracts concluded with them

Annex # 5;

i) The Joint-Venture Agreement (if any)

Annex # 6;

j) Addenda, if any.

**6.2** In the event of discrepancies/inconsistencies between the Contract documents, the order of precedence shall be:

(i) Addenda, as the case may be, with the mention that newer addenda shall prevail over older ones;

(ii) The Contract;

(iii) The Tender Book, including any amendments operated thereon before tender submission;

(iv) The Final Tender.

**6.3** For the avoidance of any doubt, if, during performance of the Contract, it is found that certain technical elements of the Tender fall below or do not meet the requirements set out in the Tender Book, the provisions of the Tender Book shall prevail over both the Tender and the Contract.

**6.4** The following exclusion from the rule laid down at article 6.2, if the case be, shall apply: If, during the performance of the Contract, it is found that certain technical elements of the Tender are above the requirements set out in the Tender Book, the provisions of the Tender shall prevail over both the Tender Book and, accordingly, the Contract.

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### **7. Obligations of the Provider**

**7.1** (1) The Provider hereby undertakes to render the services covered by the contract according to the requirements of the Tender Book, enclosed as Annex # 1 hereto, the obligations assumed in the Tender, as well as the regulations in force in the field of the Contract.

(2) The Provider shall be required to oversee provision of the services, and to provide the human and material resources or other similar, may these be provisional or permanent, as required under the Contract, when the need to provide such is set out under the Contract or this can reasonably be inferred from the Contract.

**7.2.** (1) Further to provision of services, the Provider shall prepare the following documents:

- The ESG rating report providing the ESG rating, as well as its substantiation.
- The Benchmarking report, in the category of electric utilities, at international level, including also its substantiation.

(2) The Provider is under the obligation to deliver the Reports listed at paragraph (1) in not more than 6 months of contract signing.

**7.3.** (1) For provision of services, the Provider shall make available a team of at least 5 experts, of which at least 4 are key experts. These key experts shall meet the minimum requirements laid down at paragraph 4.2(B) of the Tender Book, which is enclosed hereto as Annex # 1.

(2) Within 5 days of contract signing, the Provider shall send to the Purchaser for review and approval, the List of Personnel proposed to provide the services, accompanied by supporting documents showing that the minimum requirements under paragraph 4.2(B) of the Tender Book have been met. Any delay caused to the contract schedule by the Purchaser rejecting the proposed personnel shall lead to application of penalties according to article 9.1 of the Contract.

(3) During performance of the Contract, the Provider shall only use the key experts nominated in the Personnel List referred in paragraph (2) above and approved by the Purchaser. By way of exception, should one or more key experts not be available, they may only be replaced with the agreement of the Purchaser, and only by experts having an education and experience at least equal to that of the person(s) they are replacing. In such instances, the Provider is required to submit to the Purchaser a replacement proposal in not more than seven business of that event occurring, without prejudice to the time for provision under Article 7.2(2).

**7.4.** The Provider is under the obligation to comply with all the requirements of the Tender Book, whether or not these are expressly laid down in this Contract, as well as any other requirements/instructions issued by the Purchaser during performance of the Contract and arising from the obligation to complete and successfully carry through the specific subject-matter of the Contract.

**7.5.** The Provider shall nominate one or more coordinators in charge of all matters in connection with Contract performance, who are liable for performance of the Contract activity and act as an interface with the Purchaser's representatives.

**7.6.** The Provider undertakes to indemnify the Purchaser against any:

- (i) claims, fines and legal actions, resulting from the breach by the Provider, its employees, partners or subcontractors, of intellectual property rights (patents, trade names, trademarks, etc.), related to the services provided, and
- (ii) damages, costs, charges and expenses of any nature whatsoever in connection with paragraph (i) above, unless such breach results from compliance with the Tender Book issued by the Purchaser.

### **8. Main Obligations and Rights of the Purchaser**

**8.1** The Purchaser shall take over the services rendered under the conditions laid down at Article 12 of the Contract.

**8.2** The Purchaser shall make full payment of the Contract price within 30 days of receiving the invoice from the Provider, based on the invoice and the Services Taking-Over Protocol (PVRS)

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executed for the service rendered and completed, signed without comments by the Purchaser's representatives. The PVRS shall have enclosed the reports issued by the Provider under article 7.2.

**8.3** (1) The Purchaser shall make available to the Provider the facilities and/or information mentioned in the Tender Book. As applicable, the Purchaser may provide the Provider with other facilities and/or information, when these are available and needed for the performance of the Contract;

(2) The Purchaser hereby undertakes to comply with the obligations referred/assumed in the Tender Book.

**8.4.** The Purchaser has the right to ask, anytime it deems fit, information relating to the records and volume of services rendered or other information relating to the development of the contract;

**8.5.** The Purchaser shall nominate one or more coordinators in charge of all matters in connection with Contract performance, who are liable for performance of the Contract activity and act as an interface with the Provider's representatives.

## **9. Penalties for Defaults**

**9.1** If, through its exclusive fault, the Provider fails to perform its contractual obligations or fulfils its obligations in a late and/or inappropriate, defective manner, then the Purchaser has the right to claim payment and to bill accordingly for damages (penalties). The damages (penalties) claimed by the Purchaser in such cases will be calculated by applying a percentage of 0.2% per day of delay on the amount of obligations affected by non-performance, late or defective/inappropriate performance, until the effective and compliant fulfilment of such obligations.

