

**AGREEMENT BETWEEN
THE REPUBLIC OF LITHUANIA AND THE BRUSSELS-CAPITAL
REGION
ON THE STATISTICAL TRANSFERS OF ENERGY FROM RENEWABLE
SOURCES
FOR TARGET COMPLIANCE PURPOSES UNDER DIRECTIVES
2009/28/EC AND (EU) 2018/2001**

The Republic of Lithuania and the Brussels-Capital Region (hereinafter individually referred to as “a Party” or “the Party” and collectively as “the Parties”),

Taking into account that:

Article 6 of the Directive 2009/28/EC of the European Parliament and of the Council of 23 April 2009 on the promotion of the use of energy from renewable sources and amending and subsequently repealing Directives 2001/77/EC and 2003/30/EC (hereinafter – Directive 2009/28/EC) allows the Parties to agree on and make arrangements for the statistical transfers of specified amounts of energy from renewable sources to each other;

The Parties wish to create a legal framework for the implementation of statistical transfers under Article 6 of Directive 2009/28/EC between them;

Building upon this momentum and considering the adoption of the Directive (EU) 2018/2001 of the European Parliament and of the Council of 11 December 2018 on the promotion of the use of energy from renewable sources (hereinafter – Directive (EU) 2018/2001), the Parties aspire to establish a multiannual cooperation for statistical transfers under Article 8 of Directive (EU) 2018/2001 until 31 December 2025;

The Selling Member State wishes to sell and the Buying Entity wishes to purchase Specified amounts of energy from renewable sources, under the terms and conditions of this Agreement and in accordance with Article 6 of Directive 2009/28/EC in relation to the year 2020 and in accordance with Article 8 of Directive (EU) 2018/2001 for the years after 2020.

Have agreed as follows

Part 1 - OBJECTIVE AND DEFINITIONS

Article 1

(1) The objective of this Agreement is to provide a legal framework for the implementation of statistical transfers under Article 6 of Directive 2009/28/EC and Article 8 of Directive (EU) 2018/2001.

(2) To achieve this objective the Selling Member State agrees to sell and the Buying Entity agrees to buy Specified amounts of energy from renewable sources in accordance with the terms and conditions of this Agreement.

(3) The Parties enter into this Agreement with the purpose of:

a) Contributing to the cost-efficient achievement of the EU targets for the share of energy produced from renewable sources as established in Directive 2009/28/EC and Directive (EU) 2018/2001;

b) Optimising the balance of benefits from statistical transfers of Specified amounts of energy from renewable sources for both the Buying Entity and the Selling Member State;

c) Creating broad public acceptance with regard to cooperation mechanisms in the field of promotion of renewable energy.

Article 2

Pursuant to the Agreement the following terms shall be defined as follows:

a) Selling Member State: the Republic of Lithuania, a Member State of the European Union which, as a party to this Agreement, transfers the Specified amounts of energy from renewable sources to the Buying Entity according to this Agreement;

b) Buying Entity: the Brussels-Capital Region, a federated entity of the Kingdom of Belgium - a Member State of the European Union - which, as a party to this Agreement, purchases the Specified amount of energy from renewable sources for target compliance purposes under Directive 2009/28/EC and Directive (EU) 2018/2001 from the Selling Member State;

c) Specified amount of energy from renewable sources: the statistical value of energy from renewable sources as reported for the purpose of compliance with the mandatory national targets for the share of energy from renewable sources in final energy consumption as set out in the third column in part A of Annex I to Directive 2009/28/EC or Directive (EU) 2018/2001;

d) **Statistical Transfer**: statistical transfer of a specified amount of energy from renewable sources from the Selling Member State to the Buying Entity in accordance with Article 6 of Directive 2009/28/EC or Article 8 of Directive (EU) 2018/2001; if used without capital letters (“statistical transfer”), means any transfer of a specified amount of energy from renewable sources (not necessarily between the Parties) in accordance with Article 6 of Directive 2009/28/EC or Article 8 of Directive (EU) 2018/2001;

e) **Minimum Amount**: amount of **Statistical Transfer** of energy from renewable sources, as specified in Article 6 (2), which the Buying Entity irrevocably undertakes to buy and the Selling Member State irrevocably undertakes to sell;

