

Republic of Serbia  
Ministry for National  
Investment Plan

City of Belgrade

China Road and Bridge  
Corporation

РЕПУБЛИКА СРБИЈА  
ГРАДСКА УПРАВА ГРАДА БЕОГРАДА  
Бр. 344-1220/10  
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БЕОГРАД

Република Србија  
МИНИСТАРСТВО ЗА НАЦИОНАЛНИ  
ИНВЕСТИЦИОНИ ПЛАН

Бр. 48-00-16/2010-01

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COMMERCIAL CONTRACT  
DESIGN AND EXECUTION OF WORKS OF THE CONSTRUCTION OF  
THE ZEMUN- BORČA BRIDGE WITH THE ACCOMPANYING ROADS

Belgrade, April 15, 2010

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**COMMERCIAL CONTRACT****DESIGN AND EXECUTION OF WORKS OF THE CONSTRUCTION OF THE ZEMUN- BORČA  
BRIDGE WITH THE ACCOMPANYING ROADS**

Concluded in Belgrade, April 15, 2010,

Between the Contracting Parties:

- EMPLOYER:**                   **REPUBLIC OF SERBIA**  
**MINISTRY FOR NATIONAL INVESTMENT PLAN**  
Belgrade, Vojkovićeveva No. 10,  
Represented by M.Sc. Verica Kalanović, Minister  
(hereinafter referred to as: "**EMPLOYER**")
- BENEFICIARY:**               **CITY OF BELGRADE,**  
Belgrade, Dragoslava Jovanovića No. 2,  
represented by Dragan Đilas, Mayor  
(hereinafter referred to as "**BENEFICIARY**")
- CONTRACTOR:**               **CHINA ROAD AND BRIDGE CORPORATION (CRBC)**  
Beijing, PR China, C88 Andingmenwai Dajie  
represented by Lu Shan, Vice President  
(hereinafter referred to as "**CONTRACTOR**")

**PREAMBLE**

- Within the Agreement on Economic and Technical cooperation in the field of infrastructure between the Government of the Republic of Serbia and the Government of the People's Republic of China, signed August 20, 2009, in Beijing (hereinafter: Agreement), it was determined that the Agreement is concluded in order to improve cooperation in the field of infrastructure of two countries, and that the priority in the coming period is the implementation of the project of the Construction of the Bridge Zemun-Borča with accompanying roads;
- The Preliminary Agreement on realization of project of implementation of the Zemun-Borča bridge with the accompanying roads (hereinafter referred to as: Preliminary Agreement) which the contracting parties have concluded on October 23, 2009 the content of the project of the construction of the Bridge Zemun-Borča with accompanying roads was determined (hereinafter referred to as: the Project), the quantity of services and works which are the subject of the Project, deadlines for realization of the Project, obligations of the parties from the Preliminary Agreement, as well as the period of application which is conditional upon coming into force of this Contract; Note from the meeting held on October 22, 2009 which the parties from the Preliminary Agreement signed on November 26, 2009 are integral part of the Preliminary Agreement and represents entirely, as a unique and three-way binding act, a legal foundation for defining of this Contract;
- The function of the Investor in terms of the provisions from the Law on planning and construction („Official Gazette of RS", no. 72/09), in line with this Contract, Preliminary

Agreement and Conclusion from the Government 05 number: 48-3532/2009-001 dated June 18, 2009 is performed by the City of Belgrade, who is also the Beneficiary;

- CHINA ROAD AND BRIDGE CORPORATION (CRBC) is responsible for preparation of the design and technical documentation and for the execution of the Project which are the subject of this Contract, based on Article 11 of the Agreement, and in accordance with the letter of the China International Contractors Association on recommending construction works to CRBC, dated June 3, 2009 and the letter of the Embassy of the People's Republic of China in the Republic of Serbia with the recommendation of CRBC as a contractor, dated September 3, 2009, and on the basis of the Preliminary Agreement;
- In order to secure part of the funds for financing the project, with the assistance by the Contractor, the Republic of Serbia has contacted the Chinese EXIM Bank (hereinafter: EXIM Bank) in order to secure a "preferential buyer's loan", in line with the loan amount as defined by the Law on Budget for the year of 2009 and the Law on the Budget of the Republic of Serbia for 2010 ("Official Gazette of RS" No. 107/09), Article 3 para. B) "Project loans". Financing for implementation of part of the project included in this Contract shall be more closely defined in a Loan agreement with the EXIM bank;
- Relevant documentation, in terms of Article 3 Para. 1 of the Preliminary Agreement, and for the purpose of providing services and execution of the Project which are the subject of this Contract, consists of:
  - 1) Pre-feasibility study for the road North Tangent with the General Design from July 2007;
  - 2) Terms of Reference for the road North Tangent with the bridge Zemun-Borča, from September 2009;
  - 3) Terms of Reference for the preparation of the design for the road North Tangent with the bridge Zemun-Borča, from October 2009;
  - 4) Conceptual Design with the bill of quantities and estimates which the Contractor submitted to the Employer and the Beneficiary on October 10 and 12, 2009;
  - 5) The Conclusion of the Working Group for review of variant solutions for Zemun – Borča Bridge and for preparing the proposition of the platform for negotiations with the Chinese contractor, dated October 16, 2009.
- The Contractor (CRBC) is obliged, in line with Article 3 Para. 2 of the Preliminary Agreement, that apart from services defined in the Preliminary Agreement, which he is obliged to provide in line with this Contract, he shall make corrections in the Conceptual design and improve the esthetics in the sense of technologically progressive and modern solution, so that it is acceptable for both parties and that, based on such corrected design, he shall initiate the preparation of project-technical documentation defined in the Preliminary Agreement and this Contract.

## I. BASIC PROVISIONS

### Article 1. Subject of The Contract

This Contract (hereinafter referred to as: the Contract) defines mutual rights and obligations of the Employer, Beneficiary and Contractor in preparation and realization of the Project, financing of the Project, content of the Project, value of the services and works which form the content of the Project, deadlines for provision of services and execution of the Project, obligations of the Employer, Beneficiary and Contractor, as well as other issues of significance for implementation of the Project. This Contract consists of provisions and terms, annexes to the Commercial Contract, Terms of Reference submitted by the Employer and Beneficiary, and confirmed by the Contractor, as well as all modifications in line with the Contract. The Ministry

for National Investment Plan is in charge of implementation of this Contract in the Republic of Serbia.

## Article 2. Definitions and Interpretations

2.1. Unless otherwise expressly stated in this Contract, the defined terms shall have the meanings determined as follows:

- 2.1.1. „Contract“ is this Contract on construction, all relevant documentation mentioned in the Preamble of this Contract, annexes to this Contract, all changes and modifications (annexes) in line with this Contract.
- 2.1.2. „Employer“ is the Ministry for National Investment Plan.
- 2.1.3. „Beneficiary“ is the City of Belgrade.
- 2.1.4. „Contractor“ is China Road and Bridge Corporation (CRBC).
- 2.1.5. „Engineer“ is a person appointed by the Employer or the Beneficiary to act as an Engineer for the needs of this Contract, or some other person the Employer or the Beneficiary shall appoint in line with the provisions of this Contract, and inform the Contractor accordingly, in line with the provisions from this Contract.
- 2.1.6. „Contractor's representative“ is the person mentioned in the Contract by the Contractor or the person the Contractor shall appoint in line with the provisions of this Contract and who shall act on behalf of the Contractor.
- 2.1.7. „Staff of the Employer and the Beneficiary“ consists of the Engineer, assistants to the Engineer and all other staff, employees and other personnel of the Engineer or the Employer and the Beneficiary and all other staff presented to the Beneficiary by the Engineer or the Employer and the Beneficiary as the Personnel of the Employer and the Beneficiary.
- 2.1.8. „Staff of the Contractor“ is the Representative of the Contractor and all the staff the Contractor uses at the site, which includes the staff, employees and other personnel of the Contractor and all sub-contractors, as well as all other staff assisting the Contractor during the execution of works.
- 2.1.9. „Sub-contractor“ is a person named in the Contract as the sub-contractor for part of the works and his legal successors.
- 2.1.10. „Dispute Adjudication Board (DAB)“ consists of three persons appointed in line with Article 89.
- 2.1.11. „Base Date“ is the date of signing of the Preliminary Agreement.
- 2.1.12. „Commencement date“ is the date refers to the Article 42. of the Contract.
- 2.1.13. „Contractor's Equipment“ means all appliances, equipment, machinery, vehicles, spare parts stuff, instruments and physical objects of whatsoever nature required for the execution and completion of the Project and the remedying of any defects therein, but does not include equipment, materials or other objects intended to form or forming part of the Project.
- 2.1.14. „Contract price“ means the price refers to the Article 4. of the Contract.
- 2.1.15. „Agreed amount“ means the Contract price plus the amount defined in the Article 5. of the Contract.
- 2.1.16. „Time for Completion“ is 36 months.

## 2.2. INTERPRETATIONS

2.2.1. Unless the context indicates otherwise, in this Contract:

- 2.2.1.1. words which indicate one gender include all genders;
- 2.2.1.2. words which indicate singular also include plural, and words which indicate plural also include singular;
- 2.2.1.3. provisions which contain the words to agree, agreed and agreement require for the agreement to be in writing, and
- 2.2.1.4. in writing means written by hand, typed, printed or made in electronic form so that it represents a permanent document.

Words written on the margins and other headings shall not be taken into consideration during the interpretation of the rules and terms from this Contract.

### 2.3. COMMUNICATION

2.3.1. Whenever this Contract calls for provision or issuing of approvals, confirmations, certificates, decisions, agreements, rulings, announcements and requirements, such communications:

2.3.1.1. if in writing shall be delivered to the person addressed (with receipt confirmation), shall be sent by mail or by courier or transferred via the agreed means of electronic transfer; and

2.3.1.2. shall be delivered, sent or transmitted to the address of the recipient stated in the Contract. However,

2.3.1.2.1. if the recipient notifies of another address, all further communications shall be forwarded to that other address; and

2.3.1.2.2. unless the recipient has stated otherwise in the request for issuing of approval or agreement, the approval or agreement may be sent to the address from which the request was sent.

2.3.1.3. Approvals, confirmations, agreements and ruling may not be withheld or delayed without justification. When issuing approval to one party the issuer shall deliver a copy of the approval to the other party. When one party or the Engineer delivers an announcement to the other party, the copy of that announcement shall be sent to the Engineer or the other party, depending on the case.

### 2.4. RELEVANT LAW AND LANGUAGE

2.4.1. Laws of the Republic of Serbia are applied to this Contract.

2.4.2. Under the circumstance of no Serbian laws and/or regulations exist, such international customs as FIDIC terms and conditions and ICE, etc. shall be referred to.

2.4.3. If there are versions of any part of the Contract in several languages, the version written in English language shall prevail.

2.4.4. Language for communication is English.

### 2.5. PRIORITY OF THE DOCUMENTS

2.5.1. Documents which form the Contract are considered mutually explanatory. For the purpose of interpretation, the priority of the documents is as follows:

2.5.1.1. The Contract,

2.5.1.2. Annexes to this Contract

2.5.1.3. Technical documentation

2.5.1.4. Relevant documentation from the Preliminary Agreement which consists of:

2.5.1.4.1. The Conclusions of the Working Group for review of variant solutions for Zemun – Borča Bridge and for preparing the proposition of the platform for negotiations with the Contractor;

2.5.1.4.2. Conceptual Design with the bill of quantities and estimates which the Contractor submitted to the Employer and the Beneficiary on the October 10 and 12, 2009;

2.5.1.4.3. Terms of Reference for the preparation of the design for the road North Tangent with the bridge Zemun-Borča, from October 2009;

2.5.1.4.4. Terms of Reference for the road North Tangent with the Bridge Zemun-Borča, from September 2009;

2.5.1.4.5. Pre-feasibility study for the road North Tangent with the General Design from July 2007.

2.5.2. If any discrepancies or irregularities are found within the documents, the Engineer is obliged to issue the necessary clarification or instruction, agreed with both



parties. This clarification shall not in any way influence the change in deadlines or in the price of services and works included in this Contract.

## 2.6. KEEPING OF THE DOCUMENTATION AND ITS SECURITY

- 2.6.1. The Contractor has in his possession all his documentation and takes care of it until it is taken over by the Employer and the Beneficiary. The Contractor is obliged to submit to the Employer all the technical documentation in six copies, and all other documentation in two copies.
- 2.6.2. The Contractor is obliged to keep at the construction site one copy of the Contract, documentation regulated by the Law on planning and construction, documentation from the Contractor, modifications and other communication issued on the basis of the Contract. Staff of the Employer and the Beneficiary has the right to access these documents at all reasonable times.
- 2.6.3. Execution of the Project shall be described in the Construction log kept by the Contractor. The construction log must always be available to representatives of the Employer and the Beneficiary during the working hours. Daily data are entered by the Contractor's representative or the nominated representative. There must not be any empty places left in the log. Apart from the Contractor's representative, the following persons may also enter data into the construction log:
  - 2.6.3.1. Engineer;
  - 2.6.3.2. Authorised representatives of the Contractor, the Beneficiary and the Engineer;
  - 2.6.3.3. Relevant official bodies of Serbia.
- 2.6.4. In case the Engineer and the Contractor disagree about the data in the construction log, they are obliged to state their opinions within five (5) working days. Should they fail to do so, it shall be deemed that the data is accepted. Pages from the construction log for the previous day shall be handed over to the Engineer each morning.

## 2.7. USE OF DOCUMENTATION OF THE CONTRACTOR BY THE EMPLOYER

- 2.7.1. The Contractor keeps copyright and other intellectual property rights to the documentation of the Contractor and other project documentation prepared by the Contractor (or on his behalf).
- 2.7.2. It is considered that by signing the Contract the Contractor has granted to the Employer and to the Beneficiary unlimited (in terms of duration), transferable, non-exclusive and free license to copy, use and transmit the Contractor's documentation as well as to modify it and use it in that form. That license:
  - 2.7.2.1. is valid during the actual or foreseen working period (depending on which of the two is longer) of relevant parts of the Project,
  - 2.7.2.2. grants to any person holding the relevant part of the works in legal possession the right to copy, use and transmit the Contractor's documentation for the purpose of completing, exploitation, maintenance, change, adjustments, repairs and demolition of the Project, and
  - 2.7.2.3. in case the Contractor's documentation is in the form of a computer programme or other software, allows its use in any computer on the construction site and other locations foreseen by the Contract, including the replacement of any computer delivered by the Contractor.
- 2.7.3. Contractor's documentation and other project documentation prepared by the Contractor (or on his behalf) may not be used, copies or transmitted to third parties by the Employer or the Beneficiary (or on their behalf) for the purposes different from those foreseen by this Article.

