



AYALON HIGHWAYS CO.

**TRAFFIC SURVEILLANCE AND  
CONTROL SYSTEM**

**TURN-KEY DESIGN / BUILD UPGRADE  
PROJECT**

**Tender No. 17/15**

**AGREEMENT**

**Volume B**

**August 2015**

**TRAFFIC SURVEILLANCE AND CONTROL SYSTEM AGREEMENT**

This Traffic Surveillance and Control System Agreement (together with all Exhibits attached thereto, the "**Agreement**"), made and entered into as of the \_\_\_\_\_ day of \_\_\_\_, 2016 ("**Effective Date**"), by and between Ayalon Highways Company Ltd., a company organized under the laws of the State of Israel with principal offices at Al Parashat Drachim Str. PO Box 32294, Tel Aviv, Israel ("**Company**" and/or "**AHCo**"), and \_\_\_\_\_, a company organized and existing under the laws of \_\_\_\_\_ with principal offices at \_\_\_\_\_ and \_\_\_\_\_, a company organized and existing under the laws of \_\_\_\_\_ with principal offices at \_\_\_\_\_ (jointly and severally referred to as "**Contractor**" and/or "**TSCS Contractor**").

**WHEREAS** Contractor has been awarded tender 17/15 published by Company on [03.09.2015] attached hereto as **Exhibit A** ("**Tender**") for the procurement, supply, engineering, design, construction, operation, installation, integration, migration and provision of maintenance, support, training and other services and works (including without limitation engineering and civil works) in respect of the Site, System and Field Equipment (as defined below), all as further detailed in the Tender and in this Agreement, partly as a turnkey project with full liability and end to end responsibility ("**Project**"); and

**WHEREAS** The portion of the Project in respect of the segments of the Project detailed in Chapters 1.4 and 1.5 of the SOW and all other requirements set forth in the SOW in respect thereof ("**Optional Project Segments**"), are deemed as an irrevocable option granted to Company that may at any time according to this Agreement be exercisable by Company, in whole, in part or if at all, at its sole discretion, by providing Contractor with a Purchase Order; and

**WHEREAS** Contractor has thoroughly investigated all aspects of the Project, including without limitation, Company's existing systems, field equipment, the infrastructure, the Ayalon Highway (including without limitation all sections, interchanges, control bridges, signage, lanes, infrastructure, electricity and construction plans, architectural design, etc.) and the terms and conditions herein reflect the Contractor's provision for all costs and expenses related to the Project, whether direct, indirect, foreseen or unforeseen; and

**WHEREAS** Contractor represents that it has all the requisite experience, expertise, know-how, resources, staff, materials, qualifications, authorizations, permits and licenses and ability (including without limitation financial ability) to carry out the Project and obligations herein and grant the rights and licenses herein, at the highest professional level and in accordance with this Agreement; and

**WHEREAS** Based on the Proposal and the aforementioned Contractor representations and those contained herein, the Company has decided that it wishes to retain Contractor as an independent contractor to carry out the Project in accordance with the terms of this Agreement;

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

**1. Preamble & Definitions**

- 1.1. The appendices, schedules and exhibits to this Agreement shall form an integral part hereto.
- 1.2. The following Exhibits to this Agreement shall form an integral part thereof (with the exception of Exhibit B which shall apply to the extent referenced herein):

**1.2.1. Exhibit A: Tender.**

- 1.2.2. **Exhibit B: Proposal** [*To be attached to final version, as approved by Company*].
- 1.2.3. **Exhibit C: Specifications-** to be attached in accordance with and as set forth in Section 3 below, based on and in compliance with the SOW and the Tender.
- 1.2.4. **Exhibit D: Equipment Specifications-** to be attached in accordance with and as set forth in Sections 3.2-3.3 below, based on and in compliance with the SOW and the Tender.
- 1.2.5. **Exhibit E: SOW: Volumes C1.1, C1.2, C2 and C3 of the Tender.**
- 1.2.6. **Exhibit F:** [*To be attached to final version in accordance with Chapter 10 of the SOW, as approved by Company*].
- 1.2.7. **Exhibit G: Submission Tests-** to be attached in accordance with and as set forth in Sections 3.2-3.3 below, based on and in compliance with the SOW and the Tender.
- 1.2.8. **Exhibit H: ATP** to be attached in accordance with and as set forth in Sections 3.2-3.3 below, based on and in compliance with the SOW and the Tender.
- 1.2.9. **Exhibit H1: Chapter 11 of the SOW: Existing Infrastructure.**
- 1.2.10. **Exhibit I: Third Party Off-the-Shelf Software and Licenses** [*Shall be attached to final version, as approved by Company*].
- 1.2.11. **Exhibit J: Support and Maintenance Plan (SMP)** to be attached as set forth in Section 3.2 and 3.3 below, in compliance with the SOW and the Tender subject to Company's approval.
- 1.2.12. **Exhibit J1: Chapter 3 of the SOW: Documentation.**
- 1.2.13. **Exhibit J2: Chapter 9 of the SOW as updated according to Section 3.3 below: Training.**
- 1.2.14. **Exhibit K: Consideration** [*Shall be attached to final version in accordance with Section 1.10 of Annex L of the SOW and Chapter 10 of the SOW, as approved by Company*].
- 1.2.15. **Exhibit L: Guarantee.**
- 1.2.16. **Exhibit M1 and M2: Insurance.**
- 1.2.17. **Exhibit N: Escrow Agreement-** [*Shall be attached to final version in accordance with Section 14.4 below, as approved by Company*].
- 1.2.18. **Exhibit O: NDA.**
- 1.2.19. **Exhibit P: Commencement of Work Order Form.**
- 1.3. Without derogating from Section 4.10 below, the Company shall not be committed or obligated by the terms and conditions set forth in the Proposal, nor shall such terms and conditions bind the Company in any manner, even if Company was made aware of the existence thereof.
- 1.4. In the event of a contradiction between the provisions of this Agreement, the provisions of the Exhibits hereto or any Standards, the more severe/stringent requirements shall prevail; or if not applicable then the provisions of the Agreement and/or mandatory Standards shall prevail. Notwithstanding the foregoing, the determination of which requirements shall prevail shall be decided by Company in its sole discretion. The Agreement and Exhibits shall supersede any terms in the Proposal and any different or additional terms therein.
- 1.5. The headings and titles in this Agreement shall not affect the meaning thereof nor be taken into consideration in the interpretation or construction of the Agreement. Any requirement

herein to comply with applicable laws shall include, without limitation, compliance with Israeli Law as defined herein.

- 1.6. Words importing persons or parties shall include firms, corporations and any organization or entity having legal capacity. Where the context requires, words importing the singular also include the plural and vice versa and words importing the masculine also include the feminine and neuter and vice versa.
- 1.7. Any and all Contractor obligations, representations, warranties and terms and conditions required of Contractor under this Agreement shall apply to all entities comprising Contractor jointly and severally.
- 1.8. For the purpose of this Agreement, the following capitalized terms shall have the following definitions ascribed to them:
  - 1.8.1. **Acceptance** - shall occur only upon successful completion of the ATP and upon Company issuing an Acceptance Test Certificate signed by Company explicitly stating that the Project (or any applicable part thereof, as the case may be) complies with this Agreement, including without limitation the Specifications, Equipments Specifications and SOW.
  - 1.8.2. **Additional Documentation** - shall have the meaning ascribed to it in Section 3.3 below.
  - 1.8.3. **Additional Personnel** - shall have the meaning ascribed to it in Section 6.1 below.
  - 1.8.4. **Agreement** - shall have the meaning ascribed to in the Preamble above.
  - 1.8.5. **ATP** - hardware & software test procedures and test plans, which shall be carried out according to the terms and conditions of this Agreement pursuant to Company's general ATP requirements and the criteria set forth in **Exhibit H** hereto (to be attached in accordance with Sections 3.2 and 3.3 below) and/or Company's requirements, respectively, with respect to the Project.
  - 1.8.6. **Ayalon Highway** - shall have the meaning as set forth in Chapter 1.1.1-1.1.5 of the SOW.
  - 1.8.7. **Bankruptcy Event** - the occurrence of any of the following events to each or all other entities comprising the Contractor: (i) a receiver is appointed for Contractor or its property; (ii) Contractor makes a general assignment for the benefit of its creditors; (iii) Contractor commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within forty five (45) days; or (iv) Contractor is liquidated or dissolved.
  - 1.8.8. **Business Day** - Sunday to Friday, with the exception of official bank holidays in Israel.
  - 1.8.9. **Change Request** - shall have the meaning ascribed to it in Section 15.1 below.
  - 1.8.10. **Chief Foreman** - shall have the meaning ascribed to it in Section 6.1 below.
  - 1.8.11. **Company** - shall have the meaning ascribed to it in the Preamble above.
  - 1.8.12. **Company Project Manager** - shall have the meaning ascribed to it in Section 5.14 below.
  - 1.8.13. **Contractor** - shall have the meaning ascribed to in the Preamble above.
  - 1.8.14. **Critical Design Review Date** - have the meaning ascribed to it in the Schedule.
  - 1.8.15. **Default** - shall have the meaning ascribed to it in Section 23.2.3 below.
  - 1.8.16. **Defect** - any damage, error, defect, rejects, discrepancies, non-conformance, bug and/or failure of or caused in connection with any Site/ Project component/item,

including without limitation the System and/or Field Equipment, whether hardware or software, and any viruses, worms or disrupting, disabling, harming, or otherwise impeding code. The determination of whether and to what extent a Defect has occurred will be made by Company in its sole and exclusive discretion. For avoidance of doubt any non compliance and implications set forth in Sections 4.12 and 8.5 shall also be deemed a Defect to be remedied by Contractor at Contractor's sole expense.

- 1.8.17. **Detailed Documentation** - shall have the meaning ascribed to it in Section 3.2 below.
- 1.8.18. **Documentation** - all the softcopy and hardcopy of documentation and any other documents provided from time to time by Contractor according to Company's criteria and requirements which relate to the Project, System, Field Equipment and/or the Works as further detailed in **Chapter 3 of the SOW.**
- 1.8.19. **Effective Date** - shall have the meaning ascribed to it in the Preamble above.
- 1.8.20. **Encumbrance** - shall have the meaning ascribed to it in Section 4.11 below.
- 1.8.21. **Equipment Specifications** - the specifications, design and functionality of the Field Equipment, as set forth in **Exhibit D** hereto (to be attached in accordance with and as set forth in Sections 3.2 and 3.3 below, based on and in compliance with the SOW and Tender).
- 1.8.22. **Escrow Agent** - shall have the meaning ascribed to it in Section 14.4 below.
- 1.8.23. **Escrow Agreement** - shall have the meaning ascribed to it in Section 14.4 below.
- 1.8.24. **Field Equipment** - the equipment, tools, components, software and hardware set forth in **Exhibit D** hereto (to be attached in accordance with and as set forth in Sections 3.2 and 3.3 below, based on and in compliance with the SOW and Tender).
- 1.8.25. **Final Post Warranty Acceptance** - shall have the meaning ascribed to it in Section 9.4 below.
- 1.8.26. **Force Majeure Event** - shall have the meaning ascribed to it in Section 25 below.
- 1.8.27. **General Site Engineer** - shall have the meaning ascribed to it in Section 6.1 below.
- 1.8.28. **Government Agency** - shall mean any local, regional, state, foreign or other government and/or municipal agency, instrumentality, commission, authority, board or body, including without limitation NTA- Metropolitan Mass Transit System Ltd.
- 1.8.29. **Indemnified Parties** - shall have the meaning ascribed to it in Section 19 below.
- 1.8.30. **Initial Plan** - the initial plan provided by the Company as part of the Tender as set forth in Annex K of the SOW.
- 1.8.31. **Insurance** - insurance complying with all terms set forth in Section 21.
- 1.8.32. **Insurance Certificate** - shall have the meaning ascribed to it in Section 21 below and Exhibits M1-M2.
- 1.8.33. **Intellectual Property Rights** - means all worldwide (i) patents, patent applications and patent rights; (ii) rights associated with works of authorship, including copyrights, copyrights applications, copyrights restrictions, mask work rights, mask work applications and mask work registrations; (iii) rights relating to the protection of trade secrets and confidential information; (iv) rights

analogous to those set forth herein and any other proprietary rights relating to intangible property; (v) trade names, together with the goodwill attached thereto, trademarks, logos, service marks, merchandise marks and brands, domain names, whether registered or not, together with all translations, adaptations, derivations and combinations thereof and all applications, registrations and renewals in connection therewith; (vi) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vii) all registrations, initial applications, renewals, extensions, continuations, divisions or reissues thereof now or hereafter in force (including any rights in any of the foregoing) and (viii) all divisions, continuations, renewals, reissues and extensions of the foregoing (as applicable) now existing or hereafter filed, issued, or acquired.

- 1.8.34. **Israeli Law/law** - all statutes, laws, by-laws, regulations, binding court precedents, directives, orders, decrees, injunctions, consents, codes, guidelines and standards, draft bills (including without limitation Israeli standards and revised sheets (known in Hebrew as "*Gilyonot Tikun*")), environmental and other regulations, building and planning law and safety regulations, all the foregoing as enacted by the State of Israel or by any relevant municipality, institute, organization or authority which applies and/or is related to this Agreement and/or the Project and as may be amended or enacted, from time to time, by the State of Israel or by the relevant Israel municipality, institute, organization or authority (including without limitation Standards). This Agreement is not subject to the Sale Law, 5728-1968.
- 1.8.35. **Maintenance Period(s)** - shall have the meaning ascribed to it in Section 11.3 below.
- 1.8.36. **NDA** - the Non-Disclosure Agreement, **Exhibit O** hereto.
- 1.8.37. **Open Source** - any software that is licensed under terms which require, as a condition of use, modification and/or distribution of such software and/or any other software incorporated into, derived from or distributed with such software ("**Derivative Software**"), either of the following: (i) that the source code of such software and/ or any Derivative Software be made available to third parties; and/or (ii) that permission for creating derivative works of such software and/or any Derivative Software be granted to third parties or any software under the definition of Open Source Initiative. By means of example and without limitation, Open License Terms include the following licenses or distribution models: the GNU General Public License (GPL), the GNU Lesser or Library GPL (LGPL).
- 1.8.38. **Optional Project Segments** - shall have the meaning ascribed to it in the preamble of this Agreement.
- 1.8.39. **Optional Project Segment Performance Guarantee** - shall have the meaning ascribed to it in Section 17.2 below.
- 1.8.40. **Parties** - Company and Contractor, each - a **Party**.
- 1.8.41. **Performance Guarantee** - shall have the meaning ascribed to it in Section 17 below.
- 1.8.42. **Personnel** - all personnel, employees, and/or representatives of Contractor and Subcontractor, as the case may be, involved in connection with the Project, Works and/or Contractor's obligations in this Agreement, including without limitation the Additional Personnel set forth in Section 6.1 below.
- 1.8.43. **Preliminary Plans** - shall have the meaning ascribed to it in Section 3.1 below.

- 1.8.44. **Proceedings** – shall have the meaning ascribed to it in Section 4.15 below.
- 1.8.45. **Project** - shall have the meaning ascribed to it in the preamble of this Agreement. For the sake of clarity the term Project as used throughout this Agreement includes the Optional Project Segments to the extent exercised, any System Upgrades and/or Change Requests, as the case may be.
- 1.8.46. **Project Manager**- shall have the meaning ascribed to it in Section 6.1 below.
- 1.8.47. **Project Segment** – any segment of the Project, as set forth in Chapter 1.3 of the SOW.
- 1.8.48. **Proposal** - Contractor's response to the Tender, dated [\_\_\_\_\_] and attached hereto as **Exhibit B**.
- 1.8.49. **Purchase Order** - the Company's then current Commencement of Work Order Form substantially similar to the form attached as **Exhibit P** hereto.
- 1.8.50. **Quality Control Manager** - shall have the meaning ascribed to it in Section 6.1 below.
- 1.8.51. **Safety Ordinance** - shall have the meaning ascribed to it in Section 8.5.4 below.
- 1.8.52. **Safety Regulations** - shall have the meaning ascribed to it in Section 8.5.4 below.
- 1.8.53. **Schedule** - the Project timeline and milestones set forth in **Exhibit F** hereto and/or the Optional Project Segments timeline and milestones as set forth in a Purchase Order executed by Company, if any, as applicable.
- 1.8.54. **Service Engineer** - shall have the meaning ascribed to it in Section 10.8 below.
- 1.8.55. **Site** - Ayalon Highway, premises of the Company and/or any other licensee of the System and any site where Works are to be conducted and/or where the System and/or the Field Equipment and/or any other Project component is located.
- 1.8.56. **SLA** - the Service Level Agreement requirements set forth in **Exhibit J** hereto.
- 1.8.57. **SMP**- Support and maintenance plan to be attached as **Exhibit J** as set forth in Sections 1.2.11 and 3.2-3.3.
- 1.8.58. **SOW** - the statement of work for the Project, as set forth in Volume C of the Tender.
- 1.8.59. **Source Code** - fully documented human-readable source code form of the System, including programmer's notes and materials and documentation, sufficient to allow a reasonable skilled programmer to understand the design, logic, structure, functionality, operation and features and to use, operate, maintain, modify, support and diagnose errors.
- 1.8.60. **Specifications** - the specifications, design and functionality of the System, as set forth in **Exhibit C** to be attached hereto in accordance with and as set forth in Section 3 below, based on and in compliance with the SOW and the Tender.
- 1.8.61. **Standard(s)** - means any rule, principle and/or guideline adopted under any Law or by any Government Agency, including, without any limitation, by the Standards Institution of Israel (SII).
- 1.8.62. **Subcontractor(s)** - means any person to whom the Contractor has subcontracted performance of a part of the Works in accordance with Section 7 below, including but not limited to suppliers, vendors and subcontractors (including their subcontractors), and the subcontractor's legal successors in title, but not any

assignee of the Subcontractor, except as otherwise agreed in writing between the Parties.

