



ICGB AD
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Natural Gas
Interconnector
Greece - Bulgaria

DATED 20.05.2019

(1) ICGB AD

- and -

(2) CONSORTIUM "TIBEY"

Agreement for the provision of Owner's Engineer and Employer's Representative services relating to the ICGB Interconnector Project

Prepared by DLA Piper UK LLP using elements of The Federation Internationale des Ingenieurs-Conseils (FIDIC) Client/Consultant Model Services Agreement Fifth Edition 2017 with due permission of FIDIC

NOTE: ICGB AD is not following the standard template for services agreements published by the Public Procurement Agency and approved by the Bulgarian Minister of Finance due to the international character of the Project; the transboundary effect of the pipeline and the complexity of the construction. Based on the strategic importance of the Project, as well as of the nature of the works, supplies and services required for the timely completion of the entire Project, ICGB AD is using the international standard forms of contracts issued by the International Federation of the Consulting Engineers (FIDIC) for some of the public procurements which will be awarded during implementation of the Project.

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THIS AGREEMENT is made on 20.05.2019

BETWEEN:

- (1) **ICGB AD**, a company established and existing under the laws of the Republic of Bulgaria, having its registered seat at 13 Veslets Street, 1000 Sofia, Bulgaria, with UIC 201383265, represented by its Executive Officers Ms Teodora Georgieva-Mileva and Mr Konstantinos Karayannakos ("**Client**" which term includes its legal successors and permitted assignees) of the one part; and
- (2) **Consortium "TIBEY" consisting of Tractebel Engineering S.A., Tractebel, Engineering SRL, INTBER GMBH, Ypsilon Consult EOOD and Bulgaria Engineering EAD, Bulstat registration number: 177352504** with address: Blvd. Bulgaria No 118, fl.4, 1618 Sofia, Bulgaria ("**Consultant**" which term includes its legal successors and permitted assignees) of the other part.

BACKGROUND

- A. The Client is procuring the design, construction, commissioning and operation of a natural gas pipeline directly connecting the national gas transmission systems of the Republic of Greece and the Republic of Bulgaria, having the outer diameter of DN 800, the total length of approximately 182 km, and the entry point in the region of the town of Komotini (Greece), with the exit point in the region of the town of Stara Zagora (Bulgaria).
- B. The Client desires that certain Services (as hereinafter defined) be performed in relation to the Project (as hereinafter defined), and by competitive procurement process has selected the Consultant to perform the Services in accordance with this Agreement, which is entered into by the Client and the Consultant and executed as a deed.
- C. In consideration of the payments to be made by the Client to the Consultant under this Agreement, the Consultant hereby agrees with the Client to perform the Services in conformity with the provisions of this Agreement.
- D. The Client hereby agrees to pay the Consultant on a lump sum basis in consideration of the performance of the Services such amounts as may become payable under the provisions of this Agreement at the times and in the manner prescribed by this Agreement.

IT IS AGREED BY THE CLIENT AND THE CONSULTANT:

1. GENERAL PROVISIONS

1.1 Definitions

The following words and expressions shall have the meanings assigned to them except where the context otherwise requires:

"Acceptance Certificate" means the certificate signed on behalf of both Parties pursuant to Clause 3.10.

"Agreement" means Clauses 1 to 10 (inclusive), Appendix 1 [*Scope of Services*], Appendix 2 [*Equipment and Facilities*], Appendix 3 [*Remuneration and Payment*], Appendix 4 [*Programme*], Appendix 5 [*Rules for Adjudication*], Appendix 6 [*General Conditions of Dispute Adjudication Agreement*], Appendix 7 [*Consultant's Services Team*],

Appendix 8 [*Technical Offer*] and Appendix 9 [*Price Offer*], as may be amended from time to time in accordance with this Agreement.

"Approved Bank" means a financial institution that is either (i) a bank licenced or otherwise authorised to operate in Bulgaria or (ii) a reputable bank licensed for operation in the EU/EEA which possesses a credit rating of at least Baa3 (Moody's) or BBB- (S&P) or BBB (Fitch).

"Approved Insurer" means an institution that is either (i) licenced or otherwise authorised to operate in Bulgaria or (ii) a reputable insurer licensed for operation in the EU/EEA which possesses a credit rating of at least Baa3 (Moody's) or BBB- (S&P) or BBB (Fitch).

"Background Intellectual Property" means, in respect of each Party, the Intellectual Property owned by or otherwise in the possession of that Party at the Commencement Date.

"Change in Law" means, in relation to the Republic of Bulgaria and/or the Republic of Greece, any change to national (or state) legislation, any statute, statutory instrument, order, regulation, bylaw, code or other legislation which comes into effect or is repealed or amended or varied after the date of the Technical Offer in relation to this Agreement (other than that which comes into effect having been published in draft prior to such date) and which directly affects the scope, extent, nature or type of Services and has a critical impact upon the performance by the Consultant of them.

"Client's Representative" means Mr. Dimitar Spassov or the person appointed from time to time by the Client, and communicated by Notice to the Consultant, to be the Client's representative for the administration of this Agreement.

"Commencement Date" in respect of:

- (i) Phase 1 means the date on which the Condition Precedent has been satisfied or waived pursuant to Sub-Clause 4.2.3 or 4.2.2 (as appropriate) and the Client has confirmed the same in writing pursuant to Sub-Clause 4.2.4 or 4.2.2 (as appropriate).
- (ii) Phase 2 means the date on which the Notice to Proceed is issued by the Client to the Consultant.

"Condition Precedent" means written confirmation, in the form of a brokers' or insurers' certificate, that the insurance cover required by Sub-Clause 9.1.1 is being maintained.

"Confidential Information" means this Agreement, all documents relating to this Agreement, all information and data provided pursuant to this Agreement, all information specifically identified by the disclosing Party as confidential at the time of disclosure, or information that a reasonable person would consider from the nature of the said information and circumstances to be confidential (however it is conveyed or on whatever media it is stored), including without limitation confidential or proprietary information, trade secrets, data, documents, communications, plans, know-how, formulas, designs, calculations, test results, specimens, drawings, studies, specifications, surveys, photographs, software, processes, programmes, reports, maps, models, agreements, ideas, methods, discoveries, inventions, patents, concepts, research, development, and business and financial information and any information relating to the Services.

"Conflict of Interest" means where the Consultant, his employees or hired persons outside his structure who participate in the Project have an interest which may lead to benefit as meant by Art. 2, Para. 3 of the Act on Prevention and Finding Conflict of Interests (a law

enacted in the Republic of Bulgaria) which a fair minded and informed observer would conclude may influence their impartiality and independence in relation to the Project.

"Consultant's Representative" means Mr. Mathieu Glorie, or the person appointed from time to time by the Consultant, and communicated by Notice to the Client to be its representative for the administration of this Agreement.

"Control" means the beneficial ownership of more than fifty per cent (50%) of the issued share capital of a company or the legal power to direct or cause the direction of the general management of the company, and controls, controlled and the expression "change in Control" shall be construed accordingly.

"Counter-Notice" shall have the meaning given in paragraph 6 of Appendix 3 [*Remuneration and Payment*]

"Country" means, as the context requires, the Republic of Greece and the Republic of Bulgaria.

"day" means a calendar day.

"Dispute" shall have the meaning given in Sub-Clause 10.1.1.

"Effective Date" means the last date of execution of this Agreement.

"Employer's Representative" means the person appointed as such under the Works Contract.

"Exceptional Costs" means the costs, not otherwise compensated under this Agreement (and only in respect of the suspension and resumption of the Services where expressly permitted under this Agreement), arising out of any necessary work, cost, expense or delay reasonably and demonstrably incurred by the Consultant in respect of an event or circumstance which is (a) beyond the Consultant's control; (b) which the Consultant could not reasonably have provided against before entering into this Agreement; (c) which, having arisen, the Consultant could not reasonably have avoided or overcome; and (d) which is not substantially attributable to the Consultant; and which is additional to the Services (or Variations) and which is necessarily and unavoidably performed under this Agreement and in each case identified as such in this Agreement.

"Exceptional Event" means an event or circumstance which is (i) beyond a Party's control; (ii) which such Party could not reasonably have provided against before entering into this Agreement; (iii) which, having arisen, such Party could not reasonably have avoided or overcome; and (iv) which is not substantially attributable to the other Party, and which is limited to the events or circumstances listed below, subject to (i) to (iv) above:

- (a) war, hostilities (whether war be declared or not), invasion, act of foreign enemies;
- (b) rebellion, terrorism, revolution, insurrection, military or usurped power or civil war;
- (c) riot, commotion, disorder, strike or lockout by persons other than the Consultant's personnel and other employees of the Consultant and Consultant's sub-consultants;

- (d) munitions of war, explosive materials, ionising radiation or contamination by radio-activity except as may be attributable to the Consultant's actions; and
- (e) natural catastrophes such as earthquake, hurricane, typhoon or volcanic activity.

"Foreground Intellectual Property" shall have the meaning given in Sub-Clause 1.7.1 [*Intellectual Property*].

"FIDIC" means the Fédération Internationale des Ingénieurs-Conseils, the International Federation of Consulting Engineers.

"Intellectual Property" means all intellectual property rights including, without limitation, any patents, patent applications, trademarks, trade secrets, registered designs, registered design applications, copyrights, design rights, moral rights, processes, formulas, specifications, drawings, including rights in computer software and data bases howsoever arising in any part of the world.

"Line Pipe Supply Contract" means a contract for the supply of line pipe by a supplier appointed by the Client for the achievement of the Project.

"Local Currency" means the currency of the Country and **"Foreign Currency"** means any other currency.

"month" shall mean a calendar month.

"Notice" means a written communication identified as a Notice and issued in accordance with the provisions of Clause 1.3 [*Notices and other Communications*].

"Notice to Proceed" means a notice to proceed in respect of Phase 2 issued in accordance with Sub-Clause 4.2.6.

"Party" and **"Parties"** means the Client and/or the Consultant as the context requires.

"Phase" means either Phase 1 or Phase 2 (as the case may be).

"Phase 1" means Phase 1 of the Services as described in paragraph 3.2 of the Scope of Service. .

"Phase 2" means Phase 2 of the Services as described in paragraph 3.2 of the Scope of Services.

"PPA" means the Public Procurement Act of the Republic of Bulgaria (promulgated SG, issue 13 of 16 February 2016 and as may be amended from time to time).

"Programme" means the programme developed by the Consultant and approved by the Client pursuant to Clause 4.3 [*Programme*] as may be amended and approved from time to time in accordance with this Agreement.

"Prohibited Materials" means any materials, products, goods or substances which:

- (a) pose a hazard to the health or safety of any person who may come into contact with the Project (whether during its construction or after its completion); or

- (b) either by themselves or as a result of their use in a particular situation or in combination with other materials, would or are likely to have the effect of reducing the normal life expectancy of any other materials or structure in which they are incorporated or to which they are affixed; or
- (c) are or become generally known within the Greek, Bulgarian or international building, construction or engineering industries to be deleterious (either to health and safety or to the durability of the works); or
- (d) contravene any relevant standard code of practice issued from time to time by any relevant authority or under a European directive relating to standards or good building practice or good industry practice; or
- (e) do not conform to the Client's requirements in the Works Contract or the Line Pipe Supply Contract.

"Project" means the design, construction, commissioning and operation of a natural gas pipeline directly connecting the national gas transmission systems of the Republic of Greece and the Republic of Bulgaria, having the outer diameter of DN 800, the total length of approximately 182 km, and the entry point in the region of the town of Komotini (Greece), with the exit point in the region of the town of Stara Zagora (Bulgaria).

"Project Contracts" means the Works Contract, the Line Pipe Supply Contract and any other contracts as may be referenced in Appendix 1 [*Scope of Services*].

"Public Holiday" means a day on which banks are not open for general business in the Republic of Greece and the Republic of Bulgaria, as the context requires.

"Public Procurement" means the public procurement competition for the Services in connection with the Project.