f) **Maximum Amount**: amount of **Statistical Transfer** of energy from renewable sources, as specified in Article 6 (3), which the Selling Member State guarantees to sell and the Buying Entity may buy under this Agreement;

g) **New Energy Projects**: completely new renewable energy or energy efficiency projects (not yet even planned), new renewable energy or energy efficiency projects that are in a preparatory or/and development phase at the moment of the signature of this Agreement, as well as, development or/and expansion of already existing renewable energy or energy efficiency projects. For the sake of clarity, renewable energy or energy efficiency projects, already in the construction phase (stage of completion of 50 percent or more) at the moment of the signature of this Agreement and implemented renewable energy or energy efficiency projects shall not be considered as New Energy Projects under this Agreement. New Energy Projects may also include joint projects between Selling Member State and Buying Entity in accordance with Articles 9 and 10 of Directive (EU) 2018/2001.

Part 2 - PRINCIPAL OBLIGATIONS

Article 3

(1) The Parties shall at all times co-operate in order to establish and maintain the necessary and favourable conditions for the implementation of the **Statistical Transfer** each year of the validity of this Agreement as defined in Article 18(1).

(2) National contact points are established to facilitate the implementation of this Agreement and deal with any matters arising in the course of the implementation. The contact point of the Selling Member State will be the Head of the Climate Change

Management Group at the Ministry of Energy of the Republic of Lithuania. The contact point of the Buying Entity will be the Head of the Air Climate Energy Planning Department of Brussels Environment (the government entity responsible inter alia for energy in the Brussels-Capital Region).

Article 4

(1) The Buying Entity hereby irrevocably purchases from the Selling Member State the Minimum Amount corresponding to the production of overall ■ GWh of energy from renewable energy sources with respect to the year 2020, for the price and under the terms and conditions set out in Article 6 and Article 8 of this Agreement. The Selling Member State guarantees the availability of the above-mentioned Minimum Amount of energy from renewable energy sources.

(2) Besides the minimum buying obligation set out in paragraph 1 of this Article 4, with respect to the year 2020, the Buying Entity has the possibility to buy, and the Selling Member State guarantees to sell up to a Maximum Amount corresponding to the production of overall ■ GWh of energy from renewable energy sources for the price and under the conditions set out in Articles 6 and 8 of this Agreement.

(3) Each year following the year 2020, the Parties may agree to further **Statistical Transfers**, under the terms and conditions specified in Article 10 of this Agreement.

(4) The Parties undertake to notify the **Statistical Transfer** of the respective Specified amount of energy from renewable sources to the European Commission in accordance with Article 6(2) of Directive 2009/28/EC, article 8(5) of Directive (EU) 2018/2001 and with Articles 7 and 10 of this Agreement.

Article 5

(1) The Selling Member State shall use the revenues received from **Statistical Transfer** for New Energy Projects and/or scientific research in the field of renewable energy sources in the Republic of Lithuania in accordance with the following principles:

a) The revenues received from **Statistical Transfer** shall be used for New Energy Projects in the Republic of Lithuania, including a partial funding of such projects. Using the revenues in a co-financing mechanism for New Energy Projects shall also be allowed.

b) The Parties may cooperate and seek that up to 15 percent of all revenues received from **Statistical Transfer** would be used for scientific research in the field of renewable energy in the Republic of Lithuania.

(2) The Selling Member State may establish a special fund, special financial program, legal entity or make other instruments for the development/funding of New Energy Projects and/or scientific research in the renewable energy field in the Republic of Lithuania in accordance with the principles set out in paragraph 1 of this Article 5.

(3) Where applicable, the Selling Member State shall report to the Buying Entity on the use of the revenues from year N **Statistical Transfers** not later than by 31 December of year N+1. The Selling Member State shall specify developed/funded New Energy Projects and/or scientific research in the field of renewable energy in the Republic of Lithuania and the amounts of revenues from **Statistical Transfer** used for development/funding of such projects and/or scientific research in respective year by providing a written report. If in respective year revenues will not be used or used partially by the Selling Member State, such amount of unused revenues will be transferred to the next calendar year and can be used in accordance with paragraph 1 of this Article 5. The Parties agree that number of such transfers of unused revenues will not be limited.