- 1.8.63. **Subcontract Terms** - shall have the meaning ascribed to it in Section 7.4 below.
- 1.8.64. **Submission Tests** - test procedures verifying System and Field Equipment compliance with the Specifications and Equipment Specifications, as set forth in **Exhibit G** hereto, to be attached in accordance with and as set forth in Section 3 below, based on and in compliance with the SOW and the Tender.
- 1.8.65. **Support Fees** - shall have the meaning ascribed to it in Section 16.3 below.
- 1.8.66. **Support Services** - shall have the meaning ascribed to it in Section 11.1 below.
- 1.8.67. **Supervisor** - shall have the meaning ascribed to it in Section 5.14 below.
- 1.8.68. **System** - The Traffic Surveillance and Control system, including without limitation all hardware, software and computer programs and applications in connection therewith and all Updates and Upgrades thereto and all applicable Documentation, all as further detailed in **Exhibit C** hereto, to be attached in accordance with and as set forth in Section 3 below, based on and in compliance with the SOW and the Tender.
- 1.8.69. **Tender** - shall have the meaning ascribed to in the Preamble above.
- 1.8.70. **Termination** - shall have the meaning ascribed to it in Section 23.2 below.
- 1.8.71. **Termination for Convenience** - shall have the meaning ascribed to it in Section 23.3 below.
- 1.8.72. **Updates** - a new version/update of the System, Field Equipment and/or any part of the Project, that contains error fixes, maintenance, work product that corrects programming and/or design errors (usually designated by a progressing of the release number right of the decimal point following the version initially licensed).
- 1.8.73. **Upgrades** - superseding and new releases of the then current release of the System, Field Equipment and/or any part of the Project that add to, improve, correct or enhance existing features and capabilities of the then current release such software, including any major enhancements (which may be designated by a progressing of the release number left of the decimal point following the version initially licensed).
- 1.8.74. **Warranty Period(s)** - shall have the meaning ascribed to it in Section 10.2 below.
- 1.8.75. **Works** - means all construction, engineering, procurement, manufacturing, transport, erection, commissioning, testing, labor, supervision, training, services, works, facilities, equipment, supplies, tools, materials, spares and consumables to be furnished by the Contractor and its Subcontractors which may be required to design, support, construct, build, test, and/or complete the Project, all as further detailed in the SOW, including any work which is necessary to satisfy the Company's requirements and/or is implied by the Agreement and/or arises from any obligation of the Contractor hereunder, including work to remedy Defects and including Optional Project Segments.

## 2. **The Main Principals and Responsibilities**

- 2.1. **Project Performance**. Based on Contractor's representations and warranties, Company hereby appoints Contractor to execute the Project (which may include, at Company's sole discretion, the Optional Project Segments). Contractor hereby agrees to timely execute the



Project and to carry out all obligations in connection therewith in accordance with the terms and conditions of this Agreement. Contractor shall design, customize, deliver, procure and supply the System and Field Equipment to Company; perform the Works, including without limitation all integration, engineering, design, construction, operation, installation, migration works and provision of support, training and other services and works (including without limitation engineering and civil works), all according to the SOW in full compliance with the Specifications and Equipment Specifications, according to the milestones and timetable contained therein and in the Schedule.

- 2.2. **Optional Project Segments.** Exercise of the Optional Project Segments in whole or in part or if at all shall be at Company's sole discretion and option, exercisable by Company at any time, during the period of ten years from and after the Effective Date hereof, upon Company providing Contractor with any number of Purchase Orders as Company may determine (if any), under the terms of this Agreement. Company may decide to exercise the Optional Project Segments in any manner, e.g. to partially retain Contractor as Project integrator of third party field equipment or both as an integrator and Field Equipment supplier, as further detailed in Chapters 1.4 and 1.5 of the SOW. During the said ten year term, unless agreed otherwise in writing between the parties hereto, the Optional Project Segment pricing and payment terms set forth in this Agreement shall remain fixed other than exchange rate linkage as set forth in Section 16.6 below. Any works conducted under the Purchase Order shall be deemed Works subject to all terms and conditions and requirements under this Agreement with applicable changes set forth in the Purchase Order (including without limitation the SOW, ATP, Acceptance, Support Services, SMP, applicable Field Equipment Specifications etc.). Any description of the Optional Project Segment Works included herein shall not be deemed as a binding commitment by Company to exercise the Optional Project Segment option above, in whole or in part, if any, and any Field Equipment quantities therein constitute only a non-binding forecast on behalf of Company. To the extent that Company provides Contractor with a Purchase Order exercising any Optional Project Segments (in whole or in part), Contractor hereby irrevocably agrees and undertakes that it shall timely execute such Optional Project Segments, in accordance with the terms of this Agreement and the Purchase Order and shall have no discretion in connection therewith.
- 2.3. **Compliance.** Contractor shall execute the Project and carry out all obligations in connection therewith in strict compliance with the Specifications, Equipment Specifications, the SOW, the Schedule, all the terms and provisions of this Agreement and applicable laws, regulations, guidelines and standards, upon completion of which Company shall receive the Project fully integrated with Company's systems and equipment (without derogating from Company's right to exercise the Optional Project Segments in whole or in part as set forth in Section 2.2 above).
- 2.4. **Schedule and Liquidated Damages.** Contractor acknowledges that time is of the essence, and that any delay in performance of the Project shall cause severe damages and shall be deemed a material breach of this Agreement. In the event of a delay or failure, without derogating from any other right or remedy of the Company under the Agreement or the Israeli law, [following a seven \(7\) days prior written notice to Contractor.](#) Contractor shall pay Company a predetermined minimum amount of liquidated damages calculated as cumulative compensation of the percentages hereinafter detailed of the total consideration payable for the relevant Project Segment and/or the Optional Project Segment, as the case may be, for each week of delay, until final completion and/or delivery is made. In the event of any such delay, Contractor shall take all remedial actions to minimize the delay. The foregoing cumulative compensation shall be as follows: for up to each one week of delay - half a percent (0.5%) of the total relevant Project Segment consideration and/or the Optional Project Segment consideration and/or Change Request consideration (all as set forth in Section 16 below), as the case may be, up to a cap of 10% of the total relevant Project Segment consideration and/or the Optional Project Segment consideration, as the

case may be, without derogating from the right to recover further compensation for the full loss and/or damage. [The foregoing liquidated damages shall not apply to the extent that the delay is solely and entirely attributable to Company's acts and/or omissions.](#)

### **3. Preliminary and Detailed Documentation**

- 3.1. Contractor shall provide Company for its approval with the preliminary plans set forth in Chapter 3.2.3 of the SOW ("**Preliminary Plans**"), in compliance with the terms and conditions of this Agreement, by no later than the Preliminary Design Review date set forth in the Schedule. Company shall review and may provide rejections and revisions to be made in respect thereof to Contractor. Contractor shall revise the Preliminary Plans and provide for Company's re-examination within no more than five Business Days of its receipt of such rejections and/or revisions. To the extent that the Company provides rejections, the above approval process shall be repeated until Company's final written approval. If such approval is not provided within a reasonable time, at Company's sole discretion, Company may terminate this Agreement without derogating from any rights and remedies available to Company by contract and/or law. If Company approves the Preliminary Plans as set forth herein, such shall be attached to the SOW as an integral part thereof.
- 3.2. Contractor shall provide the Company for its approval with detailed Specifications, Equipment Specifications, Submission Tests, ATP, SMP and additional planning and design documents as set forth in Chapter 3.2.4 of the SOW (collectively, the "**Detailed Documentation**"), upon the Critical Design Review Date as set forth in the Schedule, and in compliance with the terms of this Agreement. Company shall review and may provide rejections and revisions to be made in respect thereof to Contractor. Contractor shall revise the said documents and provide for Company's re-examination within no more than ten Business Days of its receipt of such rejections and/or revisions. To the extent that Company provides written approval in respect of the Detailed Documentation, such Detailed Documentation shall be attached hereto and shall form an integral part of the existing Specifications, Equipment Specifications, Submission Tests and ATP and SOW, respectively. To the extent that the Company provides rejections, the above approval process shall be repeated until Company's final written approval. If such approval is not provided regarding the Detailed Documentation or any part thereof within a reasonable time, at Company's sole discretion, Company may terminate this Agreement without derogating from any rights and remedies available to Company by contract and/or law.
- 3.3. Contractor shall provide the Company for its approval with the documents detailed in Chapters 3.2.5-3.2.7 of the SOW upon the dates set forth in the Schedule for Installation, Factory Acceptance Tests, Commissioning, respectively, (collectively, the "**Additional Documentation**"), and in compliance with the terms of this Agreement. Company shall review and may provide rejections and revisions to be made in respect thereof to Contractor. Contractor shall revise the said documents and provide for Company's re-examination within no more than ten Business Days of its receipt of such rejections and/or revisions. To the extent that Company provides written approval in respect of the Additional Documentation, such Additional Documentation shall be attached hereto and shall form an integral part of the existing Specifications, Equipment Specifications, Submission Tests and ATP and SOW, respectively. To the extent that the Company provides rejections, the above approval process shall be repeated until Company's final written approval. If such approval is not provided regarding the Additional Documentation or any part thereof within a reasonable time, at Company's sole discretion, Company may terminate this Agreement without derogating from any rights and remedies available to Company by contract and/or law.
- 3.4. Neither the approval nor the disapproval of documents, including without limitation the Preliminary Plans, Detailed Documentation and/or Additional Documentation under this Section 3, nor any objections, representations, comments or suggestions, nor any failure to

make the same in relation to thereto shall relieve the Contractor in whole or in part of any duty, obligation, responsibility or liability undertaken by the Contractor in relation to the Project, or diminish or vary any such duty, obligation, responsibility or liability.

- 3.5. Neither (i) any approval of the Preliminary Plan and/or the Detailed Documentation and/or Additional Documentation by Company, nor (ii) the implementation pursuant to Sections 3.1 - 3.3 above of any modification as a condition to such approval, shall constitute a Change Request and no additional payment of any kind or delay in Schedule shall be granted in respect of such approval or modification.
- 3.6. For the sake of clarity the foregoing processes, planning, testing and other terms and conditions (including without limitation Acceptance) set forth in this Agreement (including without limitation this Section 3 and Section 9) shall also apply in respect of the Optional Project Segments (if exercised by Company), System Upgrades and Change Requests, *Mutatis Mutandis*.
- 3.7. For the sake of clarity, the Initial Plan is provided as an indicator and shall not be relied on by Contractor in terms of accuracy. Contractor shall be solely responsible for the accuracy (including without limitation location and design of signage and control bridges) and for performance of the plans specified in the Detailed Documentation and Additional Documentation (as approved by Company as part of the Detailed Documentation and Additional Documentation) and any expenses incurred in connection therewith (including without limitation those that arise due to inaccuracies in the Initial Plan), shall be solely borne by Contractor. As a sole exception to the foregoing, Company shall bear expenses, solely to the extent set forth in Chapter 11.2 of the SOW and provided that such were pre-approved by Company in writing.

#### **4. Contractor's Representations and Warranties**

Contractor warrants, represents and undertakes to Company that on its behalf and on behalf of and in respect of its Subcontractors:

- 4.1. It is duly incorporated and validly existing under the laws of the jurisdiction of its incorporation, and has the full corporate power and authority to execute, deliver and perform this Agreement and any other agreement, document and instrument which is ancillary hereto, to perform the acts required of it hereunder and to perform its obligations and consummate the transactions contemplated hereby and thereby. The Agreement is in full force and effect and constitutes the legal, valid and binding obligation of the Contractor, enforceable in accordance with its terms.
- 4.2. There are no restrictions, limitations, and/or impediments, either by contract, law or otherwise or due to any existing legal dispute between Contractor and any relevant third party, in respect of Contractor's entering into this Agreement, and the fulfillment of all its undertakings and obligations under this Agreement.
- 4.3. There is no litigation, arbitration or administrative proceedings against the Contractor, current or pending or, to the knowledge of the Contractor, threatened, that could (whether individually or in the aggregate) prejudice, affect or impair the ability of the Contractor to perform any of its obligations under this Agreement.
- 4.4. It has obtained or possesses, and shall continue to possess, at its sole responsibility, cost and expense, any and all authorizations, approvals, consents, licenses, standards or all other rights necessary to enable it to provide Company with all Project deliverables and services in accordance with the provisions of this Agreement, and for it to perform under this Agreement and fully comply with any and all of its obligations under this Agreement. All the foregoing are in full force and effect and Contractor hereby warrants that it is not aware of any reason that the existing permits or consents should be revoked or not renewed when due. The Project, the System and Field Equipment, as well as Contractor's performance of the Works and all other obligations and undertakings under this Agreement

shall at all times comply with all applicable laws, regulations, guidelines and standards, in effect from time to time.

- 4.5. The Project and all deliverables (whether software and/or hardware), Works and services including without limitation the System and Field Equipment and use thereof, do not and will not infringe, misappropriate and/or violate any and all third party Intellectual Property Rights. Contractor has and will continue to have all the rights and licenses required to grant the rights and licenses granted herein. There has been no action, suit or proceeding or any written communications alleging that any Works and/or components of the Project without limitation the System and Field Equipment have infringed, misappropriated, or violated any Intellectual Property Rights of any other person or entity and such are not subject to any proceeding, order, judgment, and/or settlement agreement. Contractor represents that it has not received any notice or claim from a third party alleging that any of Project infringes any Intellectual Property Rights of any third party. Without derogating from the foregoing, Contractor has all necessary legal and other rights to use all the Intellectual Property Rights which are required from time to time in order to carry out the Project, and the Contractor does not, and shall not, in carrying out the Project, infringe any Intellectual Property Rights of any third party. No Intellectual Property Rights which are necessary for the Project are, to the Contractor's knowledge, being infringed nor, to its knowledge, is there any threatened infringement of those Intellectual Property Rights by any third party.
- 4.6. It has all the requisite skills, production ability, experience, expertise, know-how, resources, staff, materials, qualifications, authorizations, permits and licenses and ability (including without limitation financial ability) and facilities necessary to design, to carry out and execute the Project and obligations herein and grant the rights and licenses herein, at the highest professional level and in accordance with this Agreement, fully and timely and in accordance with good engineering practice and prudent electrical and mechanical engineering skills. All Works performed in connection with this Agreement will be performed with reasonable skill and care, in a competent, professional and workmanlike manner, free from defects, and in accordance with the best professional practices in the industry.
- 4.7. The System and Field Equipment are and shall at all times be free from viruses, worms or any code which has the effect of disrupting, disabling, harming, or otherwise impeding in any manner whatsoever.
- 4.8. The Works, System and Field Equipment shall at all times (24 hours a day) comply with the Specifications and Equipment Specifications, respectively, and also with the quality assurance, information security and safety requirements as set forth in this Agreement and in the SOW respectively (including without limitation Chapters 00 and Annexes N&M thereto).
- 4.9. System and Field Equipment shall at all times consist of open system architecture enabling integration and interfacing with any additional field equipment and units as Company deems fit. The System and Field Equipment open system architecture and design shall without limitation: (i) ensure interoperability, interfacing and integration with tools, services, hardware and software (including those procured by Company from third parties) and with all protocols, applications, platforms, codes, SDKs and technology contained therein, (ii) ensure that third party hardware, software and service providers may integrate additional field equipment, software and services with the System and Field Equipment; (iii) enable expansion thereof; and (iv) shall at all times support any and all Optional Project Segments to the extent exercised at Company's discretion. Contractor shall cooperate with any third party engaged by Company as a supplier of hardware, software and/or services with respect to the System and Field Equipment. Contractor shall provide Company and applicable third parties, at Company's discretion, with all documents, information and applicable licenses (consistent with Sections 14.1-14.3 below) as required

to enable the integration, interface and interoperability of the System and Field Equipment with third party products, software, systems and services and with all protocols, applications, platforms, codes, SDKs and technology contained therein, at no charge or licensing restrictions. To that end Contractor shall provide (without limitation) SDKs, APIs, codes and protocols, including without limitation as set forth in Chapter 6 of the SOW.