"Services" means the services defined in Appendix 1 [*Scope of Services*] to be performed by the Consultant in accordance with this Agreement which includes any Variations to the Services instructed or arising in accordance with this Agreement.

"Technical Offer" means the technical offer submitted by the Consultant to the Client on 05.09.2018, and included in Appendix 8 [*Technical Offer*].

"Variation" or "Variation to the Services" means any change to the Services instructed or approved as a Variation under Clause 5 [*Variations*].

"Variation Notice" means a written communication identified as a Variation Notice and issued pursuant to Clause 5 [*Variations*] and in accordance with the provisions of Clause 1.3 [*Notices and other Communications*].

"Works Contract" means the contract to be entered or entered into between the Client and a contractor for the detailed engineering, procurement of equipment, construction, installation, commissioning of the pipeline and staff training of the Client.

"year" means a calendar year.

1.2 Interpretation

- 1.2.1 In this Agreement, except where the context requires otherwise:
- 1.2.1.1 words indicating the singular include the plural, and vice-versa where the context requires;
 - 1.2.1.2 words indicating one gender include all genders;
 - 1.2.1.3 provisions including the word "agree", "agreed" or "agreement" require the agreement to be recorded in writing, and signed by both Parties;
 - 1.2.1.4 "shall" means that the Party or person referred to has the obligation under this Agreement to perform the duty referred to;
 - 1.2.1.5 "may" means that the Party or person referred to has the choice of whether to act or not in the matter referred to;
 - 1.2.1.6 "written" or "in writing" means hand written, type written, printed or electronically made and resulting in a permanent un-editable record;
 - 1.2.1.7 any reference to "price", "rates", "costs", "expenses", "damages" and the like shall be a reference to the value of such item net of any applicable taxes unless specified otherwise;
 - 1.2.1.8 a reference to a person or persons shall include natural persons, individuals, firms, bodies corporate, unincorporated associations, partnerships, joint ventures, trusts or other entities or organisations of any kind, including (without limitation) government entities (or political subdivisions or agencies or instrumentalities thereof), and references to any of the same include the others and references to any of the same include their successors and assignees and transferees;
 - 1.2.1.9 the words "include", "including", "such as" and "for example" are to be construed without limitation;
 - 1.2.1.10 where under this Agreement an act is required to be done within a specified period of days after or from a specified date, the period shall begin immediately after that date and if the period ends on a Saturday, Sunday or Public Holiday, then the period shall end on the next business day in the Republic of Greece and the Republic of Bulgaria;
 - 1.2.1.11 where under this Agreement an act is required to be done within a month or a specified period of months after or from a specified date, the period shall begin immediately after that date and if the period ends on a Saturday, Sunday or Public Holiday, then the period shall end on the next business day in the Republic of Greece and the Republic of Bulgaria;
 - 1.2.1.12 a reference to a Clause, Sub-Clause or Appendix is, unless expressly stated to the contrary, a reference to a Clause in this Agreement, a Sub-Clause in this Agreement or an Appendix to this Agreement;



- 1.2.1.13 any reference to this Agreement (or any part thereof) or to any other document shall include any variation, amendment, or supplement to this Agreement (but, in respect of this Agreement (or any part thereof), only as expressly permitted under the terms of this Agreement) or to such other document;
- 1.2.1.14 any reference to any legislation, draft legislation, order, regulation or other similar instrument (including any EU instrument) (whether specifically named or not) shall be construed as a reference to that legislation, draft legislation, order, regulation or other similar instrument as amended, replaced, consolidated or re-enacted and shall include any subordinate legislation as well as orders, notices or directions made or given thereunder and legally binding codes of practice;
- 1.2.1.15 subject to the restrictions imposed by this Agreement on subcontracting, an obligation to do something includes an obligation to procure it to be done; and
- 1.2.1.16 an obligation not to do something includes an obligation not to wilfully allow it to be done.
- 1.2.2 The marginal words and other headings shall not be taken into consideration in the interpretation of this Agreement.
- 1.2.3 The ejusdem generis rule does not apply and the meaning of general words is not to be restricted by any particular examples preceding or following those general words.

1.3 Notices and other Communications

- 1.3.1 Wherever this Agreement provides for the giving or issuing of a Notice, a Variation Notice or other form of communication including without limitation approvals, consents, instructions and decisions, then such Notice, Variation Notice or communication shall be:
 - 1.3.1.1 where it is a Notice or Variation Notice, identified as such with reference to the Clause or Sub-Clause under which it is issued;
 - 1.3.1.2 where it is another form of communication, identified as such with reference to the Clause or Sub-Clause under which it is issued where appropriate;
 - 1.3.1.3 in writing and delivered by hand, sent by pre-paid special or recorded mail or courier or, subject to Sub-Clause 1.3.3, transmitted by email or via the document management system for documentation exchange, using the software described by the Consultant in the Technical Offer; and
 - 1.3.1.4 delivered, sent or transmitted to the address for the recipient's communications:
 - (a) in the case of Notices, Variation Notices or other forms of communication given to the Client:

Client's address 13 Veslets Street
 1000 Sofia
 Bulgaria

Email: office@icgb.eu

Telephone number: +359(2) 9263 862

- (b) in the case of Notices, Variation Notices or other forms of communication given to the Consultant:

Consultant's address Abacus Business Centre
 118 Bulgaria Blvd., fl.4
 1618 Sofia, Bulgaria

Email: office@engineering-bg.com

Telephone number: +359 2 854 96 50

However:

- (i) if the recipient gives Notice of another address, Notices, Variation Notices and other forms of communication shall thereafter be delivered accordingly; and
- (ii) if the recipient has not stated otherwise when requesting an approval or consent, it may be sent to the address from which the request was issued.

1.3.2 Notices, Variation Notices and other forms of communication shall be deemed duly served:

1.3.2.1 if sent via personal delivery, on proof of delivery; or

1.3.2.2 if sent via hand, on proof of delivery; or

1.3.2.3 if sent by pre-paid special or recorded delivery mail or delivery by courier, on proof of delivery; or

1.3.2.4 if sent via e-mail or via the document management system for documentation exchange, using the software described by the Consultant in the Technical Offer, on the day of issue of the relevant delivery confirmation receipt (or other equivalent confirmation of receipt) unless that day is not a business day in the Republic of Bulgaria and the Republic of Greece, in which case it shall be deemed duly served on the next business day in the Republic of Bulgaria and the Republic of Greece thereafter.

- 1.3.3 Electronic communication (whether by e-mail or via the document management system for documentation exchange, using the software described by the Consultant in the Technical Offer) shall not be used in respect of:
- 1.3.3.1 the issue by the Client of a Notice of termination pursuant to Sub-Clause 6.4.1; or
 - 1.3.3.2 the issue by the Consultant of a Notice of termination pursuant to Sub-Clause 6.4.2; or
 - 1.3.3.3 the issue by the Client of a Notice to suspend the Services pursuant to Sub-Clause 6.1.1; or
 - 1.3.3.4 the issue by the Consultant of a Notice to suspend the Services pursuant to Sub-Clause 6.1.2; or
 - 1.3.3.5 the issue by either Party of any Notice or communication in respect of any Dispute.
- 1.3.4 Notices and other form of communications shall not be unreasonably withheld or delayed.

1.4 Law and Language

- 1.4.1 This Agreement and any non-contractual obligations arising out of or in connection with it shall be governed by the laws of England and Wales.
- 1.4.2 If any part of this Agreement is written and/or signed in more than one language then the ruling language shall be English.
- 1.4.3 The language for all communications shall be English (except that the Bulgarian and Greek languages shall be used where identified in Appendix 1 [*Scope of Services*]).

1.5 Changes in Legislation

- 1.5.1 A Change in Law shall be treated as a Variation to the Services under Clause 5.1 [*Variations*] provided always that the Consultant shall:
- 1.5.1.1 use all reasonable endeavours to mitigate any delay or potential delay in the programme for the Project caused by the Change in Law;
 - 1.5.1.2 use all reasonable endeavours to minimise any increase in costs and maximise any reduction in costs in connection with the Change in Law; and
 - 1.5.1.3 demonstrate that the changes associated with the Variation shall be implemented in the most cost-effective manner.
- 1.5.2 Either Party may by a separate Notice to the other require that the provisions of this Agreement be amended to comply with the Change in Law where applicable.

1.6 Assignments and Sub-Contracting

- 1.6.1 The Consultant shall not assign any of its rights under this Agreement to any person without the prior written consent of the Client. The Client (at the Client's sole discretion) may assign all or any of its rights under this Agreement to any person at any time.
- 1.6.2 The Consultant shall not transfer any of its obligations under this Agreement to any person without the prior written consent of the Client. The Client (at the Client's sole discretion) may transfer all or any of its obligations under this Agreement to any person at any time.
- 1.6.3 The Consultant shall not sub-contract performance of all or part of the Services without the written consent of the Client. The consent of the Client shall not be required where the appointment of a sub-consultant for the performance of part of the Services is included in the Technical Offer, if any, as incorporated into this Agreement, or is otherwise anticipated in any of the documents constituting this Agreement, in which case the Consultant shall be required to enter into an appointment with the specified sub-consultant for the performance of the relevant part of the Services prior to the commencement of the performance of such part. The Consultant shall provide the Client with a certified copy of each such appointment forthwith upon it being signed by both parties to it.
- 1.6.4 The Client's consent to any sub-contract arrangement (or the inclusion of any sub-contract arrangement within the Technical Offer, as incorporated into this Agreement, or as otherwise anticipated in any of the documents constituting this Agreement) shall not relieve the Consultant of any of the Consultant's obligations under this Agreement. The Consultant shall remain responsible and liable to the Client for the acts, omissions and defaults of any sub-consultant in relation to this Agreement as if they were acts, omissions and defaults of the Consultant.
- 1.6.5 The Consultant shall not terminate the appointment of a sub-consultant which has been consented to by the Client and/or which has been included in the Technical Offer, as incorporated into this Agreement, (or otherwise anticipated in any of the documents constituting this Agreement) and appoint a replacement sub-consultant, without the prior written consent of the Client.
- 1.6.6 The Client shall make payments direct to any sub-consultant appointed by the Consultant in the circumstances set out in Art. 66 of the PPA, provided that the Services in respect of which payments are made have been accepted by the Client in accordance with this Agreement. The Client shall only make direct payments if (i) the Consultant has received from the sub-consultant a detailed final report on the completed portion of the Services performed by the sub-consultant together with a request for direct payment, (ii) the Consultant has submitted to the Client the subconsultant's report and the request for direct payment within fifteen (15) days of their receipt, together with a written statement that the Consultant considers there to be no disputed or disputable payments. The Client may suspend any direct payment request if such request has been disputed by the Consultant until the cause for such suspension is remedied.

1.7 Intellectual Property

- 1.7.1 All Intellectual Property held in any medium, whether electronic or otherwise, created by the Consultant during the performance of the Services ("**Foreground**

Intellectual Property") shall be vested in the Consultant. The Consultant shall grant to the Client a royalty free worldwide licence to use and copy the Foreground Intellectual Property for any purpose in connection with the Project.

- 1.7.2 All Background Intellectual Property shall remain the property of the original owner. The Consultant hereby grants to the Client, or agrees to procure the grant to the Client of an unrestricted royalty free licence to use and copy the Consultant's Background Intellectual Property to the extent reasonably required to enable the Client to make use of the Services or the Project. The Client hereby grants to the Consultant an unrestricted royalty free licence to use and copy the Client's Background Intellectual Property provided to the Consultant to the extent reasonably required to enable the Consultant to provide the Services.
- 1.7.3 The Consultant shall ensure (except in respect of any of the Client's Background Intellectual Property) that the Foreground Intellectual Property and the Consultant's Background Intellectual Property, to the extent incorporated into the Services, will not infringe any Intellectual Property or other rights of any third party.
- 1.7.4 The Consultant shall not be liable for the use by any person of the Consultant's Background Intellectual Property or the Consultant's Foreground Intellectual Property for any purpose other than the purpose for which it was originally intended.
- 1.7.5 Not used.