## 2.8. USE OF DOCUMENTATION OF THE EMPLOYER BY THE CONTRACTOR

- 2.8.1. The Employer and the Beneficiary keep all copyright and other intellectual property rights in all the documentation prepared by the Employer, and the Beneficiary (or on

their behalf). The Contractor has the right to copy, use and transmit these documents for the purposes of implementation of this Contract and at his own expense. The Contractor does not have the right to copy, use or transmit them to third parties without the approval from the Employer and the Beneficiary, apart in the measure necessary for implementation of this Contract.

#### 2.9. CONFIDENTIAL DATA

2.9.1. The Contractor is obliged to submit all the confidential data and other information which the Engineer justifiably asks for in order to determine whether the Contractor is acting in line with the Contract.

#### 2.10. ACTING IN LINE WITH THE LAWS

2.10.1. The Contractor is obliged to act in line with the laws of the Republic of Serbia during the implementation of the Contract.

### Article 3. Content of the Project

Content of the project which is the subject of this Contract is the preparation of project and technical documentation (services) and execution of works and delivery of the material for the realization of the project of implementation of the bridge and the accompanying roads (works).

Services from Para. 1. of this Article, are the activities of preparation of:

1. Preliminary design for the bridge Zemun – Borča;
2. Preliminary design for the roads;
3. Preliminary design for the engineering constructions at the roads route;
4. Preliminary design for the waterworks;
5. Preliminary design for the sewerage;
6. Preliminary design for the electrical installations;
7. Preliminary design for arranging of the green areas;
8. Geotechnical documentation;
9. Synchronous plan;
10. Environmental impact assessment;
11. Feasibility study.

Apart from services from Para. 2 of this Article, the Contractor is obliged to perform the related Main designs and documentation necessary for execution of works, after it receives the positive report of the expert control prepared by State Revision Committee which is formed, in line with the provisions from the Law on planning and construction, by the minister in charge of construction activities.

Activities related to provision of services from Para. 2 and 3 of this Article are performed by the Contractor together with the local legal entity which is recorded in the registry for the preparation of technical documentation for this type of constructions for which the construction permit is issued by the relevant ministry and which has a decision from the minister in charge of construction activities that it fulfills the conditions prescribed by law.

The works from Para. 1 of this Article include the construction of the Bridge Zemun – Borča in the length of approximately 1.500 m with the accompanying roads approximately 21.000 meters long from the new Novosadski to Pančevački put and engineering constructions, including traffic signalizations, with construction and other material necessary for the realization of the project, as well as obtaining all attestations, certificates and tests necessary for the technical testing procedure and obtaining the exploitation permit. The contents of the execution of the Project shall be specified to the Base Date.

The execution of works from Para. 5 of this Article is performed by the Contractor together with the local legal entity which is recorded in the registry for construction of this type of constructions for which the construction permit is issued by the relevant ministry and which has a decision from the minister in charge of construction activities that it fulfills the conditions prescribed by law.

#### **Article 4. Financing of the Project and the Amount of Services and Works**

The Project is financed in line with the Loan agreement between the EXIM bank and the Republic of Serbia, the law which regulates the budget of the Republic of Serbia and this Contract.

The Contract Price of services and works from Article 3. of this Contract is USD 255.000.000 (two hundred fifty five million US dollars), which is determined, based on the date the Preliminary agreement was concluded, as the amount of EUR 170.000.000 (one hundred and seventy million euros) and includes the profit of the Contractor as well as expenses of organizing the construction site, preparatory works, accompanying material and equipment, insurance and all other related, direct or indirect expenses of the Contractor.

The currency of all the payment payable by the EXIM bank upon the request submitted by the Employer shall be in USD and that for the payment payable by the Employer shall be in local currency i.e. Serbian Dinar.

The Contract Price from Para. 2 of this Article does not include:

1. expenses related to obtaining and preparation of the land (the Beneficiary is responsible for obtaining the construction land which shall be given, free of charge, to the Contractor to use, for the purpose of execution of permanent and temporary works, access and construction of necessary facilities during the execution of the Project);
2. expenses for value added tax (VAT), levies and customs duties.

#### **Article 5. Change of the Amount Due to Changed Circumstance and Subsequent Works**

In case of changed circumstances and subsequent works the amount may be changed upon approval from all contracting parties up to the level of maximum 10% of the Contract Price, according to the procedure and in a manner determined by this Contract. In case no agreement can be reached by all the parties, the amount from Article 4. Para. 2 shall remain unchanged.

The changed circumstances from Para. 1 of this Contract imply unexpected events which influence the amount and which were not possible to foresee at the time of the conclusion of the Contract, and the occurrence of which was unavoidable or its effects impossible to be removed during the realization of the Project (conditions for execution of works in soil or water which were impossible to foresee in the technical documentation).

Subsequent works from Para. 1 of this Article are those works which are not concluded and not necessary for execution of this Contract and which the Employer and the Beneficiary demand to be undertaken. Any substantial changes of the Main design, demand by the Employer and the Beneficiary and agreed by Contractor, will be considered as subsequent works which value of those changes will not exceed the Agreed amount.

Expenses from Para. 1 of this Article are to be borne by the Employer and the Beneficiary.

## **Article 6. Payment Method**

The Payment method is by installation, which "milestones" are stipulated in the Annex I to this Contract, which will be agreed and signed by all contractual parties.

All transfers for the Contractor as per this Contract shall be performed by EXIM Bank in line with the request for tranche delivered to the EXIM Bank by the Employer, apart from the transfers which the Employer is obliged to make in proportion determined by the Loan Agreement.

All transfers shall be made in line with the Loan Agreement. The amount and the payment schedule (for the first payment and the payment certificates) shall be defined in the Annex I to this Contract, in line with the provisions from the Loan Agreement.

The Employer shall not bear any responsibility for payments for the Contractor apart from payments in the relevant proportion from the Loan Agreement and the payments in case of changed circumstances and potential subsequent works.

Payments to the Contractor shall be made for performed services and executed works in line with the verified payment certificates and final certificate upon finalisation of the Project.

## **Article 7. Deadlines**

The Contractor is obliged to perform all the services and works from Article 2. of this Contract, and:

1. to prepare the Preliminary designs (not including the time for approval) – within 150 days from the date the Preliminary Agreement was concluded;
2. to prepare the Main designs (not including the time for approval) – within 150 days from the date of receipt of the Report by the Auditing committee about the Conceptual designs;
3. to act according to the remarks made by the Republic Auditing Committee, and technical control within 15 days from the date the remarks were submitted.
4. to execute the works, counting from the Commencement Date, referring to relevant provision of the Article 42 of this Contract:
  - 4.1. in phase I: road T-6 (from the new Novosadski put to the Car Dušan street (Batajnički put)) – within 10 months;
  - 4.2. in phase II: road from Batajnički put to Zrenjaninski put – within two years, and for the construction of the Bridge – within three years;
  - 4.3. in phase III: section from Zrenjaninski put to Pančevački put – within two years.

## **II. EMPLOYER AND BENEFICIARY**

### **Article 8. Obligations of the Employer and the Beneficiary**

The Employer and the Beneficiary are obliged to:

1. grant the Contractor the right of access and possession of all parts of the construction site during the agreed term of execution of the Project. The right of access and possession of the construction site is not granted exclusively to the Contractor. The Employer and the Beneficiary may refuse the right of possession until the receipt of the Performance guarantee;
2. obtain all the necessary approvals and permits in line with the Law on planning and construction;

3. acquire the right of possession over the location or the use of the land for implementation of the project in line with the Plan of detailed regulation and the Contract and enable access to the location for the Contractor, subcontractors and other persons appointed by the Contractor to complete the works before the Commencement Date. The Employer and Beneficiary are obliged to make the site ready for implementation, including but not limited for the dismantling and removing of all existing obstacles. Contractor's access to the location shall be in line with the technical documentation, dynamic plan of construction in line with the resolved property relations. The Employer and the Beneficiary shall also be responsible for resettlement of all inhabitants or those present at the location and shall bear all the costs including but not limited to payment of the resettlement fees, fees related to obtaining the land and fees for providing security for the location;
4. fully support and coordinate project implementation in all phases;
5. form the coordination working team;
6. perform financial control activities;
7. submit on time milestone certificates with the request for payment to the EXIM Bank and the administration in charge of treasury activities for the purpose of paying the Contractor;
8. provide for the Engineer and supervision, in line with the Law on planning and construction;
9. provide technical control of the Main design of the road North Tangent with the Bridge Zemun-Borča;
10. within 14 days resolve all timely delivered requests by the Contractor and submit their responses in writing. Timely delivery means that the Contractor has delivered the request at least 28 days before the request may, potentially, have an influence on the agreed obligations;
11. timely resolve and approve, with previous written and clarified approval by the Engineer:
  - 11.1. potential surpluses and deficits in works, subsequent works and unforeseen works;
  - 11.2. potential requests for prolongation of the deadline for execution of works;
12. provide the technical testing and to take part in the Committee for Technical Inspection;
13. form the Committee for Taking-over of the Project and final calculation and to take part in the work of that Committee.
14. to operate the Project strictly follow the instructions of the Contractor during the warranty period.

The Employer is obliged to ensure that the Contractor is exempt from VAT, levies and customs, through the procedure of Loan Agreement between the EXIM Bank and the Republic of Serbia is confirmed (Article on exemptions, exemption certificates, etc.)

The Employer and the Beneficiary are obliged to, to an extent it is in their power, assist the Contractor with obtaining all the relevant approvals and permits from the authorities in charge, including licenses and permits for equipment and material, and also including the equipment of the Contractor according to the Contract and any other authorisations necessary for the start, execution and completion of works on the basis of the Contract.

The Employer and the Beneficiary are obliged to offer support to the Contractor in the provision of sufficient working permits for the Contractor's employees and staffs who are necessary for implementing the Project according to the relevant legislation of Serbia.

### **III. ENGINEER**

#### **Article 9. Obligations of the Engineer**

The Employer and the Beneficiary shall appoint the Engineer who shall carry out the duties assigned to him in the Contract and shall inform the Contactor such appointment in writing form. The Engineer's staff shall include suitably qualified engineers and other professionals who are competent to carry out these duties. All engineers must fulfill the conditions prescribed by the Law on planning and construction related to expert supervision.

Engineer may use authorisations of the Engineer provided by this Contract or which are inherent to it.

The Engineer is not authorised to perform changes to the Contract.

Before issuing any order which results in change of deadline, amount or scope of work the Engineer must obtain written approval from the Employer and the Beneficiary.

The Engineer is not authorised to relieve any party of its obligations from the Contract;

No approvals, control, confirmation, agreement, inspection, instruction, notification, proposal, order, request, examination or a similar act by the Engineer (including the lack of disapproval) does not relieve the Engineer from any responsibility undertaken on the basis of the Contract, including the responsibility for errors, failures, diversions and failure to act.

The Engineer has the right to assign obligations and authorisations to his assistants and also to revoke those obligations and authorisations with express approval by the Employer and the Beneficiary, and shall inform the Contractor accordingly.

The Engineer has the right to issue to the Contractor (at any time) orders necessary for execution of works and removal of defects, entirely in line with paragraphs 3, 4 and 5 of this Article and this Contract. The Contractor may accept orders from the Engineer only or from some assistant to whom the appropriate authorisation has been assigned to in line with this Article.

### **IV. OBLIGATIONS BY THE CONTRACTOR**

#### **Article 10. General Obligations by the Contractor**

The Contractor is obliged to design, execute and complete the Project in line with the Contract, as well as to remove all defects in the Project. Upon completion, the works must be appropriate for use for those purposes provided in the Contract, which also includes the obligation by the Contractor to remove, at his own cost, all defects which are the result of errors in the designs or in the execution of the Project, within 10 years from the completion of obligations from this Contract. The Contractor is obliged to execute the Project from this Contract according to the Main designs.

It is the obligation of the Contractor to complete the Analysis of the project risk by detailed review of the documentation. The Analysis should point to potential problems and technology for their prevention. If the Contractor does not submit this document for approval to the Engineer, the changed circumstances or subsequent works Articles shall not be applied and the relevant costs shall be charged to the Contractor. The Contractor must complete the risk analysis within six months from the date of the approved Main design.

The Contractor is obliged to obtain the equipment and documentation of the Contractor, as well as to provide for all the staff of the Contractor, goods, expendable material and all other items and services, whether temporary or permanent, which are necessary for designing, execution, completion and removal of defects.

The Contractor shall be responsible for adequacy, stability and safety of all works at the construction site and all methods of execution of the Project.

The Contractor is obliged to submit, at the request of the Engineer, particularities of the arrangement and methods which the Contractor intends to adopt for execution of the Project. No significant changes in those arrangements and methods may be performed before they are communicated to the Engineer.

The Contractor is obliged to act in line with the orders issued by the Engineer or his authorised assistant regarding any issue related to the Contract. The orders are issued in writing.

The Contractor is obliged to perform all the agreed services and works in line with the Law on planning and construction and other relevant laws and regulations of the Republic of Serbia and technical documentation, and pursuant to valid technical regulations, standards and normatives.

The Contractor is obliged to determine in a decision the certified contractor for works included in this Contract as well as certified contractors for all foreseen works from the technical documentation, with personal licenses and to submit them to the expert supervision. Certified contractors must fulfill the demands prescribed by the Law on planning and construction.

In case there is a need to change some of the certified contractors, the Contractor is obliged, prior to submission of the decision on determination of the new certified contractors, to address the Beneficiary, who will issue the written approval within 7 days. Together with the reasons for the change of the above mentioned certified contractors, the Contractor is obliged to submit the evidence that the newly appointed certified contractors fulfill all the demands regulated by the Law on planning and construction.

For the purpose of executing of the Project which are the subject of this Contract, the Contractor is obliged to obtain the work force, material, construction and other equipment, to perform all the preparatory, main and completion works, to set up and maintain the traffic signalization and other necessary activities for complete execution of the Project and which are the subject of this Contract.

The Contractor is obliged, before introduction to the works, to perform the following:

1. The Contractor is obliged to submit to the Employer and the Beneficiary, within 21 days from the date of the approval of the Main design:
  - 1.1. the detailed dynamic plan for execution of the agreed works with clearly defined activities. The dynamic plan must be signed and verified by the Contractor. The integral part of the dynamic plan are the resource plans and:
    - 1.1.1. Mobilization Plan of Human Resources;
    - 1.1.2. Mobilization Plan of Machinery and Equipment;
    - 1.1.3. Mobilization Plan of Materials for Permanent Works;
    - 1.1.4. Site Organization Chart for Construction;
    - 1.1.5. Methodology of Construction;
  - 1.2. Safety at work and fire prevention analysis;
  - 1.3. Detailed topographic plan of the location prior to the Commencement Date;
  - 1.4. Detailed list and dynamic plan of delivery of information, documentation or activities which are the obligation of the Employer or the Beneficiary, and may influence the implementation of this Contract in any way.