- 4.10. Contractor hereby reconfirms all the representations and warranties that it made in the Proposal, all of which shall continue to apply in full force and effect throughout the Term of this Agreement.
- 4.11. All items and deliverables supplied to Contractor pursuant to this Agreement shall be free and clear of any right of lien, encumbrance or pledge ("**Encumbrance**"). Contractor hereby expressly waives any Encumbrance on any item supplied to Company pursuant to this Agreement. In addition Contractor hereby expressly agrees that it shall not initiate the issuance of any injunction or any other writ or order in connection with the Project including without limitation one resulting in any delay, interruption or obstruction to the Project and that its sole remedy, if available pursuant to this Agreement, shall be limited to monetary compensation.
- 4.12. Contractor has thoroughly investigated and familiarized itself with all aspects of the Project, Contractor's existing systems, field equipment, the infrastructure, the Site (including without limitation all sections, interchanges, control bridges, signage, lanes, infrastructure, electricity and construction plans, architectural design, etc.), its surroundings including any ongoing or future projects in proximity thereto, and has found the foregoing suitable and sufficient to complete its obligations under this Agreement. All information provided to Company prior to signing of the Agreement, including the information detailed in the Proposal, is true and complete, to the fullest extent required to perform all of Contractor's obligations, and in no way shall providing any such information derogate from Contractor's liability under this Agreement. Notwithstanding anything to the contrary, the terms and conditions herein reflect the Contractor's provision for all costs and expenses related to the Project, whether direct, indirect, foreseen or unforeseen. The Contractor hereby represents that it has been provided with all the documents attached to this Agreement, it has read and understood all such documents, and has been provided all the explanations and has obtained any additional information required. Contractor represents that it has obtained and shall continue to obtain at its own responsibility and expense any and all information that may impact the implementation and execution of its obligations under this Agreement, including without limitation information in connection with third party current or future projects conducted in proximity to the Project, such as the intended electrification of the railways that run between the South-bound and North-bound routs of the Ayalon Highways by the Israel Railways Ltd. Any implications and liabilities in connection with the foregoing information shall be at the Contractor's sole and exclusive responsibility at Contractor's sole cost and expense and Contractor hereby waives, releases and forever discharges the Company from and against any and all current and future claims in respect thereof.
- 4.13. The Contractor and its Subcontractors performing the Works, or any part thereof, have obtained all consents, permits and licenses required under Israeli Law in connection with the Works, and are duly registered under the Engineering Construction Contractors Registration Law 5729 - 1969 in the class and with the ranking required to carry out the Works. In addition, the Contractor and its subcontractors, undertake to maintain the required registration and/or licenses throughout the term of the Agreement and provide Company with copies thereof upon request.
- 4.14. Contractor has not instituted any proceedings with respect to a Bankruptcy Event, and no proceedings have been instituted against Contractor with respect to a Bankruptcy Event. There is no reasonable basis for a third party to claim that a Bankruptcy Event has

occurred or is reasonably likely to occur. Contractor has paid all of its liabilities as they have become due, and, subject to receipt of the consideration pursuant to this Agreement, will be able to pay all of its known and anticipated future liabilities as they become due, in each case in accordance with their respective terms.

- 4.15. There are no (i) actions, suits, claims, hearings, arbitrations, proceedings (public or private) or governmental investigations against or affecting Contractor and/or any part of the Project, pending or threatened, against or by Contractor (collectively, "**Proceedings**"), nor any Proceedings or investigations or reviews by any Government Agency against or affecting Contractor, pending or threatened against or by Contractor, relating to any of part the Project or which seek to enjoin or rescind the transactions contemplated by this Agreement; or (ii) existing orders, judgments or decrees of any Government Agency naming Contractor as an affected party in connection with, or otherwise affecting, any of the Project.
- 4.16. Other than the exhaustive list set forth in Chapters 11.2.5 and 11.4.2 of **the SOW** hereto (which contains items that are at Company's expense), all expenses and costs in connection with the Project including without limitation all components, licenses, permits, approvals, hardware, software, Field Equipment, System, Works and compliance with any and all requirements are and shall be at the Contractor's expense.
- 4.17. The Contractor is in compliance with the terms and conditions of all third party software licenses, including without limitation Open Source. The System and Field Equipment do not and shall not incorporate and/or use Open Source in a way that, creates, or purports to create obligations for the Company with respect to any Company owned Intellectual Property Rights or grant, or purport to grant, to any third party, any rights or immunities under any Company Intellectual Property Rights, including without limitation that is required to be (A) disclosed or distributed in source code form, (B) licensed for the purpose of making derivative works, or (C) redistributable at no charge.
- 4.18. The System, Field Equipment and Works shall comply with any and all information security, cyber security and privacy requirements and restrictions set forth in this Agreement and under any and all applicable Laws.
- 4.19. The Contractor, its Personnel and permitted Subcontractors and anyone on their behalf shall fulfill their obligations faithfully and conscientiously and shall use their skills and knowledge to the benefit of the Company.

## **5. Personnel**

- 5.1. Contractor shall during the whole term of the Agreement employ and retain for the Works the number of employees required for the due and diligent performance of the Works, including the key personnel detailed in Chapters OO and 12.4.5 of the SOW and the Tender, respectively, adhering to the requirements therein.
- 5.2. All Contractor employees engaged in the performance of this Agreement will be suitably qualified and experienced to perform the tasks or work allocated to them and (where appropriate) shall hold such licenses, permits or registrations as are required under any applicable law.
- 5.3. Contractor shall comply with all the requirements of the Israeli Law regarding the employment of the employees in Israel, including without limitation the Foreign Workers Law, 5751-1991 and the Employment Service Law, 5719-1959. Without derogating from the above, Contractor shall obtain all approvals and work permits for foreign employees who will be assigned to the Project, required by the applicable Israeli Law and reimburse their expenses (including flights, accommodation, *per diem* expenses etc.)
- 5.4. Without derogating from the above, the Contractor shall be responsible for ensuring that all the Personnel working in Israel shall be insured, if and when required, in accordance with applicable Israeli Law. Furthermore, the Contractor shall be liable to pay any

payment required by the Israeli National Social Security Institution. With respect to employees to which the Israeli National Health Insurance Law 5754-1994 does not apply, the Contractor shall obtain adequate medical insurance.

- 5.5. The names and personal information (i.e. profession, company, ID No./Passport No.) pertaining to all of the Personnel, including the employees and representatives of the Contractor and/or the Subcontractors (in addition to the pre-requisite list set forth in Tender), will be submitted to Company in advance no later than the due date for submission of the Preliminary Plans (set forth in Section 3.1 above) in order to obtain security clearance, if necessary, to allow entrance to the Site. In the event that any applicable security approval shall not be granted (including by the appropriate agency), for any reason whatsoever, the Contractor and/or the Subcontractor shall be responsible for substituting the unapproved Personnel.
- 5.6. Contractor shall be obliged to inform Company of any change in the list of Personnel. Company shall have the right to object to any such change. Without derogating from the above, the Company shall have the right to require that the Contractor remove from the Site and/or the Project any person employed by Contractor or by a Subcontractor, even if the Company previously agreed to the employment of such person, and such person shall not be again employed at Site and/or in connection with the Project without the written permission of Company. Any person so removed from the Site and/or Project shall be replaced as soon as possible and in any event no later than seven days of removal, by a competent substitute, pre-approved by Company. The above shall not cause any delay in the Schedule set forth in this Agreement, and shall not entitle the Contractor to any right or remedy.
- 5.7. Contractor shall ensure proper gear, clothing and equipment for the Personnel including those required in cases of special and/or high risk works, and take any precaution measures necessary to ensure the safety and health of the Personnel as required by any law.
- 5.8. Contractor hereby states that it is aware of the legal requirements related to the performance of the Works, employment of workers and their safety, including any such legal requirements as detailed in the SOW, and undertakes to act accordingly.
- 5.9. Contractor shall make sure that the Personnel does not wander in the Site and its surroundings unnecessarily and will not interrupt with the traffic and/or other works being performed on the Site.
- 5.10. Contractor undertakes that the Works will be managed to the satisfaction of the Company and in compliance with all Israeli Law requirements, including without limitation personnel books listing the name, occupation and professional classification of each employee and also each employee's work days and work hours.
- 5.11. Contractor undertakes to provide the Personnel with all necessary conditions and conveniences, including toilet facilities and proper working stations at the Site, as required by law and this Agreement.
- 5.12. Contractor shall give or provide all necessary supervision to plan, arrange, direct, manage, inspect and test the Project during the execution thereof for the proper fulfillment of the Contractor's obligations under this Agreement. Such superintendence shall be given by skilled and experienced Personnel having in depth knowledge of the Works to be carried out (including the methods and techniques required, the hazards likely to be encountered and methods of preventing accidents) for the satisfactory completion of the Project.
- 5.13. Without derogating from the above, the Contractor shall perform at its sole responsibility and expense continuous, on-site supervision (known in Hebrew as: "Pikuach Tsamud") of the performance of the Works, including overall supervision (known in Hebrew as: "Pikuach Elyon") by its Personnel, all as required under any applicable law, including the Planning and Construction Law 5725-1965.

- 5.14. Company shall appoint a Company Project Manager and a Supervisor, on behalf of the Company ("**Company Project Manager**" and "**Supervisor**", respectively). Company shall notify Contractor of such appointment of said Company personnel or any replacement thereof. It is hereby agreed that the Company, the Company Project Manager and/or the Supervisor have the right to supervise, guide, or give instructions to Contractor or to anyone employed by it. Contractor shall comply with such instructions, provided however, that the instructions may only be construed as a means to ascertain full performance of the provisions of this Agreement and that the Contractor shall have no grounds to claim that he has not fulfilled his obligations as detailed in this Agreement due to acts, omissions, or lack of instructions from Company, the Company Project Manager and/or Supervisor.
- 5.15. The provisions of this Section shall not under any circumstances constitute employee-employer relations between the employees and/or subcontractors of the Contractor and the Company.
- 5.16. The Contractor shall carry out the Works on the Project in accordance with the Schedule and solely in strict accordance with working hours/days as permitted by the Israeli Law. Contractor shall plan such compliance ahead of time to meet the Schedule.

#### **6. Contractor's Representatives**

- 6.1. Upon the signature of this Agreement Contractor shall appoint a general site engineer, a project manager, a quality control manager and a chief foreman, the identities of which shall be pre-approved in writing by Company and whom shall act as sole point of contact in all issues related to the performance of its obligations hereunder (the "**General Site Engineer**", the "**Project Manager**", the "**Quality Control Manager**" and the "**Chief Foreman**" and the additional personnel required to be appointed by law, respectively adhering to the requirements set forth in the Tender, the SOW and any applicable law ("**Additional Personnel**"). The Contractor shall ensure that it is represented at all times by a competent and authorized Project Manager, General Site Engineer, Quality Control Manager and Chief Foreman. The General Site Engineer should not be absent from Site during normal working hours for more than three (3) consecutive Business Days at a time without the prior written consent of Company and in which case a deputy shall be nominated by the Contractor and Company shall be informed in writing of such assignment. The said Project Manager, General Site Engineer, Quality Control Manager, Chief Foreman and Additional Personnel shall each provide their full time, energy and attention to the superintendence of the Project and shall exercise overall superintendence of the Project on behalf of the Contractor and shall have authority to receive on behalf of the Contractor all consents, approvals, orders, instructions and information given by Company and must be given adequate authority to represent and act on behalf of the Contractor as if they were the Contractor for the purposes of this Agreement.
- 6.2. Without derogating from Contractor's obligations under this Agreement, the Project Manager will constantly conduct risk assessments and provide risk control solutions and upon Company's request provide Company with ongoing reports regarding the foregoing and the Project progress.
- 6.3. Company may, at any time, require the Contractor to remove and replace the Project Manager and/or General Site Engineer and/or Quality Control Manager and/or Chief Foreman and/or any other Additional Personnel in which case the Contractor shall, after receiving written notice of such request, remove such Project Manager and/or General Site Engineer and/or Quality Control Manager and/or Chief Foreman and/or any other Additional Personnel, as appropriate, from the Project and promptly replace that Project Manager and/or General Site Engineer and/or Quality Control Manager and/or Chief Foreman and/or any other Additional Personnel, as appropriate with another skilled and experienced person, pre-approved in writing by Company.



- 6.4. The Contractor is not entitled to replace the Project Manager and/or General Site Engineer and/or Quality Control Manager and/or Chief Foreman and/or any other Additional Personnel without prior written consent from the Company and the provisions of Section 5.6 above shall apply, *mutatis mutandis*.
- 6.5. General Site Engineer's Authority and *Modus Operandi*:
- 6.5.1. The Contractor undertakes to provide the General Site Engineer with unlimited access to the Site for the purpose of inspecting the Work performance and progress. Without derogating from the foregoing, the General Site Engineer shall inspect the quality of the materials, machines and equipment used for performance of the Works, their compatibility to the Works, the SOW, the methods for performing the Works, and the process and progress pace of the Works.
- 6.5.2. The Contractor shall ensure that the General Site Engineer provides monthly reports containing the total monthly work hours, materials used, equipment and work methods applied etc., to be provided to Company upon request.
- 6.5.3. General Site Manger shall be responsible for providing Company with written confirmation and approval of the Works, prior to commencement thereof, in respect of work methods, quality and type of equipment, and quality and quantity of materials planned to be used and compliance with the terms hereof.

## 7. Subcontractors

- 7.1. Contractor may not sub-contract or assign any part of the Project without the explicit prior written consent of the Company, which shall be at the Company's sole discretion. Contractor shall provide Company with all applicable information regarding such Subcontractors, and to the extent approved, Contractor shall be permitted to engage the Subcontractors only in execution of the part of the Works pre-approved by the Company in accordance with Chapter 00.20 and 12.4.8 of the SOW.
- 7.2. Without derogating from the aforementioned, the Contractor shall list Subcontractors it wishes to engage in connection with execution of parts of the Works, the nature and scope of the engagement, the Subcontractor's experience and expertise in performing the Works to be assigned to them and methods of inspection.
- 7.3. Neither the approval of any Subcontractor by the Company nor any subcontract executed by the Contractor shall relieve the Contractor from any of its liabilities under the Agreement. The Contractor shall be fully responsible for the acts and omissions of all of its Subcontractors, including their employees or workmen.
- 7.4. Contractor shall ensure that any permitted subcontracting shall be made by Contractor under a written agreement between Contractor and the applicable Subcontractor, which stipulates, *inter alia*, that the Subcontractor shall: (i) protect Company, the Project and any Intellectual Property Rights in connection therewith to at least the same degree as the terms and conditions of this Agreement and shall contain at the least terms and conditions not less restrictive than those set forth in Sections 4, 5, 8, 10-14, 18-24, 26 ('**Subcontract Terms**'); (ii) permit Contractor and/or Company to immediately terminate the said subcontract agreement for violation or breach of any of the Subcontract Terms and otherwise terminate such agreement upon termination or expiration of this Agreement for any reason; (iii) ensure that all representations and warranties made towards Contractor by any Subcontractor and/or Personnel shall be valid and apply towards the Company as a third party beneficiary; and (iv) ensure that the Company shall not be bound or liable towards any Subcontractor and/or Personnel. The Contractor undertakes to provide the Company with the foregoing subcontract agreement, immediately upon request.

For the sake of clarity, Subcontractors and Personnel shall enter into contractual relationship only with Contractor and shall be paid only by the Contractor. The Contractor shall hold harmless and indemnify the Company from any claims, proceedings, damages, costs, charges and expenses arising out of or in connection with the Works performed by the Subcontractors/Personnel and/or any claims made by Subcontractors/Personnel.

