

## Memorandum of Understanding

### Relating to the development of the undersea Interconnector Project and strengthening of the transmission grid in western Latvia

#### This Memorandum of Understanding (MoU) is entered into between:

- 1) **Affärsverket svenska kraftnät**, a Swedish state utility, with its registered office at Box 1200, 172 24 Sundbyberg, Sweden (hereinafter referred to as "SvK");
- 2) The Consortium, comprised of **Public Institution Central Project Management Agency**, incorporated under the laws of Lithuania whose registered office is at S. Konarskio g. 13, LT-03109 Vilnius, Lithuania (hereinafter referred to as "CPMA"), and **AB Lietuvos Energija**, a company incorporated under the laws of Lithuania whose registered office is at Zveju g. 14, LT-09310 Vilnius, Lithuania (hereinafter referred to as "LE"), acting according to the 23 June 2009 Consortium Agreement (hereinafter referred to as the "Lithuanian Consortium"); the Lithuanian Consortium for the purpose of signing this MoU is represented by CPMA;
- 3) **Latvenergo AS**, a company incorporated under the laws of Latvia, whose registered office is at Pulkveza Brieza 12, Riga, Latvia (hereinafter referred to as "Latvenergo");

Hereinafter jointly referred to as the "Parties" and each individually as a "Party".

#### **Whereas**

- (A) The Prime Ministers of the Republic of Lithuania, the Republic of Estonia and the Republic of Latvia have met in the Prime Ministers' Council of the Baltic Council of Ministers and took part in round table discussion "Baltic electricity market and Integration to the European electricity market",
- (B) The Prime Ministers stressed the common interest of the three Baltic States to integrate their energy sectors with the common European energy market, strengthen security on the energy supply and decrease dependency on the single external energy supplier,
- (C) The Prime Ministers underlined the importance of creating an open and functioning Baltic electricity market, based on harmonised market regulation and integrated with the Nordic electricity market, and an urgent need to develop electricity interconnections with the NORDEL system,
- (D) The Prime Ministers welcomed the progress achieved by the High Level Group on Baltic Energy Market Interconnection Plan (hereinafter referred to as "BEMIP") in examining the legal and regulatory framework of the Baltic electricity markets, in particular the work on the Road Map to create a Baltic electricity market defining the necessary legal and technical measures to be taken,
- (E) The discussions between the Parties have led to a shared vision upon the headlines of a possible co-operation regarding the building, operating and maintaining of a Nordic-Baltic undersea electricity transmission cable (hereinafter referred to as the "Interconnection") between Sweden and Lithuania aiming to integrate the Baltic electricity market and the common Nordic electricity market into a common Nordic-Baltic electricity market, and strengthening of the grid on the common Baltic electricity market, both projects to be performed simultaneously,
- (F) In the Joint Declaration of the Prime Ministers' Council of the Baltic Council of Ministers, dated the 27<sup>th</sup> of April 2009, it has been unanimously agreed that there will be created a

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common Baltic electricity market covering the three Baltic States which will be integrated with the Nordic electricity market and, in particular, the NordPool Spot market mechanism in the most efficient way and within the shortest possible time frame, but certainly not later than the dates foreseen by the EU legislation,