(4) In case of essential breach of the paragraph 1 of this Article 5, the sole remedy can apply – termination of this Agreement for future periods (without effect of former **Statistical Transfers**), and such remedy can be used only if the breach of paragraph 1 of this Article 5 is sufficiently material and according to the procedure laid down in Article 18(3). No other remedy can apply for breach of this Article 5.

Part 3 - SPECIFICATIONS AND NOTIFICATION OF STATISTICAL TRANSFERS

Article 6

(1) This Agreement covers the **Statistical Transfer** of the Minimum Amount of overall ■■■ GWh from renewable energy in respect to the year 2020 in annual amounts as set in paragraph 2 of this Article 6 and possible **Statistical Transfer** up to the Maximum Amount of overall ■■■ GWh from renewable energy in respect to the year 2020 in annual amounts as set out in paragraph 3 of this Article 6. Such may include energy other than electricity, provided that it was produced from renewable energy sources as in accordance with the definition under Directive 2009/28/EC.

(2) The Minimum Amount that the Buying Entity undertakes to buy from the Selling Member State in the year 2020 is ■■■ GWh. The price for **Statistical Transfer** of the Minimum Amount shall be calculated under Article 8(1).

(3) The overall Maximum Amount which the Buying Entity may buy from the Selling Member State, and the Selling Member State guarantees to sell to the Buying Entity under the conditions set out in paragraphs 4 to 6 of this Article 6 is ■■■ GWh with respect to the year 2020. The price for **Statistical Transfer** shall be calculated under Article 8(1).

(4) The Buying Entity communicates to the Selling Member States the exact amount to be transferred not later than one week following the sending of the diplomatic note by the Buying Entity pursuant to Article 17 of this Agreement. This amount shall be between the Minimum Amount and the Maximum Amount as set out in paragraphs 2 and 3 of this Article 6 and according to the conditions set out in Article 8 of this Agreement. The contact point of the Selling Member State has to inform the contact point of the Buying Entity no later than one month after the receipt of the request from the Buying Entity about its decision. For the avoidance of doubt the Selling Member State has no obligation to increase the amount for the year 2020 outside the limits of the Maximum Amount.

Article 7

Statistical Transfers as agreed between the Parties, shall be notified by the Republic of Lithuania and the Kingdom of Belgium to the European Commission in accordance with Article 6(2) of the Directive 2009/28/EC and Article 8(4) of the Directive (EU) 2018/2001.

This notification shall be carried out by each Member State respectively once the respective requirements necessary for the entry into force of this Agreement have been completed by the Party to which the notification of the **Statistical Transfer** relates and shall specify the exact amount of energy from renewable sources to be statistically transferred from the Selling Member State to the Buying Entity for relevant calendar year measured in GWh, as well as the corresponding price paid by the Buying Entity.

Part 4 - PAYMENTS AND OTHER RESPONSIBILITIES

Article 8

(1) The standard price per **Statistical Transfer** of a Specified amount of energy from renewable sources as indicated in Articles 6(2), 6(3), 10(3) and 10(5) of this Agreement shall be [REDACTED] Euro per 1 MWh (Minimum Amount and Maximum Amount). The Parties agree that the price cannot be renegotiated between the Parties.

(2) Without prejudice to the obligations under this Agreement, the Buying Entity is free to purchase other Specified amounts of energy from renewable sources from other Member States in accordance with Article 6 of Directive 2009/28/EC and Article 8 of Directive (EU) 2018/2001.

(3) Without prejudice to the obligations under this Agreement, the Selling Member State is free to sell other Specified amounts of energy from renewable sources to other Member States in accordance with Article 6 of Directive 2009/28/EC and Article 8 of Directive (EU) 2018/2001.

(4) The Buying Entity shall disburse the due amount for the annual **Statistical Transfer** of Specified amount of energy from renewable sources onto the bank account indicated by the Selling Member State's contact point at the latest 2 months after the indication of the exact energy amount according to Article 7 of this Agreement. The Buying Entity shall bear any bank service charges, transaction fees or any other similar costs in relation to such transfer. The Selling Member State shall send to the Buying Entity a confirmation of the receipt of the payment within 5 days of the date of transfer to the Account.

