

FRAMEWORK AGREEMENT FOR
EXECUTION OF ELECTRIFICATION
WORKS

(the “Agreement”)

Between

Israel Railways Ltd.

(“ISR”)

and



(the “Contractor”)

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This Framework Agreement for Execution of Electrification Works (the “**Agreement**”) is entered into as of [REDACTED], 202[REDACTED] (the “**Signature Date**”), by and between **Israel Railways Ltd.**, a limited liability company incorporated under the laws of the State of Israel, having its principal place of business at 1 Yoseftal St., Lod (“**ISR**”), and [REDACTED], a company incorporated under the laws of [REDACTED], having its principal place of business at [REDACTED] (the “**Contractor**”).

Each of ISR and the Contractor shall also be referred to herein as a “**Party**”, and collectively as the “**Parties**”.

1. **Recitals**

- Whereas:** ISR is a governmental company tasked with the gradual development and electrification of the ISR railway network, comprised of approximately 1,500 kilometers (“**ISR Railway Network**” or the “**Network**”); and
- Whereas:** ISR conducted the Tender Process for the selection of contractors to execute the Works (as defined below), based on work orders to be issued by ISR from time to time in accordance with the specifications detailed in this Agreement; and
- Whereas:** The Contractor was declared as a Successful Bidder in the Tender Process; and
- Whereas:** The Contractor has experience, expertise, manpower, professional personnel, resources and ability in the electrification of railway networks similar to the ISR Railway Network, including, inter alia, with respect to performing works similar to the Works; and
- Whereas:** ISR wishes to appoint the Contractor to execute and perform the Works pursuant to the Tender Documents (including the Bid) and on the terms and conditions set forth in this Agreement;

Now therefore, it is hereby agreed between the Parties as set forth below in this Agreement.

2. **Definitions**

- 2.1. In this Agreement, capitalized words or phrases shall have the meaning ascribed to them herein, in **Appendix “A” (Definitions)**, in any other Appendix hereto or in the Tender Documents (as applicable).
- 2.2. Where words or phrases are not capitalized or not defined, they shall have the meaning consistent with the context.

3. **Agreement Documents**

- 3.1. The following documents, including any and all annexes, annexures, appendices, attachments, exhibits, schedules and forms attached thereto, referred to therein and/or incorporated therein, are incorporated into this Agreement and constitute and form an integral and substantive part of this Agreement:
- 3.1.1. This Agreement document and each and every Appendix to this Agreement document (collectively, Volume 2 of the Agreement); and

- 3.1.2. Volume 1 (Invitation to Bid) of the Agreement; and
- 3.1.3. Volume 3 (Technical Specifications) of the Agreement, including each and every sub-volume, section and chapter thereof (the “**Technical Specifications**”); and
- 3.1.4. Volume 4 of the Agreement - The Bid Documents, including any and all addenda thereto and clarifications thereof; and
- 3.1.5. Each and all Work Orders.

4. Interpretation

4.1. Unless otherwise expressly stated in this Agreement:

- 4.1.1. Without derogating from clause 3 (Agreement Documents) above, any and all references herein to this ‘Agreement’ shall be considered and deemed to include and incorporate reference to: (i) this Agreement document; and (ii) each Appendix to this Agreement document, each and all of which shall be considered and deemed to comprise and constitute an integral and substantive part of this Agreement; (iii) the Tender Documents (including the Bid), each and all of which shall be considered and deemed to comprise and constitute an integral and substantive part of this Agreement.
- 4.1.2. Each and all of the recitals set forth in clause 1 (Recitals) above shall be considered and deemed to comprise and constitute an integral and substantive part of this Agreement.
- 4.1.3. Headings in this Agreement are inserted for convenience only and shall not affect its interpretation.
- 4.1.4. The masculine gender includes the feminine and neuter genders and vice versa.
- 4.1.5. The singular includes the plural and vice versa.
- 4.1.6. Reference to a person or entity includes any natural, juristic, statutory or governmental person or entity.
- 4.1.7. Reference to any Law (including any Permit) includes the Law as validly amended, consolidated, replaced, supplemented or varied.
- 4.1.8. Reference to any permit, license, consent, authorization or approval includes the permit, license, consent, authorization or approval as validly amended, consolidated, replaced, supplemented or varied.
- 4.1.9. All periods of time are based on and computed according to the Gregorian calendar.
- 4.1.10. Where time is to be calculated by reference to a day or event, that day or the day of that event shall be excluded.

- 4.1.11. Where the day on or by which any thing is to be done pursuant to this Agreement is not a Business Day, that thing shall be done on or by the subsequent Business Day.
- 4.1.12. Reference to any annex, annexure, appendix, article, attachment, clause, exhibit, paragraph, schedule or section is a reference to an annex, annexure, appendix, article, attachment, clause, exhibit, paragraph, schedule or section of this Agreement.
- 4.1.13. Any capitalized words, terms, phrases or abbreviations used or defined specifically in any annex, annexure, appendix, article, attachment, clause, exhibit, paragraph, schedule or section shall have the meaning set forth therein.
- 4.1.14. Other parts of speech and grammatical forms of a word or phrase defined in this Agreement shall have a corresponding meaning.
- 4.1.15. The use of the words “*inter alia*”, “includes” or “including” when introducing an item or list of items does not limit the meaning of the words which precede or follow that item or list of items.
- 4.1.16. The word “deemed” shall mean that something is fact regardless of the objective truth.
- 4.1.17. Any reference in this Agreement to the provisions of this Agreement or the provisions of a clause of this Agreement (including with respect to any annex, annexure, appendix, article, attachment, exhibit, paragraph, schedule or section of this Agreement) includes and is a reference to all provisions, terms and conditions of this Agreement or that clause of this Agreement (as applicable).
- 4.1.18. In respect of ISR, the phrase “agents and representatives” includes and shall be deemed to be a reference to any and all officers, directors, functionaries, laborers, employees, staff, personnel, advisors, consultants, subconsultants, contractors, representatives and agents of ISR, as well as any and all persons and entities on their behalf, all to the extent involved in the Project.
- 4.1.19. Without derogating from any other provisions of the Agreement, a reference to the obligations and undertakings of the Contractor shall be deemed to be a reference to obligations and undertakings of any and all entities on its behalf and any and all of its officers, directors, functionaries, laborers, employees, staff, personnel, advisors, consultants, subconsultants, contractors, representatives and agents, as well as any and all persons and entities on behalf of any of them.
- 4.1.20. Reports, records, documents, deliverables, information, data and acts carried out in writing may be in hand-written, type-written, printed or electronic format and any and all references in this Agreement to data, documentation, documents, records, information and acts carried out in writing shall be deemed to be a reference to any of those formats.

- 4.2. **Freedom of Information Law.** No provision of this Agreement shall be applied or construed as derogating from the obligations of ISR or any other competent Authority pursuant to the Freedom of Information Law, 1998 (the “**Freedom of Information Law**”), nor as constituting a decision by any of them under the Freedom of Information Law. Accordingly, ISR and any competent Authority may exercise their rights and authorities in connection with any request filed under the Freedom of Information Law solely in accordance with the provisions thereof and any other applicable Law.

5. Term of the Agreement

- 5.1. Provided that all applicable preconditions and conditions set forth in Section 13.2 (Post Award Requirements – Preconditions for the Execution of the Agreement) of the ITB have been met and fulfilled in accordance with the provisions thereof, the Agreement shall be effective, valid, enforceable and binding from the Signature Date.
- 5.2. Unless terminated or cancelled earlier in accordance with the provisions of this Agreement or Law, this Agreement shall commence and become legally binding as of the Signature Date and shall continue to be in effect for a period of five (5) years as of the Signature Date (the “**Initial Term**”). Thereafter, ISR shall have the option to extend the Agreement for additional terms as determined by ISR (each, an “**Extended Term**”) up to a maximum of fifteen (15) years as of the Signature Date, subject to issuance of written advance notice to the Contractor at least thirty (30) days prior to the expiry of the Initial Term or an Extended Term (as applicable). The Initial Term and the Extended Terms shall together hereinafter be referred to as the “**Term of the Agreement**”.

6. Order of Priority and Precedence

- 6.1. The terms, conditions and provisions of the Agreement and the documents forming the Agreement are to be taken as mutually explanatory of one another.
- 6.2. In the event of any ambiguity, conflict or contradiction between the main body of this Agreement and any other document comprising or incorporated into this Agreement, the provision(s) of the main body of this Agreement shall apply and prevail
- 6.3. In the event of any other ambiguity, conflict or contradiction in or between any one or more document comprising or incorporated into this Agreement (including any Work Order), the provision or interpretation that is more onerous (stricter) for the Contractor shall apply and prevail.
- 6.4. In the event of any ambiguity, conflict or contradiction between, on the one hand, this Agreement and, on the other hand, any Law(s), Permit(s) and/or requirement(s) of applicable Authorities, then the following shall apply:
- 6.4.1. If minimum requirements are specified in the Agreement (including any Work Order) and the requirement(s) of any applicable Law(s), Permit(s) and/or requirement(s) of applicable Authorities is/are less or lower than the minimum required under the Agreement, the minimum requirements under the Agreement (notwithstanding that such minimum exceeds the minimum required under any applicable Law(s), Permit(s) and/or requirement(s) of applicable Authorities) shall apply;

6.4.2. Otherwise, the Contractor shall be obliged to comply with the stricter requirement (i.e., the requirement that is more onerous for the Contractor), unless otherwise determined by ISR.

6.5. **Notification.** Immediately upon becoming aware thereof, the Contractor shall notify ISR of any such ambiguity, conflict and/or contradiction and ISR will render its decision based on the foregoing principles.

7. Framework Agreement

7.1. This Agreement is a 'framework agreement' intended to govern the carrying out of the Project and the Works pursuant to and in compliance with Work Orders to be issued by ISR to the Contractor, all in accordance with the provisions of this Agreement.

7.2. From time to time and at any time(s) during the Term of the Agreement, ISR may issue Work Orders to the Contractor pursuant to clause 89 (Work Orders) below.

7.3. This Agreement does not in any way constitute an obligation on the part of ISR to contract consistently or persistently with the Contractor, nor is it a commitment to select the Contractor to perform Works under the Agreement nor to issue Work Orders in any amount, value, volume or number whatsoever.

7.4. The Contractor acknowledges that this Agreement does not grant any exclusivity rights regarding the execution of the Project and/or the Works, and ISR may engage other contractors to perform identical or similar works at any time.

7.5. Without derogating from the above, in the issuance of Work Orders and/or the allocation of Works to the Contractor, ISR may consider, *inter alia*, the following (among any other relevant matters and/or issues, as determined by ISR at its sole discretion):

7.5.1. Cost efficiency, *inter alia*, based on the total estimated cost of execution of the applicable Works by the Contractor pursuant to its Bid;

7.5.2. Geographical continuity of the Works with works carried out in adjacent or related sites or areas;

7.5.3. Optimization of Works execution efficiency and coordination;

7.5.4. Satisfaction (or dissatisfaction) with the Contractor's performance of previous or other Works, including (but not limited to) adherence to schedules and timelines, availability and responsiveness of the Contractor's staff, quality of workmanship, frequency and extent of defects, volume of claims and variation orders initiated by the Contractor, liquidated damages imposed on the Contractor, etc.

- 7.6. Also without derogating from the above or from any other provisions of the Agreement, if ISR determines, at its sole discretion, that the Contractor lacks sufficient capacity to handle the required workload under a Work Order issued to the Contractor, ISR may reallocate or transfer Works under such Work Order to other contractors, all as required to ensure timely completion of the Works and/or the Project. Such reallocation or transfer shall not give rise or entitle the Contractor to claim or receive any remedy or relief (including any additional or extension of time, remuneration, consideration, compensation, reimbursement or additional payment).

8. Obligations of the Contractor Prior to the Effective Date

- 8.1. The Contractor undertakes to fulfil all of the following obligations within six (6) months from the Signature Date (“**Effective Date**”):
- 8.1.1. The Contractor submitted and received ISR’s approval to a list detailing the designations, names and CVs of the Core Management Team; and
- 8.1.2. The Contractor submitted and received ISR’s approval for the technical documents and technical plan specified in Section 3.2 of the Technical Specifications.
- 8.2. Failure by the Contractor to fulfil the obligations set forth under clause 8.1 above by the Effective Date shall be deemed a material breach of the Agreement and ISR shall be entitled to terminate this Agreement in accordance with clause 68 (Termination of the Agreement by ISR). The aforesaid shall not derogate from any other remedy available to ISR under the Agreement and/or Law.

9. Work Orders

- 9.1. **Issuance of Work Orders.** From time to time and at any time(s) during the Term of the Agreement, ISR may issue to the Contractor work orders substantially in the form of **Appendix “B” (Proforma Work Order)** hereto, specifying the Works to be carried out by the Contractor (each a “**Work Order**”). However, subject to clause 9.23 (Minimum Five-Yearly Value of Work Orders) below, ISR shall not be obligated to issue any Work Order(s) to the Contractor, and the decision(s) whether or not to do so shall be and remain at the sole discretion of ISR.
- 9.2. **First Work Order Notification.** Without derogating from the foregoing, with respect (solely) to the first Work Order issued by ISR to the Contractor, ISR shall provide the Contractor with six (6) months’ prior written notice of its intention to issue the first Work Order and the intended date for the issuance of the first Work Order (“**First Work Order Notification**”).
- 9.3. **General Mobilization Activities.** As of the receipt of the First Work Order Notification and by no later than the date of the issuance of the first Work Order, the Contractor shall carry out and complete each and all of the following (collectively, the “**General Mobilization Activities**”):
- 9.3.1. Organization and mobilization to Israel of the Core Management Team;

- 9.3.2. Procurement, shipment and arrival to Israel of all requisite Major Equipment;
- 9.3.3. Establishment of a Local Procurement & Storage Center in Israel; and
- 9.3.4. Establishment of Local Offices in Israel.
- 9.4. The General Mobilization Activities are required as initial organization and preparation, for efficiency and time schedule considerations, and do not constitute the overall resources required to execute the Works under the Agreement and/or any Work Order. Accordingly, nothing stated in or not stated in clause 9.3 (General Mobilization Activities) above is intended or should be construed as limiting or derogating from clause 10.8.4 below or from any other provisions of the Agreement.
- 9.5. **One-off Payment.** Subject to clause 9.8 below, in consideration of the full and proper performance and completion of the General Mobilization Activities, as approved by ISR, ISR shall pay the Contractor a one-off, fixed, all-inclusive amount of twenty-three million five hundred thousand New Israeli Shekels (23,500,000 NIS) (the “**One-off Payment**”).
- 9.6. Subject to clause 9.8 below, the One-off Payment shall be payable to the Contractor following approval by ISR that the General Mobilization Activities have been fully and properly completed.
- 9.7. Subject to clause 9.8 below, the One-off Payment shall constitute the entire consideration to which the Contractor shall be entitled in respect of and in connection with the performance and completion of the General Mobilization Activities, and shall be considered and deemed to include payment and reimbursement for and in respect of any and all costs, expenses, disbursements, fees, charges, remuneration, compensation, overheads, preliminaries and generals, profit, markup, taxes and all other amounts whatsoever regarding the full, proper and complete execution and completion of the General Mobilization Activities and the performance and fulfilment of any and all applicable responsibilities and obligations under and pursuant to this Agreement.
- 9.8. The One-off Payment shall constitute an advance payment as an interest-free loan against future Work Orders, in respect of which the following shall apply:
 - 9.8.1. The One-off Payment shall be repaid by the Contractor through equal percentage deductions from each payment under Work Orders until the full repayment of the One-off Payment by the Contractor. Each deduction shall be in the amount of ten percent (10%) of the respective payment. In the event that the final repayment of the One-off Payment will be of a lower percentage than percent (10%) of the applicable payment, the deduction will not be higher than the outstanding balance of the One-off Payment.
 - 9.8.2. If the One-off Payment has not been repaid before termination of the Agreement for any reason, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to ISR.

- 9.9. **Payment for Acceleration of the General Mobilization Activities.** Subject always to prior written notice from ISR in the First Work Order Notification, the Contractor shall be entitled to five hundred thousand NIS (NIS 500,000) per each month that the General Mobilization Activities are completed prior to the intended date for the issuance of the first Work Order as notified in the First Work Order Notification (the “**Acceleration Payment**”). For the removal of doubt, the Acceleration Payment shall be paid to the Contractor in addition to the One-off Payment and shall not be subject to the repayment mechanism set forth in clause 9.8 above.
- 9.10. **Monthly Payment.** In addition to the One-off Payment, as of the completion of the General Mobilization Activities and until the elapse of twelve (12) months thereafter, ISR shall pay to the Contractor a fixed, all-inclusive monthly amount of five hundred thousand NIS (NIS 500,000) per each month (the “**Monthly Payment**”), in consideration of the full and proper ongoing maintenance of the Core Management Team, Major Equipment, Local Procurement & Storage Center and Local Offices. The Monthly Payment shall be payable to the Contractor following completion of the General Mobilization Activities and receipt of ISR’s approval in accordance with clause 9.6 above, on a pro-rata basis.
- 9.11. The Monthly Payment shall constitute the entire consideration to which the Contractor shall be entitled in respect of and in connection with the ongoing maintenance of the Core Management Team, Major Equipment, Local Procurement & Storage Center and Local Offices, and shall be considered and deemed to include payment and reimbursement for and in respect of any and all costs, expenses, disbursements, fees, charges, remuneration, compensation, overheads, preliminaries and generals, profit, markup, taxes and all other amounts whatsoever regarding the full, proper and complete ongoing maintenance of the Core Management Team, Major Equipment, Local Procurement & Storage Center and Local Offices and the performance and fulfilment of any and all applicable responsibilities and obligations under and pursuant to this Agreement. For the removal of doubt, the Contractor shall not be entitled to Monthly Payments after the elapse of twelve (12) months from the completion of the General Mobilization Activities, and such ongoing maintenance costs shall be considered and deemed included in the Work Order Consideration payable to the Contractor on the basis of the BOQ.
- 9.12. **Works Orders – General Provisions.** All Work Orders shall be subject to the terms of this Agreement, and the provisions of the Agreement shall apply and be applied to any and all Work Orders and to any and all Works to be carried out pursuant to a Work Order. Without derogating from the foregoing or from any other provisions of the Agreement: (i) all design works and construction works pursuant to a Work Order shall be carried out in accordance and compliance with Volume 3 (Technical Specifications), which shall comprise an integral and substantive part of each Work Order; and (ii) all references in this Agreement to the term “Works” shall be considered and deemed to be a reference to the Works that are required to be carried out pursuant to a Work Order; and (ii) all references in this Agreement to the term “Site” shall be considered and deemed to be a reference to the Site that is specified in a Work Order.
- 9.13. Each Work Order shall be signed by ISR’s authorized representatives. A document which does not qualify as a duly signed Work Order shall not obligate ISR in any way whatsoever.

- 9.14. **Work Order Response.** Within ten (10) days following the receipt of a Work Order, the Contractor shall provide ISR with its response to the Work Order (each, a “**Work Order Response**”) comprising a detailed plan for the carrying out of the Work Order, a detailed programme and time schedule for the carrying out of the Work Order and any and all other documentation and/or information requested in the applicable Work Order.
- 9.15. **First Reply.** ISR will review each Work Order Response submitted by the Contractor and shall be entitled, at its sole discretion, to: (i) request the Contractor to amend the Work Order Response (in whole or in part) or provide a revised Work Order Response (in whole or in part); (ii) request the Contractor to provide additional data, information and/or documents; and/or (iii) approve the Work Order Response (in whole or in part). ISR shall notify the Contractor accordingly (the “**First Reply**”).
- 9.16. **Follow-up Work Order Response.** Within seven (7) days following receipt of the First Reply, the Contractor shall submit, as applicable, the requested amended Work Order Response, the requested revised Work Order Response and/or the requested additional data, information and/or documents (the “**Follow-up Work Order Response**”).
- 9.17. **Second Reply.** ISR will review the Follow-up Work Order Response and shall be entitled, at its sole discretion, to act in accordance with its prerogatives stipulated in clause 9.15 above. ISR shall notify the Contractor accordingly (the “**Second Reply**”).
- 9.18. **Discussions.** If ISR does not approve the Follow-up Work Order Response in its Second Reply, ISR and the Contractor shall, within seven (7) days, discuss the Work Order Response and the Follow-up Work Order Response and the First Reply and Second Reply applicable thereto.
- 9.19. **Agreement or Decision by ISR.** The discussions between the ISR and the Contractor shall be conducted amicably and in good faith, with the aim of overcoming and resolving differences (if any) and reaching an agreement with respect to the applicable Work Order Response. If an agreement is reached, the agreed upon Work Order Response shall be considered and deemed to be the applicable Work Order Response approved by ISR. If an agreement is not reached, ISR shall determine, at its sole discretion, the contents of the applicable Work Order Response and the Work Order Response so determined by ISR shall be considered and deemed to be the applicable Work Order Response approved by ISR.
- 9.20. **Contractor Bound by Approved Work Order Responses.** The Contractor shall be bound by each approved Work Order Response and shall be obligated to execute the applicable Works and otherwise to act in accordance therewith. The Contractor shall have no right or entitlement to refuse, omit or delay doing so (including in the event of or during the resolution of any dispute or disagreement, if any, between the Parties concerning or in connection with the applicable approved Work Order Response).
- 9.21. **Contractor Bound by Work Orders.** The Contractor shall not be entitled to change or cancel any part of a Work Order (as specified pursuant to an approved Work Order Response), nor refuse, omit or neglect to carry out any part of a Work Order, nor delay or postpone carrying out any part of a Work Order.

- 9.22. **Notice to Proceed.** Without derogating from the foregoing and notwithstanding anything to the contrary in the applicable approved Work Order Response, the Contractor shall, immediately upon the issuance by ISR of a “Notice to Proceed (Design)” with respect to the applicable Work Order (each, a “**Notice to Proceed (Design)**”), commence performance of such Work Order. The Contractor shall commence the “Execution Phase” (as such term is defined in the Technical Specifications) of the Works under a Work Order at the Site immediately upon the issuance by ISR of a “Notice to Proceed (Execution)” (each, a “**Notice to Proceed (Execution)**”). Issuance of the Notice to Proceed (Execution) shall be subject to fulfillment by the Contractor of its obligations and responsibilities with respect to the “Design Phase” (as such term is defined in the Technical Specifications) of the Works. Notwithstanding the foregoing, ISR shall be entitled, by itself or through third parties, to prepare the detailed design for a designated Network Section and to instruct the Contractor to perform (only) the “Execution Phase” of the Works in accordance with ISR’s design. In such case, the Work Order Consideration payable to the Contractor shall be determined in accordance with the provisions of clause 52 (Change Orders) hereto.
- 9.23. **Minimum Five-Yearly Value of Work Orders.** Without derogating from the foregoing or from any other provisions of the Agreement, in each period of five (5) years as of the Signature Date, ISR shall issue Work Orders to the Contractor whose aggregate Work Order Consideration is equal to at least thirty (30%) of the aggregate value of all work orders issued during the applicable period with respect to the Project (it being acknowledged by the Contractor that ISR may engage other contractors, including Direct Contractors, to perform works on the Project) (“**Minimum Work Orders**”). Provided that:
- 9.23.1. The Option Notice (to the extent issued to the Contractor) and any work orders issued to other contractors during the applicable period with respect to the SCADA Works shall not be taken into account for purpose of determining the Minimum Work Orders; and
- 9.23.2. If, during any such five (5) year period, ISR does not issue the Minimum Work Orders, the applicable shortfall shall be made up in the following five (5) year period by way of the issuance of additional Work Orders during the following five (5) year period; and
- 9.23.3. If the applicable shortfall occurs during the final five (5) year period of the Term of the Agreement, ISR shall make up the applicable shortfall by way of a payment to the Contractor of overheads equal to six (6%) of the aggregate Work Order Consideration of all Work Orders that would have needed to have been issued during that five (5) year period in order to reach the thirty percent (30%) benchmark; and
- 9.23.4. Save as aforesaid, ISR shall be under no obligation to issue any Work Order or any number of Work Orders to the Contractor, whether in any calendar year during the Term of the Agreement, in any such five (5) year period of the Term of the Agreement or otherwise, and the decision whether or not to do so shall be and remain at the sole discretion of ISR; and
- 9.23.5. In any event, ISR shall not be required to make up any shortfall caused by or resulting from, whether wholly or partially, any act, omission, breach or default by or on behalf of the Contractor.

10. Representations and Warranties of the Contractor

- 10.1. The Contractor warrants, represents and undertakes to ISR as set forth in each and all of clauses 10.410.5 to 10.9 below.
- 10.2. The Contractor acknowledges ISR entered into this Agreement in reliance upon the truth and accuracy of each of the warranties, representations and undertakings set forth in clauses 10.410.5 to 10.9 below.
- 10.3. Each such warranty, representation and undertaking is independent and shall not be negated, limited or reduced by any other warranty, representation or undertaking made or contained in this Agreement.
- 10.4. No warranty, representation or undertaking of the Contractor nor any information provided by the Contractor for purposes of or pursuant to this Agreement is or shall be misleading or omit to state a material fact.
- 10.5. **Corporate Status and Organizational Structure:**
 - 10.5.1. The Contractor is and shall remain an incorporated entity (and not a natural person or individual), duly recognized by law in its country of registration or domicile (as the case may be).
 - 10.5.2. The Contractor has and shall have all requisite approval, power, authority and ability to own its properties and assets and to conduct its business and activities as intended and required to be conducted pursuant to this Agreement.
 - 10.5.3. The Contractor has and shall have all requisite approval, power, authority and ability to enter into this Agreement and to execute the Works in accordance and compliance with this Agreement.
 - 10.5.4. The entering into and execution of this Agreement has been and shall remain duly authorized and approved by all requisite corporate action and no further authorization or approval is necessary or required.
 - 10.5.5. The entering into and execution of this Agreement has not resulted and will not result in any breach or default under Law or under any agreement, contract, instrument or legal relationship to which the Contractor is a party or by which the Contractor is bound.
 - 10.5.6. This Agreement constitutes the legal, valid and binding obligation of the Contractor, enforceable in accordance with its terms.
 - 10.5.7. The Contractor shall have and maintain full, proper and lawful authority, license, permission and power to execute the Works in accordance and compliance with this Agreement.

- 10.5.8. Without derogating from any other provision of the Tender Documents (including the Bid), all warranties, representations, undertakings, information, data and documents provided by or on behalf of the Contractor in the framework of or in connection with the Tender Process were true, complete and accurate as at the Signature Date.

10.6. Risk and Expense:

- 10.6.1. The execution of the Works in accordance and compliance with the Contractor's undertakings included in this Agreement shall be at the sole and exclusive risk, cost and expense of the Contractor, other than as expressly stipulated in this Agreement.
- 10.6.2. ISR and its agents and representatives shall have no responsibility or liability whatsoever to pay, remunerate or compensate the Contractor other than as expressly stipulated in this Agreement.
- 10.6.3. The Contractor shall have no right or entitlement whatsoever to claim or receive any remedy or relief (including any additional or extension of time, remuneration, consideration, compensation, reimbursement or additional payment) other than as expressly permitted in this Agreement.
- 10.6.4. Wherever the Agreement confers, imposes, provides for or uses language of obligation, responsibility or commitment regarding the Contractor, the Contractor shall bear all risks, costs and expenses involved in the execution and fulfilment of the applicable obligation, responsibility or commitment, other than as expressly stipulated in this Agreement.
- 10.6.5. With respect to each Work Order, the Work Order Consideration shall constitute the entire consideration to which the Contractor shall be entitled in respect of and in connection with the applicable Works, and shall be considered and deemed to include payment and reimbursement for and in respect of any and all costs, expenses, disbursements, fees, charges, remuneration, compensation, overheads, preliminaries and generals, profit, markup, taxes and all other amounts whatsoever regarding the full, proper and complete execution and completion of the applicable Works and the performance and fulfilment of any and all applicable responsibilities and obligations under and pursuant to this Agreement.
- 10.6.6. Without derogating from ISR's rights under this Agreement and Law, any agreed compensations which have been fixed in the Agreement in favour of ISR are compensations which have been evaluated in advance by the Contractor after considering the expected and foreseeable losses and damages to the Contractor in connection with the events or circumstances giving rise to payment of the agreed compensations.

10.6.7. **Unique Nature of the Project and the Works.** The Contractor confirms that it has taken into consideration that: (i) the Project and the Works are dynamic and subject to ongoing development (including in respect of their timelines and scope); (ii) the performance of the Works shall be adapted as may be necessary and required to accommodate and account for the fact that the Project and the Works are dynamic and subject to ongoing development (including in respect of their timelines and scope); and (iii) neither the fact that the Project and the Works are dynamic nor the occurrence of any such ongoing development (including in respect of their timelines and scope) shall constitute or amount to, or be considered or deemed to be, a change or variation of or an addition to the Works, unless otherwise expressly stated in this Agreement.

10.7. **Expert Review and Adequacy of the Consideration:**

10.7.1. The Contractor has, as a skilled and professional expert, knowledgeable and experienced in executing works similar to the Works, independently scrutinized, investigated, considered, evaluated and assessed all conditions, data, documentation, factors, information and technical, financial and functional aspects and risks which are relevant to or may reasonably be expected to affect the execution the Works in accordance and compliance with the Agreement, or which are relevant to or may be expected to affect the execution or implementation by the Contractor of any one or more of the provisions of the Agreement, including (without limitation):

10.7.1.1. The design, nature, extent, scope, technical specifications and engineering aspects of the Works; and

10.7.1.2. The Network is spread across Israel and weather conditions could differ from Site to Site; and

10.7.1.3. The Network is spread across Israel and aboveground, belowground, geotechnical, geological, hydrological, climatic, environmental and seismic conditions could differ from Site to Site; and

10.7.1.4. All timelines, deliverables and milestones pursuant to the Agreement; and

10.7.1.5. The nature, extent, scope and standard of performance required of the Contractor pursuant to the Agreement; and

10.7.1.6. All data, documentation, factors and information provided by ISR; and

10.7.1.7. The remuneration, consideration and compensation payable to the Contractor pursuant to the Agreement.

10.7.2. The Contractor is satisfied, based on its own scrutiny, investigations, evaluations and assessments, that:

- 10.7.2.1. All Technical Specifications are suitable, appropriate and feasible for and in respect of the execution and completion of the Works in accordance with the Agreement; and
- 10.7.2.2. There are no errors, omissions, defects, deficiencies or inaccuracies in any part or aspect of the Technical Specifications which render them or any part or aspect thereof unsuitable, inappropriate or unfeasible for or in respect of the execution and completion of the Works in accordance with the Agreement; and
- 10.7.2.3. The Contractor is willing, ready, capable, available, committed and appropriately resourced to execute and complete the Works in accordance and compliance with the Agreement; and
- 10.7.2.4. The remuneration, consideration and compensation payable to it pursuant to this Agreement in respect of its execution and completion of the Works are correct, adequate, appropriate, suitable, fair and sufficient.

10.8. Contractor's Commitment to its Undertakings:

- 10.8.1. **Core Management Team.** Any and all members of the Core Management Team shall: (i) be subject to ISR's approval; and (ii) not be replaced unless with the prior approval of ISR; and (iii) relocate to and reside in the State of Israel for the duration of the Term of the Agreement and, unless with the prior approval of ISR, not render any work or services in connection with the Project from elsewhere in the world; and (iv) be engaged by the Contractor in connection with the Project on a full time basis and, unless with the prior approval of ISR, not render any work or services which are not connected to the Project. In this regard, ISR shall have the right to levy against and recover from the Contractor any and all of the liquidated damages, compensation, deductions and payment adjustments set forth in **Appendix "G" (Liquidated Damages)**.
- 10.8.2. The Contractor shall have and maintain, and it shall procure that its Subcontractors shall have and maintain, all agents and representatives and all ability, experience, expertise, knowledge, professional qualification, skill, training and resources (including, but not limited to, personnel, manpower, machinery, tools, special tools, equipment, facilities, technical ability and financial and economic resources) necessary and required to execute the Works in accordance and compliance with the Agreement and for them to fulfil each and every term, condition and provision of the Agreement applicable to them.
- 10.8.3. The Contractor shall perform its obligations under the Agreement and execute and complete the Works in accordance and compliance with the Agreement, all in a continuous, industrious, efficient, expeditious, skilled, careful, diligent, professional and expert manner.

- 10.8.4. The Contractor shall provide all resources (time resources, human resources, technical resources, financial and economic resources, and other resources such as the means and methods required to investigate, analyze, evaluate, present alternatives and make recommendations with respect to various issues, as well as other resources such as documents, systems, services, consumables, equipment, facilities, goods, materials, tools, etc. whether of a temporary or permanent nature) as are necessary and required for the full, complete and proper undertaking and implementation of its obligations under and pursuant to the Agreement and each Work Order.
- 10.8.5. The Works shall be executed and completed in accordance and compliance with the Agreement and the applicable Work Order and the execution and completion of the Works shall include any and all activities, tasks, work and services which are necessary or required to satisfy the obligations of the Contractor as set forth in the Agreement and the applicable Work Order, or as arise from any obligation of the Contractor, including (without limitation) any and all activities, tasks, work and services not specifically mentioned in the Agreement and/or the applicable Work Order but which are necessary for the full, proper, reliable, timely, safe and successful execution and completion of the Works.
- 10.8.6. The Contractor acknowledges that ISR may engage other contractors to perform works on the ISR Railway Network. The Contractor shall coordinate its activities and shall cooperate, liaise and interface with such other contractors as directed by ISR to ensure efficient execution of all works on the ISR Railway Network. In addition, the Contractor shall coordinate, cooperate, liaise and interface with any and all local and international consultants, advisors, designers, professionals and experts involved in the Project, and the Works shall be executed and performed in unison and conjunction with the work and services rendered by such, all as necessary and required to ensure the full, proper, timely and successful completion of the Project.
- 10.8.7. **Integrated System and Interface Management.** Without derogating from the provisions of clause 10.8.6 above, and notwithstanding the engagement by ISR of separate contractors to perform works pertaining to traction substations, SCADA and other systems required for electrification of the ISR Railway Network, the Contractor shall be obligated and responsible together with all such contractors for the successful integration, testing, commissioning and operation of the complete electrification system as a unified operational system. Without derogating from the foregoing, in the performance of the Works, the Contractor shall comply with Section 2 (Interface Management and Coordination Requirements) of Volume 3 (Technical Requirements).
- 10.8.8. All responsibilities, obligations, activities, tasks, work and services shall be: (A) provided and performed by and on behalf of the Contractor in a manner that ensures that the completed Works are fit for the purposes for which they are intended; (B) provided and performed by and on behalf of the Contractor in a manner that promotes the good name, standing and reputation of ISR; and (C) fully and properly compliant with: (i) the Agreement; (ii) all Standards; (iii) all Technical Specifications; (iv) Good Industry Practices; (v) all Permits; (vi) all applicable Laws; and (vii) all requirements of applicable Authorities.

- 10.8.9. At no time during the execution of the Works shall the Contractor engage or become involved, whether directly or indirectly, in any legal or other relationship with any person or entity that creates, or causes, or appears to create or cause any direct or indirect conflict of interest between, on the one hand, such person or entity and, on the other hand, ISR or any of its agents and representatives.
- 10.8.10. All materials and components used in the execution of the Works shall be new, unused, of excellent quality, free from defects, and fit for their intended purpose(s). When completed, the Works shall be fit for the purpose(s) for which they are intended, as defined and described in, or as envisaged and contemplated by, the Agreement and in the applicable Work Order.
- 10.8.11. **Manner of Execution and No Interference.** In addition to and without derogating from any other provisions of the Agreement, the Contractor shall, and it shall procure that its personnel and Subcontractors shall:
- 10.8.11.1. Take into account that the ISR Railway Network is operational, and accordingly shall arrange and manage the execution of the Works in a manner that enables and accommodates, to the maximum extent possible, the ordinary day-to-day and ongoing operation and maintenance of the ISR Railway Network; and
- 10.8.11.2. Take all necessary and required steps and measures to prevent or avoid the performance of the Works delaying, disrupting, hindering, impeding, obstructing or interfering with the operation and maintenance of the ISR Railway Network; and
- 10.8.11.3. Mitigate the effects and consequences that the performance of the Works will or may have on the operation and maintenance of the ISR Railway Network; and
- 10.8.11.4. Take all necessary and required steps and measures to prevent or avoid the performance of the Works inconveniencing, disrupting, hindering, impeding, obstructing or interfering with the general public and/or local residents; and
- 10.8.11.5. Take all necessary and required steps and measures to prevent or avoid the performance of the Works inconveniencing, disrupting, hindering, impeding, obstructing or interfering with the day-to-day business or commercial functions, activities and/or operations of private and public persons and entities.

10.9. **Monitoring & Verification and Cooperation:**

- 10.9.1. ISR and any and all of its agents and representatives shall be entitled, and the Contractor shall permit and allow them, to monitor, review, assess, audit and/or verify: (i) the execution of and compliance with the Agreement by and on behalf of the Contractor; and/or (ii) the execution of the Works by and on behalf of the Contractor.

- 10.9.2. No such monitoring, review, assessment, audit and/or verification shall relieve or release the Contractor of any one or more of its obligations and responsibilities under the Agreement.
- 10.9.3. Without derogating from the foregoing, the Contractor shall:
 - 10.9.3.1. Permit and facilitate ISR's and its agents' and representatives' access to and sight of any and all information, documentation, deliverables and records related to or associated with the execution or implementation of the Contractor's obligations and responsibilities under the Agreement (including by permitting and allowing them to make and take copies of relevant written and/or electronic materials); and
 - 10.9.3.2. Cooperate with and provide all necessary and required assistance to ISR and any and all of its agents and representatives in respect of: (i) the exercising of their rights and entitlements under the Agreement; and (ii) the performance of their obligations and responsibilities under the Agreement.

11. Representations and Warranties of ISR

- 11.1. ISR warrants, represents and undertakes to the Contractor as set forth in each of clauses 11.2 and 11.3 below.
- 11.2. No warranty, representation or undertaking of ISR nor any information provided by ISR for purposes of or pursuant to this Agreement is or shall be misleading or omit to state a material fact.
- 11.3. **Corporate Status, Organizational Structure and Risk:**
 - 11.3.1. ISR has and shall have full approval, power, authority and ability to enter into this Agreement and to perform its obligations in accordance and compliance with this Agreement.
 - 11.3.2. The entering into and execution of this Agreement has been and shall remain duly authorized and approved by all requisite corporate action and no further authorization or approval is necessary or required.
 - 11.3.3. The entering into and execution of this Agreement has not resulted and will not result in any breach or default under Law or under any agreement, contract, instrument or legal relationship to which ISR is a party or by which ISR is bound.
 - 11.3.4. This Agreement constitutes the legal, valid and binding obligation of ISR, enforceable in accordance with its terms.
 - 11.3.5. ISR has and shall have full, proper and lawful authority, license, permission and power to permit the Contractor to execute and complete the Works at the Site in accordance with this Agreement.

12. Execution of the Project and the Works

- 12.1. The Contractor shall perform the Works: (i) in a highly expert, professional, skilled, careful and diligent manner; (ii) timeously, expeditiously and in a workmanlike manner; and (iii) exercising all skill, care and diligence to be expected of a highly qualified contractor knowledgeable and experienced in electrification works in projects similar to the Project and in performing works similar to the Works.
- 12.2. The Contractor shall provide the materials, equipment, personnel, goods, consumables and other things and services, whether of a temporary or permanent nature, required to fulfil the Contractor's obligations under the Agreement and within the timelines and specifications stipulated in the Agreement and/or the Work Orders (as applicable).
- 12.3. The Works shall include any work which is necessary to satisfy ISR's specifications and instructions, the Bid, or is implied by the Agreement, and all works which (although not mentioned in the Agreement) are necessary for the stability, or the completion, or the safe and proper operation, of the Works.
- 12.4. The Contractor shall, forthwith and without the need for any prior request or notification by or on behalf of ISR: (i) remedy and rectify any and all ambiguities, errors, inadequacies, inconsistencies, omissions and defects in the performance of the Works; and (ii) take all steps and measures necessary and required to render the Works fully compliant with the Agreement and applicable Law.
- 12.5. The Contractor shall be responsible for all Works carried out by it or on its behalf. In no event shall any approval, non-approval, certification, rejection or payment in respect of any part of the Works limit or negate the Contractor's obligations, responsibilities or liabilities under or pursuant to the Agreement or Law.
- 12.6. The Contractor shall engage, maintain and deploy professionals, experts, consultants, advisors and other service providers and subcontractors as necessary and required to ensure that the Works are carried out fully, appropriately and properly in accordance with this Agreement, each Work Order and applicable Law. To the extent such engagement requires registration and/or permits pursuant to any Law(s), then the Contractor shall only engage individuals who are duly registered and hold the requisite permits (all as applicable). Without derogating from the foregoing, the Contractor shall comply with the requirements detailed in the Technical Specifications regarding the engagement and training of local personnel for the performance of the Works.
- 12.7. **Liaison.** Without derogating from the foregoing, the Contractor shall attend meetings, consultations and discussions with ISR and its agents and representatives, as well as with any and all other technical, legal and other consultants and advisors of ISR involved in the Project, all as may be necessary or required for the full, appropriate, proper and timely execution of the Works and, in any event, as may be required or instructed by or on behalf of ISR.

- 12.8. **Duty of Care.** The Contractor shall owe a duty of care to ISR and its assigns (if any) to: (i) carry out the Works fully, appropriately and properly pursuant to the Tender Documents (including the Bid) and in accordance with this Agreement, the Work Orders and applicable Law; and (ii) ensure that the Works are carried out such that they are fit for the purpose(s) for which they are intended.
- 12.9. **Project Documentation.** The Contractor shall procure, produce or prepare (as the case may be) any and all reports, records, documents, deliverables, information, data and other materials as may be necessary or required for the full, appropriate, proper and timely performance of the Works and, in any event, as may be required or instructed by or on behalf of ISR (“**Project Documentation**”).
- 12.10. The Contractor shall provide ISR and its duly authorized agents and representatives with full and unrestricted access to and copies of any and all Project Documentation, all as may be necessary or required for the full, appropriate, proper and timely performance of the Works and, in any event, as may be required or instructed by or on behalf of ISR.
- 12.11. **Duty to Alert.** Without derogating from the Contractor’s responsibility for the full, proper, appropriate, complete and timely execution of the Works and without relieving or releasing the Contractor of any of its obligations under or pursuant to this Agreement, the Contractor shall:
- 12.11.1. Immediately upon becoming aware thereof, notify ISR of any event, circumstance, situation or matter which will, may or could reasonably be expected to have any adverse, detrimental or delaying effect or consequence on or in respect of the due progress, execution or delivery of the Works or any part thereof; and
- 12.11.2. Promptly investigate, analyze and make recommendations to ISR with respect to addressing any and all such events, circumstances, situations and/or matters in order to prevent, avoid and/or mitigate (as the case may be) any additional costs, damages and delays (if any) in the execution and delivery of the Works; and
- 12.11.3. In any event and without derogating from any other provisions of the Agreement or from its mitigation-related obligations pursuant to Law, promptly take all reasonable steps and measures to prevent, avoid and/or mitigate (as the case may be) any additional costs, damages and delays (if any) in the execution and delivery of the Works.

13. Nature of Relationship

- 13.1. The Contractor shall act solely as an independent contractor in executing the Project and the Works and nothing herein shall be deemed or construed to create a relationship of employer and employee, principal and agent, partnership or joint venture between ISR and the Contractor, or between ISR and any of the Contractor’s personnel.
- 13.2. There shall be no contractual relationship between ISR and any of the Contractor’s personnel.

- 13.3. All work, services, tasks, activities, actions and conduct undertaken or implemented by any of the Contractor's personnel and all risks and liabilities associated therewith or related thereto shall be the direct responsibility of the Contractor.
- 13.4. The Contractor shall be responsible and liable for the acts, omissions, conduct, representations, breaches and defaults of the Contractor's personnel.
- 13.5. The Contractor shall be solely responsible for the remuneration, compensation, benefits, contributions and taxes of the Contractor's personnel.

14. Laws and Requirements of Authorities

- 14.1. **General.** The Contractor shall, and it shall procure that its personnel and Subcontractors shall: (i) be and remain aware of and familiar with all Laws and requirements of applicable Authorities governing or applicable to the Site, the Works and this Agreement (including, without limitation, all applicable employment and labour Laws, health and safety-related Laws, environmental Laws, etc.); and (ii) execute and complete the Works in accordance and compliance with all such Laws and requirements of applicable Authorities.
- 14.2. Without derogating from the generality of the foregoing:
 - 14.2.1. **Health and Safety.** The Contractor shall, and it shall procure that its personnel and Subcontractors shall: (i) be and remain aware of and familiar with all health and safety aspects of the Site, the Works and the Agreement; and (ii) execute and complete the Works in accordance and compliance with all applicable health and safety Laws and requirements of applicable Authorities;
 - 14.2.2. The Contractor shall, and it shall procure that its personnel and Subcontractors shall:
 - 14.2.2.1. Comply with all health and safety requirements stipulated in the Technical Specifications; and
 - 14.2.2.2. In any event, comply with ISR's rules, instructions and procedures applicable to or governing health and safety, all as may be provided to the Contractor in advance and in writing (if and to the extent possible and practicable under the circumstances) and all as may be updated from time to time and adapted according to the progress of the Works and/or the evolving needs and requirements of the Project;

- 14.2.3. **Primary Contractor.** In respect of the Works, as of the date on which the Contractor is given right of access to, and possession or the necessary right of use of, the applicable part(s) of the Site, the Contractor shall: (i) be deemed to be the Primary Contractor (“*Kablan Rashi*”), the Construction Executor (“*Mevatzea Bniya*”) and the Works Manager (Foreman/“*Menahel Avoda*”), as each such term is defined in the Safety at Work Regulations (Construction Works), 1988; and (ii) be responsible for, comply with and implement each and every obligation and responsibility of a Primary Contractor (“*Kablan Rashi*”), a Construction Executor (“*Mevatzea Bniya*”) and a Works Manager (Foreman/“*Menahel Avoda*”), as each such term is defined in the Safety at Work Regulations (Construction Works), 1988.
- 14.2.4. **Third-Party Contractors.** Without derogating from the foregoing or from any other provisions of the Agreement, ISR may, at its sole discretion, instruct in the applicable Work Order that: (i) the Contractor shall, with respect to one (1) or more of ISR’s other contractors (including Direct Contractors) and/or with respect to one (1) or more contractor(s) engaged by or on behalf of any applicable Authority or utility owner (for the purposes of this Sub-Clause, each a “**Third-Party Contractor**”), assume the role of Primary Contractor (“*Kablan Rashi*”), Construction Executor (“*Mevatzea Bniya*”) and Works Manager (Foreman/“*Menahel Avoda*”), as each such term is defined in the Safety Regulations at Work (Construction Works), 1988 (in each such case, a “**Primary-role**”); or (ii) one (1) or more Third-Party Contractor shall assume such role with respect to the Contractor (in each such case, a “**Secondary-role**”).
- 14.2.5. **Primary-role.** For and in connection with each and every Primary-role, the following shall apply:
- 14.2.5.1. In respect of worksites of Third-Party Contractor(s), the Contractor shall be: (i) deemed to be the Primary Contractor (“*Kablan Rashi*”), Construction Executor (“*Mevatzea Bniya*”) and Works Manager (Foreman/“*Menahel Avoda*”), as each such term is defined in the Safety at Work Regulations (Construction Works), 1988; and (ii) responsible for, comply with and implement each and every obligation and responsibility of a Primary Contractor (“*Kablan Rashi*”), Construction Executor (“*Mevatzea Bniya*”) and Works Manager (Foreman/“*Menahel Avoda*”), as each such term is defined in the Safety at Work Regulations (Construction Works), 1988.
- 14.2.5.2. If (and only if) the Contractor is required, as aforesaid, to assume the role of Primary Contractor (“*Kablan Rashi*”), Construction Executor (“*Mevatzea Bniya*”) and Works Manager (Foreman/“*Menahel Avoda*”), then the Contractor shall be entitled to (and only to) payment of an amount equal to three percent (3%) of the costs of the works (excluding the costs of goods, materials and equipment) executed by the applicable Third-Party Contractor.

- 14.2.5.3. Except as aforesaid, the Contractor shall have no right or entitlement to claim or receive any remedy or relief in connection with its assuming the role, as aforesaid, of Primary Contractor (“*Kablan Rashi*”), Construction Executor (“*Mevatzea Bniya*”) and Works Manager (Foreman/“*Menahel Avoda*”).
- 14.2.6. **Secondary-role.** For and in connection with each and every Secondary-role, the following shall apply, but without derogating from any other provisions of the Contract:
- 14.2.6.1. The Contractor shall permit, allow and take all actions and steps to facilitate the performance and implementation by any and all applicable Third-Party Contractors of their obligations as Primary Contractor(s) (“*Kablan Rashi*”), Construction Executor(s) (“*Mevatzea Bniya*”) and Works Manager(s) (Foreman/“*Menahel Avoda*”); and
- 14.2.6.2. The Contractor shall: (i) co-ordinate and co-operate with any and all such Third-Party Contractors in respect of health and safety-related matters; and (ii) comply with and implement any and all applicable health and safety-related instructions and requirements of such Third-Party Contractors; and
- 14.2.6.3. The Contractor shall have no right or entitlement to claim or receive any remedy or relief in connection with any of the foregoing.
- 14.2.7. **Environmental.** The Contractor shall, and it shall procure that its personnel and Subcontractors shall: (i) be and remain aware of and familiar with all environmental protection and preservation aspects of the Site, the Works and the Agreement; and (ii) execute and complete the Works in accordance and compliance with all applicable environmental protection and preservation Laws and requirements of applicable Authorities;
- 14.2.8. The Contractor shall, and it shall procure that its personnel and Subcontractors shall:
- 14.2.8.1. Comply with all environmental protection and preservation requirements stipulated in the Technical Specifications; and
- 14.2.8.2. In any event, comply with ISR’s rules, instructions and procedures applicable to or governing environmental protection and preservation, all as may be provided to the Contractor in advance and in writing (if and to the extent possible and practicable under the circumstances) and all as may be updated from time to time and adapted according to the progress of the Works and/or the evolving needs and requirements of the Project.

15. Anti-Bribery and Anti-Corruption

- 15.1. The Contractor shall, and it shall procure that the Contractor’s personnel shall:

- 15.1.1. Not offer gifts or benefits to any public official, government functionary or third party, nor solicit, promise or accept gifts or benefits for itself or for any public official, government functionary or third party for the purpose of inducing any favorable permit, approval, authorization, license, consent or decision concerning or in respect of the Project, the Works or the Agreement; and
- 15.1.2. Abide by, comply with and implement any and all applicable foreign and domestic anti-bribery and anti-corruption laws.

16. Permits and Consents

- 16.1. **ISR Obtained Permits.** In respect of ISR Obtained Permits and the process for procurement thereof, the Contractor shall:
 - 16.1.1. Provide (itself or via one of its representatives or Subcontractors) any and all assistance, coordination and cooperation as may be necessary or required to enable ISR and/or anyone on its behalf to apply for and/or obtain any ISR Obtained Permit, including (without limitation) by:
 - 16.1.1.1. Procuring or preparing (as applicable) any and all data, designs, information, specifications, reports and other documentation as may be requested or required by ISR and/or anyone on its behalf; and
 - 16.1.1.2. Attending or participating in (as applicable) any and all meetings, discussions and site inspections as may be requested or required by ISR and/or anyone on its behalf; and
 - 16.1.2. Adhere to and comply with all applicable terms and conditions of the ISR Obtained Permits.
- 16.2. **Other Permits.** Other than in respect of the ISR Obtained Permits, the Contractor shall obtain, possess, maintain, renew and comply with the terms and conditions of each Permit as may be necessary or required for:
 - 16.2.1. The execution of the Project and the Works in accordance and compliance with the Agreement and each Work Order; and/or
 - 16.2.2. The fulfilment by it of the terms, conditions and provisions of the Agreement and each Work Order.
- 16.3. Without derogating from the generality of the foregoing, the Contractor shall:
 - 16.3.1. Ensure that any and all designers, engineers and architects involved in the Works hold the requisite approvals and licenses under the Engineers and Architects Law, 1958; and
 - 16.3.2. Itself hold any and all certifications necessary or required under the Registration of Contractors for Engineering Construction Works Law, 1969, or a Lawful exemption thereunder (as the case may be);

- 16.3.3. Ensure that all its Subcontractors hold, as required by and in accordance with all applicable Laws, all certifications necessary or required for “a contractor for performing governmental works”, duly issued by the relevant certifying Authority/ies;
 - 16.3.4. Ensure that all its Subcontractors are registered in all registries as required by and in accordance with all applicable Laws; and
 - 16.3.5. Ensure that none of its Subcontractors are registered or domiciled in, or a resident of, or conduct a substantial part of its business in, a country that does not have diplomatic relations with the State of Israel.
- 16.4. Upon ISR’s request, the Contractor shall provide to ISR a copy of any Permit obtained or renewed by, or issued or granted to, the Contractor.

17. Subcontracting

- 17.1. For purposes of this Agreement:
- 17.1.1. The term “**Subcontract**” shall mean any and all contracts or agreements entered into by the Contractor with any subconsultants, suppliers and/or subcontractors with respect to the execution of the Project or the Works; and
 - 17.1.2. The term “**Subcontractor**” shall mean any and all counterparties and replacement counterparties (if any) to any Subcontract.
- 17.2. The Contractor shall enter into a Subcontract with the Major Subcontractor for performance of the OCS related Works. The Contractor shall not replace the Major Subcontractor and/or terminate its Subcontract with the Major Subcontractor without the prior approval of ISR. Without derogating from the foregoing, ISR may, at its sole discretion and for any reason and on any grounds, object to or refuse to grant approval for the replacement of the Major Subcontractor.
- 17.3. Subject to clause 17.2 above, the Contractor shall not Subcontract the execution of the whole of the Works.
- 17.4. Save for the Subcontract with the Major Subcontractor, which was approved by ISR within the Tender Process, the Contractor shall not enter into any Subcontract for the performance of the Works, unless with the prior approval of ISR.
- 17.5. Without derogating from the generality of the foregoing, ISR may, at its sole discretion, require that the terms, conditions and provisions of any one or more Subcontract and/or any material change(s) or amendment(s) to any one or more Subcontract be subject to the prior approval of ISR.
- 17.6. The Contractor shall procure that any and all Subcontractors engaged thereby for the performance of any of the Works shall have all ability, experience, expertise, knowledge, professional qualification, skill, training and resources as may be necessary or required for the full and proper performance of the applicable Works.

- 17.7. There shall be no contractual relationship between ISR and any Subcontractors engaged by or on behalf of the Contractor.
- 17.8. All work, services, tasks, activities, actions and conduct undertaken or implemented by Subcontractors and/or by agents and representatives of Subcontractors and all risks and liabilities associated therewith or related thereto shall be the direct responsibility of the Contractor as if they were the work, services, tasks, activities, actions, conduct, risks and liabilities of the Contractor.
- 17.9. The Contractor shall be responsible and liable for the acts, omissions, conduct, representations, breaches and defaults of any and all Subcontractors and of their agents and representatives as if they were the acts, omissions, conduct, representations, breaches and defaults of the Contractor.
- 17.10. Each and every Subcontractor and each of their agents and representatives shall be considered and deemed to be an agent and representative of the Contractor, engaged and appointed by the Contractor to act for, on behalf of and as representative of the Contractor.
- 17.11. Subcontractors and their agents and representatives shall have no right or authority to act for or bind ISR and shall not attempt to enter into any contract, commitment or other agreement in the name of or on behalf of ISR, nor attempt to incur any debt or liability whatsoever in the name of or on behalf of ISR.
- 17.12. The Contractor shall be solely responsible for the remuneration, compensation and consideration of any and all Subcontractors.
- 17.13. Subcontractors and their agents and representatives shall not act or present themselves nor attempt or purport to act or present themselves other than in accordance and compliance with this Agreement or as otherwise authorized or permitted by ISR.
- 17.14. All Subcontracts shall include provisions entitling ISR to require and enabling the applicable Subcontract to be ceded, assigned, delegated and transferred to ISR or its nominee(s).
- 17.15. In addition and without derogating from the foregoing, ISR may, at its sole discretion, instruct the Contractor in the applicable Work Order to enter into a Subcontract with a specific Subcontractor for performance of any part of the Works (“**Appointed Subcontractor**”). The provisions of clauses 17.6 to 17.14 above shall apply with respect to any such Appointed Subcontractor, *mutatis mutandis*, provided, however, that the Contractor shall be entitled to (and only to) payment of an amount equal to six percent (6%) of the costs of the works (excluding the costs of goods, materials and equipment) executed by the applicable Appointed Subcontractor.

18. Site and Mobilization Areas

- 18.1. **Access and Use.** ISR will provide the Contractor with a non-exclusive, non-transferable right to access and use the Site for the sole purpose of executing and completing the Works in accordance with the Agreement.

- 18.2. The Contractor shall have no other rights or entitlements whatsoever other than to access and use the Site, on a non-exclusive, non-transferable basis, for the sole purpose of executing and completing the Works in accordance with the Agreement.
- 18.3. **Site Availability Date.** ISR will make the Site available to the Contractor as of the Site Availability Date stipulated in the applicable Work Order.
- 18.4. **ISR Arranged Mobilization Sites.** If ISR will arrange any mobilization, organizational or staging areas, space and/or facilities (“**ISR Arranged Mobilization Site(s)**”) as stated in the applicable Work Order, then the following shall apply thereto:
- 18.4.1. **Delivery.** ISR shall make the ISR Arranged Mobilization Site(s) available to the Contractor on or before the respective date(s) stated in the applicable Work Order.
- 18.4.2. The Contractor may decline to use any ISR Arranged Mobilization Site(s) on condition that it delivers to ISR written notice to that effect by no later than ten (10) days following the issuance of the applicable Work Order, in which case the following provisions shall not apply to the ISR Arranged Mobilization Site(s) listed in such notice.
- 18.4.3. Immediately upon any ISR Arranged Mobilization Site(s) being made available to the Contractor as aforesaid: (i) any and all references in this Contract to ‘**Mobilization Areas**’ shall be considered and deemed to include reference to the applicable ISR Arranged Mobilization Site(s); and (ii) without derogating from the generality of the foregoing, the Contractor shall pay any and all applicable charges, fees, levies, rent, taxes and the like associated with the applicable ISR Arranged Mobilization Site(s).
- 18.4.4. **Permits.** The Contractor (not ISR) shall obtain and maintain any and all Permits as may be necessary or required for the Contractor’s use and/or occupation of the ISR Arranged Mobilization Site(s).
- 18.4.5. **Assignment.** At its sole discretion, ISR may assign and transfer to the Contractor any and all agreements and arrangements (other than rights and obligations pertaining to the period prior to such assignment and transfer) pursuant to which ISR procured or arranged the applicable ISR Arranged Mobilization Site(s) (a “**Mobilization Site Procurement Contract**”).
- 18.4.6. **Non-assignment.** In respect of any ISR Arranged Mobilization Site(s) where the applicable Mobilization Site Procurement Contract(s) is/are not assigned and transferred to the Contractor as aforesaid, the Contractor shall, at the sole discretion of ISR, either:
- 18.4.6.1. On a back-to-back basis with ISR, assume and be bound by all rights and obligations of ISR under the applicable Mobilization Site Procurement Contract(s) which relate to the Works or otherwise to the Project (other than rights and obligations pertaining to the period prior to such assumption); or

- 18.4.6.2. Enter into and execute any and all required agreements and other arrangements in respect of the applicable ISR Arranged Mobilization Site(s) (independent of the applicable Mobilization Site Procurement Contract(s)).
- 18.4.7. **Rehabilitation and Re-Delivery.** The Contractor shall be responsible to: (i) rehabilitate and restore the ISR Arranged Mobilization Site(s) to the required condition; (ii) re-deliver the applicable ISR Arranged Mobilization Site(s) back to ISR (duly rehabilitated and restored as aforesaid); and (iii) if applicable, re-assign and transfer the applicable Mobilization Site Procurement Contract(s) back to ISR.
- 18.5. **Other and Additional Mobilization Areas.** If any mobilization, organizational or staging areas, space and/or facilities (“**Mobilization Areas**”) are required by it in addition to or beyond any applicable ISR Arranged Mobilization Site(s) (if any), the Contractor shall be responsible to procure, arrange and maintain same, including to:
 - 18.5.1. Negotiate, execute and comply with all necessary and required contracts and arrangements with third parties and/or applicable Authorities in connection with the use and occupation of Mobilization Areas (including in connection with payment of any and all applicable charges, fees, levies, rent, taxes and the like); and
 - 18.5.2. Obtain, possess, maintain, renew and comply with the terms and conditions of any and all Permits as may be necessary or required in connection with the use and/or occupation of Mobilization Areas; and
 - 18.5.3. Repair, reinstate, rehabilitate and redeliver, as required, all Mobilization Areas.
- 18.6. **Safeguarding and Security.** Without derogating from any other provisions of the Agreement, throughout the execution of the Works, the Contractor shall be responsible for the health, safety, security and safeguarding of any and all Contractor’s personnel and Subcontractors present or located at or on the Site or any Mobilization Areas.
- 18.7. **Onsite Storage.** Without derogating from any other provisions of the Agreement, throughout the execution of the Works, the Contractor shall be responsible for the suitable, appropriate, safe and hazard-free storage (whether indoors, outdoors and/or according to any special storage requirements or instructions as may be issued by ISR from time to time, at its sole discretion) of any and all goods, materials, tools, special tools, plant, equipment, machinery and other facilities present or located at or on the Site or any Mobilization Areas.
- 18.8. **Cleanliness and Sanitation.** Without derogating from any other provisions of the Agreement, throughout the execution of the Works, the Contractor shall be responsible to:
 - 18.8.1. Maintain the cleanliness and sanitation of the Site and all Mobilization Areas;
 - 18.8.2. Implement and comply with all Laws applicable to or governing the cleanliness and/or sanitation of the Site and Mobilization Areas;

- 18.8.3. Remove and lawfully dispose of all dirt, muck, debris, garbage, scrap, waste, spoil, surplus soil, surplus material and excavated material caused or created by the execution of the Works or which otherwise accumulated at or on the Site and/or Mobilization Areas; and
- 18.8.4. Ensure that the Site and Mobilization Areas are kept hazard-free and fit and suitable for the execution of the Works.
- 18.9. **Access to ISR.** ISR and any and all of its agents and representatives shall be entitled to, and the Contractor shall permit and allow them, access to the Site, Mobilization Areas and any other place where any Works are being executed, including the factories, manufacturing plants and other facilities of the Contractor and its Subcontractors, for the purpose of monitoring, reviewing, assessing, auditing and/or verifying the progress of the Works and/or the compliance of the Works with the provisions of this Agreement, provided that such access shall take place during normal working hours and be coordinated with the Contractor in advance.

19. Means of Access and Transportation within the Site

- 19.1. **Means of Access to the Site and Mobilization Areas.** The Contractor shall be responsible to procure, arrange and maintain any and all means and methods of access, including roads, streets, paths and routes, to the Site and Mobilization Areas as may be necessary or required for it to execute and complete the Works in accordance with the Agreement (“**Means of Access**”), including to:
 - 19.1.1. Negotiate, execute and comply with all necessary and required contracts and arrangements with third parties and/or applicable Authorities in connection with the use and occupation of Means of Access (including in connection with payment of any and all applicable charges, fees, levies, rent, taxes and the like); and
 - 19.1.2. Obtain, possess, maintain, renew and comply with the terms and conditions of any and all Permits as may be necessary or required in connection with the use and/or occupation of Means of Access; and
 - 19.1.3. Repair, reinstate, rehabilitate and redeliver, as required, all Means of Access.
- 19.2. **Transportation within the Site.** Without derogating from any other provisions of the Agreement, any and all goods, materials, tools, special tools, plant, equipment, machinery and other facilities shall be transported within the Site in accordance and compliance with ISR’s rules, instructions and procedures applicable to or governing transportation within the Site, all as may be provided to the Contractor in advance and in writing (if and to the extent possible and practicable under the circumstances) and all as may be updated from time to time and adapted according to the progress of the Works and/or the evolving needs and requirements of the Project.

20. Direct Contractors

- 20.1. ISR may, at any time and any number of times during the term of the Agreement, appoint or engage any one or more third party to perform any work, services, tasks, activities and/or other actions (whether in connection with the Project, the Works, the Site, the Network or otherwise) (each, a “**Direct Contractor**”).
- 20.2. The Contractor shall, and it shall procure that its personnel and Subcontractors shall:
 - 20.2.1. Cooperate and coordinate with any and all Direct Contractors, including (without limitation) undertaking and implementing any and all necessary and required interfacing, interaction, integration and design coordination; and
 - 20.2.2. Interface and coordinate with any and all Direct Contractors in compliance with Section 2 (Interface Management and Coordination Requirements) of the Technical Specifications; and
 - 20.2.3. Not hinder, obstruct or interfere with any Direct Contractors; and
 - 20.2.4. Permit and allow the performance and implementation by any and all Direct Contractors of their respective responsibilities and obligations towards ISR, including (*inter alia*) by providing all necessary and required: (i) access to the Site and the Works; and (ii) data, information and documents related to the Works, including (*inter alia*) all design, technical and engineering data, information and documents as may be necessary or required to be provided to any Direct Contractor(s) in order to achieve the full, proper and safe execution and completion of the Works in accordance with the Agreement.

21. Security

- 21.1. Without derogating from any other provisions of the Agreement, the Contractor shall, and it shall procure that its personnel and Subcontractors shall: (i) be and remain aware of and familiar with all Laws governing or applicable to the security and safeguarding of the Site and the Works; and (ii) execute and complete the Works in accordance and compliance with all such Laws.
- 21.2. Without derogating from the foregoing:
 - 21.2.1. The Contractor shall, and it shall procure that its personnel and Subcontractors shall: (i) be and remain aware of and familiar with all security and safeguarding aspects of the Site, the Works and the Agreement; and (ii) execute and complete the Works in accordance and compliance with all applicable security and safeguarding-related Laws and requirements of applicable Authorities; and

- 21.2.2. The Contractor shall comply with ISR's rules, instructions and procedures applicable to or governing security and safeguarding, all as may be provided to the Contractor in advance and in writing (if and to the extent possible and practicable under the circumstances) and all as may be updated from time to time and adapted according to the progress of the Works and/or the evolving needs and requirements of the Project.

22. Nuisance

- 22.1. Without derogating from any other provisions of the Agreement, the Contractor shall, and it shall procure that its personnel and Subcontractors shall, take all necessary and required steps and measures to prevent the execution of the Works inconveniencing, disrupting, obstructing or interfering with, or being or causing any nuisance (whether due to noise, vibration, dust or otherwise) to:
 - 22.1.1. The day-to-day business or commercial functions, activities and/or operations of third parties; and/or
 - 22.1.2. The general public; and/or
 - 22.1.3. The ISR Railway Network or any part or aspect thereof.

23. Design Deliverables

- 23.1. Without derogating from any other provisions of this Agreement, the Design Deliverables (whether specified in **Appendix "B" (Proforma Work Order)** hereto, or specified in any Work Order, or otherwise prepared or produced by or on behalf of the Contractor) shall be:
 - 23.1.1. Prepared and completed by the Contractor: (i) with all due skill, care, diligence, professionalism and expertise; and
 - 23.1.2. Prepared and completed by the Contractor such that they are fit for the purposes for which they are intended; and
 - 23.1.3. Prepared and completed by the Contractor so that they are fully and properly compliant with: (i) the Agreement; (ii) all Standards; (iii) all Technical Specifications; (iv) Good Industry Practices; (v) all Permits; (vi) all applicable Laws; and (vii) all requirements of applicable Authorities; and
 - 23.1.4. Approved by ISR in accordance and compliance with and subject always to the provisions of **Appendix "F" (ISR Approval)** hereto.
- 23.2. No Works shall commence unless all Design Deliverables related thereto have been approved by ISR in accordance with the Agreement.

24. Track Availability

- 24.1. As from the issuance of the Notice to Proceed (Execution), ISR shall grant the Contractor with the required Track Possession (TP) to enable the Contractor to perform the applicable Works in accordance with the applicable minimum TP hours specified in Section 0.34 of the Preliminaries Section of the Technical Specifications with respect to each of a Greyfield Area Works or Greenfield Area Works (the “**Guaranteed Track Availability**”).
- 24.2. ISR shall be entitled to update or cancel a scheduled Track Possession on four (4) hours’ prior notice to the Contractor with respect to Works to be performed on weekdays and twelve (12) hours’ prior notice with respect to Works to be performed on Saturdays or official holidays. The Contractor shall be entitled to an extension of time for the execution of the Works with respect to any such cancelled Works. In addition, if and to the extent that ISR did not give the required prior notice, the Contractor shall receive payment with respect to the cancelled working team or teams on Site in accordance with line 10.01.02 Category D - Resources of the BOQ.
- 24.3. In order to determine whether the Contractor received the Guaranteed Track Availability, following the completion of all Works under a Work Order, ISR shall calculate the average daily Track Possession granted to the Contractor per each category of Works (Greyfield/Greenfield) under the applicable Work Order in accordance with the following:
- 24.3.1. Summation of all Track Possession hours granted to the Contractor, including Fridays and Saturdays, regardless of whether the Contractor utilized such TP hours (the “**Total Track Possession Time**”);
- 24.3.2. Division of the Total Track Possession Time by the number of workdays during which the Contractor carried out Works, including Fridays and Saturdays (the “**Daily Average Track Possession Time**”).
- 24.4. If the Daily Average Track Possession Time, per each category of Work, is lower than the Guaranteed Track Availability, the Contractor will receive compensation calculated in accordance with the following formula:

$$30\% \times \text{Total WO Consideration} \times \frac{\text{Guaranteed Track Availability} - \text{Daily Average TP Time}}{\text{Guaranteed Track Availability}}$$

(the “**Track Availability Compensation**”).

- 24.5. Following is a numerical example of the Track Availability Compensation calculation for illustration purposes only:

Total Work Order Consideration: 5,000,000 NIS

Work Category: Greyfield

Guaranteed Track Availability (according to the applicable Work category): 6 hours

Total workdays, including Fridays and Saturdays, during which the Contractor carried out Works: 100 days

Total Track Possession Time granted to the Contractor throughout the execution of the Works: 450 hours

Daily Average Track Possession Time:

$$450 \div 100 = 4.5 \text{ average hours per day}$$

Whereas the Daily Average Track Possession Time granted to the Contractor (4.5 hours) is lower than Guaranteed Track Availability for Works carried out in a Greyfield Area (6 hours), the Contractor is entitled to receive compensation to be calculated as follows:

Guaranteed Track Availability minus Daily Average TP Time:

$$6 \text{ hours} - 4.5 \text{ hours} = 1.5 \text{ hours}$$

Daily deviation from Guaranteed Track Availability:

$$1.5 \text{ hours} \div 6 \text{ hours} = 25\%$$

Track Availability Compensation to be paid to the Contractor:

$$30\% \times 5,000,000 \text{ NIS} \times 25\% = 375,000 \text{ NIS}$$

25. