*DRAFT CONTRACT*

**PUBLIC PROCUREMENT CONTRACT**

**No. .………………../………………..**

This day, ...................., in the city of ..................., on the legal grounds of Article 20, paragraph 7, sub-paragraph 2 of the Public Procurement Act (PPA), by and between

**1. EMBASSY OF THE REPUBLIC OF BULGARIA IN THE CITY OF OTTAWA, CANADA,** BULSTAT /UIC/ national identification number: …………………….., address: 325 Stewart Street, Ottawa, Ontario, K1N 6K5, Canada, represented by Svetlana Stoycheva-Etropolski, Ambassador Extraordinary and Plenipotentiary, hereinafter referred to as **CONTRACTING AUTHORITY**,of one part,

and

**2. .........................................................................,** nationalidentification number:

*(Contractor's name)*

**……………………..…….,** having its seat in ............................................................................................................,

address of the office, assigned to performance of the contract: …………………….........................

............................................................................................................................................, represented by ...................................................................................................................................................................................... *(lawful representative – name and position)*

or ....................................................................................................................., (in case there is an authorized representative – name, position, act on which his/her representative powers are based), selected as contractor following a public procurement conducted by solicitation of tenders by Contract Notice No. ……………………., PPR ID No. ……………… of ……….2019, under the procedure of Title Five, Chapter Twenty-Six of the Public Procurement Act (PPA) of the Republic of Bulgaria and Title Nine of the Implementing Regulation of PPA (IRPPA), with subject: “**Selection of real estate brokerage firm for the sale of a real property (residence), located in the city of Ottawa, Canada, on behalf of DM-Ottawa”.**, hereinafter referred to as **CONTRACTOR**, of the other part,

this public procurement contract was entered into, hereinafter referred to as “Contract”).

The Parties agreed on the following:

**І. SUBJECT OF CONTRACT**

**Article 1. THE CONTRACTING AUTHORITY** entrusts and the **CONTRACTOR** agrees to perform realtor services for the sale of a real property at 190 Lansdowne Road, Rockcliffe Park, Province of Ontario, Canada in accordance with the clauses of this contract and the appendices to it, which are an integral part thereof: Appendix No. 1 – Technical specification of the **CONTRACTING AUTHORITY**, Appendix No. 2 – Technical proposal of the **CONTRACTOR**, Appendix No. 3 – Price proposal of the **CONTRACTOR**,

**Article 2.** The **CONTRACTOR** shall undertake to provide the Services in accordance with the Technical specification,the Technical proposal of the **CONTRACTOR** and the Price proposal of the **CONTRACTOR**, constituting respectively Appendices Nos. 1, 2 and 3 to this Contract (the "Appendices"), forming integral part hereof and part of the **CONTRACTOR**’s tender for participation in the public procurement. The minimum sale price of the real property shall be ……………………………………………………., according to the contractor’s tender.

**Article 3.** Within 3 (three) business days of the date of execution of the Contract, but at the latest before the performance thereof commences, the **CONTRACTOR** shall notify the **CONTRACTING AUTHORITY** of the name, contact details and the representatives of the subcontractors, indicated in the tender of the **CONTRACTOR**, if any. The **CONTRACTOR** shall notify the **CONTRACTING AUTHORITY** of all changes in the information provided in the course of performance of the Contract not later than 3 (three) calendar days of occurrence of the respective circumstance.

**II. CONTRACT TERM. TIME LIMIT AND LOCATION OF PERFORMANCE**

**Article 4.** This Contract shall enter into effect as of the date indicated in its beginning, on which it is signed by both parties and shall remain in effect until the fulfillment of all obligations, undertaken by the parties under the Contract, but for not more than twelve months as of the date of its signing.

**Article 5.** The deadline for providing the services within the term under Article 4 shall be up to the final transfer of the title over the real property to the buyer, approved by Decision of the Council of Ministers of the Republic of Bulgaria, after the **CONTRACTING AUTHORITY** would have received the entire amount of the agreed sale price of the real property and after the final acceptance of the performance under the Contract.

**Article 6.** Place of performance of the Contract is at the address of the real estate: 190 Lansdowne Road, Rockcliffe Park, Province of Ontario, Canada.

**III. PRICE, PROCEDURE AND TIME LIMITS FOR PAYMENT.**

**Article 7. (1)** In exchange for the services provided, the **CONTRACTING AUTHORITY** undertakes to pay the **CONTRACTOR** a total price in the amount of ...% (Say:........... per cent of the amount of the agreed sale price of the real property in Canadian Dollars, excluding any taxes and charges owed to third parties - for instance the Harmonized Sales Tax – HST, and excluding any tax on the sale of the real property), hereinafter referred to as “commission”, “remuneration” or “Contract value”, in accordance with the Price proposal of the CONTRACTOR, constituting Appendix No. 3, forming integral part of this contract.

