

**SCHEDULE 1: TENDER**

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## SCHEDULE 2: PERFORMANCE LEVELS

Hourly flow rate: not less than 343 000 normal m<sup>3</sup> gas

Daily flow rate: not less than 8 220 000 normal m<sup>3</sup> gas

Monthly (30 days) flow rate: not less than 247 000 000 normal m<sup>3</sup> gas



**SCHEDULE 3: PRICE OFFER**



**SCHEDULE 4: KEY PERSONNEL**

Project Manager – **Georgios Manis**

Engineering Manager – **Sotirios Xydias**

QA/QC Manager – **Stylianios Mantatzis**

Construction Manager – **Ilias Fradellos**

Deputy Construction Manager / Technical Manager for Bulgarian Section - **Georgi Evgeniev Dreharov**

HSE Manager - **Antonios Pappas**

## SCHEDULE 5: PAYMENT

### 1. PAYMENT SCHEDULE

An overview of the payments to be made in respect of the Works in accordance with and subject to Clause 14 (*Contract Price and Payment*) is illustrated in the table below.

Payment schedule	Payments as % of Total Lump Sum Price (TLS)
After Commencement Date - advance payment	10% of TLS
Regular payments every 2 months based on the achieved progress according to the TLS Breakdown and the Payment Rules	80% of TLS
Upon issuance of Taking-Over Certificate	15% of TLS
Upon issuance of Handover for Use Certificate	5% of TLS
Issuance of Performance Certificate - payment of the Retention Money	5% of TLS

### 2. TLS BREAKDOWN

The following table sets out the "**TLS Breakdown**", allocating the Total Lump Sum Price against individual Project Items as described in the table.

#### TLS Breakdown

Project Item	Description	Lump sum amount (Euro) (In Numbers & In Words)	Lump sum amount upper limit
<b>1.</b>	<b>Mobilization</b>	4 200 000,00 €	Up to 3% of TLS
<b>2</b>	<b>Engineering</b>	6 800 000,00 €	Up to 5% of TLS
2.1	Detailed design (DEG)	5 100 000,00 €	Up to 75% of the lump sum amount of Project Item 2
2.2	Final technical documentation (FTD)	1 700 000,00 €	-
<b>3</b>	<b>Pipeline</b>	96 485 000,00 €	-
3.1	Linear part - pipe line	64 850 000,00 €	Up to 45% of TLS

Project Item	Description	Lump sum amount (Euro) (In Numbers & In Words)	Lump sum amount upper limit
3.2	Block valve station BV1	1 250 000,00 €	-
3.3	Block valve station BV2	820 000,00 €	-
3.4	Block valve station BV3A	820 000,00 €	-
3.5	Block valve station BV4	820 000,00 €	-
3.6	Block valve station BV4A	820 000,00 €	-
3.7	Block valve station BV5	780 000,00 €	-
3.8	Block valve station BV6	820 000,00 €	-
3.9	Block valve station BV7	900 000,00 €	-
3.10	HDPE conduits	1 900 000,00 €	-
3.11	Cathodic Protection	2 000 000,00 €	-
3.12	HDD Crossings	15 000 000,00 €	-
3.13	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	5 690 000,00 €	-
3.14	Activities related to crops compensation (Bulgaria), EIA activities or any other activities related to third parties	15 000,00 €	-
<b>4</b>	<b>Komotini Gas Metering Station (GMS1) &amp; Pigging Station (PS1)</b>	9 990 000,00	-
4.1	Delivery of equipment and overall construction according to Project specifications	8 150 000,00 €	Up to 85% of the lump sum amount of Project Item 4
4.2	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	1 840 000,00 €	-





<b>Project Item</b>	<b>Description</b>	<b>Lump sum amount (Euro) (In Numbers &amp; In Words)</b>	<b>Lump sum amount upper limit</b>
<b>5</b>	<b>Kardjahli AGRS and BV3</b>	3 925 000,00 €	-
5.1	Delivery of equipment and overall construction according to Project specifications	2 975 000,00 €	Up to 85% of the lump sum amount of Project Item 5
5.2	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	950 000,00 €	-
<b>6</b>	<b>Dimitrovgrad AGRS</b>	4 500 000,00 €	-
6.1	Delivery of equipment and overall construction according to Project specifications	3 825 000,00 €	Up to 85% of the lump sum amount of Project Item 6
6.2	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	675 000,00 €	-
<b>7</b>	<b>Stara Zagora Gas Metering Station (GMS2) &amp; Pigging Station (PS2)</b>	9 000 000,00 €	-
7.1	Delivery of equipment and overall construction according to Project specifications	7 650 000,00 €	Up to 85% of the lump sum amount of Project Item 7
7.2	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	1 350 000,00 €	-
<b>8</b>	<b>Operations &amp; Maintenance Base - Dispatching Centre (Stamboliski)</b>	2 870 000,00 €	-
<b>9</b>	<b>Integrated Control &amp; Telecommunication Systems</b>	7 000 000,00 €	-
9.1	Delivery of equipment and overall construction according to Project specifications	5 950 000,00 €	Up to 85% of the lump sum amount of Project Item 9
9.2	Mechanical Testing and Precommissioning Activities (testing of all systems prior to the gas in)	1 050 000,00 €	-
<b>10</b>	<b>Training</b>	80 000,00 €	-

<b>Total Lump Sum Price (TLS)</b>	144 850 000,00 €
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### 3. PAYMENT RULES

For the purposes of determining any entitlement of the Contractor to payment, the value of the works completed by the Contractor at any point shall be calculated in accordance with the following rules ("**Payment Rules**"):

- 3.1 The TLS shall be equal to the sum of the lump sum amounts for Project Items 1, 2, 3, 4, 5, 6, 7, 8, 9 and 10.
- 3.2 The lump sum amount for Project Item 2 shall be equal to the sum of the lump sum amounts for Project Items 2.1 and 2.2.
- 3.3 The lump sum amount for Project Item 3 shall be equal to the sum of the lump sum amounts for Project Items 3.1, 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8, 3.9, 3.10, 3.11, 3.12, 3.13 and 3.14.
- 3.4 The lump sum amount for Project Item 4 shall be equal to the sum of the lump sum amounts for Project Items 4.1 and 4.2.
- 3.5 The lump sum amount for Project Item 5 shall be equal to the sum of the lump sum amounts for Project Items 5.1 and 5.2.
- 3.6 The lump sum amounts for Project Item 6 shall be equal to the sum of the lump sum amounts for Project Items 6.1 and 6.2.
- 3.7 The lump sum amount for Project Item 7 shall be equal to the sum of the lump sum amounts for Project Items 7.1 and 7.2.
- 3.8 The lump sum amount for Project Item 9 shall be equal to the sum of the lump sum amounts for Project Items 9.1 and 9.2.
- 3.9 For Project Item 1, payments shall be as follows:
  - 3.9.1 ten per cent (10%) of the lump sum amount for the relevant item is payable upon the approval by Employer of the insurance policies for all Contractor's Insurances;
  - 3.9.2 thirty-five per cent (35%) of the lump sum amount for the relevant item is payable following handover by the Contractor to the Employer of the cars and all Employer's site facilities in full operation as required pursuant to the provisions of the Contract;
  - 3.9.3 thirty per cent (30%) of the lump sum amount for the relevant item is payable upon completion of the Contractor's offices and the open and sheltered storage areas, ready for Plant storage;
  - 3.9.4 fifteen per cent (15%) of the lump sum amount for the relevant item is





payable upon review and validation by the Employer of Contractor's Documents (as applicable);

3.9.5 10% of the lump sum amount for the relevant item is payable upon unloading of each fifty per cent (50%) of the total quantity of Line Pipe delivered by the Line Pipe Supplier to the Delivery Points.

3.10 For Project Item 2, payments shall be based on the actual bi-monthly progress. The procedure for measuring progress shall be in accordance with paragraph 4 below.

3.11 For Project Item, 3.1 the payments shall be based on the actual bimonthly progress of the linear part calculated only for portions of the linear part that are completed according to the following:

$$\frac{\text{Actual Linear Progress}}{\text{Nominal Length}} \times \text{Lump sum amount of Project Item 3.1}$$

The linear part shall be considered as completed after all works are finished in order for the pipe to be ready for hydro test:

- Pipe is welded;
- Pipe is in trench;
- Welding quality documents are available; and
- Pipe is back filled, ready for pressure test.

3.12 For Project Items 3.2, 3.3, 3.4, 3.5, 3.6, 3.7, 3.8 and 3.9, payments shall be as follows:

3.12.1 Thirty five per cent (35%) of the lump sum amount for the relevant item is payable when the relevant equipment is ready to install (inspected, accepted and stored on site);

3.12.2 Forty per cent (40%) of the lump sum amount for the relevant item is payable when all works on site are finished in order for the linear section of the BV to be ready for hydro test; and

3.12.3 Twenty five (25%) of the lump sum amount for the relevant item is payable when all other works related to BV completion are finished.

3.13 For Project Item 3.10, payments shall be based on the actual bimonthly progress of the HDPE conduits installation calculated according to the following:

$$\frac{\text{Actual Linear Progress}}{\text{Nominal Length}} \times \text{Lump sum amount of Project Item 3.10}$$

3.14 For Project Item 3.11, payments shall be as follows:

3.14.1 Eighty per cent (80%) of the lump sum amount for the relevant Project Item is payable as per progress of the linear elements; and

3.14.2 Twenty per cent (20%) of the lump sum amount for the relevant Project

Item is payable upon completion, commissioning and successful completion of all Tests on Completion.

3.15 For Project Item 3.12, payments shall be as follows:

3.15.1 Each HDD crossing shall be separate position;

3.15.2 Twenty per cent (20%) of the lump sum amount for the relevant Project Item is payable after full mobilisation;

3.15.3 Eighty per cent (80%) of the lump sum amount for the relevant Project Item is payable after all works for each position are completed and the crossing is ready for hydro test; and

3.15.4 the relevant weighting of each HDD in the payment will be proportional to its length.

3.16 For Project Item 3.13 payments shall be based on the actual bimonthly progress according to the following:

3.16.1 Eighty five (85%) of the lump sum amount of the relevant item is payable according to the following:

$$\frac{\text{Length of successfully Hydrottested Sections}}{\text{Nominal Length}} \times 85\% \times \text{Lump sum amount of Project Item 3.13}$$

3.16.2 Fifteen per cent (15%) of the lump sum amount for the relevant item is payable on successful drying of pipeline.

3.17 For Project Item 3.14, payments shall be based on the actual bi-monthly progress. The procedure for measuring progress shall be in accordance with paragraph 4 below.

3.18 For Project Items 4.1, 5.1, 6.1, 7.1, 8 and 9.1, payments shall be as follows:

3.18.1 Thirty five per cent (35%) of the lump sum amount for the relevant item is payable when all the relevant equipment is ready to install (inspected, accepted and stored on site);

3.18.2 Fifteen per cent (15%) of the lump sum amount for the relevant item is payable when works on site reach fifty per cent (50%) progress;

3.18.3 Twenty five per cent (25%) of the lump sum amount for the relevant item is payable when works on site reach seventy-five per cent (75%) progress;

3.18.4 Twenty five per cent (25%) of the lump sum amount for the relevant item is payable when works on site reach one hundred per cent (100%) progress; and

3.18.5 The procedure for measuring progress shall be in accordance with paragraph 4 below.

3.19 For Project Items 4.2, 5.2, 6.2, 7.2 and 9.2, one hundred per cent (100%) of the lump sum amount for the relevant item is payable after successful completion of all

Mechanical Completion and Precommissioning Activities.

3.20 For Project Item 10, payments shall be based on actual bi-monthly progress. The procedure for measuring progress shall be in accordance with paragraph 4 below.

**4. PROGRESS MEASUREMENT**

The procedure for progress measurement shall be prepared by the Employer or its representatives based on all available documents which are comprised within the Technical Specification, including the bill of materials (out of which quantities will be used for measuring progress) of the Technical Design and the FEED (as such terms are defined in the Technical Specification) as well as the bill of materials of the detailed design developed by the Contractor. The progress measurement procedure will be submitted to the Contractor for acceptance. If the Parties fail to reach an agreement on the progress measurement procedure, payments will be made upon completion of all of the works for each relevant Project Item.





**SCHEDULE 6: INSURANCE**

<b>1. PART 1 EMPLOYER'S INSURANCE</b>	
<p><b>CONSTRUCTION "ALL RISKS"</b> <b>(Sect. 1)</b> <b>Interest/Property Insured:</b></p>	<p>The Insurance is to cover the Works in respect of physical loss, physical damage and liability incurred by the Insureds within the insured values from the time the Employer, the Contractor, the Subcontractors, any of their respective contractors, manufacturers and/or suppliers and any other person with whom the Insureds have entered into written contracts directly in connection with the Works, take responsibility for the assets which are the subject of the Insurance.</p> <p>The Insurance is to cover the Works executed by or under the direction of the Contractor against physical loss or damage, including: materials, components, parts, machinery, fixtures, equipment and any other property destined to become part of the Permanent Works, including pre-existing property, temporary works and all items associated therewith whether or not intended to form part of the works.</p> <p>Unless the Employer issues a Variation requiring the Contractor to take out and maintain the insurance specified in part 3 of this Schedule 6, this Insurance is also to cover contractor's equipment (materials, supplies, plant, vessels, machinery, equipment, tools, buildings and structures including warehouses, offices, camps and workshops and the contents therein, to the full replacement value of such equipment) and site preparatory work.</p>
<b>Exclusions:</b>	The Insurance will contain typical exclusions for current market practice at the time the Insurance is procured, for the type of activities part of the Works.
<b>Sum Insured:</b>	<p>EUR 144 850 000,00 an amount equivalent to the total reinstatement value of the Works, plus an escalation limit of ten per cent (10%) as per an Automatic Increase Clause.</p> <p>Sublimit for surrounding Property over EUR 500,000.</p>
<b>Geographical Limits:</b>	Anywhere in the Country in connection with the Works.
<b>Deductibles:</b>	<p>In respect of each occurrence:</p> <ul style="list-style-type: none"> <li>• Natural Catastrophe (earthquake, flood) 2% of VARTOL (Value At Risk At Time Of Loss) with min. EUR 800,000 and max. EUR 3.000.000</li> <li>• Testing and Commissioning EUR 200,000</li> <li>• HDD/River Crossings 10% VARTOL with min. EUR 100.000</li> <li>• All other losses EUR 100,000</li> </ul>



<b>Period of Cover:</b>	From the commencement of any part of the Works until the date of issue of the Handover for Use Certificate plus a twenty four (24) month extended maintenance period..
<b>Insureds:</b>	<p>Policyholder: Employer.</p> <p>Insureds: Employer, shareholders of the Employer, respective parents, subsidiaries and affiliates (in each case of any tier) as existing or of future constitution, joint ventures, co-ventures and respective employees, directors, officers, consultants hired by Insureds, etc.</p> <p>Other Insureds (or Additional Insureds): The Contractor, Subcontractors, any of their respective contractors, manufacturers and/or suppliers and any other person with whom the assureds have entered into written contracts directly in connection with the Works. Coverage for manufacturers, suppliers, vendors, architects, consulting engineers, surveyors, etc., being limited to on site activities only.</p>
<b>Loss Payee:</b>	The Employer or other Insured in relation to its own interest. All claims must be routed via the Employer.
<b>THIRD PARTY LIABILITY (Sect. 2)</b> <b>Interest:</b>	All sums which any Insured becomes liable to pay to third parties in respect of bodily injury and/or damage to property in connection to the Works and/or negligent damage to surrounding and third party property.
<b>Limit of Indemnity:</b>	EUR 10,000,000 any one occurrence
<b>Geographical Limits:</b>	Worldwide in connection with the Works, excluding USA, Canada, Australia, EU sanctioned territories.
<b>Deductible:</b>	The first EUR 100,000, physical damage only, nil bodily injury or where third party liability section of construction all risks policy responds in excess of an Additional Insured's TPL policy.
<b>Insured:</b>	Same as Section 1.
<b>1.3 Other common provisions:</b>	<p>Deductibles:</p> <p>Physical loss or damage - All deductibles shall be for the account of the Contractor save where a claim arises as a result of an act or omission of/breach of Contract by the Employer, in which case the deductible(s) in respect of such claim shall be for the account of the Employer.</p> <p>Other retention:</p> <p>Contractor shall bear the full costs of restoration of damage, whenever Contractor is liable, including faulty design, material and workmanship should losses not be recoverable from the construction all risks insurance policy due to standard exclusions,</p>

warranties, subjectivities or sublimits.

**PART 2: CONTRACTORS' INSURANCE:**

The Contractor shall effect, maintain, and extend this obligation to Subcontractors, the following insurances:

**2.1. EMPLOYER'S LIABILITY**

Employer's liability insurance covering personal injury or death of employees of the Insureds engaged in the performance of the Works to a limit of EUR 5,000,000 or as required by Law, whichever is greater and extended to any personnel travelling abroad.

**2.2 THIRD PARTY LIABILITY**

All sums which the Contractor becomes liable to pay by reason of law and/or express contractual liability for any event or series of, to third parties in respect of bodily injury and/or damage to property, covering the activities of the Contractor in connection to the Works for an amount of EUR 5.000.000 per each occurrence.

This insurance should be extended by naming the Employer, the shareholders of the Employer, respective parents, subsidiaries and affiliates (in each case of any tier), and any person/entity nominated by the Employer on its behalf, and such other persons as the Employer may elect as Other Insureds (or Additional Insureds) in respect of claims that may be made against them arising out of the execution of the Works.

Including excess auto liability, which is in excess of the third party compulsory limit in the Country.

This insurance is primary to the Employer's Insurance under the third party liability section of the construction all risks policy. In the event that the Contractor may be entitled to claim the same event under both the Contractor's third party liability policy and the third party liability section of the construction all risks policy, the third party liability section of the construction all risks policy will intervene on exhaustion of coverage of the Contractor's third party liability.

**2.3 MOTOR INSURANCES**

Insurance in respect of third party liability insurance and passenger liability insurance for an amount required by Law or EUR 5.000.000, whichever is greater. To include compulsory insurances applicable to motorized vehicles if marine vessels and/or aircrafts are to be used by the Contractor.

**2.4 OTHER INSURANCES**

Any other legally required insurances except the auto liability which is compulsory requirement in Bulgaria and Greece.



**PART 3: CONTRACTORS' INSURANCE:**

If so required by the Employer pursuant to a Variation, the Contractor shall effect, maintain, and extend this obligation to Subcontractors, the following insurances:

**3.1 CONTRACTORS EQUIPMENT/EPC CONTRACTOR SURVEY**

Insurance against loss or damage from whatsoever cause arising in respect of Contractor supplied items, not for incorporation into the Works, including: materials, supplies, plant, vessels, machinery, equipment, tools, buildings and structures (including warehouses, offices, camps and workshops) and the contents therein, to the full replacement value of such equipment.

**SCHEDULE 7: GENERAL CONDITIONS OF DISPUTE ADJUDICATION AGREEMENT**

**1. Definitions**

"Dispute Adjudication Agreement" is a tripartite agreement by and between:

- (i) the "Employer";
- (ii) the "Contractor"; and
- (iii) the "Adjudicator".

The Employer and the Contractor have entered (or intend to enter) into a contract, which is called the "Contract" and is defined in the Dispute Adjudication Agreement, which incorporates this Schedule 7 (*General Conditions of Dispute Adjudication Agreement*). In the Dispute Adjudication Agreement, words and expressions which are not otherwise defined shall have the meanings assigned to them in the Contract.

**2. General Provisions**

- (a) The Dispute Adjudication Agreement shall take effect when the Employer, the Contractor and the Adjudicator have respectively each signed a dispute adjudication agreement.
- (b) This employment of the Adjudicator is a personal appointment. No assignment or subcontracting of the Dispute Adjudication Agreement is permitted without the prior written agreement of all the parties to it.

**3. Warranties**

- (a) The Adjudicator warrants and agrees that he/she is and shall be impartial and independent of the Employer and Contractor. The Adjudicator shall promptly disclose to each of them any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.
- (b) When appointing the Adjudicator, the Employer and the Contractor relied upon the Adjudicator's representations that he/she is:
  - (i) experienced in the work which the Contractor is to carry out under the Contract;
  - (ii) experienced in the interpretation of contract documentation; and
  - (iii) fluent in the language for communications defined in the Contract.

**4. General Obligations of the Adjudicator**

**5. The Adjudicator shall:**

- (a) have no interest financial or otherwise in the Employer or the Contractor, nor any financial interest in the Contract except for payment under the Dispute Adjudication Agreement;



- (b) not previously have been employed as a consultant or otherwise by the Employer or the Contractor, except in such circumstances as were disclosed in writing to the Employer and the Contractor before they signed the Dispute Adjudication Agreement;
- (c) have disclosed in writing to the Employer and the Contractor before entering into the Dispute Adjudication Agreement and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Employer or the Contractor, and any previous involvement in the overall Project of which the Contract forms part;
- (d) not, for the duration of the Dispute Adjudication Agreement, be employed as a consultant or otherwise by the Employer or the Contractor, except as may be agreed in writing by the Employer and the Contractor;
- (e) comply with the Procedural Rules contained in Schedule 8 (*Procedural Rules*) of the Contract and with Sub-Clause 20.3 of the Contract;
- (f) not give advice to the Employer or the Contractor concerning the conduct of the Contract, other than in accordance with the Rules for Adjudication;
- (g) not enter into discussions or make any agreement with the Employer or the Contractor regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Adjudication Agreement;
- (h) ensure his/her availability for any site visit and hearings as are necessary; and
- (g) treat the details of the Contractor and all the his/her activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Employer and the Contractor.

**5. General Obligations of the Employer and the Contractor**

- (a) The Employer and the Contractor shall not request advice from or consultation with the Adjudicator regarding the Contract. The Employer and the Contractor shall be responsible for compliance with this provision.
- (b) The Employer and the Contractor undertake to each other and to the Adjudicator that the Adjudicator shall not, except as otherwise agreed in writing by the Employer, Contractor and the Adjudicator:
  - (i) be appointed as an arbitrator in any arbitration under the Contract;
  - (ii) be called as a witness to give evidence concerning any Dispute before arbitrator(s) appointed for any arbitration under the Contract; or
  - (iii) be liable for any claims for anything done or omitted in the discharge or purported discharge of the Adjudicator's functions, unless the act or omission is shown to have been in bad faith.
- (c) The Employer and the Contractor hereby jointly and severally indemnify and hold the Adjudicator harmless against and from claims from which he/she is relieved from liability under the preceding paragraph.

**6. Payment**

- (a) The Adjudicator shall be paid as follows, in the currency named in the Dispute Adjudication Agreement:
  - (i) a daily fee which shall be considered as payment in full for:
    - (a) each working day spent reading submissions, attending hearings (if any), preparing decisions, or making site visits (if any); and
    - (b) each day or part of a day up to maximum of two (2) days travel time in each direction for the journey (if any) between the Adjudicator's home and site or another location of a meeting with the Employer and the Contractor;
  - (ii) all reasonable expenses incurred in connection with the Adjudicator's duties, including the cost of secretarial services, telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs; a receipt shall be required for each item in excess of five percent (5%) of the daily fee referred to in paragraph 6(a)(i); and
  - (iii) any Taxes properly levied in the Country on payments made to the Adjudicator (unless a national or permanent resident of the Country) under this paragraph 6.
- (b) The daily fee shall be as specified in the Dispute Adjudication Agreement.
- (c) Immediately after the Dispute Adjudication Agreement takes effect, the Adjudicator shall, before engaging in any activities under the Dispute Adjudication Agreement, submit to the Contractor, with a copy to the Employer, an invoice for (i) an advance of twenty-five percent (25%) of the estimated total amount of daily fees to which he/she will be entitled and (ii) an advance equal to the estimated total expenses that he/she shall incur in connection with his/her duties. Payment of such invoice shall be made by the Contractor upon his receipt of the invoice. The Adjudicator shall not be obliged to engage in activities under the Dispute Adjudication Agreement until he or she has been paid in full for the invoice submitted under this paragraph 6.
- (d) Thereafter the Adjudicator shall submit to the Contractor, with a copy to the Employer, invoices for the balance of his/her daily fees and expenses, less the amounts advanced. The Adjudicator shall not be obliged to render its decision until invoices for all of his or her daily fees and expenses for making a decision shall have been paid in full.
- (e) Unless paid earlier in accordance with the above, the Contractor shall pay each of the Adjudicator's invoices in full within twenty eight (28) calendar days after receiving each invoice and shall apply to the Employer under the Contract for reimbursement of one-half of the amounts of these invoices. The Employer shall then pay the Contractor in accordance with the Contract.
- (f) If the Contractor fails to pay to the Adjudicator the amount to which he/she is





entitled under the Dispute Adjudication Agreement, the Employer shall pay the amount due to the Adjudicator and any other amount which may be required to maintain the operation of the adjudication; and without prejudice to the Employer's rights or remedies. In addition to all other rights arising from this default, the Employer shall be entitled to reimbursement of all sums paid in excess of one-half of these payments, plus all costs of recovering these sums and financing charges calculated at the rate specified in Sub-Clause 14.11 of the Contract.

- (g) If the Adjudicator does not receive payment of the amount due within twenty eight (28) days after submitting a valid invoice, the Adjudicator may (i) suspend his/her services (without notice) until the payment is received, and/or (ii) resign his/her appointment by giving notice to the Employer and the Contractor. The notice shall take effect when received by them both. Any such notice shall be final and binding on the Employer, the Contractor and the Adjudicator.

