INTERNATIONAL CHAMBER OF COMMERCE

INTERNATIONAL COURT OF ARBITRATION

In the Matter of an Arbitration

Between :

GAMA GÜÇ SISTEMLERI MÜHENDISLIK VE TAAHHÜT (GAMA or Claimant

AND

THE REPUBLIC OF NORTH MACEDONIA (MACEDONIA or Respondent)

(The Claimants and the Respondent hereinafter collectively referred to as Parties)

ICC Arbitration No. 26696/HBH

Terms of Reference

Pursuant to Article 23 of the ICC Arbitration Rules in force as of 1 January 2021

The Parties and their Representatives

Claimant

Gama Güç Sistemleri Mühendislik ve Taahhüt A.Ş.
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Respondent

The Republic of North Macedonia

Represented by

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The Arbitral Tribunal

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ICC Case Management Team

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I. Definitions

1. The following defined terms are used in these Terms of Reference:

   a. International Chamber of Commerce (ICC)

   b. International Court of Arbitration of the International Chamber of Commerce (Court)

   c. Secretariat of the International Court of Arbitration (Secretariat)

   d. ICC Arbitration Rules in force as of 1 January 2021 (Rules)

   e. Arbitral Tribunal, includes one or more arbitrators (Tribunal)

   f. Claimant and Respondent (individually, a Party and collectively, the Parties)

   g. Agreement between the Republic of Turkey and the Republic of Macedonia Concerning the Reciprocal Promotion and Protection of Investments dated 14 July 1995 (the Treaty or BIT)

II. The Parties and Their Representatives

2. Any addition or change to the registered office of any Party or to a Party's legal representation after the date of these Terms of Reference must be notified to the other Parties, the Tribunal and the Secretariat in writing immediately after such addition or change.

3. When a relationship exists between a new Party representative and an arbitrator which in the Tribunal's view may create a conflict of interest, the Parties agree that the Tribunal may take appropriate measures to ensure the integrity of the arbitration, including the exclusion of the new party representative from participating in all or part of the arbitration.

4. By signing these Terms of Reference, the Parties confirm that the above mentioned representatives of the Parties are duly authorized to act and express themselves in this arbitration in the name and for the account of the party that appointed them, in particular for the execution of these Terms of Reference. Each may validly exercise his/her power and authority individually or collectively.

III. Constitution of the Tribunal

5. The Tribunal was constituted as follows:

   a. On 13 May 2022, Klaus Reichert SC was confirmed as co-arbitrator by the Secretary General upon nomination by Claimant, pursuant to Article 13(1).

   b. Also on 13 May 2022, Barton Legum was confirmed as co-arbitrator by the Secretary General upon nomination by Respondent, pursuant to Article 13(1).

c. On 24 June 2022, Lucinda Ann Low was confirmed as president of the Tribunal by the Secretary General upon joint nomination by the Parties in consultation with the co-arbitrators, pursuant to Article 13(1).

6. By signing these Terms of Reference, each party confirms that the Tribunal has been properly constituted in accordance with the dispute resolution provisions contained in the Treaty (set out in paragraph 26 herein), the Parties' subsequent agreement regarding its constitution and the governing law, and the Rules.

7. Accordingly, the Parties waive any objections to the constitution of the Tribunal in respect of matters known to the Parties at the date of signature.

8. Each of the members of the Tribunal confirms that s/he has disclosed, to the best of their knowledge, all circumstances likely to give rise to any justifiable doubts as to their impartiality or independence and that they will promptly disclose any such circumstances that may arise in the future. The Parties acknowledge that as of the date hereof, in making their assessment of relationships with entities which might require disclosure, the members of the Tribunal have relied on the Parties to identify potentially relevant entities. As of the date hereof, no such entities have been identified other than the parties and their counsel.

9. Each Party undertakes to promptly inform the Tribunal, the ICC and the other Party about any change or update to the list of potentially relevant entities set out in the foregoing paragraph. Further, if such arises hereinafter, either Party shall promptly inform the Tribunal, the ICC and the other Party about any direct or indirect relationship between that Party, or its representatives, and the Tribunal.

IV. Notifications and Communications

10. Pursuant to Article 3 of the Rules, the Parties and the Tribunal must send copies of all written correspondence directly to all other Parties' representatives, each arbitrator and the Secretariat simultaneously to the addresses indicated on pages i-iv.

11. Communications shall be sent to the Party representatives' email addresses as set out above on or before any date set by the Tribunal and by courier only when required.

12. Documents must be sent to the Secretariat in electronic form only.

13. Subject to any requirements of mandatory law that may be applicable, and unless the Parties agree otherwise, (1) the Terms of Reference may be signed in counterparts and (2) such counterparts may be scanned and communicated to the Secretariat pursuant to Article 3 of the Rules by email or any other means of telecommunication that provides a record of the sending thereof.

14. Likewise, subject to any requirements of mandatory law that may be applicable, (1) any award may be signed by the members of the Tribunal in counterparts and/or (2) such counterparts may be notified to the Parties by the Secretariat by delivery against receipt,

registered post, courier, email or any other means of telecommunication that provides a record of the sending thereof, pursuant to Article 35 of the Rules.

V. Procedure to Date

15. On 24 November 2021, the Secretariat received a Request for Arbitration filed by Claimant.

16. In its Request, Claimant indicated that given the complexity of the dispute and the fact that the Treaty on which the claim is based does not specify the number of arbitrators, a three-member Tribunal should be constituted.

17. The Secretariat notified the Request for Arbitration to Respondent on 13 December 2021.

18. On 28 February 2022, following the extended time limit of 11 February 2022 set by the Secretariat, the Secretariat received an Answer to the Request for Arbitration filed by Respondent.

19. In the Answer, Respondent indicated its agreement with Claimant to the appointment of a three-member Tribunal.

20. On 28 January 2022, Claimant nominated Mr. Klaus Reichert SC as co-arbitrator.

21. On 10 February 2022, Respondent nominated Ms. Niuscha Basssiri as co-arbitrator. On 2 March 2022, Claimant objected to the confirmation of Ms. Niuscha Basssiri. On 7 April 2022, the Court decided not to confirm Ms. Niuscha Basssiri and subsequently, on 11 April 2022, the Secretariat invited Respondent to nominate another co-arbitrator by 25 April 2022.

22. On 28 April 2022, the Respondent nominated Mr. Barton Legum as co-arbitrator.

23. On 19 May 2022, the Secretariat was advised by counsel for Claimant that the parties had reached agreement on the procedure for selecting the president of the tribunal pursuant to Article 12(5) of the ICC Rules. As a result of this procedure, on 9 June 2022, Claimant informed the Secretariat that Lucinda A. Low had been selected as President of the Tribunal.

24. Pursuant to Article 16 of the Rules the file was transmitted to the Tribunal on 27 June 2022.

25. As required by Article 24 of the Rules, on 21 July 2022, the Tribunal convened a case management conference which took place via videoconference to consult the Parties on procedural measures that may be adopted pursuant to Article 22(2) of the Rules and Appendix IV to the Rules.

VI. Arbitration Agreement

26. Claimant has made claims under the Treaty, Article VII of which provides as follows:

ARTICLE VII

Settlement of Disputes Between One Party and Investors of the Other Party

1. Disputes between one of the Parties and an investor of the other Party, in connection with his investment, shall be notified in writing, including a detailed information, by the investor to the recipient Party of the investment. As far as possible, the investor and the concerned Party shall endeavour to settle these disputes by consultations and negotiations in good faith.

2. If these disputes cannot be settled in this way within six months following the date of the written notification mentioned in paragraph 1, the dispute can be submitted, as the investor may choose, to:

(a) the International Center for settlement of Investment Disputes (ICSID) set up by the "Convention on Settlement of Investment Disputes Between States and Nationals of other states",

(b) an ad hoc court of arbitration laid down under the Arbitration Rules of Procedure of the United Nations Commission for International Trade Law (UNCITRAL),

(c) the Court of Arbitration of the Paris International Chamber of Commerce,

(d) the courts of justice of the hosting Party that is a party to the dispute. However, the investor who has brought the dispute before the said courts can only apply to one of the dispute settlement procedures under (a), (b) or (c) of this Article, if a final award has not been rendered within one year.

3. The arbitration awards shall be final and binding for all parties in dispute. Each Party commits itself to execute the award according to its national law.

VII. Applicable Substantive Law

27. The BIT does not specify the governing law. The Claimant has submitted that the law applicable to the dispute is the Treaty and the relevant rules of public international law. The Respondent proposes that this matter be determined by the Tribunal during the course of the proceedings.

VIII. Applicable Procedural Rules

28. Pursuant to Article 19 of the Rules, the proceedings shall be governed by the Rules and, where the Rules are silent, by any rules which the Parties or, failing them, the Tribunal may settle on, whether or not reference is thereby made to the rules of procedure of a national law to be applied to the arbitration.

IX. Language of the Arbitration

29. The Parties have agreed on English as the language of the arbitration.

X. Place of Arbitration

30. The Parties have agreed on Paris, France as the place of arbitration.

31. Pursuant to Article 18(2) of the Rules, the Tribunal may, after consultation with the Parties, conduct hearings and meetings at any location it considers appropriate.

32. Pursuant to Article 18(3) of the Rules, the Tribunal may deliberate at any location it considers appropriate.

XI. Parties' Respective Positions and Relief Sought

33. The following summaries are intended to satisfy the requirements of Article 23(1) of the ICC Rules without prejudice to other or further allegations, arguments, contentions or denials contained in the submissions already on record, and in further pleadings or submissions in this arbitration, subject to Article 23(4) of the Rules.

34. Therefore, no Party shall make new claims which fall outside the limits of these Terms of Reference once they have been signed or approved, unless it has been authorized to do so by the Tribunal who shall consider the nature of such new claims, the stage of the arbitration and other relevant circumstances.

35. No statement or omission in the summary of any Party is to be interpreted as a waiver or admission of any issue of fact or law. The summary neither reflects any fact finding by the Tribunal nor any admission by any other Party.

36. The Parties have summarized their position as set forth below.

37. By signing these Terms of Reference, neither Party subscribes to nor acquiesces in the summary of the other Party's position set forth below.

A. Claimant's Position and Relief Sought

(i) Claimant's Position

Claimant is a protected investor pursuant to Article I(2)(b) of the Treaty that has made a protected investment in Macedonia pursuant to Article I(1) of the Treaty. As summarized below and explained in more detail in the Request for Arbitration, Respondent has breached a number of Treaty obligations and customary international law and expropriated Claimant's investment in Macedonia. Claimant's investment in Macedonia is the claim to money against the Company for Production of Electricity and Heat TE-TO AD Skopje (TE-TO) in connection with the construction of a power plant in Skopje.

In 2007, an international consortium comprised of Claimant (as consortium leader) and Alstom Ltd. (Switzerland), as a contractor, and TE-TO, as owner, entered into an engineering, procurement and construction (EPC) contract for the construction of a 220 MW combined cycle cogeneration power plant in Skopje with a total value of €135,800,000.00. The EPC contract involved a significant contribution by Claimant in terms of construction operations, know-how, equipment, and qualified personnel over five years. The power plant was commissioned in May 2011 and commenced commercial operation on 24 February 2012. The power plant of TE-TO is the largest power plant constructed in Macedonia to date representing circa 12% of Macedonia's total installed capacity.

In February 2012, Claimant and TE-TO entered into a settlement agreement pursuant to which TE-TO unconditionally agreed to pay Claimant a net sum of €5 million by 31 March 2012 in full and final settlement of all claims of Claimant and TE-TO under the EPC Contract. Since TE-TO failed to pay Claimant the agreed sum within the agreed deadline, Claimant commenced summary debt collection proceedings against TE-TO before a Macedonian notary public, which ensued in a dispute between Claimant and TETO under the EPC contract.

The Macedonian courts wrongfully assumed jurisdiction over the dispute between Claimant and TE-TO and wrongfully applied Macedonian law, although the EPC contract was governed by English law and included an arbitration clause requiring Claimant and TE-TO to settle any disputes under the Rules of Arbitration of the ICC in London.

In May 2018, after the lapse of six years since the dispute arose between Claimant and TE-TO, the First Instance Civil Court in Skopje handed down a judgment denying Claimant's claim on the merits with the reasoning that Claimant's claim was conditional to certain obligations. This reasoning was flawed and in contradiction with the acts of TE-TO, which acknowledged the claim during these proceedings and in a separate set of proceedings described below. Following GAMA's appeal, in October 2019, the judgment of the First Instance Civil Court in Skopje was upheld by the Appellate Court in Skopje.