**(2)** The commission under paragraph 1 shall include all costs of the **CONTRACTOR** in the performance of the Services, including the costs of personnel, who will perform the procurement and/or of the persons, who will be responsible for the performance and for its subcontractors *(in case the* ***CONTRACTOR*** *has indicated in its tender that it would employ subcontractors)* and the **CONTRACTING AUTHORITY** shall not be obliged to cover any other costs, incurred by the **CONTRACTOR**.

**(3)** The commission, indicated in paragraph 1, as a figure of discount rate, shall be fixed (final) for the Contract performance term and include all direct and indirect costs of performance of the Contract, as well as any taxes and charges payable (except for the ones specified in Article 7. (1)), and may not be changed.

**(4)** In case the performance of the Contract would require payment of costs, related to the sale of the real property, to payment of stamp duty or local, notarial or other fees, such costs shall not be deemed included into the **CONTRACTOR**’s remuneration under paragraph 1 and shall be paid directly by the **CONTRACTING AUTHORITY** at the instruction of the **CONTRACTOR** or by the **CONTRACTOR** following an express written instruction and at the expense of the **CONTRACTING AUTHORITY**.In the latter case, any costs incurred by the **CONTRACTOR** shall be reimbursed to it by the **CONTRACTING AUTHORITY** against presentation of a supporting document, issued in the name of the **CONTRACTING AUTHORITY**.

**Article 8. The CONTRACTING AUTHORITY** shall pay to the **CONTRACTOR** the commission under Article 7, paragraph 1 for the performance of this Contract within 15 (fifteen) calendar days, as of the final transfer of the title over the real property to the buyer, approved by Decision of the Council of Ministers of the Republic of Bulgaria, after the **CONTRACTING AUTHORITY** would have received the entire amount of the agreed sale price of the real property and after the final acceptance of the performance under the Contract. Payment shall be made **only following the successful finalization of the transaction in regard to the real property and receipt of the full amount of the sale proceeds by the Contracting Authority.**

**Article 9. (1)** Payment under this Contract shall be effected based on the following documents:

**1.** Bimonthly reports on the services provided, approved by the **CONTRACTING AUTHORITY** – concerning the activities and tasks performed during the period of contract performance, submitted by the **CONTRACTOR** to the **CONTRACTING AUTHORITY** (depending on the time period, in which the services were provided);

**2.** Final handover record on the acceptance of the services, provided during the period of contract performance, signed by the **CONTRACTING AUTHORITY** and the **CONTRACTOR,** after the approval of the last report under item 1 by the **CONTRACTING AUTHORITY** and the final transfer of the title over the real property to the buyer, approved by Decision of the Council of Ministers of the Republic of Bulgaria, after the **CONTRACTING AUTHORITY** would have received the entire amount of the agreed sale price of the real property, respectively in compliance with the provisions of Section VII – Handover and Acceptance of Performance – of the Contract; and

**3.** An invoice for the commission due under Article 7, paragraph 1, issued by the **CONTRACTOR** and submitted to the **CONTRACTING AUTHORITY.** The value of the commission in monetary terms must be calculated in accordance with Article 7 of the contract based on the price of the real property from the sale closed, received by the **CONTRACTING AUTHORITY.**

**(2)** The **CONTRACTING AUTHORITY** shall undertake to make the payment due within 15 (fifteen) calendar days following receipt of the **CONTRACTOR’s** invoice, in compliance with the terms under Paragraph 1.

**Article 10. (1)** The payment under this Contract shall be made in Canadian Dollars by a bank transfer to the following bank account of the **CONTRACTOR:**

Bank: …………………………….

BIC: …………………………….

IBAN: ..............................

**(2)** The **CONTRACTOR** shall be obliged to notify in writing the **CONTRACTING AUTHORITY** of all subsequent changes under Paragraph 1 within five days, as of the moment of occurrence of such change. If the **CONTRACTOR** fails to notify the **CONTRACTING AUTHORITY** thereof within the time limit specified above, it shall be considered that all payments were duly made.

**IV. RIGHTS AND OBLIGATIONS OF THE PARTIES**

**Article 11.** The enumeration of specific rights and obligations of the parties in this section of the Contract shall not be exhaustive or affect the validity of other clauses of the Contract or of applicable legislation, envisaging rights and/or obligations for any of the parties.

