



# Russian Arbitration Center

at Russian  
Institute  
of Modern  
Arbitration

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**Case No. [PI4543-22]**

**ARBITRAL AWARD  
on agreed terms**

**23 January 2023**

**Claimant:** [Claimant]

**Respondent:** [Respondent]

**Arbitral Tribunal:** Nadmitov Alexander Namsaraevich as a sole arbitrator

**Assistant to the Arbitral Tribunal:** Sabina Magometovna Ganieva

**Seat of arbitration - Moscow, Russian Federation**

Language of Arbitration: Russian

English Text: RAC – Ekaterina Petrenko

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## I. CASE SUMMARY

Case No. [PI4543-22]

Moscow, the Russian Federation

23 January 2023

1. The Arbitral Tribunal, comprising sole arbitrator Nadmitov Alexander Namsaraevich (hereinafter – **Arbitral Tribunal, Nadmitov A.N.**), heard the claims of

[Claimant] ([Claimant]), [OGRN], [INN], [address] (hereinafter – **Claimant, Client, [Claimant]**)

to

[Respondent] ([Respondent]), [OGRN], [INN], [address] (hereinafter – **Respondent, Contractor, [Respondent]**), jointly with the Claimant – **Parties**)

on recovery of forfeit for late performance under contract No. [No] of 23 December 2020 (hereinafter – **Contract**) for [works] amounting to USD 12,875.63 in Russian rubles at the exchange rate set by the Central Bank of the Russian Federation on the payment date.

2. The dispute was heard in the standard procedure according to the rules of international commercial arbitration of the Arbitration Rules of the Russian Arbitration Center at the Russian Institute of Modern Arbitration (hereinafter – **RAC**) as amended on 1 November 2021 (hereinafter – **Arbitration Rules**).
3. The hearing took place on 30 November 2022, at 11:00 Moscow time, at the RAC premise at 119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3, with the Respondent joining via RAC videoconferencing (hereinafter – **VC**).
4. The hearing was attended by:

The Arbitral Tribunal, comprising sole arbitrator, Nadmitov A.N.;

Assistant to the Arbitral Tribunal – Sabina Magometovna Ganieva, RAC Legal Counsel;

External assistant to the Arbitral Tribunal – Kristina Andreevna Sretinskaya.

From the Claimant:

[Name], power of attorney No. [No] of 18 November 2022, issued by the Claimant's General Director, [Name], identified by a passport of the Russian Federation;

[Name], power of attorney No. [No] of 21 March 2022, issued by the Claimant's General Director, [Name], identified by a passport of the Russian Federation;

[Name], power of attorney No. [No] of 21 July 2020, issued by the Claimant's General Director, [Name], identified by a passport of the Russian Federation.

From the Respondent:

[Name], power of attorney No. [No] of 28 November 2022, issued by the Respondent's General Director, [Name], identified by a passport of the Russian Federation;

[Name], power of attorney No. [No] of 28 November 2022, issued by the Respondent's General Director, [Name], identified by a passport of the Russian Federation.

From the RAC Administrative Office:

Aramian Diana Razmikovna, RAC Junior Case Counsel.

## II. COMMENCEMENT OF ARBITRATION, CONSTITUTION OF THE ARBITRAL TRIBUNAL

5. On 15 July 2022, a claim on recovery of forfeit for late performance under the Contract with annexes was e-mailed to the RAC (hereinafter – **Request for Arbitration, Claim**).<sup>1</sup>
6. On 21 July 2022, the Claimant’s representative, [Name], sent by e-mail a payment order No. [No] of 19 July 2022, according to which the Claimant had paid RUB 51,254.18 as an arbitration fee.
7. On 21 July 2022, under Paragraph 2 of Article 9 of the Arbitration Rules, the RAC Executive Administrator Mullina Y.N. (hereinafter – **RAC Executive Administrator**) notified<sup>2</sup> the Parties of the commencement of the arbitration, the number assigned to the arbitration [PI4543-22], the date of commencement of the arbitration – 15 July 2022, the seat of arbitration – the Russian Federation. Under Paragraph 3 of Article 9 of the Arbitration Rules, the Parties were informed that the rules of international commercial arbitration shall apply to the present arbitration since the place of the place of performance of a substantial part of the obligations under the Contract was [outside Russia], the dispute shall be heard in the standard procedure, the language of administration of the arbitration shall be Russian.
8. The RAC Executive Administrator also informed the Parties of the need to pay the USD 2,037.79 arbitration fee within 10 days from the date of receipt of the notice of commencement of arbitration and submit a higher-quality scan of the Contract.
9. On 22 July 2022, the Respondent’s representative, [Name], sent an e-mail requesting access to the case file in the Online Arbitration System of the RAC (hereinafter – **OAS**), attaching a power of attorney No. [No] of 22 February 2022, issued by the Respondent’s General Director, [Name]. The Respondent’s representative also provided additional e-mail addresses for the correspondence: [e-mail], [e-mail].
10. On 25 July 2022, the Claimant e-mailed a high-quality scanned copy of the Contract, and on 27 July 2022 – a payment order No. [No] of 26 July 2022 of RUB 117,747.79, confirming payment of the arbitration fee in full.
11. All documents of the present arbitration shall be uploaded to the OAS according to Paragraph 4 of Article 5 of the Arbitration Rules.
12. On 22 July 2022, the Claimant’s General Director, [Name], was invited to confirm his powers and join the case file at the e-mail address [e-mail], but during the arbitration, he did not use such an opportunity.
13. On the same day, the Claimant’s representative, [Name], received an invitation to confirm her powers at the e-mail address [email], and on 25 July 2022, she confirmed her powers and gained access to the case file.
14. On 21 September 2022, the Claimant’s representative, [Name], was invited to confirm his powers at the e-mail address [e-mail], but he did not use such an opportunity during the arbitration.

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<sup>1</sup> Under Article 9 of the Arbitration Rules, the claim filed by the Claimant as the first procedural document shall be considered as the Request for Arbitration.

<sup>2</sup> On 21 July 2022, the Notice of Commencement of Arbitration (Ref. No. 198/22 of 21 July 2022) was uploaded to the Online Arbitration System of the RAC, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]) and on 22 July 2022, in hard copy by the Russian Post (Tracking Nos. [No], [No]).