In December 2020, the Macedonian Supreme Court quashed both judgments and reverted the case to the First Instance Civil Court in Skopje. The Macedonian Supreme Court fully accepted GAMA's argument made in the first instance and appellate proceedings, i.e., that TE-TO's obligation to pay GAMA's claim is unconditional. In October 2021, the First Instance Civil Court in Skopje again denied GAMA's claim contrary to the instructions by the Supreme Court and despite that, in the meantime, TE-TO acknowledged, and the Macedonian courts wrote off GAMA's claim in separate proceedings. Consequently, the debt collection proceedings became obsolete.

In April 2018, TE-TO submitted to the First Instance Civil Court in Skopje a proposal for commencement of judicial reorganization proceedings by enclosing a reorganization plan proposing a restructuring of TE-TO's debt by writing-off 90% of claims of unsecured creditors and suspension of the payment of the remaining 10% of the claims for ten years. Although the conditions for commencement of judicial reorganization of TE-TO were not met, and the reorganization plan proposed by TE-TO was abusive and in flagrant breach

of Macedonian law, the Macedonian courts approved the write-off of 90% of the claims of unsecured creditors, including 90% of GAMA's claim or €4.5 million and the suspension of the payment of the remaining 10% of GAMA's claim or €500,000 after ten years.

Following the Macedonian courts' approval of TE-TO's debt restructuring, Respondent undertook steps to ensure that the manifestly unlawful reorganization plan would not collapse. The write-off of the claims of unsecured creditors generated a tax debt for TE-TO of approximately €16 million, which TE-TO was unable to pay. Enforcement of the tax debt by the Macedonian tax authority would cause the reorganization plan of TE-TO to collapse under Macedonian law. To prevent the collapse of the reorganization plan of TE-TO, in October 2019, Respondent unlawfully granted TE-TO state aid in the form of a ten-year deferral of its obligation to pay its tax debt.

The decisions of the Macedonian courts and other state organs have been taken in breach of Treaty obligations and customary international law.

Macedonia has breached Article II(3) of the Treaty by providing Claimant and its investment treatment that is less favorable than the treatment it has accorded to investments of comparable investors, both Macedonian and of third countries. The decisions of Macedonian courts, which approved the write-off of 90% of the GAMA's claim in favor of TE-TO, treated GAMA and its investment less favorably in comparison to, inter alia: (i) other unsecured creditors and their investments, including shareholders and related parties of TE-TO, which have been put in the same class of creditors as GAMA, although shareholders' claims in insolvency are subordinated to claims of all other creditors, and (ii) in comparison to Macedonian or foreign parties and treatment of their investments in similar reorganization proceedings in North Macedonia.

The MFN provision in Article II(3) of the Treaty also entitles Claimant to rely upon the substantive protections accorded to the investments of third State nationals under other North Macedonia's BITs currently in force, including the duty (i) to accord fair and equitable treatment (e.g., pursuant to Article 3(1) of the Lithuania-Macedonia BIT, Article 3(1) of the Austria-Macedonia BIT and Article 2(2) of the Slovakia-Macedonia BIT); (ii) to accord full protection and security (e.g. pursuant to Article 3(1) of the Lithuania-Macedonia BIT and Article 3(1) of the Austria-Macedonia BIT); (iii) not to impair by arbitrary, unreasonable or discriminatory measures the management, maintenance, use, enjoyment or disposal of investments (e.g., pursuant to Article 3(2) of the Lithuania-Macedonia BIT and Article 3(2) of the Spain-Macedonia BIT) and (iv) to provide effective means of asserting claims and enforcing rights with respect to investments (e.g. pursuant to Article 3(3) of the Kuwait-Macedonia BIT).

