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Re: ICC Arbitration no. 26696/HBH: Gama Güç Sistemleri Mühendislik Ve Taahhüt
A.Ş. v. The Republic of North Macedonia

Dear Colleagues:

Pursuant to Article 24 of the 2021 Rules of Arbitration of the International Chamber of Commerce (the “Rules”), and after consulting with the Parties, the Tribunal hereby issues the following (capitalized terms used herein shall have the same meaning as in the Terms of Reference dated 28 July 2022:

Procedural Order No.1

Part I. Procedural Timetable

A. The Procedural Timetable for this arbitration, agreed by the Parties with the Tribunal, is attached as Annex I to this Procedural Order No. 1 (“Procedural Timetable”).

Part II. Procedural Rules

A. General

- (i) Except for Hearing(s) dates which are fixed and not subject to change except in the most exceptional circumstances, the dates set out in the Procedural Timetable are intended to be maximum time limits. The Parties shall endeavor to complete the relevant steps in the proceedings as efficiently as possible. Any request for an extension of time must be presented promptly after the requesting Party is reasonably deemed to have learned of the need for such an extension, must state the reason for the requested extension, and must specify the exact date until which the extension is requested. Subject to the Rules, extensions of time shall be granted as determined by the Tribunal or as agreed by the Parties subject to the Tribunal's approval.
- (ii) Communications to the Tribunal and the opposing Party shall be delivered by electronic mail. Soft copies of Memorials, Hearing(s) Submissions, witness statements, expert reports, exhibits, legal authorities and all documents relied upon shall be also submitted through file transfer links

and on a memory stick delivered by courier, together with a memory stick to each member of the Arbitral Tribunal containing any such submission, evidence or document. Such memory stick shall be accessible without a password. In the event any document is delivered by courier as well as electronic mail, the date of delivery by electronic mail shall be considered its date of delivery, in which case the courier shall be dispatched within three next business days. Submissions of Memorials and supporting documentation contained in the memory sticks must contain a hyperlinked list of documents.

- (iii) A copy of all communications to the Tribunal shall be transmitted simultaneously to the other Party, each member of the Tribunal and the Secretariat of the International Court of Arbitration of the International Chamber of Commerce. Memorials (except for legal authorities that are to be provided by electronic mail and on a memory stick only) and fact and expert witness statements shall be also dispatched by courier in hard copy, A5 format, soft covers, double-sided and wired bound to each member of the Arbitral Tribunal within three next business days after the delivery by electronic mail, with the exception of Mr. Legum, who prefers to work exclusively with soft copies.
- (iv) The Parties are requested to confine their pleadings strictly to the limited issues for decision in these proceedings and to avoid unnecessary length. Responsive pleadings (*i.e.*, the Reply and Rejoinder) should be directed specifically to the matters of fact or arguments of law raised in the pleading under reply, and must not raise further issues extraneous to those arguments.
- (v) The Parties shall submit their allegations of facts, legal arguments and evidence in a detailed, specified and comprehensive manner. The Parties are required to put forward their respective full cases, including the fact evidence, witness statements and expert reports without reservation at the first available opportunity (the Statements of Claim and Defence respectively), and not to split their cases; provided however that a Party is not required to anticipatorily rebut the opposing Party's arguments prior to their articulation in detailed, specified and comprehensive manner.

B. Evidence

(i) Documentary

- a. While the Tribunal has not considered whether a document production phase in this case is necessary, for the convenience of the Parties it has included the following provisions regarding document production. A request for documents (“Request to Produce”) shall contain:

- (1) a description of a requested document sufficient to identify it; or
 - (2) a description in sufficient detail (including subject matter) of a narrow and specific requested category of documents that are reasonably believed to exist; and
 - (3) a description of how the documents requested are relevant and material to the outcome of the case; and
 - (4) a statement that the documents requested are not in the possession, custody or control of the requesting Party, and of the reason why that Party assumes the documents requested to be in the possession, custody or control of the other Party.
- b. Each Party shall submit to the other Party its Request to Produce complying with B (i) a. above in the form of a vertical “Stern” Schedule in accordance with the dates set forth in the Procedural Timetable. The Stern Schedule shall be submitted in A3 format or 11” x 17” format.
- c. The Stern Schedule in the Request to Produce shall be submitted in vertical format and contain five rows:
- (1) the first row shall contain a brief description of each document or category of documents sufficient to identify it.
 - (2) the second row shall describe specifically why each document or category of documents is both relevant to and potentially material to the outcome of the dispute and a statement that the documents requested are not in the possession, custody or control of the requesting Party and the reasons why that Party assumes the documents requested are in the possession, custody or control of the other Party.
 - (3) The Party answering the Request to Produce shall complete the third row of the Stern Schedule of the requesting Party with a reasonably brief statement of whether it has the documents or category of documents in question in its possession or control, why it objects to production, and why it considers such documents or category of documents should not be produced.
 - (4) The fourth row shall contain a reasonably brief reply from the Party formulating the Request to Produce to the opposing Party’s answer thereto.

- (5) The fifth row of the Stern Schedule shall be completed by the Tribunal as it rules on the document production requests.
- d. Prior to submitting the Stern Schedule to the Tribunal, the Parties are expected to meet and confer to attempt to resolve any issues regarding document production. Neither Requests to Produce or answers thereto, nor any exchanges or issues regarding document production may be raised before the Tribunal unless serious endeavors undertaken by the Parties to overcome such issues have proved unsuccessful.
- e. The Parties and the Tribunal shall be guided by the IBA Rules on the Taking of Evidence in International Arbitration, rev. 2020 (the “IBA Rules”), including with respect to all document production requests, but are not bound by the IBA Rules. The Tribunal will be particularly mindful of the requirements of both relevance and materiality to the outcome if it is called upon to resolve any disputed requests. Open-ended language effectively casting the breadth of a category widely risk an order dismissing such category. Similarly, explanations of materiality to the outcome of the dispute which do not give precise forensic or evidential reasons (e.g., saying that a category relates to a case made at para. x of a submission is not sufficient, rather what the Tribunal expects to be explicitly stated is how the requested document will be forensically deployed in relation to a key anterior matter of disputed fact) also risk an order dismissing such category.
- f. The Parties should note, well in advance of any document production requests, that any future decision by the Tribunal on the Parties’ contested requests, or indeed any voluntary agreement to produce documents, will not be taken by the Tribunal as an implied decision on any issue in dispute between the Parties. Accordingly, if a request is denied, or granted in a modified fashion, or agreed to between the Parties, that should not be taken as any indication as to the Tribunal’s views on the merits. The Parties should not thereafter plead, submit (particularly at any oral hearing) or allege that the Tribunal’s decision to uphold or deny a request, or an agreement to produce, is indicative of a position either in their favour or against them. If a request is denied, for example, that does not mean that the requested Party can consider that its own burden of proof has been discharged. Moreover, if a Party refuses to produce documents on an issue for which it bears the burden of proof, then such Party runs the risk of having the issue resolved in due course as not proven. The Parties are expected to bear this in mind in facilitating disclosure of relevant and material documents.

- g. Documentary evidence from a Party which is not submitted as and when provided in the Procedural Timetable or as otherwise permitted under this Procedural Order No. 1 may not be admissible absent a showing of reasonable cause for the omission, as determined by the Tribunal. If a Party fails without satisfactory explanation to produce any document requested by the other Party to which it has not objected as required in the Procedural Timetable or as otherwise permitted by this Procedural Order No. 1, or fails to make available any document ordered by the Tribunal to be produced, the Tribunal may infer that such document would be adverse to the interests of that Party.
- h. The need for Hearing bundles to be provided by the Parties shall be discussed and agreed prior to any Hearing (s), and in any event no later than the Pre-Hearing Conference set forth in the Procedural Timetable. The Hearing bundles do not need to be printed out.
- i. In the event that a Party wishes to object to the authenticity or admissibility of any documentary evidence identified by the opposing Party, the objecting Party shall do so, at the latest, in either the subsequent written submission or when provided for in the Procedural Timetable. Any objections to evidence identified in the Replies or accompanying Witness Statements shall be made at the earliest reasonable opportunity. Upon a Party's request, the Tribunal will decide on the admissibility of evidence at least one week before the Evidentiary Hearing.
- j. Unless notice of an objection to the authenticity or admissibility of a document is delivered in accordance with the preceding subparagraph, all documentary evidence submitted to the Tribunal shall be deemed to be authentic. For the purpose of these rules, "Authenticity" includes the fact that:
 - (1) a document that is said to be an original was printed, written signed or executed as it purports to have been,
 - (2) a document that is said to be a copy is a true copy of the original, and,
 - (3) where the document is a copy of a letter, fax or other electronic communication, the original was sent as it purports to have been sent and received by the person to whom it was addressed.
- k. The exhibits containing documentary evidence shall be numbered consecutively throughout the proceedings. The number of each exhibit submitted by Claimant, including those already submitted, shall be preceded by "C" for factual exhibits; "CL" for legal