**V. GENERAL RIGHTS AND OBLIGATIONS OF THE CONTRACTOR**

**Article 12.** The **CONTRACTOR** shall have the right:

**1.** to receive remuneration in the amount, time limits and terms under Articles 7–10 of the contract;

**2.** to request and obtain from the **CONTRACTING AUTHORITY** any necessary assistance for the fulfillment of the obligations under this Contract, as well as all necessary documents, information and data, directly related or necessary for the performance of the Contract;

**Article 13.** The **CONTRACTOR** shall be obliged to:

**1.** provide/render the services and to fulfil its obligations under this Contract within the time limits agreed and up to a high quality standard, in conformity with the Contract and the Appendices;

**2.** make available to the **CONTRACTING AUTHORITY** the statements, reports, papers and materials, prepared by it and to make any revisions and/or amendments to them within the time limit, indicated by the **CONTRACTING AUTHORITY**, if the latter would so request;

**3.** inform in due course the **CONTRACTING AUTHORITY** of any obstacles, encountered in the process of performance of work, propose methods for eliminating them and may request from the **CONTRACTING AUTHORITY** instructions and/or assistance for eliminating them.

**4.** fulfil all lawful instructions and requirements of the **CONTRACTING AUTHORITY**;

**5.** keep in secrecy the Confidential information, as agreed in Article 34 of the Contract;

**6.** *(in case the* ***CONTRACTOR*** *had indicated in its Tender that it would employ subcontractors)* assign the respective part of the Services to the subcontractors, indicated in the **CONTRACTOR's** Tender and control the fulfilment of their obligations; refrain from assigning the work or any part thereof to subcontractors, other than those indicated in the **CONTRACTOR's** Tender, except in the cases and under the terms of PPA;

**7.** *(in case the* ***CONTRACTOR*** *had indicated in its Tender that it would employ subcontractors)* The**CONTRACTOR** shall undertake to enter into subcontract/subcontracts with the subcontractors specified in its Tender within 3 (three) days of the entry into this Contract. Within 3 (three) days of the execution of a subcontract or of an additional agreement for substituting a subcontractor specified in the Tender, the **CONTRACTOR** shall transmit a copy of the subcontract or of the additional agreement to the contracting authority together with proof that the conditions under Article 66, paragraphs 2 and 11 of the PPA have been met;

**8.** take part in all working meetings, related to the performance of this Contract;

**9.** refrain from making changes in the composition of the personnel, who will be in charge of the provision of services, without prior written consent from the **CONTRACTING AUTHORITY;**

**10.** perform the work assigned to it with the care of good trader in accordance with the requirements of the **CONTRACTING AUTHORITY**, the Tender and the terms of this contract;

**11.** prepare and follow a schedule for performance of the procurement, after coordinating it in advance with the **CONTRACTING AUTHORITY;**

**12.** survey the market and advise the **CONTRACTING AUTHORITY** concerning the average market prices, at which such properties are traded;

**13.** publicize in an appropriate manner the offering of the real estate, subject of this contract, in accordance with Appendix No.1: Technical specification of the **CONTRACTING AUTHORITY** and Appendix No. 2: Technical proposal of the **CONTRACTOR** with the attachments thereto, which form integral part of this contract;

**14.** prepare and sign with the **CONTRACTING AUTHORITY** an Agreement for offering of the real property for sale, in accordance with the requirements of the Province of Ontario, Canada, in compliance with this contract and the applicable legislation;

**15.** conduct preliminary discussions with potential buyers or their brokers;

**16.** organize visual examinations of the real property by potential buyers;

**17.** organize negotiations for execution of a contract for sale of the real property or a preliminary contract for sale of the real property;

**18.** keep in mind the requirement to reject tenders from potential buyers, in which the price offered is lower than the minimum sale price, specified in its price proposal;

**19**. coordinate with the buyer the actions required for performance of the preliminary contract and for the drawing up of the final contract in notarized form;

**20.** inform in a timely manner the **CONTRACTING AUTHORITY** of all requirements of local legislation, which must be fulfilled prior to the sale of the real property;

**21.** take into account and comply with the norms and rules of Bulgarian and local legislation, which are applicable to this contract.

**22.** take into account the Decision of the Council of Ministers of the Republic of Bulgaria, whereby the sale of the real property would be authorized or denied.

**23.** The **CONTRACTOR** may not, absent express written authorization by the **CONTRACTING AUTHORITY**, sign contracts on behalf or at the cost of thelatter, nor accept or make payments, nor perform any legal actions on behalf and at the expense of the **CONTRACTING AUTHORITY.**

**VI. GENERAL RIGHTS AND OBLIGATIONS OF THE CONTRACTING AUTHORITY**

**Article 14.** The **CONTRACTING AUTHORITY** shall have the right:

**1.** to request and receive the Services according to the agreed time limits, quantity and quality;

**2.** to control the performance of the obligations, assumed by the **CONTRACTOR**, incl. to request and obtain information from the **CONTRACTOR** over the entire Contract term, or to perform checks, as necessary and on-site at the performance location of the Contract, without thereby interfering with its proper performance;

**3.** to request, as necessary and by own discretion, substantiation on the part of the **CONTRACTOR** concerning the statements/reports/materials developed by it or of a respective part thereof;

