

JOINT VENTURE AGREEMENT BETWEEN ONYX GROUP DEVELOPMENT



1. PREAMBLE

This agreement is made and entered into by and between:

The ONYX Group Development first part

And

Institute `Kirilo Savic` a.d. (Address) Vojvode Stepe 51, 11010 Belgrade, Serbia,

represented by Prof.Miroljub Jevtic,PhD, General Manager second part

Whereas the foregoing parties have resolved to form a Joint Venture under the title of

----- Joint Venture

For the exclusive purposes of securing and/or executing projects in Iraq

- Infrastructure and Construction

Now it is hereby agreed as follows:

Initials *JM*

Appendix and which shall be entered as a sale of interest

to \_\_\_\_\_ in the accounts and records on formation of the Joint Venture.

**'Project'** means the Project or Projects which have been contracted with the Client for the supply of the Deliverables, for the purposes of securing and executing which, the Joint Venture has been formed.

**'Representative'** Means the person representing a Member on the Management Committee.

**'Schedules'** means Schedules 'A', 'B' and 'C' which set out general, financial and other information relating to the Members and the obligations, duties, rights, risks and benefits arising from their participation in the Joint Venture.

**'Specific Provisions'** Means the variations, if any, required to this standard form of agreement for the specific purposes of the Agreement.

## 2.2 Interpretation

Unless inconsistent with the context, an expression in the Agreement which denotes:

- any gender shall include the other genders
- a natural person shall include a juristic person and vice versa
- the singular shall include the plural and vice versa

## 2.3 Headings

The headings to clauses of the Agreement shall not be considered part thereof, nor shall the words they contain be taken into account in the interpretation of any clause.

## 2.4 Law

The Agreement shall be construed in accordance with and governed by the laws of the Republic of IRAQ and the English language versions shall prevail.

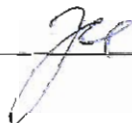
## 2.5 Language

English shall be exclusively used by the Members in the preparation of Documents unless otherwise indicated.

## 2.6 Conflict between Agreement and Project

In the event that any provision of the Agreement is in conflict with the terms of the Project, the Agreement shall be amended to the approval of the Management Committee so as to eliminate that conflict.

Initials \_\_\_\_\_



### **3. JOINT VENTURE GENERAL**

#### **3.1 Establishment and Purpose**

The Joint Venture established by the Members in terms of the Agreement is an unincorporated association with the exclusive purposes of securing and executing projects for the benefit of the Members. The Joint Venture shall be deemed officially established and constituted from the date of receipt of the Operational Funding from \_\_\_\_\_ as per the funding schedule attached as an appendix to this agreement. This funding is not construed in any way as part of Schedule A requirements of this agreement.

#### **3.2 Termination**

The operation of the Joint Venture and the validity of the Agreement shall terminate if and when, by mutual agreement of the members, it becomes evident that the Joint Venture will not be engaged for any Project, or, if the Joint Venture secures the Project, when all obligations and rights of the Joint Venture and the Members in connection with the Client and the Agreement have ceased and/or been satisfactorily discharged.

Unless otherwise decided by the Management Committee, the Agreement shall not terminate if a Member changes its name, or is taken over by, or merged with, another body.

#### **3.3 Exclusivity**

Unless otherwise agreed by the Management Committee, or provided for in the Project, no Member shall engage in any activity related to the Project other than as a Member of the Joint Venture and Members shall ensure that their subsidiaries and other bodies over which they have control comply with this requirement.

#### **3.4 Participation of Members**

Except as may otherwise be stipulated in the Agreement, each Member shall be responsible for all costs incurred by it prior to the date of inception of the Agreement.

Subsequent to the date of inception of the Agreement, each Member shall, participate in the execution, risks, responsibilities and fortunes of the Joint Venture including, inter alia, human and other resources and participation in profits and losses to the extents indicated in the Schedules.

Participation in any aspect not covered in the Schedules shall, if an agreement cannot be reached between the Members, be to the same extents as indicated by the Members Interests.

### 3.5 Management

The affairs of the Joint Venture shall be directed and controlled by the Management Committee, as set out in Section 4 hereof.

### 3.6 Confidentiality

This agreement shall be read in conjunction with the separate Confidentiality and Non-Circumvention Agreement undertaken by the members of the Joint Venture.