- 7.5. Contractor shall remain fully responsible for the performance of the subcontracted parts of the Works, and for the cooperation and coordination between the Subcontractors to whom any of the Works are assigned, and Contractor shall remain liable for its Subcontractors compliance with the terms hereof and for any and all of their acts and omissions. Nothing herein contained shall be deemed as Company granting any right to Subcontractors or any third party by reason of this Agreement or by Company approving any such Subcontractor.
- 7.6. In the event that the Company shall determine, at its sole discretion, that any Subcontractor and/or any person acting on its behalf is not suitable to carry the Project, Company may instruct their evacuation from the Site, and the Contractor shall duly comply with such instruction at its own expense. In this event, the Contractor shall carry out the works itself or promptly find a suitable replacement pre-approved in writing by Company.
- 7.7. Contractor, at its own expense, shall obtain, maintain and renew all permits, licenses or consents required by any applicable laws, regulations, guidelines, standards, in connection with the performance of the obligations under this Agreement and for the execution of the Project including by Subcontractors. Contractor shall indemnify and hold Company harmless from and against any failure to obtain, maintain or renew such permits, licenses or consents to the extent necessary to perform its obligations under this Agreement and/or any claims from Subcontractors and/or any third parties in connection with such Subcontractor's acts and omissions.

## **8. Works**

- 8.1. The Contractor hereby undertakes to:
  - 8.1.1. Perform the Works in accordance with the SOW and the Supervisor's instructions, including installation of the System and Field Equipment in its entirety in accordance with the Specifications and Equipment Specifications, respectively, in the exact timeframes detailed in the Schedule.
  - 8.1.2. Use only excellent materials, appropriate for the fulfillment of all the conditions as set out in the SOW.
  - 8.1.3. Obtain all the necessary licenses and/or permits required under any law for the performance of the Works, in whole or in part, including any coordination of the Works which may be necessary, at its own expense and without being entitled to further consideration to that detailed in this Agreement.
  - 8.1.4. Ensure water supply, electricity, phone lines and/or any other utility necessary for the performance of the Works, without being entitled to payment further to that detailed in this Agreement.
  - 8.1.5. Make sure that upon completion of the Works the Project will fully, accurately and entirely fill the requirements as they are detailed in the Specifications, Equipment Specifications and SOW and will be to the satisfaction of the Company Project Manager and the Supervisor.
  - 8.1.6. It is clarified that any supervision which may be conducted by the Company during execution of the Works is merely as a precaution, and shall not release the Contractor and/or anyone on its behalf from any obligation it may have towards the Company under this Agreement, and the Contractor shall be solely responsible for any actions or omissions in connection with the Works.

- 8.1.7. Notwithstanding any dispute that may arise between the Parties, Contractor shall in any event not be entitled to suspend the Works and/or any of its obligations in this Agreement.
- 8.1.8. In view of the importance and complexity of the Project, the Contractor agrees that all other works and services which, for any reason whatsoever, have not been specifically described in the Agreement, but are, according to the generally accepted international standards, necessary to complete the Project, or any of its parts, are deemed to be included in the Works and will be provided by the Contractor as if they would have specifically been contemplated in this Agreement.
- 8.2. Protection of Existing Infrastructure, Drainage and the Road Surface
- 8.2.1. The Contractor declares and undertakes that prior to the commencement of Works it has duly inspected the existing infrastructure of the Site, Ayalon Highway and the Project in its entirety, including, without limitation, the Optional Project Segments, and the location of their respective drainage, water pipes, sewer lines, and electricity and phone lines. The Contractor undertakes to avoid causing damage to any of the aforementioned infrastructure and/or to any component which is an integral part of the Project, including signage, bridges and other means of directing traffic, and to take any and all measures necessary for prevention of any such damage, including placing warning signs and any other necessary precaution measures.
- 8.2.2. The Contractor undertakes to prevent any damage to the road surface on the Site or its vicinity, and the Contractor undertakes that any and all equipment, tooling and Field Equipment used is in good order and will not damage and/or cause harm to the road surface, including without limitation due to oil and/or solar leaks.
- 8.2.3. Without derogating from Contractor's liability, the Contractor undertakes to immediately inform the Company of any such damage, and immediately repair the damage at its own expense upon occurrence thereof.
- 8.3. Prevention of Disruptions
- 8.3.1. The Contractor undertakes to perform the Works in a manner which shall prevent any disruption and/or disturbance to the public and/or property in the vicinity of the Site, and to act in strict accordance with any applicable law. Without derogating from the generality of the aforesaid, the Contractor undertakes to remove dirt, rocks, litter and/or any equipment used from places which they may cause disturbance and/or discomfort to the drivers on Ayalon Highway and/or on any other road and/or to property in the vicinity of the Site, and also to prevent the creation of dust and/or noise in a way which may constitute Public Nuisance, as defined in the Israeli Torts Ordinance (New Version) 5728-1968.
- 8.3.2. Furthermore, the Contractor undertakes that during the performance of the Works it will prevent any disruption to the ongoing traffic on Ayalon Highway and/or on any other road and in their vicinity. Without derogating from the generality of the aforesaid, the Contractor undertakes to make sure that the rocks and/or dirt which will be dug during the Works be removed from Site in a manner which will not disrupt the traffic, to the Company's satisfaction.
- 8.3.3. In the event that during the performance of the Works the Contractor will be obligated to act in a way which may disrupt traffic, Contractor shall perform these actions only with prior written approval of the Company, subject to the authorization of the Israeli police and to receiving the required permits in accordance with any legal requirement.

#### 8.4. Safety and Direction of Traffic

The Contractor undertakes that during the Works it will guarantee the safety of ongoing traffic at the Site, and comply with the provisions of Chapter 00.4 of the SOW, and, without derogating from the above, ensure, *inter alia*, that:

- 8.4.1. Any and all requirements made by the Company, Israeli police and any applicable Government Agency are fulfilled.
- 8.4.2. Works will be ceased during fog or any other problematic or dangerous weather as it may be, all in accordance with the instructions of the Company, Company Project Manager, Supervisor, Company Quality Assurance Manager and the Israeli police and any Israeli Law requirements.
- 8.4.3. Appropriate signs and any signs required by law shall be placed at the Site and its vicinity, including direction signs, warning signs of "works conducted on the road" and "obstructions on road".
- 8.4.4. The Works will be performed within the timeframe detailed in the Schedule.
- 8.4.5. Luminous signaling devices shall be installed at the Site and activated at nighttime to caution drivers that they are approaching a worksite.
- 8.4.6. All Works and safety measures will be conducted in accordance with the terms of this Agreement and the instructions and requirements set forth in Chapters 00.4, 00.7 of the SOW (and Annex M thereto) and the Tender.

#### 8.5. Safety Requirements

The Contractor shall comply, and shall ensure that, while performing its obligations under the Agreement, the Personnel comply with all safety regulations, rules and orders under Israeli Law. The Contractor confirms and undertakes that:

- 8.5.1. It shall take all the necessary measures and precautions related to the performance of the Works in order to ensure the safety of, and shall provide protection to prevent damage, injury or loss to, the Personnel and the Company, including its employees and invitees, the public and other third parties, to other property at the Site or at other locations where any part of the Works is carried out.
- 8.5.2. It shall be responsible for any damage, injury or loss caused to the Personnel or the Company, including its employees and invitees, the public and other third parties, property, materials and equipment at the Site as a result of or in connection with the performance of the Works.
- 8.5.3. It will fence the Site as required by Israeli Law, Government Agency, the Israeli police and the Company. The fencing will be constructed so as to prevent access of any unauthorized persons to the Site.
- 8.5.4. Without derogating from the above, the Contractor shall be regarded as a Main Contractor ("Kablan Rashi") and a Construction Executer ("Mevatzeha Benia"), as defined in the Working Safety Regulations (Construction Works), 5748-1988 (hereinafter – the "**Safety Regulations**"). In this respect, the Contractor shall appoint a Chief Foreman ("Menahel Havoda") (approved by the Ministry of Economy) as required under the Safety Regulations. The Contractor committed to take upon itself all the duties and responsibilities of a Main Contractor and a Construction Executer according to any applicable law, including all work safety laws and regulations and without derogating from the above shall be solely responsible for the fulfillment of the provisions of the Working Safety Ordinance (New Version) 5730-1970 and any regulations enacted upon it, including the Safety Regulations (hereinafter – the "**Safety Ordinance**"), with regard to all of the works to be performed at the Site, either by the Contractor or the

Subcontractors. The Contractor shall submit to the regional working supervisor an announcement regarding the appointment of the Chief Foreman ("Menahel Havoda"), as required under section 2 to the Safety Regulations.

- 8.5.5. To the extent so required by Israeli Law, the Contractor will designate to the Company the name of the safety supervisor who shall be selected from the lists officially approved by the Ministry of Economy. For the avoidance of doubt, the Contractor shall be entitled to subcontract this obligation, provided that such subcontracting shall be in accordance with the terms of this Agreement and provided that such subcontracting shall be allowed under and/or shall not cause a breach of the provisions of the Safety Regulations and/or the Safety Ordinance and/or any other applicable law. Contractor shall perform the Works in accordance herewith and in compliance with the required functions and obligations of the safety supervisor.
- 8.5.6. The Contractor will allocate adequate resources to enable it to comply with its obligations pursuant to the provisions hereof.
- 8.5.7. The Contractor will exercise in the performance of its obligations under the provisions of this Section 8.5 with all skill and care to be expected of a properly qualified and highly competent design and build contractor, experienced in carrying out the functions of a safety coordinator and supervisor for projects of a similar size, scope, complexity and purpose.
- 8.5.8. Without derogating or in any way releasing the Contractor from any obligations under the Agreement, the Contractor shall comply, at its own expense, with the recommendations of the Company regarding the temporary or permanent arrangement of ladders, gangways, working platforms, fencing of openings, posting of warning signs and wearing of equipment including safety helmets, without derogating or in any way releasing the Contractor from any obligations under the Agreement.
- 8.5.9. Without derogating or in any way releasing the Contractor from any obligations under the Agreement, the Contractor undertakes to appoint at its expense a professional and certified safety consultant to audit and verify compliance with all safety requirements.
- 8.5.10. The Contractor's obligations to ensure compliance with all applicable Israeli Laws in connection with safety requirements apply and shall continue to apply on an ongoing basis, including without limitation in respect of requirements stemming from any third party current or future projects conducted in proximity to the Project, such as the Israel Railways Ltd.'s intended electrification of the railways that run between the South-bound and North-bound routs of the Ayalon Highway. Any implications and liabilities in connection with the foregoing shall be at the Contractor's sole and exclusive responsibility and at the Contractor's sole and exclusive cost and expense, including without limitation the safeguarding and protection of its Personnel, the Company, including its employees and invitees, the public and other third parties and any and all property, materials and equipment (including the purchase of new complying Field Equipment and components, as approved by Company in writing, which shall not be effected by the foregoing implications). Any Israeli Laws specified in the SOW shall not be deemed as exhaustive list required for compliance and Contractor shall be responsible at its expense to adhere to any and all additional Israeli Laws requirements and standards to the extent applicable.

#### 8.6. Environmental Regulations

- 8.6.1. The Contractor shall perform the Works in full compliance with any and all environmental related requirements under the Israeli Law and in accordance with Chapters 00.22-00.23 of the SOW.
- 8.6.2. During the performance of the Works, the Contractor shall clean and clear the Site, at its own expense, from any waste, garbage, debris, excess materials, temporary structures, construction equipment, which is not necessary to the performance of the Works, and other waste or any contamination created as result of the performance of the Works. All waste will be disposed of in accordance with all applicable laws, regulations and ordinance governing such disposal. At the Company's request the Contractor shall provide the Company with the relevant delivery certificates regarding the disposal of waste.
- 8.6.3. In respect of any replacement of existing equipment, Contractor shall be responsible and liable for dismantling the replaced existing equipment and for disposal in accordance with any applicable Israeli Law requirements unless Company requires that the replaced equipment be delivered to Company, in which case Contractor shall be responsible also for its delivery to Company's designated location, at its then current condition without any damage, Defect or loss, at Contractor's sole expense.
- 8.6.4. Without derogating from the foregoing, the Works include dismantling and disposing of electronic waste, for which Contractor shall be solely responsible. The dismantling and disposing of electronic equipment and waste shall be performed by Contractor in accordance with the requirements of the Israel Ministry of Environmental Protection. Without derogating from the above, the Contractor shall act in full compliance with the Environmental Treatment of Electrical and Electronic Equipment and Batteries Law, 5772-2012 ("**E-Waste Law**"). The ownership of any existed field equipment to be dismantled by the Contractor shall be transferred to the Contractor, and if applicable the Contractor shall be deemed as Holder of Nondomestic Waste Equipment and Batteries (as defined under the E-Waste Law) and Contractor shall act in full compliance with Section 34 of the E-Waste Law. No additional consideration shall be paid for the foregoing activities.

#### 8.7. Quality Assurance and Quality Control

The Contractor shall implement and maintain quality assurance and quality control programs in accordance with the requirements of the codes, standards and other requirements set forth in this Agreement (including without limitation Chapter 00.29-00.30 of the SOW) and the Israeli Law and shall provide to the Company copies of such programs before the same are implemented or audited. Without derogating from the foregoing Company shall have the right to access the offices and premises of Contractor and any applicable records for purposes of auditing the Works or any part thereof.

#### 8.8. Suspension of Works

- 8.8.1. Order to Suspend. Company may, at any time, instruct the Contractor to suspend progress of all or any part of the Works. Contractor shall comply with the Company's instructions and shall, during such suspension, properly protect, secure and store the Works and any material or equipment supplied on Site and/or elsewhere, as the case may be, against any deterioration, loss or damage.
- 8.8.2. Cost of Suspension. The sole cost of suspension borne by the Company due to an explicit order by the Company to suspend shall be the due direct costs for Personnel, and storage of Field Equipment, to the extent pre-approved by Company in writing. Notwithstanding the foregoing, the Contractor shall not be entitled to be paid any costs (a) for suspensions that continue for less than 5

consecutive days nor any number of days per year that in aggregate are less than ninety (90) days per year; a suspension of less than one day will not be considered as a suspension and will not be taken into consideration for the above calculations; or (b) if such suspension is due to Contractor's or any third party on its behalf; or (c) a Force Majeure Event. Contractor shall notify the Company regarding any such costs as they are incurred and promptly provide applicable receipts and documentation. The Contractor shall as soon as possible after the ordered suspension period, and not later than 30 days, supply to the Company full details and supporting documents verifying the Contractor's cost. After receipt of such documents, and subject to Company's written approval, the Company shall pay the Contractor within ninety (90) days after the next upcoming milestone according to the Schedule, provided that the Contractor has provided the Company all the documents mentioned above at least 5 Business Days before such scheduled milestone. In the event that the Contractor did not provide such documents within such time, the Company shall pay the Contractor no later than ninety (90) days after the succeeding milestone according to the Schedule subject to Company's approval of applicable the documents.

#### 8.9. Work Log

The Contractor will run a daily written log recording the performance of the Works at the Site, including log of Personnel working that day and work hours, materials used and their quantity, weather conditions and any event out of the ordinary which may occur on the Site during performance of the Works or otherwise and all Support Services including each Defect, nature of Defect, response, workaround and resolution times, Personnel involved and any further details required by Company. The Support Services work log shall be provided to Company within 7 days as of a Company's service call in addition to all other reports required.

#### 8.10. Works Inspection

Contractor shall be deemed to have inspected and satisfied itself as to all existing or foreseeable matters affecting or relating to the Works and the Site including accordance with the procedures as set out in the SOW and shall provide Company with detailed monthly reports, to Company's satisfaction. Without derogating from the above said, the Contractor shall perform the following inspections:

- 8.10.1. A full and thorough inspection of the components of the Site and applicable bridge plans and "as mades";
- 8.10.2. A full and thorough inspection of the functional and environmental performance of each component of the System and Field Equipment;
- 8.10.3. An inspection of all the components of the System and Field Equipment and/or to be installed as part of the Project and out of the control center, to be performed on the Work Site itself, and inspection of the performance of the control center.
- 8.10.4. Contractor shall photograph the Site before performing the Works, and after completing every milestone and segment thereof, up until the completion, as such: digging foundations, installing pipes, covering ditches/trenches, casting cement foundations, equipment installations, etc. The portfolio shall be delivered to the Company along with the Contractor's inspection and/other reports and upon Company's request.
- 8.10.5. Contractor shall conduct laboratory tests, at Contractor's expense, at Company's request.

#### 8.11. Completion of Works

- 8.11.1. Upon completion of the Works and/or Acceptance, or any part thereof, the Contractor shall remove all tools and leave the whole of the Site clean and in a workmanlike condition to the reasonable satisfaction of the Company including without limitation in accordance with Chapter 00 of the SOW. The Site shall be restored to its original state, as may be necessary, including any potholes and/or bumps that may have been created in the Site, to the reasonable satisfaction of the Company.
  - 8.11.2. Contractor undertakes that no later than the dates set out in the Schedule, it will complete the installation of the System and Field Equipment and the Works, and hand the Project or any part thereof over to the Company (the "**Taking Over Date**"). Prior to the Taking Over Date the Contractor shall complete all inspections detailed in the ATP, SOW and/or requested by the Company at any time, and complete all its obligations according to the Agreement and any other document, as may apply.
  - 8.11.3. Following the Taking Over Date the Contractor shall deliver to the Company immediately upon demand all Documentation, including the final drawings and documents of the as-mades, together with an electronic copy of all drawings and documents and all hardware and software. All plans and documents shall comply with the requirements set forth in the SOW (including without limitation Geographic Information System (GIS) requirements set forth in chapter 00.37 of the SOW).
  - 8.11.4. It is clarified that any handing/taking over of the Project or any component thereof shall not constitute approval that the Contractor fulfilled all its obligations according to the Agreement.
- 8.12. Works Damage Liability
- 8.12.1. The Contractor shall be solely liable for damages caused in connection with the Works for any reason, including with regards to the access roads used for Contractor's needs, whether provided by the Contractor or by others, to all roads and paths in proximity of the Site and to all existing facilities and equipment adjacent and proximate to the Site.
  - 8.12.2. The Site is surrounded by roads used by the general public – Contractor warrants that no damages or interruptions shall be caused with regards to any such roads.
  - 8.12.3. The responsibilities include maintenance and upkeep of the Site and access roads throughout the performance of the Works and up until the final Acceptance.
  - 8.12.4. The Contractor shall be held liable for any damages – whether bodily harm or property damages or any other expense, which may be caused to the Company and/or its representatives to the Contractor itself and/or its representatives and/or any other third party, as result of an act or omission of the Contractor, and/or its representatives during the execution of the Works and/or in connection with the Works and/or the Project and/or resulting from breach of any obligation under this Agreement and/or any obligations under law.
  - 8.12.5. With regards to the burden of evidence and burden of proof in tort, the Contractor shall be considered in all matters relating to the Project, the systems and facilities which have been brought to the Site, as having had full and exclusive control, as having solely and exclusively supervised, and if any damage shall be caused due to fire or due to fire which emerged from the above, as the sole and exclusive occupant of the Site, the structure, and the systems and facilities in real-estate.
  - 8.12.6. The Company shall be exempt from any liability for damages, whether bodily harm or property damages – which shall be caused to the Contractor or its



employees or to any acting for it or on its behalf, or their agents, during or following performance of the Works and/or resulting from the defective performance of the Works. If liability shall be imposed upon Company for damages aforementioned in this Section – the Contractor shall indemnify, defend and hold the Company harmless from and against any loss, damage and expense, including attorney fees.

8.12.7. It is hereby conditioned that any authorization given to Contractor by the Company and/or the Company Project Manager and/or the supervisor and/or their assigns – including completion certificates, authorizations, specifications, completion of parts of the performance, accounting authorization, licensing authorizations, sub-contractor identity authorizations, suppliers, manufacturers, materials, equipment, etc. – shall not in any way impose liability upon the Company and/or the Company Project Manager and/or the supervisor and/or exempt Contractor from liability and/or diminish its liabilities in accordance with the Agreement and/or by law.

8.12.8. Responsibility for urgent handling of Works

If Contractor shall not timely comply with its obligations in connection with Works hereunder (including without limitation handling of hazards, defects and other), Company may at its discretion employ a contractor on its behalf, which shall perform the repairs on account of the Contractor in accordance with the Agreement, and Contractor shall bear all Company expenses in this respect and an additional 12.5% of such expenses as supervision fees without derogating from Company rights and remedies by contract and/or by law. Contractor shall not be obligated to pay the aforesaid expenses set forth in this Section 8.12.8, to the extent that Contractor's failure to timely comply with its obligations in connection with Works hereunder is solely and entirely attributable to Company's acts and/or omissions.

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8.12.9. Contractor shall be solely liable for the integrity of the Works, temporary works made in connection therewith, and in any case of damage and/or injury and/or loss to the Works or any part thereof, and/or to any temporary works whatsoever, due to any reason, including floods, storm winds, etc., and Contractor shall repair the damage at its expense, as soon as possible, in a manner that after repairing the damage, the Works shall be in good condition and comply with all the Specifications, Equipment Specification and requirements set forth in this Agreement. Without derogating from the above, this Section shall also apply towards any damage, and/or injury and/or loss, caused by Contractor during the Warranty Period and/or Acceptance, while performing repair and/or inspection related works, for the purpose of complying with this Agreement.

8.13. Coverage of Works. The Contractor undertakes to prevent coverage or hiding of Works (or any part thereof), without the approval of the Company, that is to be covered or hidden in accordance with the Agreement and/or applicable law.

8.13.1. Upon completion of any applicable Works that require coverage, the Contractor shall send Company a 48 hours prior written notice to allow Company to check, examine and survey said Works before its covering or hiding and to provide any instructions before approving coverage. Contractor shall provide a survey by a certified surveyor and shall ensure its verification in case there is an underground infrastructure, all of which shall be a precondition for approval by Company.

8.13.2. In the event that the Contractor covers any Works not in compliance with the instructions of the Company, or without sending the Company due notice as mentioned above, the Contractor shall expose and uncover such Works for inspection upon requirement by the Company within the time frame set forth by

Company and shall recover it promptly after coverage, all at the expense of the Contractor and without delay of the Schedule.

- 8.13.3. In the event that Contractor refuses or neglects to comply with Company's requests or instructions mentioned in Section 8.13 above, the Company shall have the right to employ contractors and/or workers on Contractor's expense for the purpose of exposing, uncovering and covering any Works.
- 8.14. Contractor shall throughout the term of this Agreement maintain offices and storage facilities containing required tools and spare parts in Tel Aviv or any other area pre-approved in writing by Company. Contractor shall attend meetings with applicable third party contractors providing works at the Site, at Company's request. Contractor shall: fully cooperate with such third party contractors, provide such contractors with technical and other reasonable assistance at Company's discretion, including without limitation as set forth in Chapter 12.7 of the SOW. Contractor shall be responsible for the System and Field Equipment during any such contractors' works (including without limitation the supervision, coordination, safety and safeguarding thereof). In the event of any dispute between the Contractor and any such Company third party contractors the dispute shall be determined by the Company at its sole discretion.

## **9. Acceptance**

- 9.1. The Contractor shall conduct Submission Tests in respect of the Project in accordance with the SOW and the Schedule and provide Company with a signed certificate confirming successful completion of the Submission Tests in accordance therewith.
- 9.2. The Project, including each applicable milestone set forth in the Schedule and any and all payment obligations herein, are and shall be subject to final Acceptance by Company, following acceptance testing to be carried out in respect of each of the Project components and milestones. Acceptance testing (including trial operation) shall be carried out by Company with the active assistance of Contractor in accordance with the ATP and SOW, to verify Project compliance with Specifications, Equipment Specifications and SOW and the terms of this Agreement. Company may instruct Contractor to continue to the next applicable milestone set forth in the Schedule regardless of Acceptance, without derogating from Contractor's obligations herein and from Acceptance being a pre-requisite to payment obligations.
- 9.3. As part of the Acceptance process, Company shall provide Contractor with a list of Defects that do not meet the Specifications, Equipment Specifications, and/or SOW, respectively. Contractor shall cure the Defects within the timeframe set forth in the ATP and re-submit the System, Field Equipment and/or other Project component for re-testing, in any event, by no more than 14 days from receiving Company's list of Defects. Acceptance tests will, if required by Company, be repeated as many times as is reasonably necessary. All costs incurred due to any rejection and/or repetition of the tests shall be borne by Contractor. Additional Acceptance tests shall not act as a waiver of Contractor's obligations to meet the Schedule and/or any milestones detailed therein and in the SOW. If, after three (3) repeated Acceptance tests, no Acceptance occurs, then Company may at any time upon fourteen (14) days prior written notice, notwithstanding anything to the contrary in this Agreement, terminate this Agreement, in whole or in part, without derogating from any rights or remedies available to Company at law, contract or otherwise.
- 9.4. Upon conclusion of the Warranty Period as set forth in Section 10.2 below Company shall conduct post warranty acceptance tests in respect of the Project as set forth in the Schedule and Specifications. Sections 9.2 -9.3 above shall apply in respect of such post warranty acceptance tests, *Mutatis Mutandis* and Acceptance in this respect shall be defined as "**Final Post Warranty Acceptance**".
- 9.5. Until Company provides its written Final Post Warranty Acceptance approval in accordance herewith, the Warranty Period shall be deemed to have been extended and all

Contractors obligations in connection therewith shall continue to apply without additional compensation.

- 9.6. For the sake of clarity the processes, planning, testing and other terms and conditions (including without limitation Acceptance) set forth in this Agreement (including without limitation Sections 3 and 9) shall also apply respectively to any Optional Project Segments (to the extent exercised by Company pursuant to any Purchase Order) and to any System Upgrades and Change Requests.

#### **10. Compliance Warranties**

- 10.1. Contractor undertakes that the System and Field Equipment shall be of excellent quality and standard and comply with the requirements of the Israeli Standards Regulations, and the Standards Law 5713-1953, and/or Israeli Law requirements as such exist and will exist at any time.
- 10.2. Contractor undertakes, warrants and represents that the Project, including without limitation System, Field Equipment and services, will, for period(s) of twelve (12) months from date of each applicable Acceptance: (i) perform in accordance with the Specifications, Equipment Specifications, SOW and related documentation provided by Contractor and Field Equipment manufacturer (and will achieve any function described therein), (ii) be free from defects in materials, workmanship or design; and (iii) be free from viruses, worms or any code which has the effect of disrupting, disabling, harming, or otherwise impeding in any manner whatsoever ("**Warranty Period(s)**"). Any replacement or repaired component will be warranted for the remainder of the original Warranty Period or six months, whichever is longer. Notwithstanding the foregoing, to the extent that the Field Equipment manufacturer warranty period exceeds the foregoing Warranty Period, then the Warranty Period in respect thereof shall be extended accordingly. Contractor hereby assigns and transfers to Company all warranties provided to Contractor with respect to Field Equipment and other Project items, or any portion thereof, and represents and warrants that such warranties are fully assignable to Company.
- 10.3. Without derogating from the foregoing and/or from any rights and remedies available to Company, Contractor shall during the Warranty Period and until Final Post Warranty Acceptance occurs: repair and/or replace any Defect and provide all Works required in connection therewith, including preventive maintenance, and all Supports Services and SLA, at Contractor's expense, to Company's satisfaction. Contractor shall be solely responsible for all costs, fees and expenses in connection with fulfilling its obligations under this Section 10, including all labor, material, parts, shipping, taxes, customs and other costs, fees and expenses arising from, among other things, the removal, repair, replacement, reinstallation, inspection, shipping and testing of any defective or nonconforming items. If any such costs, fees or expenses are incurred or paid by Company, or if Company incurs increased costs as a result of Contractor's breach of warrant, Company may charge and bill such costs to Contractor, and may offset such costs against amounts otherwise due to Contractor. All costs reimbursable to Company under this Section 10 shall be due and payable on demand.
- 10.4. Contractor shall be responsible for detecting any Defect that arises during the Warranty Period and until Final Post Warranty Acceptance occurs. Upon detecting a Defect and/or upon receipt of any notice from Company, Contractor shall immediately commence corrective action to correct the Defect and shall proceed to prosecute such corrective action with all due diligence, at its own cost, in accordance with any instructions of the Company. During the Warranty Period and until Final Post Warranty Acceptance occurs the Contractor shall provide the Support Services free of charge.
- 10.5. If the Contractor fails to remedy a Defect within the applicable time frame, the Company may execute or procure the execution of the remedial work at the Contractor's risk and

cost. The documented costs incurred by the Company in remedying the Defect plus an additional 12.5%, shall be due to the Company from Contractor upon demand.

- 10.6. If a Defect is such that repairs cannot be expeditiously carried out on the Site, the Contractor may, with the consent of the Company, remove from the Site for the purposes of repair any part of the Works which is Defective. Contractor shall bear all costs relating to such removal, including the cost of insurance.
- 10.7. Contractor shall use best efforts to ensure that any Works conducted under the warranty and Support Services do not interfere with the ongoing operation or maintenance of the System and Field Equipment. In the event that the Contractor or its Subcontractor causes any damage to the System and/or Field Equipment as a result of its Works in remedying any Defect, the Contractor shall repair such damage at its own cost.
- 10.8. In addition to the Contractor's obligation specified herein, Contractor shall make available to the Company, at no cost to the Company, a skilled service engineer in Israel approved by Company in writing, for entire duration of the Warranty Period (hereinafter - the "**Service Engineer**"). The Service Engineer shall devote as many hours as shall be necessary for the purpose of providing Support Services to the Company, but in any event no less than 40 hours per week. The cost of the Service Engineer including its on-Site presence when necessary shall be borne by the Contractor.
- 10.9. Contractor access rights to the Site, System and/or Works records require Company prior approval, however, to the extent that any such access rights require any other approval and/or permit from any third party including any Government Agency, Contractor shall be solely responsible for promptly obtaining such approval. Such right of access shall be during the Company's normal working hours. Access shall also be granted to any duly authorized representative of the Contractor whose name has been communicated in writing to and has been approved as a person to whom access shall be allowed as aforesaid by the Company. Any right of access pursuant to this Section 10.9 shall be exercised having full regard to the Company's operational, safety, and environmental requirements, and in consultation with the Company, and with prior written notification to the Company of any such access made to any part of the Site and/or System and/or Field Equipment and/or records of the Works.
- 10.10. Contractor shall indemnify the Company for all claims, damages, losses and expenses (including legal fees and expenses) in respect of (a) bodily injury, sickness, disease or death, of any person whatsoever; and (b) damage to or loss of any property, real or personal, to the extent that such damage, loss or expense arises out of, in the course of or by reason of the actions or omissions of the Contractor in the remedying of Defects.
- 10.11. Without limiting Company's rights as specified elsewhere in this Section 10, if a Project item is discovered to be defective or nonconforming at a statistically higher rate than thirty percent (30%) of such item delivered in any three consecutive months, then, without derogating from any additional rights and remedies, at no cost to Company and at Company's option, Contractor will (i) replace at Contractor's expense all such items (100%) from the same type and series; (ii) extend the warranty period for all replaced items for no less than an additional twelve (12) months from the date on which the warranty for the Items would otherwise expire, and/or (iii) compensate Company for all expenses associated with correcting the defect/nonconformance, including field support, logistics (freight, duties), advanced exchange of a refurbished part, refurbishment, and any required upgrade costs, including qualification.

## **11. Support Services**

- 11.1. Following the Warranty Period and Final Post Warranty Acceptance, Contractor shall provide Company with Support Services which Company is entitled to request annually. Support services include Updates and Upgrades of the System and Field Equipment, repair and replacement of any non-conformities with Specifications and Equipment

Specifications, providing spare parts and installation and integration thereof, preventative maintenance, ongoing maintenance activities as per Field Equipment manufactures instructions, onsite support, all Warranty Period services set forth herein (which shall also apply throughout the Maintenance Periods) and all other services, as further described in Chapter 12 of the SOW and in the SMP **Exhibit J** of this Agreement, all in accordance with the availability, schedule, response and resolution times set forth therein ("**Support Services**"). The installation and implementation of any Updates and Upgrades shall be subject to planning, testing, ATP, Company's Acceptance and all of the terms and conditions as set forth in this Agreement. Updates and Upgrades shall be provided promptly upon availability thereof and also, without limitation, to the extent required to keep the System and Field Equipment current and compatible with Updates and Upgrades of third party software and software platforms, any Optional Project Segments and/or Change Requests exercised.