### **Article 11. Bank Guarantees**

The Contractor is obliged to submit to the Employer before the date the notification issued by the Engineer for Commencement date is obtained:

1. Performance guarantee in the amount of 10% of the Contract price with validity term 28 days longer than the agreed deadline for Completion of the Project and Defect Notification Period. Bank guarantee must have a clause that it is irrevocable, unconditional and payable at first call without objection;
2. Insurance policies according Article 78.

The Contractor is obliged to prolong the bank guarantee from this Article, in case the deadline for Completion of the Project or Defect Notification Period is prolonged. The bank issuing the guarantees must be a first class international or local bank acceptable to the Employer.

### **Article 12. Representative of the Contractor**

The Contractor determines the Representative and grants him all authorisations necessary to act on behalf of the Contractor and in line with the Contract. If the Representative of the Contractor is not named in the Contract the Contractor is obliged to, prior to the Commencement Date, submit to the Engineer for approval the names and data about the person he intends to appoint as the Representative of the Contractor. If the approval is withheld or revoked later, or if the appointed person does not act as the Representative of the Contractor, the Contractor is obliged to present, in the similar way, the name and data of another person appropriate for that appointment. The Contractor may not, without the prior approval from the Engineer, replace the Representative of the Contractor or appoint a new one.

The Representative of the Contractor is obliged to dedicate all his time to implementation of the Contract by the Contractor. In case of temporary absence of the Representative of the Contractor from the construction site during the execution of works, appropriate replacement shall be appointed with the previous approval from the Engineer, and the Engineer shall be notified thereof.

The Representative of the Contractor accepts orders on behalf of the Contractor, in line with the provisions from this Contract.

The Representative of the Contractor has the right to assign his authorities and functions to any competent person, as well as to revoke at any time those authorisations and functions. No assignment or revocal may come into effect before the Engineer does not receive the previous notification signed by the Representative of the Contractor with the name of that person and indication of authorisations and functions being assigned or revoked.

The Representative of the Contractor and all the mentioned persons must speak Serbian or English fluently. In case the Representative of the Contractor or all the mentioned persons are not fluent in Serbian, the Contractor shall hire a competent translator to be available during the working hours.

### **Article 13. Subcontractors**

The Contractor is obliged to hire subcontractors with the seat in the Republic of Serbia, as well as to use the construction material and other goods necessary for implementation of the



project which is the subject of this Contract produced, processed and manufactured in the Republic of Serbia, in the amount not smaller than 45% of the total Agreed amount of the Project. The percentage of potential works and services which the Contractor hires and which originate from third countries does not influence the percentage of engagement of subcontractors, residing in the Republic of Serbia, and goods originating from Serbia.

Selection of subcontractors with the seat in the Republic of Serbia, as well as suppliers of construction material and other goods originating from the Republic of Serbia, is done by the Contractor within 14 days, with the approval from the Employer and the Beneficiary, provided within 14 days from the date the proposal was submitted.

The Contractor is responsible for actions and failure to act of any subcontractor, his representatives or employees in the same way as if those are actions or failure to act by the Contractor.

The Contractor is, at the time of signing of the Contract, familiar with the prices of material, and goods at the Serbian market, he included them in the project Risk analysis and formed the total amount from this Contract with those prices.

#### **Article 14. Setting Out**

The Contractor shall set out the Works in relation to original points, lines and levels of reference specified in the Contract or notified by the Engineer. The Contractor shall be responsible for the correct positioning of all parts of the Works, and shall rectify any error in the positions, levels, dimensions or alignment of the Works.

The Employer shall be responsible for any errors in these specified or notified items of reference, but the Contractor shall use reasonable efforts to verify their accuracy before they are used.

#### **Article 15. Safety Procedures**

The Contractor is obliged, at his own expense:

1. to act in line with all the relevant safety regulations,
2. to take care about the safety of all persons having the right to be at the construction site,
3. to make sure there are no unnecessary obstacles at the construction site and the works so that those persons are not exposed to dangers,
4. To provide a fence, lighting, supervision and guards for the Project until the taking-over by the Beneficiary and to secure and safeguard in appropriate way the executed works, equipment and material from decay, damage, removal or destruction until the construction is taken over,
5. to secure all temporary works (including roads, pedestrian paths, guards and fence) which are necessary for execution of the Project for the purpose of use and protection of passers-by and owners and users of the adjoining land.

#### **Article 16. Quality Assurance**

The Contractor shall institute a quality assurance system to demonstrate compliance with the requirements of the Contract. The system shall be in accordance with the details stated in the Contract. The Engineer shall be entitled to audit any aspect of the system.

Details of all procedures and compliance documents shall be submitted to the Engineer for information before each design and execution stage is commenced. When any document of a technical nature is issued to the Engineer, evidence of the prior approval by the Contractor himself shall be apparent on the document itself.

Compliance with the quality assurance system shall not relieve the Contractor of any of his duties, obligations or responsibilities under the Contract.

#### **Article 17. Data about the Construction Site**

It shall be deemed that the Contractor has fully obtained all the necessary information about the risks, eventualities and other circumstances which may influence the works which are the subject of this Contract. To a same extent it is considered that the Contractor has reviewed the construction site, its surroundings, the above mentioned data and other information and that prior to the submission of the Offer, he got familiar with all the relevant matters, including among other things:

1. form and nature of the construction site, with subterranean conditions,
2. hydrological and climatic conditions,
3. scope and nature of work and goods necessary for execution and completion of the Project and removal of defects,
4. laws, procedures and working customs in the Republic of Serbia,
5. requirements of the Contractor related to access, accommodation, benefits, staff, electric energy, transportation, water and other installations.

#### **Article 18. Sufficiency of the Agreed Amount**

It shall be deemed that the Contractor:

1. is certain of the adequacy and sufficiency of the Agreed amount, and
2. has based the Agreed amount on the data, interpretations, necessary information, examinations and all relevant matters from Article 17, as well as on potential further data relevant to the Contractor's design.
3. the Agreed amount covers all liabilities of the Contractor and everything which is necessary for good designing, execution and completion of the Project and removal of potential shortcomings.

#### **Article 19. Rights of Way and Facilities, and Avoidance of Interference**

The Contractor shall bear all costs and charges for special and/or temporary rights-of-way which he may require, including those for access to the Site. The Contractor shall also obtain, at his risk and cost, any additional facilities outside the Site which he may require for the purposes of the Works.

The Contractor shall not interfere unnecessarily or improperly with:

1. the convenience of the public, or
2. the access to and use and occupation of all roads and footpaths, irrespective of whether they are public or in the possession of the Employer or the Beneficiary.

The Contractor shall indemnify and hold the Employer/Beneficiary harmless against and from all damages, losses and expenses (including legal fees and expenses) resulting from any such unnecessary or improper interference.

**Article 20. Access Route**

The Contractor shall be deemed to have been satisfied as to the suitability and availability of access routes to the Site. The Contractor shall use reasonable efforts to prevent any road or bridge from being damaged by the Contractor's traffic or by the Contractor's personnel. These efforts shall include the proper use of appropriate vehicles and routes.

Except as otherwise stated in these Conditions:

1. the Contractor shall (as between the Parties) be responsible for any maintenance which may be required for his use of access routes;
2. the Contractor shall provide all necessary signs or directions along access routes, and shall obtain any permission which may be required from the relevant authorities for his use of routes, signs and directions;
3. the Employer/Beneficiary shall not be responsible for any claims which may arise from the use or otherwise of any access route,
4. the Employer/Beneficiary does not guarantee the suitability or availability of particular access routes, and
5. Costs due to non-suitability or non-availability, for the use required by the Contractor, of access routes shall be borne by the Contractor.

**Article 21. Transport of Goods and Contactor's Equipment**

The Contractor is responsible for all transportation of goods and especially:

1. The Contractor is obliged to notify the Engineer at least 21 days in advance about the arrival of any equipment or main positions of the goods to the construction site;
2. The Contractor is responsible for packing, loading, transportation, acceptance, unloading, storage and protection of goods and other items necessary for execution of Works.

The Contractor is responsible for all equipment of the Contractor. Upon their arrival at the construction site, the equipment of the Contractor is deemed to be used exclusively for execution of the Project. The Contractor may not remove from the construction site any greater portion of the Contractor's equipment without prior approval from the Engineer. However, approval is not necessary for vehicles used for transport of goods and staff of the Contractor outside the construction site.

**Article 22. Protection of the Environment**

The Contractor is obliged to apply measures for protection of the environment (both inside and outside the construction site), in order to reduce to a minimum damage and discomfort caused to people and property due to pollution, noise or other activities.

The Contractor is obliged to ensure that the emissions, surface discharges and waste water caused due to his activities do not go above the values stated in the Employer/Beneficiary's requests, or values prescribed by applicable Laws.

**Article 23. Infrastructure Connections**

The Contractor is obliged to, at his own expense, provide for the construction connections (electric energy, water, sewerage, gas, telephone, etc.) and to bear the costs of used electric

energy, water, sewerage, gas, telephone, garbage removal, etc. from the date he is introduced in the business until the construction is taken over.

The Contractor is obliged to, at his own risk and at his own expense, provide for all the equipment necessary for the use of these services and measuring of the used quantities.

#### **Article 24. Progress Reports**

The Contractor is obliged to submit to the Engineer monthly reports about the progress of works, in six copies. The first report covers the period from the end of the first calendar month after the Commencement Date. From then on the reports are submitted monthly, within 7 days from the last day of the period they relate to. Reporting shall continue until the Contractor has completed all work which is known to be outstanding at the completion date stated in the Taking-Over Certificate for the Project.

Each report contains:

1. graphic charts and a detailed account of progress, including every designing phase, documentation of the Contractor, purchase, preparation, transport to the construction site, construction, installation, testing;
2. photographs depicting the condition of construction and progress at the construction site;
3. copies of the quality guarantees, testing results and attestations for material;
4. list of changes, notifications about the Employer's and Beneficiary's claims and Contractor's claims;
5. statistical data on safety, including details about dangerous incidents and activities related to environmental aspects and public relations, and
6. comparisons between the actual and planned progress, with details about circumstances which might cause breach of the agreed deadline for completion and adopted measures (or measures yet to be adopted) in order to prevent delays.
7. programme for delivery of information and technical documentation, by third parties, which may directly or indirectly influence the dynamic of fulfillment of the obligations from the Contract, with specified actual dates of receipt of such information or dates of the announced receipt of such information. The Contractor shall specify every consequence of potential or actual delay in delivery of information to the dynamics of the works.

In case the Contractor does not fulfill the adopted dynamic plan, he is obliged to introduce working in several shifts, prolong the shifts or introduce more employees, without the right to increase the costs or get a special fee for that.

#### **Article 25. Security and Maintenance of the Construction Site**

The Contractor shall be responsible for keeping unauthorised persons off the Site. Authorised persons shall be limited to the Contractor's Personnel and the Employer/Beneficiary's Personnel; and to any other personnel notified to the Contractor, by the Employer/Beneficiary or the Engineer, as authorised personnel of the Employer/Beneficiary's other contractors on the Site.

The Contractor shall confine his operations to the Site, and to any additional areas which may be obtained by the Contractor and agreed by the Engineer as working areas. The Contractor shall take all necessary precautions to keep Contractor's Equipment and Contractor's Personnel within the Site and these additional areas, and to keep them off adjacent land.

During the execution of the Project, the Contractor shall keep the Site free from all unnecessary obstruction, and shall store or dispose of any Contractor's Equipment or surplus materials. The Contractor shall clear away and remove from the Site any wreckage, rubbish and Temporary Works which are no longer required.

Upon the issue of a Taking-Over Certificate, the Contractor shall clear away and remove, from that part of the Site and Works to which the Taking-Over Certificate refers, all Contractor's Equipment, surplus material, wreckage, rubbish and Temporary Works. The Contractor shall leave that part of the Site and the Works in a clean and safe condition. However, the Contractor may retain on Site, during the Defects Notification Period, such Goods as are required for the Contractor to fulfil obligations under the Contract.

The Contractor shall be responsible for keeping unauthorised persons off the Site. Authorised persons shall be limited to the Contractor's Personnel and the Employer/Beneficiary's Personnel; and to any other personnel notified to the Contractor, by the Employer/Beneficiary or the Engineer, as authorised personnel of the Employer/Beneficiary's other contractors on the Site.

#### **Article 26. Fossils**

All fossil remains, coins, valuable items and antiques, structures and other remains or items of geological or archeological interest which are found at the construction site shall be handed over to the Engineer for safe keeping and disposal. The Contractor is obliged to undertake reasonable measures to prevent removal or destruction of those findings by the Contractor's staff or other persons.

Upon discovery of such items, the Contractor is obliged to notify the Engineer immediately thereof, and then the Engineer shall order further procedures with those items. In case the Contractor is late or incurs costs because he acted in line with such an order, after he informs the Engineer thereof, the Contractor has the right to:

1. prolongation of the deadline in proportion to the delay, if the completion deadline was breached or about to be breached, and
2. compensation of such expenses, which is included in the Agreed amount.

Upon receipt of further notifications, the Engineer shall act in line with this Contract in order to agree or determine those issues.

#### **Article 27. Other Obligations of the Contractor**

The Contractor is obliged, within the Agreed amount for the execution of the Project, to complete other activities and works:

1. to maintain the construction site documentation and to provide evidence on the quality of the executed works, built-in material, installations and equipment,
2. during the determination of borrow pit of the material to act in line with the Law on mining;
3. to remove all damages he commits during the execution of the Project on the construction facility and neighbouring facilities;
4. to provide 4 copies of completed drawings of the as-built facilities;
5. to ensure the presence and participation of his representatives and subcontractors' representatives in the work of the Committee for Technical Inspection of the facility;
6. to remove all defects as per the remarks by the Committee for technical testing, in the agreed deadline;
7. to take part in taking-over of the facility and the final calculation of the as-built works;

8. to remove all the defects according to the minutes from the Committee for Taking-over and final calculation;
9. in an appropriate way to secure and keep the as-built works, equipment and material from decay, damage, removal or destruction until the facility is taken over;
10. in line with this Contract, to remove all defects which may potentially arise during the warranty period;
11. to perform other activities prescribed by the Law on planning and construction;
12. to execute all preparatory works and to complete the organization of the construction site;
13. to ensure conditions for execution of works, according to the adopted detailed dynamic plan, in all weather conditions;
14. to ensure compensation for costs resulting from destruction and damage of works, material and equipment;
15. to ensure security and safe keeping of the facility until it is taken over.