**4.** to request from the **CONTRACTOR** to rework or improve any of the statements/reports/materials, as agreed in Article 17 of the Contract;

**5.** to reject any of the statements/reports/materials, as agreed in Article 17 of the Contract;

**6. to reject tenders of potential buyers, proposed by the CONTRACTOR and shall be entitled to terminate the contract unilaterally under Article 27, paragraph 2, sub-paragraph 3 of the same without paying any costs and/or other remunerations to the contractor;**

**7.** to require collection of at least one tender from potential buyers for the sale of the real property, indicated in Article 1;

**8.** to receive at any time information concerning the activities of the **CONTRACTOR** for performance of this contract, including as to the interest shown in the real property and on the average market price, at which such properties are being traded;

**9.** to require a report from the **CONTRACTOR** on the work performed, as well as the return of any papers, documents etc. kept by it, in connection with the current procedure of sale of the real property;

**10.** to refuse to close a transaction, which the **CONTRACTOR** brokered, including in case the transaction would not be approved by Decision of the Council of Ministers of the Republic of Bulgaria.

**Article 15. The CONTRACTING AUTHORITY** shall be obliged to:

**1.** accept the statements/reports/materials concerning each activity/stage/task, when they are in compliance with the agreements reached, under the procedure and terms of this Contract;

**2.** pay the **CONTRACTOR** the Price in the amount, under the procedure and terms, envisaged in this Contract;

**3.** provide and ensure access by the **CONTRACTOR** to the information, required for performance of the Services, subject of the Contract, in compliance with the relevant requirements or restrictions under applicable law;

**4.** keep in secrecy the Confidential information, as agreed in Article 34 of the Contract;

**5.** render assistance to the **CONTRACTOR** in connection with the performance of this Contract, including also for overcoming any obstacles, encountered in the performance of the Contract, upon request from the **CONTRACTOR** to this effect;

**6.** inform the **CONTRACTOR** of the provisions of Bulgarian legislation, applicable to the subject matter of this contract.

**VII. HANDOVER AND ACCEPTANCE OF PERFORMANCE**

**Article 16. (1)** The handover of the performance of Services in each bimonthly period by means of the respective report, as well as the handover of the reports/materials on the completion of each activity/stage/task, shall be documented by a protocol of handover of the respective document for review and approval by the **CONTRACTING AUTHORITY.** The protocol shall be signed by representatives of the **CONTRACTING AUTHORITY** and the **CONTRACTOR** in two originals – one for each of the Parties (“Acceptance and handover protocol”) within 7 (seven) days of the submission of the respective report by the **CONTRACTOR**. If shortcomings in performance would be found, they shall be described in the Acceptance and handover protocol and an appropriate time limit for eliminating them will be specified or a sanction will be imposed in accordance with Articles 21–26 of the Contract.

**(2)** In regard to the activities and tasks completed during the period of performance of the contract the **CONTRACTOR** shall submit tothe **CONTRACTING AUTHORITY** for its approval a report concerning the services provided within 7 (seven) days following the expiry of the respective two-month period of the term of performance of the contract under Article 4 and Article 5.The acceptance of the activities, performed during the two months lapsed shall be certified by an Acceptance and handover protocol, signed by the Parties within 7 (seven) days following submission of the quarterly report by the **CONTRACTOR.** If shortcomings in performance would be found, they shall be described in the Acceptance and handover protocol and an appropriate time limit for eliminating them will be specified or a sanction will be imposed in accordance with Articles 21–26 of the Contract.

**(3)** The final acceptance of performance of the Services under this Contract shall be made by signing a final Acceptance and handover protocol, to be signed by the Parties within 14 (fourteen) days of the expiry of the performance term under Article 5 of the Contract. If at that time shortcomings in performance would be found, they shall be described in the final Acceptance and handover protocol and an appropriate time limit for eliminating them will be specified and/or a sanction will be imposed in accordance with Articles 21–26 of the Contract.

**Article 17.** The **CONTRACTING AUTHORITY** shall have the right:

**1.** to accept the performance, when it is in conformity with the agreement reached;

**2.** to request revisions and/or amendments to the statements/reports/materials within a time limit specified by it and in such a case the revision and/or amendment shall be performed within a time limit, prescribed by the **CONTRACTING AUTHORITY** and entirely at the expense of the **CONTRACTOR;**

**3.** if any non-conformity of the work performed to the agreement reached or any shortcomings would be found, the **CONTRACTING AUTHORITY** may refuse to accept the performance until the shortcomings are eliminated, and impose an appropriate time limit for their elimination at the expense of the **CONTRACTOR;**

**4.** to refuse to accept performance in case of material departures from the agreement reached, or if the shortcomings found are of such a nature that they may not be eliminated within the performance time limit under the Contract and/or the result of performance would no longer be useful for the **CONTRACTING AUTHORITY**.