For the avoidance of doubt, if the Provider fails to fulfil its contractual obligations in respect of the performance security or fulfils them late and/or defectively, under a non-corresponding manner, the Purchaser shall be entitled to claim payment of damages (penalties) by applying a percentage rate of 0.2% per day of delay of the amount of the performance security calculated from the first day following the expiry of the time limit granted to the Provider by the Purchaser for remedying the performance security, according to article 9.3.

**9.2** If the Purchaser fails to perform its payment obligations within the term agreed in article 8.2, then the Provider has the right to ask and the Purchaser must pay, as penalties, an amount equivalent to 0.05% per day of delay of the unpaid amount, until the actual payment date, however such penalties shall not exceed the amount of the debt.

**9.3** Upon finding that one of the Parties has failed to comply with the obligations undertaken under this Contract, the affected party shall issue a written notification to the other party regarding the breached obligation or the obligation fulfilled faultily and shall grant a remedial term which, as a rule, cannot exceed 10 days. If the defaulting party fails to fulfil its obligation within the period granted in the notification, the affected party shall be entitled to terminate the Contract, without court intervention and without any other prior formalities. Termination will come into force starting with the first day following the term granted for remedial and will entitle the affected party to claim damages.

**9.4** The fact that the Parties have charged delay penalties or damages shall not exonerate the Provider from its obligation to provide the services or to perform its obligations or liabilities according to the Contract.

**9.5** As regards termination due to non-compliance by the parties with their contractual obligations, the defaulting party shall owe damages to fully cover and/or compensate the prejudice incurred by the other party. The provisions of this article do not affect those of articles 9.1 and 9.2 above, which remain applicable.

**9.6** The provisions of this Contract as regards the termination of the Contract is supplemented by the relevant provisions of the Civil Code in force.

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### **10. Confidentiality**

**10.1.** (1) A contracting party is not entitled, without the written consent of the other party:

- a) to disclose the contract or any of its provisions to a third party, apart from those persons involved in the performance of the contract;
- b) to use the information and documents obtained or to which such party has access during the performance of the contract, for a purpose other than that of fulfilling such party's contractual obligations.

(2) The disclosure of any information to the persons involved in the performance of the contract shall be under a confidentiality obligation and shall be limited only to such information necessary for the fulfilment of the contract.

**10.2.** A contracting party shall be exempted from liability for the disclosure of information related to the contract if:

- a) the information was known to the contracting party before it was received from the other contracting party; or
- b) the information was disclosed after obtaining the written consent of the other contracting party for such disclosure; or
- c) the contracting party was under a legal obligation to disclose such information.

**10.3.** With or immediately after signing the contract, the Provider and the Purchaser shall sign a „Non-disclosure Agreement”, that becomes integral part of the Contract, Annex # 4. The purpose of the Non-disclosure Agreement shall be to protect confidential data and information owned by the Purchaser or third parties from whom the Purchaser has obtained the right of use, data and information to be accessed/used by the Provider during and in connection with the performance of the contract concluded with the Purchaser.

### **11. Performance Security of the Contract**

**11.1** (1) The Provider undertakes to lodge the Contract's performance security, amounting to EUR ....., representing 10% of the Contract price without the VAT.

(2) The performance security shall be set up in not more than 5 business days of Contract signing by both parties. This period may be extended at the justified request of the Provider; however, for not more than 15 days after Contract signing.

(3) The means lodging the security shall comply with the provisions of Article 164(4)(a) and/or (b) of Law no. 99/2016, as subsequently amended and supplemented.

**11.2** (1) The Purchaser has the right to raise claims against the performance security at any time during performance of the Contract, within the limit of the damages caused, should the Provider fail its obligations under this Contract. Before raising any claim against the performance security, the Purchaser shall give written notice to the Provider and, where applicable, to the issuer of the security instrument, pinpointing the obligations which have not been met and the method applied to calculate the damages.

(2) Should the Performance Security be enforced, in full or in part, the Provider is under the obligation to top up the security concerned as necessary for the part of the Contract still to be performed.

(3) Where, during performance of the Contract, a change occurs for whatever reason and leads to extension of the Contract term, and the performance security has been lodged as a security instrument, the Provider shall extend the validity of the security instrument accordingly so that it covers the entire term of the Contract, plus 30 days.

**11.3** Where the performance security has been lodged as a security instrument and the Provider fails to comply with the formal requirements laid down for the performance security, as these are detailed at Article 1 of Annex # 3.1 to this Contract for the initial security or, as applicable, at Article 2 of Annex # 3.1 for the replacement security, as well as the requirements laid down at Article 3 of Annex # 3.1, the provisions of article 9.3 shall apply accordingly.

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**11.4** The Purchaser shall issue the performance security in not more than 14 days of taking over without observations the last services rendered under the Contract.

### **12. Taking-Over**

**12.1** (1) The Purchaser has the right to check provision of services in order to determine their compliance with the requirements of the Tender Book and the provisions of this Contract.

(2) The Purchaser shall give written notice to the Provider of the identity of its representatives or proxies for this purpose.

**12.2** (1) The services shall be taken-over according to paragraph 16 of the Tender Book, and this shall be documented in a Services Taking-Over Protocol (PVRS), signed without objections by the Purchaser's representatives.

(2) The PVRS issued according to the provisions of paragraph (1) shall become supporting document for the issue and payment of the Provider's invoice.

(3) The Provider shall only issue the invoice after receiving the PVRS without observations from the Purchaser.

### **13. Delays**

**13.1** The Provider shall observe the terms set out in the Contract and in the Tender Book, as well as with any other terms agreed upon with the representatives of the Purchaser.

**13.2** If, during the performance of the Contract, for objective reasons, other than by fault of the Provider, it cannot comply with the terms agreed, the Provider shall notify the Purchaser in writing in a timely manner. The modification of the agreed terms can only be made in objective situations, not attributable to the Provider, with the agreement of both parties, through an addendum to the Contract.

**13.3** Except for the situations provided at article 13.2 or force majeure, any late performance of the Contract by guilty of the Provider, entitles the Purchaser to ask penalties to the Provider according to article 9.1.

### **14. Force Majeure**

**14.1** Force majeure is ascertained by a competent authority.

**14.2** Force majeure exonerates the contracting parties from the fulfilment of the obligations assumed by this Contract, for as long as it operates.

**14.3** The performance of the Contract shall be suspended for the duration of force majeure, but without prejudice to the rights that were due to the parties prior to its occurrence.

**14.4** The contracting Party invoking force majeure has the obligation to notify the other Party immediately and in full of its occurrence and to take any measures at its disposal to limit the consequences.

**14.5** The contracting Party invoking force majeure has the obligation to notify the other party the termination of its cause within maximum 5 days as of the termination.

**14.6** If force majeure acts or is estimated to act for a period of more than 60 days, each party will be entitled to notify the other party of the full termination of this Contract by the effect of law, without any of the parties being able to claim damages from the other party.

### **15. Settlement of disputes**

**15.1** The Purchaser and the Provider will make every effort to resolve amicably, through direct negotiations, any dispute or difference that may arise between them within or in connection with the performance of the Contract.

**15.2** If, after 15 days from the start of these negotiations, the Purchaser and the Provider fail to resolve amicably a contractual dispute, each may request that the dispute be resolved by the

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materially competent courts at the headquarters of the Purchaser, under the conditions and according to the procedures regulated by the legislation in force.

### **16. Language of the Contract**

**16.1** The language governing the Contract is Romanian.

### **17. Communications**

**17.1** (1) Any communication between the parties, related to the fulfilment of this Contract, must be sent in writing. All correspondence related to performance of the Contract shall be sent to the attention of the External Communication and Public Relations Department of SNN Headquarters, as Contract Manager according to article 22. Any correspondence related to the Contract (with the exception of that related to article 23.10 of this Contract) addressed to someone other than the Contract manager, appointed in this article, will be disregarded.

(2) Any written document must be registered both on its transmission and on its receipt.

### **18. Applicable law**

**18.1** This Contract will be interpreted according to the Romanian laws.

**18.2** All provisions of this Contract shall be completed and interpreted according to the provisions of the Civil Code and the applicable laws of Romania. The contractual clauses are binding for the contracting parties.

**18.3** If, during the performance of the Contract, legislative changes that affect the contractual clauses occur, the implementation of which is required by the respective legislative changes, the parties will proceed to amend these clauses, according to the imperative changes of the legislation, by Addendum thereto.

**18.4** In any situation, the mandatory legal provisions prevail over the contractual clauses.

**18.5** The contractual documents will not be used for purposes other than those established by the Contract.

**18.6** By signing the Contract, the parties confirm that they have read, fully understood and expressly accept all its provisions.

### **19. Termination of the Contract. Suspension of the Contract**

**19.1** (1) The Purchaser reserves the right to withdraw the Contract, by written notice to the Provider 30 days prior to the time at which the Purchaser wishes to terminate the Contract, without any compensation, without any formality and without any further judicial or extrajudicial proceedings. In this case, the Provider shall be entitled to claim payment for the part of the Contract performed and, as the case may be, for expenses incurred up to the effective date of termination, for the purpose of fulfilling the Contract, provided that it submits supporting documents to this effect, these documents being checked and confirmed in advance by the Purchaser.

(2) Notwithstanding the provisions of common law on the termination of contracts or to the Purchaser's right to request a declaration of absolute nullity of the contract, according to the provisions of common law, the Purchaser shall have the right to withdraw the contract during its period of validity and in one of the following situations:

a) The Provider was, at the time of awarding the Contract, in one of the situations that would have determined its exclusion from the awarding procedure, pursuant to article 177 of Law No 99/2016 on sectoral procurement;

b) The Contract should not have been awarded to the Provider, considering the serious breach of obligations arising from the relevant European legislation and found by a decision of the Court of Justice of the European Union.

**19.2** (1) The Purchaser reserves the right to withdraw the Contract by written notice to the Provider, without any compensation, if the Provider has been declared bankrupt, makes the object of a



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winding-up, dissolution, administration / judicial supervision procedure, or is under the control of an authority that entered into an arrangement with creditors regarding the payment of debts, has suspended/terminated its activity, is in compulsory enforcement or incurs under any similar situation arising from a similar procedure provided for in the national legislation or regulations.

(2) If general insolvency proceedings have been opened against the Provider, including any member/leader in case of a joint venture, consortium or other group consisting of two or more persons or against a subcontractor or third party supporter, within 30 days of the date of opening of the proceedings, or as the case may be, as of the signing date of the Contract, if general insolvency proceedings have already been opened against it, the Provider undertakes to submit a detailed analysis of the impact of this event on the performance of the Contract and its ability to fulfil its obligations, accompanied by a plan of measures to prevent any negative impact.

(3) Under the situations mentioned at para. (1), the Provider has the right to claim only the corresponding payment for the part of the Contract fulfilled until the withdrawal of the Contract.

**19.3** If the Contract awarding procedure or the performance of the Contract is found to be vitiated by material errors, irregularities, non-conformities or offences involving fraud, corruption, bribery, embezzlement or other economic and financial offences, the Purchaser shall have the right, at its option,

(i) either to notify the Provider the suspension of the performance of the Contract, until the situation is clarified and a decision is made regarding the continuation or termination of the Contract - a situation in which the suspension will be confirmed by a written document signed by both parties, and will cease at the moment when the Purchaser decides on the continuation or termination of the Contract,

(ii) or to notify the Provider the termination of the Contract, as effect of its termination, according to article 25.9 or, as the case may be, article 25.11 of this Contract.

**19.4** If, during performance of the Contract, it is found that certain elements of the Technical Proposal are not complied with (they are inferior or do not meet the requirements set out in the Tender Book), the Purchaser reserves the right, in a first stage, to terminate the provision of the services until the remedial of the situation ascertained and, if this does not occur within a reasonable term, to withdraw the Contract. In case of suspension/temporary cessation of the services provision, the duration of the Contract will be automatically extended by the period of suspension/cessation.

## **20. Conflict of interests**

**20.1** The Parties must comply with the legal provisions in the field of public/sectoral procurement regarding the avoidance of conflict of interests.

**20.2** The Provider shall avoid any contact/action/arrangement, including - but not limited to - those with the Purchaser, its staff or collaborators, which could compromise the independence of the Provider or of its staff or collaborators. If and when the Provider fails, in any way, to maintain its independence, the Purchaser, without affecting its right to obtain compensation for the damage caused to it as a result of the conflict of interests situation thus arising, may decide to terminate the Contract with immediate effect, without any prior formalities being required and without the intervention of any court and/or arbitration.

**20.3** The Provider shall not be entitled to engage or enter into any other arrangements for the provision of services, directly or indirectly, for the purpose of fulfilling the Contract, with natural or legal persons who have been involved in the process of verification/evaluation of requests for participation/tenders submitted within the Contract awarding procedure or with employees/former employees of the Purchaser, with whom the Purchaser has terminated contractual relationships subsequent to the awarding of the Contract, during a period of at least 12 months after the conclusion of the Contract, under penalty of termination or cancellation de jure of the Contract. The Provider must notify the Purchaser, within 15 days as of employment or, as the case may be, as of

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the date of the conclusion of the agreement for the provision of services, if during the 12-month period it has engaged or entered into any arrangements for the provision of services with the above-mentioned persons for the purpose of fulfilling the Contract.

### **21. Assignment of the Contract**

**21.1** (1) The assignment of rights and obligations arising under this Contract is permitted only with the prior written consent of the Purchaser and only under the conditions of Law no. 99/2016, on sectoral procurement, as subsequently amended and supplemented.

(2) The Provider shall not transfer wholly or partially the obligations assumed by the Contract without the previous written agreement of the Purchaser.

(3) The assignment shall not exempt the Provider from any liability regarding the guarantee or any other obligations assumed under the Contract.

(4) The Provider must notify the Purchaser related to the intent to assign the rights or obligations resulted from this Contract. Assignment takes effect only if all parties agree.

(5) If the rights and obligations of the Provider according to this Contract and/or by law are taken over by another economic operator as a result of universal succession or by universal title as part of a reorganization process, the Provider may assign any of its rights and obligations under the Contract, including rights to payment, only with the prior written consent of the Purchaser. In such cases, the Provider must supply to the Purchaser information related to the identity of the entity to which it assigns the rights.

(6) Any right or obligation assigned by the Provider without the previous authorization from the Purchaser is not executory against the Purchaser.

(7) In the event of the transfer/taking-over of obligations by the Provider, the notification shall trigger the initiation of novation between the two Parties, provided that the requirements established by article 240 para. (1) letter b) of Law no. 99/2016 are complied with, for:

(i) the Economic Operator taking over the rights and obligations of the Provider under this Contract, which meets the qualification criteria initially established, respectively within the procedure from which this Contract resulted,

(ii) this Contract, provided that this amendment does not involve other material changes of the Contract,

(iii) the Purchaser, but not for the purpose of evading the application of the awarding procedures provided for by Law no. 99/2016.

(8) In the event of early termination of the Contract, the Provider shall assign the contracts concluded with the subcontractors to the Purchaser.

(9) If there is a third-party providing support, and this has failed its obligations under the firm support commitment, the Provider's claim against that third party providing support shall be assigned, as security, to the Purchaser.

### **22. Performance of the Contract**

**22.1** This Contract shall be performed by the External Communication and Public Relations Department of SNN Headquarters, with the registered office in Bucharest, Str. Polona nr. 65, Sector 1.

**22.2** The Contract performance shall include, but not be limited to coordination of activities, taking-over of products, making of payments, correspondence with the Provider, sending of notices for late/non-performance of obligations, enforcement of the performance security, calculation and application of penalties, issue of the fact-finding documents referred in article 161 of the Government Decision no. 394/2016 (when requested by the Provider).

**22.3** The invoices shall be issued on the name of SN „Nuclearelectrica” S.A. with the dates mentioned at article 1 and shall be transmitted to the Contract manager mentioned in article 22.1.

### **23. Data Protection**

**23.1** When processing personal data in connection with the Contract, each Party undertakes to comply with the applicable legislation on the protection of personal data, respectively Regulation no. 679/2016 and any generally mandatory rules adopted in connection with the protection of personal data.

**23.2** The processing by one of the Parties of the personal data received from the other Party will be done only for the purposes of concluding the Contract and rendering the services that are the object of the Contract and for performing the Seller's legal obligations.

**23.3** Each Party requests from the other Party only the personal data necessary for the conclusion, execution and termination of the Contract and, to the extent that there is another purpose for which it requests the personal data, it will justify this request by providing the information required by the applicable legislation, respectively by article 13-14 of Regulation no. 679/2016 and/or any article or rule that replaces or supplements these provisions.

**23.4** Each Party shall process the personal data provided by the other Party only during the performance of the Contract for the purpose of this performance and, subsequently, in accordance with the legal requirements in force. Any personal data whose processing is no longer required, according to the law, after the performance of the Contract, will be returned to the other Party or destroyed.

**23.5** The personal data processing activities by the Parties will be limited to fulfilling the purpose of the Contract and shall be limited to: collection, recording, organization, structuring, storage, adaptation or modification, extraction, consultation, use, disclosure by transmission, dissemination or making available, alignment or combination, restriction, erasure or destruction.

**23.6** The categories of data subjects whose personal data will be processed by the Parties are: employees and management staff with mandate Contract.

**23.7** The categories of personal data processed by the Parties will be, as the case may be: name, surname, employer's name, position held, telephone numbers, correspondence addresses (including email addresses), signature, image used on identity and/or access documents to the premises of SNN, series and number of ID, Personal Number, dates and times of visits/access to the premises of SNN, data on access to certain areas captured by access control devices, video images captured by video surveillance cameras.

**23.8** Each Party that discloses the personal data of its employees/representatives ensures that it has provided them with the information provided in article 13-14 of Regulation no. 679/2016 and/or in any article or rule that replaces or supplements these provisions.

**23.9** In the event that circumstances arise in which any of the Parties acts as an authorized person of the other Party, or as an associated controller with the other Party in connection with the Contract, the Parties undertake to conclude a binding agreement or contract in accordance with the provisions of articles 26 and 28 of Regulation no. 679/2016 and/or of any article or rule that replaces or supplements these provisions.

**23.10** The parties agree to notify each other of any personal data security breach promptly, but no later than 24 hours after becoming aware of the breach, and to communicate any breach or suspected personal data breach using e-mail addresses:

- Purchaser: [dpo@nuclearelectrica.ro](mailto:dpo@nuclearelectrica.ro),
- Provider: .....

### **24. Revision and amendment of the Contract and related provisions**

**24.1** (1) The Parties shall have the right, during the period of validity of the Contract, to agree to amend and/or supplement the terms thereof without organizing a new awarding procedure, with the agreement of the Parties, without affecting the general nature of the Contract.

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### **25. Anti-bribery/Anti-fraud provisions**

**25.1** The Provider/Provider's Personnel/Subcontractors shall always act loyally and impartially and as a trusted advisor to the Purchaser, according to the rules and/or code of conduct of their field of work and with the necessary discretion.

**25.2** (1) The Provider declares, to the best of its knowledge, that neither it nor its Personnel/Subcontractors, either directly or through a third party, has/have promised, offered or given any amount of money, material goods and/or any other benefit with the intent to have caused an employee of the Purchaser to perform an activity or job duty under a non-corresponding manner or to have rewarded an employee of the Purchaser for the performance of an activity or job duty or to have offered/promised to offer any inducement with the intent to have caused an employee of the Purchaser to have undertaken or to have refrained from undertaking an activity or performing a job duty during the performance of the Contract and thereafter, that would have breached the duties and responsibilities of the person/persons concerned towards the Purchaser.

(2) The Provider/Provider's Personnel/Subcontractors, either directly or through a third party, shall not promise or offer, give any amount of money, goods and/or benefit with the intention to determine an employee of the Purchaser to improperly carry out an activity or job duty, or as a reward for an employee of the Purchaser for performance of an activity or job duty, or that would offer/promise to offer any inducement with the intention to cause an employee of the Purchaser to carry out or refrain from carrying out an activity or job duty during the term of the Contract and thereafter that would come against the duties and responsibilities of the person(s) concerned towards the Purchaser.

**25.3** (1) The Provider declares, to the best of its knowledge, that its Personnel/Subcontractors, either directly or indirectly, has/have not paid any undue commission or fee unlawfully charged to an employee of the Purchaser related to this Contract.

(2) The Provider/Provider's Personnel/Subcontractors shall not pay or intend to pay, directly or indirectly, any undue commission, any fee unlawfully charged and shall not offer any gift to an employee of the Purchaser related to the performance of the Contract or in order to obtain any favour or for any other reason.

**25.4** Where the Provider/Provider's Personnel or any of its Subcontractors offer to give/grant or give/grant bribe, goods, facilities, commissions to any person for the purpose of inducing or rewarding performance/non-performance of any act or fact related to this Contract, or favouring/disfavouring any person in connection with this Contract, the Purchaser may decide to terminate/rescind the Contract.

**25.5** The Provider/Provider's Personnel/Subcontractors declares/declare that it/they has/have not been convicted as a person/company or its directors/members of its management body/associates, as the case may be, have not pleaded guilty to an offence involving fraud, corruption, bribery, embezzlement or other economic and financial offences.

**25.6** The Provider/Provider's Personnel/Subcontractors agrees/agree to supply and support, upon the express request of the Purchaser, a self-declaration related to the compliance with the anti-bribery policies, business principles and ethical behaviour of the Purchaser and undertakes/undertake to inform immediately, in writing, the Purchaser related to any case occurred or of which it/they subsequently became aware, but not later than 5 working days as of the becoming aware of the situation that has arisen.

**25.7** The Provider and its Personnel shall comply with the professional secrecy, during the performance of the Contract, including during any extension thereof, and after termination of the Contract.

**25.8** The Provider/Provider's Personnel/Subcontractors agrees/agree and undertakes/undertake to comply with the policies and procedures related to the anti-bribery management system of the Purchaser.

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**25.9** Any breach of the obligations assumed by anti-bribery clauses of articles 25.1 – 25.8 above shall grant the right to the Purchaser to terminate the Contract, with immediate effect, without any compensation, without any formality and without any other judicial or extrajudicial procedure.

**25.10** (1) For the application of this article 25, „Provider's Personnel” means the personnel hired on the signing date of this Contract, as well as any other personnel to be hired by the Provider during the validity term of this Contract.

(2) For the application of this article 25, „Subcontractor” means both the subcontractors declared by the Provider on the signing date of this Contract and, as the case may be, other subcontractors to be involved subsequently in the performance of this Contract.

**25.11** (1) The Purchaser reserves the right to terminate/cancel the Contract, without affecting the right of the Parties to claim damages or other prejudices, if the Provider has committed irregularities, non-conformities or offences involving fraud, corruption, bribery, embezzlement or other economic and financial offences within the awarding procedure of the Contract or related to the performance thereof.

(2) The Purchaser may terminate/cancel the Contract, without affecting the right of the Parties to claim damages or other prejudices, if the Purchaser has committed essential errors, irregularities, non-conformities or offences involving fraud, corruption, bribery, embezzlement or other economic and financial offences within the awarding procedure of the Contract or related to the performance thereof.

## **27. Provisions on Taxation of Non-Resident Income [if applicable]**

**27.1.** The parties agree that the services covered by this Contract fall under the scope of article 7 “Corporate Profits” of the Double Taxation Convention concluded between Romania and ..... [Provider’s state of residence], hereinafter referred to as the “Convention”. Therefore, the Purchaser (SNN) must not calculate, withhold and pay to the State budget the tax on non-residents’ income in Romania (“Withholding Tax - WHT”).

**27.2.** For the application of the provisions of the Convention, the parties agree as follows:

a) The Provider is required to submit to the Purchaser the tax residence certificate issued in ..... [Provider’s state of residence], in original or as notarized copy bearing an apostille affixed in ..... [Provider’s state of residence].

b) The template and information content of the tax residence certificate issued in ..... [Provider’s state of residence] shall be those approved by ..... [Provider’s state of residence]; however, according to the Romanian legislation, this must contain the following minimum information: the identification data of the Provider and of the authority that issued the tax residence certificate (name, address, tax identification number, reference to the status of resident for tax purposes in ..... [Provider’s state of residence], as well as the certificate issue date). The Provider must provide the tax residence certificate containing at least the minimum information required by Romanian law, otherwise the Purchaser will be unable to apply the provisions of the Convention.

c) The Provider undertakes to send the tax residence certificate every year, before the date of the first payment of that year relating to the performance of the contract concluded between the Provider and the Purchaser. The Purchaser shall not make payment for the services covered by the contract until receipt of the tax residence certificate, in original, corresponding to the year in which payment is made.

d) If the Provider requests payment without fulfilling the obligation to provide the Purchaser the tax residence certificate by the date of the first payment of the respective year, the Purchaser shall calculate, withhold and transfer to the state budget the non-resident income tax at the rate provided for by the legislation applicable in Romania (on the signing date of this contract, the valid rate is 16%), and after receiving the certificate shall request the Romanian tax authorities to refund the non-resident income tax paid in excess. The payment to the Provider of the non-resident income tax paid in excess is made only if the Purchaser (SNN) has obtained the approval of the tax refund, within 60 days as of the approval date and receipt of the tax paid in excess or compensation, as the

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case may be, with other taxes and duties owed by SNN to the budget. Furthermore, if, for tax recovery, the Purchaser incurs certain costs such as translations, opinions issued by tax consultants/lawyers/financial experts, the Provider must bear these costs, based on supporting documents submitted by the Purchaser (copies of invoices, etc.). In this regard, the Purchaser shall issue a cost recovery invoice in an appropriate manner at the level of actual costs (without adding a mark-up).

e) If the Convention suffers modifications or a new convention is signed, compared to that in force on the signing date of this contract, and the tax treatment and/or article 7 mentioned above is amended, the parties shall amend the contract accordingly by addendum. The same is valid if, due to any reason, the Provider changes the tax residence in another state.