All matters relating to the Agreement and the Project shall therefore be treated by the Members as confidential and no such matter shall be disclosed to any third party without the prior written approval of the Management Committee.

No Member shall therefore be party to the dissemination of publicity relating to the Project, or the Agreement, without the prior written approval of the Management Committee and the Client.

### 3.7 Assignment

No Member shall cede, assign, or in any other way make over any of its rights, or obligations, under the Agreement without the prior written consent of the Management Committee.

### 3.8 Subcontracting

No Member shall subcontract any obligation, work or duty for which it is, itself, responsible in terms of the Agreement without the prior written consent of the Management Committee.

### 3.9 Variations to Agreement

No variation, modification, or waiver of any part of the Agreement shall be of any force, or effect, unless unanimously agreed by the Members and reduced to writing.

### 3.10 Liability

Each Member warrants that it will indemnify the other Members against all legal liabilities arising out of, or in connection with the performance of its obligations under the Agreement.

It is acknowledged by the Members that they may be held jointly and severally liable in respect of claims against the Joint Venture by the Employer or third parties.

## 4. MANAGEMENT OF JOINT VENTURE

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#### 4.1 General

The affairs of the Joint Venture shall be directed, controlled and managed by the Management Committee, which, within the terms of the Agreement and the Contract, shall have full authority to bind the Members in all matters relating to the affairs of the Joint Venture.

Communication between the Joint Venture and the Client, or third parties, relating to the Project shall be conducted exclusively by the Management Committee, or by such person as it may delegate to perform this function.

The Management Committee shall have the power to appoint a project manager and/or such other persons as it may see fit to appoint for the purpose of executing the Project and may delegate such of its powers, responsibilities and duties as it may consider necessary, or desirable, to persons or bodies appointed or seconded for this purpose.

Such administrative functions as are necessary to ensure the effective operation of the Management Committee shall be performed by its chairman.

#### 4.2 Management Committee

##### 4.2.1 Composition

The Management Committee shall, unless otherwise agreed by all the Members, consist of one Representative of each Member and each Member shall be obliged, at all times, to maintain a Representative on the Management Committee.

Each member shall, not later than three working days after the signing of the Agreement, appoint its Representative and notify the other Members of the name and contact details of the Representative. Such Representative shall have the power to bind the Member that he represents in all matters relating to the execution of the Contract and the performance of the Agreement.

A Member shall be entitled, after giving the other Members not less than three working days written notice of his intention to do so, appoint, remove and/or replace, an alternate who shall, at any meeting of the Management Committee from which the Representative whom he represents is absent, be vested with all rights and powers and subjected to all the obligations of the absent Representative.

The chairman of the Management Committee shall be the Representative of the Member which has the largest Member's Interest. If two, or more, Members have the same, largest Member's Interest, the chairmanship shall rotate between the Representatives of such Members at three monthly intervals, the order of rotation to be determined by ballot.

Notwithstanding the foregoing, the chairmanship of the Management Committee may be determined, or changed, at any time by unanimous decision of the Management Committee.

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No remuneration shall be paid by the Joint Venture to Representatives or their alternates for serving on the Management Committee, unless otherwise decided by the Management Committee.

#### 4.2.2 Meetings

Meetings of the Management Committee shall take place at such times and places as the Management Committee may determine, provided that the chairman shall convene a meeting of the Management Committee to be held not later than ten working days after he has been requested, in writing, by a Member to do so. Not less than five working days written notice of any meeting of the Management Committee shall be given to all Representatives and their alternates.

The Management Committee may permit, or invite, persons other than Representatives or alternates to attend any of its meetings, but such persons shall not have voting rights.

#### 4.2.3 Decisions

Each Representative shall have one vote on the Management Committee and where, in terms of this clause, a casting vote is required, this shall be exercised by the chairman.

All decisions of the Management Committee shall, desirably, be unanimous. Accordingly, if unanimity cannot, initially, be achieved in regard to a decision, the meeting at which that decision is sought shall be adjourned for a period of 48 hours to enable Representatives to consult with their principals. If, on resumption of the adjourned meeting, unanimity can still not be achieved, the decision, provided it is not one requiring unanimity of the Members, shall be taken by majority vote and, in the event of a tie, the chairman shall exercise a casting vote.

A Member not satisfied with a majority decision of the Management Committee may declare a dispute, to be dealt with in terms of Clause 8 hereof, but the majority decision shall, nevertheless, be implemented with immediate effect.

