

CONTRACT

For awarding public procurement for services

№

Today, 2018, Sofia, between :

ICGB AD,

Having its seat and management address in Sofia 1000, Oborishte, 13 Veslets Street , fl. 2, UIC 201383265, represented by Konstantinos Karagyanakos and Teodora Georgieva-Mileva, in their capacity of Executive officers, hereinafter referred to as **CONTRACTING ENTITY**, on the one hand

and

„....., having its seat and registered address....., UIC, represented by....., in his/her capacity of, hereinafter referred to as **CONTRACTOR** on the other,

(the CONTRACTING ENTITY and the CONTRACTOR hereinafter referred to as the **Parties**, and individually a **Party**);

Pursuant to art. 112 PPA and Decision №.....of the CONTRACTING ENTITY for nominating a contractor for a public procurement for

SELECTION OF A CONSULTANT FOR CONSTRUCTION SUPERVISION FOR CONSTRUCTION OF GAS INTERCONNECTOR GREECE-BULGARIA,

This contract was concluded (**Contract/the Contract**) on the following:

I. SUBJECT OF THE CONTRACT

Art. 1. (1) The CONTRACTING ENTITY assigns and **the CONTRACTOR** shall agree to perform against payment the following activities subject of the public procurement procedure:

- Conformity assessment of investment projects;
- Exercise of building supervision functions;
- Expert support to the CONTRACTING ENTITY during the construction, including the commissioning of the construction

(2) In the course of performing the services referred to in par. 1 the CONTRACTOR shall be guided by the Special Development Act and the regulations pertaining to it related to its application.

Art. 2. The CONTRACTOR shall undertake to provide the Services in accordance with Appendix 1 - Technical specification, Appendix 2 - the Technical offer of the CONTRACTOR and Appendix 3 - the Price offer of the CONTRACTOR, and through the persons referred to in a List of a team which will perform the procurement as defined in Appendix No 5 respectively to this Contract (**the Appendices**) and being an integral part hereof.

II. PRICE, PAYMENT PROCEDURE AND TERMS.

Art. 3. (1) For provision of the Services the CONTRACTING ENTITY shall undertake to pay to the CONTRACTOR the total price in accordance with the Price offer of the CONTRACTOR, which is Appendix № 5 (hereinafter referred to as the **Price** or **Value of the Contract**).

The amount of the services as per sites is in accordance with the prices offered by the CONTRACTOR in their price offer- Appendix №5.

(2) The price under par. 1 includes all costs of the CONTRACTOR for performance of the Services, including the costs for the staff which will perform the services.

(3) The price stipulated in par. 1 is fixed/ final for the particular activities related to performance of the Services referred to in the Price offer of the CONTRACTOR for the time of performance of the Contract and shall not be subject to modification except when it is expressly agreed in this Contract and in accordance with the provisions of PPA.

(4) The price does not include costs for fees pursuant to the State Fees Act, Local Taxes and Fees Act and other similar fees related to compliance with construction supervision obligations. Such fees shall be paid directly by the CONTRACTING ENTITY upon instructions by the CONTRACTOR or by the CONTRACTOR at the expense of the CONTRACTING ENTITY. In the latter case the costs incurred by the CONTRACTOR shall be recovered to the CONTRACTOR by the CONTRACTING ENTITY against a receipt issued to the CONTRACTING ENTITY, by the end of the month they were incurred.

Art. 4. (1) The CONTRACTING ENTITY shall pay to the CONTRACTOR the Price under this Contract as follows:

4.1. An advance payment of 10% (ten percent) of the Contract price.

4.2 Payment of 50% (fifty percent) of the Contract price as follows:

4.2.1. Payment of 15% (fifteen percent) of the Contract price upon submission of the Conformity Assessment Report of the Investment Project or upon receipt of the completed Construction Permit.