15. On 22 July 2022, the Respondent's General Director, [Name], was invited to confirm his powers and join the case file at the e-mail address [e-mail], but he did not use such an opportunity during the arbitration.
16. On 22 July 2022, the Respondent's representative, [Name], was invited to confirm her powers at the e-mail address [e-mail], and on the same day, she confirmed her powers and gained access to the case file.
17. Therefore, the Parties were allowed to familiarize themselves with the case file and use the OAS to promptly send procedural documents under Article 5 of the Arbitration Rules.
18. Under Paragraph 1 of Article 15 of the Arbitration Rules, if the claim's value is under USD 500,000 for international commercial arbitration, the dispute shall be resolved by a sole arbitrator. If the Parties have not agreed on the candidacy of the arbitrator or the procedure for his/her designation in the arbitration agreement, the arbitrator shall be appointed by the RAC Board.
19. Based on the Order of the RAC Board of 8 August 2022, **Nadmitov Alexander Namsaraevich, Managing Partner of the Law Firm "Nadmitov, Ivanov & Partners", a leading research fellow of the HSE-Skolkovo Institute for Law and Development**, was appointed as the sole arbitrator in the present case.
20. On 10 August 2022, the RAC Executive Administrator notified<sup>3</sup> the Parties of the constitution of the Arbitral Tribunal. A.N. Nadmitov accepted the appointment as a sole arbitrator, confirmed his independence, and impartiality, and absence of conflict of interest with respect to the Parties, by signing on 10 August 2022 the arbitrator's declaration.
21. On 11 August 2022, under Paragraph 1 of Article 38 of the Arbitration Rules, the RAC Executive Administrator notified<sup>4</sup> the Parties of the appointment of Sabina Magometovna Ganieva, the RAC Legal Counsel, as the assistant to the Arbitral Tribunal at the request of the Tribunal.
22. On 16 August 2022, under Paragraph 4 of Article 38 of the Arbitration Rules, the RAC Administrative Office notified<sup>5</sup> the Parties of the appointment of Barashkov Danil Valerievich, a trainee of the Law Firm "Nadmitov, Ivanov and Partners", as the external assistant to the Arbitral Tribunal at the request of the Tribunal.
23. On 5 October 2022, the RAC Administrative Office notified<sup>6</sup> the Parties of the substitution of the external Assistant of the Arbitral Tribunal, Barashkov Danil Valerievich, due to his inability to fulfill the functions of the assistant. Kristina Sretinskaya, Junior Lawyer of the Law Firm "Nadmitov, Ivanov and Partners", was appointed as an external assistant to the Arbitral Tribunal.
24. During the arbitration, no challenges to the Arbitral Tribunal and assistants were raised.

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<sup>3</sup> On 10 August 2022, the Notice of Constitution of the Arbitral Tribunal (Ref. No. 228/22 of 10 August 2022) was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and on 11 August 2022, by the Russian Post (Tracking Nos. [No], [No]).

<sup>4</sup> On 11 August 2022, the Notice of Appointment of Assistant to the Arbitral Tribunal (Ref. No. 229/22 of 11 August 2022), CV and declaration of Ganieva S.M., CV and declaration of Nadmitov A.N., and CV of Junior Case Counsel Aramian D.R. were uploaded to the OAS and sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]).

<sup>5</sup> On 16 August 2022, the CV and declaration of external assistant to the Arbitral Tribunal Barashkov D.V. were uploaded to the OAS and sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]).

<sup>6</sup> On 5 October 2022, the Notice on Substitution of the External Assistant to the Arbitral Tribunal were uploaded to the OAS and sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]).

### III. COURSE OF ARBITRATION

25. On 15 July 2022, the Claimant filed a Request for Arbitration with the RAC to recover the forfeit of USD 12,875.63 for the late performance under the Contract. In support of the claims, the Claimant stated the following (Paragraphs 26 – 37 of this Award).
26. Under Clause 6.1 of the Contract, Section No. 1 of the Statement of Work, that is Annex No. 1 to the Contract (hereinafter – **Statement of Work**), the Respondent should perform [the works] under the Contract within the time limits set forth in the project schedule (Annex No. 2 to the Contract) and the Statement of Work. Per Annex No. 4 to the Statement of Work, the Parties agreed on a detailed calendar work schedule (hereinafter – **Work Schedule**).
27. According to the Work Schedule, the Respondent undertook to complete the Works using the Respondent’s materials by 10 June 2021 (hereinafter – **Stage No. 2**). Pursuant to Clause 3 of the “Terms and Definitions” section of the Contract, the completion of the Works by the Respondent and their acceptance shall be confirmed by a work completion certificate. The respective certificate No. 2 for Stage No. 2 was signed by the Parties on 26 August 2021.
28. The Claimant stated that the Respondent in fact completed Stage No. 2 on 24 August 2021, as recorded by the commissioning certificate No. 21. Therefore, the Respondent was 75 calendar days late in completing the works under Stage 2.
29. The Claimant relied on Clause 14.1 of the Contract, which states that if the Respondent fails to meet the time limits set forth in the Work Schedule, it shall pay to the Claimant a forfeit of 0.05% of the cost of the overdue stage for each day of delay, but in total not exceeding 7% of the cost of the overdue stage. The Claimant contended that the forfeit stipulated in the Contract is adequate and proportionate to the consequences of the Respondent’s breach of obligations and is half the standard forfeit set by the Supreme Court of the Russian Federation (hereinafter – **Supreme Court**) and commonly applied in commercial contracting practice, as per Ruling of the Supreme Court of the Russian Federation No. 305-ЭС19-16942 (34) in Case No. A40-47169/2016.
30. In Exhibit No. 5 to the Request for Arbitration, the Claimant provided a calculation of the forfeit for breaching the time limits for the completion of Works, which amounted to USD 12,875.63 taking into account the stage cost of USD 343,350.00, the Works completion date according to the Work Schedule of 10 June 2021, the actual completion date of 24 August 2021, the delay period of 75 days, the amount of forfeit of USD 171.68 per day of delay.
31. The Claimant stated that to comply with the claim procedure stipulated in Clause 12.2 of the Contract, it sent the Respondent a claim letter No. [number] of 3 December 2021, requesting payment of a forfeit of USD 12,875.63 (hereinafter – **Claim letter of 3 December 2021**). In response to the Claim letter, the Respondent, by letter No. [No] of 14 December 2021 (hereinafter – **Letter of 14 December 2021**), refused to pay the forfeit.
32. The Claimant sent Claim letter No. [No] of 19 January 2022 (hereinafter – **Claim letter of 19 January 2022**) stating that the Respondent’s references to discrepancies detected during the performance of the works as a basis for the impossibility of charging the Claimant a forfeit for delay in the works under Stage No. 2 were without legal merit. In Letter No. [number] of 18 March 2022 (hereinafter – **Letter of 18 March 2022**, jointly with Letter of 14 December 2021 – **Letters**), the Respondent again rejected the forfeit, citing new, previously unspecified circumstances. The Claimant contended that there are no grounds for the Respondent’s refusal to pay the forfeit, and the arguments presented by the Respondent in the Letters in response to the Claim letter of 3 December 2021, and the Claim letter of 19 January 2022, were without legal merit.