Decisions of the Management Committee, whether taken at a meeting, or otherwise, shall be recorded in written minutes, which shall be distributed by the chairman to reach the Representatives not later than five working days after those decisions were taken. Such minutes shall be deemed to have been affirmed by the Representatives unless written notice of dissent is received by the chairman not later than three working days after receipt of the minutes by the Representative

#### 4.2.4 Powers and duties

The functions, responsibilities and powers of the Management Committee shall include, inter alia, those listed below:

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- 4.2.4.1 Formulating overall policy in regard to the achievement of the objectives of the Joint Venture.
- 4.2.4.2 Managing the day to day affairs of the Joint Venture.
- 4.2.4.3 Monitoring, directing and coordinating the activities of the Members to ensure that the objectives of the Joint Venture are achieved and that the obligations and responsibilities of the individual Members are met.
- 4.2.4.4 Monitoring and controlling the financial affairs of the Joint Venture and ensuring that proper books of account and financial records relating to affairs of the Joint Venture are maintained in an approved form and submitted to the Management committee for approval at regular intervals, which shall not be longer than one month.
- 4.2.4.5 Determining the necessity for and the details of any changes in the duties and responsibilities of Members provided that any resulting changes in Members' Interests shall be unanimously approved by the Members.
- 4.2.4.6 Determining the terms and conditions of employment of personnel and the emoluments applicable to staff seconded to the Joint Venture by the Members.
- 4.2.4.7 Controlling and approving the appointment of all subcontractors.
- 4.2.4.8 Procuring, after the completion of the Project and the release of all bonds, guarantees and sureties given in respect of the performances of the Joint Venture and the Members, the preparation and auditing of a final set of accounts, on the basis of which the final profits, or losses, attributable to the individual Members shall be determined and any necessary adjustments effected on a Project basis.

## **5. RESOURCES OF JOINT VENTURE**

The resources to be utilized by the Joint Venture in securing and executing the Project shall, insofar as these are to be provided directly by the Members, be as set out in the Schedules and may, from time to time, be amended by decision of the Management Committee, provided that the Member's Interests are not, except with the unanimous approval of the Members, affected thereby.

Similarly, specific areas of responsibility of the Members for the performance of work and the provision of facilities shall be as set out in the Schedules and may, from time to time, be amended by decision of the Management Committee, provided that the Members' Interest are not, except with the unanimous approval of the Members, affected thereby.

### **5.1 Schedule 'A' (General)**

Schedule 'A' shall contain general information relating to the Joint Venture shall be held on a Project basis including, inter alia, the following:

- 1 The Client name and address.
- 2 A brief description of the Project and the Deliverables.
- 3 The name, physical address, communications addresses and domicile Citadeletexecutant of each Member and of the Joint Venture.
- 4 The Members' Interests.
- 5 A statement indicating whether, or not. Specific Provisions apply to the Agreement.
- 6 A schedule of insurance policies which must be taken out by the Joint Venture and by the individual Members.
- 7 A Schedule of sureties, indemnities and guarantees that must be furnished by the Joint

Venture and by the individual Members.

- 8 Details of the persons, who, in the event of failure by the Members to reach Agreement on the appointments of mediator and arbitrator, will nominate appointees to these positions in terms of Clauses 8.2 and 8.3.

## 5.2 Schedule 'B' (Financial)

Schedule 'B' shall contain information regarding the financial affairs of the Joint Venture including, inter alia, the following:

- 1 The working capital required by the Joint Venture and the extent to which and manner whereby this will be provided and/or guaranteed by the individual Members from time to time.
- 2 The banking accounts that are to be opened in the name of the Joint Venture and the manner in which these are to be operated.
- 3 The rates of interest that will be applicable to amounts by which Members are in debit, or credit, to the Joint Venture.
- 4 The names of the auditors and others, if any, who will provide auditing and accounting services to the Joint Venture.
- 5 The intervals at which interim financial accounts and forecasts will be prepared for approval by the Management Committee
- 6 Insofar as not covered in Schedule 'C', the basis on which contributions of various types by the Members towards the work of the Joint Venture in securing, executing, managing and satisfactorily completing the Project, will be valued
- 7 The basis on which profits and/or surplus cash will, if available from time to time, be distributed to Members.
- 8 The basis upon which losses, if any, are to be apportioned to Members.