- 11.2. Support Services shall include compliance with the SLA and the credits mechanism set forth therein.
- 11.3. Support Services shall be available for a period of ten (10) years after end of the applicable Warranty Period and Final Post Warranty Acceptance for each applicable portion of the Project, respectively ("**Maintenance Period(s)**"). Company may decide whether or not to receive annual Support Services, at any given time, at its discretion, including without limitation whether to receive partial Support Services (e.g. in respect of the System or Field Equipment separately). Company shall be entitled to renew its subscription for Support Services at any time, by providing Contractor with a Purchase Order(s), if any. Solely in respect of System Support Services (with the exception of Field Equipment) a re-instatement fee shall be required in the event of such renewal, an amount not to exceed the retroactive payment of the Support Service Fees for the period during which Company chose not to receive the Support Service coverage. No re-instatement fees shall be required for renewal of Support Services for the Field Equipment.
- 11.4. Under no circumstances whatsoever shall any "end of life" status relating to the System and/or Field Equipment, any components thereof and/or any Project deliverables, derogate from any or all of Contractors obligations in this Agreement.

## **12. Documentation**

- 12.1. Contractor shall provide the Company with all final versions, and if requested by the Company any prior version existing, of the complete, accurate and detailed Documentation in accordance with the Schedule, Specifications, Equipment Specifications and SOW. The System operator manual and training shall be provided in Hebrew and all other Documentation and all correspondence with Company shall be provided in English and no other additional language (other than Hebrew if so desired by Contractor or required in the Exhibits hereto).
- 12.2. During the Warranty Period and as part of the Support Services Contractor shall furnish Company, free of charge, with all updates of Documentation including in connection System operation documentation pursuant to any software corrections, additions, modifications, enhancements, upgrades and new releases.
- 12.3. Company shall have the right, at no additional charge, to reproduce the Documentation solely for the use of Company and/or the third parties listed in Section 14.1 below.
- 12.4. Additional terms and conditions regarding documentation are detailed in Chapter 3 of the SOW hereto.

## **13. Training Services**

- 13.1. Contractor undertakes to train Company's employees, representatives and subcontractors and parties listed in Section 14.1 below, in accordance with Chapter 9 of SOW hereto. Such training services will include instruction in the use, operation and maintenance of the

System and Field Equipment, and detailed explanations and training regarding the software functionality, structure and components thereof. Contractor acknowledges that one important purpose of the aforesaid undertaking is to ensure Company's independent set up, configuration and operation of the System and Field Equipment. The training will be conducted at Company's premises unless otherwise agreed by Company in writing. All costs associated with the training, including travel and lodging for Contractor's instructors, will be borne by the Contractor.

- 13.2. Training and related training documentation shall be provided in the Hebrew language, or if required by the Company in English.

#### **14. System License, Escrow and IP**

- 14.1. **System License.** Contractor hereby grants Company, its affiliates and/or any third party acting either on their behalf and/or for the purpose of the Project and/or Ayalon Highway (including without limitation: the State of Israel, Tel Aviv Jaffa Municipality, Metropolis Transport Authority and any Government Agency): a non-exclusive, irrevocable, perpetual, fully paid up, royalty free, transferable (upon assignment) and sublicensable (to the foregoing licensee's contractors acting on its behalf) license to use, operate, maintain, repair, copy, adjust and modify the software included in the System and/or Project and the Documentation in any location(s) in Israel. Company shall be entitled to make copies of the System software as required for use under the license terms set forth herein including back-up copies.
- 14.2. The foregoing license is not limited including without limitation by: number of users and/or concurrent users and any amount of users may use the System at any given time on any number of devices, processors, CPUs including without limitation multicore processors and devices. The System software may be moved (in Israel) to different CPUs, processors, cores or any other physical or virtual device at any time and from time to time, all the foregoing with no additional license fees.
- 14.3. **Off-the-Shelf License.** The System does not contain any third party software other than the off-the-shelf software set forth in **Exhibit I** hereto. The third party software listed in **Exhibit I** is sufficient for all purposes required for the Project as set forth in this Agreement and no further third party software is required. Contractor shall secure and obtain on behalf of the Company all the perpetual, irrevocable licenses and rights for third party software the set forth in this Section 14.3 and any third party software required pursuant to any Updates and/or Upgrades and/or Optional Project Segments, all as required for Company to enjoy its rights under Section 14.1 above and this Agreement, at Contractor's expense, including, without limitation, payment by the Contractor of all license fees and/or royalties in connection therewith, if applicable, including for the purpose of operation, maintenance, repair, and adjustments of the System. To the extent that any third party software licensed shall no longer be available, Contractor shall provide Company a six months prior written notification and shall at its expense promptly replace such third party software with equivalent software, approved by Company, that complies with all the terms and conditions of this Agreement.
- 14.4. **Escrow.** The parties hereto agree that [*Israeli escrow agent agreed to by Company to be inserted upon Effective Date*] shall act as escrow agent in connection with the Source Code for the purposes set forth herein ("**Escrow Agent**"). Within ten (10) Business Days after the Effective Date the parties will enter into an escrow agreement acceptable to Company (including without limitation sufficient levels of verification) in strict compliance with the terms hereof and governed by Israeli Law ("**Escrow Agreement**"). Within five (5) days after the Acceptance of the System or any part thereof, Contractor shall deposit into escrow with the Escrow Agent, under the terms of this Agreement and the Escrow Agreement, the Source Code, in such media as acceptable to Company, and shall update such Source Code to include all modifications, improvements, updates and upgrades thereto and to bring it current - upon each Change Request, Acceptance and new release

but in any event not less than once per calendar quarter. Upon a Release Event (as hereinafter defined) Company and its designees shall obtain and Contractor hereby grants a perpetual, irrevocable, nonexclusive, nontransferable fully paid, royalty free license, with the right to sublicense (solely to contractors acting on behalf of Company), to use, modify, enhance and develop the Source Code as required to continue to enjoy its rights under this Agreement in respect of the System, including for the purpose of the continued receipt of the Support Services. **Release Event:** (a) Contractor materially breaches its obligations under this Agreement and such breach is not remedied within (30) days after written notice thereof from Company; (b) Contractor materially fails to provide Support Services under the terms hereof and such failure is not remedied within twenty (20) days after written notice thereof from Company; (c) Contractor (and/or its licensor) becomes the subject of any Bankruptcy Event. All escrow related fees shall be borne by Contractor. Any dispute regarding the occurrence of a Release Event shall be determined solely by the Board of Directors of Company. Only the Source Code of third party off-the-shelf software set forth in Exhibit I hereto, to the extent explicitly pre-approved in writing by Company shall be excluded from deposit into escrow with the Escrow Agent, as set forth above.

Provided that Contractor so notifies Company in writing, within five (5) days after the Effective Date, Contractor shall deposit the Source Code with Company, in lieu of the deposit with the Escrow Agent as set forth in this Section 14.4, and the same terms and conditions set forth above shall apply in respect thereof, including in respect of the applicable media, updates, rights granted to Company and Release Event and further provided that Company or any third party on its behalf may conduct verification of the Source Code at levels at Company's sole discretion.

- 14.5. Reservation of Rights. All Intellectual Property Rights existing prior to the effective date of this Agreement, or developed or acquired within or outside the frame of this Agreement, shall remain with the Party which owned such rights. Neither Party shall, by virtue of this Agreement, acquire ownership of Intellectual Property Rights of the other Party existing on the Effective Date hereof. Notwithstanding the foregoing it is hereby agreed that ownership of Intellectual Property Rights with respect to any development created specifically for Company shall be owned by Company and Contractor shall provide Company all tangible assets and Documentation representing such Intellectual Property Rights upon their creation, including without limitation the corresponding Source Code.

## **15. Changes and Supplements**

- 15.1. Company shall have the right to request, in writing, that changes, enhancements and/or supplements shall be made to the Project in whole or in part including without limitation to the Specifications and/or Equipment Specifications, System, Field Equipment and/or scope of Works ("**Change Request**"), and Contractor shall act according to such Change Requests on time schedules and at prices that shall be determined by the Company in accordance with the first of the following to apply: (i) if Exhibit K hereto contains pricing for the same or materially similar items as those in the Change Request – then the pricing shall be determined by the Company based on Exhibit K hereto, on a pro-rated basis; (ii) if the Company determines that the same or similar pricing for the Change Request items appears in the pricelist for road and bridge building works as published by Netivei Israel, National Transport Infrastructure Company Ltd. ("Netivy Israel Pricelist") – then the pricing for the Change Request shall be in accordance with the Netivy Israel Pricelist; (iii) if the Company determines that the same or similar pricing for the Change Request items appears in the Dekel Building Cost Data Manual ("Dekel Pricelist") then the pricing for the Change Request shall be in accordance with the Dekel Pricelist less a 15% deduction; or (iv) if no such pricing exists the Contractor shall provide Company with a pricing analysis for its review, which pricing shall apply solely to the extent approved in writing by Company.



- 15.2. Contractor shall inform Company in advance and in writing, within fourteen (14) days as of Company's Change Request: as to all the costs involved in the performance of such Change Request; and provide Company with a detailed description of the works, deliverables; the schedule and timeframe for completion of such Change Request, anticipated impact on the entire System and Field Equipment, detailed pricing (including material and manpower) and all documentation and information as required by Company in connection therewith.
- 15.3. Contractor shall not begin the performance of any Change Request before Company has submitted Company's then current Change Request order form. Fulfillment of each Change Request shall be subject to the terms and conditions of this Agreement, including without limitation: testing, planning and Company approvals and Acceptance (including as detailed in Sections 3 and 9 above). All deliverables in connection with any Change Request shall be deemed as part of the Project and subject to the terms of this Agreement.
- 15.4. For the sake of clarity, any Change Requests materially within the scope of the Equipment Specifications and/or Specifications, Works and SOW and/or required as remedial works pursuant to a Defect and/or as Updates and/or Upgrades and/or required for Acceptance and/or for compliance with the terms of this Agreement and/or daily works (as set forth in Chapter 00.32 of the SOW) shall not be deemed as a Change Request and shall not require additional payment. In the event of any *bona fide* controversy between the Parties whether a certain task should be considered as a Change Request, such controversy will not withhold or delay the performance of such action by Contractor, to the extent required by Company in writing despite the controversy, provided that any non-disputed amount will be duly and timely paid. Exercise of Optional Project Segments in whole or in part (in any quantities whatsoever) shall not be deemed as a Change Request even if entitled as such. Without derogating from the foregoing, Change Requests may be required at any given time.
- 15.5. For any and all changes, Company retains the right and option to reject a Contractor's proposal in connection with any Change Request, and to implement the change through a third party in which case Contractor shall then cooperate with any such third party including as required to provide integration services and transfer to maintenance.

## **16. Pricing and Terms of Payment**

- 16.1. Turnkey Project Consideration. As full and final consideration for fulfillment of all Contractor's obligations and all rights and licenses granted herein in connection with the Project Segment Company shall pay Contractor the amount of [to be completed in final draft in accordance with the Tender], to be paid in accordance with the milestones set forth in **Exhibit K**, subject to Acceptance.
- 16.2. Optional Project Segment Consideration. As full and final consideration for fulfillment of all Contractor's obligations and all rights and licenses granted herein in connection with the Optional Project Segments, if and to the extent exercised by Company via a Purchase Order(s), Company shall pay the Contractor the amounts set forth in such Purchase Order(s) (determined by Company in accordance with Exhibit K), subject to Acceptance of the milestones set forth such Purchase Order(s).
- 16.3. Support Services Fees. As full and final consideration for the Support Services, to the extent Company elects to receive such services, if any, after the applicable Warranty Period(s), Company shall pay Contractor support fees in the amount of: [to be inserted in final version in accordance with the Tender]% of the applicable consideration paid under this Agreement in connection with the items for which Support Services are elected by Company at its discretion ("**Support Fees**"). Support Fees, if elected by Company, shall be paid on a quarterly basis at the end of each calendar quarter for the preceding quarter. For the sake of clarity, to the extent that Company elected to receive Support Services in



respect of any Change Request ordered, the respective corresponding Support Fees shall only apply in respect of consideration paid for hardware and/or the Field Equipment included in such Change Request, if any, and shall not apply to any other consideration paid pursuant to such Change Request (without derogating from Supplier's obligation to provide Support Services in respect of the Change Request in its entirety including hardware and software components therein).

16.4. Final Consideration. The consideration set forth in this Section 16 constitutes the total and final consideration due to Contractor in consideration for all deliverables, services Works, obligations, rights and license in respect of the Project and/or set forth in this Agreement and except for the said consideration, unless expressly agreed otherwise by the Parties in writing, Contractor hereby warrants that Company shall not be required to pay Contractor and/or any third party any additional payments, fees, royalties, expenses and/or costs, with respect to the Project and/or this Agreement. The foregoing shall not apply to a Change Request. Payment to Contractor of any amount for any reason shall not, relieve Contractor from any of its obligations or responsibilities hereunder.

16.5. Delivery and Payment Terms

16.5.1. Delivery shall be DDP Incoterms 2000 terms. Title shall transfer to Company upon the earlier of: delivery or payment. Risk of loss shall remain with Contractor until final Acceptance, without derogating from Contractor's obligations under this Agreement including without limitation providing the Support Services during the Warranty Period(s) and the Maintenance Period.

16.5.2. All payments due under this Agreement shall be paid in New Israeli Shekels to the following Contractor designated Israel bank account in Israel: ***To be inserted in final draft***.

16.5.3. Payments are due, subject to the terms set forth in this Agreement, within ninety (90) days after the applicable payment due date as set forth herein, subject to Acceptance and subject to receipt of a duly issued invoice, provided, however, that payment due pursuant to final Acceptance of any final milestone in any applicable Purchase Order, shall be due within one hundred and fifty (150) days after such applicable payment due date, subject to such final Acceptance and subject to receipt of a duly issued invoice.

16.5.4. Other than VAT to the extent applicable by Law, prices and payments herein are inclusive of all taxes of any nature. Contractor will duly pay all applicable taxes or will supply appropriate tax exemption certificates in a form satisfactory to Company. If required to do so by law and only to the extent so required by the Israeli Tax Authorities and subject to Contractor's failure to provide Company with a certificate of exemption from withholding tax Company shall withhold tax from any payments due under this Agreement.

16.6. Link to Exchange Rate

16.6.1. All Prices set forth in the Agreement are linked to the exchange rate, as defined below, which shall be calculated according to the last exchange rate known on the last date determined for the submission of the Tender's proposals and according to the last exchange rate known on the date of issuance of invoice.

16.6.2. The exchange rate for the purpose of the Agreement is an exchange rate composed of: forty percent (40%) of the Israel consumer price index as published by the Israel Central Bureau of Statistics; thirty percent (30%) of the representative exchange rate of the USA dollar; and thirty (30%) of the representative exchange rate of the Euro, all as published by the Bank of Israel.

**17. Guarantees**

- 17.1. Project Performance Guarantee. To ensure any and all undertakings of Contractor, its Personnel and Subcontractors, upon the Effective Date Contractor shall obtain and deliver to Company, an unconditional bank guarantee issued by a recognized Israeli banking institution, payable to Company according to the wording set forth in Exhibit L hereto which shall remain in full force and effect at least until the Final Post Warranty Acceptance of the entire Project in a sum equal to: ~~ten-eight~~ percent (~~84~~%) of the total consideration payable for the entire Project Segment (not including VAT) which sum shall apply from the Effective Date until the beginning of the Warranty Period (following Acceptance); and thereafter in a sum of five percent (5%) of the total consideration payable for the entire Project Segment (including VAT) until the Final Post Warranty Acceptance of the entire Project ("**Performance Guarantee**"). The Performance Guarantee shall serve as security and a guarantee for all of the Contractor's obligations hereunder, including, but not limited to, material breach and liquidated damages for delays. The Performance Guarantee shall be renewed at least thirty (30) days prior the date on which it is scheduled to expire, and shall remain in full force and effect at least until the end of the Warranty Period (following the Final Post Warranty Acceptance of the entire Project). The Performance Guarantee shall be extended proportionally to any delay in the execution of the Works for any reason. Failure to extend as aforesaid shall be sufficient reason to forfeit the Performance Guarantees. Additional Performance Guarantees shall be provided in respect of each Change Request under the above terms.
- 17.2. Optional Project Segments Performance Guarantee. To ensure any and all undertakings of Contractor, its Personnel and Subcontractors in connection with the Optional Project Segments, upon Company issuing a Purchase Order, Contractor shall obtain and deliver to Company unconditional bank guarantees issued by a recognized Israeli banking institution, payable to Company according to the wording set forth in Exhibit L hereto in a sum equal to ~~ten-eight~~ percent (~~40~~%) of the total consideration payable for the Optional Project Segments exercised by Company under all Purchase Orders not including VAT ("**Optional Project Segment Performance Guarantee**"). The Optional Project Segment Performance Guarantee shall serve as security and a guarantee for all of the Contractor's obligations hereunder in connection with the Optional Project Segment including, but not limited to, material breach and liquidated damages for delays. The Optional Project Segment Performance Guarantee shall be renewed at least thirty (30) days prior the date on which it is scheduled to expire, and shall remain in full force and effect at least until the end of the Warranty Period (following the Final Post Warranty Acceptance of the Optional Project Segment). The Optional Project Segment Performance Guarantee shall be extended proportionally to any delay in the execution of the Works for any reason. Failure to extend as aforesaid shall be sufficient reason to forfeit the Performance Guarantees.
- 17.3. Maintenance Guarantee. No later than the final day of effect of the aforesaid Performance Guarantee and Optional Project Segment Performance Guarantee or extended guarantee as the case may be, Contractor shall deposit with Company an unconditional bank guarantee of identical language the existing Performance Guarantee and Optional Project Segment Performance Guarantee or extended guarantee as the case may be, in the amount of ~~ten~~ five percent (~~40~~%) of the Support ~~Fees-Fees~~ (including VAT) in effect for the entire Maintenance Period.
- 17.4. Expedited Payments Guarantee. Contractor may request to expedite payments set forth hereunder. Company may in its discretion agree to do so against receipt of an unconditional bank guarantee issued by a recognized Israeli banking institution, payable to Company according to the wording set forth in Exhibit L hereto in a sum equal to such expedited payments, which shall remain in full force and effect at least until the applicable payment due date and Acceptance of the applicable payment milestone as set forth in this Agreement.
18. Confidential Information Contractor shall comply with the provisions of the Non-Disclosure Agreement attached hereto as Exhibit O.