authorities; “CWS” for fact witnesses; and “CE” for expert witnesses. The number of each exhibit submitted by Respondent shall be preceded by “R” for factual exhibits; “RL” for legal authorities; “RWS” for fact witnesses; and “RE” for expert witnesses.

1. The use of demonstrative exhibits (i.e., charts, figures or tabulations compiling information from evidence already in the record but not in that form) will be permitted at the Hearing(s), provided that no new evidence is contained therein. For the avoidance of doubt, a PowerPoint slide or presentation that does no more than quote, reference or display evidence in the record is not a demonstrative exhibit. An electronic copy of any such demonstrative exhibits to be used during the first Hearing(s) date shall be provided by the Party producing the exhibits to the other Party and the Tribunal at least 72 hours before the first day of the Hearing(s). The opposing Party must make any objections to a demonstrative exhibit by the end of the following day after receiving the demonstrative exhibit. The Tribunal shall rule on the use of such demonstrative exhibit prior to its use at the Hearing(s). Each Party shall provide hard copies of permitted demonstrative exhibits to the opposing Party and the Tribunal at or prior to the commencement of the Hearing(s). Any demonstrative exhibits used after the first Hearing(s) date, including experts’ demonstrative exhibits, shall be provided to the opposing Party and each member of the Tribunal at least 24 hours prior to the Hearing date in which any such exhibit is intended to be used. The opposing Party may make objections to such demonstrative exhibit within such 24-hour period, and the Tribunal shall rule on such objections prior to the use of the demonstrative exhibit in the Hearing(s).
- m. Any Party may seek the introduction into evidence of any document in a language other than English, so long as such Party furnishes a translation into English of the portion of any such document that the Party wishes to rely upon, and assumes the cost of such translation, subject to any allocation of costs by the Tribunal. The Parties shall paginate any translation in the same way as the original document. If a Party plans to rely on a specific passage of a legal exhibit (case law, legal doctrine) written in a language other than English, such Party shall provide the translation in English of the specific passage together with a translation in English of the text immediately surrounding the passage so that the reader can put such passage in context (the text surrounding the passage at issue shall generally include the paragraphs preceding and following such passage). For voluminous documents, a Party may provide a translation of only a

portion of the document sufficient to provide adequate context to the part of the document that the Party wishes to rely upon. Any objection regarding the accuracy or sufficiency of a translation, or adequacy of context provided, shall be raised promptly by the objecting Party and shall be communicated to the originating Party, and if not resolved, shall be raised before the Tribunal. The Parties may agree, on a case-by-case basis to waive the translation requirement for all or part of particularly voluminous or repetitive documents or group of documents, in which case the Party introducing such documents or parts thereof need only provide a translation if requested by the Tribunal.

- n. If a Party wishes to obtain the production of documents from a person or organization not a Party to the arbitration and from whom the Party cannot obtain the documents on its own, the Party may ask the Tribunal, within the time period provided in the Procedural Timetable, to take whatever steps that in the opinion of the Tribunal are legally available to assist in obtaining the requested documents. The Party shall identify the documents sought from the non-party in sufficient detail and state why such documents are relevant and material to the outcome of the case. The Tribunal shall decide on this Request and shall take such steps as the Tribunal shall deem appropriate if, in its discretion, the Tribunal determines that the documents would be relevant and material.
- o. No production of new documentary evidence shall be allowed or accepted after the filing of the last written submission, except (i) by agreement of the Parties; (ii) if the new document reflects or relates to a fact that occurred after the filing of the last written submissions or (iii) unless the Party wishing to introduce the new document requests leave from the Tribunal and leave is granted after consulting the other Party. For these purposes, documentary evidence means evidence of any kind, whether recorded, on paper, electronic means, audio or visual recordings or any other mechanical or electronic means of storing or recording information.