1. **SUBCONTRACTING**

*(in case the* ***CONTRACTOR*** *had indicated in its Tender that it would employ subcontractors)*

**Article 18. General conditions applicable to Subcontractors**

**(1)** For the purposes of performance of the contract activities, the **CONTRACTOR** shall be entitled to employ only the subcontractors, specified by it in the tender, based on which it was selected as the **CONTRACTOR**, **except in the cases, envisaged in PPA and IRPPA.**

**(2)** The percentage participation of the subcontractors in the price for contract implementation may not differ from that specified in the Tender of the **CONTRACTOR**.

**(3)** The **CONTRACTOR** may replace the subcontractors nominated for the Contract performance, as well as include new subcontractors in the cases, envisaged in the PPA.

**(4)** Irrespective of the employment of any subcontractors, the **CONTRACTOR** shall remain responsible for the performance of this Contract.

**(5)** Any execution of contract with a subcontractor, which was not nominated in the **CONTRACTOR’s** Tender and was not included during the performance of the Contract activities under the procedure of PPA or any performance of the contract activities by a person, which is not a subcontractor, nominated in the **CONTRACTOR**’s tender, shall be treated as a breach of the Contract and serve as grounds for unilateral termination of the Contract by the **CONTRACTING AUTHORITY**.

**Article 19. Contracts with subcontractors**

**(1)** When executing the Contracts with the subcontractors, proposed in the tender of the **CONTRACTOR**, the latter shall be obliged to create conditions and ensure that:

1. the applicable clauses of the Contract would be mandatory for compliance by the subcontractors;
2. the actions of the subcontractors would not result directly or indirectly in breach of the Contract;
3. In the course of exercising its control functions under the contract the **CONTRACTING AUTHORITY** will be able to freely perform checks of the activity and documentation of the subcontractors.

**Article 20. Settlements with subcontractors**

**(1)** Where a portion of the contract performed by a subcontractor can be delivered as a separate project to the **CONTRACTOR** or to the **CONTRACTING AUTHORITY**, the **CONTRACTING AUTHORITY** shall pay remuneration for this part directly to the subcontractor.

**(2)** Settlements under Paragraph (1) shall be effected on the basis of a claim addressed by the subcontractor to the **CONTRACTING AUTHORITY** care of the **CONTRACTOR**, which shall be obliged to transmit the said claim to the **CONTRACTING AUTHORITY** within 15 days of receipt thereof.

**(3)** The **CONTRACTOR** shall append to the claim referred to in Paragraph 2 an opinion showing whether it contests the payments or any part of them as undue.

**(4)** The **CONTRACTING AUTHORITY** may refuse payment under Paragraph 2 if the payment claim has been contested until such time as the cause of the refusal has been remedied.

**IX. SANCTIONS FOR NON-PERFORMANCE**

**Article 21.** In case of delay of performance of the obligations under this Contract, including in cases of shortcomings found in accordance with Article 16 of the contract, the Party at fault shall owe the compliant party a penalty in the amount of 0.2% (zero point two tenths per cent) of the contract value under Article 7, Paragraph 1 for each day of delay, but not exceeding 10% (ten per cent) of the Contract value.

**Article 22.** In case of finding poor quality or other inaccurate or partial performance of an individual activity/task or a departure from the requirements of the **CONTRACTING AUTHORITY**, indicated in the Technical specification – Appendix No.1 to the Contract, the **CONTRACTING AUTHORITY** shall be entitled to demand from the **CONTRACTOR** to perform entirely and properly the respective activity/task, without owing additional remuneration for this.

**Article 23.** In case of systematic (in three or more cases) non-performance, including of refusal to perform obligations under the contract, the **CONTRACTOR** shall owe the **CONTRACTING AUTHORITY** a penalty in the amount of 5% (five per cent) of the Contract price under Article 7, paragraph 1.

**Article 24.** In case of total non-performance of the obligations under the Contract, the **CONTRACTING AUTHORITY** shall be entitled to terminate the Contract forthwith, while the **CONTRACTOR** shall owe the **CONTRACTING AUTHORITY** a penalty in the amount of 10% (ten per cent) of the Contract price under Article 7, paragraph 1.

**Article 25.** The value of each penalty due under this Contract as a percentage of a value, specified in Article 21, Article 23 and Article 24, shall be calculated based on the market value of the real property in Canadian Dollars, excluding taxes and charges, determined by an independent appraiser.

**Article 26.** Payment of the penalties, agreed in this Contract, shall not limit the rights of the compliant Party to seek actual performance and/or compensation for damage suffered and benefits foregone in greater amounts, in accordance with applicable law.

1. **TERMINATION OF THE CONTRACT**

**Article 27. (1)** This Agreement shall be terminated:

**1.** upon expiry of the Contract term under Article 5 hereof, following the final acceptance of performance and the making of the last payment;

**2.** when all obligations of the Parties to it have been fulfilled.

**3.** upon occurrence of total objective impossibility of performance, of which fact the Party affected has to inform the other Party within 5 (five) days of occurrence of the impossibility and to provide evidence to this effect;

**4.** upon dissolution of the legal entity – Party to the Contract, without legal succession, within the meaning of the legislation of the state, where the respective entity is established;

**5**. under the terms of Article 5(1), Item 3 of EFRCRPTRJPCTBOA of the Republic of Bulgaria.

**(2)** This Contract may be terminated:

**1.** by mutual agreement of the Parties, expressed in writing;

**2.** if bankruptcy or liquidation proceedings would be opened against the CONTRACTOR – by request of any of the Parties.

3. unilaterally – upon 1-week’s notice by the Contracting Authority, expressed in writing.

**Article 28. (1)** Each Party shall be entitled to cancel the Contract in the event of culpable infringement of a material obligation of the other party to the Contract under the terms and with the consequences according to Article 87 et seq. of the Obligations and Contracts Act of the Republic of Bulgaria, by service of a written warning by the compliant Party to the one at fault and setting an appropriate time limit for performance. Cancellation of the Contract shall not be allowed if the unfulfilled part of the obligation is immaterial with regard to the interest of the compliant Party.

**(2)** For the purposes of this Contract the Parties shall treat as culpable infringement of a material obligation of the **CONTRACTOR** any of the following cases:

**1.** if the **CONTRACTOR** has failed to commence the provision of Services within 30 (thirty) days, as of the Date of entry into effect;

**2.** the **CONTRACTOR** has suspended the performance of Services for more than 30 (thirty) days;

**3.** the **CONTRACTOR** has allowed a material departure from the conditions for performance of the procurement, incl. the Technical specification – Appendix No. 1 and the Technical proposal – Appendix No. 2.

**(3)** The **CONTRACTING AUTHORITY** may cancel the Contract by written notice to the **CONTRACTOR** only and without setting any additional time limit for performance, if due to the delay of the **CONTRACTOR** it had become pointless or if the obligation should have certainly been fulfilled at the time agreed.

**Article 29.** The **CONTRACTING AUTHORITY** may terminate the Contract in the cases under Article 118, paragraph 1 of the PPA without owing compensation to the **CONTRACTOR** for any damage suffered from the termination of the Contract, except where the termination is done on the grounds of Article 118, paragraph 1, item 1 of the PPA. In the latter case the compensation amount shall be determined in a memorandum or an agreement, signed by the Parties and in case of failure to reach agreement – under the procedure of the dispute settlement clause of this Contract

**Article 30.** In all instances of termination of the Contract, except for dissolution of a legal entity – Party to the Contract – without legal succession:

**1.** The **CONTRACTING AUTHORITY** and the **CONTRACTOR** shall draw up a protocol of findings concerning the work performed up to the moment of termination and the amount of any payments potentially due; and

**2.** the **CONTRACTOR** shall undertake to:

**a)** cease the provision of Services with the exception of such activities, as may be needed and requested by the **CONTRACTING AUTHORITY;**

**b)** transfer to the **CONTRACTING AUTHORITY** all statements/papers/reports, prepared by the former in performance of the Contract up to the date of termination; and

**c)** return to the **CONTRACTING AUTHORITY** all documents and materials, which are the property of the same and had been provided to the **CONTRACTOR** in connection with the subject of Contract.

**Article 31.** In case of early termination of the Contract, the **CONTRACTING AUTHORITY** shall be obliged to pay the **CONTRACTOR** for any Services actually performed and accepted under the established procedure.

**XI. MISCELLANEOUS**

**Defined terms and interpretation**

**Article 32. (1)** Unless defined expressly in a different way in this Contract, the terms used in it shall have the meanings, attached to them in the PPA, respectively in the legal definitions from the Supplementary Provisions of the PPA or, if there are none for some of the terms – according to the meanings, attached to them in the basic provisions of the PPA.

**(2)** In case of conflict between different provisions and terms, contained in the Contract and the Appendices, the following rules shall apply:

**1.** the special provisions shall prevail over the general provisions;

**2.** the provisions of the Appendices shall prevail over the provisions of the Contract

**Compliance with applicable norms**

**Article 33.** In the course of performance of the Contract, the **CONTRACTOR** (and its subcontractors) shall be obliged to comply with all applicable normative acts, provisions, standards and other requirements, related to the subject of Contract and in particular with all applicable rules and requirements in the fields of environmental protection, social and labour law, applicable collective agreements and/or international environmental, social and labor law provisions, in accordance with Annex 10 to Article 115 of the PPA.

**Confidentiality**

**Article 34. (1)** Each Party to this Contract shall undertake to keep confidential and not to disclose or disseminate any information about the other Party, which has come to its knowledge in the course of or in connection with the performance of the Contract ("Confidential information"). Confidential information shall include, without limitation: any financial, commercial, technical or other information, analyses, compiled materials, studies, documents or other materials, related to the business, governance or activities of the other Party, of any nature or in any form, including financial and operating results, markets, current and potential clients, property, working methods, personnel, contracts, commitments, legal issues or strategies, products, processes, related to documentation, drawings, specifications, diagrams, plans, notices, data, specimens, models, samples, software, software applications, computer devices or other materials or recordings or other information, irrespective of whether in written or verbal form, or contained on a computer disk or other device. The information related to the name of the project implemented, the value and subject matter of this Contract, shall not be treated as confidential information with the view of future reference to professional track record of the **CONTRACTOR.**

**(2)** Except for the cases, indicated in Paragraph 3 of this article, Confidential information may be disclosed only following prior written approval from the other Party, while such an approval may not be unreasonably withheld.

**(3)** No breach of the obligations for non-disclosure of Confidential information shall exist, if:

**1.** the information became or is becoming publicly available without breach of this Contract by any of the Parties;

**2.** the information is required by virtue of a law, binding on any of **the Parties; or**

**3.** the submission of information is required by a regulatory or other competent authority and the respective Party is bound to comply with such a request;

In the cases under Items 2 or 3 the Party, which is obliged to provide the information, shall notify forthwith the other Party to the Contract.

**(4)** The obligations under this clause shall apply to the **CONTRACTOR**, all of its subsidiaries, the companies and organizations, controlled by it, all of its employees and natural or legal persons, hired by it, while the **CONTRACTOR** shall remain responsible for the performance of obligations on the part of such persons. The obligations, related to non-disclosure of Confidential information, shall remain in effect also after the termination of the Contract on any ground.

**Public statements**

**Article 35.** The **CONTRACTOR** may not issue public statements and announcements, or disclose or circulate any information, which it received in connection with the performance of the Services subject of this Contract, irrespective of whether it is based on data and materials of the **CONTRACTING AUTHORITY** or on outcomes of the work of the **CONTRACTOR**, without prior written consent of the **CONTRACTING AUTHORITY**, while such a consent may not be unreasonably withheld.

**Copyright**

**Article 36. (1)** The Parties shall agree, on the grounds of Article 42, paragraph 1 of the Copyright and Neighbouring Rights Act of the Republic of Bulgaria that the copyright on all documents and materials and all other elements or components, created as a result of or in connection with the performance of the Contract, shall belong entirely to the **CONTRACTING AUTHORITY** in the same volume, in which it would belong to the author. The **CONTRACTOR** shall declare and warrant that no third parties hold any rights over the documents prepared and over other results of the performance of the Contract, which could be protected by copyright.

**(2)** If established by an effective court ruling or if the **CONTRACTING AUTHORITY** and/or the **CONTRACTOR** would find that the preparation, introduction and usage of documents or other materials, drawn up in the course of performance of this Contract that the copyright of any third party had been infringed upon, the **CONTRACTOR** shall undertake to enable the **CONTRACTING AUTHORITY** to make use of them:

1. by making changes in the respective document or material; or

2. by replacing any element thereof under copyright protection by another element having the same function, which does not infringe upon copyright of third parties; or

3. by obtaining at own cost permission to use the product from the third party, the copyright of which was infringed upon.

**(3)** The **CONTRACTING AUTHORITY** shall notify the **CONTRACTOR** of any claims of alleged infringement upon copyright by third parties within 7 (seven) days of becoming aware of such. In case third parties would raise justified claims, the **CONTRACTOR** shall bear the full responsibility and all damage, resulting therefrom. The **CONTRACTING AUTHORITY** shall bring the **CONTRACTOR** into potential disputes on infringement of copyright in connection with the performance of the Contract.

**(4)** The **CONTRACTING AUTHORITY** shall pay the **CONTRACTOR** compensation for any damage suffered and benefits foregone as a result of a conclusively admitted infringement upon copyright of third parties.

**Transfer of rights and obligations**

**Article 37.** None of the parties may assign the rights and obligations, stemming from this Contract, without the consent of the other Party. Monetary receivables under the Contract (and under the subcontracts) may be transferred or pledged in accordance with the applicable law.

**Amendments**

**Article 39.** This Contract may be amended only by additional agreements, drawn up in written form and signed by both Parties, subject to the requirements and restrictions of PPA.

**Force majeure**

**Article 40. (1)** The Parties shall be released from liability for non-performance of any obligation under this Contract, where the impossibility of performance is due to force majeure.

**(2)** For the purposes of this Contract, “force majeure” shall have the meaning defined in Article 306, paragraph 2 of the Commerce Act of the Republic of Bulgaria. The Parties shall agree that the changes in applicable legislation, affecting the activity of any of them and preventing their compliance or leading to impossibility to perform any of the obligations, assumed by the Contract, shall also constitute force majeure.

**(3)** The Party affected by force majeure shall be obliged to undertake all reasonable efforts and measures, in order to minimize the damage and losses suffered, as well as to notify forthwith the other party in writing upon the occurrence of force majeure. All relevant and/or legally prescribed evidence of the occurrence and nature of the force majeure, the causal link between that circumstance and the impossibility of performance, as well as the expected duration of the non-performance shall be attached to the notice.

**(4)** The fulfillment of that obligation shall be suspended for the duration of the force majeure circumstances. The Party affected shall be obliged, following coordination with the opposite Party, to continue to perform those of its obligations, which are not affected by force majeure.

**(5)** A Party may not invoke force majeure if:

**1.** it had already been in delay or other non-performance prior to the occurrence of force majeure;

**2.** it failed to notify the other Party of the occurrence of force majeure; or

**3.** its negligence or deliberate actions or omissions to act have resulted in impossibility to perform the Contract.

**(6)** A lack of financial resources shall not constitute force majeure.

**Severability**

**Article 41.** In case of conflict between any arrangements between the Parties and current normative acts, applicable to the subject of Contract, such arrangements shall be deemed invalid and shall be substituted by the respective provisions of the normative act, which shall not lead to invalidity of the Contract and any other arrangements between the Parties. The invalidity of any clause of the Contract shall not lead to invalidity of any other clause or of the Contract as a whole.

**Notifications**

**Article 42. (1)** All notifications between the Parties in connection with this Contract shall be performed in writing and may be transmitted in person or by registered letter, by courier, telefax or e-mail.

**(2)** For the purposes of this Contract the contact details and persons of the Parties shall be as follows:

**1.** For **the CONTRACTING AUTHORITY:**

mailing address: ………………….

telephone: ………………………………………….

fax:...........................................

e-mail: ………………………………………..

contact person

*(name and position)*

**2.** For **the Contractor:**

mailing address: ………………….

telephone: ………………………………………….

fax:...........................................

e-mail: ………………………………………..

contact person

*(name and position)*

**(3)** The following shall be treated as notification dates:

**1.** the date of handing over – in the event of personal delivery of the communication;

**2.** the date of the postmark on the advice of delivery – when sent by post;

**3.** the date of delivery, noted on the courier’s receipt – when sent by courier;

**4.** the date of receipt – when transmitted by fax;

**5.** the date of receipt – when transmitted by electronic mail.

**(4)** All correspondence between the Parties shall be considered valid, if forwarded to the above addresses (incl. e-mail addresses), via the means of communication referred to above and to the contact persons indicated. In case of change in the addresses, telephones and other contact details indicated the respective Party shall be obliged to notify the other in writing within 3 (three) days of the occurrence of the change. In case of non-performance of this obligation any notice shall be deemed validly served, if transmitted to the above addresses, via the means of communication referred to and to the contact persons indicated.

**(5)** In case of reorganization without termination, of change of the trade name, legal form, corporate seat, registered address, purposes of business, term of existence, governing bodies and manner of representation of the CONTRACTOR, the latter shall undertake to notify the **CONTRACTING AUTHORITY** of the change within 3 (three) days of its entry into the respective register

**Language**

**Article 43. (1)** This Contract shall be executed in Bulgarian and English language. In case of non-conformities, the version in Bulgarian language shall prevail.

**(2)** The applicable languages according to paragraph 1 shall be mandatory for use when drawing up all types of documents, related to the performance of the Contract, incl. notices, records, reports etc., as well as at working meetings held. All costs of translation, if necessary for the **CONTRACTOR** (or its representatives or employees), shall be at the expense of the **CONTRACTOR**.

**Governing Law**

**Article 44.** This Contract, incl. the Appendices thereto, as well as all agreements arising from or related to it and all rights and obligations related to it, shall be governed by and interpreted in accordance with Bulgarian law.

**Dispute Settlement**

**Article 45.** All disputes, arising from this Contract or pertaining to it, including disputes arising from or pertaining to its interpretation, nullity, implementation or termination, as well as the disputes for filling omissions in the Contract or for adapting it to newly arising circumstances, shall be settled between the Parties by negotiations and in case of inability to reach agreement – the dispute shall be referred for resolution to the competent Bulgarian court.

**Counterparts**

**Article 46.** This Contract consists of [… (…)] pages and was drawn up and signed in two identical copies – one for each Party.

**Appendices:**

**Article 47.** This Contract contains the following appendices, which form integral part hereof:

Appendix No. 1 – Technical Specification;

Appendix No. 2 – Technical proposal with attachments of the **CONTRACTOR**;

Appendix No. 3 – Price proposal of the **CONTRACTOR**;

**CONTRACTING AUTHORITY: CONTRACTOR:**