**7. Default of the Adjudicator**

If the Adjudicator fails to comply with any obligation under paragraph 4, he/she shall not be entitled to any fees or expenses hereunder and shall, without prejudice to their other rights, reimburse each of the Employer and the Contractor for any fees and expenses received by the Adjudicator, for proceedings or decisions (if any) of the adjudication which are rendered void or ineffective.

**8. Default of the Adjudicator**

Any dispute or claim arising out of or in connection with this Dispute Adjudication Agreement, or the breach, termination or invalidity thereof, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by three arbitrators appointed in accordance with these Rules of Arbitration.

## Form of Adjudication Agreement

- (1) [NAME AND DETAILS OF CONTRACT]
- (2) [NAME AND ADDRESS OF EMPLOYER]
- (3) [NAME AND DETAILS OF CONTRACTOR]
- (4) [NAME AND ADDRESS OF ADJUDICATOR]

### BACKGROUND:

The Employer and the Contractor have entered into the Contract and desire jointly to appoint the Adjudicator to act as adjudicator to adjudicate a dispute which has arisen in relation to [ ]<sup>1</sup>

### The Employer, Contractor and Adjudicator jointly agree as follows:

1. The conditions of this Dispute Adjudication Agreement comprise the "General Conditions of Dispute Adjudication Agreement", which is appended to the Contract and the following provisions. In these provisions, which include amendments and additions to the General Conditions of Dispute Adjudication Agreement, words and expressions shall have the same meanings as are assigned to them in the General Conditions of Dispute Adjudication Agreement.
2. [*Details of amendments to the General Conditions of Dispute Adjudication Agreement, if any*]
3. In accordance with paragraph 6 of the General Conditions of Dispute Adjudication Dispute Agreement the Adjudicator shall be paid a daily fee of [ ] per day.
4. In consideration of these fees and other payments to be made by the Employer and the Contractor in accordance with paragraph 6 of the General Conditions of Dispute Adjudication Agreement, the Adjudicator undertakes to act as adjudicator in accordance with this Dispute Adjudication Agreement.
5. The Employer and the Contractor jointly and severally undertake to pay the Adjudicator, in consideration of the carrying out of these services, in accordance with paragraph 6 of the General Conditions of Dispute Adjudication Agreement.
6. This Dispute Adjudication Agreement shall be governed by the law of England and Wales.

SIGNED by for and on behalf of the Employer:

.....  
Signature of \*Director/Authorised Signatory/Co Signature of Witness

<sup>1</sup> A brief description or name of dispute to be added.



Secretary

.....  
Full name of above (print)

.....  
Date of signing

.....  
Full name of above (print)

.....  
Address of witness

SIGNED for and on behalf of the Contractor:

.....  
Signature of \*Director/Authorised Signatory/Co  
Secretary

.....  
Full name of above (print)

.....  
Date of signing

.....  
Signature of Witness

.....  
Full name of above (print)

.....  
Address of witness

SIGNED for and on behalf of the Adjudicator:

.....  
Signature of \*Director/Authorised Signatory/Co  
Secretary

.....  
Full name of above (print)

.....  
Date of signing

.....  
Signature of Witness

.....  
Full name of above (print)

.....  
Address of witness

## **SCHEDULE 8: PROCEDURAL RULES**

### **General**

Any reference in the Contract to the Rules for Adjudication shall be deemed to be a reference to these Rules.

Definitions in the Contract shall apply in these Rules.

### **Notice of Intention to seek Adjudication**

1. (1) Either Party to this Contract (the "referring Party") may give written notice (the "notice of adjudication") of his intention to refer any Dispute arising under the Contract to adjudication.
- (2) The notice of adjudication shall be given to the other Party to this Contract and shall be written in English.
- (3) The notice of adjudication shall set out briefly:
  - (a) the nature and a brief description of the Dispute and of the parties involved;
  - (b) details of where and when the Dispute has arisen;
  - (c) the nature of the redress which is sought; and
  - (d) the names and addresses of the Parties to this Contract (including, where appropriate, the addresses which the Parties have specified for the giving of notices).
2. (1) Following the giving of a notice of adjudication, the Parties shall seek to agree the identity of the adjudicator. If the identity of an adjudicator has not been agreed within fourteen (14) days following the notice of adjudication, then the referring Party may apply, with a copy of the application to the other Party, to any appointing authority named in this Contract or, if none, to the President of FIDIC or his nominee, to appoint an adjudicator, and such appointment shall be final and conclusive.
- (2) A person requested to act as adjudicator in accordance with the provisions of paragraph (1) shall indicate whether or not he is willing to act within two days of receiving the request.
- (3) In this paragraph, and in paragraphs 5 and 6 below, an "adjudicator nominating body" shall mean the body (not being a natural person and not being a Part) which is the appointing authority named in this Contract or, if none, the President of FIDIC or his nominee.
3. The request referred to in paragraphs 2, 5 and 6 shall be accompanied by a copy of the notice of adjudication.
4. Any person requested or selected to act as adjudicator in accordance with paragraphs 2, 5 or 6 shall be a natural person acting in his personal capacity. A person requested or selected to act as an adjudicator shall not be an employee of

any of the either of the Parties and shall declare any interest, financial or otherwise, in any matter relating to the Dispute.

5. (1) The adjudicator nominating body referred to in paragraphs 2(1) and 6(1), 5(3)(b) and 6(1)(c) must communicate the selection of an adjudicator to the referring Party within five (5) days of receiving a request to do so.
- (2) Where the nominating body or the adjudicator nominating body fails to comply with paragraph (1), the referring party may:
  - (a) agree with the other party to the dispute to request a specified person to act as adjudicator: or
  - (b) request any other adjudicator nominating body (a body which holds itself out publicly as a body which will select an adjudicator on an international FIDIC project when requested to do so by a referring party) to select a person to act as adjudicator.
- (3) The person requested to act as adjudicator in accordance with the provisions of paragraphs (1) or (2) shall indicate whether or not he is willing to act within two (2) days of receiving the request.
6. (1) Where an adjudicator indicates to the Parties that he is unable or unwilling to act, or where he fails to respond in accordance with paragraph 2(2), the referring Party may:
  - (a) request another person (if any) specified in this Contract to act as adjudicator: or
  - (b) request the nominating body (if any) referred to in this Contract to select a person to act as adjudicator: or
  - (c) request any other adjudicator nominating body to select a person to act as adjudicator.
- (2) The person requested to act in accordance with the provisions of paragraph 6(1) shall indicate whether or not he is willing to act within two (2) days of receiving the request.
7. (1) Where an adjudicator has been selected in accordance with paragraphs 2, 5 or 6, the referring Party shall, not later than twenty one (21) days from the date of the notice of adjudication, refer the Dispute in writing (the "referral notice") to the adjudicator.
- (2) A referral notice shall be accompanied by copies of, or relevant extracts from, this Contract and such other documents as the referring party intends to rely upon.
- (3) The referring Party shall, at the same time as he sends to the adjudicator the documents referred to in paragraphs 7(1) and (2), send copies of those documents to the other Party.
8. (1) The adjudicator may, with the consent of the Parties, adjudicate at the same time on more than one Dispute under this Contract.



- (2) The adjudicator may, with the consent of the Parties, adjudicate at the same time on related disputes under different contracts, whether or not either Party is a party to those disputes.
  - (3) All the parties in paragraphs 8(1) and (2) respectively may agree to extend the period within which the adjudicator may reach a decision in relation to all or any of these disputes.
  - (4) Where an adjudicator ceases to act because a Dispute is to be adjudicated on by another person in terms of this paragraph, that adjudicator's fees and expenses shall be determined in accordance with paragraph 27.
9. (1) An adjudicator may resign at any time on giving notice in writing to the Parties.
- (2) An adjudicator must resign where the Dispute is the same or substantially the same as one which has previously been referred to adjudication, and a decision has been taken in that adjudication.
  - (3) Where an adjudicator ceases to act under paragraph 9(1):
    - (a) the referring Party may serve a fresh notice under paragraph 1 and shall request an adjudicator to act in accordance with paragraphs 2 to 7; and
    - (b) if requested by the new adjudicator and insofar as it is reasonably practicable, the Parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
  - (4) Where an adjudicator resigns in the circumstances referred to in paragraph 9(2), or where a Dispute varies significantly from the Dispute referred to him in the referral notice and for that reason he is not competent to decide it, the adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses reasonably incurred by him. The Parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.
10. Where either Party objects to the appointment of a particular person as adjudicator, that objection shall not invalidate the adjudicator's appointment nor any decision he may reach in accordance with paragraph 20.
11. (1) The Parties may at any time agree to revoke the appointment of the adjudicator. The adjudicator shall be entitled to the payment of such reasonable amount as he may determine by way of fees and expenses incurred by him. The Parties shall be jointly and severally liable for any sum which remains outstanding following the making of any determination on how the payment shall be apportioned.
- (2) Where the revocation of the appointment of the adjudicator is due to the default or misconduct of the adjudicator, the Parties shall not be liable to pay the adjudicator's fees and expenses.

#### **Powers of the adjudicator**

12. The adjudicator shall:
- (a) act impartially in carrying out his duties and shall do so in accordance

with any relevant terms of this Contract and shall reach his decision in accordance with the applicable Laws in relation to this Contract;

- (b) avoid incurring unnecessary expense;
- (c) immediately disclose in writing to the parties anything of which he becomes aware which could affect his impartiality or independence; and
- (d) conduct the adjudication proceedings in English or such other language as may be agreed between the Parties and the adjudicator (including any hearings) and all communications between the adjudicator and the Parties shall be in that language. All such communications shall be copied to the other party.

13. The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the Dispute, and shall decide on the procedure to be followed in the adjudication. In particular he may-

- (a) request either Party to supply him with such documents as he may reasonably require including, if he so directs, any written statement from either Party supporting or supplementing the referral notice and any other documents given under paragraph 7(2);
- (b) decide upon the adjudicator's own jurisdiction, and as to the scope of any Dispute referred to him;
- (c) decide to conduct a hearing in which event he shall decide on the date, place and duration for the hearing. The adjudicator may request that written statements from the Parties be presented to him prior to, at or after the hearing;
- (d) subject to obtaining any necessary consent from a third party or parties, make such site visits and inspections as he considers appropriate, whether accompanied by the parties or not;
- (e) subject to obtaining any necessary consent from a third party or parties, carry out any tests or experiments;
- (f) obtain and consider such representations and submissions as he requires, and, provided he has notified the parties of his intention, appoint experts, assessors or legal advisers;
- (g) give directions as to the timetable for the adjudication, any deadlines, or limits as to the length of written documents or oral representations to be complied with;
- (h) issue other directions relating to the conduct of the adjudication; and
- (i) refuse admission to hearings to any persons other than the Employer, the Contractor and their respective representatives, and to proceed in the absence of any party who the adjudicator is satisfied received notice of the hearing.

14. The Parties shall comply with any request or direction of the adjudicator in



relation to the adjudication.

15. If, without showing sufficient cause, a Party fails to comply with any request, direction or timetable of the adjudicator made in accordance with his powers, fails to produce any document or written statement requested by the adjudicator, or in any other way fails to comply with a requirement under these provisions relating to the adjudication, the adjudicator may:
- (a) continue the adjudication in the absence of that Party or of the document or written statement requested;
  - (b) draw such inferences from that failure to comply as circumstances may, in the adjudicator's opinion, be justified; and
  - (c) make a decision on the basis of the information before him attaching such weight as he thinks fit to any evidence submitted to him outside any period he may have requested or directed.

The adjudicator shall not give advice to the Parties or their representatives concerning the design, execution and completion of the Works other than in accordance with these Rules.

16. (1) Subject to any agreement between the Parties to the contrary, and to the terms of paragraph 16(2) below, either Party to the Dispute may be assisted by, or represented by, such advisers or representatives (whether legally qualified or not) as he considers appropriate.
- (2) Where the adjudicator is considering oral evidence or representations, a Party may not be represented by more than one person, unless the adjudicator gives directions to the contrary.
17. The adjudicator shall consider any relevant information submitted to him by either of the Parties and shall make available to them any information to be taken into account in reaching his decision.
18. The adjudicator and either Party shall not disclose to any other person any information or document provided to him in connection with the adjudication which the party supplying it has indicated is to be treated as confidential, except to the extent that it is necessary for the purposes of, or in connection with, the adjudication.
19. (1) The adjudicator shall reach his decision not later than-
- (a) sixty three (63) days after the date of the referral notice mentioned in paragraph 7(1); or
  - (b) seventy seven (77) days after the date of the referral notice if the referring Party so consents; or
  - (c) such period exceeding sixty three (63) days after the referral notice as the Parties may, after the giving of that notice, agree.
- (2) Where the adjudicator fails, for any reason, to reach his decision in accordance with paragraph 19(1):



- (a) Either Party may serve a fresh notice under paragraph 1 and shall request an adjudicator to act in accordance with paragraphs 2 to 7; and
  - (b) if requested by the new adjudicator and insofar as it is reasonably practicable, the Parties shall supply him with copies of all documents which they had made available to the previous adjudicator.
- (3) As soon as possible after he has reached a decision, the adjudicator shall deliver a copy of that decision to each of the Parties.

### **Adjudicator's decision**

20. The adjudicator shall decide the matters in Dispute. He may take into account any other matters which the Parties agree should be within the scope of the adjudication or which are matters under this Contract which he considers are necessarily connected with the dispute. In particular, he may:
- (a) open up, revise and review any decision taken or any certificate given by any person referred to in this Contract unless this Contract states that the decision or certificate is final and conclusive;
  - (b) decide that either Party is liable to make a payment under this Contract (in the currency of this Contract) and when that payment is due and the final date for payment; and/or
  - (c) having regard to any term of this Contract relating to the payment of interest, decide the circumstances in which, and the rates at which, and the periods for which simple or compound rates of interest shall be paid.
21. In the absence of any directions by the adjudicator relating to the time for performance of his decision, the Parties shall be required to comply with any decision of the adjudicator immediately on delivery of the decision to the Parties in accordance with this paragraph.
22. The adjudicator shall provide reasons for his decision. The adjudicator shall not be called as a witness by the Parties to give evidence concerning any Dispute in connection with, or arising out of, this Contract.

### **Effects of the decision**

23. (1) In his decision, the adjudicator may, if he thinks fit, order either Party to comply peremptorily with his decision or any part of it.
- (2) The decision of the adjudicator shall be binding on the Parties, and they shall comply with it until the Dispute is finally determined by international arbitration (in accordance with the terms of this Contract) or by agreement between the Parties.
24. The adjudicator shall treat the details of this Contract and all activities and hearings of the adjudicator as confidential and shall not disclose the same without the prior written consent of the Parties. The adjudicator shall not, without the consent of the Parties, assign or delegate any of his work under these Rules or engage legal or technical assistance.

25. The adjudicator shall not be liable for anything done or omitted in the discharge or purported discharge of his functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator shall be similarly protected from liability.
26. If the adjudicator shall knowingly breach any of the provisions of Rule 12(a) or act in bad faith, he shall not be entitled to any fees or expenses hereunder and shall reimburse each of the Parties for any fees and expenses properly paid to him if, as a consequence of such breach any proceedings or decisions of the adjudicator are rendered void or ineffective.

**Payment**

27. The adjudicator shall be paid the fees and expenses set out in the adjudicator's agreement.