(ii) Witnesses

- a. Witness statements and expert witness statements shall stand as direct evidence at the Hearing(s). Each witness statement shall have the form of a written, sworn declaration or a written declaration under oath or affirmation. Witnesses will not be heard under oath but the Tribunal shall draw their attention to the fact that the Tribunal requests them to tell the truth and shall ask them to confirm that they will comply with this request. Each Party shall

have the opportunity to cross-examine any witness of the opposing Party having submitted its testimony in the form of a witness statement. Each Party which submits any fact or expert witness statement shall produce the underlying witness at the Hearing(s) for testimony so long as the opposing Party has called for the cross-examination of such witness in its List of Witnesses to be Cross Examined (described below). The Party which submitted the witness statement of a fact witness called for cross-examination may conduct a brief direct examination of the witness, the maximum duration of which will be decided at the Pre-Hearing Conference, but only to introduce the witness, and/or to respond to an issue that could not reasonably have been anticipated when the witness statement(s) was submitted. Except as provided in the preceding clause, this direct examination is limited to matters arising from the respective witness statements. This brief direct examination is strictly limited to the aforementioned circumstances and shall not be a means to introduce new evidence or further direct testimony that should otherwise have been contained in the witness statement.

- b. The Party which submitted the opinion of an expert witness may conduct a direct examination and/or the expert witness may give a presentation to the Tribunal, the maximum duration of which will be decided at the Pre-Hearing Conference. This direct examination and/or presentation may serve only to introduce the witness, to summarize the contents of the witnesses' expert witness statements and/or to respond to a subsequent submission of the other party's expert on the same subject, or new facts that were not available when the expert witness statement(s) was submitted.
- c. Cross-examination shall not be limited to the issues or matters covered in the witness statements but may address any matters or issues known to the witness and that may be considered relevant and material to the outcome of the dispute.
- d. After cross-examination, the Party that presented the witness or expert that was subject to cross-examination shall have the opportunity to carry out redirect examination of such expert or witness within the scope of such cross-examination. In its discretion, the Tribunal will consider whether leave requested to carry out re-cross examination within the scope of redirect examination shall be granted or not.
- e. Each Party shall be responsible for the attendance of the witnesses and experts on whose evidence it relies and for the costs of such witnesses and experts attending the Hearing(s). The Arbitral

Tribunal may decide on the allocation of such costs in the Final Award.

- f. Failure to make a witness having submitted a written witness statement available for cross-examination at the Hearing(s) may result in the exclusion of that witness' evidence or the Tribunal may draw such inferences as it deems appropriate in determining the weight to be given to a witness statement or expert opinion of such individual, after considering the submissions from counsel for the Parties on the issue.
- g. It shall not be improper for counsel to meet witnesses and potential witnesses to establish the facts and assist in the drafting of written witness statements prepared by the witness.
- h. Each witness statement shall:
 - (1) set out the name and address of the witness, his or her relationship (past and present, if any) to any of the Parties, their legal advisors and the Tribunal, and a description of his or her qualifications, training, professional experience and present position of the witness (curriculum vitae with a photograph), including his or her competence to testify;
 - (2) state whether the witness is a witness of fact or an expert witness;
 - (3) contain a full and detailed description of the facts, and the source of the witness's information as to those facts, in sufficient detail so as to stand as the examination in chief of the witness at the Hearing;
 - (4) be signed by the witness, with an indication of the date and place of signature; and
 - (5) in the case of expert witness reports, also include a description of the expert's qualifications and competence to testify; a statement of his or her independence from the Parties, their legal advisors and the Tribunal; an affirmation of his or her genuine belief in the opinions expressed in the Expert Report; the facts or legal authorities on which the expert evidence is based; and be accompanied by any documents or calculations not in the record relied upon in the expert witness report.
- i. All written witness statements of fact or expert witness reports shall be in English or accompanied by an English translation.