Article 9

(1) The Parties shall refrain from any actions which might violate the provisions of this Agreement.

(2) The Parties assume the responsibility for any failure or refusal to perform their obligations under this Agreement other than for reasons of *force majeure* according to Article 12 of this Agreement.

(3) The liability of the Parties to each other for breach of this Agreement shall be limited to direct actual damages only. For the avoidance of any doubts, any unpaid amounts or interest for the delay under Article 8 shall be attributable to such actual damages of the Selling Member State. Such direct actual damages and termination of Agreement (only in cases explicitly provided for in Article 18 of this Agreement), shall be the sole and exclusive remedies, and all other remedies or damages at law or in equity are waived.

Part 5 – FUTURE COOPERATION

Article 10

(1) For each year following the year 2020, and throughout the duration of this Agreement, the Parties may agree to additional **Statistical Transfers**, established on a yearly basis. During this period, the Buying Entity may purchase from the Selling Member State and the Selling Member State may sell a statistical amount of energy from renewable energy sources at the price indicated under Article 8(1) of this Agreement.

(2) Each year following the year 2020, the contact point of the Buying Entity may indicate to the contact point of the Selling Member State a Specified amount of energy from renewable energy sources it intends to purchase, measured in GWh. This request shall take place not later than 30 June of the year following the year for which the possible **Statistical Transfer** is considered. Not later than one month after the receipt of the request from the Buying Entity, the contact point of the Selling Member State informs the contact point of the Buying Entity regarding the Selling Member State's preparedness to answer to the request of the Buying Entity. For the avoidance of doubt, the Selling Member State is under no obligation to agree to the request communicated by the Buying Entity.

(3) Subject to the conditions established in Part 6 of this Agreement, once the contact point of the Selling Member State has accepted the Specified amounts of energy from

renewable sources requested by the Buying Entity under paragraph 2 of this Article 10, both Parties shall be bound to execute the **Statistical Transfer**.

(4) The Parties shall notify the **Statistical Transfer** under this Article 10 to the European Commission, pursuant to Article 8(4) of Directive (EU) 2018/2001, including the quantity and price.

(5) Payment modalities under Article 8 of this Agreement shall apply.

(6) Revenues from the **Statistical Transfers** shall be used in accordance with Article 5.

Part 6 - GENERAL PROVISIONS

Article 11

This Agreement shall be without prejudice to any international obligations of the Parties and of the Kingdom of Belgium.

Article 12

(1) Responsibility for non-performance or delay in performance on the part of any Party to this Agreement with respect to any obligations or any part thereof under this Agreement, other than an obligation to pay money, shall be suspended to the extent that such non-performance or delay in performance is caused or occasioned by *force majeure*, as defined in this Agreement.

(2) *Force majeure* shall be limited to:

a) Natural disasters (earthquakes, landslides, cyclones, floods, fires, lightning, tidal waves, volcanic eruptions and other similar natural events or occurrences);

b) War between sovereign States where the relevant State has not initiated the war under the principles of international law, acts of terrorism, sabotage, rebellion or insurrection;

c) International embargoes against States other than the relevant State, provided, in every case, that the specified event or cause of the above mentioned types and any resulting effects preventing the performance by the relevant State of its obligations, or any part thereof, are beyond the relevant State's control.

(3) If a Party to this Agreement is prevented from carrying out its obligations or any part thereof under this Agreement (other than an obligation to pay money) as a result of

force majeure, it shall notify in writing the other affected Party to which performance is owed. The notice must:

- a) Specify the obligations or part thereof that cannot be performed;
- b) Fully describe the event of *force majeure*;
- c) Estimate the time during which the *force majeure* will continue; and
- d) Specify the measures proposed to be adopted to remedy or abate the *force majeure*.

Following this notice, and for so long as the *force majeure* continues, any obligations or parts thereof which cannot be performed because of the *force majeure*, other than the obligation to pay money, shall be suspended.

Article 13

(1) The Parties shall take all possible steps in good faith in order to ensure that all disputes and disagreements arising in connection with the implementation of the Agreement or related to the Agreement are settled by mutual negotiations between the Parties.