## 19. Indemnification

- 19.1. Contractor shall defend, indemnify and hold Company, its affiliates, the licensees (set forth in Section 14.1 above) and their respective officers, directors, employees, shareholders, customers, agents, successors and assigns ("**Indemnified Parties**") harmless from and against any and all damages, liabilities, claims, settlement and losses arising out of, resulting from or in any manner related to: (i) injury, bodily harm, death or damage to property in connection with the Project, including without limitation the Works; (ii) employment issues in respect of an employee/Personnel of Contractor and /or its Subcontractors (such as but not limited to salary, social security, health insurance); (iii) breach of this Agreement, including without limitation breach of any representations and/or warranties set forth herein; (iv) any acts, errors or omissions by Contractor its Personnel and/or Subcontractors; (v) any claim of product liability in connections with the System and/or Field Equipment; or (vi) any claim which alleges that the Project, the System and/or Field Equipment (or any components thereof) including without limitation the use, manufacture, import, service, support, enhancement, modification design and/or construction thereof, infringe upon, misappropriate and/or violate any Intellectual Property Rights or other proprietary rights of persons, firms or entities who are not parties to this Agreement.
- 19.2. In the event of any such claim set forth in Section 19.1 above, Company shall (i) promptly notify Contractor and (ii) at Contractor's expense, reasonably cooperate with Contractor in the defense of such claim. Company may employ counsel at its own expense to assist it with respect to any such claim; provided, however, that if such counsel is necessary because of a conflict of interest of either Contractor or its counsel or because Contractor does not assume control, or provide sufficient defense, Contractor will bear the expense of such counsel.
- 19.3. If the use, manufacture, import, service, support or use of any Project component, including with limitation the System and/or Field Equipment and any part thereof, is enjoined or becomes the subject of a claim of infringement, Contractor shall obtain such licenses, or make such replacements or modifications, as are necessary to the continue the manufacture, use or use thereof without infringement and in compliance with the Specifications and/or Equipment Specifications, as the case may be. If Contractor is unable to achieve either of the foregoing within thirty (30) days (or such longer period as determined by Company in good faith) after the holding of infringement or the entry of the injunction, as applicable, Contractor shall promptly refund to Company the consideration paid in connection therewith. Nothing in this Section shall limit any other remedy of Company.

## 20. Limitations of Liability

- 20.1. WITH THE EXCEPTION OF CONTRACTOR'S LIABILITY UNDER SECTIONS 18 AND 19 ABOVE, UNDER NO CIRCUMSTANCES WILL INDEMNIFIED PARTIES BE LIABLE UNDER ANY CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INCIDENTAL OR CONSEQUENTIAL DAMAGES OR LOST PROFITS IN CONNECTION WITH THE SUBJECT MATTER OF THIS AGREEMENT, EVEN IF THE INDEMNIFIED PARTIES AND/OR CONTRACTOR WERE ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS SECTION DOES NOT LIMIT COMPANY'S AND/OR CONTRACTOR'S LIABILITY FOR BODILY INJURY OF A PERSON, DEATH OR PHYSICAL DAMAGE TO PROPERTY ARISING FROM FRAUD OR WILLFUL MISCONDUCT OF THE COMPANY AND/OR CONTRACTOR.
- 20.2. INDEMNIFIED PARTIES LIABILITY UNDER, ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL AMOUNT PAID TO CONTRACTOR UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PERIOD PRECEDING THE EVENT THAT GAVE RISE TO THE CLAIM.

## 21. Insurance

- 21.1. Without derogating from Contractor's liability and obligations pursuant to the Agreement and/or under any applicable law, Contractor shall effect and maintain including per the Project Segment and per each Optional Project Segment - beginning upon each applicable initial Purchase Order until each applicable Final Post Warranty Acceptance, at Contractor's expense, Contractors All Risk Policy, covering all the Works, issued by a reputable Israeli Insurance Company, in the name of Contractor, the Sub-Contractors (of any tier) and Company, all as detailed in the insurance certificate as set forth in **Exhibits M1** hereto.
- 21.2. **Additional Insurance Coverage:**  
Without derogating from Contractor's liability and obligations pursuant to the Agreement and/or under any applicable law, in addition to the foregoing insurance the Contractor shall effect and maintain the following insurances:
- 21.2.1. From the initial Purchase Order and during the entire term of this Agreement an **Employers' Liability Insurance** in respect of the non-Israeli employees employed by Contractor.
- 21.2.2. From the initial Purchase Order and during the entire term of this Agreement Third Party Liability Insurance and Employers Liability Insurance on an annually renewable basis, as specified in Exhibit M2 hereto.
- 21.2.3. From the date of initial Purchase Order and through all periods in which Contractor and/or the Company may be held legally liable, provided that such period shall not be less than seven (7) years or the term of this Agreement, whichever is longer, a **Product Liability Insurance** and **Professional Liability Insurance** on an annually renewable basis, as specified in **Exhibit M2** hereto.
- 21.2.4. Any and all vehicles that will be brought to the Project/Site by the Contractor and/or anyone acting on its behalf will be covered, throughout the entire terms of this Agreement and any subsequent period, by **Compulsory Insurance** (for bodily injury) as required by law, **Comprehensive Property Insurance** for the vehicles and also **Third Party (vehicle) Insurance** covering property damages and also bodily injuries that there is no legal requirement to insure, with a limit of liability of not less than the standard limit of liability that is customary at the time of arranging or renewing such insurance, as the case may be.
- 21.3. The Contractor hereby waives any right for compensation and/or indemnification from the Company in respect of any loss or damage covered by the aforementioned insurances. The Contractor further undertakes to ensure that each of the insurances set out above (except for compulsory insurance) shall include a provision according to which the insurer waives the right of subrogation against the Company and/or anyone acting on its behalf, other than against a person who has caused damage with malicious intent, and that the insurance is extended to indemnify the Company and/or anyone on its behalf for their liability and/or for their liability in respect of acts and/or omissions of the Contractor and/or anyone acting on its behalf, subject to a cross-liability clause.
- 21.4. Contractor undertakes to ensure that all Subcontractors engaged in the Project, or in connection therewith, shall effect and maintain all required insurances.
- 21.5. Contractor undertakes to cooperate with Company in the investigation of all damages, including the exact circumstances surrounding the occurrence of the said damages. Contractor undertakes to strictly comply with, and fulfill, all of the provisions of the Insurance policies.
- 21.6. Contractor shall at all times comply with Israeli National Insurance Law 5755-1995 and all regulations and orders therein so as to ensure that all Israeli personnel employed or engaged by or on behalf of the Contractor or any sub-contractor (of any tier) in the

performance of the Works and the making good of any defects during the Warranty Period and Support Services, shall be entitled to the full benefits due under such law. The foregoing shall not apply with respect to any non-Israeli personnel engaged as aforesaid, in respect of whom the Contractor undertakes to effect and maintain National Insurance or Workmen's Compensation Insurance as required under the laws applicable to the employment of such persons. Furthermore the Contractor shall procure adequate and suitable travelers insurance (including medical, hospitalization and repatriation expenses) on behalf of all non-Israeli personnel, whilst sojourning in Israel.

- 21.7. Contractor confirms and acknowledges that it is aware that the extent of coverage and limits of liability afforded under the Insurance requirements represent a minimal insurance requirement and Contractor may effect, at his sole expense, additional or excess coverage as he may deem fit. Contractor declares and acknowledges that neither Company nor any one acting on its behalf shall bear any liability towards Contractor with regard to the extent of the coverage (or lack thereof) under the Insurance and expressly as to the limits of liability afforded therein and Contractor hereby waives all right to raise any demand or claim whatsoever in respect thereof. For the avoidance of doubt, it is expressly agreed that the Contractor shall bear all deductibles applicable under the Insurance
- 21.8. If and to the extent that any of the Insurances taken out or to be taken out in connection with the Project are cancelled or are subject to restrictions such as additional exclusions and/or increased deductibles and/or increased premiums by reason of manufacturing, design or other defects in the System and/or Field Equipment or the operating history of Projects similar to the Project contemplated in this Agreement, Contractor shall indemnify Company against any increased costs Company incurs by reason of obtaining and maintaining such insurances and, if any such insurance is or becomes unavailable for the same reasons, Contractor shall indemnify Company against all costs, expenses and losses incurred by Company as a result of such insurance being unavailable.
- 21.9. The issuance of the aforesaid Insurance policies shall not limit or derogate in any way from Contractor's liability or obligations under this Agreement and/or at law.
- 21.10. If Contractor fails to take out the Insurance policies as required above, Company, in its sole discretion, may hold back amounts due to the Contractor and/or pay the premium for said policies in lieu of Contractor, and charge Contractor for all direct and indirect costs.
- 21.11. Contractor shall provide Company with the Certificates of Insurance (Exhibits M1 and M2 and all other applicable certificates of insurance complying with the foregoing) by no later than seven (7) days before commencement of the Works, signed by its insurers. However, the initial signed Exhibit M1 shall be provided upon the Effective Date hereof.

## **22. Remedies and Reliefs**

- 22.1. Without derogating from any relief and/or remedy the Company may have under any law and/or agreement, the Company may act as follows, alternately or cumulatively, whether during the Term of this Agreement or during the Warranty Period, in the event of Contractor's breach of its obligations herein:
- 22.1.1. Temporarily or permanently discontinue the Works, in whole or in part, to Company's own discretion.
- 22.1.2. Assign the Works, or any part thereof, to a different contractor.
- 22.1.3. Enter into the Site and seize any structure, whether temporary or permanent, materials and tools belonging to the Contractor and/or in its possession, and use them for the continuing of the Works.
- 22.1.4. Sell the tools and/or materials and/or tools at the Site for the purpose of collecting sums owing by the Contractor.

- 22.1.5. Clear the Site of any materials and/or tools belonging to the Contractor and store them in appropriate storage places at the Contractor's expense without incurring any liability.
- 22.1.6. It is clarified that the Contractor shall bear any and all expenses incurred or that shall incur in connection with the performance of any of the aforementioned actions, including expenses due to transportation, insurance, storage and/or auction.

### **23. Term and Termination**

- 23.1. **Term.** This Agreement shall be effective from the Effective Date, and shall remain in force until the last to expire of the Maintenance Periods (then in effect or that are to come into effect) ("**Term**"), unless otherwise terminated as provided herein. This Agreement may be renewed for additional successive one-year periods after the initial Term, upon mutual written agreement of the parties.
- 23.2. **Termination.** This Agreement may be terminated by Company for cause immediately upon the occurrence of and in accordance with the following:
- 23.2.1. **Insolvency Event.** Company may terminate this Agreement by delivering written notice to the Contractor upon the occurrence of any of the following events: (i) a receiver is appointed for Contractor or its property; (ii) Contractor makes a general assignment for the benefit of its creditors; (iii) Contractor commences, or has commenced against it, proceedings under any bankruptcy, insolvency or debtor's relief law, which proceedings are not dismissed within sixty (60) days; or (iv) Contractor is liquidated or dissolved.
- 23.2.2. **Change of Control.** If there is a change in ownership representing twenty percent (20%) or more of the equity ownership of Contractor (including each entity comprising the Contractor), Company may, at its option, terminate this Agreement upon written notice to Contractor.
- 23.2.3. **Default.** Company may terminate this Agreement effective upon written notice to the Contractor if the Contractor materially violates any covenant, agreement, representation or warranty contained in this Agreement or defaults or fails to perform any of its obligations or agreements hereunder, which violation, default or failure is not cured within thirty (30) days after notice thereof from Company stating its intention to terminate this Agreement by reason thereof.
- 23.3. **Termination for Convenience.** Company may terminate this Agreement at any time (in whole or in part) for its convenience, at its sole discretion, upon delivery of a sixty (60) days prior written notice to Contractor ("**Termination for Convenience**"). In the event of such Termination for Convenience (as opposed to termination for default), Contractor shall be entitled to receive and retain all payments made or payable by Company prior to the date of termination solely in respect of the then current applicable milestone completed until such termination according to the Schedule, but Company shall have no further payment obligation pursuant to this Agreement.
- 23.4. **Survival; Support After Termination.** Sections 1, 2.2, 2.3, 2.4, 3.4-3.7, 4-14, 16.3-16.6 (in respect of Support Services if exercised by Company, on a pro-rated basis), 17-22, 23.4-5, 24, 26-28 of this Agreement shall survive termination or expiration of this Agreement. Furthermore, in the event of any termination or expiration of this Agreement (i) all licenses granted to Company and its representatives shall remain in effect; and (ii) Contractor shall continue to provide Support Services to Company, at Company's request, at the rates set forth in this Agreement (on a pro-rated basis) for a minimum of ~~five-thirty (530) years-months~~ after termination or expiration.

23.5. **Consequences.** Upon termination of this Agreement, Company shall be entitled, at its sole discretion, to retain and continue to perpetually use any of the Contractor's equipment and tooling, which are on the Site. Immediately upon termination of this Agreement, Contractor shall transfer all the Works completed and/or in progress and all Field Equipment to Company. At the request of Company, Contractor shall also assign any assignable subcontracts to Company, at Company's discretion. The Contractor shall take all other necessary steps to ensure a smooth and complete turnover of the Project and all Works to Company, including without limitation: (i) delivery and transfer of the System, Field Equipment, spare parts, test equipment and all Documentation (including without limitation Specifications, designs, Source Codes and Confidential Information) to Company, in good working order and in compliance with the terms and conditions of this Agreement (any non-conformities or Defects shall be repaired/replaced at Contractor's expense); (ii) cooperation with Company's contractors and providing all reasonable assistance and information as required.

#### **24. Import Permits and Duties**

24.1. Contractor shall be responsible for the payment of all customs, duties, fees and taxes, import duties and/or import surcharges, withholding tax on imports and sales tax imposed on or as a consequence of the importation of any of the Field Equipment and any part of the Project into Israel. Contractor shall be also responsible for the payment of port fees and customs clearance charges related to the import of the Field Equipment or any part of the Project into Israel.

24.2. Without derogating from any of the Contractor's obligations to pay all customs, fees, taxes and all clearance charges related to the import of the Field Equipment and any part of the Project, Company hereby agrees to reasonably cooperate with Contractor to the extent necessary and sign the necessary documents in order to assist the Contractor with receiving certain tax exemption, and, to the extent necessary, to be registered as the importer of the Project, provided, however, that such cooperation shall not create any obligations on Company other than what is specifically set forth herein. Contractor shall, for the purposes of importation of any of the Works, Field Equipment and any part of the Project obtain all import permits, licenses, authorizations, certificates and approvals in a timely manner, including: the preparation, processing, and submission of all documentation to the competent authorities of Israel; the provision of all necessary explanations relating to the nature of the machinery and equipment and the manner in which it will be used; and any other matter specified in the relevant procedures required by the authorities of Israel as a condition to the granting or maintaining of any exemption from, or reduction of any taxes and import duties. Contractor shall consult with Company before submission of any documentation or the provision of any explanation to the authorities of Israel and Company shall give reasonable assistance to the Contractor therewith, at Contractor's expense, provided that such assistance shall not relieve the Contractor of its responsibilities referred to above.