Respondent has breached its obligation to provide fair and equitable treatment, which applies by virtue of the MFN clause in the Treaty, to Claimant's investment, including (but not limited to) through:

(i) the arbitrary decisions of the Macedonian courts, which wrongfully assumed jurisdiction over the dispute between Claimant and TE-TO and wrongfully applied Macedonian law, instead of English law, in contradiction with the EPC contract;

(ii) the excessive duration of the dispute between Claimant and TE-TO before the Macedonian courts in violation of Claimant's right to a speedy trial (until they became obsolete due to the write-off of GAMA's claim by the Macedonian courts);

(iii) the endorsement by Macedonian courts of the abusive tactics employed by TE-TO and its majority shareholder, which based on unlawful acts, artificially created the "imminent insolvency" of TE-TO only to release TE-TO from creditors' claims, including that of Claimant;

(iv) the wrongful refusal of the First Instance Civil Court in Skopje to reject TE-TO's proposal for commencement of insolvency and its reorganization plan;

(v) the failure of the First Instance Civil Court in Skopje to review and decide upon the Claimant's request for recusal of the judge in flagrant breach of Claimant's due process rights;

(vi) the decisions of the Macedonian courts approving the debt restructuring of TE-TO resulting in the unlawful writing-off of 90% of GAMA's claim and accrued interest against TE-TO, involving serious procedural defects, breach of Claimant's due process rights and abusive outcome;

(vii) unjustified discrimination of GAMA in civil court proceedings and reorganization proceedings of TE-TO, as compared to treatment received by TE-TO, its shareholders, related parties and other unsecured creditors, and to the treatment of other domestic and foreign investors in similar reorganization proceedings;

(viii) the wrongful refusal by the Macedonian Prosecution to take any actions in respect of the criminal charges filed by the Finance Police Administration of the Republic of North Macedonia against individuals, including the insolvency judge, who were involved in preparing grounds for the reorganization of TE-TO and writing off of GAMA's claim;

(ix) the unlawful interference by Respondent by granting TE-TO state aid in the form of a ten-year deferral of its obligation to pay its tax debt resulting from the writing-off of claims of unsecured creditors, after the restructuring of TE-TO's debt was approved by Macedonian courts, to ensure that the reorganization plan would not collapse;

(x) a denial of justice by Macedonian courts and state organs through acts described above;

The same acts also constitute the breach of the Respondent's duty to accord full protection and security, to provide effective means of asserting claims and enforcing rights with respect to investments, and not to impair by arbitrary, unreasonable or

discriminatory measures the management, maintenance, use, enjoyment or disposal of investment, which apply by virtue of the MFN clause also to Claimant's investment.

These violations have also violated Respondent's obligation under Article III of the Treaty, which protects Claimant's investment against the illegal expropriation. The decisions of the Macedonian courts, which unlawfully and discriminatorily approved the writing-off of 90% of Claimant's claim against TE-TO, with the remaining part to be repaid only after ten years, contrary to the five years' statutory deadline for the repayment of claims under Macedonian law, constitute an illegal expropriation of Claimant's investment. The actions of the Respondent's state organs described above also constitute a breach of the customary international law, encompassing the prohibition of the denial of justice.

Claimant requests the payment of compensation for damages suffered by Claimant resulting from the breaches of the Treaty and customary international law by the Respondent. Claimant's total damages are estimated at €5 million and €11,959.00, the latter representing legal representation costs that the Claimant incurred until the Request for Arbitration was filed because of the legal proceedings through which the Respondent unlawfully interfered with the Claimant's investment. Claimant reserves the right to claim additional compensation for damages arising from Respondent's acts during the pendency of these proceedings.

Claimant reserves its right to address Respondent's legal and factual characterization of the dispute described in Respondent's Answer, which are without merit, in its forthcoming legal submission.

(ii) Claimant's Relief Sought

Claimant respectfully requests the Arbitral Tribunal to issue an award:

(i) declaring that Respondent breached its obligations under the Treaty and customary international law; and

(ii) ordering Respondent to compensate in full Claimant for the damages and losses suffered as a result of Respondent's breaches under the Treaty and customary international law, currently estimated to be in the amount of €5 million with interest at one monthly rate of EURIBOR for euros for each semi-annual period based on the rate applicable on the last day of the semi-annual period preceding the current semi-annual period, increased for 10% from 1 April 2012, and €11,959.00.

(iii) ordering Respondent to pay any further applicable interest on any amount awarded until Respondent complies with such award, and

(iv) ordering Respondent to pay all arbitration costs, including but not limited to compensation for all arbitrators', experts' & witnesses' fees and costs, legal representation fees and expenses, ICC Secretariat's fees and costs, and other administrative costs such as

costs related with the hearing etc. incurred by Claimant in connection with the present dispute.