33. As to the Respondent's argument that the delay in the completion of the Works was due to nonconformities preventing their performance, the Claimant stated the following.
- 33.1 The Respondent failed to provide evidence of a causal link between the cited nonconformities and its inability to complete the Works on time;
- 33.2 The Respondent continued to carry out the Works without interruption, as evidenced by a general work log that did not include information about remedial work;
- 33.3 The Claimant asserted that the Respondent was, in any event, unable to ensure timely performance of the Works because of the failure to deliver the necessary materials on time. Under Clause 5.1 of the Contract, the Respondent shall carry out the Works under Stage No. 2 using its own materials, which were to be delivered to the [Site] no later than 21 May 2021, as indicated in Clause 38 of the Work Schedule. The Respondent did not deliver the materials by the specified time limit as confirmed by the letters of importation of materials to the [Site] (Exhibit No. 11 to the Request for Arbitration), which record the dates of materials delivery;
- 33.4 The Claimant repeatedly informed the Respondent of its delay in materials delivery and other breaches of the agreed Work Schedule, highlighting that the untimely completion of the Works impeded scheduled preventive maintenance and led to [downtime]. No corrective action plan was sent by the Respondent and no steps were taken to comply with the Work Schedule;
- 33.5 The [end user of the Works results] also highlighted the delay in deliveries as a reason for the deviation from the planned Work Schedule.
34. Under the Contract, the Respondent shall perform all the Works necessary for the safe operation of the object of the Works, including the elimination of nonconformities discovered during their execution. Pursuant to Clause 4.1 of the Contract, the price payable to the Respondent for the performance of the Works includes, among other things, works not expressly outlined in the Contract, the Statement of Work, but which are necessary or commonly performed by experienced, qualified, and reasonable contractors on similar projects to ensure continuity or completion or the safe and reliable operation of the site. Therefore, according to Claimant, Respondent undertook to perform these Works, if necessary, for the contract price.
35. The Claimant stated that, according to the Respondent, the Respondent had carried out [the Works] that were not provided for in the Contract and that increased the scope of the Works.
- 35.1 In the Claimant's view, this action by the Respondent did not relate to the subject matter of the Contract and was carried out under services contract No. [No] of 21 December 2021, which, under Clause 12 of the Contract, applied to the Parties' relations from 12 July 2021;
- 35.2 According to the Claimant, by this retroactive clause, the Parties emphasized that the relations previously developed under the verbal contract are retrospectively incorporated into the later written contract;
- 35.3 Therefore, the performance of these Works did not increase the scope of obligations under the Contract and did not affect in any way the time limits for the completion of Stage No. 2.
36. Despite the Respondent's assertion to the contrary, the World Health Organization's designation of a coronavirus pandemic did not prevent the timely performance of obligations. Respondent neither sent the corrective action plan nor initiated a procedure to change the time limits for performance



under the Contract. Additionally, the Respondent did not notify the Claimant of the occurrence of force majeure according to the procedure outlined in Section 10 of the Contract.

37. Therefore, the Claimant requested the recovery of the forfeit for late performance under the Contract amounting to USD 12,875.63 in Russian rubles at the exchange rate set by the Central Bank of the Russian Federation on the payment date, as well as arbitration and registration fees totaling RUB 71,254.18.
38. On 8 August 2022, the Respondent e-mailed an answer to the Notice of Commencement of Arbitration No. [No] dated 8 August 2022 (hereinafter – **Answer to the Request, Response**),<sup>7</sup> in which it stated the following (Paragraphs 39 – 45 of this Award).
39. The Respondent disagreed with the Claimant’s claims and did not acknowledge the forfeit for failing to comply with the time limits for the completion of the Works.
40. In letters No. [No] of 14 December 2021, No. [No] of 18 March 2022, the Respondent stated that during the performance of the Works under Stage No. 2, deviations were identified, which were promptly recorded by acts and signed by three parties: the Claimant, the Respondent, and [end user of the Works]. These nonconformities were documented in the reports and submitted to the Claimant as part of the post-completion documentation, specifically:
  - nonconformance report No. [No] of 9 July 2021 [redacted];
  - nonconformance report No. [No] of 28 July 2021 [redacted];
  - nonconformance report No. [No] of 3 August 2021 [redacted];
  - nonconformance report No. [No] of 3 August 2021 [redacted];
  - nonconformance report No. [No] of 10 August 2021 [redacted];
  - nonconformance report No. [No] of 23 August 2021 [redacted].
41. According to the Respondent, the reasons beyond its control caused the delay in completing the Works, and all deviations found were documented and promptly submitted to the Claimant.
  - 41.1 The Respondent asserted that the information in letter No. [No] of 19 January 2022, stating that the nonconformities were rectified by the [end user of the Works results] and it did not impede the ability to perform the Works, is incorrect;
  - 41.2 The [end user of the Works results] rectified these nonconformities only with respect to reports Nos. [No] and [No], while the Respondent’s employees corrected the remaining nonconformities using their own tools and additional components;
  - 41.3 The Respondent noted that the correction of nonconformities, regardless of who performed it, prevented the completion of the equipment installation.
42. Regarding the obligation to deliver the necessary materials for the Works no later than 21 May 2021, the Respondent stated that during the video and audio conferencing meetings, it repeatedly informed that it was unable to receive the necessary equipment within the agreed timeframe due to

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<sup>7</sup> Under Article 10 of the Arbitration Rules, the first procedural document submitted by the Respondent shall be considered as the Answer. The Answer shall be considered as the Response automatically under Paragraph 2 of Article 12 of the Arbitration Rules (not submitted within the time limit set by the Procedural Schedule of 12 September 2022).

circumstances beyond its control, as confirmed by a letter from the manufacturer of the hydraulic [equipment] to the official distributor [Official distributor].

