**APPENDIX 5**

**RULES FOR ADJUDICATION**

**referred to Sub-Clause 10.2 of the Agreement**

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**I RULES FOR ADJUDICATION**

**General 1** Any reference in the Conditions of Agreement to the Rules for Adjudication shall be a reference to these Rules, further the Rules.

**2** Definitions in the Agreement shall apply in the Rules.

**Appointment of 3** TheClient and the Consultant shall jointly ensure the **Adjudicator** Adjudicator shall be a suitable qualified person.

**4** If for any reason the appointment of the Adjudicator is not agreed at the latest within 15 days of the reference of a dispute in accordance with the Rules, the either Party may apply, within a copy of the application to the other Party, to any appointing authority named in the Agreement or, if none, to the President of FIDIC of his nominee, to appoint an Adjudicator, and such appointment shall be final and conclusive.

**5** The Adjudicator’s appointment may be terminated by the mutual agreement of the Parties. The Adjudicator’s appointment shall expire when the Services have been completed or when any disputes referred to the Adjudicator shall have been withdrawn or decided, whichever is the later.

**Terms of 6** The Adjudicator is to be and shall remain throughout his/her **Adjudicator** appointment, impartial, and independent of the Parties and shall immediately disclose in writing to the Parties anything of which he becomes aware which could affect his impartiality or independence.

**7** The Adjudicator shall not give advice to the Parties or their representatives concerning the conduct of the Project of which the Services form part other than in accordance with the Rules.

**8** The Adjudicator shall not be called as a witness by the Parties to give evidence concerning any dispute in connection with or arising out of the Agreement.

**9** The Adjudicator shall treat the details of the Agreement and all activities, and hearings of the Adjudicator as confidential and shall not disclose the same without the prior written consent of the Parties. The Adjudicator shall not without the consent of the Parties, assign or delegate any of his work under the Rules or engage legal or technical assistance.

**10** The Adjudicator may resign by given 30 days’ notice to the Parties. In the event of resignation, death or incapacity, termination or a failure or refusal to perform the duties of Adjudicator under the Rules, the Parties shall agree upon a replacement Adjudicator within 15 days or Rule 4 above shall apply.

**11** The Adjudicator shall in no circumstances be liable for any claims for anything done or omitted in the discharge of the Adjudicator’s duties unless the act or omission is shown to have been in bad faith.

**12** If the Adjudicator shall knowingly breach any of the provisions of the Rule 6 above or act in bad faith, he/she shall not be entitled to any fees or expenses hereunder and shall reimburse each of the Parties for any fees and expenses properly paid to him/her if, as a consequence of such breach any proceedings or decisions of the Adjudicator are rendered void or ineffective.

**Payment 13** The Adjudicator shall be paid the fees and expenses set out in the Dispute Adjudication Contract.

**14** The retainer fee, if applicable, shall be paid in full for the Adjudicator:

(a) being available, on 28 days’ notice, for all hearing and Site visits;

(b) all office overhead expenses such as secretarial services, photocopying and office supplies incurred in connection with his duties;

(c) all services performed hereunder except those performed during the days referred to in Rule 15 below.

**15** The daily fee shall be payable for each working day preparing for or attending Site visit or hearings or preparing decisions including any associated travelling time.

**16** The retainer and daily fees shall remain fixed for the period of tenure of the Adjudicator.

**17** The Consultant shall make all payment to the Adjudicator. The Consultant shall reimburse 50 percent the said payment by the Client. The Consultant shall pay invoices addressed to him/her within 30 days of receipt.

**18** If the Consultant fails to pay an invoice addressed to it, the Client shall arrange to pay the sum due to the Adjudicator and recover the sum paid from the Consultant.

**19**  Immediately after the Dispute Adjudication Contract takes effect, the Adjudicator shall before engaging in any activities under the Dispute Adjudication Contract, submit to the Consultant, with a copy to the Client, an invoice for:

1. an advance of 25 percent of the estimated total amount of the daily fees to which the Adjudicator shall be entitled, and
2. an advance equal to the estimated total expenses that the Adjudicator shall incur in connection with his/her duties.

**20** The Adjudicator shall not be obliged to engage in activities under the Dispute Adjudication Contract until has been paid in full for invoices submitted under Rule 19 above.

**21** The Adjudicator shall submit to the Consultant, with a copy to the Client, invoice for the balance of his/her daily fees and expenses, less the amounts advanced. The Adjudicator shall not be obliged to render its decision until invoices for all daily fees and expenses for making a decision shall has been paid in full.

**Obtaining 22** A dispute between the Parties may be referred in writing by **Adjudicator'** either Party to the Adjudicator for the decision, with a copy to **Decision** the other Party. If the Adjudicator has not been agreed or appointed, the dispute shall be referred in writing to the other Party, together with a proposal for the appointment of an Adjudicator. A reference shall identify the dispute and Rules.

**23** The Adjudicator may decide to visit the Site. The Adjudicator may decide to conduct a hearing in which event he/she decides on the date, place and duration for the hearing. The Adjudicator may request that written statements from the Parties be presented to him/her prior to, at or after the hearing. The Parties shall promptly provide Adjudicator with sufficient copies of any documentation and information relevant to the Agreement that may be requested.