4.2.2. Payment of 10% (ten percent) of the Contract price upon the signing of the Site Construction Protocol and the designation of a construction line and level (Model 2 of Ordinance No. 3 of 2003 for drafting acts and protocols during construction);

4.2.3. Payment of 15% (ten percent) of the Contract price upon signing of the Constitutional Act for Establishing Readiness for Acceptance of the Construction (Model 15 of Ordinance No. 3 of 2003 for drafting acts and protocols during construction);

4.2.4 Final payment of 10% (ten percent) of the Contract price upon receipt of the Permit to use the construction and acceptance of the Final Report for the execution of the Contractor's Contract by the CONTRACTING ENTITY.

4.3. Periodic payments in the amount of 50% (fifty percent) of the contract price total payable in equal installments at the end of each second month for the period since the signing of the Protocol for opening the construction site and determining the construction line and level (Model 2 of Ordinance no. 3 of 2003 for the preparation of acts and protocols during construction) until the signing of the Constitutive Act for establishing the readiness for acceptance of the construction (Form 15 of Ordinance No. 3 of 2003 for drawing up of acts and protocols during construction) , but for a period not longer than already for 18 months.

4.4. Of each payment under 4.2 and 4.3, 10% (ten percent) of the advance payment for 4.1. shall be deducted.

(2) payments under art. 4, par. 1, shall be made with a payment order to an account of the CONTRACTOR, as follows:

Bank:
BIC:
IBAN:

Art. 5. (1) 1) Payments will be made under the following conditions:

- under Article 1, paragraph 1, item 4.1, within 30 calendar days from the conclusion of this contract and receipt by the CONTRACTOR of a letter of assignment from the CONTRACTING ENTITY.

- under Article 1, paragraph 1, item 4.2 after a signed and accepted two-sided protocol of transceivers without notice from the CONTRACTING ENTITY, certifying the work performed;

- under Article 1, paragraph 1, item 4.3. after acceptance by the CONTRACTING ENTITY of the monthly performance reports for the period for which the payment is due and after a signed and accepted two-way transmitter protocol without notice from the CONTRACTING ENTITY;

(2) After the occurrence of the circumstances under paragraph 1, described above, the CONTRACTOR shall issue an invoice for the part of the value of the contract for the respective activity, which he sends for approval by the CONTRACTING ENTITY.

(3) The CONTRACTING ENTITY undertakes to make any payment due within 30 days after the approval of the invoice of the CONTRACTOR.

III. TERM AND PLACE OF PERFORMANCE. EFFECTIVENESS.

Art. 6. (1) The Contract shall take effect on the date when it is signed by the Parties which is the date of the last signature on all copies of the Contract and has a term of effectiveness until all contractual obligations assumed under the Contract have been fulfilled.

(2) The term for performance of this Contract is until commissioning of the Site. The term for exercising construction supervision starts running as of the date a letter of engagement is received and shall expire upon commissioning of the Site.

(3) The place of performance of the Contract shall be in accordance with what is stipulated in the Technical specification and is only for the territory of Bulgaria.

IV. DELIVERY AND ACCEPTANCE OF PERFORMANCE. A PROTOCOL OF DELIVERY AND ACCEPTANCE.

Art. 7. (1) Delivery of performance of the Services shall be done by submission of a report for the work done, signing bilateral protocols of delivery and acceptance as well as delivery of all the documentation of the construction site.

(2) The protocol of delivery and acceptance approved by the CONTRACTING ENTITY and signed in advance by the CONTRACTOR, shall be submitted within 15 working days after the respective action has been performed that is subject to payment under art. 4 and all documents under art. 5 of this contract have been submitted. Having been approved by the CONTRACTING ENTITY with no remarks, the protocol of delivery and acceptance shall be considered finally approved and shall serve as a basis for the respective payment to the CONTRACTOR.

(3) In the event that the CONTRACTING ENTITY refuses to accept the work of the CONTRACTOR, it may provide them with a term.

V. RIGHTS AND OBLIGATIONS OF THE PARTIES.

Art. 8. The CONTRACTING ENTITY undertakes:

- (1) To provide access to the CONTRACTOR to the site as well as to the operational information on performing the particular construction and assembly works;
- (2) To assist solving all issues in the event of difficulties that have arisen related to implementation of the contractual activities, need for approval or obtaining opinions and permits from state or local bodies as well as to provide administrative assistance if required for performance of the subject of the Contract;
- (3) To sign all acts, protocols and other documents required to certify the construction and assembly works performed and commissioning of the Site;
- (4) To pay administrative fees due for issuing written opinions by specialized control bodies regarding lawful performance of the construction.
- (5) To assist the CONTRACTOR with respect to performance of this Contract, including remedying obstacles for performance of the Contract when the CONTRACTOR requests that;
- (6) To release the Performance guarantee provided by THE CONTRACTOR in accordance with the clauses of this Contract;

Art. 9. THE CONTRACTING ENTITY shall be entitled to:

- (1) Check at any time that the CONTRACTOR performs this Contract as well as to require that the CONTRACTOR submit information with respect to works performed related to the construction supervision performed without this interfering with its main operations;
- (2) If required, to request from the CONTRACTOR written information on the works performed in accordance with Contract;
- (3) Require replacement of specialists from the team of the CONTRACTOR, when incompliance with their obligations is established related to the subject matter of the Contract
- (4) Give instructions regarding compliance of materials used and construction and assembly works performed and if required, to recommend further test of the construction materials used of which it shall immediately notify the CONTRACTING ENTITY.
- (5) The CONTRACTING ENTITY shall not be liable for actions or inactions of the CONTRACTOR, which result in death or accident of any natural person on the site, loss or damage to any property as a result of performance of the subject matter of the Contract during the period set for preparation of the investment design.

Art. 10. THE CONTRACTOR undertakes to:

- (1) To carry out all activities described in Attachment 1 of the Technical Specification, as well as all usual supporting activities in a timely manner in full compliance with the existing regulations for the execution of the Construction Supervision functions according to the Territory Management Act and putting the construction into operation.
- (2) To be responsible for the lawful commencement, execution and completion of the construction.
- (3) To conclude and maintain professional liability insurance for damages caused to other participants in the construction and / or to third parties as a result of unlawful acts or omissions in connection with or in the performance of their obligations for the object for a period not shorter of the warranty period under the conditions of art. 171, 172 and 173 of the SDA and the Ordinance on the terms and conditions for compulsory insurance in the design and construction;
- (4) The CONTRACTOR shall be liable for damages incurred to the CONTRACTING ENTITY and other participants in the construction and joint liability with the builder for damages caused by non-observance of the technical rules and norms and the approved projects.

Art. 11. THE CONTRACTOR shall be entitled to :

- (1) Perform construction supervision any time when required and the rest of the participants in construction shall be obliged to comply with its instructions and orders entered following the respective procedure in the Site register.

- (2) Promptly notify the CONTRACTING ENTITY in the event of violation of construction rules and regulations and within 3 days of establishing the violation- the respective NCCD as well as to suspend works on the construction site until omissions and violations established in the performance of construction and assembly works have been remedied and to control remedying of defects indicated by them or other control bodies. In the event of the EPC's Contractor failure to comply with the instructions to remedy the omissions established, to promptly notify the CONTRACTING ENTITY and the respective NCCD bodies.
- (3) Give instructions regarding compliance of materials used and construction and assembly works performed and if required, recommend additional tests of the construction materials used of which it shall promptly notify the CONTRACTING ENTITY.

VI. PERFORMANCE GUARANTEE. RETAINING AND RELEASING THE GUARANTEE.

Art. 12. Upon signing this Contract the CONTRACTOR shall submit to the CONTRACTING ENTITY a performance guarantee at the amount of 5 % (five per cent) of the Value of the Contract, VAT excluded, namely BGN (**Performance guarantee**), which serves to secure performance of the obligations of the CONTRACTOR under the Contract.

Art. 13. (1) In the event of an amendment of the Contract made in accordance with this Contract and applicable law, including when the amendment is related to Price indexation, the CONTRACTOR undertakes to take the actions required to bring the performance guarantee in accordance with the amended provisions of the Contract within 7 (seven) days of signing an ancillary agreement for the amendment.