43. The Respondent highlighted that, despite the absence of a signed contract, it had maintained the [works] that were not specified in the Contract, which was confirmed by act No. [No] of 21 September 2021. The Respondent emphasized that, by letter No. [No] of 18 March 2022, it had informed the Claimant that the World Health Organization's designation of the coronavirus pandemic (COVID-19) was an obstacle to the timely delivery of the equipment, which prevented the timely performance of the obligations.
44. The Respondent stated that the Claimant did not suffer any losses due to the delay in the performance of the Works, and no penalties were imposed by the end user of the works results [end user of the Works results]. At the same time, the Respondent referred to the Ruling of the Supreme Court of the Russian Federation in the Case of 9 December 2014 No. A40-116560/2012 (if the Claimant recovers a forfeit not to compensate for possible losses but to gain a benefit, it abuses its right), and Paragraph 3 of Article 307 of the Civil Code of the Russian Federation (hereinafter – **Civil Code**) to support the requirement to act in good faith.
45. Based on the above, the Respondent requested the dismissal of the Claimant's claims, since the delay in the completion of the Works, which were finished without rescheduling the unit start-up dates, was not due to the Respondent's fault.
46. On 26 August 2022, the Arbitral Tribunal issued Procedural Order No. 1 with a draft Procedural Schedule,<sup>8</sup> inviting the Parties to:
  - 46.1. discuss the potential for an amicable settlement of the dispute and notify the Arbitral Tribunal and the RAC if time and/or place for further discussion is needed;
  - 46.2. inform the Arbitral Tribunal and the RAC no later than 9 September 2022 about any remarks, proposals, or comments on the draft Procedural Schedule attached to the Procedural Order No. 1. If there are no remarks, proposals, or comments, to approve the draft Procedural Schedule within the specified time limit;
  - 46.3. inform about participation in the hearing via VC.
  - 46.4. inform no later than 9 September 2022 that the e-mail addresses specified in Clauses 1.4 – 1.5 of the draft Procedural Schedule are incorrect or outdated if deemed necessary by the Party.
  - 46.5. draw attention to the necessity to comply with the order of document exchange set forth in Article 5 of the Arbitration Rules, as well as joining the OAS.
47. Under the draft Procedural Schedule, the Arbitral Tribunal proposed to set the following time limits: submission of Claim – no later than 26 September 2022, Response – no later than 26 October 2022, Counterclaim – no later than 26 October 2022, Response to the Counterclaim – no later than 28 November 2022, additional written submissions and evidence for the Claimant – no later than 9 November 2022, for the Respondent – no later than 23 November 2022. The Arbitral Tribunal also proposed to schedule the hearing for 30 November 2022 at 11:00 Moscow time, in the RAC premises at the 119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3 and/or using

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<sup>8</sup> On 26 August 2022, Procedural Order No. 1 was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and on 30 August 2022, in hard copy by the Russian Post (Tracking Nos. [No], [No]).

VC. The Arbitral Tribunal also recorded the fact of submission of the Answer to the Request – 8 August 2022.

48. On 6 September 2022, the Claimant e-mailed its comments on the draft Procedural Schedule, proposing to set the following time limits: submission of Claim – no later than 19 September 2022, Response – no later than 3 October 2022, Counterclaim – no later than 3 October 2022, Response to the Counterclaim – no later than 10 October 2022, additional written submissions and evidence for the Claimant – no later than 17 October 2022, for the Respondent – no later than 24 October 2022. The Claimant also expressed a preference for an in-person hearing on 31 October 2022 at 11:00 Moscow time at the RAC premises at the 119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3.
49. On 7 September 2022, the RAC Administrative Office sent an e-mail requesting the Claimant's representative, [Name], to submit a power of attorney confirming the authority to act on behalf of the Claimant in this arbitration according to Paragraph 3 of Article 33 of the Arbitration Rules.
50. On the same day, the Claimant's representative, [Name], resubmitted comments on the draft Procedural Schedule of 6 September 2022, submitting a power of attorney No. [No] of 9 June 2020.
51. On 8 September 2022, the Claimant submitted an additional power of attorney for [Name] No. [No] of 21 July 2020, granting authority to independently conduct proceedings on behalf of and in the interests of the Claimant before the RAC.
52. On 9 September 2022, the Respondent communicated via e-mail its agreement with the draft Procedural Schedule of 26 August 2022, proposed by the Arbitral Tribunal, and expressed disagreement with the Claimant's comments. The Respondent also proposed to keep the date of the hearing on 30 November 2022 at 11:00 Moscow time with VC.
53. On 12 September 2022, the Arbitral Tribunal issued a Procedural Order No. 2,<sup>9</sup> confirming the Procedural Schedule. To comply with the principle of equal treatment of the Parties in the proceedings and to maintain the adversarial proceedings according to Paragraph 1 of Article 22 of the Arbitration Rules, the Arbitral Tribunal considered it fair to set the time limits proposed in the Procedural Order No. 1: submission of Claim – no later than 26 September 2022, Response – 26 October 2022, Counterclaim – no later than 26 October 2022, Response to the Counterclaim – no later than 28 November 2022, additional written submissions and evidence for the Claimant – no later than 9 November 2022, for the Respondent – no later than 23 November 2022.
54. Moreover, the Arbitral Tribunal scheduled the date and venue for the hearing on 30 November 2022 at 11:00 Moscow time in the RAC premises at the 119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3, providing the opportunity to join via VC.
55. On 23 September 2022, the Claimant e-mailed a claim for recovery of forfeit under the Contract (hereinafter – **Claim**). The Claim contains the arguments and claims outlined by the Claimant in the Notice for Arbitration, except for the following:
  - the Claimant indicated that the place of performance of a substantial part of the obligations under the Contract and the place with which the subject matter of the dispute is most closely connected, is outside the Russian Federation – [outside Russia], therefore, the present dispute is administered according to the rules of international commercial arbitration of the Arbitration Rules, Federal Law of 29 December 2015 No. 382-FZ (as amended on 27 December 2018) “On

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<sup>9</sup> On 12 September 2022, Procedural Order No. 2 was uploaded to the OAS, sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]) and in hard copy by the Russian Post (Tracking Nos. [No], [No]).

Arbitration in the Russian Federation” (hereinafter – **Law on Arbitration**), Federal Law of 7 July 1993 No. 5338-I (as amended on 30 December 2021) “On International Commercial Arbitration” (hereinafter – **Law on ICA**);