B. Respondent's Position and Relief Sought

Respondent's position is that this arbitration is an impermissible effort by Claimant (a disappointed creditor in a local bankruptcy proceeding) to use the bilateral investment treaty between Turkey and North Macedonia as an appellate process.

The claims arise out of a private dispute between private parties, bereft of the sovereign conduct necessary to ground an investment treaty claims. Respondent did not use any sovereign powers to interfere with the contract or with Claimant's attempt to recover money allegedly owed under the Settlement Agreement.

Claimant's case relates solely to the decisions and conduct of the Macedonian courts. While Claimant may be unhappy with the decisions of those courts, this Tribunal does not sit as an appellate body on matters of domestic law, and Claimant does not allege any denial of justice or disclose any facts that could support such a claim. Moreover, Claimant deliberately submitted to the jurisdiction of the Macedonian courts, and those courts did not misapply Macedonian law. If Claimant now wishes it had not sought relief before Macedonian courts, or regrets choices made by itself and its counsel during local proceedings, it can look only to itself (or its counsel).

Respondent requests that the claims be dismissed, and costs awarded.

XII. Amount in Dispute

38. The amount in dispute is currently quantified at Euros 5 011 959.

XIII. Issues to Be Determined

39. The issues to be determined by the Tribunal may include but are not limited to the following:

    a. has the conduct of the Respondent breached its obligations under the Treaty and customary international law and if so, in what respects?

    b. if there has been a breach, what damages and interest, if any, are owed to the Claimant?

    c. should there be an award of costs to the prevailing party and if so, in what amount?

40. In any event, the issues to be determined shall be those resulting from the Parties' submissions, including forthcoming submissions, and those relevant to the decision of the Parties' respective claims and defenses, without prejudice to Article 23(4) of the Rules.

41. The Tribunal shall be free to decide any issue by way of partial or interim awards, or by a final award as it may deem appropriate and after having provided the Parties a reasonable opportunity to present their case.

XIV. Protection of Personal Data

42. The Parties and their legal representatives acknowledge, and shall ensure, that all those acting on their behalf acknowledge, that the ICC is subject to EU Regulation 2016/679 (GDPR) and related French data protection laws and regulations, acts as a controller of personal data for some of the data processed during the arbitration for the purposes detailed in the ICC Data Privacy Notice for ICC Dispute Resolution Proceedings, but not for the activities undertaken by others in the context of ICC proceedings.

43. The GDPR or other data protection laws and regulations may also apply to the Parties, their legal representatives, the arbitrators and others acting on their behalf or at their request. The Party that considers itself or others acting on its behalf to be bound by the GDPR or other relevant data protection laws and regulations shall inform the Tribunal as soon as practicable. That Party shall insure that anyone acting on its behalf is notified of such information of the Tribunal. This means that, absent unusual circumstances, any data protection issues shall be raised at the case management conference if not before.

44. Each Party, its legal representative(s) and arbitrators acting as data controller to which the GDPR applies has a separate responsibility to comply with the provisions of the GDPR.

45. To the extent applicable, the Tribunal, the Parties, and their legal representatives shall put in place, and shall ensure that all those acting on their behalf put in place, appropriate technical and organizational measures to comply with any applicable data protection laws during the arbitration and the applicable retention period in a proportionate manner that minimizes the impact on the personal data.

46. The Tribunal has authority to issue directions applying the data protection laws to the proceedings, which shall be binding on the Parties for the purposes of the arbitration.

47. The Parties and their legal representatives shall put in place and shall ensure that all those acting on their behalf put in place:

    a. appropriate technical and organizational measures to ensure a reasonable level of security appropriate to the arbitration, taking into account the scope and risk of the processing, the state of the art, the impact on data subjects, the capabilities and regulatory requirements of all those involved in the arbitration, the costs of implementation, and the nature of the information being processed or transferred, including whether it includes personal data or sensitive business, proprietary or confidential information; and

    b. mechanisms to ensure that they comply with data breach notification procedures.