## V. DESIGNING

### Article 28. General Design Obligations

The Contractor shall prepare the design and bear the responsibility for them. The Contractor is obliged to define, in a decision, a responsible designer for the works included in this Contract, as well as all responsible designers for all foreseen types of works, with personal licenses and to submit them to the Beneficiary. The responsible designers must fulfill the conditions prescribed by the Law on planning and construction.

The Contractor guarantees that he, his designers and assistant designers have the experience and the abilities necessary for designing. The Contractor is obliged to ensure the presence of designers at the discussions with the Engineer at all reasonable times, until the facility is taken over.

The Contractor shall, in the shortest possible time, act in line with the remarks made by the expert and technical control and the State Revision Committee about the completed technical documentation.

### Article 29. Contractor's Documents

Documentation of the Contractor consists of the technical documentation prescribed by the Terms of Reference, this Contract, documents necessary for obtaining approvals and permits, documents for the Documentation of the as-built condition and Documentation for exploitation and maintenance. All the documentation must be in English and the documents needed for the permits and approvals should be also in Serbian.

The Contractor is obliged to prepare the documentation of the Contractor, as well as other documents necessary for giving instructions to the Contractor's staff.

All the Contractor's documentation shall be submitted to the Engineer for review and/or approval. The review period may not exceed 14 days, counting from the date of the receipt of the documentation and notification of the Contractor by the Engineer. The notification must state that the Contractor's documentation is deemed ready both for review (and approval if that is foreseen) and for use. It must also be stated in the notification that the Contractor's documentation is in line with the Contract or a degree where it is not in line with the Contract. The review and/or approval by the Engineer would not interrupt normal construction progress of the Contractor.

During the review period, the Engineer may notify the Contractor that some of his documents are not in line with the Contract (stating the degree of deviation). Such a document is then corrected, re-submitted and reviews (and approves, if that is foreseen), at the cost of the Contractor.

For each section of the Project, apart in the case where prior approval or agreement is obtained from the Engineer:

1. in case of a Contractor's document which was submitted to the Engineer for approval:
  - 1.1. the Engineer notifies the Contractor that the document is approved, with or without remarks, or that it is not in line with the Contract (together with stating degree of deviation);
  - 1.2. execution of that section of the Project may not start until the Engineer does not approve the Contractor's document; and
  - 1.3. it is deemed that the Engineer has approved the document upon expiry of the review period for the Contractor's documentation which is necessary for designing and execution of that section, unless the Engineer has previously provided a notification opposite to the sense of point (1.1);
2. execution of that section of the Project may not start before the expiry of the review period for all the Contractor's documentation which is relevant for designing and execution of works;
3. execution of such section of the Project must be in line with the reviewed (and approved if necessary) Contractor's documentation;
4. in case the Contractor wishes to make a change in a design or document which has previously been submitted to review (and approval if necessary), he shall notify the Engineer thereof immediately. After that, the Contractor shall submit to the Engineer the changed documents in line with the above described procedure.

In case the Engineer demands additional Contractor's documentation, the Contractor is obliged to prepare it urgently.

Such approval or agreement or review (in line with this Article or another issue) shall not relieve the Contractor from any obligation or liability.

### **Article 30. Contractor's Undertaking**

The Contractor undertakes that the design, the Contractor's Documents, the execution and the completed Works will be in accordance with the Laws in the Republic of Serbia, and the documents forming the Contract, with the approved changes.

### **Article 31. Technical Standards and Regulations**

The design, Contractor's documentation, execution and completed Works shall be in line with the technical standards, laws on construction and protection of environment, and other standards detailed in the Terms of Reference, which are related to the Project or are foreseen by relevant laws, valid in the Republic of Serbia.

Regarding the Project and each particular section, all these laws are the laws which are in force at the time of the Base Date. References in the Contract to published standards imply references to editions which were applicable on the Base Date, unless it is provided otherwise.

In case laws in the Republic of Serbia modified or new standards come into force after the Base Date, the Contractor is obliged to notify the Engineer thereof and (if necessary) submit proposals for improvement. In case:

1. the Engineer determines that the harmonization is necessary, and
2. proposals for harmonization constitute a change,

the Engineer initiates the change in line with the Contract and the Agreed amount.

### **Article 32. As-Built Documents**

The Contractor is obliged to prepare and keep updated a complete set of records of the as-built condition of the Project, with the demonstration of exact as-built locations, dimensions and details of the as-built work. Those records are kept at the construction site and are used exclusively for the purposes prescribed by this Article. Two copies are submitted to the Engineer before the start of the review at the completion.

Apart from that, the Contractor is obliged to submit to the Engineer the graphic documentation in the as-built condition of the Project which demonstrates all the stated Works for the purpose of the review. The Contractor is obliged to ask for approval from the Engineer related to their dimensions, reference system and other relevant data. Prior to issuance of the Taking-over Certificate, the Contractor is obliged to submit to the Engineer a certain number of copies of the graphic documentation in the as-built condition, in line with the requests from the Employer and the Beneficiary. Works shall not be deemed completed for the needs of taking-over before the Engineer receives that documentation.

### **Article 33. Design Error**

If errors, shortcomings, ambiguities, inadequacies and other failures are determined in the Contractor's documentation the documentation and the Works are subject to corrections, at the expense of the Contractor, regardless of any approval or agreement granted in line with this Article.

For each deviation from the Main Design and the agreed works, the Contractor shall have a written approval from the Employer and the Beneficiary. The Contractor may not demand an increase in the agreed amount for works he has performed without approval from the Employer and the Beneficiary.

## **VI. STAFF AND WORK FORCE**

### **Article 34. Hiring Staff and Work Force**

Unless otherwise stated in the requests from the Employer and the Beneficiary, and in this Contract, the Contractor takes care about hiring of the complete staff and work force, local or other, their salaries and other expenses.

The Contractor is not allowed to hire staff and work force among those persons already working for the Employer or the Beneficiary nor is he allowed to try to do so.

The Contractor is obliged to respect the laws which are relevant to the Contractor's staff, including the laws which regulate their working relations, health protection, safety, social insurance, immigration and emigration and to enable them to use their legal rights. The Contractor is obliged to demand from his employees to respect the relevant laws including those related to safety at the work place.

No work is allowed at the construction site outside the working hours, unless:

1. the Contract stipulates otherwise,
2. the Engineer grants his approval to do so, or



3. the work is inevitable or necessary for the purpose of protection of persons or property or due to safety of the Works, and in that case the Contractor is obliged to notify the Engineer immediately thereof.

The Contractor is obliged to ensure and maintain the necessary accommodation and other social conditions for his employees, if any. The Contractor may not allow to any of his employees temporary or permanent accommodation in the facilities which form the Main works.

The Contractor is obliged to take constant care about the health and safety of his employees to a reasonable degree. He is also obliged to, in cooperation with the local healthcare bodies, ensure that healthcare providers, first aid and ambulance services be always at the disposal of the employees of the Contractor, the Employer and the Beneficiary at the construction site and the accommodation facilities, as well as to take care about the hygiene and protection from the epidemics.

The Contractor is obliged to hire an officer in charge of safety at work at the construction site, who would be responsible for safety and protection from accidents. That person must possess appropriate qualifications and authorisations to issue orders and undertake measures for prevention of accidents. The Contractor is obliged to provide to that person, for the duration of the execution of the Project, everything he may require in order to perform his duties. The Contractor is obliged to submit to the Engineer a detailed report on every accident in the shortest possible period after the accident occurs. The Contractor is obliged to keep records and submit reports related to health, safety and damage caused to property, at the request of the Engineer.

The Contractor is obliged to, during the designing and the execution of the Project in whole and when necessary after that, provide a superintendance for planning, organizing, providing directions, managing, control and testing of the Project.

The Superintendance must have sufficient number of employees who have sufficient knowledge of Serbian and/or English language and are familiar with the activities being undertaken (including the necessary methods and techniques, possible hazards and methods for prevention of accidents) so as to ensure satisfactory and safe execution of the Project.

The Contractor's Personnel shall be appropriately qualified, skilled and experienced in their respective trades or occupations. The Engineer may require the Contractor to remove (or cause to be removed) any person employed on the Site or Works, including the Contractor's Representative if applicable, who:

- 1) persists in any misconduct or lack of care,
- 2) carries out duties incompetently or negligently,
- 3) fails to conform with any provisions of the Contract, or
- 4) persists in any conduct which is prejudicial to safety, health, or the protection of the environment.

If appropriate, the Contractor shall then appoint (or cause to be appointed) a suitable replacement person.

The Contractor is obliged to submit to the Engineer a report about the number of his employees of all categories and every type of equipment of the Contractor at the construction site. The report is submitted every calendar month in the form approved by the Engineer, until the Works are completed and the Taking-over Certificate of the Project is issued.

The Contractor is obliged to constantly undertake measures for the prevention of illegal, rebellious or unbusinesslike behaviour of the Contractor's staff, protection of peace and protection of persons and property at or in the vicinity of the construction site.

## VII. MATERIAL AND PRODUCTION

### Article 35. Method of Execution

The Contractor is obliged to produce and prepare the material and execute all other Works:

1. in a manner prescribed by the Contract,
2. with expertise and care, in line with the relevant good practice, and
3. by using the appropriate equipment and harmless material, unless otherwise stated by the Contract.

### Article 36. Samples

The Contractor is obliged to submit for review to the Engineer the following samples with the important data:

1. manufacturing standard samples of material and samples prescribed by the Contract, entirely at the Contractor's expense, and
2. additional samples required by the Engineer in terms of changes.

All samples should have a label designating the origin and proposed application in the Project.

### Article 37. Inspection

The staff of the Employer and the Beneficiary have the right at all reasonable times:

1. have full access to all parts of the Site and to all places from which natural Materials are being obtained, and
2. during production, manufacture and construction (at the Site and elsewhere), be entitled to examine, inspect, measure and test the materials and workmanship, and to check the progress of manufacture of Plant and production and manufacture of Materials.

The Contractor shall give the Employer's Personnel full opportunity to carry out these activities, including providing access, facilities, permissions and safety equipment. No such activity shall relieve the Contractor from any obligation or responsibility.

The Contractor shall give notice to the Engineer whenever any work is ready and before it is covered up, put out of sight, or packaged for storage or transport. The Engineer shall then either carry out the examination, inspection, measurement or testing without unreasonable delay, or promptly give notice to the Contractor that the Engineer does not require to do so. If the Contractor fails to give the notice, he shall, if and when required by the Engineer, uncover the work and thereafter reinstate and make good, all at the Contractor's cost.

### Article 38. Testing

The Contractor shall provide all apparatus, assistance, documents and other information, electricity, equipment, fuel, consumables, instruments, labour, materials, and suitably qualified and experienced staff, as are necessary to carry out the specified tests efficiently. The Contractor shall agree, with the Engineer, the time and place for the specified testing of any Plant, Materials and other parts of the Project.

The Engineer has the right to change the place and particularities of the foreseen testing or to order the Contractor to perform additional tests. If during thus changed or additional tests it is

determined that the tested facility, material or production are not in line with the Contract, the costs of change are borne by the Contractor, regardless of the other provisions from the Contract.

The Engineer shall give the Contractor not less than 24 hours' notice of the Engineer's intention to attend the tests. If the Engineer does not attend at the time and place agreed, the Contractor may proceed with the tests, unless otherwise instructed by the Engineer, and the tests shall then be deemed to have been made in the Engineer's presence.

The Contractor shall promptly forward to the Engineer duly certified reports of the tests. When the specified tests have been passed, the Engineer shall endorse the Contractor's test certificate, or issue a certificate to him, to that effect. If the Engineer has not attended the tests, he shall be deemed to have accepted the readings as accurate.

### **Article 39. Rejections**

If by examination, control, measuring or testing of the facilities, material, design or production their shortcomings or incompatibility with the Contract are determined in another sense, the Engineer has the right to refuse the material, the design and the production and notify the Contractor thereof, providing a clarification. The Contractor is obliged to immediately remove the defects and to align the refused item with the Contract.

If the Engineer requests new testing of material, design or production the testing is conducted under the same conditions. If the refusal and new testing cause additional costs to be incurred, the Contractor is obliged to cover the costs.

### **Article 40. Remedial Work**

Notwithstanding any previous test or certification, the Engineer may instruct the Contractor to:

1. remove or replace from the construction site any material not in line with the Contract,
2. remove or execute again any other works which are not in line with the Contract, and
3. execute all the works which are urgently necessary due to safety of the Project, prevention of accidents, unforeseen events or similar.

The Contractor is obliged to act in line with the order in a reasonable deadline which is defined in the order or immediately in case it is a matter of urgency as described in Para. 1 point 3 of this Article.

If the Contractor fails to act in line with the order, the Employer and the Beneficiary have the right to hire, at the Contractor's expense, another person for compensation. Apart to the extent to which the Contractor has the right to compensation for the performed work, the Contractor is obliged to compensate all expenses to the Employer and the Beneficiary incurred due to that failure.

### **Article 41. Fees**

The Contractor shall pay all the fees, rents and other claims related to:

1. natural material obtained outside the construction site, and
2. removal of ruins and material from excavations and other unnecessary material (natural or artificial).

## VIII. START, DELAYS AND SUSPENSION

### Article 42. Commencement of Works

The Contractor shall commence the Work on the Site on the date (the "Commencement Date") when all of the following conditions are fully met:

- 1) The Effective Date, as defined in Article 98 has occurred;
- 2) the First payment has been fully paid to the Contractor;
- 3) the Main Design has been approved by the Employer and the Beneficiary in writing;
- 4) the Employer and the Beneficiary has acquired the land ownership or the land use right with respect to the Site and the Employer and the Beneficiary has duly given the Contractor full access to the each section for the performance of the Work and all the conditions of the Site required for the performance of the Work have been satisfied; and
- 5) Employer has obtained all Governmental Approvals and all other permits and licences which are required for the development and construction of the Project and otherwise for the performance of the Work under the Contract.

The Engineer is obliged to deliver to the Contractor a notification about the Commencement Date at least 7 days in advance.

The Engineer shall introduce the Contractor into the work by making record in the construction log and delivers to the Contractor:

1. construction permit;
2. confirmation on acceptance of the Main design issued by the relevant authority;
3. decision on appointment of the Engineer;

The Contractor is obliged to start the execution of the Project as soon as possible after the Commencement Date, after which he shall start with the execution of the Project in an expedient manner and without delays. If the Contractor, within 56 days from the Commencement Date does not commence the works, the Employer may terminate this Contract, together with the realization of the performance guarantee, as well as demand compensation for damages from the Contractor, up to the amount of the actual damage.

### Article 43. Time for Completion

The Contractor is obliged to complete the Project and all the sections within the Time for Completion of Works or sections, including:

1. achieving positive testing results upon completion, and
2. completion of all works which are, in line with the Contract, necessary in order to consider the Project or sections completed for the needs of taking-over in line with the provisions from the Taking-over of the Project and sections.

### Article 44. Dynamic Plan

The Contractor is obliged to submit to the Engineer a detailed monthly-based dynamic plan within 14 days from the receipt of notification. The Contractor is also obliged to submit the modified dynamic plan if the previous dynamic plan was not in line with the actual progress or commitments of the Contractor. Every dynamic plan contains:

1. order according to which the Contractor intends to execute the Project including the expected time for each designing phase, Contractor's documentation, purchase, production, control, delivery on the construction site, construction, installation, testing,

2. deadlines for the review in line with the provisions from the Contractor's documentation and submission of other documents, approvals and agreements stated in line with the provisions from the Contract,
3. order and time order of major and important controls and testing prescribed by the Contract, and
4. accompanying report which contains:
  - 4.1. general description of methods which the Contractor intends to adopt and the main phases of execution of works, and
  - 4.2. details about the Contractor's estimate related to the number of Contractor's staff according to the types and every type of Contractor's equipment necessary at the construction site for all the main phases.

If within 14 days from the acceptance of the dynamic plan the Engineer does not inform the Contractor about the degree to which he does not agree with the Contract, the Contractor may act in line with that dynamic plan, under the condition it fulfills his other obligations. The staff of the Employer and the Beneficiary may rely on this plan in planning of their activities.

The Contractor is obliged to notify immediately the Engineer about the specific possible events or circumstances which may have a negative effect on the works. The Engineer has the right to demand from the Contractor an estimate of the expected influence of future events or circumstances.

If the Engineer ever notifies the Contractor that the dynamic plan is not in line with the Contract and the actual progress and expressed intentions of the Contractor, the Contractor is obliged to submit to the Engineer the changed dynamic plan.

#### **Article 45. Extension of Time for Completion**

The Contractor shall be entitled to an extension of the Time for Completion if and to the extent that completion for the purposes of the Taking Over of the Project and Sections, is or will be delayed by any of the following causes:

- 1) a change requested by the Employer and the Beneficiary (unless an adjustment to the Time for Completion has been agreed),
- 2) a cause of delay giving an entitlement to extension of time under Articles of these Conditions,
- 3) exceptionally adverse climatic conditions,
- 4) Unforeseeable shortages in the availability of personnel or Goods caused by epidemic or governmental actions, or
- 5) any delay, impediment or prevention caused by or attributable to the Employer/Beneficiary, the Employer/Beneficiary's Personnel, or the Employer/Beneficiary's other contractors on the Site.

If the Contractor considers himself to be entitled to an extension of the Time for Completion, the Contractor shall give notice to the Engineer. When determining each extension of time, the Engineer shall review previous determinations and may increase, but shall not decrease, the total extension of time.

#### **Article 46. Delays Caused by the Employer and the Beneficiary**

If following cases occur:

1. the Contractor has respected entirely all the actions prescribed by the relevant authorities of the Republic of Serbia,
2. those authorities slow down or disrupt the works of the Contractor, or
3. when slowing down or disruption was not foreseeable,

then this delay or disruption will be considered as a cause of delay under sub-paragraph (2) of the Article 45.

#### **Article 47. Rate of Progress**

If at any time:

1. actual progress is too slow for fulfilling the completion deadline, and/or
  2. the progress has fallen (or will fall) behind the current dynamic plan,
- and it is not resulting from the causes stated in the provisions from the extension of the completion deadline, the Engineer may instruct the Contractor to submit the modified works programme with the accompanying report about the changed methods which the Contractor proposes for adoption for the purpose of accelerating the progress and completion of the works in the defined deadline.

If the Engineer does not determine anything else the Contractor shall adopt those changed methods which may imply of the working hours and/or increase in number of Contractor's staff and/or goods at the risk and at the expense of the Contractor. If these changed methods imply additional costs for the Employer or the Beneficiary, the Contractor is obliged to compensate those costs for the Employer or the Beneficiary and to pay (potential) compensation for delay.

#### **Article 48. Delay Damages**

If the Contractor does not fulfill his obligation in the agreed deadline, he shall be obliged to pay to the Employer a compensation for delay. The amount of compensation for delays is 0,05% (five hundredth part of the percent) of the total Contract Price for the Project and it shall be paid for each day which goes by between the agreed deadline for completion and the date stated in the Taking-over Certificate. However, the total amount payable in line with this paragraph may not be higher than 10% of the total Contract Price for the Project.

That compensation is the only compensation payable by the Contractor for such failure to perform his obligations, apart in the case of termination by the Employer prior to the completion of the Project. That compensation does not relieve the Contractor from his obligation to complete all the Project or from any other obligations or responsibilities from the Contract.

#### **Article 49. Suspension of the Work**

The Engineer has the right to issue, at any time, an order for suspension of Works in whole or partially. During the suspension the Contractor is obliged to protect, store and secure that section or Works in whole from deterioration, loss or damage.

The Engineer shall also inform about the cause of suspension. If the cause has been informed and is the responsibility of the Contractor, the Contractor does not have the right to an Extension of Time or to compensation of expenses.

If the Contractor suffers delay and/or incurs Cost from complying with the Engineer's instructions of Suspension of the Work, the Contractor shall give notice to the Engineer and shall be entitled to:

- 1) an extension of time for any such delay, if completion is or will be delayed, and
- 2) payment of any such Cost, which shall be included in the Agreed amount.

If the suspension under this Article has continued for more than 84 days, the Contractor may request the Beneficiary's permission to proceed. If the Beneficiary does not give permission within 28 days after being requested to do so, the Contractor may, by giving notice to the Beneficiary, treat the suspension as an exemption of implementation of the affected part of the

Works. If the suspension affects the whole of the Works, the Contractor may give notice of termination.

#### **Article 50. Resumption of Work**

After the permission or instruction to proceed is given, the Contractor and the Engineer shall jointly examine the Works and the Materials affected by the suspension. The Contractor shall make good any deterioration or defect in or loss of the Works or Materials, which has occurred during the suspension.

### **IX. TESTING UPON COMPLETION**

#### **Article 51. Obligations of the Contractor during the Testing**

The Contractor is obliged to perform the testing in line with the Contract.

The Contractor is obliged to inform the Engineer at least 21 days in advance the date after which the Contractor shall be ready to perform each test upon completion individually. Unless otherwise agreed, testings upon completion are done within 14 days from that date or on the day or on the days which the Engineer determines.

Testing upon completion are done in line with the laws of the Republic of Serbia and the Testing programme defined in the scope of the Main design.

If there is an unjustified delay in testing upon completion through the fault of the Contractor, the Engineer has the right to demand from the Contractor to perform the testing within 21 days from the receipt of the request. The Contractor is obliged to perform the tests on the day or the days which the Engineer defines and notifies the Contractor about.

If the Contractor does not perform the testing at the expiry of the 21 days, the Beneficiary's staff may undertake the testing, at the risk and at the expense of the Contractor. In that case it shall be deemed that the testing has been performed in the presence of the Contractor and the results of testing shall be accepted as true.

If unfavourable results of testing of the Works or sections upon completion are received, it shall be deemed that the works have been refused and the Engineer or the Contractor shall have the right to demand new testing under the same conditions.

If unfavourable results of new testing of the Works or sections upon completion are received the Engineer has the right to:

1. order further testing on completion;
2. if unfavourable results significantly diminish the benefits the Beneficiary may have from the Works or the section, to refuse the Works or the section (depending on the case), and in that case the Employer and the Beneficiary have those rights which are prescribed by the provision Failure to remove defects, or
3. issue the Taking-over Certificate at the request of the Beneficiary.

In case the Engineer issues the Taking-over Certificate, the Contractor shall continue to act in line with all other obligations from the Contract, and the amount from the Contract is reduced by the amount which is equal to a decrease in benefit for the Employer and the Beneficiary due to unfavourable testing results. If the relevant decrease due to unfavourable results is not stated (or the manner of its calculation defined) in the Contract, the Employer and the Beneficiary must demand for the decrease to be jointly determined and paid prior to the issuing of the Taking-over Certificate.

## **X. TAKING OVER BY THE BENEFICIARY**

### **Article 52. Taking over the Works and Sections**

The Beneficiary shall accept the Works once the Taking-over Certificate on completion of Works is issued by the Engineer.

The Contractor is obliged to inform in writing the Engineer about the Time for completion of construction works and their readiness for Technical inspection not later than 28 days before the completion of the works. The Contractor also has the right to submit the request for Technical inspection for each section individually.

Technical inspection of the facility is provided for by the Beneficiary in line with the laws of the Republic of Serbia. Technical inspection is performed by the Committee for Technical Inspection formed by the relevant Ministry of the Republic of Serbia.

### **Article 53. Committee for Technical Inspection**

The Contractor is obliged to cooperate with the Committee for Technical Inspection and to act according to all the requirements from that Committee.

The Engineer and the Contractor are obliged to provide to the Committee for Technical Inspection all the necessary documentation in line with the Law on planning and construction and the Rule Book on the content and the method of conducting technical inspection and issuing of the necessary licenses.

In case the Committee for Technical Inspection makes remarks to the as-built works in its report, the Contractor is obliged to remove them in the deadline proposed by the Committee.

If the Contractor does not act in line with the remarks from the Committee for Technical Inspection in the proposed deadline, the Employer and the Beneficiary shall by hiring third parties remove the defects, at the expense of the Contractor by collecting on the basis of the performance guarantee.

Upon receiving a positive report from the Committee for Technical Inspection, the Employer, the Beneficiary, the Engineer and the Contractor shall, without delay, and no later than 7 days, initiate the taking-over and the final calculation of the as-built works.

The Contractor shall, on the basis of the Protocol on taking-over and the final calculation deliver the final certificate.

### **Article 54. Issuing of the Taking-Over Certificate**

The Engineer is obliged, within 28 days from the receipt of the positive report by the Committee for Technical Inspection to issue to the Contractor a Taking-over Certificate with a note of the date of the completion of Works or the section in line with the Contract.

The Engineer has the right to issue, as per the order of the Beneficiary, a Taking-over Certificate of any section of the Main works.

The Beneficiary may not use any section of the Works (apart for temporary purposes foreseen by the Contract or agreed between the parties of the Contract), until the Engineer issues a



Taking-over Certificate of that section. However, if the Beneficiary uses any part of the Works before the Taking-over Certificate is issued:

1. the used section shall be deemed accepted on the date it was first used,
2. the Contractor ceases to be responsible for taking care of that section starting from that date, when the responsibility is transferred to the Beneficiary, and
3. at the request of the Contractor, the Engineer shall issue the Taking-over Certificate of that section.

Upon issuing of the Taking-over Certificate of some section of the Works by the Engineer, the Contractor must be enabled as soon as possible to undertake all measures necessary for completion of potentially remaining testing at the completion of Works. The Contractor is obliged to perform the testing in the shortest possible time and before the expiry date of the relevant Defects Notification Period.

If the Contractor is disabled to continue with the testing upon completion for longer than 14 days and by the fault of the Employer and the Beneficiary, it shall be deemed that the Beneficiary has accepted the Works or the section (depending on the case) on the day the testing would otherwise be completed.

The Engineer shall then issue the Taking-over Certificate and the Contractor shall be obliged to perform the testing in the shortest possible time and before the deadline for reporting defects expires. The Engineer shall submit the request for testing 14 days in advance and in line with the relevant provisions from the Contract.

## **XI. RESPONSIBILITY FOR DEFECTS IN THE DEFECT NOTIFICATION PERIOD**

### **Article 55. Completion of Outstanding Work and Remedying Defects**

Defect Notification Period for reporting defects for as-built works shall be 2 (two) years counting from the date of issuing of the Taking-over Certificate to the Beneficiary. For the built-in equipment and devices there is a warranty period in line with the manufacturer's conditions and which is effective from the date of installation.

The warranty period for as-built works and removal of defects which are the consequence of designing errors or errors in execution of works is 10 (ten) years counting from the date the Taking-over Certificate of works to the Beneficiary is issued. This period includes the Defect notification period. In this period the Contractor must remove all defects and its consequences, which have resulted from errors in designing or execution of works.

In order for the Works, Contractor's documentation as well as each section to be brought to the condition foreseen by the Contract (taking into account normal wear and tear) until the expiry of the deadline for reporting defects or as soon as possible before that, the Contractor is obliged to:

1. complete all the works which were not completed until the day stated in the Taking-over Certificate within a reasonable deadline defined by the Engineer, and
2. perform all the works necessary for removal of defects or damages reported by the Engineer or the Beneficiary prior to or at the date of expiry of the deadline for reporting defects in Works or sections (depending on the case).

If a defects or damage occurs, the Engineer or the Beneficiary shall inform the Contractor accordingly.

All the work foreseen for Completion of the remaining works and removal of defects shall be conducted at the risk and at the expense of the Contractor if it is necessary because of:

1. Works design, unless the designs the Employer or the Beneficiary is responsible for (if there are any),
2. facilities, material or production which are not in line with the Contract,
3. irregular exploitation or maintenance due to matters the Contractor is responsible for, or
4. the Contractor's failure to fulfill any of his obligations.

If the need for such work may be attributed to some other source, the Employer and the Beneficiary are obliged to notify the Contractor immediately thereof (or have someone else do it for them).

The Employer and the Beneficiary have the right, in line with the Contract, to an extension of the deadline for reporting defects in Works or sections, if after the acceptance it is determined that the Works, some section or an important part of works (depending on the case) may not be used for the prescribed purposes due to defects or damage.

If the Contractor does not remove any defects or damage within a reasonable deadline, but not longer than 28 days, the Employer and the Beneficiary have the right to define (or have someone else do it for them) a deadline for removal of that defects or damage.

If the Contractor does not remove any defects or damage within the newly defined deadline, which was supposed to be done at the expense of the Contractor in line with the Contract, the Employer and the Beneficiary have the right (in their own discretion) to:

1. remove the defects or damage themselves or have someone else do it in an appropriate manner and at the expense of the Contractor by activating the bank guarantee for removal of defects in the Defect Notification Period. However the Contractor does not bear any responsibility for those works;
2. require from the Engineer to approve or determine an appropriate deduction from the amount of the Contract; or
3. if due to a defects or damage the Employer or the Beneficiary are devoid of full benefit from Works or an important section of the Works, terminate the Contract in whole or just the part related to the above mentioned important section which may not be utilized according to its purpose. The Employer and the Beneficiary furthermore have the right to compensation of the amount paid for the Works or section of the Works (depending on the case), with interest on arrears, and of the de-installation costs, clearing of the construction site and returning the facilities and material to the Contractor, without influencing all his other rights in line with the Contract or according to some other basis.

If the work on the removal of any defects or damage may influence the performance of the Works, the Engineer has the right to demand any examination foreseen by the Contract be repeated, including examination upon completion and examination after the completion. The request is submitted within 28 days from the removal of the defects or damage.

These examinations are conducted under the same terms as the previous ones, the difference being that they are done at the risk and at the expense of the responsible party in line with Para. 3 of this Article.

Until the Performance Certificate is issued, the Contractor has the right of access to all sections of the Works and to records on exploitation and performance of Works, with limitations required by the safety measures.

At the request of the Engineer, the Contractor is obliged to examine the samples of any defects according to the instructions from the Engineer. If the expenses of removal of defects are not borne by the Contractor, in line with Para. 3 of this Article, the examination costs shall

be agreed and determined by the Engineer and they are included in the amount of the Contract price.

The performance of obligations by the Contractor may not be deemed complete until the Engineer issues the Performance Certificate to the Contractor.

The Engineer is obliged to issue the Performance Certificate within 28 days from the expiry of the final deadline for reporting defects or after that, when the Contractor submits the Contractor's documentation and completes and tests all the Works, with the removal of potential defects. An example of the Performance Certificate is issued to the Employer and the Beneficiary.

The Performance Certificate is exclusively deemed to be the evidence of acceptance of Works.

Upon issuing the Performance Certificate each party remains responsible for implementation of each obligation unfulfilled by then. For the needs of defining the nature and the scope of unfulfilled obligations, the Contract is still considered legally valid.

The Contractor is obliged to, upon receipt of the Performance Certificate from the construction site, remove all the remaining equipment of the Contractor, surplus of material, ruins, garbage and temporary works.

If the mentioned issues are not removed within 28 days from the receipt of the Performance Certificate by the Beneficiary, the Beneficiary have the right to sell or dispose of in another way with all the remaining things. The Employer and the Beneficiary have the right to a compensation of costs they were exposed to relate to sale or removal of those things and returning the construction site into its previous condition.

Potential balance from the sale is paid to the Contractor. If that amount is smaller than the expenses of the Beneficiary, the Contractor is obliged to pay the balance to the Beneficiary.

## **XII. VARIATIONS AND ADJUSTMENTS**

### **Article 56. Right to Vary**

For any change or deviation from the design the Engineer and the Contractor must have a written approval from the Employer and the Beneficiary.

The Contractor may not demand a change in the Agreed amount of the Contract for works which he has executed without the written approval from the Employer and the Beneficiary.

Variations may be initiated by the Engineer at any time prior to issuing the Taking-Over Certificate for the Works, either by an instruction or by a request for the Contractor to submit a proposal. A Variation shall not comprise the omission of any work which is to be carried out by others.

The Contractor shall execute and be bound by each Variation, unless the Contractor promptly gives notice to the Engineer stating (with supporting particulars) that (1) the Contractor cannot readily obtain the Goods required for the Variation, (2) it will reduce the safety or suitability of the Works, or (3) it will have an adverse impact on the achievement of the Schedule of Guarantees. Upon receiving this notice, the Engineer shall cancel, confirm or vary the instruction.

The Contractor may, at any time, submit to the Engineer a written proposal which (in the Contractor's opinion) will, if adopted, (1) accelerate completion, (2) reduce the cost to the

Employer/Beneficiary of executing, maintaining or operating the Works, (3) improve the efficiency or value to the Employer/Beneficiary of the completed Works, or (4) otherwise be of benefit to the Employer/Beneficiary.

The proposal shall be prepared at the cost of the Contractor and shall include the items listed in Article 57. (Variation Procedure).

#### **Article 57. Variation Procedure**

If the Engineer requires a proposal prior to issuing an order for some change, the Contractor shall be obliged to respond in writing in the shortest possible time, stating the reasons why he may not accept that request (if that is the case) or by submitting:

1. a description of the proposed design and/or works which were supposed to be executed and the programme of their execution,
2. the Contractor's proposal related to the necessary changes to the programme in line with the programme and the completion deadline, and
3. the Contractor's proposal for correction of the agreed amount.

After receiving such a proposal, the Employer and the Beneficiary are obliged to respond in the shortest possible time in the form of approval, rejection or remark. The Contractor may not postpone any work in expectation of the response.

The Engineer issues an order to the Contractor related to any change with the condition for recording costs, where the Contractor is obliged to confirm the receipt.

The Contractor is obliged to, at the request of the Engineer, submit the offers, invoices, confirmations and calculations or receipts as evidence.

#### **Article 58. Adjustments for Changes in Legislation**

Correction of the Contract Price is done in order to harmonize it with the increase or decrease of the expenses caused by the changes in the Laws of the Republic of Serbia or in the official interpretations of such laws published after the Base Date, and which shall influence fulfillment of the obligations from the Contract.

If the Contractor is late (or about to be late) and/or he is (or is about to be) exposed to additional expenses due to changes in the laws or such interpretations arising after the Base Date, he shall notify the Engineer thereof and has the right to:

1. extension of the deadline due to such a delay, if the delay in completion is unavoidable, and
2. compensation of such costs, which is included in the Agreed amount of the Contract.

Upon receipt of that notification, the Engineer shall act in order to confirm or determine those issues.

### **XIII. PAYMENT PROCEDURE**

#### **Article 59. First Payment**

The Engineer shall verify the certificate for the first payment upon receipt of the payment certificate and when the Employer receives performance guarantee and insurance. The Contractor is obliged to ensure that is valid and applicable until the end of Defect Notification Period.

## **Article 60. Application for Milestone Payment Certificates**

The Contractor is obliged to submit to the Engineer, along with the milestone payment certificate, the Report in six copies upon the expiry of the agreed payment period in the form approved by the Engineer, where the amounts the Contractor deems he has the right to are detailed, and with accompanying documentation including the relevant report on the progress of works.

The report contains the following items, as necessary, which are expressed in various currencies where the agreed amount is payable, in line with the presented order:

1. estimated agreed amount of the as-built Works and Contractor's documentation;
2. other additions or reductions which are due in line with the Contract or something else;
3. photocopies of the minutes about the performed control of the Works which have preceded the as-built works and which may not be controlled in later phases, verified and signed by the expert supervision;
4. photocopies of the pages of the construction log for the previous month, for which the certificate is delivered, jointly signed and verified;
5. photocopies of the pages of the construction log (diary), for all the agreed and as-built positions presented in the certificate, verified by the Engineer;
6. with every milestone payment certificate the Contractor is obliged to submit the dynamic plan with an overview of the condition of works and a proposal for measures for removal potential delays in implementation;

If the Contractor does not submit the milestone payment or the final payment certificate with all the annexes from this Article, EXIM Bank, at the request of the Employer, and the Employer in his proportional part of the financial share, shall not perform the payment of certificates for which the complete documentation has not been submitted.

## **Article 61. Verification of the payment certificate**

No amount may be verified or paid before the Employer and the Beneficiary receive and approve the performance guarantee. After that the Engineer is obliged to, within 14 days from the receipt of the payment certificate, the Report and the accompanying documentation, verify the payment certificate for the Employer and the Beneficiary. The payment certificate must contain the amount whose maturity was objectively determined by the Engineer.

The payment certificate may not be withheld for any other reason except:

1. in case any delivery or works performed by the Contractor are not in line with the Contract, compensation for the costs of repair or replacement may be withheld until the repair or replacement are completed; and/or
2. in case the Contractor has not performed any work or fulfilled any of his obligations from the Contract and was warned thereof by the Engineer, payment of the amount of that work or obligation may be withheld until such work is executed or such obligation fulfilled.

## **Article 62. Payment**

The Employer is obliged to submit payment certificate to the EXIM Bank the undisputable part of the certificate and is responsible for his payment timely to the Contractor according to the loan Agreement, after received:

1. the amount verified in each certificate within 28 days after the receipt of the verified payment certificate, Report and accompanying documentation by the Engineer; and
2. the amount confirmed in the final certificate within 28 days from the receipt of the certificate by the Contractor, verified by the Engineer.

If the Contractor does not pay already paid funds to the subcontractors with the seat in the Republic of Serbia, or suppliers of construction material and other goods originating from the Republic of Serbia in the agreed deadlines, the Employer has the right to submit an order to the EXIM Bank for the funds to be directly to the subcontractors and the suppliers, and the next certificate submitted by the Contractor, shall be reduced by the directly paid amount.

If the Employer fail to perform his obligation of the payment to the Contractor, or to submit the payment certificate to the EXIM Bank within the agreed period, the Contractor shall be entitled to receive financing charges compounded monthly on the unpaid amount during the period of delay, which shall be calculated at the annual rate of three percentage points above the discount rate of the Central bank in the country of the currency of payment. This compensation is included in the Agreed amount. The Contractor shall be entitled to this payment without formal notice, and without prejudice to any other right or remedy.

If the Contractor fail to perform his obligation of the finishing the Works and preparing milestone payment certificates on time, so the Employer is to be charged penalties from the EXIM Bank, the Employer shall be entitled to receive financing charges compounded monthly on the unpaid amount during the period of delay, which shall be calculated at the annual rate of three percentage points above the discount rate of the Central bank in the country of the currency of payment. This compensation is included in the Agreed amount. The Employer shall be entitled to this payment without formal notice, and without prejudice to any other right or remedy.

### **Article 63. Final Certificate**

The Contractor is obliged to, within 56 days from the receipt of the Performance Certificate submit to the Engineer together with the Report on completion and the accompanying documentation, the final certificate in six copies, which shall contain:

1. value of the works executed in line with the Contract up to the date stated in the Taking-over Certificate of Works,
2. any other amounts which the Contractor deems due, and
3. an estimate of any other amounts which the Contractor deems payable for himself in line with the Contract. The estimated amounts are presented separately in that Report on completion.

Engineer is then obliged to perform the verification in line with the provisions from this Contract.

The Contractor is obliged to, within 28 days from the date of receipt of the Performance Certificate submit to the Engineer in six copies the draft of the final report with the accompanying documentation in the form approved by the Engineer, where the following is presented:

1. the amount of all as-built works in line with the Contract, and
2. all other amounts to which the Contractor claims the right to in line with the Contract or as per some other grounds.

If the Engineer does not agree or if he is not able to verify any part of the final report draft, the Contractor shall submit to the Engineer further data which he may reasonably demand, and make changes they agree on in the draft as may be agreed between them. The Contractor then prepares and submits to the Engineer the final report in the agreed form. Thus agreed report is mentioned in these Terms as the Final report.

If after the discussion between the Engineer and the Contractor and possibly agreed changes in the final report draft, it is determined that there is a dispute the Engineer is obliged to submit to the Beneficiary the interim certificate (with one copy for the Contractor) for the agreed parts

of the final report draft. After that, if the dispute is finally resolved by the DAB or through an amicable dispute resolution, the Contractor shall prepare and submit to the Employer and the Beneficiary the Final report (with a copy for the Engineer).

When submitting the Final report, the Contractor is obliged to submit the justification in writing by which it is confirmed that the total amount stated in the Final report covers all the Contractor's claims in line with the Contract or related to the Contract. The justification may state that it becomes legally valid when the Contractor receives the performance guarantee and the remaining amount, starting from that date.

#### **Article 64. Issue of the Final Payment Certificate**

Within 28 days from the receipt of the Final statement and the justification in writing, the Engineer is obliged to issue to the Beneficiary and the Employer the final certificate which contains:

1. the amount due for payment, and
2. the remainder (if any) which the Employer and the Beneficiary owe to the Contractor or which the Contractor owes to the Employer and the Beneficiary, depending on the case, taking into account all the amounts the Employer and the Beneficiary have previously paid and all the amounts the Employer and the Beneficiary are entitled to.

In case the Contractor has not submitted the request for issuing of the final certificate, the Engineer has the right to demand from him to do so. If the Contractor does not submit the request within 28 days, the Engineer has the right to issue the final certificate to the amount which he finds objectively due.

#### **Article 65. Cessation of the Employer and the Beneficiary**

The Employer and the Beneficiary are not liable to the Contractor under any issue or any matter in line with the Contract or related to the Contract or execution of works, apart to an extent to which the Contractor has included the amount exclusively for that purpose in:

1. the Final statement as well as in
2. the Statement on completion (apart related to issues or matters after the issuing of the Taking-over Certificate).

Provision from Para. 1 of this Article of the Contract does not limit the liability of the Employer and the Beneficiary regarding the compensation for damages or the liability of the Employer and the Beneficiary in case of fraud, willful failure to fulfill the obligations or fraudulent behaviour by the Employer and the Beneficiary.

### **XIV. TERMINATION BY THE EMPLOYER AND THE BENEFICIARY**

#### **Article 66. Termination by the Employer and the Beneficiary**

In case the Contractor fails to perform any of his obligations from the Contract, the Engineer has the right to warn him and to demand that he corrects the failure in a defined reasonable deadline by a notice.

The Employer and the Beneficiary have the right to terminate this Contract in case the Contractor:

1. fails to act in line with the Performance guarantee or with the notice for removal of defects,

2. abandons the Works or clearly state in any other way his intention not to continue fulfilling his obligations from the Contract,
3. without reasonable excuse fails:
  - 3.1. does not initiate the Works in line with the provisions from Start, delay and suspension, or
  - 3.2. acts in line with the notification issued in line with the provisions from Refusal or Removal of defects within 28 days from the receipt,
4. concludes a sub-Contract for the entire Works or assigns the Contract without the necessary approvals,
5. goes under liquidation or becomes insolvent, bankrupt, sequestered, agrees to settle with his creditors, or does his business under the administrative receiver on behalf of the creditors or in case of any part or event which (according to the relevant law) produces the effect similar to the effect of the above mentioned actions or events, or
6. submits or offers (directly or indirectly) to someone bribe, gift, tip, commission or any other valuable item as an incentive or reward:
  - 6.1. for acting or not acting in relation to the Contract, or
  - 6.2. for favouring or not favouring someone regarding the Contract or in case any of the Contractor's employees, representative or subcontractor submits or offers to someone (directly or indirectly) any of the above mentioned incentives or reward from this paragraph. However, the legally provided incentives or rewards to the Contractor's staff do not provide sufficient grounds for termination.

In case of such events or circumstances, the Employer and the Beneficiary have the right to terminate the Contract with a 14 day notice period and to remove the Contractor from the construction site. However, in the cases foreseen in point (5) or (6) of the previous paragraph, the Employer and the Beneficiary have the right to an immediate termination of the Contract.

Decision by the Employer and the Beneficiary to terminate the Contract does not affect any other rights of the Employer and the Beneficiary foreseen by the Contract or otherwise.

The Contractor is then obliged to leave the construction site and to deliver to the Engineer all the required goods, the entire Contractor's documentation and all other project documentation which he has prepared or which has been prepared for him. However, the Contractor is obliged to immediately act in line with the orders contained in the dismissal for (1) transfer of any of the sub-Contract and (2) for protection of persons or property or safety of the Works.

Upon the termination, the Employer and the Beneficiary may complete the Works on their own, or to have other persons do that on their behalf. The Employer and the Beneficiary and those other persons may use all the goods, Contractor's documentation and other project documentation prepared by the Contractor or prepared on his behalf.

The Beneficiary then notifies the Contractor that his equipment and temporary works shall be handed over at or in the vicinity of the construction site. The Contractor is obliged to immediately take care of their removal at the risk and at the expense of the Contractor. However, if by then the Contractor does not settle the claims from the Employer and the Beneficiary, the Employer and the Beneficiary have the right to sell those items for the purpose of settlement of their own claims and to pay the potential balance to the Contractor.

#### **Article 67. Valuation at the Date of Termination**

In the shortest possible time from the date the dismissal given in line with the provisions from the Termination by the Employer and the Beneficiary becomes legally valid, the Engineer shall determine the amount of the Works, goods and documentation of the Contractor and all other amounts payable to the Contractor for the works executed in line with the Contract.



### **Article 68. Payment after Termination**

Once the dismissal becomes legally valid, the Employer and the Beneficiary may:

1. suspend all further payments to the Contractor until the costs are determined related to designing, execution and completion of Works and removal of defects, compensation for damages due to (possible) delays and all other expenses which the Employer, and the Beneficiary has had, and/or
2. recover from the Contractor a compensation for all the losses and damages suffered and expenses they had related to completion of the Works. From that amount the potential amount payable to the Contractor is deducted, payable in line with the Validation at the date of termination. Upon collection of those losses, damages and additional expenses, the Employer and the Beneficiary shall pay the possible difference to the Contractor.

### **Article 69. Entitlement to Termination of the Employer and the Beneficiary**

The Employer and the Beneficiary have the right to terminate the Contract whenever it is convenience for them by submitting a termination notice. The termination becomes legally valid 42 days from the submission of the termination notice to the Contractor or from returning the performance guarantee to the Contractor by the Employer and the Beneficiary. The Employer and the Beneficiary do not have the right to terminate the Contract based on this paragraph in order to execute the Works themselves or hire some other Contractor to do it.

After the termination, the Contractor acts in line with the provisions from the Termination of works and removal of the Contractor's equipment and he shall receive the payment for the executed works in line with the provisions from this Contract.

## **XV. SUSPENSION AND TERMINATION BY THE CONTRACTOR**

### **Article 70. Contractor's Entitlement to Suspend Work**

If the Engineer and the Beneficiary do not verify a certificate or if the Employer does not submit for payment the certificate to the EXIM Bank, the Contractor has the right to suspend the Works (or to slow down the execution of the Works) until he receives the certificate or reasonable evidence of payment, and he is obliged to inform the Employer about his intention at least 21 day in advance.

Such action by the Contractor does not influence his right to financing charges, in line with Article 62, in case of delays in payments and termination in line with Article 71 Termination by the Contractor.

If the Contractor later does accept the requested certificate or sufficient proof about the submission of the certificate for payment, prior to submission of the termination notice, he is obliged to continue normal activities in the shortest possible time.

In case the Contractor is late and/or is exposed to expenses due to suspension of the Works (or reducing rate of the work) in terms of this Article, he shall notify the Engineer thereof and has the right to:

1. an extension of time for any such delay, if there is a delay or there is about to be a delay in completion of the Works, and
2. payment of any such Costs, which is included in the Agreed amount.

After receiving this notice, the Engineer performs harmonization or determination of those issues.

#### **Article 71. Termination by the Contractor**

The Contractor has the right to terminate the Contract if:

1. he does not receive a valid proof of delivery for payment of the certificate to the Employer, Beneficiary or EXIM Bank within 42 days from the submission of notification from the previous Article,
2. the Engineer does not issue the relevant certificate within 56 days from the receipt of the report and the accompanying documentation,
3. the Employer and the Beneficiary substantially fails to perform his obligations under the Contract,
4. a longer suspension influences the complete Works.

In each of these cases the Contractor has the right to terminate the Contract with the notification period of 14 days. Decision by the Contractor to terminate the Contract shall not influence any other rights of the Contractor foreseen in the Contract or based on any other grounds.

#### **Article 72. Termination of the Works and removal of the Contractor's equipment**

Once the termination becomes legally valid the Contractor immediately:

1. stops with the execution of works, apart from those which the Engineer has ordered for the protection of persons or property or safety of the Works,
2. submits the Contractor's documentation, facilities, material and other works for which the Contractor has received compensation, and
3. removes the remaining goods from the construction site, apart from that which is necessary for safety reasons, and leaves the construction site.

#### **Article 73. Payments on Termination**

Once the termination submitted in line with the provisions from the Termination by the Contractor becomes legally valid, the Employer is obliged to immediately:

1. return to the Contractor the performance guarantee,
2. perform the payment to the Contractor in line with the provisions according the Article 87, and
3. pay to the Contractor the amount of the lost profit or other losses or damage the Contractor has suffered due to the termination.

### **XVI. RISK AND LIABILITY**

#### **Article 74. Compensation for Damages**

The Contractor is obliged to indemnify and hold harmless the staff of the Employer and the Beneficiary and their representatives from all claims, damages, losses and expenses (including legal costs) related to:

1. bodily harm, illnesses or death of any person as the consequence of the design, execution or completion of the Works and removal of defects, if that can not be attributed to neglect, willful act or breach of the Contract by the Employer or the Beneficiary, staff of the Employer and the Beneficiary or their representatives, and
2. damage or loss of property, immobile or personal (apart from the Works), to an extent to which such damage or loss:

- 2.1. resulted as a consequence of the design, execution or completion of the Project and removal of defects, and
- 2.2. may be attributed to neglect, willful act or breach of the Contract by the Contractor, staff of the Contractor, their representatives or any other person they hire directly or indirectly.

The Employer and the Beneficiary are obliged to indemnify and hold harmless the Contractor, the staff of the Contractor and their representatives all claims, damages, losses and expenses (including legal costs) related to:

1. bodily harm, illnesses or death as the consequence of neglect, willful act or breach of the Contract by the Employer or the Beneficiary, staff of the Employer and the Beneficiary or their representatives, and
2. matters for which the liability may be excluded from the coverage by insurance foreseen in Article 81. Para. 3. Point 4.

#### **Article 75. Taking Care of the Works by the Contractor**

The Contractor assumes all responsibility for taking care of the Project and the goods starting from the Commencement Date to the issuing of the Taking-over Certificate of the Project, when the responsibility for taking care of the Project is transferred to the Beneficiary. When the Taking-over Certificate is issued for some section or part of the Project, the responsibility for taking care of that section or part is transferred to the Beneficiary.

When the responsibility is transferred to the Beneficiary, the Contractor shall assume the responsibility for taking care of remaining works on the date indicated in the Taking-over Certificate, until those works are completed.

In case of loss or damage to the works, goods or Contractor's documentation until the Contractor is responsible for taking care of them, due to a reason not stated in the provisions of Article 76. Risks of the Employer and the Beneficiary, the Contractor is obliged to compensate the loss or repair the damage at his own risk and at his own expense, so that the Works, goods and the documentation are in line with the Contract.

The Contractor is responsible for every loss or damage caused by some of his actions upon the issuing of the Confirmation on acceptance. The Contractor is also responsible for every loss or damage caused after the issuing of the Taking-over Certificate due to an earlier event for which the Contractor was responsible.

#### **Article 76. Risks of the Employer and the Beneficiary**

Risks which are indicated in this Article and are related to:

1. wars, animosities (regardless of whether the war has been declared or not), invasion, acts by foreign enemies,
2. riots, terrorism, revolution, uprising, military or usurped power or civil war in the country,
3. riots or rebellions in the country caused by persons not belonging to the staff of the Contractor and other employees of the Contractor and subcontractor,
4. ammunition, explosive devices, ionizing radiation or radioactive pollution in the country, apart from those which may attributed to Contractor's cleaning of that ammunition, explosive devices, radiation or radioactivity,
5. air strikes caused by airplanes or other flying devices flying at or above the speed of sound.
6. strikes caused by galleys, yachts and cargoships or other surface and undersurface devices.

7. loss or damage due to the use or occupation by the Employer and the Beneficiary of any Section or part of the Permanent Works, except as may be provided for in the Agreement.
8. obligations of the Employer and the Beneficiary as stated in the Contract.
9. any operation of the force of nature against which an experienced contractor could not reasonably have been expected to take precautions.

In case all these risks lead to losses or damage to the Works, goods or Contractor's documentation, the Contractor is obliged to notify the Engineer thereof immediately and to compensate those losses or damage to an extent to which the Engineer demands it.

If the Contractor suffers delay and/or is exposed to costs due to compensation of such losses or damages, he shall inform the Engineer thereof and shall have the right to:

1. an extension of time for any such delay, if completion is or will be delayed, and
2. payment of any such Cost, which shall be included in the Agreed amount. In the case of this Article, Items 7. and 8. reasonable profit on the Cost shall also be included.

Upon the receipt of the above mentioned further notification, the Engineer harmonizes or determines those matters.

### **Article 77. Intellectual and Industrial Property Rights**

In this Article the term "breach" shall mean breach (or supposed breach) of some patent right, registered design, copyright, trademark, trade name, commercial secret or other intellectual and industrial property rights which are related to the Project, and the term "claim" represents the claim submitted due to the supposed breach.

Whenever a Party does not give notice to the other Party of any claim within 28 days of receiving the claim, the first Party shall be deemed to have waived any right to indemnity under this Article.

The Employer and the Beneficiary are obliged to inform and protect the Contractor from any claim for the supposed breach which was:

1. unavoidable due to the Contractor's actions in line with the requests by the Employer and the Beneficiary, or
2. a consequence of using the Project by the Employer and the Beneficiary:
  - 2.1. for the purposes not stated in the Contract or which the Contract does not foresee, or
  - 2.2. in relation to something which the Contractor did not deliver, if the Contractor was not notified about such use before the Base Date or if it was not foreseen by the Contract.

The Contractor is obliged to indemnify and hold harmless the Employer and the Beneficiary from all other claim which arises from or in relation to (1) the Contractor's design, production, construction or execution of Works, (2) use of the Contractor's equipment or (3) proper use of the Project.

If one party has the right to indemnification in line with this Article, the other party may (at his own expense) lead the negotiations regarding that indemnification, initiate a DAB or submit the dispute to arbitration. The other party is obliged to, at the request and at the expense of the first party, offer assistance in disputing the claim. That other party and its staff may not admit anything which might influence the party owing the indemnification, unless that party has not initiated negotiations, procedure or arbitration at the request of the other party.

## **XVII. INSURANCE**

### **Article 78. General Insurance Terms**

In this section (XVII. INSURANCE), "the party which provides the insurance" represents with all types of insurance the party responsible for conducting and maintaining the insurance foreseen by the provisions of this Contract.

The Contractor is obliged to insure the works and the persons under the conditions approved by the Employer and the Beneficiary.

According to each insurance policy from loss or damage, the payments are made in currencies necessary for compensation of the loss or damage. The funds which the insurers pay out are used to compensate the loss or damage.

The Contractor is obliged to within 14 days from the Commencement Date of the start of the execution of works submit to the Employer and the Beneficiary:

1. proof that the insurance was foreseen by this Article, and
2. copies of insurance policies foreseen in the provisions Insurance of the Works and the Contractor's equipment and Insurance from the injuries to persons and damage to property.

Upon payment of each premium, the party which provides insurance shall submit to the Employer and the Beneficiary a proof of that payment. Upon submission of the proof of payment, the party which provides insurance informs the Engineer thereof.

### **Article 79. Insurance of Contractor's Works and Equipment**

The Contractor is obliged to insure the works, facilities, material and documentation at least for the amount which would be necessary for their compensation, with the costs related to demolition and removal of ruins, professional compensations and profit. This insurance lasts from the date of submission of evidence in line with Article 75 until the day the Taking-over Certificate is issued.

The Contractor is obliged to, until the date of issuing of the Performance Certificate keeps the insurance from loss or damage for which the Contractor is responsible, which occur prior to the issuing the Taking-over Certificate and from the loss or damage caused by the Contractor during the execution of any other works.

The Contractor is obliged to insure the equipment to at least half of the price of its replacement, with delivery to the construction site. The entire Contractor's equipment is insured from the moment of transportation to the construction site until there is no need for it.

The insurance foreseen by this Article:

1. is done and kept by the Contractor in the function of the party providing the insurance,
2. is done jointly on behalf of the parties, which jointly have the right to payment by the insurer, whereby those payments are distributed to the parties exclusively for the needs of compensation for loss or damage,
3. covers the losses or damages the causes of which are not stated in Article Risks of the Employer,
4. also covers losses or damages of section of the Works which are ascribed to the use by the Employer or occupancy of some other section

If upon expiry of one year from the Base Date the coverage stated in point 4 ceases to be available under the commercially acceptable conditions, the Contractor is obliged (in the

capacity of the party providing the insurance) to inform the Employer and the Beneficiary with justification. The Employer and the Beneficiary in that case (1) have the right to a proportional payment of the amount which is proportional to the amount which the Contractor would expect to pay under such commercially acceptable conditions for such a coverage, and (2) approve the defects from Article General insurance terms, if the insurance was not provided under the commercially acceptable conditions.

### **Article 80. Insurance against Injury to Persons and Damage to Property**

The Contractor is obliged to insure every party against liability for or loss or damage of physical property (apart from items insured in line with Article 76 or against death or bodily harm of any person (apart from persons insured in line with Article 78) which may arise as a consequence of implementation of the Contract by the Contractor before the issuing of the Confirmation on good performance.

Insurance foreseen by this Article:

1. is done and kept by the Contractor as the insuring party,
2. is mutual on behalf of the parties,
3. is extended so as to cover liability against loss or damage of the Investor's property (apart from issues insured in line with the Article 79) occurring during the implementation of the Contract by the Contractor, and
4. may exclude liability arising from:
  - 4.1. the Employer/Beneficiary's right to execution of the Main works on, above, under or through a terrain or for occupation of that terrain for the Main works,
  - 4.2. damage which is an inevitable consequence of the Contractor's obligation to execute the Works and remove the defects, and
  - 4.3. causes stated in the provisions from Risks of the Employer and the Beneficiary, apart to an extent where the coverage is available under the commercially acceptable terms.

### **Article 81. Insurance of the Contractor's Personnel**

The Contractor is obliged to take out and keep the insurance against claims, damage, loss and expenses (including legal costs) resulting from injury, illness or death of members of the Contractor's staff.

The Employer and the Contractor also have the right to indemnification on the basis of the insurance policy, if that insurance excludes losses and claims arising from any action or negligence on the part of the Employer and the Beneficiary or their staff.

Insurance is kept completely for the whole time that staff is assisting in the execution of the Project. In case of subcontractor's staff, insurance may be provided by the said sub-contractor, however the Contractor shall remain responsible for acting in line with this Article.