- (G) One of the instruments to achieve the above mentioned goals is that the energy companies of Lithuania and Latvia and the power transmission state utility of Sweden will be invited to start without delay practical implementation of the Interconnection,
- (H) The mentioned Joint Declaration further emphasized that the Interconnection should be a trilateral energy infrastructure project with the participation of energy companies of Lithuania, Latvia and Sweden. Each of them should have the right to participate in such project on equal terms aiming to connect the common Baltic electricity market with the common Nordic electricity market and the NordPool Spot market mechanism. It should be built upon the results of the feasibility study concluded by LE and SvK in March 2008 and taking into consideration progress made as well as technical, financial and economic aspects of project implementation. There is common agreement regarding the route of the Interconnection, i.e. from Sweden to Lithuania,
- (I) The mentioned Joint Declaration further supported the shared allocation of funds granted by the European Commission within the framework of the draft (wording as of 30<sup>th</sup> of May 2009) "Regulation of the European Parliament and of the Council establishing a programme to aid economic recovery by granting Community financial assistance to projects in the field of energy" (hereinafter referred to as the "EEPR Programme") for the Nordic-Baltic electricity interconnection and for strengthening the power grid in the Baltic States (€175 million) (hereinafter referred to as the "EEPR assistance") between a) the development and construction of the Nordic-Baltic interconnection and b) strengthening of the transmission grid in western Latvia (both projects hereinafter referred to as the "Overall Project").
- (J) In light of the above mentioned declaration, the Parties declare that the aim is to reach the below listed goals by making best efforts, to the extent the Parties are legally entitled to do so:
- to make the common Baltic electricity market compatible with the Nordic electricity market and the NordPool Spot market mechanism in order to facilitate the long-term goal of developing a common Nordic-Baltic electricity market without major bottlenecks in the grid;
  - to achieve that both Latvenergo and LE comply with the BEMIP requirements and, in case they are in breach of with these requirements, they will promptly take sufficient measures to make sure the BEMIP requirements will be achieved;
  - until the Interconnection is commissioned, all intermediate market developments on the Baltic side should be designed in full compliance with the NordPool Spot market mechanism prerequisites and allow open access to market actors in all Baltic states in order to facilitate an integration with the Nordic market when the physical Interconnection is in function.
- (K) The capacity on the Interconnection shall be made available on an economic and technical basis that ensures that electricity flows between any Nordic and Baltic countries are not disadvantaged by reason of the Baltic end of the Interconnection being located in Lithuania rather than Latvia.
- (L) The Parties acknowledge that the Interconnection will be a project which in practice shall be implemented by relevant transmission system operators.

(M) On 23<sup>rd</sup> of June 2009 CPMA and LE concluded the Consortium Agreement (execution of which on 22<sup>nd</sup> of June 2009 was approved by the Government of the Republic of Lithuania) in which they agreed to participate in the Interconnector Project (as it is defined in article 2.1 below) through the Lithuanian Consortium. The main principles, related to the representation of the Lithuanian Consortium vis-à-vis the other Parties of this MoU, which were set forth in the Consortium Agreement are as follows:

- CPMA will be the formal applicant for, and administrator of, the EEPR assistance attributable to the Lithuanian Consortium in accordance with this MoU;
- LE will provide the necessary investments which are due to be made by the Lithuanian Consortium in accordance with this MoU;
- LE, being the transmission system operator with all necessary knowledge and resources, will provide necessary organizational, technical and other resources which are due to be provided by the Lithuanian Consortium in accordance with this MoU;
- CPMA will represent the Lithuanian Consortium in relation to the European Commission and/or other EU institutions as regards the EEPR assistance related issues, while LE will represent the Lithuanian Consortium in all other aspects related to the implementation of the Interconnector Project with CPMA having the right to give instructions to LE as regards the EEPR assistance related issues.

**On such basis, the Parties, by signing this MoU, commit themselves to make their best efforts, to the extent the Parties are legally entitled to do so, to ensure the implementation of the decisions taken by the Prime Ministers' Council of the Baltic Council of Ministers on 27<sup>th</sup> of April 2009, and to achieve the targets set out in the aforementioned Joint Declaration of the Prime Ministers Council of the Baltic Council of Ministers aiming to build the Interconnection between Sweden and Lithuania in order to facilitate the long-term goal of developing a common Nordic-Baltic electricity market based on the NordPool Spot market mechanism.**

## **1 Scope and objectives of the MoU**

1.1 The purpose of this MoU is to

- (A) set out the terms on which the Parties, to the extent they have necessary authority and are legally entitled to do so, intend to work together on establishing the Interconnection between Sweden and Lithuania and to make the common Baltic electricity market compatible with the Nordic electricity market and the NordPool Spot market mechanism in order to facilitate the long-term goal of developing a common Nordic-Baltic electricity market without major bottlenecks in the grid;
- (B) set out the terms on which Latvenergo intends to strengthen the electricity grid in western Latvia independently (however with regard to the terms specified in article 4.3 below) of the work to be completed in order to facilitate the objectives set out in article 1.1(A) above.

1.2 Taking into account the purpose of this MoU laid down in article 1.1 above and in line with the legal nature of the Interconnection as an infrastructure object, the Parties shall take all reasonable steps, which are necessary to ensure:

- (A) that the Interconnection between Sweden and Lithuania shall be developed as an electricity transmission infrastructure project with full Third Party Access;
- (B) that operation of the Interconnection is conducted in line with applicable EU legislation;
- (C) a non-discriminatory access to the Interconnection and the relevant electricity

- transmission grid, operated by any of the Parties or their affiliates, shall through implicit auction be granted for all participants of the common EU electricity market;
- (D) a reasonable access to information on the development of the Interconnector Project and Latvian Grid Project as defined in article 2.1 below and implementation of the requirements of applicable legal acts;
  - (E) that the transmission system operators affiliated to each of the Parties, together with the Estonian transmission system operator and, if relevant, other transmission system operators, shall as soon as possible develop a transparent set of rules of operation of the electricity transmission infrastructure of the Baltic States, so as to facilitate the creation of an open and transparent common Baltic electricity market and its integration with the Nordic electricity market, in accordance with the EU legislation and the action plan prepared by the BEMIP High Level Group.

## **2 Co-operation of the Parties**

2.1 The Overall Project shall consist of the following parts:

- (A) the development of the Interconnection between Sweden and Lithuania (hereinafter referred to as the "Interconnector Project"). The Interconnection is to be named NordBalt (former Swed-Lit);
- (B) the strengthening of the electricity transmission grid in Latvia (hereinafter referred to as the "Latvian Grid Project").

2.2 As soon as this MoU is duly signed by all the Parties, the efforts of the Parties shall be aimed primarily at reaching a common understanding about the implementation of the Interconnector Project.

## **3 Single Purpose Company for the Interconnector Project**

- 3.1 The Parties intend to jointly establish a Single Purpose Company (hereinafter referred to as the "SPC") to serve as an instrument for handling common matters concerning the Interconnection. The Parties' intention is that the detailed mission and objectives including questions concerning day-to-day management, competences and functioning of the SPC during the development and operational phases of the Interconnection shall be agreed between the Parties and laid down in the Shareholders Agreement, Framework Agreement and Articles of Association of the SPC (hereinafter referred to as the "Agreement Structure Package").
- 3.2 It is the intention of the Parties to reach a common understanding about the principles of modus operandi of the SPC as soon as possible but not later than the 16th of October 2009.
- 3.3 It is the intention of the Parties that the ownership of the SPC shall be in proportion to the participating Party's equity investment in the SPC.
- 3.4 In case the participating Parties decide not to establish the SPC, the ownership and governance matters related to the Interconnection will be regulated in another way to be agreed in writing among the Parties.

## **4 The Latvian Grid Project**

- 4.1 The Latvian Grid Project shall be developed and owned by the Latvian transmission system operator (Augstsprieguma tīkls) or any other company or consortium, as Latvenergo according to Latvian legislation may designate for this task, which can be nominated in accordance with article 16 below.

- 4.2 Latvenergo or, according to article 16 below, its designated company ensures that it will keep SvK and the Lithuanian Consortium informed properly about the developments in the Latvian Grid Project aiming to facilitate the Interconnector Project.
- 4.3 The Latvian Grid Project is an important precondition for the interconnection of the Nordic and Baltic transmission networks. Latvenergo shall therefore ensure that it use its reasonable endeavours to make sure that the Latvian Grid Project will be finished at least at the same time as the Interconnector Project is finished and will not cause any delay to the starting up of the Interconnection.
- 4.4 In case the EEPR assistance (as mentioned in article 5.5(B) below) is not granted to Latvenergo, the obligations of Latvenergo set forth in article 4.3 above will be adjusted in line with the overall Baltic transmission grid enforcement plans.
- 4.5 Neither the Agreement Structure Package nor other documentation related to the Interconnector Project will cover the Latvian Grid Project.
- 4.6 Parties' obligations related to the Interconnector Project will not be dependent in any way on the implementation of the Latvian Grid Project.

## **5 EEPR assistance**

- 5.1 The Parties agree to submit to the European Commission (hereinafter referred to as the "Commission") a joint proposal for the EEPR assistance for the Interconnector Project alongside with a copy of this MoU in accordance with Chapter II, Article 7(2)(b) (Eligibility) of the EEPR Programme.
- 5.2 Latvenergo shall, in parallel, submit its own proposal to the Commission for the EEPR assistance for the Latvian Grid Project alongside with a copy of this MoU as an attachment and will ensure to make clear in this proposal that the Lithuanian Consortium and SvK are not involved in the Latvian Grid Project. The funds which will be obtained will be accrued to Latvenergo. Latvenergo shall however keep both SvK and the Lithuanian Consortium informed about the contents of the proposal for the EEPR assistance for the Latvian Grid Project. Latvenergo by this MoU is not prevented from applying for another EU funding outside or within the frame of the EEPR Programme.
- 5.3 SvK and the Lithuanian Consortium will not apply, in parallel, for the EEPR assistance, which under article 5.5(B) below is attributable to the Latvian Grid Project, to cover the investment costs for the necessary strengthening of their respective national grids in relation to the connection of the Interconnection to the Swedish and Lithuanian national grids. However this does not prevent them from applying for another EU funding outside or within the frame of the EEPR Programme.
- 5.4 EEPR assistance which will be granted to the Interconnector Project will be transferred (for the benefit of all the Parties) to SvK who shall in this respect serve as a contact body towards the Commission (i.e. it will serve as a depository of the EEPR assistance). Attribution of the granted EEPR assistance to the Parties, which have been paying or have been obligated to pay (as applicable) their part of the investment costs for the Interconnector Project, shall be regulated by a separate agreement. Such agreement shall be signed by all the Parties before release of the EEPR assistance by the Commission to SvK.

5.5 The proposals to be submitted by the Parties shall specify the EEPR assistance sought in relation to:

(A) the Interconnector Project which shall be for €131 million;

(B) the Latvian Grid Project which shall be for €44 million;

and which, in total, shall not exceed €175 million, specified as the envisaged community contribution in Annex A of the EEPR Programme unless otherwise agreed by the Parties.

5.6 The Parties shall in their respective proposals justify and clarify the claimed investment costs in a legible and transparent way.

5.7 The EEPR assistance provided (if any) under the EEPR Programme referred to in article 5.1 above shall be allocated in accordance with any conditions attached and methods for implementation as specified by the Commission.

5.8 The Parties anticipate that they will prepare and coordinate among themselves the above defined joint proposal for the EEPR assistance for the Interconnector Project using their internal resources.

## **6. Sharing of costs and income related to the Interconnection**

6.1 The costs for transmission losses incurred by the operation of the Interconnection, due to among others congestion management, will be shared in proportion to each participating Party's ownership of the Interconnection. In case the SPC is created, transmission losses will be dealt with in the Agreement Structure Package.

6.2 Due to infrastructure nature of the Interconnection it shall not in general have any financial revenues incurred by the operation of the Interconnection except for possible revenues from congestion management. All costs and eventual revenues incurred by the operation of the Interconnection will be shared or paid by the Parties in proportion to each participating Party's ownership of the Interconnection. In case the SPC is created, this will be dealt with in the Agreement Structure Package.

## **7 Financing of the Interconnector Project**

7.1 Agreed development costs incurred in connection with the Interconnector Project shall be borne by the Parties in proportion to each participating Party's ownership of the Interconnection.

7.2 The total amount of the EEPR assistance granted to the Interconnector Project will be allocated among the Parties in proportion to each participating Party's ownership of the Interconnection.

7.3 The Parties participating in the Interconnector Project shall undertake to provide equity financing needed for the implementation of the Interconnector Project in proportion to each Party's ownership in the Interconnection. In case the SPC is created, equity financing issue shall be agreed in the Agreement Structure Package.

## **8 Internal and Third Party Costs**

8.1 Except as otherwise provided in article 8.2 below, each Party shall bear its own internal and third party costs, including salary and travel expenses for the persons involved in the several project groups, incurred in connection with the Overall Project and the performance of their obligations hereunder unless and until otherwise agreed by the Parties.

- 8.2 Any additional material costs associated with the development of the Interconnection, separately agreed on in writing among the Parties in advance, will be borne by the Parties in proportion to each participating Party's ownership of the Interconnection.

## **9 Exclusivity**

The Parties agree that each of them shall be entitled to participate in the Interconnector Project on the terms set out in this MoU and that no Party may be excluded from participation in the Interconnector Project, provided that it accepts and performs obligations equivalent to those accepted by the other Parties in relation to the development of the Interconnector Project.

## **10 Term and Termination**

- 10.1 This MoU shall become effective on the date hereof when signed by each of the Parties and shall remain in effect until the earlier of termination or a successor agreement being entered into by the Parties which is expressly stated to succeed and replace it.
- 10.2 This MoU may be terminated at any time by the written agreement of the Parties.
- 10.3 If one Party does not wish to fulfil its commitments under this MoU and/or wishes to leave the Interconnector Project as mentioned in article 2.1(A) above, such Party shall be entitled to terminate this MoU and its participation in the Interconnector Project by giving the other Parties (hereinafter referred to as the "Remaining Parties") sixty (60) days prior written notice. The terminating Party is then obligated to pay to the Remaining Parties an amount corresponding to the total unspent amount of any EEPR assistance, as described in section 5.5(A) above, received by or granted to that Party in order to ensure that the EEPR assistance shall be effectively used for the purpose it was granted for, namely the Interconnection. The terminating Party accepts that the Remaining Parties shall be entitled to use any remaining EEPR assistance granted for the Interconnector Project to its further development and that they shall be entitled to use the work product resulting from all such assistance in the further development of the Interconnector Project (i.e. the terminating Party will not be entitled to any compensation).
- 10.4 In case Latvenergo does not perform, fulfil or accomplish the Latvian Grid Project as defined in article 2.1(B) above it will be obliged to reimburse to the Commission the unspent EEPR assistance granted to the Latvian Grid Project solely. Since the Interconnector Project and Latvian Grid Project are not financially dependant such an action will in no way oblige SvK and the Lithuanian Consortium to reimburse any amount. In turn, any EEPR assistance granted to the Interconnector Project as defined in article 2.1(A) above and which will be allocated directly to Latvenergo will not be part of the reimbursement mentioned in this article 10.4 but will be paid to the Remaining Parties.
- 10.5 The Parties agree that this article is applicable only with regard to Parties' obligations related to the Interconnector Project. Parties acting jointly may, by notice, require a Party (hereinafter referred to as the "Defaulting Party") to withdraw from this MoU if the Defaulting Party:
- (A) is in material or continuous breach of any of the principal provisions of this MoU and where the breach is capable of remedy, the Defaulting Party has failed to remedy the breach within sixty (60) days of being notified of the breach by one of the other Parties; or
  - (B) is unable to pay its debts as they fall due, or its liabilities exceed its assets, or sufficient owners or creditors entitled to do so decide, or a court decides, to place it in liquidation and there is no successor appointed to take the rights and obligations of such Party, or it agrees with any class of its creditors to reschedule its debts or

make any similar arrangement with them, or a receiver, trustee or similar person is appointed over all or a substantial part of its assets, or, under the laws of any applicable jurisdiction, any event analogous to any of the events described above occurs.

- 10.6 The Defaulting Party shall pay to the Remaining Parties an amount corresponding to the total unspent amount of any EEPR assistance, as described in section 5.5(A) above, received by or granted to that Party in order to ensure that the granted EEPR assistance will be used for the purpose it was granted for, namely the Interconnection.
- 10.7 The Parties hereby confirm and agree that the extent of each Party's liabilities in relation to a termination or a withdrawal under this MoU shall be limited to refunding of the unspent amount of EEPR assistance provided to that entity by the Commission in relation to the Interconnector Project and/or the Latvian Grid Project.
- 10.8 Any compensation under article 10 falls due within sixty (60) days from the receipt of a claim from either one of the Remaining Parties. Regarding the amount corresponding to the EEPR assistance, the Remaining Parties are entitled to the attribution of the amount in proportion to their equity investment into the Interconnector Project.
- 10.9 The Remaining Parties shall be obligated to use the EEPR assistance compensation to finance the continuation of the Interconnector Project.

## **11 Procurement**

- 11.1 All Parties will be considered as contracting parties and thus will sign the final purchase agreement with the winning supplier. SvK will take the lead in the performance of the whole procurement procedure of the part of the Interconnector Project described in article 2.1(A) above. The Lithuanian Consortium and Latvenergo will participate in this procurement procedure as observers and thus will not influence or delay the procedure as long as the non discrimination principle is ensured and SvK's behaviour is not causing damage for them. The Parties clearly agree however that the principal financial and technical compatibility decisions, tender documentation and transaction documents (contracts) must be in advance approved by the Parties participating in the Interconnector Project.
- 11.2 Consequent to the commitment of SvK to carry out the procurement, Swedish law shall, as long as it is in line with the rules laid down in Directive 2004/17/EC of the European Parliament and of the Council of 31<sup>st</sup> of March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, be applicable on the procurement procedure for the Interconnector Project as defined in article 2.1(A) above.
- 11.3 Consequent to the commitment of SvK to carry out the procurement, Swedish law only shall be applicable on any and all of the contracts which the Parties will enter into with suppliers as a result of the procurement procedure mentioned in articles 11.1 and 11.2 above.
- 11.4 Due to the fact that SvK will have the lead in the performance of the procurement procedure, as mentioned in article 11.1 above, and the fact that according to article 11.3 above Swedish law will be applicable on any and all contracts with suppliers arising out of this procurement procedure, all contracts mentioned in article 11.3 above shall be written in the Swedish language with an authorised translation into the English language. SvK shall ensure that the translation conforms to the texts written in the Swedish language.
- 11.5 Notices or formal communications between SvK and the suppliers under or in connection with the procurement procedure mentioned in this article 11 shall, according to the non discriminatory, procurement rules laid down in Directive 2004/17/EC of the European



Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts, be in the English language only.

- 11.6 In the event of any conflict between the Swedish text and the text in any other language, the Swedish text shall prevail.
- 11.7 Latvenergo will conduct a separate procurement procedure for the part of the Latvian Grid Project as defined in article 2.1(B) above independent from the procurement procedure mentioned in this article 11.
- 11.8 Each Party is entitled to choose the currency for its respective part of all contracted payments due to suppliers, which will be stated in the contracts mentioned in article 11.3 above.

## **12 Confidentiality**

- 12.1 In this MoU "Receiving Party" will mean: a Party to this MoU that receives Confidential Information.
- 12.2 In this MoU "Disclosing Party" will mean: a Party to this MoU that supplies or has supplied Confidential Information to the other Party to this MoU.
- 12.3 In this MoU will "Confidential Information" mean: information in any form, tangible or intangible as supplied in writing, orally or by observation that may be disclosed by or on behalf of the Disclosing Party to the Receiving Party such as, but not limited to, technical, financial, commercial and operating data in whatever form which is related to the Interconnector Project or the Latvian Grid Project and reasonably can be seen as confidential.
- 12.4 The Receiving Party will ensure:
  - (A) not to disclose Confidential Information to any third party, and
  - (B) not to use, except for the purpose for which the disclosure hereunder is made, any of the Confidential Information provided by the Disclosing Party in such connection without the prior written consent of the Disclosing Party.
- 12.5 The obligation of confidentiality does not apply to the extent:
  - (A) The Receiving Party can document that the information was readily and lawfully available on a non-confidential basis prior to the disclosure hereunder to the Receiving Party or which lawfully comes into the possession of the Receiving Party from another source without an obligation to keep such information confidential, or
  - (B) The information was already in the public domain or has come within the public domain and is readily available through no fault, breach or action by the Receiving Party, or
  - (C) Such disclosure is required in accordance with applicable legislation or by an order of a competent court or competent regulatory, administrative or governmental body, or
  - (D) To an Affiliate, provided that the Receiving Party guarantees the adherence of such Affiliate to the terms of this MoU, and to such of the following persons who have a clear need to know the Confidential Information in order to contribute to the execution of the Interconnector Project, such as employees, officers and directors of the Receiving Party or of one of its Affiliates or any professional consultant or expert retained by the Receiving Party for the purpose of evaluating the Confidential Information. Prior to making any disclosure to such persons or entities, however,

- the Receiving Party shall safeguard at all times that all those persons or entities abide to the undertaking of confidentiality as established in this MoU, or
- (E) The information is disclosed to a permitted assignee, as provided in article 16 below, or
  - (F) Data or material which is independently developed by the Receiving Party or its agents, contractors, consultants, Affiliates or employees of its Affiliates, or such information data or material which both Parties agree in writing is not confidential, or
  - (G) Provided to the Parties' own professional advisers or insurance advisers.

12.6 In the event that a Party is requested to disclose all or any part of the Confidential Information pursuant to any applicable law or regulation or pursuant to a valid and effective order issued by a competent court or by a competent regulatory, administrative or other governmental body or in the event a Disclosing Party is under a legal obligation to disclose all or part of the Confidential Information, such Disclosing Party shall immediately and, if possible, in any case prior to proceeding with any disclosure, notify the other Parties of the existence, terms and circumstances surrounding such request or legal obligation.

### **13 No Partnership or Agency**

Nothing in this MoU shall be deemed to constitute a partnership between the Parties, or constitute any Party the agent of any other Parties for any purpose, or entitle any Party to commit or bind any other Party (or any of its Affiliates) in any manner.

### **14 Entire Agreement**

This MoU sets out the entire agreement and understanding between the Parties with respect to the subject matter of it. It is agreed that:

- (A) no Party has entered into this MoU in reliance upon any representation, warranty or undertaking of any other Party which is not expressly set out in this MoU;
- (B) a Party shall have no claim or remedy in respect of misrepresentation (whether negligent or otherwise) or untrue statement made by any other Party; and
- (C) this article shall not exclude any liability for fraudulent misrepresentation.

### **15 Notices**

15.1 Any notice to be given pursuant to this MoU shall be in writing and signed by the duly authorised representatives of the person giving it for the time being appointed for the purposes of this MoU. It shall be served by sending it by fax to the number set out in article 15.2 below, delivered by hand, or by sending it by prepaid recorded delivery, special delivery or registered post, to the address set out in article 15.2 below and in each case marked for the attention of the relevant party (or to such other address or fax number as shall have been duly notified in accordance with this article). Any notice so served by hand, fax or post shall be deemed to have been duly given:

- (A) in the case of delivery by hand, when delivered;
- (B) in the case of delivery by fax, at the time of transmission subject to confirmation of receipt;
- (C) in the case of prepaid recorded delivery, special delivery or registered post, at 10 a.m. on the third business day following the date of posting (in the absence of contrary proof of the actual time of receipt);

provided that in each case where delivery by hand or by fax occurs after 6 p.m. on a business day or on a day which is not a business day, service shall be deemed to occur at 9 a.m. on the next following business day.

References to time in this article are to local time in the county of the addressee.

Any notice addressed to the Lithuanian Consortium hereunder every time shall be addressed separately to both LE and CPMA.

**15.2 SvK:**

Address: Box 1200, 172 24 Sundbyberg, Sweden

Fax: +46 8378405

Attention: Mr. Sture Larsson

**CPMA:**

Address: S. Konarskio g. 13, LT-03109 Vilnius, Lithuania

Fax: +370 5 251 4401

Attention: Mr. Viktoras Sirvydis

**LE:**

**Address for Correspondence: Juozapaviciaus g. 13, LT-09311 Vilnius, Lithuania**

Fax: +370 5 212 6736

Attention: Mr. Aloyzas Koryzna

**Latvenergo:**

Address: 12 Pulkveza Brieza Str., Riga, LV-1230, Latvia

Fax: +371 6772 8880

Attention: Mr. Karlis Mikelsons

- 15.3 All notices or formal communications under or in connection with this MoU shall be in the English language or, if in any other language, accompanied by a translation into English. In the event of any conflict between the English text and the text in any other language, the English text shall prevail.

**16 Assignment**

- 16.1 Neither a Party nor any of its respective Affiliates (as defined in article 16.3 below) shall be entitled to, nor shall it purport to, assign this MoU or any of its rights or obligations hereunder nor grant, declare, create or dispose of any right or interest in it except for assignment or delegation to Party's Affiliate.
- 16.2 Notwithstanding article 16.1 above, Latvenergo and the Lithuanian Consortium shall be entitled, after consultation, to give notice substituting another entity which is nominated by their respective governments to assume its rights and obligations under this MoU and

other Parties agree to enter into a novation agreement to give effect to such transfer of rights and obligations, in respect of any liabilities of that entity under this MoU.

- 16.3 In this MoU "Affiliate" will mean: any person or entity directly or indirectly controlling or controlled by, or under direct or indirect control with, a Party. For purposes of this definition, the term "control" (including the correlative terms "controlled by" and "under control with"), as used with respect to any person or entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such person or entity, whether through the ownership of voting securities or by contract or otherwise.
- 16.4 In case SvK will be transferred into a limited liability company it will be entitled to assign the rights and/or obligations forthcoming out of this MoU to the legal entity which will take over the ownership and responsibility for the Swedish transmission grid.

## **17 Invalidation**

If any provision of this MoU is or is held to be invalid or unenforceable, then so far as it is invalid or unenforceable it has no effect and is deemed not to be included in this MoU. This shall not invalidate any of the remaining provisions of this MoU. The Parties shall then use all reasonable endeavours to reach agreement on whether and, if so, how to replace the invalid or unenforceable provision by a valid provision the effect of which is as close as possible to the intended effect of the invalid or unenforceable provision.

## **18 Counterparts**

This MoU will be executed in three (3) counterparts by the Parties to it on separate counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument.

## **19 Public announcements**

The Parties will use reasonable endeavours to co-ordinate and harmonise any public announcement or similar publicity with respect to the Interconnector Project.

## **20 Governing Law**

This MoU shall be governed by and construed in accordance with Swedish law.

## **21 Dispute Resolution**

- 21.1 All disputes, controversies or claims arising out of or in connection with this MoU, including the breach, termination or invalidity thereof, shall not be submitted to a court of law but shall be finally settled in accordance with the Rules of the Arbitration Institute of the Central Chamber of Commerce of Finland (Centralhandelskammaren/Keskuskaupakamari).
- 21.2 The arbitration proceedings shall take place in Helsinki, Finland and the proceedings shall be conducted in the English language or any other language if the Parties agree on that.

## **22 Mile-stone dates**

- 22.1 The Parties agree on the following mile-stone dates for the process:
- (A) It is the intention of the Parties to reach a common understanding about the principles of *modus operandi* of the SPC as soon as possible but not later than the 16<sup>th</sup> of October 2009.

- (B) It is the intention of the Parties to sign the Agreement Structure Package or otherwise agree upon the ownership and governance matters related to the Interconnection, in case the Parties decide not to establish the SPC, as soon as possible after the Parties reach a common understanding about the principles of *modus operandi* of the SPC (as provided in article 22.1(A) above), however in any case prior the Parties start procurement procedure mentioned in articles 11.1 and 11.2 above.

### **23 Legal Effect**

- 23.1 For the avoidance of doubt, the Recitals and articles 1 (Scope and Objectives of the MoU), 4.3 (as regards the Latvian Grid Project) are non binding in their legal effect and no Party shall be liable for any loss howsoever caused in relation to such articles.
- 23.2 The total liability of each Party to the MoU for all breaches thereof shall be limited to unspent part of the EEPR assistance allocated by the Commission to each Party under the Interconnector Project and/or the Latvian Grid Project on the terms specified in this MoU.

**SvK, the Lithuanian Consortium and Latvenergo have caused this MoU to be executed in triplicate by their respective duly authorised representatives as of the dates indicated below.**

**Agreed and accepted:**

**Affärsverket svenska kraftnät**

Name: Mr. Mikael Odenberg

Title: CEO and President

Date: 08-07-2009

**Latvenergo AS**

Name: Mr. Kārlis Miķelsons,

Title: Chairman of the Management Board

Date: 09-07-2009

**Lithuanian Consortium comprised of  
Central Project Management Agency  
and AB Lietuvos Energija, represented  
by Central Project Management Agency**

Name: Mr. Viktoras Sirvydis

Title: Director of the Central Project Management Agency

Date: 09-07-2009