f) If the competent tax authorities of any of the States in which the Purchaser and the Provider are resident for tax purposes consider that the classification under article 7 of the Convention is wrong and the services are subject to taxation at source according to the Convention (royalties, interests, commissions, etc.), both parties shall take all necessary steps to convince the authorities that the classification is correct, and this may involve the submission of additional documents and information, as the case may be. If even after the submission of these additional documents and information, the competent tax authorities concerned maintain the same opinion, the parties shall use the remedies allowed by the legislation in force in order to appeal any amounts determined to be payable by the Purchaser to the state budget, representing non-resident income tax, accessories (interests and default interests) and possible fines. After having exhausted the legal remedies, if any measures ordered by the Romanian tax authorities related to the payment of amounts to the state budget representing non-resident income tax, accessories (interests and default interests) and fines remain in force, resulting from the misclassification of services related to this contract, then the Purchaser shall pay these amounts as soon as possible. In such situation, the Provider agrees to bear all costs that the Purchaser (SNN) has with the eventual additional taxes representing non-resident income tax corresponding to the contract, accessories (interests and default interests) and fines established in its charge. The settlement of this costs will be established by addendum thereto.

g) As from the date of the definitive stay of the measures ordered by the Romanian tax authorities as a result of a possible misclassification of the services related to this contract, or of a different understanding of the contractual provisions, the legislation in force and the Convention, the parties shall amend the contract accordingly, and the Promissory Purchaser shall calculate, withhold and pay to the state budget the non-resident income tax.

### **28. Subcontractors *(it only applies when one/more parts of the contract are subcontracted)***

**28.1.** (1) The subcontractors proposed in the tender shall have the right to express, at execution of the contract or when these are introduced in the contract, as the case may be, the option to be paid directly by the Purchaser, corresponding to the part(s) the contract performed by subcontractors, according to the contract concluded between the Provider and the subcontractor.

Where a subcontractor expresses the option to be paid directly, the activities resting with them, as well as the amounts related to the services provided shall be detailed in the contract concluded by the said subcontractor with the Provider; otherwise, no direct payment to the subcontractor by the Purchaser shall be possible.

(2) The contracts concluded between the subcontractor and the Provider shall be in accordance with the tender and shall be enclosed as annexes to the services contract.

**28.2** (1) The Provider shall be fully liable towards the Purchaser for the performance the Contract.

(2) The subcontractor shall be fully liable towards the Provider for the performance of its part of the Contract.

**28.3.** (1) The Provider shall submit to the Purchaser the names, contact details and legal representatives of its subcontractors involved in performance of the Contract, not later than the start of contract performance.

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(2) The Provider is under the obligation to give notice to the Purchaser of any changes occurred in the information under paragraph (1) during the term of the Contract.

(3) The provider has the right to involve new subcontractors, during the Contract term, provided that their change does not qualify as a material variation of the Contract under the terms of articles 235 – 241 of Law no. 99/2016 on the sectoral procurement.

(4) In the case referred in paragraph (3), the Provider shall submit to the Purchaser the information provided at paragraph (1) and shall obtain the Purchaser's agreement to any new subcontractors subsequently involved in performance of the Contract.

(5) Where replacement or introduction of new subcontractors takes place after the award of the Contract, they shall submit the certificates and other documents required to determine the applicability of any exclusions, as well as the resources/capabilities corresponding to their part of involvement in the contract to be performed.

The parties have concluded this Contract in 2 (two) original counterparts, having the same legal validity, one for each party.

**PURCHASER**

**PROVIDER**

**Conditions for lodging the performance security as a security instrument**

**Article 1.** Should the performance security be lodged as a security instrument, the security shall meet the following conditions:

- (i) it shall be irrevocable;
- (ii) it shall have a validity term equal to the validity term of the contract, plus 30 days;
- (iii) must provide that the payment of the guarantee will be executed unconditionally, i.e., at the first request of the Purchaser, on the basis of its declaration as to the fault of the guaranteed person;
- (iv) Domestic issuers of security instruments (incorporated in Romania), other than one of the issuers of security instruments (credit institutions or insurance companies) which, on the date of issue of the security instrument, are directly or indirectly owned by the Romanian State:
  - shall have themselves or, for credit institutions (banks) incorporated in Romania, their parent company shall have, valid external ratings;
  - the issuer of the rating mentioned at paragraph above must be, as the case may be, one of the international companies Fitch, Standard & Poor's or Moody's;
  - where they have an individual external rating in force, the rating of the security issuer must be at least equivalent to the Fitch's BB rating, or, where the credit institution (bank) incorporated in Romania does not have an individual external rating in force, but the parent company does have such an individual external rating in force, the rating of the parent company must be at least equivalent to the Fitch's BB rating.If the issuer of the guarantee instrument is one of the issuers of guarantee instruments (credit institutions or insurance companies) owned directly or indirectly by the Romanian State, the above rules do not apply, in the sense that guarantee instruments issued by it are accepted without fulfilling the above conditions;
- (v) For the national issuers of guarantee instruments (registered in Romania) insurance companies that do not hold a rating in force issued by one of the international companies Fitch, Standard & Poor's or Moody's or are not owned directly or indirectly by the Romanian State, the following rules shall apply cumulatively for the same reference fiscal year for which, on the evaluation date of the issuer, the source documents are available publicly:
  - The MCR and SCR rates of the „Report on solvency and financial situation” of the issuer for the previous year must be minimum 70% of the national average published by the FSA for each of the two rates corresponding to the same reference year;
  - Gross premiums of general insurances for the previous year should be minimum Lei 70,000,000;
  - Total assets in the previous year should be minimum Lei 200,000,000
- (vi) International issuers of guarantee instruments (registered outside Romania):
  - must hold external ratings in force;
  - the issuer of the rating mentioned at paragraph above must be, as the case may be, one of the international companies Fitch, Standard & Poor's or Moody's;
  - the rating of the guarantee issuer must be, at least, the equivalent of BBB rating - in Fitch classification.