(2) Actions for bringing the Performance guarantee in compliance with the amended provisions of the Contract may include, as per choice of the CONTRACTOR:

1. payment of an additional amount of money to the bank account of the CONTRACTING ENTITY, in compliance with the requirements of art. 14 of the Contract; and/or;
2. submission of a document for amendment of the initial bank guarantee or a new bank guarantee, in compliance with the requirements of art. 15 of the Contract; and/or;
3. submission of a document for amendment of the initial insurance or a new insurance, in compliance with the requirements of art. 16 of the Contract.

Art. 14. When an amount of money is provided as a Performance guarantee, the amount shall be paid to the bank account of the CONTRACTING ENTITY, referred to in the Public procurement documentation.

Art. 15. (1) When a bank guarantee is provided as a performance guarantee, the CONTRACTOR shall deliver to the CONTRACTING ENTITY an original copy of the bank guarantee issued to the benefit of the CONTRACTING ENTITY, which shall have to meet the following requirements:

1. to be an unconditional and irrevocable bank guarantee in a form initially agreed with the CONTRACTING ENTITY, which contains an obligation of the guaranteeing bank to make a payment upon a first written request by the CONTRACTING ENTITY declaring

that there is failure to comply with an obligation of the CONTRACTOR or other grounds for retention of the Performance guarantee under this Contract.

2. to have a validity period for the whole term of the Contract plus 30 (thirty) days following termination of the Contract, and if required, the term of validity of the bank guarantee is extended or a new one is issued.

(2) Bank costs on opening and maintaining the Performance guarantee in the form of a bank guarantee as well as on absorption of funds by the CONTRACTING ENTITY, in the event there are grounds for this, shall be at the expense of the CONTRACTOR.

Art. 16. (1) When an insurance is provided as a Performance guarantee, the CONTRACTOR shall deliver to the CONTRACTING ENTITY an original copy of the insurance policy, where the CONTRACTING ENTITY is referred to as a benefiting third party, which needs to meet the following requirements :

1. secure performance of this Contract through covering the liability of the CONTRACTOR;
2. have a validity period for the whole term of the Contract plus 30 (thirty) days following termination of the Contract.

(2) Costs on conclusion of the insurance contract and maintenance of the insurance for the period required as well as on each payment of insurance compensation to the benefit of the CONTRACTING ENTITY shall be at the expense of the CONTRACTOR.

Art. 17. (1) The CONTRACTING ENTITY shall release the Performance guarantee within 30 days following termination of the Contract in its full amount if no grounds to retain any amount on it by the CONTRACTING ENTITY exist.

(2) Release of the Performance guarantee shall be made as follows:

1. when it is in the form of an amount of money- by transferring the amount to the bank account of the CONTRACTOR, stipulated in the Contract;
2. when it is in the form of a bank guarantee- by returning its original to a representative of the CONTRACTOR or a person authorized by them;
3. when it is in the form of an insurance- by [returning the original of the insurance policy/ insurance certificate to a representative of the CONTRACTOR or a person authorized by them.

(3) The guarantee or the respective part thereof shall not be released by the CONTRACTING ENTITY if in the process of performance of the Contract a dispute has arisen between the Parties regarding failure to comply with the obligations of the CONTRACTOR and the issue has been referred to a court to be solved. In the event the dispute is solved in favor of the CONTRACTING ENTITY, they may start absorbing the guarantees.

Art. 18. The CONTRACTING ENTITY shall be entitled to retain the respective part and to use the Performance guarantee when the CONTRACTOR fails to comply with any of its obligations under the Contract as well as in the cases of bad, partial and delayed performance of any obligation of the CONTRACTOR, by absorbing such part of the Performance guarantee which corresponds to the penalty agreed in the Contract for the respective case involving failure to comply.

Art. 19. The CONTRACTING ENTITY shall be entitled to retain the full amount of the Performance guarantee in the following cases:

1. if the CONTRACTOR fails to commence work on performance of the Contract for a period longer than 15 /fifteen/ days following the Effective date and the CONTRACTING ENTITY breaks the Contract on these grounds;
2. in the event of total failure to perform, incl. when the Services do not comply with the requirements of the CONTRACTING ENTITY, and the CONTRACTING ENTITY breaking the Contract on these grounds;
3. upon termination of the operations of the CONTRACTOR or upon it being declared insolvent.