## **XVIII. FORCE MAJEURE**

### **Article 82. Definition of Force Majeure**

In this Article, "Force Majeure" means an exceptional event or circumstance:

1. which is beyond a Party's control,
2. which such Party could not reasonably have provided against before entering into the Contract,
3. which, having arisen, such Party could not reasonably have avoided or overcome, and

4. which is not substantially attributable to the other Party.

Force Majeure may include, but is not limited to, exceptional events or circumstances of the kind listed below, so long as conditions 1. to 4. above are satisfied:

1. war, hostilities (whether war be declared or not), invasion, act of foreign enemies,
2. rebellion, terrorism, revolution, insurrection, military or usurped power, or civil war,
3. riot, commotion, disorder, strike or lockout by persons other than the Contractor's Personnel and other employees of the Contractor and Subcontractors,
4. munitions of war, explosive Materials, ionising radiation or contamination by radio-activity, except as may be attributable to the Contractor's use of such munitions, explosives, radiation or radio-activity, and
5. natural catastrophes such as earthquake activity, unexpected flood.

#### **Article 83. Notice of Force Majeure**

If a Party is or will be prevented from performing any of its obligations under the Contract by Force Majeure, then it shall give notice to the other Party of the event or circumstances constituting the Force Majeure and shall specify the obligations, the performance of which is or will be prevented. The notice shall be given within 14 days after the Party became aware, or should have become aware, of the relevant event or circumstance constituting Force Majeure. The Party shall, having given notice, be excused performance of such obligations for so long as such Force Majeure prevents it from performing them.

Notwithstanding any other provision of this Article, Force Majeure shall not apply to obligations of either Party to make payments to the other Party under the Contract.

#### **Article 84. Duty to Minimise Delay**

Each Party shall at all times use all reasonable endeavours to minimise any delay in the performance of the Contract as a result of Force Majeure.

A Party shall give notice to the other Party when it ceases to be affected by the Force Majeure.

#### **Article 85. Consequences of Force Majeure**

If the Contractor is prevented from performing any of his obligations under the Contract by Force Majeure of which notice has been given under Article 83., and suffers delay and/or incurs Cost by reason of such Force Majeure, the Contractor shall be entitled subject to Article 88. to:

1. an extension of time for any such delay, if completion is or will be delayed, and
2. if the event or circumstance is of the kind described in paragraph 2, sub-paragraphs 2 to 4, in Article 82, occurs in the Republic of Serbia payment of any such Cost.

After receiving this notice, the Engineer shall proceed to agree or determine these matters.

#### **Article 86. Force Majeure Affecting Subcontractor**

If any Subcontractor is entitled under any contract or agreement relating to the Project to relief from force majeure on terms additional to or broader than those specified in this Article, such additional or broader force majeure events or circumstances shall not excuse the Contractor's non-performance or entitle him to relief under this Article.

## **Article 87. Optional Termination, Payment and Release**

If the execution of substantially all the Works in progress is prevented for a continuous period of 84 days by reason of Force Majeure of which notice has been given under Article 83., or for multiple periods which total more than 140 days due to the same notified Force Majeure, then either Party may give to the other Party a notice of termination of the Contract. In this event, the termination shall take effect 7 days after the notice is given, and the Contractor shall proceed in accordance with Article 72.

Upon such termination, the Engineer shall determine the value of the work done and issue a Payment Certificate which shall include:

1. the amounts payable for any work carried out for which a price is stated in the Contract;
2. the Cost of Materials ordered for the Project which have been delivered to the Contractor, or of which the Contractor is liable to accept delivery: this Materials shall become the property of (and be at the risk of) the Employer when paid for by the Employer, and the Contractor shall place the same at the Employer's disposal;
3. any other Cost or liability which in the circumstances was reasonably incurred by the Contractor in the expectation of completing the Project;
4. the Cost of removal of Temporary Works and Contractor's Equipment from the Site and the return of these items to the Contractor's works in his country (or to any other destination at no greater cost); and
5. the Cost of repatriation of the Contractor's staff and labour employed wholly in connection with the Project at the date of termination.

## **XIX. CLAIMS, DISPUTES AND ARBITRATION**

### **Article 88. Contractor's Claims**

If the Contractor considers he has the right to extension of the completion deadline and/or additional payments in line with this Contract or on some other basis related to the Contract, he shall notify the Engineer and shall state the event or circumstance which form the basis of the claim. Notification shall be submitted as soon as possible, but not later than 28 days from the date when the Contractor became or should have become aware of that event or circumstance.

If the Contractor does not submit his claim in the above mentioned deadline of 28 days, deadline for completion of the Works shall not be extended and the Contractor shall not be entitled to additional payment and the Employer and the Beneficiary are exempt from liability related to the claim. In the opposite case the below mentioned provisions of this Article shall apply.

The Contractor is also obliged to submit all other notifications foreseen by the Contract and accompanying data for the claim, which are related to that event or circumstance.

The Contractor is obliged to keep the updated records necessary for the purpose of documenting the claim, whether on the construction site or some other location acceptable to the Engineer. Without acknowledging the liability of the Employer and the Beneficiary, the Engineer may, upon receipt of the notification from Para. 1 of this Article, monitor the record keeping and/or order the Contractor to keep additional records. The Contractor is obliged to enable the Engineer to review those records and to submit copies at his request.

Within 42 days from the date the Contractor has become (or should have become) aware of an event or circumstance which serve as the basis for the claim, or within some other deadline proposed by the Contractor and approved by the Engineer, the Contractor is obliged to submit to the Engineer fully justified claim with the accompanying data, with an indication of the



requested prolongation of the deadline and/or the amount of the additional payment. In case the event or circumstance which serves as the basis for the claim is of a continuous nature:

1. fully justified claim is considered temporary;
2. the Contractor shall submit further claims in monthly intervals, stating the delay and/or the requested amounts cumulatively as well as all the other data the Engineer shall justifiably require; and
3. the Contractor shall submit the final claim within 28 days from the date when the event or circumstance was terminated, or within some other deadline proposed by the Contractor and approved by the Employer/Beneficiary.

Within 42 days from the receipt of the claim or additional data related to the previous claim, or within another deadline proposed by the Engineer and approved by the Contractor, the Engineer shall approve the claim or refuse it and shall provide a detailed justification for his decision. He shall also have the right to demand further details, however he shall be obliged to provide the replies to the claim principles in the mentioned deadline.

Each interim certificate shall contain the claim amounts which have been determined to be due in line with the relevant provisions from the Contract. If the submitted data are not enough to substantiate the full amount of the claim, the Contractor is only entitled to payment of the justified part of the claim.

The Engineer shall undertake activities for the purpose of harmonizing or determining (1) extension of the (potential) completion deadline (before or after expiry) and/or (2) additional payment (potential) which the Contractor is entitled to based on the Contract.

Terms from this Article are valid together with the terms from all other Articles related to claims. If the Contractor does not act in line with this or some other Article related to some claim, when determining the extension of the deadline and/or additional payments the (potential) measure is taken into account where that failure has disabled or harmed the proper processing of the claim, if the claim is not excluded in line with Para. 2 of this Article.

#### **Article 89. Appointment of the Dispute Adjudication Board**

The disputes shall be resolved by the DAB in line with this Article. The parties shall jointly define the DAB within 28 days from the date one party notifies the other about its intention to submit the dispute to the Committee for resolving disputes.

The DAB consists of three competent persons (members). Each party (the Employer and the Beneficiary as one party, and the Contractor as the other party) proposes one candidate for member and submits his name for approval to the other party. They shall then consult both members and in agreement determine the third member who shall act as president.

Agreement between the parties and the deciding member and each member in particular shall be concluded with reference to General terms of the agreement for resolving disputes from the Annex to this Contract with potential mutually agreed modifications.

The parties shall by agreement determine the compensation for the deciding member and each member in particular when defining the appointment conditions. The parties are obliged to pay half of these compensations.

If the parties ever agree on that, they may appoint competent persons to replace one or more members of the Committee for resolving disputes. If the parties have not agreed otherwise, the appointment shall come into force when some member refuses to work or is unable to work due to death, disability or termination of appointment. The replacement shall be appointed in the same way the replaced member was appointed in line with this Article.

The term of any member may stop if the parties agree on that, but not just by the will of the Employer, the Beneficiary or only the Contractor. If the parties have not agreed otherwise, the term of the DAB (or every member individually) shall cease when the DAB reaches its decision about the dispute it has received to resolve. If no other disputes have been submitted to the Debby then, in line with Article 88, in that case the date when the decision on those disputes by the DAB was reached shall prevail.

#### **Article 90. Disagreements about the appointment of the Dispute Adjudication Board**

In any of the following cases:

1. in case the parties do not agree about the appointment of the deciding member of the DAB up to the date stated in line with the provisions from Appointment of the Committee for resolving disputes,
  2. if any party fails to nominate a member (for approval by the other party) of the three member of DAB by that date,
  3. if the parties do not agree about the appointment of the third member (in the capacity of the president) of the DAB by that date, or
  4. if the parties do not agree on appointment or replacement within 42 days from the date when the deciding member or one of the three members refused to work or became incapable to work due to death, disability, resignation or termination of the mandate,
- it shall be considered that the DAB was not formed.

#### **Article 91. Obtaining the decision by the DAB**

In case of (any) dispute between the parties related to the Contract or execution of the Project, including disputes related to verification, determination, orders, opinions or assessments by the Engineer, any party may submit the dispute in writing to the DAB after its appointment and to submit the copies to the other party and the Engineer, with reference to this Article

In case of the three members of DAB, the dispute shall be deemed submitted to the DAB on the day it is received by the president of the DAB.

Both parties are obliged to place immediately at the disposal of the DAB all the necessary information and appropriate benefits and to provide access to the construction site for the purpose of resolving the dispute. The DAB shall not act in the capacity of an arbiter.

Within 84 days from the receipt of the dispute, the DAB shall make a decision, which must be justified and with an indication that it has been passed in line with that Article. However, if neither of the parties has paid the full amount from the invoices submitted by each member, the DAB is not obliged to make a decision until the amount is paid in full. The decision shall be binding for both parties, which are obliged to act immediately in line with the said decision, unless it is changed amicably or by an arbitration decision. If the parties have not already given up on the Contract, or denounced or terminated it, the Contractor is obliged to continue with the execution of the Project in line with the Contract.

If any of the parties is not satisfied with a decision by the DAB it may, within 28 days from the date of the receipt of the decision, to inform the other party about its discontent. In case the DAB does not reach a decision within 84 days (or in some other agreed deadline) from the date the dispute or the payment was received, then any party may inform the other about its discontent upon expiry of the above mentioned 28 days.

In any case, in the information about the discontent, it is stated that it is provided in line with this Article, the subject of the dispute is presented and justification of the discontent provided.

Apart from the provisions foreseen in the Failure to act in line with the decision by the DAB and in Expiry of the term of the DAB, no party has the right to submit the dispute for arbitration, unless previously a statement about discontent has been submitted in line with this Article.

If, upon notification of the decision by the term of the DAB to both sides, no side submits its notification about the discontent within 28 days, the decision shall become final and binding for both parties.

#### **Article 92. Amicable resolution**

In case of notification about the discontent submitted in line with the Article 91, the parties are obliged to try to resolve the dispute amicably prior to the dispute being submitted for arbitration. However, if the parties have not agreed otherwise, the arbitration may be initiated upon expiry of 56 days from the date the notification about the discontent was submitted even if there were no tries to resolve the dispute amicably.

#### **Article 93. Arbitration**

If no decision is reached amicably, and the decision from the DAB (if there is one) has not become final and binding, the dispute shall be resolved in international arbitration. If the parties have not agreed otherwise:

1. the dispute shall be finally resolved in line with the Rules of Arbitration of the International Trade Chamber in Paris,
2. the dispute is resolved by three arbiters defined in line with the above mentioned Rules, and
3. the arbitration procedure shall be held in the language for communication stated in this Contract.

The arbiters are authorised to open, review and change any certificate, determination, order, opinion or estimate by the Engineer or any other decision by the DAB related to the dispute. The Engineer shall not be exempt in any way from the obligation to testify and provide data to the arbiters regarding any issue related to the dispute.

No party shall be limited in the arbitration procedure to evidence and arguments which have previously been presented to the DAB for the purpose of obtaining a decision or as justification of discontent provided in the notification about the discontent. Any decision by the DAB may be taken into account in the arbitration procedure.

The arbitration procedure may start before or after the Project are completed. Obligations from the parties from the Contract, the Engineer and the DAB may not be changed because of the arbitration procedure being led during the execution of the Project.

#### **Article 94. Failure to Act in Line with the Decision by the DAB**

In case:

1. no party submits the notification about the discontent in the deadline foreseen by this Contract,
  2. the decision by the DAB has become final and binding, and
  3. one party has not acted in line with that decision,
- the other party has the right, without any influence to its other rights, to submit that action to arbitration. In that case paragraphs from Article 91 Obtaining the decision by the DAB and Article 92 Amicable Resolution shall not apply.

## Article 95. Expiry of the Term of the DAB

In case a dispute arises between the parties related to the Contract or the execution of the Project, and there is no DAB in place due to expiry of its term or any other reason:

1. Obtaining the decision by the DAB and amicable resolution shall not apply, and
2. the dispute may directly be submitted to arbitration in line with Article 94.

## XX. FINAL PROVISIONS

### Article 96. Communication Method

All communication in the course of implementation of this Contract shall be conducted in writing, and both in Serbian and English language. The prevailing version of the written communication shall be the one in English.

### Article 97. Relevant Application of Other Regulations

For all matters not foreseen in this Contract, the relevant provisions from the Law on planning and construction, Law on obligations and other relevant regulations of the Republic of Serbia shall apply. Under the circumstance of no Serbian laws and/or regulations exist, such international customs as FIDIC terms and conditions and ICE, etc. shall be referred to. All the dealing with these matters should be discussed by the parties of the Contracts and should not conflict with the Loan agreement to be signed between the China EXIM Bank and the Republic of Serbia.

### Article 98. Copies and Coming into Force

This Contract is made in Serbian and English language in 9 (nine) identical copies in both languages, 3 (three) for the Employer, 3 (three) for the Beneficiary and 3 (three) for the Contractor. The prevailing version of the Contract is the one in English language.

This Contract shall come into force on the date the Loan agreement mentioned in Article 4 Para. 1 of this Contract comes into force (Effective date).



REPUBLIC OF SERBIA

*Verica Kalanovic*

(Verica Kalanovic, M.Sc, Minister for the National Investment Plan)



CITY OF BELGRADE

*Dragan Dilas*

(Dragan Dilas, Mayor)

CHINA ROAD AND BRIDGE CORPORATION

*Lu Shan*

(Lu Shan, Vice President)