XV. Other Procedural Matters

Procedural Orders

48. Any procedural matter may be determined by way of a procedural order after consultation with the Parties.

49. Any procedural order may be made by the President alone on behalf of the Tribunal, after consulting with the co-arbitrators. In case of urgency, the President may issue procedural orders and directions alone.

Efficiency

50. In accordance with Article 22(1) of the Rules, the Tribunal and the Parties agree to make every effort to conduct the arbitration in an expeditious and cost-effective manner, having regard to the complexity and value of the dispute.

51. The Parties agree that they shall conduct themselves in a manner consistent with the efficient use of time and resources and they shall observe any directions issued by the Tribunal as may reasonably be needed to enable the arbitration to proceed to the rendering of an Award in a proper, fair and efficient way. Notwithstanding any provision concerning allocation of costs in the Rules, the Parties agree that any unreasonable behavior by a Party may be taken into account by the Tribunal when exercising its discretion in the allocation of costs. Unreasonable behavior could include failure to comply with procedural orders and unjustified failure to meet the deadlines contained in any applicable procedural order of the Tribunal.

Value Added Tax (VAT)

52. In accordance with Article 2(13) of the Rules, amounts paid to the Tribunal do not include any VAT. The undersigning Parties severally undertake to pay the VAT, if applicable, directly to the Tribunal upon its request of payment following presentation of relevant invoices. The latter may arrange for the deposit of funds towards VAT due on the fees and expenses in accordance with the Note.

Expertise

53. Any Party and/or the Tribunal may request the ICC International Centre for ADR to propose experts pursuant to the Proposal of Experts and Neutrals Rules.

Mediation

54. The Parties may, at any time, without prejudice to the present arbitration, seek to settle their dispute in accordance with the ICC Mediation Rules.

Miscellaneous

55. The Parties acknowledge that their obligations under Article 11(7) of the Rules are continuing in nature. The previous provisions concerning new party representatives apply *mutatis mutandis* in case of third party funding.

These Terms of Reference, in accordance with Article 23 of the Rules, were drawn up and executed in counterparts, each of which shall constitute an original, execution of which is deemed to have taken place at the place of arbitration (Paris, France). Each original of these Terms of Reference forms an original arbitration agreement for the purposes of Article II and IV (1) of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention of 1958).

The Parties

For and on behalf of Claimant, Gama Güç Sistemleri Mühendislik ve Taahhüt A.Ş.

By: _____ Date: 28 July 2022

Name: Gjorgji Georgievski

For and on behalf of Respondent, The Republic of North Macedonia

By: _____ Date: 18 July 2022

Name: DAMIEN NYER

The Arbitral Tribunal

By: _____ Date: _____
Name: Klaus Reichert SC(Cl)

By: _____ Date: _____
Name: Barton Legum)

By: _____ Date: _____
Name: Lucinda A. Low

For and on behalf of Respondent, The Republic of North Macedonia

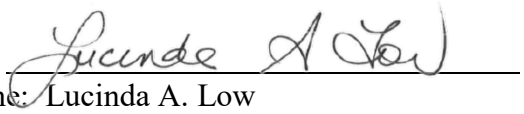
By: _____ Date: _____

Name: _____

The Arbitral Tribunal

By: _____ Date: _____
Name: Klaus Reichert SC(Cl)

By: _____ Date: _____
Name: Barton Legum)

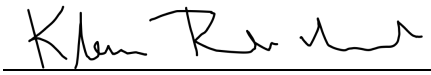
By:  Date: July 28, 2022
Name: Lucinda A. Low

For and on behalf of Respondent, The Republic of North Macedonia

By: _____ Date: _____

Name: _____

The Arbitral Tribunal

By:  Date: 28 July 2022

Name: Klaus Reichert SC(Cl)

By: _____ Date: _____

Name: Barton Legum)

By: _____ Date: _____

Name: Lucinda A. Low

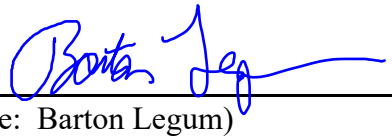
For and on behalf of Respondent, The Republic of North Macedonia

By: _____ Date: _____

Name: _____

The Arbitral Tribunal

By: _____ Date: _____
Name: Klaus Reichert SC(Cl)

By:  Date: 28 July 2022
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