- in the Claim’s statement of relief, the Claimant sought to recover from the Respondent the arbitration fee of USD 3,287.55;
  - payment order No. [No] of 26 July 2022 was attached to the Claim.
56. On 31 October 2022, Assistant to the Arbitral Tribunal, Ganieva Sabina Magometovna, notified the Parties via e-mail that the Arbitral Tribunal would participate in the hearing scheduled for 30 November 2022, at 11:00 Moscow time, via VC and reminded the Parties that their representatives could join the VC on the specified date and time from the RAC premises at 119017, Moscow, Kadashevskaya embankment, 14, bldg. 3, floor 3.
57. On 28 November 2022, the Parties were reminded by e-mail that the hearing in Case No. [PI4543-22] would take place on 30 November 2022, at 11:00 Moscow time, via VC. It was further mentioned that the Arbitral Tribunal would participate in the hearing in person.
58. On 30 November 2022, at 10:12 Moscow time, the Claimant sent the following documents by e-mail:
- a table with letters from the Claimant about violations of personnel presence [at the site];
  - a slide with completion dates of stages under the Contract;
  - [a technical description of nonconformities].
59. The Claimant stated that the documents were sent for convenience and provide a visual presentation of the Claimant’s exhibits to the Claim and contain a systematized compilation of information previously presented in the case file. During the hearing, the Respondent did not object to the inclusion of these documents, and as a result, the Arbitral Tribunal admitted them into the case file.
60. On 30 November 2022, at 11:00 Moscow time, a hearing took place (the Respondent participated via VC), during which the Parties presented their positions on the merits of the dispute. The Respondent proposed reducing the forfeit amount to half of what the Claimant asserted, arguing that part of the delay in completing the works at Stage No. 2 was caused by circumstances beyond its control, specifically by deviations noted during the equipment installation. The Claimant stated that, as a general contractor, it suffered significant reputational damage, and compliance with the time limits for scheduled preventive maintenance was achieved through the Claimant’s diplomatic efforts. Moreover, according to the plan, [the works] were to be completed within 15 days, from 25 May 2021 to 10 June 2021, but instead lasted 3.5 months, of which 2.5 months the Claimant’s employees were at [the site], thus increasing labor costs and travel expenses. The Respondent performed additional work to train [site] employees which was not taken into account in labor cost calculations.
61. On 30 November 2022, following the hearing, the Claimant uploaded the following documents to the OAS:
- [site schedule];
  - letter No. [number] of 3 December 2021 about the [performance of works].

62. On the same day, on behalf of the Arbitral Tribunal, a request was sent to the Parties via email<sup>10</sup> for written explanations in Case No. [PI4543-22] by 13 December 2022, on the following:
- requirements of the Statement of Work for documentation on [redacted] (since the Parties differed on this issue);
  - information about the forfeit for the first stage;
  - information about the actual delivery date [redacted];
  - information about nonconformance reports, including details on when nonconformities were identified and when they could have been identified, who was involved in eliminating the nonconformities, the duration of their elimination, whether their elimination caused a delay on the Contractor's side, how critical these nonconformities were for implementation by the Contractor of Stage No. 2 of the Work under the Contract:
    - nonconformance report No. [number] of 9 July 2021 [redacted];
    - nonconformance report No. [number] of 28 July 2021 [redacted];
    - nonconformance report No. [number] of 3 August 2021 [redacted];
    - nonconformance report No. [number] of 3 August 2021 [redacted];
    - nonconformance report No. [number] of 10 August 2021 [redacted];
    - nonconformance report No. [number] of 23 August 2021 [redacted];
  - information about the completion [redacted], correction of its deficiencies by the Contractor;
  - information about the Contractor's compliance with time limits for commissioning and training of [site] personnel;
  - written explanations from [end user of the Works results] regarding the nonconformance reports with details on who eliminated the nonconformities under these reports.
63. On 12 December 2022, the Claimant notified via e-mail that the Parties had decided to resolve the dispute through a settlement agreement. This decision was reached during a virtual meeting on 9 December 2022, attended by the Parties' authorized representatives. The email also included the minutes of the meeting of Parties No. [No] of 9 December 2022.
64. On 16 December 2022, the Claimant e-mailed the settlement agreement of 16 December 2022 signed by the Parties (hereinafter – **Settlement Agreement**), attaching a copy of the power of attorney No. [No] of 21 August 2021 for the Claimant's signatory, [Name].
65. On 28 December 2022, the Claimant uploaded payment order No. [No] of 15 December 2022 to the OAS, confirming the Respondent's transfer of RUB 614,296.09 to the Claimant.
66. On 28 December 2022, on behalf of the Arbitral Tribunal, an e-mail was sent to the Parties, requesting that they indicate any objections to issuing an arbitral award on the agreed terms no later than 10 January 2023.

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<sup>10</sup> On 30 November 2022, the request for written explanations in Case No. [PI4543-22] was sent to the Parties by e-mail ([e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]; [e-mail]).

67. On the same day, the Respondent replied via e-mail, indicating no objection to the issuance of the award on the agreed terms.
68. On 29 December 2022, the Claimant sent an application via e-mail, requesting the adoption of an arbitral award in Case No. [PI4543-22] on the agreed terms, signed by the Claimant's representative, [Name], attaching power of attorney No. [No] of 21 March 2022 and the Settlement Agreement.

#### IV. REASONING OF THE AWARD

##### A. JURISDICTION OF THE ARBITRAL TRIBUNAL

69. The Arbitral Tribunal has reached the following conclusions based on an analysis of the circumstances of the present dispute.
70. The Parties are legal entities established under Russian law and located in the territory of the Russian Federation.
71. There is no agreement between the Parties on the seat of arbitration or the procedure for its determination. Under Paragraph 3 of Article 23 of the Arbitration Rules, absent such agreement, the seat of arbitration shall be determined by the Arbitral Tribunal.
72. Based on the above, the Arbitral Tribunal determined the Russian Federation, Moscow, as the seat of arbitration. Therefore, the law applicable to the arbitration procedure, according to Paragraph 6 of Article 23 of the Arbitration Rules, is Russian law; thus, the Arbitral Tribunal relies on the Law on ICA to decide on its jurisdiction.
73. Under Paragraph 3 of Article 1 of the Law on ICA, disputes arising out of civil law relationships in the course of carrying out foreign trade and other types of international economic relations may be referred to international commercial arbitration if any place where a substantial part of the obligations out of the relationship of the parties is to be performed or the place with which the subject matter of the dispute is most closely connected are located abroad, subject to the existence of a concluded arbitration agreement.
74. According to Clause 1.1 of the Contract, the subject matter of the Contract is [works], with the end user of the results, as stated in Clause 1.6 of the Contract, being [end user of the Works results], a [foreign company].
75. Under Clause 1.7 of the Contract, the Works shall be performed in [outside Russia], as follows from the section “Terms and Definitions” of the Contract.
76. The place of performance of a substantial part of the obligations under the Contract and the place with which the subject matter of the dispute is most closely connected is outside the Russian Federation, namely [outside Russia]. Therefore, the rules of international commercial arbitration shall apply to the dispute.
77. Under Paragraphs 1 and 2 of Article 7 of the Law on ICA, an arbitration agreement is an agreement of the parties in writing to submit to arbitration all or certain disputes that have arisen or may arise between them in respect of a defined legal relationship or a part thereof, regardless of whether or not the legal relationship is of a contractual nature. An arbitration agreement may be concluded as an arbitration clause in a contract or as a separate agreement. The arbitration agreement shall be concluded in writing.
78. Clause 12.3 of the Contract contains the following dispute resolution provision (hereinafter – **Arbitration Agreement**):

*“12.3 Any dispute, controversy, or claim arising out of and in connection with this Contract, including those related to its breach, conclusion, amendment, termination, or invalidity, shall be settled at the option of the claimant:*

1) by arbitration administered by the Russian Arbitration Center at the Autonomous Non-Profit Organization "Russian Institute of Modern Arbitration" in accordance with the Arbitration Rules.