1.8 Confidentiality

- 1.8.1 Except with the prior written consent of the other Party, neither Party shall disclose or cause or permit their employees, professional advisers, agents or sub-consultants to disclose to third parties any Confidential Information.
- 1.8.2 Notwithstanding Sub-Clause 1.8.1, the Client may disclose Confidential Information to its shareholders in connection with the Project.
- 1.8.3 The restrictions on use and disclosure set forth in Sub-Clause 1.8.1 shall not apply to any information:
- 1.8.3.1 which at the date of its disclosure is public knowledge or which subsequently becomes public knowledge other than by any act or failure to act on the part of the receiving Party or persons for whom the receiving Party has assumed responsibility under this Agreement;
 - 1.8.3.2 which the receiving Party can establish by written proof was already in its possession at the time of disclosure by the disclosing Party and was not acquired directly or indirectly from the disclosing Party;
 - 1.8.3.3 which at any time after the Commencement Date has been acquired from any third party who did not acquire such information directly or indirectly from the disclosing Party or any of the disclosing Party's employees or professional advisers;
 - 1.8.3.4 which by proof in writing has been independently developed by the receiving Party without the use of Confidential Information;

1.8.3.5 which is required to be disclosed by law or order of a court of competent jurisdiction or government, department, agency or other public authority; or

1.8.3.6 which the disclosing Party necessarily provides to its legal, financial or insurance advisers or the contractor appointed under the Works Contract or the supplier appointed under the Line Pipe Supply Contract.

1.8.4 The obligations set forth in Sub-Clause 1.8.1 shall expire three (3) years after completion of the Services or the expiry or termination of this Agreement (whichever is the earlier).

1.9 Not used

1.10 Anti-Corruption

1.10.1 In the performance of their obligations under this Agreement, the Consultant and the Client, their agents and employees shall comply with all applicable laws, rules, regulations and orders of any applicable jurisdiction, including without limitation those relating to corruption and bribery. The Parties shall also comply with the standards provided in the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

1.10.2 The Consultant hereby represents, warrants and covenants that:

1.10.2.1 it will not participate, directly or indirectly in bribery, extortion, fraud, deception, collusion, cartels, abuse of power, embezzlement, trading in influence, money laundering, use of insider information, the possession of illegally obtained information or any other criminal activity; and

1.10.2.2 it will neither receive nor offer, pay or promise to pay either directly or indirectly, anything of value to a "public official" (as defined below) in connection with any business opportunities which are the subject of this Agreement. Furthermore, the Consultant shall immediately give Notice to the Client with full particulars in the event that the Consultant receives a request from any public official requesting illicit payments.

1.10.3 A "public official" is:

1.10.3.1 any official or employee of any government agency or government-owned or controlled enterprise; or

1.10.3.2 any person performing a public function;

1.10.3.3 any official or employee of a public international organization including without limitation donor or funding agencies or the Client;

1.10.3.4 any candidate for political office; or

1.10.3.5 any political party or an official of a political party.

- 1.10.4 In conjunction with the requirements of this Clause 1.10 the Consultant shall at the Client's request demonstrate that it adheres to a documented code of conduct in respect to the prevention of corruption and bribery. As a minimum the Consultant shall comply with the FIDIC Code of Ethics and the FIDIC Integrity Management System available at www.fidic.org.

1.11 Relationship of Parties

- 1.11.1 Nothing contained in this Agreement shall be construed as creating a partnership, agency or joint venture between the Parties.
- 1.11.2 Where the Consultant consists of a joint venture or consortium then members of such joint venture or consortium shall be jointly and severally liable under this Agreement.
- 1.11.3 If there is a change in Control of the Consultant, the Client shall be informed immediately by the Consultant in writing.

1.12 Amendments

- 1.12.1 This Agreement can only be amended with the written agreement of the Parties. Further, and without prejudice to the foregoing, this Agreement may only be amended where the circumstances set out in Art. 116 of the PPA are satisfied.

1.13 Severability

- 1.13.1 If any term or provision under this Agreement is held to be illegal or unenforceable in whole or in part then such term or provision shall be disregarded without affecting the enforceability of the remainder of this Agreement. Where either Party cannot rely on any term or provision, the Parties will negotiate in good faith for an alternative term or provision with similar contractual effect for both Parties.

1.14 Non Waiver

- 1.14.1 The rights and remedies of each Party under, or in connection with, this Agreement may be waived only by express written notice. Any waiver shall apply only in the instance, and for the purpose for which, it is given.
- 1.14.2 No right or remedy under, or in connection with, this Agreement shall be precluded, waived or impaired by:
- 1.14.2.1 any failure to exercise or delay in exercising it;
 - 1.14.2.2 any single or partial exercise of it;
 - 1.14.2.3 any earlier waiver of it, whether in whole or in part; or
 - 1.14.2.4 any of the above in relation to any other right or remedy (be it of similar or different character).



1.15 Priority of Documents

1.15.1 The documents forming this Agreement are to be taken as mutually explanatory of one another. If there is a conflict between these documents then the documents shall be interpreted and construed in accordance with the following order of precedence:

- 1.15.1.1 Clauses 1 to 10 (inclusive);
- 1.15.1.2 Appendix 1 [*Scope of Services*];
- 1.15.1.3 Appendix 3 [*Remuneration and Payment*];
- 1.15.1.4 Appendix 4 [*Programme*]
- 1.15.1.5 Appendix 5 [*Rules for Adjudication*];
- 1.15.1.6 Appendix 7 [*Consultant's Services Team*];
- 1.15.1.7 Appendix 2 [*Equipment and Facilities*].
- 1.15.1.8 Appendix 8 [*Technical Offer*]; and
- 1.15.1.9 Appendix 9 [*Price Offer*].

1.15.2 If the conflict cannot be so resolved then the Client shall issue an instruction or Variation to the Services under Clause 5.1 [*Variations*] as the case may require, in order to resolve the conflict.

1.16 Not used

1.17 Conflict of Interest

1.17.1 The Consultant hereby represents, warrants and covenants that it does not and will not have during the period of the performance of the Services any interest in any matter where there is or is reasonably likely to be a Conflict of Interest, save to the extent fully and fairly disclosed to and approved by the Client in writing.

1.18 Contracts (Rights of Third Parties) Act 1999

1.18.1 Except as expressly stated in this Agreement, this Agreement shall not and shall not purport to confer on any third party any benefit or right to enforce any term of this Agreement whether by way of the Contracts (Rights of Third Parties) Act 1999 or otherwise.

1.19 Counterparts

1.19.1 This Agreement may be executed in any number of counterparts, and by the Parties as separate counterparts, but will not be effective until each Party has executed at least one counterpart. Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute one and the same Agreement.

1.20 Cumulative Remedies

Handwritten signature/initials in blue ink.

- 1.20.1 The rights and remedies arising under, or in connection with, this Agreement are cumulative and, except where otherwise expressly provided in this Agreement, do not exclude rights and remedies provided by law or otherwise.

1.21 Further Assurance

- 1.21.1 Each Party shall at the reasonable request and cost of the other (save where it is expressly provided that the cost of such act or execution shall be for that Party's account) do any act or execute any document that may be necessary to give full effect to this Agreement.

1.22 Survival

- 1.22.1 All provisions of this Agreement which expressly or by implication come into or continue in force and effect after the expiry or termination of this Agreement, including without limitation Clause 8 [*Liabilities*] and Clause 10 [*Disputes and Arbitration*] shall remain in effect and be enforceable following such expiry or termination, subject to the applicable statute of limitation.

1.23 Performance Guarantee

- 1.23.1 Upon the execution of this Agreement, the Consultant shall, at its discretion, provide to the Client a performance guarantee of any one of the following types:

1.23.1.1 a cash deposit;

1.23.1.2 bank guarantee; or

1.23.1.3 insurance securing performance by covering the liability of the Consultant,

in each case for five per cent (5%) of the total lump sum fee payable to the Consultant, as stated in paragraph 1.2 of Appendix 3 [*Remuneration and Payment*], and whichever form is selected by the Consultant is the "**Performance Guarantee**".

- 1.23.2 If the Performance Guarantee is paid in the form of a cash deposit, the amount shall be transferred (either by the Consultant or by a third party on behalf of the Consultant) to the bank account of the Client.

- 1.23.3 If the Performance Guarantee is provided in the form of a bank guarantee, it shall be provided by an Approved Bank and the Consultant shall provide to the Client an original of the bank guarantee issued in favour of the Client, the form of which shall be subject to the prior approval of the Client and which shall meet the following requirements:

1.23.3.1 to be an unconditional and irrevocable bank guarantee which obliges the issuing bank to pay upon first written demand by the Client, stating a default of the Consultant or any other grounds for enforcing the Performance Guarantee under this Agreement, regardless of the objections of the Consultant or third persons;

1.23.3.2 that it will pay within five (5) days to the Client the sum of the due payment or part thereof as stated by the Client in a written request; and

1.23.3.3 to be valid until sixty (60) days following the issue of the last Acceptance Certificate in respect of the Services completed in relation to Phase 2 and, if required, the bank guarantee validity shall be extended or it shall be replaced with a new one in order to give effect to this requirement,

and any bank charges for issuing and maintaining the bank guarantee, as well as administering a demand by the Client on the guarantee where there are grounds for that, shall be at the expense of the Consultant.

1.23.4 If the Performance Guarantee is provided in the form of insurance, it shall be provided by an Approved Insurer and the Consultant shall provide to the Client the original of the insurance policy issued in favour of the Client (which policy shall be subject to the prior approval of the Client), the Client shall be referred to as a third party beneficiary within it, and it shall meet the following requirements:

1.23.4.1 to secure the performance of the Services by covering the Consultant's liability under this Agreement;

1.23.4.2 to be an unconditional and irrevocable obligation upon the insurer to pay upon first written demand by the Client, stating a default of the Consultant or any other grounds for enforcing the Performance Guarantee under this Agreement, regardless of the objections of the Consultant or third persons;

1.23.4.3 that it will pay within five (5) days to the Client the sum of the due payment or part thereof as stated by the Client in a written request; and

1.23.4.4 to be valid until sixty (60) days following the issue of the last Acceptance Certificate in respect of the Services completed in relation to Phase 2,

and the costs of taking out the insurance contract and maintaining the validity of the insurance over the required period, as well as the insurer's costs of administering an indemnity in favour of the Client where there are grounds for that, shall be at the expense of the Consultant.

1.23.5 If the total of the lump sum payable to the Consultant under this Agreement increases because of a Variation to the Services, the Consultant shall take necessary action to bring the amount of the Performance Guarantee up to the amount of five per cent (5%) of the total revised lump sum fee payable to the Consultant as a consequence of the Variation, by the following measures (which shall be at the discretion of the Consultant):

1.23.5.1 depositing an additional amount into the bank account of the Client, subject to the requirements of Sub-Clause 1.23.2; and/or;

- 1.23.5.2 providing a document amending the original bank guarantee or a new bank guarantee, subject to the requirements of Sub-Clause 1.23.3; and/or
- 1.23.5.3 providing a document amending the original insurance or new insurance, subject to the requirements of Sub-Clause 1.23.4.
- 1.23.6 The Consultant shall provide an amended Performance Guarantee within thirty (30) days following the date of issue of the last Acceptance Certificate in respect of the Services completed in relation to Phase 1, provided (in the case of a cash deposit) that there are no grounds for enforcing it which have arisen prior to the expiry of such period or (where the Performance Guarantee takes the form of a bank guarantee or insurance policy) a claim has not been notified under the Performance Guarantee prior to the expiry of such period. Such amended Performance Guarantee shall be for the amount of five per cent (5%) of the total lump sum fee payable to the Consultant, as stated in paragraph 1.2 of Appendix 3 [*Remuneration and Payment*] in respect of Phase 2.
- 1.23.7 The Client shall release the Performance Guarantee after sixty (60) days following the date of issue of the last Acceptance Certificate in respect of the Services completed in relation to Phase 2, provided (in the case of a cash deposit) that there are no grounds for enforcing it which have arisen prior to the expiry of such period or (where the Performance Guarantee takes the form of a bank guarantee or insurance policy) a claim has not been notified under the Performance Guarantee prior to the expiry of such period.
- 1.23.8 The release of the Performance Guarantee shall be effected as follows:
 - 1.23.8.1 if provided in the form of a cash deposit, by transferring the amount into a bank account specified by the Consultant;
 - 1.23.8.2 if provided in the form of a bank guarantee, by returning its original to the Consultant's Representative or another authorized person; and/or
 - 1.23.8.3 if provided in the form of an insurance policy, by returning the original of the insurance policy/insurance certificate to the Consultant's Representative or another authorized person and sending a written notice to that effect to the insurer.
- 1.23.9 The Client may enforce the Performance Guarantee in the following circumstances:
 - 1.23.9.1 where the Consultant is in breach of its obligations under this Agreement;
 - 1.23.9.2 where the Consultant has been subject to a formal insolvency or analogous event, as described in Sub-Clause 6.4.1.2.
- 1.23.10 Where the Performance Guarantee takes the form of a cash deposit, in each case in which the Client wishes to make a retention from such deposit, the Client shall notify the Consultant of such retention and its grounds. Retention of any amount from the cash deposit, or any valid claim by the Client on a bank guarantee or insurance policy (where the Performance Guarantee takes such form), shall not be

construed as a waiver of the Client's rights to claim greater amounts as damages under this Agreement.

1.23.11 If the Client enforces the Performance Guarantee in whole or in part and this Agreement is still in effect, the Consultant shall within five (5) days replenish the Performance Guarantee by paying the amount enforced by the Client to the account of the Client or provide a document amending the original bank guarantee or a new bank guarantee, or an insurance policy, so as to ensure that while this Agreement is still in effect the amount of the Performance Guarantee is in accordance with Sub-Clause 1.23.1.

1.23.12 Any failure on the part of the Consultant to comply with the requirements of this Clause 1.23 shall be deemed to be a breach of a material term or condition of this Agreement for the purpose of Sub-Clause 6.4.1.1.

1.24 Own Costs

Each Party shall bear its own costs incurred in connection with the negotiation, drafting and execution of this Agreement.

2. THE CLIENT

2.1 Information

2.1.1 In order not to delay the Consultant in the performance of the Services, the Client shall within a reasonable time and with due regard to the Programme, provide to the Consultant, free of cost, all information, and any further information reasonably requested by the Consultant, which may pertain to the Services and which the Client is able to obtain.

2.1.2 The Consultant may at his own risk and expense rely upon and use all of the information provided by the Client or by others on behalf of the Client, but the Client makes no representation or warranty as to the accuracy or completeness of any such information or any representation or statement contained within it. The Client shall have no liability arising out of or in relation to any such information or from any representation or statement.

2.2 Decisions

On all matters properly referred to the Client in writing by the Consultant, the Client shall give its decision, approval, consent, instruction or Variation, as the case may be, in writing within a reasonable time and with regard to the Programme so as not to delay the Services.

2.3 Assistance

2.3.1 In the Country and in respect of the Consultant, its personnel and dependants, as well as sub-consultants, if any, as the case may be, the Client shall use reasonable endeavours at the Consultant's cost to assist in:

2.3.1.1 the provision of documents necessary for entry, residency, working and exit;

2.3.1.2 providing unobstructed access wherever it is required for the Services;

- 2.3.1.3 import, export and customs clearance of personal effects and of goods required for the Services;
- 2.3.1.4 their repatriation in emergencies;
- 2.3.1.5 the provision of the authority necessary for the Consultant to permit the import of foreign currency by the Consultant for the Services and by its personnel for their personal use and to permit the export of money earned in the performance of the Services; and
- 2.3.1.6 providing access to other organisations for collection of information which is to be obtained by the Consultant.

Sub-Clauses 2.3.1.1 and 2.3.1.3 to 2.3.1.5 shall not apply where the Country is a principal place of business of the Consultant.

2.4 Not used

2.5 Supply of Client's Equipment and Facilities

- 2.5.1 The Client shall make the equipment and facilities described in paragraphs 2 and 3 of Appendix 2 [*Equipment and Facilities*] available to the Consultant for the purpose of the Services, with due regard to the Programme and free of cost.
- 2.5.2 The Consultant shall locate its head office facilities for the purposes of provision of the Services in accordance with paragraph 1 of Appendix 2 [*Equipment and Facilities*].

2.6 Not used

2.7 Client's Representative

- 2.7.1 The Client shall notify the Consultant of the extent of powers and authority delegated to the Client's Representative.
- 2.7.2 The Consultant shall execute the Client's Representative's instructions and shall only take instructions from the Client's Representative or from an assistant of the Client's Representative to whom the appropriate authority has been delegated in writing and notified to the Consultant by the Client's Representative.
- 2.7.3 Any approval, check, certificate (including an Acceptance Certificate), consent, examination, inspection, instruction, notice or similar act by the Client's Representative (or from an assistant of the Client's Representative to whom the appropriate authority has been delegated by the Client's Representative) or lack of the same (including absence of disapproval) shall not relieve the Consultant from any responsibility hereunder, including responsibility for errors, omissions, discrepancies and non-compliances.
- 2.7.4 Without prejudice to any other powers granted to it hereunder, the Client's Representative:
 - 2.7.4.1 unless otherwise notified by the Client, shall be the principal point of contact between the Client and the Consultant in all matters connected with the Project;

2.7.4.2 shall be entitled to issue instructions to the Consultant at any time in connection with the performance of the Services; and

2.7.4.3 shall be entitled to issue or reject any authorizations, consents or approvals to be granted to the Consultant hereunder and shall be entitled to make requests hereunder on behalf of the Client.

2.8 Not used

3. THE CONSULTANT

3.1 Scope of Services

3.1.1 The Consultant shall perform the Services as stated in Appendix 1 [*Scope of Services*].

3.1.2 The Consultant shall perform the Services in accordance with the Programme as may be amended from time to time in accordance with this Agreement. The Consultant understands and agrees that time is of the essence in the performance of the Services.

3.1.3 The Consultant declares that as at the Effective Date there are no circumstances or matters that may give rise to a conflict of interest in the performance of its obligations under this Agreement. The Consultant shall inform the Client immediately if it becomes aware of any such circumstances or matters. If a conflict of interest arises then the Parties shall agree, in good faith, on measures to manage such conflict.

3.2 Not used

3.3 Standard of Care

3.3.1 The Consultant warrants and undertakes to the Client that, notwithstanding any term or condition to the contrary in this Agreement or any related document or any legal requirement of the Country or any other relevant jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), in the performance of the Services it has exercised and shall continue to exercise the skill, care and diligence reasonably to be expected from a consultant experienced in the provision of such services for projects of similar size, nature and complexity to the Project.

3.3.2 To the extent achievable using the standard of care in Sub-Clause 3.3.1, and without extending the obligation of the Consultant beyond that required under Sub-Clause 3.3.1, the Consultant shall perform the Services with a view to satisfying any function and purpose that may be described in Appendix 1 [*Scope of Services*].

3.3.3 The Consultant shall comply with all regulations, statutes, ordinances and other forms of standards, codes of practice and legislation applicable to the Services, the Project and/or this Agreement.

3.3.4 The Consultant warrants and undertakes that:

- 3.3.4.1 it has carried out and will carry out the Services in accordance with recognised good practice and the Technical Offer, the Scope of Services and this Agreement;
- 3.3.4.2 it will not recommend to the Client the use, or require or permit the use, of any Prohibited Materials for incorporation in any construction works;
- 3.3.4.3 it has carried out or will carry out the Services taking into account the Client's requirement to ensure the efficiency, value for money and safety of any construction work and its commercial operation after completion with the minimum interruption for maintenance or repair;
- 3.3.4.4 it has and will have all such resources and capabilities as are required to perform its obligations under this Agreement in every respect;
- 3.3.4.5 in the carrying out of the Services, no infringement of any Intellectual Property right of any kind in any country has resulted or will result nor will any such infringement arise from the operation or ownership of such construction work by the Client;
- 3.3.4.6 it shall proceed with the Services regularly and diligently and perform the same as may be necessary having regard to the Client's programme requirements for the Project and in order to prevent any delay or disruption to the progress of the Project (the Consultant being obliged to bring to the attention of the Client any delay or disruption to the progress of the Project as soon as it becomes aware of it);
- 3.3.4.7 it shall proceed with the Services with the objective of keeping the overall costs of the Project within the cost plan for the Project or any other budgetary constraints agreed with the Client (the Consultant being obliged to bring to the attention of the Client any increase in the cost of the Project as soon as it becomes aware of it);
- 3.3.4.8 it will perform its obligations under this Agreement so that the Client will not be in breach of any contract entered into by the Client with any third party provided that the terms of such contract have been notified by the Client to the Consultant; and
- 3.3.4.9 it will carry out the Services in accordance with the mandatory requirements of Bulgarian and Greek legislation applicable to the Services, the Project and/or this Agreement.

3.4 Client's Property

Anything supplied by or paid for by the Client for the use of the Consultant shall be the property of the Client and, where practicable, shall be so marked. The Consultant shall use reasonable endeavours to safeguard and protect such property of the Client until completion of the Services and/or return of such property to the Client.

3.5 Consultant's Personnel

- 3.5.1 The key personnel who are proposed by the Consultant to work in the Country shall be subject to acceptance by the Client with regard to their qualifications and experience. Such acceptance by the Client shall not be unreasonably withheld. Personnel, if any, included in the Technical Offer included as part of this Agreement shall be deemed to be accepted by the Client on entering into this Agreement.
- 3.5.2 The Consultant shall provide its own competent staff (to be professionals in their respective fields or other qualified persons, as required by the public procurement documentation in respect of this Agreement) as may be required to allow the proper performance of the Services. As a minimum, the Consultant's team in charge of the performance of the Services shall be composed by the individuals identified in Appendix 7 [*Consultant's Services Team*].
- 3.5.3 The Consultant, the Consultant's Representative and the personnel of the Consultant working on the Project shall be available to attend discussions and presentation meetings related to the Services with the Client, the Client's Representative and third parties involved in the Project at all reasonable times as requested by the Client.

3.6 Consultant's Representative

- 3.6.1 The Consultant shall notify the Client of the extent of powers and authority delegated to the Consultant's Representative. The Consultant's Representative shall be a director/partner of the Consultant and its services shall be available for as long as necessary to ensure proper performance of the Services. The Consultant may only replace its representative for an individual of equal or higher rank and qualifications and with the prior written consent of the Client, such consent not to be unreasonably withheld or delayed. Such replacement shall take place as soon as reasonably possible.
- 3.6.2 If required by the Client, the Consultant shall designate an individual to liaise with the Client's Representative in the Country.

3.7 Changes in Consultant's Personnel

- 3.7.1 The Consultant may only replace an individual identified in Appendix 7 [*Consultant's Services Team*] (or any authorised substitute thereof) in case of duly justified need, for an individual of equal or higher rank and qualifications and with the prior written consent of the Client, such consent not to be unreasonably withheld or delayed. Such replacement shall take place as soon as reasonably possible.
- 3.7.2 For the purposes of Sub-Clause 3.7.3.1, it is hereby agreed that misconduct or inability to perform satisfactorily is accepted as a reason for the replacement by the Consultant of personnel at the request of the Client.
- 3.7.3 The cost of such replacement shall be borne by the Consultant except where the replacement is requested by the Client, and in such case:
- 3.7.3.1 the request by the Client shall be made by Notice stating the reasons for it; such reasons shall relate to the provision of the Services and shall be reasonable and not vexatious; and

3.7.3.2 the Client shall bear the cost of replacement unless misconduct or inability to perform satisfactorily in accordance with Sub-Clause 3.3.1 [*Standard of Care*] is the reason for the replacement of the relevant personnel by the Consultant.

3.8 Safety and Security of Consultant's Personnel

3.8.1 If in the reasonable opinion of the Consultant the health, safety or security of its personnel whilst in the Country is compromised by an Exceptional Event then the Consultant shall be entitled to suspend all or part of the Services in accordance with Sub-Clause 6.1.2.2 [*Suspension of Services*] and remove such personnel from the Country until such time as the Exceptional Event has ceased.

3.9 Construction Administration

3.9.1 The Consultant shall perform the role of the engineer, "Owner's Engineer", Employer's Representative, project manager or similar as laid down in the Project Contracts. The Consultant shall provide such construction administration services in accordance with Appendix 1 [*Scope of Services*].

3.9.2 When acting as the engineer, Employer's Representative, project manager or similar, the Consultant shall have the authority to act on behalf of the Client to the extent provided in the relevant Project Contract. If the authority of the Consultant under the Project Contract is subject to prior approval of the Client, then the Client warrants that such restriction on the authority of the Consultant shall be stated in the Works Contract, Project Contracts or shall be made known in writing to the relevant contractor or supplier under the relevant Project Contract. If the Consultant is authorised under a Project Contract to certify, determine or exercise discretion in the discharge of its duties then the Consultant shall act fairly as go between the Client and the relevant contractor or supplier, exercising independent professional judgement and using the skill, care and diligence specified in Sub-Clause 3.3.1.

3.9.3 The Consultant shall not be liable to the Client for the performance of the Project Contracts by the relevant contractor or supplier unless there is negligence, act, omission, bad faith or breach of this Agreement or the Project Contracts by the Consultant, its personnel or its sub-contractors. In the discharge of its duties under the Project Contracts, the Consultant shall only be liable to the Client if there is negligence, act, omission, bad faith or breach of this Agreement or the Project Contracts by the Consultant, its personnel or its sub-contractors.

3.9.4 The Consultant shall not be liable to the Client or the Client's counterparties under a Project Contract for the means, techniques, methods or sequencing of any aspect of the Project Contracts for the safety or adequacy of any of the contractor's operations unless there is negligence, act, omission, bad faith or breach of this Agreement or the Project Contracts by the Consultant, its personnel or its sub-contractors.

3.9.5 If an ambiguity or discrepancy is found between the Consultant's obligations under this Agreement and the Consultant's duties under the Project Contracts, the Consultant shall give Notice to the Client indicating the effect of such ambiguity or discrepancy. The Client shall rectify such ambiguity or discrepancy by instruction as soon as reasonably practicable and where necessary shall issue a Variation to the Services in accordance with Clause 5.1 [*Variations*].

- 3.10** Acceptance in principle of the completed Services within each Phase shall be documented by an Acceptance Certificate to be signed by the Client's Representative and the Consultant's Representative in two originals (one for each of the Parties) provided always that the issue of or failure to issue any such Acceptance Certificate shall not, pursuant to Sub-Clause 2.7.3, relieve the Consultant from any responsibility hereunder, including responsibility for errors, omissions, discrepancies and non-compliances.
- 3.11** The Client is entitled:
- 3.11.1 to accept the completed Services if they have been carried out by the Consultant in accordance with this Agreement to the satisfaction of the Client; or
 - 3.11.2 to ask for any of the Services to be carried out again if they have not been carried out in accordance with this Agreement within a period fixed by it, in which case such Services shall be carried out within the time as specified by the Client entirely at the cost and risk of the Consultant, and in case of any deficiencies in the Services, the Client may suspend acceptance of the Services until any such deficiencies are remedied within a reasonable time frame at the cost and risk of the Consultant; or
 - 3.11.3 to carry out any of the Services if they have not been carried out in accordance with this Agreement, and the Consultant shall pay to the Client any costs incurred by the Client as a consequence of it carrying out any of the Services; or
 - 3.11.4 to refuse acceptance in case of deficiencies in the Services, or if the deficiencies are of such a nature that they cannot be remedied within the time limit for their completion.
- 3.12** While implementing the Services and performing its other obligations under this Agreement, the Consultant and its sub-consultants shall observe all applicable laws, regulations, standards and other requirements related to the subject matter of this Agreement and in particular all applicable rules and requirements relating to the construction, environmental, social and labour law, applicable collective agreements and/or provisions of the international environmental, social and labour law in accordance with Appendix 10 attached to Art. 115 of the PPA. The applicability of English law as the governing law of this Agreement shall not derogate from the mandatory requirements of Bulgarian and Greek law that are applicable to the performance of the Services, including any requirements in respect of construction and commissioning, and environmental, social, immigration and labour law.
- 3.13** The Consultant and the Client acknowledge that the Client is relying upon the Consultant performing the Services and its obligations under this Agreement.
- 3.14** This Agreement constitutes the entire agreement and understanding between the Parties in respect of its subject matter and supersedes any previous agreement, warranty, statement, representation, understanding, or undertaking (in each case whether written or oral) given or made before the Effective Date by, or on behalf of, the Parties and relating to its subject matter (notwithstanding the terms of any such former agreement or arrangement expressed to survive termination).
- 3.15** Each Party confirms that it has not relied upon, and (subject to Sub-Clause 3.17) shall have no remedy in respect of, any agreement, warranty, statement, representation, understanding or undertaking made by any party (whether or not a party to this Agreement) unless that warranty, statement, representation, understanding or undertaking is expressly set out in this Agreement.



3.16 Subject to Sub-Clause 3.17, neither Party shall be entitled to the remedies of rescission or damages for misrepresentation arising out of, or in connection with, any agreement, warranty, statement, representation, understanding or undertaking whether or not it is set out in this Agreement.

3.17 Nothing in this Agreement shall restrict or exclude any liability for (or remedy in respect of) fraud or fraudulent misrepresentation.

4. COMMENCEMENT AND COMPLETION

4.1 Agreement Effective and duration

4.1.1 Except for the provisions of Sub-Clause 1.1 [*Definitions*], Sub-Clause 1.2 [*Interpretation*], Sub-Clause 1.3 [*Notices and other Communications*], Sub-Clause 1.4 [*Law and Language*], Sub-Clauses 1.6.1 and 1.6.2 [*Assignments and Sub-Contracting*], Sub-Clause 1.8 [*Confidentiality*], Sub-Clause 1.11 [*Relationship of Parties*], Sub-Clause 1.12 [*Amendments*], Clause 1.13 [*Severability*], Sub-Clause 1.17 [*Conflict of interest*], Sub-Clause 1.19 [*Counterparts*], Sub-Clause 1.23 [*Performance Guarantee*], Sub-Clause 1.24 [*Own Costs*], Sub-Clause 4.1 [*Agreement Effective*], Sub-Clause 4.2 [*Commencement and Completion of Services*] and Clause 9 [*Insurance*], the obligations of the Parties under this Agreement in respect of each Phase shall be conditional upon the occurrence of the relevant Commencement Date.

4.1.2 Without prejudice to Sub-Clause 8.2 below, the term of this Agreement shall commence on the Effective Date and shall continue until the last to occur of:

4.1.2.1. the date of issue of a use permit pursuant to Art. 177 of the Spatial Development Act of the Republic of Bulgaria, in respect of the Bulgarian section of the Works (as such term is defined in the Works Contract);

4.1.2.2. the date of issue of an operation permit pursuant to the Greek technical regulation "Natural gas pipelines with maximum operation pressure above 16 bar", in respect of the Greek section of the Works (as such term is defined in the Works Contract);

4.1.2.3. the date of issue of the Performance Certificate (as such term is defined in, and pursuant to, the Works Contract); and

4.1.2.4. the date of completion by the Consultant of all of its Services as described in the Scope of Services,

provided that such period shall not exceed the term provided in Art. 113, para 1 of the PPA commencing on the Effective Date.

4.2 Commencement and Completion of Services

4.2.1 The Consultant shall commence the performance of the Services in relation to a Phase as soon as is reasonably practicable after the Commencement Date for that Phase. The Consultant shall complete the Services for each Phase in accordance with the Programme.

4.2.2 The Client may by notice in writing to the Consultant waive the pre required to be delivered by the Consultant.

- 4.2.3 The Consultant shall use its best endeavours to satisfy or procure the satisfaction of the Condition Precedent as soon as reasonably practicable on or after the Effective Date.
- 4.2.4 On the date that the Condition Precedent (except where this has been expressly waived by the Client in writing) has, in the opinion of the Client (acting reasonably), been satisfied, the Client shall confirm the same in writing to the Consultant.
- 4.2.5 In the event that the Commencement Date for Phase 1 has not occurred by the date falling one (1) month after the Effective Date (or such later date as may be agreed in writing between the Parties) the Client may terminate this Agreement with immediate effect, and if termination occurs, all provisions of this Agreement other than those expressed in Sub-Clause 1.1 [*Definitions*], Sub-Clause 1.2 [*Interpretation*], Sub-Clause 1.4 [*Law and Language*], Sub-Clause 1.8 [*Confidentiality*] and Sub-Clause 3.14 shall cease to have effect and such termination shall be without prejudice to any accrued rights or obligations as at that date.
- 4.2.6 The Client may serve a Notice to Proceed in respect of Phase 2 at any time in the period from the Commencement Date for Phase 1 and the date falling eighteen (18) months after such Commencement Date (or such later date as may be agreed in writing between the Parties).
- 4.2.7 If the Client does not serve a Notice to Proceed in respect of Phase 2 as described in Sub-Clause 4.2.6, the Client may:
- 4.2.7.1 terminate this Agreement with immediate effect; or
 - 4.2.7.2 suspend the Services under Sub-Clause 6.1.1 [*Suspension of Services*]; or
 - 4.2.7.3 issue a Variation to the Services in accordance with Clause 5.1 [*Variations*].

4.3 Programme

- 4.3.1 Within fourteen (14) days of the Commencement Date for Phase 1 the Consultant shall submit its programme which shall include as a minimum:
- 4.3.1.1 the order and timing in which the Consultant intends to carry out the Services in order to complete the Services for each Phase in accordance with the key dates and/or timescales stipulated in Appendix 4 [*Programme*] or elsewhere in this Agreement;
 - 4.3.1.2 any key dates and/or timescales stipulated in Appendix 4 [*Programme*] or elsewhere in this Agreement for the delivery of any part of the Services to the Client;
 - 4.3.1.3 the key dates when decisions, consents, approvals or information from the Client or third parties is required to be given to the Consultant (the Consultant having discussed such proposed key dates with the Client in advance of submitting the Programme); and

4.3.1.4 any other requirements stated in Appendix 4 [*Programme*].

4.3.2 Within fourteen (14) days of receiving the programme, the Client shall give Notice to the Consultant that the Client either approves or rejects the programme. If the programme is rejected by the Client, the Consultant shall amend and resubmit the programme as soon as possible for the Client to approve, and this process shall continue until such time as the programme is approved by the Client.

4.3.3 The Consultant shall keep the Programme under review and shall amend the same (i) as and when necessary to comply with this Agreement and (ii) as and when directed by the Client. The Consultant acknowledges that the Client may amend any key dates and/or timescales stipulated in Appendix 4 [*Programme*] or elsewhere in this Agreement. Any amendment to the Programme shall only be effective once approved by the Client.

4.3.4 The Parties shall promptly give Notice to each other of any specific, actual or probable future events or circumstances which may adversely affect or delay the Services.

4.4 Not used

4.5 Rate of Progress of Services

4.5.1 If, for any reason, the rate of progress of the Services is, in the reasonable opinion of the Client, insufficient to ensure completion of the Services in accordance with the Programme, then the Client may give Notice to that effect to the Consultant. Upon receipt of such Notice the Consultant shall revise the Programme and shall issue a Notice to the Client describing the measures the Consultant intends to put in place in order to complete the Services in accordance with the Programme.

4.5.2 Unless the Client advises otherwise, the Consultant shall adopt the measures proposed, which may require increases in the hours worked by its personnel and/or the numbers of its personnel, at the risk and cost of the Consultant. If the Client is not satisfied (acting reasonably) that the measures proposed by the Consultant will allow it to complete the Services in accordance with the Programme, the Client may adopt its own measures to correct the deficiency in the rate of progress of the Services. The Consultant shall pay to the Client any costs incurred by it as a consequence of it adopting such measures.

4.6 Exceptional Event

4.6.1 If a Party is prevented from performing any of its obligations under this Agreement by, or due to, an Exceptional Event then it shall give a Notice to the other Party providing a description of the Exceptional Event together with an assessment of its effects on the Party's ability to comply with its obligations under this Agreement. The Notice shall be given within fourteen (14) days from when the Party becomes aware, or should have become aware, of the event or circumstance constituting an Exceptional Event. The Party having given Notice shall be excused from performance of such obligations for so long as the effects of the Exceptional Event prevent such performance.

4.6.2 Where an Exceptional Event gives rise to an unavoidable change in the scope of Services then the Client shall issue a Variation to the Services in accordance with Clause 5.1 [*Variations*].

4.6.3 The obligations of either Party to make payments to the other Party under this Agreement shall not be excused by an Exceptional Event provided always that the Consultant shall not be entitled to be paid by the Client for any Services which have been performed by the Consultant and affected by an Exceptional Event and in relation to which as a consequence the Client has derived no benefit from them.

5. VARIATIONS TO SERVICES

5.1 Variations

5.1.1 A Variation to the Services may be initiated by the Client by issue of a Variation Notice at any time prior to completion of the Services provided always that any Variation shall not contravene Art. 116 of the PPA. The Client may request the Consultant to submit a proposal in respect of a proposed Variation. If the proposal is accepted by the Client then the Variation shall be confirmed by the Client by issue of a Variation Notice. Any such Variation shall not substantially change the extent or nature of the Services in accordance with Art. 116 para 1 item 5 of the PPA.

5.1.2 A Variation to the Services may be issued by the Client in respect of any:

5.1.2.1 amendment to Appendix 1 [*Scope of Services*] in terms of increase or reduction;

5.1.2.2 omission of part of the Services;

5.1.2.3 changes in the specified sequence or timing of the performance of the Services;

5.1.2.4 changes in the method of implementation of the Services;

5.1.2.5 provision of this Agreement requiring the issue of a Variation; or

5.1.2.6 proposal submitted by the Consultant (at the Client's request) and accepted in writing by the Client.

5.1.3 The Consultant shall give Notice to the Client as soon as reasonably practicable where the Consultant considers that any instruction or direction from the Client or any other circumstance constitutes a Variation to the Services. The Consultant shall include in the Notice details of how the Consultant considers that the instruction or direction constitutes a Variation, and also details of the estimated impact upon the Programme and cost of the Services for such matters. The Consultant shall provide full supporting evidence with the Notice. Within fourteen (14) days of receipt of the Notice the Client shall either issue a Variation Notice, or cancel the instruction or direction, or state by issue of a further Notice why the Client considers the instruction, direction or circumstance does not constitute a Variation to the Services, and where the Client fails to respond to the Consultant with either a Variation Notice or a further Notice within such period, he shall be deemed to have notified the Consultant that the instruction, direction

or circumstance does not constitute a Variation to the Services. In such case the Consultant shall comply with and be bound by such further Notice unless the Consultant refers the matter as a Dispute under Clause 10 [*Disputes and Arbitration*] within seven (7) days of receipt of such further Notice or (where the Client fails to respond to the Consultant's initial Notice) upon the expiry of the fourteen (14) day period referred to above.

5.1.4 The Consultant shall be bound by each Variation. The Consultant shall not otherwise make any changes to the Services.

5.2 Agreement of Variation Value and Impact

5.2.1 The Client and the Consultant shall agree the value of any Variation, or its method of calculation, including its impact (if any) upon other parts of the Services and the Programme.

5.2.2 The value of any Variation shall be a lump sum which is consistent with, and determined by reference to, the prices in Appendix 3 [*Remuneration and Payment*] and Appendix 9 [*Price Offer*].

5.2.3 The value of the Variation and its impact on the Programme shall be agreed and confirmed in writing by the Client to the Consultant. Pursuant to such agreement the Client shall issue an instruction to the Consultant to commence work on the Variation.

5.2.4 Where agreement under Sub-Clause 5.2.3 is not reached within fourteen (14) days of receipt by the Consultant of the Variation Notice or it is not practicable to establish and agree between the Parties all the effects of the Variation prior to the Consultant commencing work on the Variation then the Client may by Notice instruct the Consultant to commence work on the Variation and the Consultant shall comply with such instruction. The Consultant shall be compensated on a time spent basis at the rates stated in Appendix 3 [*Remuneration and Payment*] until such time as agreement is reached on all the effects of the Variation.

5.2.5 The value of any Variation once agreed and confirmed in writing by the Client to the Consultant shall represent the Consultant's sole entitlement to payment in respect of the Services to which the Variation relates.

6. SUSPENSION OF SERVICES AND TERMINATION OF AGREEMENT

6.1 Suspension of Services

6.1.1 The Client may suspend all or part of the Services at its sole discretion and for any reason by giving ten (10) days' Notice to the Consultant.

6.1.2 The Consultant may suspend all or part of the Services in the following circumstances:

6.1.2.1 when the Consultant has not received payment of an invoice or a part of an invoice, as the case may be, by the date for payment of such invoice and the Client has not issued a valid Counter-Notice in accordance with paragraph 6 of Appendix 3 [*Remuneration and Payment*] stating the reasons for non-payment of the invoice or part

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thereof, subject to the Consultant giving seven (7) days' Notice to the Client; or

6.1.2.2 where an Exceptional Event arises which prevents the Consultant from performing any of its obligations under this Agreement, including those contemplated under Clause 3.8 [*Safety and Security of Consultant's Personnel*]. Notice shall be given to the Client as soon as reasonably practicable. The Consultant shall use reasonable endeavours to avoid or minimise such suspension of all or part of the Services.

6.1.2.3 Not used.

6.2 Resumption of Suspended Services

6.2.1 When the Services have been suspended under Sub-Clause 6.1.1 [*Suspension of Services*] the Consultant shall resume the Services or part thereof, as the case may be, within ten (10) days of receipt of Notice from the Client instructing the Consultant to resume the Services or part thereof.

6.2.2 Where the Services have been suspended under Sub-Clause 6.1.2 [*Suspension of Services*] the Consultant shall resume the Services or part thereof, as the case may be, as soon as reasonably practicable after the matters giving rise to the suspension have ceased.

6.3 Effects of Suspension of the Services

6.3.1 The Consultant shall be paid for Services performed in accordance with this Agreement up to the date of suspension of the Services or part thereof, as the case may be.

6.3.2 During the period of suspension the Consultant shall not perform the Services or part thereof, as the case may be, but shall ensure, so far as is reasonably practicable, the security, maintenance and custody of the Services so as to prevent spoilage or loss.

6.3.3 If during the suspension and resumption of Services or part thereof the Consultant incurs Exceptional Costs, then:

6.3.3.1 the agreed remuneration shall be adjusted in accordance with Sub-Clause 7.1.2 [*Payment to the Consultant*]; and

6.3.3.2 Not used

6.3.3.3 as soon as reasonably practicable the Consultant shall inform the Client by issue of a Notice of the occurrence of these Exceptional Costs.

6.3.4 The Consultant shall take reasonable measures to mitigate the effects of the suspension of the Services or part thereof.

6.4 Termination of Agreement

6.4.1 Termination by the Client

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- 6.4.1.1 If the Consultant is in breach of a material term or condition of this Agreement, the Client may give Notice to the Consultant outlining the breach and the remedy required under this Agreement. If the Consultant has not proceeded to remedy the breach within twenty eight (28) days after the issue of the Notice then the Client may terminate this Agreement upon giving fourteen (14) days' Notice to the Consultant.
- 6.4.1.2 Notwithstanding the notice periods in Sub-Clause 6.4.1.1, if the Consultant becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events, the Client may in so far as the applicable laws permit terminate this Agreement with immediate effect upon service of an appropriate Notice.
- 6.4.1.3 Notwithstanding the notice periods in Sub-Clause 6.4.1.1, if the Consultant is in breach of Clause 1.10 [*Anti-Corruption*] or Clause 1.17 [*Conflict of Interest*], or there has been a change in Control of the Consultant, the Client may terminate this Agreement with immediate effect upon service of an appropriate Notice.
- 6.4.1.4 Notwithstanding the notice periods in Sub-Clause 6.4.1.1, where:
- (a) a substantial change of the procurement is needed, which does not allow this Agreement to be amended under Art. 116 para 1 of the PPA;
 - (b) one of the statutory grounds for mandatory exclusion of the Consultant from the Public Procurement (pursuant to Art. 54, para 1, item 1 of the PPA) applied in respect of the Consultant such that they should have been excluded from the Public Procurement; or
 - (c) this Agreement should not have been awarded to the Consultant because of an infringement found by EU Court of Justice in a procedure under Article 258 of the Treaty on the Functioning of the European Union,
- the Client may terminate this Agreement with immediate effect upon service of an appropriate Notice.
- 6.4.1.5 Notwithstanding the notice periods in Sub-Clause 6.4.1.1,
- (a) if the Consultant assigns or transfers this Agreement (or any right or obligations herein) without the express written consent of the Client; or
 - (b) the Consultant:
 - (i) knowingly fails to maintain any insurance coverages required of it pursuant to Clause 9; or

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- (ii) otherwise fails to maintain and, within twenty (20) days of its receipt of notice from the Client with respect thereto, fails to correct its failure to maintain any such required insurance coverages; or
- (c) the Performance Guarantee is not fully maintained, effective or increased in accordance with the terms of this Agreement; or
- (d) at any time when the Performance Guarantee in the form of a bank guarantee is required by this Agreement to be in effect, the issuer thereof no longer qualifies as an Approved Bank due to a downgrading of its credit rating and within five (5) days thereafter the Consultant has not provided a replacement Performance Guarantee, to the Client in a form which satisfies the requirements of Sub-Clause 1.23 [*Performance Guarantee*]; or
- (e) at any time when the Performance Guarantee in the form of insurance is required by this Agreement to be in effect, the issuer thereof no longer qualifies as an Approved Insurer due to a downgrading of its credit rating and within five (5) days thereafter the Consultant has not provided a replacement Performance Guarantee to the Client in a form which satisfies the requirements of Sub-Clause 1.23 [*Performance Guarantee*]; and/or
- (f) at any time when the professional indemnity insurance is required by this Agreement to be in effect, the issuer thereof no longer qualifies as an Approved Insurer due to a downgrading of its credit rating and within five (5) days thereafter the Consultant has not provided evidence of replacement professional indemnity insurance to the Client from an Approved Insurer.

the Client may terminate this Agreement with immediate effect upon service of an appropriate Notice.

6.4.1.6 At its sole discretion the Client may terminate this Agreement upon giving the Consultant twenty-eight (28) days' Notice.

6.4.1.7 Without prejudice to Clause 6.1.1 [*Suspension of Services*], where an Exceptional Event has led to a suspension of the Services for more than twelve (12) months the Client may terminate this Agreement upon giving fourteen (14) days' Notice to the Consultant.

Persistent Breach

6.4.1.8 If a breach by the Consultant of any of its obligations under this Agreement has occurred more than twice then the Client may serve a notice ("**Persistent Breach Notice**") on the Consultant:

- (a) specifying that it is a Persistent Breach Notice;

- (b) giving reasonable details of the breach; and
- (c) stating that such breach is a breach which, if it recurs frequently or continues, may result in a termination of this Agreement.

6.4.1.9 If, following service of such a Persistent Breach Notice, the breach specified has continued or occurred once again after the date falling thirty (30) days after the date of service of the Persistent Breach Notice and before the date falling three hundred and sixty five (365) days after the date of service of such notice, then the Client may serve another notice ("**Final Persistent Breach Notice**") on the Consultant:

- (a) specifying that it is a Final Persistent Breach Notice;
- (b) stating that the breach specified has been the subject of a prior Persistent Breach Notice within the period of three hundred and sixty five (365) days prior to the date of service of the Final Persistent Breach Notice; and
- (c) stating that if such failure is not remedied within seven (7) days or is remedied and occurs once or more within the one hundred and eighty (180) day period after the date of service of the Final Persistent Breach Notice, this Agreement may be terminated with immediate effect.

6.4.2 Termination by the Consultant

6.4.2.1 If the Services have been suspended under Sub-Clause 6.1.1 [*Suspension of Services*] for more than twelve (12) months the Consultant may terminate this Agreement upon giving fourteen (14) days' Notice to the Client.

6.4.2.2 If the Services have been suspended under Sub-Clause 6.1.2.1 [*Suspension of Services*] for more than forty two (42) days the Consultant may terminate this Agreement upon giving fourteen (14) days' Notice to the Client.

6.4.2.3 If the Client becomes bankrupt or insolvent, goes into liquidation, has a receiving or administration order made against it, compounds with its creditors, or carries on business under a receiver, trustee or manager for the benefit of its creditors, or if any act is done or event occurs which (under applicable laws) has a similar effect to any of these acts or events, the Consultant may in so far as the applicable laws permit terminate this Agreement with immediate effect upon service of an appropriate Notice.

6.4.2.4 If the Client is in breach of Clause 1.10 [*Anti-Corruption*] the Consultant may terminate this Agreement with immediate effect upon service of an appropriate Notice.

6.4.2.5 If the Services have been suspended under Sub-Clause 6.1.2.2 [*Suspension of Services*] for more than twelve (12) months the

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Consultant may terminate this Agreement upon giving fourteen (14) days' Notice to the Client.

6.5 Effects of Termination

6.5.1 Subject to Sub-Clause 4.6.3, the Consultant shall be paid for Services performed in accordance with this Agreement up to the date of termination of this Agreement.

6.5.2 If this Agreement is terminated in accordance with Sub-Clause 6.4.1 [*Termination by the Client*] (other than Sub-Clauses 6.4.1.4(a), 6.4.1.4(c), 6.4.1.6 or 6.4.1.7) the Client shall, without prejudice to any other rights the Client may have under this Agreement, be entitled to:

6.5.2.1 take over from the Consultant all documents, information, calculations and other deliverables, whether in electronic format or otherwise, pertaining to the Services performed up to the date of termination, necessary to enable the Client to complete the Services either by itself or with the assistance of another consultant (all documents in electronic format shall be editable);

6.5.2.2 claim compensation for reasonable costs directly incurred as a consequence of the termination, including but not limited to additional costs incurred in arranging for the Services to be completed by another consultant; and/or

6.5.2.3 withhold payments due to the Consultant until all the costs incurred by the Client under Sub-Clause 6.5.2.2 above have been established and all documents, information, calculations and other deliverables necessary to enable the Client to complete the Services have been received. The Client shall act expeditiously and without delay in establishing its own costs under Sub-clause 6.5.2.2.

The Client shall take all reasonable steps to mitigate such costs.

6.5.3 If this Agreement is terminated in accordance with Sub-Clauses 6.4.1.4(a), 6.4.1.4(c), 6.4.1.6, 6.4.1.7 or 6.4.2, the Client shall, without prejudice to any other rights the Client may have under this Agreement, be entitled to take over from the Consultant all documents, information, calculations and other deliverables, whether in electronic format or otherwise, pertaining to the Services performed up to the date of termination, necessary to enable the Client to complete the Services either by itself or with the assistance of another consultant (all documents in electronic format shall be editable).

6.5.4 The Consultant's entitlement to payment in the event of suspension or termination shall be limited to those sums expressly payable by the Client under this Agreement. In particular, the Client shall not be liable for any direct, indirect or consequential losses, loss of profit, loss of contracts, loss of goodwill, loss of opportunity or other costs, losses and/or expenses incurred by the Consultant.

6.6 Rights and Liabilities of the Parties

6.6.1 Termination of this Agreement shall not prejudice or affect the accrued rights or claims and liabilities of the Parties.

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7. PAYMENT

7.1 Payment to the Consultant

7.1.1 The Client shall pay the Consultant a lump sum fee for the Services in accordance with the details stated in Appendix 3 [*Remuneration and Payment*]. The lump sum fee is deemed to be inclusive of all costs, disbursements, expenses and overheads incurred by the Consultant in connection with the provision of the Services (including, without prejudice to the generality of the foregoing, personnel costs, travel expenses and accommodation, on-site visits and allocation of staff and translation costs).

7.1.2 If, during the suspension and resumption of Services or part thereof, the Consultant incurs Exceptional Costs, the Client shall pay the Consultant in respect of Exceptional Costs:

7.1.2.1 for the extra time spent by the Consultant's personnel in the performance of the Services at the rates and prices stated in Appendix 3 [*Remuneration and Payment*]. Where the rates and prices are not applicable then new rates and prices shall be agreed by the Parties. If agreement is not reached within fourteen (14) days of the issue of the relevant Notice then reasonable rates and prices shall be applied; and

7.1.2.2 the cost of all other expenses reasonably and demonstrably incurred by the Consultant which are not covered by the total lump sum fee stated in paragraph 1.2 of Appendix 3 [*Remuneration and Payment*] and which have been approved by the Client in advance,

provided always that (i) the Consultant shall not be entitled to be paid Exceptional Costs where the Services have been suspended under Sub-Clause 6.1.1 as a result of negligence, act, omission, bad faith or breach of this Agreement or the Project Contracts by the Consultant, its personnel or its sub-contractors and (ii) the Consultant shall not be entitled to be paid for any Exceptional Costs which are incurred during the first month of any suspension.

7.1.3 The Client shall pay any other amounts that become due under this Agreement.

7.2 Time for Payment

7.2.1 Amounts due to the Consultant shall be paid within twenty eight (28) days of the date of receipt of the Consultant's invoice unless otherwise stated in Appendix 3 [*Remuneration and Payment*]. Invoices may only be issued in relation to completed Services following the issue in relation to those Services of the relevant Acceptance Certificate.

7.2.2 If the Consultant does not receive payment within the time stated in Sub-Clause 7.2.1 it shall be paid financing charges at the rate stated in Appendix 3 [*Remuneration and Payment*] and in its currency calculated from the final date for payment of the invoice to the actual date payment is received from the Client. Such financing charges shall not affect the rights of the Consultant stated in Sub-Clause 6.1.2.1 [*Suspension of Services*] or Sub-Clause 6.4.2 [*Termination by the Consultant*].

7.2.3 Not used.

7.3 Currencies of Payment

7.3.1 The currencies applicable to this Agreement are those stated in Appendix 3 [*Remuneration and Payment*].

7.3.2 If at the Effective Date of this Agreement or during the performance of the Services the conditions in the Country (except where the Country is the principal place of business of the Consultant) are such as may:

7.3.2.1 prevent or delay the transfer abroad of Local Currency or Foreign Currency payments received by the Consultant in the Country; or

7.3.2.2 restrict the availability or use of Foreign Currency in the Country; or

7.3.2.3 impose taxes or differential rates of exchange for the transfer from abroad of Foreign Currency into the Country by the Consultant for Local Currency expenditure and subsequent re-transfer abroad of Foreign Currency or Local Currency up to the same amount, such as to inhibit the Consultant in the performance of the Services or to result in financial disadvantage to it, then the Client agrees that such circumstances shall be deemed to justify the application of Clause 4.6 [*Exceptional Event*] if alternative financial arrangements are not made to the satisfaction of the Consultant.

7.4 Not used

7.5 Not used

7.6 Not used

8. LIABILITIES

8.1 Liability for Breach

8.1.1 The Consultant shall indemnify (on demand) and hold harmless the Client from and against:

8.1.1.1 all claims, actions, damages, demands, costs, losses, liabilities and expenses (including legal fees and expenses) arising out of or in respect of:

(a) any breach by the Consultant of any provision of this Agreement;

(b) any failure by the Consultant to comply with any applicable laws;

(c) the employment, or termination of the employment, of any of the Consultant's personnel, or anything done, or omitted to be done, by the Consultant in relation to the Consultant's personnel; and

- 8.1.1.2 any and all liability in respect of:
- (a) death or personal injury;
 - (b) loss of or damage to property;
 - (c) breach of statutory duty; and
 - (d) third party actions, claims, demands, costs, charges and expenses brought against the Client (including legal expenses on an indemnity basis),

which may arise out of, or in consequence of, the performance or non-performance by the Consultant of its obligations under this Agreement, or the presence on any site at which the works under the Works Contract or the services under the Line Pipe Supply Contract are being or are to be carried out, of the Consultant, any sub-consultant of the Consultant or any of their respective personnel or agents.

8.1.2 The Client shall indemnify (on demand) and hold harmless the Consultant from and against all claims, actions, damages, demands, costs, losses, liabilities and expenses (including legal fees and expenses) arising out of or in respect of:

- 8.1.2.1 any failure by the Client to comply with any applicable laws; and
- 8.1.2.2 the employment, or termination of the employment, of any of the Client's personnel, or anything done, or omitted to be done, by the Client in relation to the Client's personnel.

8.1.3 If either Party is liable to the other, such liability shall be payable only on the following terms:

- 8.1.3.1 not used;
- 8.1.3.2 in any event, the maximum amount of such liability shall be limited to the amount stated in Sub-Clause 8.3.1 [*Limit of Liability*].
- 8.1.3.3 not used.

8.2 Duration of Liability

8.2.1 Notwithstanding any term or condition to the contrary in this Agreement or any legal requirement of the Country or any other relevant jurisdiction (including, for the avoidance of doubt, the jurisdiction of the place of establishment of the Consultant), neither the Client nor the Consultant shall be considered liable for any loss or damage resulting from any occurrence unless a claim is formally made on one Party by the other Party before the expiry of twelve (12) years, such period to commence upon the earlier of the date of the issue of the final taking-over certificate for the Project under the Works Contract and termination of this Agreement. Each Party agrees to waive all claims against the other in so far as such claims are not formally made in accordance with this Sub-Clause 8.2.1.

8.3 Limit of Liability

- 8.3.1 In respect of each and every claim, the maximum amount of damages payable by either Party to the other in respect of any and all liability, including liability arising from negligence, under or in connection with this Agreement shall not exceed the amount of one hundred per cent (100%) of the total lump sum fee stated in paragraph 1.2 of Appendix 3 [*Remuneration and Payment*]. This limit is without prejudice to any financing charges specified under Sub-Clause 7.2.2 [*Time for Payment*], and is subject to Sub-Clause 8.4. [*Exceptions*].
- 8.3.2 Each Party agrees to waive all claims against the other in so far as the aggregate of damages which might otherwise be payable exceeds the maximum amount payable under Sub-Clause 8.3.1.
- 8.3.3 Without prejudice to the right the Client may have under Sub-Clause 6.5.2 [*Effects of Termination*], neither Party shall be liable in contract, tort, under any law or in any statutory private right of action or otherwise, for any loss of revenue, loss of profit, loss of production, loss of contracts, loss of use, loss of business, third party punitive damages or loss of business opportunity or for any indirect, special or consequential loss or damage, other than pursuant to Sub-Clause 8.1.1.

8.4 Exceptions

- 8.4.1 Sub-Clauses 8.1.3 [*Liability for Breach*], Clause 8.2 [*Duration of Liability*], and Clause 8.3 [*Limit of Liability*] shall not apply to any liability for or in respect of:
- 8.4.1.1 deliberate manifest and reckless default, fraud, fraudulent misrepresentation or reckless misconduct by the defaulting Party;
- 8.4.1.2 death or personal injury;
- 8.4.1.3 breach of statutory duty or law;
- 8.4.1.4 any breach by either Party of Sub-Clause 1.8 [*Confidentiality*] or Sub-Clause 1.10 [*Anti-Corruption*];
- 8.4.1.5 any non-compliance by the Consultant with its obligations under Sub-Clause 3.3.4.5;
- 8.4.1.6 loss of or damage to any property of any third party to the extent attributable to any act or omission of the Consultant or any sub-consultant of the Consultant, or their respective personnel or agents;
- 8.4.1.7 in the case of the liability of the Consultant:
- (a) any payments received by the Client pursuant to any Performance Guarantee;
- (b) any payments received by the Consultant or the Client from insurance companies under insurance coverage carried by the Consultant pursuant to Clause 9 [*Insurance*]. The Consultant shall diligently pursue any claims arising for which coverage may be claimed under such insurance coverages;

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- (c) any amounts not paid by insurance, due to the Consultant's failure to comply with Clause 9 [*Insurance*];
- (d) any amounts which would have been covered by the proceeds of the insurance coverage carried or required to be carried by the Consultant pursuant to Clause 9 [*Insurance*] but for the application of any deductible under such insurances; and
- (e) any liabilities incurred by the Consultant due to the failure of the Consultant to obtain and/or maintain the insurance coverages required pursuant to Clause 9 [*Insurance*].