**24** The Adjudicator shall act as impartial expert, not as an arbitrator, and shall have full authority to conduct any hearing as he/she thinks fit, not being bound by any rules or procedures other than those set our herein. The Client and the Consultant empower the Adjudicator, among other things to:

1. establish procedure to be applied in deciding a dispute,
2. decide upon the Adjudicator’s own jurisdiction, and as to the scope of any dispute referred to him/her/her,
3. make use of his/her own specialist knowledge, if any,
4. adopt an inquisitorial procedure,
5. decide upon the payment of interest in accordance with the Contract,
6. open up, review and revise any opinion, instruction, determination, certificate or valuation, related to the dispute,
7. refuse admission of hearings to any persons other than the Client, the Consultant and their respective representatives, and to proceed in the absence of any Party who the Adjudicator is satisfied received notice of the hearing.

**25**  All communications between either of the Client or the Consultant and the Adjudicator and all hearing shall be in the language of the Dispute Adjudication Contract. All such communications shall be copied to the other Party.

**26** Not later than the fifty-sixth day after the day on which the Adjudicator received a reference or, if later, the day on which the Dispute Adjudication Contractcame into effect, the Adjudicator shall give written notice of his/her decision to the Parties. Such decision shall include reasons and state that it is given under the Rules.

**II GENERAL CONDITIONS OF DISPUTE ADJUDICATION CONTRACT**

1. **Definitions**

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

* 1. the "Client";
  2. the "Consultant"; and
  3. the "Adjudicator".

The Client and the Consultant have entered (or intend to enter) into a contract, which is called the "Agreement" and is defined in the Dispute Adjudication Contract, which incorporates this Appendix. In the Dispute Adjudication Contract, words and expressions, which are not otherwise defined, shall have the meanings assigned to them in the Agreement.

1. **General Provisions** 
   1. The Dispute Adjudication Contract shall take effect when the Client, the Consultant and Adjudicator have respectively each signed a dispute adjudication contract.
   2. This employment of the Adjudicator is a personal appointment. No assignment or subcontracting of the Dispute Adjudication Contract is permitted without the prior written agreement of all the parties to it.
2. **Warranties** 
   1. The Adjudicator warrants and agrees that he/she is and shall be impartial and independent of the Client and Consultant. The Adjudicator shall promptly disclose to each of them any fact or circumstance which might appear inconsistent with his/her warranty and agreement of impartiality and independence.
   2. (When appointing the Adjudicator, the Client and the Consultant relied upon the Adjudicator's representations that he/she is:

(i) experienced in the work, which the Consultant is to carry out under the Contract;

(ii) experienced in the interpretation of contract documentation; and

(iii) fluent in the language for communications defined in the Agreement.

1. **General Obligations of the Adjudicator**

The Adjudicator shall:

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

(b) not previously have been employed, involved in consulting or otherwise somehow engaged as a consultant or otherwise by the Client or the Consultant, except in such circumstances as were disclosed in writing to the Client and the Consultant before they signed the Dispute Adjudication Contract;

(c) have disclosed in writing to the Client and the Consultant before entering into the Dispute Adjudication Contract and to his/her best knowledge and recollection, any professional or personal relationships with any director, officer or employee of the Client or the Consultant, and any previous involvement in the overall project of which the Agreement forms part;

(d) not, for the duration of the Dispute Adjudication Contract, be employed as a consultant or otherwise by the Client or the Consultant, except as may be agreed in writing jointly by the Client and the Consultant;

(e) comply with the Rules for Adjudication contained in Appendix 5 of the Agreement and with Sub-Clause 10.2 of the Agreement;

(f)  not give advice to the Client or the Consultant concerning the conduct of the Agreement, other than in accordance with the Rules for Adjudication;

(g)  not enter into discussions or make any agreement with the Client or the Consultant regarding employment by any of them, whether as a consultant or otherwise, after ceasing to act under the Dispute Adjudication Contract;

(h) ensure his/her availability for any site visit and hearings as are necessary; and

(i) treat the details of the Agreement and all the activities and hearings as private and confidential, and not publish or disclose them without the prior written consent of the Client and the Consultant.

**5.** **General Obligations of the Client and the Consultant**

1. The Client and the Consultant shall not request advice from or consultation with the Adjudicator regarding the Agreement. The Client and the Consultant shall be responsible for compliance with this provision.
2. The Client and the Consultant undertake to each other and to the Adjudicator that the Adjudicator shall not, except as otherwise agreed in writing by the Client, Consultant and the Adjudicator:

(i) be appointed as an arbitrator in any arbitration under the Agreement;

(ii)  be called as a witness to give evidence concerning any Dispute before arbitrator(s) appointed for any arbitration under the Agreement; or

(iii)  be liable for any claims for anything done or omitted in the discharge or purported discharge of the Adjudicator's functions, unless the act or omission is shown to have been in bad faith.