## 5.3 Schedule 'C' (Contributions by Members)

Schedule 'C' shall set out the contributions of various types, other than cash, that will be made by the individual Members towards the work and obligations of the Joint Venture and shall, as far as possible, indicate the monetary values to be placed on such contributions, which may include, inter alia, the following:

- 1 Staff seconded to the Joint Venture.
- 2 Work carried out and services provided to, or on behalf of, the Joint Venture.
- 3 Plant, equipment, facilities etc. made available for use by the Joint Venture.
- 4 Materials and goods supplied to, or on behalf of, the Joint Venture.
- 5 Licenses, sureties, guarantees and indemnities furnished to, or on behalf of, the Joint Venture.
- 6 Joint Venture Disclosure form required for the Contract.

## 6. BREACH OF AGREEMENT

If a Member breaches any material provision of the Agreement, or delays or fails to fulfill its obligations in whole, or in part, and does not remedy the situation within fourteen calendar days of receipt of notice from the Management Committee, or another Member, to do so, the other Members shall have the right, without prejudice to any other rights arising from the default, to summarily terminate the Agreement and re-assign the defaulting Member's rights and obligations in the Joint Venture as they see fit and withhold any moneys due to the defaulting member by the Joint Venture.



Each Member shall indemnify the other Members against all losses, costs and claims which may arise against them in the event of the Agreement being terminated as a result of breach of the Agreement by the said Member.

## 7. INSOLVENCY OF MEMBER

Should a Member be placed in liquidation, or under judicial management, whether provisionally or finally, or propose any compromise with its creditors, the other Members shall be entitled to proceed in terms of Clause 6, as if the Member had breached the Agreement.

## 8. DISPUTES

### 8.1 Settlement

The Members shall negotiate in good faith and make every effort to settle any dispute, or claim, that may arise out of, or relate to, the Agreement.

If agreement cannot be reached, an aggrieved Member shall, if he intends to proceed further in terms of Clause 8.2 hereof, advise all other Members in writing that negotiations have failed and that he intends to refer the matter to mediation in terms of Clause 8.2.

### 8.2

**Mediation Not earlier than ten working days after having advised the other Members, in terms of Clause 8.1, that negotiations in regard to a dispute have failed, an aggrieved**

Mediation by a single mediator. The mediator shall be selected by agreement between the Members, or, failing such agreement, by the person named for this purpose in Schedule 'A'. The costs of the mediation shall be borne equally by all Members.

The mediator shall convene a hearing of the Members and may hold separate discussions with any Member and shall assist the Members in reaching a mutually acceptable settlement of their differences through means of reconciliation, interpretation, clarification, suggestion and advice. The Members shall record such agreement in writing and thereafter they shall be bound by such agreement.

The mediator is authorized to end the mediation process whenever in his opinion further efforts at mediation would not contribute to a resolution of the dispute between the Members.

### 8.3 Arbitration

Where a dispute or claim is not resolved by mediation, it shall be referred to arbitration by a single arbitrator to be selected by agreement between the Members or, failing agreement, to be nominated by the person named for this purpose in Schedule 'A'.

The Member requiring referral to arbitration shall notify the other Members, in writing, thereof, not later than thirty calendar days after the mediator has expressed his opinion, failing which the mediator's opinion shall be deemed to have been accepted by all Members and shall be put into effect.

Arbitration shall be conducted in accordance with the provisions of the Arbitration , and in accordance with such procedure as may be agreed by the Members or, failing such agreement, in accordance with the rules for the Conduct of Arbitrations published by the Association of Arbitrators and current at the date that the arbitrator is appointed.

The decisions of the arbitrator shall be final and binding on the Members, shall be carried into immediate effect and, if necessary, be made an order of any court of competent jurisdiction.

**9. DOMICILIUM**

The Members choose domicile citadel et executant for all purposes of and in connection with the Agreement as stated in Schedule 'A'. A Member shall be entitled to change his domicile from time to time, but such change shall be effective only on receipt of written notice of the change by all other Members.

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**10. SIGNATURE PAGE**



Thus done and signed at

ONYX GROUP DEVELOPMENT Ltd.  
Ceo/ Dr.Salwan AL-KHIRSAN



**Institute `Kirilo Savic` a.d.**

**Belgrade, Serbia**

**Prof. Miroslav Jevtic, PhD, General Manager**