25. **Force Majeure.** Neither party shall be liable to the other for delays or failures in performance resulting from causes unforeseeable and beyond the reasonable control of that party ("**Force Majeure Event**"). Without derogating from the foregoing, for the sake of clarity, any damages, failures and/or delays that may result from electricity failures/shortages (including without limitation any electrification project by Israel Railway Ltd.), level of wind-speed (beyond the permitted standard set forth in Sections 1.9 and 2.4 of Chapters 1 and 2 of the SOW), lightening and/or rodents, snakes (or other animals) are not and shall not be deemed as a Force Majeure Event and Contractor shall account for them in advance and at Contractor's sole expense. In the event that Contractor fails to comply with its obligations herein due to such a Force Majeure Event, Company may either: (i) terminate this Agreement or any part hereof as to such failure; or (ii) suspend this Agreement in whole or in part for the duration of the delaying cause. Contractor



shall resume performance under this Agreement immediately after the delaying cause ceases and, at Company's option, extend the then current term period for a period equivalent to the length of time the excused delay endured. Notwithstanding anything to the contrary, the following events are not and shall not be regarded as "Force Majeure Event": Any act or omission (including delay) of an associate or affiliate of the Contractor or its Personnel and/or Subcontractors; and/or any recommendation and/or instruction of any foreign governmental authority to its nationals to refrain from travelling to Israel and/or to leave Israel.

## **26. General**

- 26.1. Relationship of Parties. The Contractor serves as an independent contractor and there exists no employer – employee relation and/or any other relationship, including a partnership, franchise, joint venture, agency, fiduciary, master/servant relationship, or other special relationship between the Company and the Contractor and/or its employees and/or the employees of its Subcontractors and/or the employees of any entity acting on their behalf. Notwithstanding the foregoing, should it be determined, in contrast to the express intent of the parties, that an employer – employee relations did exist between the Company and the Contractor and/or its employees and/or the employees of the Contractor and/or the employees of its subcontractors and/or the employees of any entity acting on their behalf, the Contractor shall indemnify the Company in respect to any expense and/or damage caused as a result thereof. Neither party shall act in a manner which expresses or implies a relationship other than that of independent contractor, nor bind the other party.
- 26.2. No Third Party Beneficiaries. Unless otherwise expressly provided, no provisions of this Agreement are intended or shall be construed to confer upon or give to any person or entity other than Company and Contractor any rights, remedies or other benefits under or by reason of this Agreement.
- 26.3. Equitable Relief. Each party acknowledges that a breach by the other party of any confidentiality or proprietary rights provision of this Agreement may cause the non-breaching party irreparable damage, for which the award of damages would not be adequate compensation. Consequently, the non-breaching party may institute an action to enjoin the breaching party from any and all acts in violation of those provisions, which remedy shall be cumulative and not exclusive, and a party may seek the entry of an injunction enjoining any breach or threatened breach of those provisions, in addition to any other relief to which the non-breaching party may be entitled at law or in equity.
- 26.4. Attorneys' Fees. In addition to any other relief awarded, the prevailing party in any action arising out of this Agreement shall be entitled to its reasonable attorneys' fees and costs.
- 26.5. Notices. Any notice required or permitted to be given by either party under this Agreement shall be in writing and shall be personally delivered or sent by a reputable overnight mail service (e.g., Federal Express), or by first class mail (certified or registered), or by facsimile confirmed by first class mail (registered or certified). Notices to Company should be provided to the CEO of Company. Notices will be deemed effective (i) three (3) working days after deposit, postage prepaid, if mailed, (ii) the next day if sent by overnight mail, or (iii) the same day if sent by facsimile and confirmed as set forth above. A copy of any notice shall be sent to the following: [shall be inserted in final draft ]
- 26.6. Assignment. Contractor may not assign its rights or delegate its obligations hereunder, either in whole or in part, whether by operation of law or otherwise, without the prior written consent of Company. Any attempted assignment or delegation without Company's written consent will be void. The rights and liabilities of the parties under this Agreement will bind and inure to the benefit of the parties' respective successors and permitted assigns. For purposes of this Section, a change in control (of twenty percent (20%) or more of means of control in any of the entities comprising Contractor) shall constitute an assignment. Transfer of ownership of rights in and to Intellectual Property Rights in connection with the System shall be deemed an assignment by Contractor for the purpose hereof. Company may freely



assign its rights and obligations herein, in whole and in part, without any limitations and/or approvals.

- 26.7. Waiver and Modification. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver, amendment or other modification of any provision of this Agreement will be effective only if in writing and signed by the parties.
- 26.8. Set-off. Company may deduct set-off from any amount paid to Contractor in accordance with the Agreement, any payment, debt, or owed returns which Company is due to receive from Contractor in accordance with the Agreement, any other agreement or by law. The Contractor hereby waives any right of set-off and/or lien and/or retention it has and/or may have under any law in connection with this Agreement.
- 26.9. Severability. If for any reason a court of competent jurisdiction finds any provision of this Agreement to be unenforceable, that provision of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect.
- 26.10. Controlling Law and Jurisdiction. This Agreement and any action related thereto shall be governed, controlled, interpreted and defined by and under the laws of the State of Israel, without regard to the conflicts of laws provisions thereof. The exclusive jurisdiction and venue of any action with respect to the subject matter of this Agreement shall be the competent court residing in Tel Aviv and each of the parties hereto submits itself to the exclusive jurisdiction and venue of such courts for the purpose of any such action.
- 26.11. Headings. Headings used in this Agreement are for ease of reference only and shall not be used to interpret any aspect of this Agreement.
- 26.12. Entire Agreement. This Agreement, including all exhibits which are incorporated herein by reference, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes and replaces all prior and contemporaneous understandings or agreements, written or oral, regarding such subject matter.
- 27. Counterparts. This Agreement may be executed in two counterparts, each of which shall be an original and together which shall constitute one and the same instrument.
- 28. Basis of Bargain. Each Party recognizes and agrees that the warranty disclaimers and liability and remedy limitations in this Agreement are material bargained for basis of this Agreement and that they have been taken into account and reflected in determining the consideration under this Agreement and the decision by each Party to enter into this Agreement.

**IN WITNESS WHEREOF**, the Parties have caused this Agreement to be executed as of the date first above written.

\_\_\_\_\_

\_\_\_\_\_

**By:** \_\_\_\_\_

**By:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Exhibit L: Guarantee**

**Date:** \_\_\_\_\_

To

**Ayalon Highways Co. Ltd.**

**Al Parashat Drachim Str. PO Box 32294, Tel Aviv, Israel**

By this Guarantee, we \_\_\_\_\_ [*name of bank and branch*] (the Bank'), having our address at \_\_\_\_\_ [*address of bank*], hereby guarantee to pay you any and all amounts up to the aggregate sum of [*insert number amount*] NIS ([*insert amount in words* \_\_\_\_\_] New Israeli Shekels) (the "Guaranteed Amount") that you may claim in writing, on account of [*insert name(s) of Contractor*] \_\_\_\_\_ (hereinafter collectively referred to as the "Contractor"), jointly and severally, in connection with Contract/Agreement No. [Insert contract number/name] signed by the Contractor and you.

We hereby agree to pay you any amount up to the Guaranteed Amount, within up to seven (7) days of receipt of your first demand specifying the amount claimed by you.

Our obligation hereunder is unconditional and absolute, and accordingly you are not required to substantiate, justify or prove your demand, or to resort to any action against the Contractor or against any other party, or to exhaust any other remedies.

You are entitled to make one or more requests for payment under this Guarantee, provided that the total amount to be paid by us does not exceed the Guaranteed Amount.

This Guarantee shall remain in full force and effect until [*insert date of expiry*\_\_\_\_\_].

This Guarantee may not be assigned or transferred.

This Guarantee shall be governed by the laws of the State of Israel.

Signed on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Signature of the Bank: \_\_\_\_\_

Signed by: \_\_\_\_\_

Seal (where applicable)

**Exhibit M1**  
**INSURANCE CERTIFICATE**

Messrs.,  
Ayalon Highways Company Ltd.  
Al Parashat Drachim Street  
Tel aviv (hereinafter "**Company**")

Dear Sirs,

**Re: Confirmation of Insurance –**

In respect of the Traffic Surveillance and Control System Agreement signed between Ayalon Highways Company Ltd (hereinafter: "**Company**") and \_\_\_\_\_ Ltd. (hereinafter jointly and severally "**Contractor**") for the procurement supply, engineering, design, construction, operation, installation, integration, migration and provision of maintenance and other services in respect of Traffic Surveillance and Control System, including, without limitation, the Project, System, Field Equipment and Works as such terms are defined in the said agreement (hereinafter "**the Works**"),

We hereby confirm that we have effected from \_\_\_\_\_ to \_\_\_\_\_ (hereinafter "**the period of insurance**") a Contractors All Risks Policy in the name of Contractor and/or sub-Contractors (of any tier) and/or Company (all the above names referred to hereinafter as "**the Insureds**") covering the Works. We confirm that the scope of cover does not fall short from form BIT 2013 Policy.

The cover is valid until the completion of the Works including 90 (ninety) days running-in period and a 24-month extended maintenance period (the period of the Works, the running-in period and the maintenance period – hereinafter jointly referred to as "**the period of insurance**") and contains the following sections:

**Contractors All Risks Insurance**

1. **Section 1 – All Risks insurance**, covering physical loss or damage to the Works (including any property that constitutes part of the Works) on the basis of new replacement cost of the Works.

The cover in accordance with this section includes the following extensions:

- Property being worked upon and/or adjacent property with a limit of liability of NIS 4,000,000.
  - Removal of debris and/or stabilisation costs and/or architects fees with a limit of liability of NIS 5,000,000.
  - Direct damage due to faulty planning, faulty materials, faulty workmanship up to NIS 4,000,000.
  - Cost for expediting the repair of damage and additional expenses up to NIS 1,000,000.
  - Indirect damage due to faulty planning/workmanship/materials for the full value of the Works.
  - Riots, strikes and malicious damage.
  - Earthquake and other natural perils.
  - Theft, burglary and robbery.
2. **Section 2 – Third Party Liability Insurance**, indemnifying the Insureds in respect of their legal liability for death or bodily injury to any person, or loss of or damage to property arising from an unexpected and unintended occurrence in the course of and in connection with the Works and occurring during the period of insurance up to a limit of NIS 20,000,000 per event and in the aggregate for the period of insurance. This Section does not exclude liability arising from fire, explosion, panic, lifting apparatus, loading and unloading, sanitary fittings, scaffolding, vibration and weakening of support, strikes and lockouts, subrogation claims of the National Insurance Institute as well as bodily injury arising out of the use of mechanical heavy equipment defined under the Transportation Order [New Version] as a motor vehicle and it is not compulsory to insure. This section will also include a cross liability clause whereby if the name of the Insured includes more than one person or legal entity, the cover under this Section shall apply to each of the Insured as if the Policy has been issued separately for each Insured.

3. **Section 3 – Employers' Liability Insurance**, covering the Insureds against all sums which the Insureds shall become legally liable to pay in accordance with the Civil Wrongs Ordinance (New Version) and the Defective Products Liability Law - 1980, upon death or bodily injury to any employed person arising out of or in connection with the Works up to a limit of NIS 20,000,000 per employee, per occurrence and in the aggregate for the period of insurance.

We confirm that the Policy includes a waiver of subrogation in favour of Company, its managers and employees and/or anyone acting on its behalf, provided that such waiver of subrogation will not apply for the benefit of any person who maliciously causes damage.

The Policy includes an express condition whereby it takes precedence over any insurance taken out by Company and we waive any claim and/or demand with regard to participation of Company's insurances. In addition, the Policy includes an express condition according to which it will not be cancelled nor materially changed during the period of insurance, unless at least 30 days prior notice thereof be sent to Company by a registered mail.

Any breach of the conditions in good faith by Contractor does not derogate from Company's right to receive indemnity under the said insurances.

We confirm that Contractor is solely responsible for the payment of any insurance premiums and/or any form of deductible.

Name of the insurer	Insurer's stamp and signature	Name of the signatory	Position	Date
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**Exhibit M2**  
**INSURANCE CERTIFICATE**

Messrs.,  
Ayalon Highways Company Ltd.  
Al Parashat Drachim Street  
Tel aviv (hereinafter "**Company**")

Dear Sirs,

**Re: Confirmation of Insurance –**

In respect of the Traffic Surveillance and Control System Agreement signed between Ayalon Highways Company Ltd. (hereinafter: "**Company**") and \_\_\_\_\_ Ltd. (hereinafter jointly and severally "**Contractor**") for the procurement supply, engineering, design, construction, operation, installation, integration, migration and provision of maintenance and other services in respect of the Traffic Surveillance and Control System, including, without limitation, the Project, System, Field Equipment, Works and Support Services as such terms are defined in the said agreement (hereinafter "the **Works**" and/or "**the Product**"),

We, the undersigned, do hereby confirm that subject to the Original Policies terms, exclusions and conditions, except as amended hereunder, that Contractor is insured as follows:

The scope of cover provided under the following policies shall not be inferior to terms of the coverage provided by the policy terms known as Bit 2014 (except for Professional Liability policy), and subject to the following

Period of Insurance : From \_\_\_\_\_ to \_\_\_\_\_ (both days inclusive)

**1. Third Party Liability Insurance – Policy no. \_\_\_\_\_**

Covering the liability of The Contractor for loss, injury or damage occurring to any person and/or property of any person and/or entity, with limits of liability of \$5,000,000 (Five million U.S. dollars) any one occurrence and in all for an annual insurance period.

It is noted and agreed that the property of the Company shall be considered third party property.

This insurance is extended to include the Company as an additional insured, subject to Cross Liability clause.

**2. Employers Liability Insurance – Policy no. \_\_\_\_\_**

Covering the liability of The Contractor as an employer towards its employees, for death or injury occurring during and/or as a result of their employment. Limit of liability of \$5,000,000 (Five million U.S. dollars) any one occurrence and in all for an annual insurance period. This insurance has no exclusion regarding contractors and/or sub-contractors, works in heights, depths and/or working hours.

This insurance is extended to include the Company as an additional insured insofar it is considered as the employer of the Contractor's employees and/or it is determined that it is vicariously liable in respect of the Contractor's liability towards its employees

**3. Product liability insurance – Policy no. \_\_\_\_\_**

Limit of liability of not less than \$ 5,000,000 (Five million U.S. dollars) any one occurrence and in all for an annual insurance period. Retroactive date not later than the commencement date of the agreement. The Insurance covers the Contractor's legal liability in respect of any liability arising out of bodily injury or property damage which may devolve upon him due to any defect in the Works and/or the Product. The policy insurance includes a 12-month Discovery Period and a retroactive date not later than the commencement date of the services.

This insurance is extended to indemnify the Company and anyone acting on behalf of the Company in respect of their liability for the acts and/or omissions of the Contractor or anyone acting on its behalf, subject to Cross Liability clause.

**4. Professional Liability Insurance – Policy no. \_\_\_\_\_**

Covering the legal liability of the contractor for any wrongful act in rendering or failing to render professional services according to the agreement by the contractor or by anyone acting on its behalf. Limit of liability of not less than \$ 1,000,000 (One million U.S. dollars) any one occurrence and in all for an annual insurance period. This insurance has no exclusions regarding consequential damages, dishonesty of Contractor's employees, loss of documents, delay and loss of use.

Retroactive date not later than the commencement date of the services.

This insurance is extended to indemnify the Company and anyone acting on behalf of the Company in respect of their liability for the acts and/or omissions of The Contractor or anyone acting on its behalf, subject to Cross Liability clause but without covering the professional liability of the Company towards the Contractor.



**General**

We hereby approve that the Contractor shall be solely responsible for paying the premiums and deductibles under the above policies.

The aforementioned policies include an express condition whereby they take precedence over any insurance taken out by Company and we waive any claim and/or demand with regard to participation of Company's insurances. In addition, the Policy includes an express condition according to which it will not be cancelled nor reduce insurance coverage during the period of insurance, unless at least 60 days prior notice thereof be sent to Company by a registered mail.

Any breach of the conditions in good faith by Contractor does not derogate from Company's right to receive indemnity under the said insurances

We confirm that Contractor is solely responsible for the payment of any insurance premiums and/or any form of deductible.

Name of the insurer	Insurer's stamp and signature	Name of the signatory	Position	Date
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