**6.** **Payment**

1. The Adjudicator shall be paid as follows, in the currency named in the Dispute Adjudication Contract:

(i)  a daily fee, which shall be considered as payment in full for:

* + 1. (a)  each working day spent reading submissions, attending hearings (if any), preparing decisions, or making site visits (if any); and
    2. (b)  each day or part of a day up to maximum of two (2) days travel time in each direction for the journey (if any) between the Adjudicator's home and site or another location of a meeting with the Client and the Consultant;

(ii)  all reasonable expenses incurred in connection with the Adjudicator's duties, including the cost of secretarial services, telephone calls, courier charges, faxes and telexes, travel expenses, hotel and subsistence costs;

(iii)  any taxes properly levied in the Country on payments made to the Adjudicator (unless a national or permanent resident of the Country) under this paragraph 6.

1. The daily fee shall be as specified in the Dispute Adjudication Contract.
2. Immediately after the Dispute Adjudication Contract takes effect, the Adjudicator shall, before engaging in any activities under the Dispute Adjudication Agreement, submit to the Consultant, with a copy to the Client, an invoice for (a) an advance of twenty-five percent (25%) of the estimated total amount of daily fees to which he/she will be entitled and (b) an advance equal to the estimated total expenses that he/she shall incur in connection with his/her duties. The Consultant shall make all payment of such invoices to the Adjudicator. The Adjudicator shall not be obliged to engage in activities under the Dispute Adjudication Contract until he or she has been paid in full for the invoice submitted under this paragraph.
3. Thereafter the Adjudicator shall submit to the Consultant, with a copy to the Client, invoices for the balance of his/her daily fees and expenses, less the amounts advanced. The Adjudicator shall not be obliged to render its decision until invoices for all of his or her daily fees and expenses for making a decision shall have been paid in full.
4. Unless paid earlier in accordance with the above, the Consultant shall pay each of the Adjudicator's invoices in full within 30 (thirty) days after receiving each invoice and shall apply to the Client under the Agreement for reimbursement of one-half of the amounts of these invoices. Then the Consultant is entitled to receive they payment in accordance with the Contract.
5. If the Consultant fails to pay to the Adjudicator the amount to which he/she is entitled under the Dispute Adjudication Contract, the Adjudicator is entitled to receive the amount due to the Adjudicator and any other amount, which may be required to maintain the operation of the adjudication by demanding it from the Client. In addition to all other rights arising from this default, the Client shall be entitled to reimbursement of all sums paid in excess of one-half of these payments (of payment that shall be paid by the Client to the Adjudicator), plus all costs of recovering these sums and financing charges calculated at the rate specified in the Agreement (rate is specified in Sub-Clause 4.4.4.
6. If the Adjudicator does not receive payment of the amount due within 30 (thirty) days after submitting a valid invoice, the Adjudicator may:
   * + 1. suspend his/her services (without notice) until the payment is received, and/or
       2. resign his/her appointment by giving notice to the Client and the Consultant. The notice shall take effect when received by them both. Any such notice shall be final and binding on the Client, the Consultant and the Adjudicator.
7. **Default of the Adjudicator**

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

1. **Default of the Adjudicator**

Any dispute or claim arising out of or in connection with this Dispute Adjudication Agreement, or the breach, termination or invalidity thereof, shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one arbitrator appointed in accordance with these Rules of Arbitration. Application of this clause is limited to two cases: (a) the Parties have agreed to the adjudication, (b) the claim is exclusively against the Adjudicator.

**Form of DISPUTE ADJUDICATION CONTRACT**

Identification of the Project

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(“the Project”)

Name and address of the Client

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(“the Client”)

Name and address of the Consultant

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(“the Consultant”)

Name and address of the Adjudicator

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(“the Adjudicator”)

Whereas the Client and the Consultant have entered into an agreement (“the Agreement”) for the execution of the Project and wish to appoint the Adjudicator to act in accordance with the Rules for Adjudication [“the Rule”],

the Client, the Consultant and the Adjudicator agree as follows:

1. The Rules, General Conditions of the Dispute Adjudication Contract and the dispute provisions of the Agreement shall form part of this Contract.
2. The Adjudicator shall be paid:
3. a retainer fee of ………………………….. per calendar month (if applicable)
4. a daily fee of ……………………………

Expenses, including the cost of telephone calls, courier charges, and faxes incurred in connection with his/her duties; all reasonable and necessary travel expenses, hotel accommodation and subsistence and other direct travel expenses.

Receipts will be required for all expenses.

1. The Adjudicator agrees to act as an adjudicator in accordance with the Rules for Adjudication and has disclosed to the Parties any previous or existing relationship with the parties or other concerned with the Project or other projects.
2. The laws of Latvia shall govern this Contract.
3. The language of the Contract shall be English.

Signed by for and on behalf of the Client:

................................................ Signature of Authorised Signatory

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

................................................ Date of signing

Signed by for and on behalf of the Consultant:

................................................ Signature of Authorised Signatory

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

................................................ Date of signing

Signed by for and on behalf of the Adjudicator:

................................................ Signature of Adjudicator

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

................................................ Date of signing