(2) The Party raising any dispute shall first serve written notification of the dispute to the other Party (a „Dispute Notice“). If within 2 months of the service of a Dispute Notice, the dispute is not settled or good faith consultations have not taken place, then either Party shall be entitled to refer the Dispute to arbitration in accordance with paragraph 3 of this Article 13.

(3) Any dispute, controversy or claim arising out of or relating exclusively to this Agreement, or the breach, termination or invalidity thereof, shall be settled by arbitration in accordance with the UNCITRAL Arbitration Rules:

- a) The appointing authority shall be the Secretary-General of the Permanent Court of Arbitration at The Hague.
- b) The number of arbitrators shall be three, the language to be used in the arbitral proceedings shall be English.
- c) The seat, or legal place, of arbitration shall be The Hague.

Article 14

(1) The Parties to this Agreement are committed to confidentiality against third parties of all information related to commercial aspects of the present Agreement which is not to be notified to the European Commission according to Article 7 of the Agreement or which has not been otherwise published and are conveyed in confidence by any other Party. The receiving Party shall not use any such information for any purpose other than in accordance with the terms of this Agreement. The disclosure of confidential information requires the express written consent by the conveying Party.

(2) The confidentiality clause excludes types of information that:

a) Have been developed or are being developed by the receiving Party independently of the information;

b) Are part of the generally accessible state of technology or that reach this status without the fault of the receiving Party or

c) Is publicly known or at any time after that date becomes publicly known (otherwise than by breach of this Agreement by the Party or its authorized representatives);

d) Is disclosed by the Party under applicable law, including by governmental order, decree, regulation or rule issued by any governmental authority or agency, tax authority, court of competent law or arbitration or any other statutory or regulatory body;

e) Is disclosed by both Parties or by one Party to a third party in accordance with the written consent of the other Party.

The disclosure information to the employees, lawyers, auditors, advisors, authorized representatives of the Parties shall not be considered as the breach of non-disclosure obligation, provided that the relevant persons are bound by and observe the confidentiality obligations stipulated herein.

Article 15

All amendments and modifications to this Agreement, which will be numbered consecutively, shall be duly signed by both Parties or their appointed representatives of the Governments of the Parties prior to affecting any of the changes therein contained. No addition or modification of this Agreement shall be effective or binding on either of the Parties hereto unless agreed in writing and duly signed by the Parties or their appointed

representatives of the Governments of the Parties and the fulfilment of the requirements set out under Article 17.

Article 16

Should Article 8 of Directive (EU) 2018/2001 be amended, the Parties commit to adapt in good faith the content of this Agreement to the amended framework conditions as specified by said amendments.

Article 17

This Agreement shall enter into force when the Parties have exchanged diplomatic notes informing each other that their respective requirements necessary for the entry into force of this Agreement have been fulfilled.

Article 18

(1) The agreement shall remain in force **until 31 December 2025** or until both Parties to the Agreement duly performed their contractual obligations under the present Agreement.

(2) By way of exception, the Agreement can be terminated prematurely by mutual written arrangement of the Parties.

(3) The Agreement can also be terminated prematurely unilaterally:

a) By the Selling Member State if the Buying Entity fails to transfer the price for the amount within the deadline set out in paragraph 3 of Article 8.

b) By the Buying Entity under paragraph 4 of Article 5.

A Party may rely on the conditions for termination set out in points a) and b) of paragraph 3 of this Article 18 only if the other Party has not remedied to the failure under point a) or b) of paragraph 3 of this Article 18 within 2 months following written notice of the failure. Such written notice shall be communicated to the other Party within 2 months after the occurrence of the failure.

The Agreement is signed in duplicate, each in the Lithuanian, English, French and Dutch languages, all texts being equally authentic. In case of divergence of interpretation, the English text shall prevail.

In witness, whereof, the Parties, being duly authorized by their respective Governments, have signed this Agreement at Vilnius/Brussels on ... **2021**.

**FOR THE BRUSSELS-CAPITAL
REGION**

**FOR THE REPUBLIC OF
LITHUANIA**

Alain MARON
Minister in charge of Climate Transition,
Environment,
Energy and Participatory
Democracy, Social Action and Health

Dainius KREIVYS
Minister of Energy