The Parties agree that for the purposes of sending written submissions, notifications, and other written documents, the following e-mail addresses shall be used:

[[Claimant]]: [[e-mail]]

[[Respondent]]: [[e-mail]]

In the event of a change in the specified e-mail address, the Party shall immediately notify the other Party of such a change and, if the arbitration has already commenced, also notify the Russian Arbitration Center at the Autonomous Non-Profit Organization "Russian Institute of Modern Arbitration". Otherwise, the Party shall bear all negative consequences with respect to sending written submissions, notifications, and other written documents to an incorrect e-mail address.

The Parties shall execute the arbitral award voluntarily.

The award resulting from the arbitration shall be final for the Parties and shall not be set aside.

In cases stipulated by Chapter 7 of the Arbitration Rules of the Russian Arbitration Center at the Autonomous Non-Profit Organization "Russian Institute of Modern Arbitration", the Parties may conclude an agreement to consider the dispute within the expedited procedure.

or

2) (option for an external counterparty who is a resident of the Russian Federation) in the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in accordance with the Rules of Arbitration of Domestic Disputes. The arbitral award shall be final for the Parties.

(option for an external counterparty who is not a resident of the Russian Federation) in the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in accordance with the Rules of Arbitration of International Commercial Disputes. The arbitral award shall be final for the Parties.

or

3) by arbitration administered by the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs (RSPP) in accordance with its rules in force on the date of filing the claim. The award rendered by the arbitral tribunal shall be final, binding on the Parties, and not subject to set aside proceedings."

79. The Arbitral Tribunal notes that the Arbitration Agreement was concluded between the Parties in writing in the form of an arbitration clause in the Contract in compliance with the requirements of Paragraphs 1 and 2 of Article 7 of the Law on ICA.
80. Moreover, Clause 12.3 of the Contract constitutes an alternative arbitration agreement, granting each Party the right to choose one of several options to resolve the dispute in arbitration. Under Paragraph 24 of the Resolution of the Plenum of the Supreme Court of 10 December 2019 No. 53 "On the performance by the courts of the Russian Federation of the functions of assistance and control in relation to arbitration proceedings, international commercial arbitration", the conclusion



of such alternative dispute resolution agreements, providing for the right of the Claimant to choose the applicable dispute resolution procedure at its discretion, is permissible. By resorting to the RAC, the Claimant thus chose arbitration administered by the RAC under the Arbitration Rules as a method for resolving the present dispute.

81. A similar Arbitration Agreement is contained in Clause 4.1 of the Settlement Agreement.
82. Moreover, Clause 12.2 of the Contract provides that:

“A Party may resort to arbitration only after sending a claim letter to the other (second) Party and receiving a response from this Party (or after the time limit set for the response has passed) ...”.
83. The Claimant sent to the Respondent a Claim letter of 3 December 2021, demanding payment of a forfeit of USD 12,875.63 in rubles at the exchange rate of the Central Bank of the Russian Federation, for breaching the time limits for the completion of works under the Contract. In response to the Claim letter of 3 December 2021, the Respondent by Letter of 14 December 2021 refused to pay the forfeit. The Claimant sent a Claim letter of 19 January 2022, to which the Respondent again refused to pay the forfeit.
84. The Arbitral Tribunal finds that the Claimant complied with the claim procedure.
85. The Arbitration Agreement, in the opinion of the Arbitral Tribunal, reflects the express will of the Parties to resolve disputes arising between them in relation to the Contract through arbitration administered by the RAC.
86. Therefore, the Arbitral Tribunal notes that the agreement in the form of an arbitration clause complies with the requirements set forth in Article 7 of the Law on ICA.
87. Pursuant to Article 4 and Article Paragraph 5 of 7 of the Law on ICA and Article 7 of the Arbitration Rules, the Respondent has agreed to the jurisdiction of the Arbitral Tribunal by submitting a Response and not raising any objection to the Arbitral Tribunal’s consideration of the present dispute.
88. Thus, the present dispute arises out of a civil law relationship, is arbitrable under the law of the seat of arbitration and falls within the scope of a valid and enforceable Arbitration Agreement. Consequently, the Arbitral Tribunal has jurisdiction to hear the present dispute.

## **B. RESOLUTION OF A DISPUTE BY WAY OF A SETTLEMENT AGREEMENT**

89. The Arbitral Tribunal, pursuant to Article 33 of the Law on ICA and Article 52 of the Arbitration Rules, considered the following terms of the Settlement Agreement:

### *“The Settlement Agreement*

*[Claimant] (hereinafter – Claimant), represented by the First Deputy General Director of [Claimant], [Name], acting based on power of attorney No. [No] of 21 August 2018, on the one hand,*

*[Respondent] (hereinafter – Respondent), represented by representative, [Name], acting based on power of attorney No. [No] of 28 November 2022, on the other hand, jointly referred to as Parties,*

*taking into account and recognizing the following circumstances:*

*- a contract No. [No] of 23 December 2020 was concluded between the Claimant and the Respondent for USD 700,000 (seven hundred thousand) for [works] (hereinafter – Contract);*

*- within the Contract, the Claimant has the right to demand from the Respondent a forfeit for breach of the time limit (period of delay of 75 calendar days) in the performance of [works] with the Respondent’s materials ([redacted]), amounting to USD 12,875.63 (twelve thousand eight hundred seventy-five 63/100);*

*- on 15 July 2022, the Claimant filed a claim to recover the above forfeit under the Contract;*

*- The Russian Arbitration Center at the Russian Institute of Modern Arbitration (hereinafter – RAC) is considering Case No. [PI4543-22];*

*in order to settle the dispute in Case No. [PI4543-22], pursuant to Article 52 of the RAC Arbitration Rules, have concluded this settlement agreement (hereinafter – Agreement) as follows:*

### **1. Subject of the Agreement**

*1.1. The Respondent admits the Claimant’s claims for recovery of forfeit of USD 6,712.45 and reimbursement of arbitration and registration fees totaling USD 3,287.55, and undertakes to:*

*1.1.1. pay the forfeit of USD 6,712.45 (Six thousand seven hundred twelve 45/100) in Russian rubles at the exchange rate set by the Central Bank of the Russian Federation on the payment date;*

*1.1.2. reimburse the arbitration and registration fees paid by the Claimant totaling USD 3,287.55 (Three thousand two hundred eighty-seven 55/100) in Russian rubles at the exchange rate set by the Central Bank of the Russian Federation on the date the Claimant paid the registration and arbitration fees, which is equivalent to RUB 189,001.97 (One hundred eighty-nine thousand one ruble ninety-seven kopecks) (as calculated according to Annex No. 1 to the Agreement).*

*1.2. If the Respondent fulfills its obligations under Clause 1.1 of the Agreement, the Claimant withdraws its claims against the Respondent for forfeit of USD 6,163.18 (Six thousand one hundred sixty-three 18/100).*

### **2. Payment procedure**

*2.1. The Respondent shall pay the Claimant within 5 (five) calendar days from the date of signing this Agreement:*

2.1.1. the amount of the forfeit specified in Clause 1.1.1 of the Agreement in Russian rubles at the exchange rate set by the Central Bank of the Russian Federation on the payment date;

2.1.2. the amount of arbitration and registration fees specified in Clause 1.1.2 of the Agreement at the exchange rate set by the Central Bank of the Russian Federation on the date the Claimant paid the registration and arbitration fees (as calculated according to Annex No. 1 to the Agreement).