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(vii) The Provider shall facilitate the check by the Purchaser directly with the issuer of the guarantee instrument or through a secure correspondence mechanism (e.g., for credit institutions, their correspondent banking system) of the authenticity and main features of the guarantee instrument, through (e.g.) letter or electronic correspondence, correspondent banking system, etc.

(viii) If the guarantee instrument is issued by an insurance company as an insurance policy, in addition to the rules above, the guarantee instrument must also comply with the following:

a) The insurance policy shall be irrevocable and shall include the minimum insurance conditions specified in the contract concluded with the Purchaser;

b) The insurance policy shall have, on the presentation date, the insurance premiums paid in advance and integrally, for the entire term of the Contract and the insurance company shall confirm in writing to the Purchaser the fulfilling of this obligation. The confirmation will be submitted by the Provider at the same time with the Policy.

c) Provisions on risk reinsurance:

- for risks insured (values of the insurance policies) of less than EUR 2,000,000 (or equivalent), the insurance company shall inform the Purchaser whether it reinsures the risks under the insurance policy, the percentage/ratio of the insured value that it assigns for reinsurance either individually or as part of a portfolio, the name of the corresponding reinsurance company or companies and their most recent rating for financial strength issued by Standard & Poor, Moody's or Fitch;

- for risks insured (values of the insurance policies) higher than EUR 2,000,000 (or equivalent), the insurance company shall reinsure the risks assumed under the insurance policy for at least 50% of the amount insured and shall notify the Purchaser the name of the corresponding reinsurance company or companies, each of these reinsurance companies having the most recent rating for financial strength of at least AA in Fitch rating equivalent.

d) The reinsurance costs, for the entire duration of the contract, will be borne in full and in advance by the Provider/Insurance Company. The Provider shall provide proof of compliance with this condition by submitting the reinsurance contract for the performance security insurance policy and proof of full and advance payment of the reinsurance costs.

e) Sub-limits of the performance security insurance policy are not accepted for the insured risks;

f) The excess amounts are accepted, insofar as they are not deductible from the amount of compensation paid. The payment of the insured amount shall not be conditioned upon the payment of an excess amount.

**Article 2.** The Provider shall replace the performance security instrument in the following cases:

(i) when the credit institution depositing the initial performance security is in one of the following situations:

a) obvious payment inability to pay debts due from cash resources;

b) a drop below 2% in the credit institution's solvency ratio;

c) withdrawal of the credit institution's operating license, according to the legal provisions, as a result of the impossibility of financial recovery of a credit institution;

(ii) when the insurance company depositing the initial performance security is in one of the following situations:

a) obvious payment inability to pay debts due from cash resources;

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b) withdrawal of the insurance company's operating license, as a result of the impossibility to restore, within the financial recovery procedure, compliance with the solvency capital requirement – as regards the companies supervised under Part I "Solvency II supervisory regime" of Law no. 237/2015 on the authorization and supervision of insurance and reinsurance activity, as further amended, or as a result of the impossibility to restore the available solvency margin at least to the minimum solvency margin limit -as regards companies supervised according to Part II "National supervisory regime" of Law no. 237/2015, as further amended;

c) withdrawal of the authorization as regards the residual insurer resulting from the resolution process according to the provisions of article 71 of Law no. 246/2015 on the recovery and resolution of insurers;

(iii) as well as in any other situation where the depository entity of the initial performance security is manifestly unable to make payment of its due debts from its available cash.

**Article 3.** For applying article 1 letter (i) and (iii) the following rules are valid:

(1) The obligation/commitment/guarantee instrument (guarantee) is valid, irrevocable and unconditional for the entire duration of the contract, the Issuer/Insurer/Guarantor issuing the guarantee instrument undertakes to make the payment of the guarantee unconditionally, irrespective of the validity and legal effects of the contract, waiving of the benefit of discussion and division, any disputes and objections and without the need for any legal action or arbitration award, upon the first request of the Purchaser, on the basis of its declaration as to the fault of the guaranteed person.

(2) If the guarantee obligation/commitment is assumed by means of several documents whose provisions are contradictory (e.g., the letter of commitment contains all the required elements of the guarantee obligation/commitment, in particular those relating to irrevocability and conditionality, but the terms of business, or other contractual documents that are an integral part of the obligation/commitment, have contrary provisions, in particular as regards the irrevocability of the commitment and the conditionality of payment), the text of the letter of commitment shall mention the hierarchy of legal interpretation of the documents, i.e. in case of contrary/different provisions, the provisions of the letter of commitment shall prevail, by way of derogation from the general terms and conditions of business and other standard contractual terms and conditions practiced by the Issuer/Insurer/Guarantor.