Art. 20. In any case of retention of the Performance guarantee, the CONTRACTING ENTITY shall notify the CONTRACTOR on the retention and the grounds for this. Retention of the Performance guarantee wholly or partially does not exhaust the rights of the CONTRACTING ENTITY to seek compensation at a higher amount.

Art. 21. When the CONTRACTING ENTITY has used the Performance guarantee and the Contract continues to be effective, the CONTRACTOR undertakes within 7 (*seven*) days to supplement the Performance guarantee by paying the amount absorbed by the CONTRACTING ENTITY to the account of the CONTRACTING ENTITY or submit a document for amendment of the initial bank guarantee or a new bank guarantee, an insurance respectively, so that at any time of the effectiveness of the Contract the amount of the Performance guarantee to be in compliance with art. 12 of the Contract.

Art. 22. The CONTRACTING ENTITY shall not owe an interest for the time during which the Performance guarantee has been with them lawfully.

VII. CONTRACT TERMINATION

Art. 23. (1) This contract shall be terminated in the following cases:

1. Upon performance of all contractual obligations;
2. Upon mutual consent of the parties expressed in writing.
3. Pursuant to the procedure of art. 117, para 1, item. 7 art. 118 of the Public procurement act and upon its invalidation/ voidability being declared in accordance with art. 119 PPA.
4. Unilaterally by the CONTRACTING ENTITY after one-week written notice is sent in the event that:
 - a) material deviations from the offer have been established made by the CONTRACTOR;
 - b) in the event of the CONTRACTOR failure to comply with other contractual obligations. The Contract shall not be terminated if within the term of the notice the violation has been remedied at the expense of the CONTRACTOR.

(2) In the event of termination of the contract upon mutual consent or as a result of force majeure circumstances or objective inability to perform, the CONTRACTING ENTITY shall

make a partial payment of amounts due in accordance with a bilaterally signed protocol for actual performance of the types of activities and services as of the date of termination of contractual relationships in accordance with the requirements of the Contract and the activities and services already paid.

(3) Upon contract termination, regardless of the reason for this, the CONTRACTOR shall be obliged to:

- 1) promptly upon becoming aware of this do anything possible to complete activities and/or services started to an extent to be fit to be used by the CONTRACTING ENTITY;
- 2) deliver all the documentation, opinions, passport, report and/or other documents which the CONTRACTING ENTITY has paid.

Art. 23. (1) The parties to the public procurement contract may not amend it.

(2) An amendment to the public procurement contract concluded shall be admitted upon exception in the cases under art. 116 PPA.

VIII. FORCE MAJEURE.

Art. 24. (1) The Parties to this Contract shall not owe compensation for damages and losses suffered in the event that the latter have been caused by force majeure.

(2) In the event that the Party that should have complied with its contractual obligation has been in delay, then it may not claim force majeure.

Art. 25. (1) The Party affected by force majeure is obliged to undertake all actions with due diligence in order to minimize damages and losses suffered as well as to notify in writing the other party within 3 calendar days of the force majeure occurring. In the event of failure to notify, compensation shall be due for the damages resulting from this.

(2) During the force majeure period compliance with the obligations of the counter obligations related to them shall be suspended .

(3) For the avoidance of any doubt the Parties agree that they define the term force majeure in accordance with art. 306 of The Commercial Act and unforeseen circumstances in accordance with § 2, item 27 SP PPA.

X. DEFAULT. LIABILITY.

Art. 26. In the event of delay of performance of the obligations under this Contract the defaulting party shall owe to the non-defaulting party penalty at the amount of 0,2 /zero point two/ % of the Value of the contract for each day of delay but not more than 20 % /twenty per cent/ of the Value of the Contract.