- j. Each Party shall provide a list of which witnesses of the opposing Party it intends to cross-examine (“List of Witnesses to be Cross-Examined”) in accordance with the timeframe set out in the Procedural Timetable. Each List of Witnesses to be Cross-Examined, which shall be copied to each member of the Tribunal, shall contain:
 - (1) the names of witnesses, including expert witnesses, whose statements have been submitted by the opposing Party and whom the requesting Party wishes to have made available for cross-examination; and
 - (2) the order in which the Party will cross-examine the witnesses at the Hearing(s).
- k. The Tribunal shall have the right to examine the witnesses. Each Party may re-examine a witness with respect to questions raised by the Tribunal.
- l. Each Party shall have the opportunity to call a witness under its control to testify, provided that the witness has submitted a witness statement.
- m. These arbitral proceedings shall be conducted in English. A Party seeking to introduce witness testimony in a language other than English shall furnish an independent translation/interpretation into English of any such testimony and assume the cost of such translation/interpretation, subject to any subsequent allocation of costs by the Tribunal. The Parties shall consult with regard to the selection of the translator(s)/interpreter(s). Any objection regarding the accuracy of the translation/interpretation shall be raised promptly by the objecting Party and shall be communicated to the originating Party. In the event differences regarding interpretation of testimony cannot be resolved between the Parties, they shall be referred promptly to the Tribunal.

(iii) Hearing(s)

- a. The Hearing(s) shall take place in Paris, on the dates set forth in the Procedural Timetable, and at a venue selected by the Parties subject to the Tribunal's approval.
- b. The Hearing(s) will commence on the date set forth in the Procedural Timetable.
- c. The times for commencement and conclusion of each day of hearings, and the timing and duration of any lunch or other breaks,

will be determined by the Tribunal, in consultation with the Parties, at the Pre-Hearing Conference.

- d. After consultation with the Parties, and at the appropriate time, the Tribunal shall issue an agenda for the organization of the Hearing(s).
- e. The Hearing(s) shall be transcribed in English by professional court reporters, the presence of which shall be arranged by the Parties together with LiveNote service or comparable capability. The Parties shall pay the costs of court reporting and related services in equal shares, subject to any subsequent award on costs by the Tribunal. The Parties shall be granted reasonable opportunity to request the correction of the resulting transcript.
- f. The Parties shall be permitted to provide oral opening statements.
- g. Hearing time shall be divided equally between the Parties using a chess-clock subject to modification by the Tribunal to ensure the fair treatment of the Parties.
- h. Expert witnesses may be present for the entirety of the Hearing. Fact witnesses may be present for the continuation of the Hearing after presentation of, as the case may be, his or her cross-, re-direct and re-cross examination testimony. Each Party may have Party representatives at the Hearing(s) at all times, one of whom may also act as a fact witness for such Party.

(iv) General

- a. The Tribunal shall decide on any matters regarding the relevance, admissibility, evaluation and weight of the evidence according to the ICC Rules and any other principles or rules the Tribunal shall consider, in its sole discretion, as appropriate.
- b. When determining any issues not covered by the above rules or the procedural orders and directions issued by the Tribunal, the Tribunal may be guided by the IBA Rules.

D. Amendments

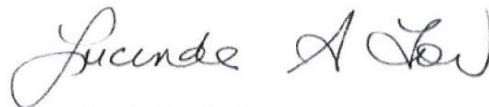
Subject to the Rules, the Procedural Timetable and this Procedural Order No 1 may be adjusted or modified by the Tribunal upon its own motion or upon the request of a Party when, in its discretion, the Tribunal determines the same to be appropriate.

E. Miscellaneous

The Parties are encouraged to approach compliance with this Procedural Order (and any subsequent Procedural Orders in these proceedings) in the spirit of its intention, namely, to facilitate a just result and not create barriers to such a result.

Sincerely,

On behalf of the Tribunal



Lucinda A. Low,
President

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