9. INSURANCE

9.1 Insurances to be taken out by Consultant

- 9.1.1 The Consultant shall take out and maintain professional indemnity insurance in an amount sufficient to cover its liabilities under this Agreement, provided always in each case that such insurance is available at commercially reasonable rates and on terms (including normal exclusions) commonly included in such insurances at the time the insurances were taken out or renewed as the case may be. Such insurances shall be placed with insurers of international repute and standing. In assessing a commercially reasonable rate the Consultant's own claims record shall be disregarded. The Consultant shall ensure that the minimum amount of cover under the professional indemnity insurance policy is not less than EUR 5,000,000 (five million) on an each and every claim basis.
- 9.1.2 The Consultant shall ensure that its professional indemnity insurance is maintained for the period of liability stated in Sub-Clause 8.2 [*Duration of Liability*].
- 9.1.3 The Consultant shall take out and maintain Workers Compensation insurance or Employer's Liability insurance and any other insurances as may be required by the applicable law for the duration of the Services.
- 9.1.4 When requested to do so by the Client, the Consultant shall produce brokers' or insurers' certificates to show that the insurance cover required by this Clause 9.1 is being maintained.
- 9.1.5 The Consultant shall notify the Client immediately should any of the insurance required by this Clause 9.1 be cancelled by the insurers or underwriters.
- 9.1.6 The Consultant shall:
 - 9.1.6.1 use reasonable endeavours to procure that the insurances to be maintained by the Consultant pursuant to this Clause 9.1 contain a waiver of subrogation against the Client, any shareholder, affiliate, consultant or contractor (other than the Consultant) of the Client, and any of their respective employees, agents, directors and officers (together the "**Client Parties**" and each a "**Client Party**"); and
 - 9.1.6.2 not bring any claim or action against the Client (or any Client Party) in respect of any losses, damages, liabilities, costs, expenses and

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charges in circumstances where and to the extent that the Consultant could recover such losses, damages, costs, expenses and charges under the insurance required to be maintained by it pursuant to this Clause 9 (whether or not such insurance has in fact been effected or, if effected, has been vitiated as a result of any act or omission of the Consultant (or any shareholder, affiliate, sub-consultant or sub-contractor of the Consultant, or any of their respective employees, agents, directors and officers (together the "**Consultant Parties**" and each a "**Consultant Party**"), including but not limited to non-disclosure or under-insurance; and

- 9.1.6.3 not bring any claim or action against the Client (or any Client Party) due to the application of policy exclusions or for losses in excess of policy limits under any insurance to be maintained by the Consultant pursuant to this Clause 9, except to the extent any claim arising is due to the act or omission of the Client or a Client Party; and
- 9.1.6.4 bear all deductibles payable in respect of claims made under the insurances to be maintained by it pursuant to this Clause 9 except to the extent any claim arising is due to the act or omission of the Client or a Client Party.
- 9.1.7 The Consultant shall not take any action or fail to take any action or (insofar as it is reasonably within his power) permit or allow others to take or fail to take any action (in either case including failure to disclose any fact or misrepresentation of any fact) as a result of which any of the insurances to be maintained by the Consultant pursuant to this Clause 9 may be rendered void, voidable, unenforceable, suspended or impaired in whole or in part or which may otherwise render any sum paid out under any relevant policy repayable in whole or in part.
- 9.1.8 Neither failure to comply nor full compliance with the provisions of this Clause 9 shall relieve the Consultant of his liabilities and obligations under this Agreement.

10. DISPUTES AND ARBITRATION

10.1 Amicable Dispute Resolution

- 10.1.1 If any dispute, difference or claim arises out of or in connection with this Agreement (including, without limitation, any question regarding its existence, validity or termination), whether contractual or non-contractual (a "**Dispute**"), then senior representatives of the Parties with authority to settle the Dispute shall, within twenty eight (28) days of a written request from one Party to the other, meet in order to attempt to resolve the Dispute amicably.
- 10.1.2 If the Dispute is not resolved within fifty six (56) days of receipt of the written request, then either Party may refer the Dispute to adjudication in accordance with Clause 10.2 [*Adjudication*], even if the meeting referred to in Sub-Clause 10.1.1 has not taken place.

10.2 Adjudication

- 10.2.1 Unless settled amicably, any Dispute may be referred by either Party to adjudication in accordance with the Rules for Adjudication in Appendix 5 [*Rules*

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for Adjudication]. The adjudicator shall be agreed between the Parties or failing agreement shall be appointed in accordance with the said Rules for Adjudication. The agreement between the Parties and the adjudicator shall incorporate by reference the General Conditions of Dispute Adjudication Agreement contained in Appendix 6 [*General Conditions of Dispute Adjudication Agreement*], with such amendments as are agreed between them.

- 10.2.2 The Parties shall bear their own costs arising out of the adjudication and the adjudicator shall not be empowered to award costs to either Party. Without prejudice to the above, the adjudicator may decide which Party shall bear the adjudicator's fees and in what proportion.
- 10.2.3 If either Party is dissatisfied with the adjudicator's decision:
- 10.2.3.1 the dissatisfied Party may give a notice of dissatisfaction to the other Party, with a copy to the adjudicator;
 - 10.2.3.2 this notice shall state that it is a "Notice of Dissatisfaction with the Adjudicator's Decision" and shall set out the matter in dispute and the reason(s) for dissatisfaction; and
 - 10.2.3.3 this notice shall be given within twenty eight (28) days of receiving the adjudicator's decision.
- 10.2.4 If the adjudicator fails to give its decision within the period stated in the Rules for Adjudication, then either Party may, within twenty eight (28) days of this period expiring, give a notice to the other Party in accordance with Sub-Clauses 10.2.3.1 and 10.2.3.2 above.
- 10.2.5 Except as stated in Clause 10.5 [*Failure to Comply with Adjudicator's Decision*], neither Party shall be entitled to commence arbitration of a Dispute unless a notice in respect of that Dispute has been given in accordance with Sub-Clause 10.2.3 or 10.2.4. If such a notice has been given, and neither Party commences arbitration of the Dispute within one hundred and eighty two (182) days of giving or receiving the notice, such notice shall be deemed to have lapsed and no longer be valid.
- 10.2.6 Whether a Notice of Dissatisfaction with the adjudicator's decision has been issued or not by either Party, any adjudicator's decision shall become binding on both Parties upon its release.
- 10.2.7 If the adjudicator has given its decision as to a matter in dispute to both Parties, and no notice under Sub-Clause 10.2.3 has been given by either Party within twenty eight (28) days of receiving the adjudicator's decision, then the decision shall become final and binding on both Parties.
- 10.2.8 Adjudication may be commenced before or after completion of the Services. The obligations of the Parties shall not be altered by reason of any adjudication being conducted during the progress of the Services.

10.3 Amicable Settlement

Where a notice has been given under Sub-Clause 10.2.3 [*Adjudication*] or 10.2.4 [*Adjudication*], both Parties shall attempt to settle the Dispute amicably before the

commencement of arbitration. However, unless both Parties agree otherwise, arbitration may be commenced on or after the twenty-eighth (28th) day after the day on which this notice was given, even if no attempt at amicable settlement has been made.

10.4 Arbitration

- 10.4.1 Unless settled amicably, subject to Clause 10.2 [*Adjudication*] and Clause 10.5 [*Failure to Comply with Adjudicator's Decision*], any Dispute in respect of which the adjudicator's decision (if any) has not become final and binding shall be referred to and finally resolved by international arbitration. Unless otherwise agreed by both Parties:
- 10.4.1.1 the Dispute shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce;
 - 10.4.1.2 the seat of the arbitration shall be Vienna;
 - 10.4.1.3 the Dispute shall be settled by one arbitrator appointed in accordance with these Rules; and
 - 10.4.1.4 the arbitration shall be conducted in English.
- 10.4.2 The arbitrator shall have full power to open up, review and revise any ruling or decision of the adjudicator.
- 10.4.3 In any award dealing with costs of the arbitration, the arbitrator may take account of the extent (if any) to which a Party failed to cooperate with the other Party in appointing the adjudicator under Clause 10.2 [*Adjudication*].
- 10.4.4 Neither Party shall be limited in the proceedings before the arbitrator to the evidence or arguments previously put before the adjudicator to obtain its decision, or to the reasons for dissatisfaction given in the Party's notice under Sub-Clause 10.2 [*Adjudication*]. Any decision of the adjudicator shall be admissible in evidence in the arbitration.
- 10.4.5 Arbitration may be commenced before or after completion of the Services. The obligations of the Parties shall not be altered by reason of any arbitration being conducted during the progress of the Services.
- 10.4.6 This Sub-Clause 10.4 shall be governed by, and construed in accordance with, the law of England and Wales.

10.5 Failure to Comply with Adjudicator's Decision

- 10.5.1 In the event that a Party fails to comply with any decision of the adjudicator, whether binding or final and binding, then the other Party may, without prejudice to any other rights it may have, refer the failure itself directly to arbitration under Clause 10.4 [*Arbitration*] and Clause 10.1 [*Amicable Dispute Resolution*], Clause 10.2 [*Adjudication*] and Clause 10.3 [*Amicable Settlement*] shall not apply to this reference. The arbitrator appointed under Clause 10.4 [*Arbitration*] shall have the power, by way of summary or other expedited procedure, to order, whether by an interim or provisional measure or an award (as may be appropriate under the applicable law or otherwise), the enforcement of that decision.

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10.5.2 In the case of a binding but not final decision of the adjudicator, such interim or provisional measure or award shall be subject to the express reservation that the rights of the Parties as to the merits of the Dispute are reserved until they are resolved by an award.

10.5.3 Any interim or provisional measure or award enforcing a decision of the adjudicator which has not been complied with, whether such decision is binding or final and binding, may also order or award damages or other relief.

IN WITNESS whereof, the Parties hereto have caused this Agreement to be executed as a deed the day and year stated above.

AUTHORISED SIGNATORIES OF THE CLIENT

Executed 20.05.2019
Authorised signatory of

ICGB AD

Signature: 

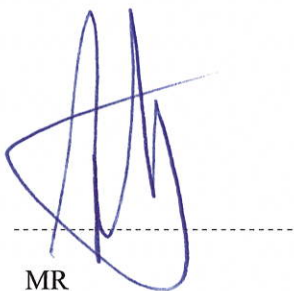
Name (block capitals): MS TEODORA
GEORGIEVA

Title: Executive Officer

Place of signing: Sofia, Bulgaria

Executed 20.05.2019
Authorised signatory of

ICGB AD

Signature: 

Name (block capitals): MR
KONSTANTINOS
KARAYANNAKOS

Title: Executive Officer

Place of signing: Sofia, Bulgaria



AUTHORISED SIGNATORY OF THE CONSULTANT

Executed 20.05.2019
Authorised signatory of

Signature: Alberto Verney

Consortium "TIBEY"

Name (block capitals): **MR. ALBERTO
VERNEY**

Title: HEAD OF SALES - ENERGY

Place of signing: SOFIA, BULGARIA

AUTHORISED SIGNATORY OF THE CONSULTANT

Executed 20.05.2019
Authorised signatory of

Signature: [Handwritten Signature]

Consortium "TIBEY"

Name (block capitals): **MR. MERT
CANDARLI**

Title: SALES MANAGER

Place of signing: SOFIA, BULGARIA

[Handwritten Signature]

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