Payments shall be transferred by the Respondent to the Claimant's account details specified in Clause 6 of the Agreement.

2.2. If the payment deadline specified in Clause 2.1. of the Agreement is not met, this Agreement shall be automatically terminated, and its legal consequences shall be deemed not to have occurred.

2.3. The date of payment for payments made by the Respondent under this Agreement shall be the date the monies are credited to the correspondent account of the Claimant's bank.

2.4. If the Parties' account details specified in Clause 6 of this Agreement change, the Parties shall notify each other within three days from the date of the respective change.

### **3. Confidentiality**

3.1. The Parties shall not disclose any information related to the Agreement, including the fact of its conclusion, without prior written consent, except when such disclosure is unambiguously and expressly required by the legislation of the Russian Federation and only to those authorized state regulatory and supervisory authorities of the Russian Federation directly specified by law, and solely to the extent directly specified in the respective law.

3.2. The Parties shall take all necessary measures to ensure that their employees, agents, and successors do not disclose specifics of this Agreement to third parties without prior consent from the other Party.

3.3. The Claimant shall have the right to communicate the terms of the Agreement to [redacted] and [redacted]. Such disclosure shall not constitute a breach of confidentiality.

### **4. Dispute Settlement**

4.1. All disputes and controversies related to the conclusion, interpretation, execution, and termination of the Agreement shall be resolved through negotiations.

4.2. Any dispute, controversy, or claim arising out of and in connection with this Agreement, including those related to its breach, conclusion, amendment, termination, or invalidity, shall be settled at the option of the claimant:

1) by arbitration administered by the Russian Arbitration Center at the Autonomous Non-Profit Organization "Russian Institute of Modern Arbitration" in accordance with the Arbitration Rules.

The Parties agree that for the purposes of sending written submissions, notifications, and other written documents, the following e-mail addresses shall be used:

[[Claimant]]: [[e-mail]]

[[Respondent]]: [[e-mail]]

In the event of a change in the specified e-mail address, the Party shall immediately notify the other Party of such a change and, if the arbitration has already commenced, also notify the Russian Arbitration Center at the Autonomous Non-Profit Organization "Russian Institute of Modern Arbitration". Otherwise, the Party

*shall bear all negative consequences with respect to sending written submissions, notifications, and other written documents to an incorrect e-mail address.*

*The Parties shall execute the arbitral award voluntarily.*

*The award resulting from the arbitration shall be final for the Parties and shall not be set aside.*

*In cases stipulated by Chapter 7 of the Arbitration Rules of the Russian Arbitration Center at the Autonomous Non-Profit Organization "Russian Institute of Modern Arbitration", the Parties may conclude an agreement to consider the dispute within the expedited procedure.*

*or*

*2) in the International Commercial Arbitration Court at the Chamber of Commerce and Industry of the Russian Federation in accordance with its applicable rules and regulations. The arbitral award shall be final for the Parties. It shall not be allowed to submit an application to a state court to make a decision on the lack of jurisdiction of an arbitral tribunal in connection with the issuance of a separate order by the arbitral tribunal on the existence of its jurisdiction as a preliminary matter.*

*or*

*3) by arbitration administered by the Arbitration Centre at the Russian Union of Industrialists and Entrepreneurs (RSPP) in accordance with its rules in force on the date of filing the claim. The award rendered by the arbitral tribunal shall be final, binding on the Parties, and not subject to set aside proceedings.*

## **5. Final Provisions**

*5.1. In all matters not covered by the Agreement, the Parties shall be governed by the laws of the Russian Federation in force.*

*5.2. Any amendments and additions to the Agreement shall be valid if made in writing and signed by duly authorized representatives of the Parties.*

*5.3. Each Party guarantees to the other Party that, as of the date of conclusion of the Agreement:*

- the Party has the right to conclude and execute the Agreement;*
- the conclusion and/or execution of the Agreement by the Party does not directly or indirectly contradict any laws, rules, decrees, other regulations, acts of state and/or local authorities, internal regulations of the Party, court decisions;*
- the conclusion and/or execution of this Agreement by the Parties does not contradict the agreements, arrangements the Parties have with third parties, will not result in a breach of any obligations to third parties, and will not give a third party grounds to make any claims against one of the Parties in connection with such a breach;*
- the Party has obtained all and any authorizations, approvals, and consents necessary for the conclusion and/or execution of the Agreement (including, those under the legislation of the Russian Federation in force or the Party's constituent documents, among others, approval of a related party transaction, approval of a significant transaction);*
- the powers of the person to conclude this Agreement on behalf of any Party are not limited by the constituent documents, internal regulations of the Parties, or other documents regulating its activities, and such person has not exceeded the limits of its authority in concluding this Agreement;*

- *no bankruptcy proceedings have been initiated against the Parties, none of the bankruptcy procedures have been introduced, and no actions related to or aimed at initiating bankruptcy procedures have been taken or are planned;*
- *there are no other circumstances that limit, prohibit, or make it impossible for the Parties to conclude this Agreement and fulfill their obligations under it;*
- *all information and documents provided by the Parties in connection with the conclusion of this Agreement are accurate.*

*5.4. The Parties are notified and recognize that they relied on the aforementioned assurances and the information specified in the preamble of the Agreement when concluding it and that the accuracy of these assurances and information is essential for the Parties.*

*5.5. The Parties confirm that this Agreement does not violate the rights and legitimate interests of other persons and is not contrary to law.*

*5.6. This Agreement shall enter into force on the date the Respondent pays the amounts specified in Clause 2.1 of the Agreement according to Clause 2.3 of this Agreement.*

*5.7. The Agreement is made in three (3) copies having equal legal force, one (1) copy for each of the Parties and one (1) copy for Case No. [PI4543-22] file.*

*5.8. Therefore, pursuant to Article 52 of the Arbitration Rules, the Parties request the Arbitral Tribunal to issue an arbitral award on the terms agreed upon herein.*

*5.9. The following annexes shall form an integral part of this Agreement:*

*Annex No. 1 - Calculation of the amount of the arbitration and registration fees.*

## **6. Details of the Parties**

*Claimant*

*Respondent*

*[Claimant]*

*[Respondent]*

*(signature, seal) [Name]*

*(signature) [Name]»*

90. The Settlement Agreement submitted by the Parties was signed by [Name] on behalf of the Claimant. Power of attorney No. [number] of 21 August 2021, issued to [Name], grants the authority to conclude the settlement agreement. The Settlement Agreement was signed by [Name] on behalf of the Respondent. Power of attorney No. [number] of 28 November 2022, issued to [Name], grants the authority to conclude the settlement agreement.