Art. 27. In the event of bad or other incorrect or partial performance of a separate document or in the event of deviation from the requirements of the CONTRACTING ENTITY, stipulated in the Technical specification, the CONTRACTING ENTITY shall be entitled to request the CONTRACTOR to perform fully and in a quality manner the respective activity without owing additional remuneration for this. In the event that the second performance of the service is not in

a quality manner, the CONTRACTING ENTITY shall be entitled to retain the performance guarantee and to terminate the Contract.

Art. 28. In the event of dissolution of the Contract due to culpable breach of any of the Parties the defaulting party shall owe a penalty at the amount of 30% (thirty per cent) of the Value of the contract.

Art. 29. The CONTRACTING ENTITY shall be entitled to retain any penalty due under this Contract from payments due under the contract and/or by retaining an amount of the Performance guarantee by notifying the CONTRACTOR in writing of this.

Art. 30. (1) Payment of penalties agreed in this Contract shall not limit the right of the non-defaulting Party to seek real enforcement and/or compensation for damages and lost profit at a higher amount in accordance with applicable law.

(2) In any case of contract termination and regardless of the reasons for this, the CONTRACTOR shall have to recover the amounts paid to them, when applicable, in their full amount, when there are no services performed and/or accepted under the contract in accordance with the contractual provisions;

(3) The parties agree that penalties under this contract shall accumulate with respect to different hypotheses and events of default.

Art. 31. In the event of default under this contract each of the parties may seek compensation for damages incurred under the provisions of civil and commercial law if it exceeds the penalties stipulated.

Art. 32. (1) The CONTRACTOR shall be fully liable for the activities performed by them as of the date the contract is concluded until expiry of warranty periods for the construction site pursuant to art. 20, par. 4 of Ordinance № 2 2003 on commissioning of construction sites in the Republic of Bulgaria and minimum warranty periods for construction and assembly works, facilities and construction sites performed.

(2) Warranty periods for the construction site shall be set in accordance with the construction contract and they start running as of the date of commissioning the construction site.

(3) Warranty periods do not run and shall be extended by the time for remedying a defect manifested during the warranty period

XI. CONFIDENTIALITY

Art. 33. (1) The CONTRACTOR and the CONTRACTING ENTITY shall consider confidential any information obtained during and/or on the occasion of performing the contract.

(2) The CONTRACTOR shall not have the right without the initial written consent of the CONTRACTING ENTITY to disclose to anybody, except their employees, in any way and in any form information with respect to the contract or part thereof as well as any other information related to its performance. Disclosure of information to an employee of the CONTRACTOR shall be done only to the extent required for the purposes of performance of the contract.

(3) The CONTRACTING ENTITY shall guarantee confidentiality in the use of documents and materials under the contract submitted by the CONTRACTOR by not providing them to third parties.

XII. FINAL PROVISIONS

Art. 34. (1) The word work/s used in the contract shall have the following meaning: construction supervision for a site/ construction site.

(2) Correspondence under this Contract shall be in written and/or any other appropriate form. In the event of change of the data given any of the parties shall be obliged to notify the other within seven days of the change.

(3) Nullity of any clause of the Contract or of additionally agreed conditions shall not lead to nullity of any other clause or the contract as a whole.

(4) The parties shall settle disputes related to its interpretation, voidness, default or termination by mutual consent and with additional agreements and if such fail to be reached - in court in accordance with Bulgarian legislation.

(5) For the issues not settled in this contract the provisions of effective Bulgarian legislation shall be applied.

This contract is drafted and signed in three uniform copies- one for the CONTRACTOR and two for the CONTRACTING ENTITY.

The following documents are an integral part of this contract:

Appendix 1 – Technical specifications;

Appendix 2 – Technical offer as part of the proposal for implementation of the procurement;

Appendix 3 – Price offer;

Appendix 4 – A guarantee to secure performance of the contract

Appendix 5:- A list with team of experts

FOR THE CONTRACTING ENTITY:

Konstantinos Karagyanakos- Executive Officer

Teodora Dimitrova Georgieva-Mileva – Executive Officer

FOR THE CONTRACTOR