91. Clause 5.8 of the Settlement Agreement contains a request from the Parties for the adoption of an arbitral award on agreed terms.

92. On 28 December 2022, an e-mail was sent to the Parties on behalf of the Arbitral Tribunal, requesting them to indicate any objections to the adoption of an award on the agreed terms by no later than 10 January 2023.

93. On the same day, the Respondent replied by e-mail, stating that it had no objections to the award on the agreed terms.

94. On 29 December 2022, the Claimant, through its representative, [Name], according to Paragraph 1 of Article 52 of the Arbitration Rules, applied for an arbitral award on the terms agreed upon in the Settlement Agreement. The Power of attorney No. [number] of 21 March 2022 issued to [Name] grants the authority to represent the principal's interests before the RAC.
95. Therefore, the Arbitral Tribunal concludes that the Parties' representatives are authorized to conclude the Settlement Agreement and apply for an award on the agreed terms.
96. The adoption of an arbitral award on the terms agreed upon by the parties where the parties have specified a time limit for the fulfillment of the obligation (in whole or in part) that occurs before the Arbitral Tribunal adopts the award, but at the same time the Parties have provided evidence of the performance (in whole or in part) of their obligations according to the agreed terms, is not contrary to law and does not render the arbitral award knowingly unenforceable. Under Paragraph 65 of this arbitral award, the Parties confirmed that the Settlement Agreement was executed, namely the transfer by the Respondent to the Claimant of RUB 614,296.09 (Six hundred and fourteen thousand two hundred and ninety-six rubles 09 kopecks), including a forfeit of USD 6,712.45 (Six thousand seven hundred and twelve 45/100) in Russian rubles at the exchange rate set by the Central Bank of the Russian Federation on the payment date, and the arbitration fee of USD 3,287.55 in Russian rubles at the exchange rate set by the Central Bank of the Russian Federation on the date Claimant paid the registration and arbitration fees, equivalent to RUB 189,001.97 (one hundred eighty-nine thousand one rubles ninety-seven kopecks).
97. The Arbitral Tribunal finds that the terms of the Settlement Agreement do not go beyond the Parties' arbitration agreement, do not contradict the law, and do not violate the rights and legitimate interests of other persons.

## V. ALLOCATION OF ARBITRATION FEE, ARBITRATION AND PARTIES' COSTS

98. Under Article 3 and Article 13 of the Rules on Arbitration Fees and Arbitration Costs of the Arbitration Rules (hereinafter – **Rules**), the Claimant, with a claim value of USD 12,875.63, paid an arbitration fee of USD 3,287.55, which is confirmed by the payment order No. [No] of 24 May 2022 for USD 343.59, payment order No. [No] of 19 July 2022 for USD 906.17, and payment order No. [No] of 26 July 2022 for USD 2,037.79 at the official exchange rate of the Central Bank of Russia as of the date of the payment orders (24 May 2022 – USD 1 = RUB 58.2087; 19 July 2022 – USD 1 = RUB 56.5616; 26 July 2022 – USD 1 = RUB 57,7821).
99. Under Paragraphs 1 and 4 of Article 8 of the Rules, if arbitration is terminated after the first hearing, the arbitration fee shall be reduced by 25%. Thus, the arbitration fee shall be reduced by USD 821.89.
100. Pursuant to Paragraph 4 of Article 13 of the Rules, 25% of the arbitration fee, which amounts to USD 821.89, shall be refunded to the Claimant based on an application signed by an authorized person. The application shall contain the reason for the refund and account details for the transfer of monies to the party.
101. Under Clause 1.1.2 of the Settlement Agreement, the Respondent reimbursed the Claimant the arbitration fee totaling USD 3,287.55 in Russian rubles at the exchange rate set by the Central Bank of the Russian Federation on the date the Claimant paid the registration and arbitration fees, equivalent to RUB 189,001.97.
102. The Parties have not applied for reimbursement of arbitration costs, expenses incurred by the Parties in the case.

## VI. OPERATIVE PART OF THE AWARD

Based on the above and guided by Articles 50 – 52 of the Arbitration Rules, the Arbitral Tribunal

### AWARDS:

1. To adopt an arbitral award in the dispute between [Claimant], [OGRN], [INN], [address], and [Respondent], [OGRN], [INN], [address] based on the terms of the Settlement Agreement of 16 December 2022 agreed upon by the Parties.
2. To acknowledge that the Respondent, [Respondent], [OGRN], [INN], [address] has paid a forfeit of USD 6,712.45 (Six thousand seven hundred and twelve 45/100) in Russian rubles at the exchange rate set by the Central Bank of the Russian Federation on the payment date.
3. To acknowledge that the Respondent, [Respondent], [OGRN], [INN], [address] has paid the arbitration fee of USD 3,287.55 in Russian rubles at the exchange rate set by the Central Bank of the Russian Federation on the date the Claimant paid the registration and arbitration fees, equivalent to RUB 189,001.97 (One hundred eighty-nine thousand one rubles ninety-seven kopeks).
4. To acknowledge the withdrawal by [Claimant], [OGRN], [INN], [address], of the claim for a forfeit under contract No. [number] of 23 December 2020 of USD 6,163.18 (six thousand one hundred sixty-three 18/100) from [Respondent], [OGRN], [INN], [address].

The arbitral award shall be binding upon the Parties from the date of its adoption and immediately enforceable.

Under Paragraph 1 of Article 34 of the Federal Law No. 5338-I of 7 July 1993 (as amended on 30 December 2021) “On International Commercial Arbitration” and express agreement of the Parties, this arbitral award shall be final for the Parties and shall not be set aside.

The present arbitral award is made in three copies, one of which is intended for keeping in the RAC files, one for the Claimant, and one for the Respondent.

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**Sole arbitrator**  
**Nadmitov Alexander Namsaraevich**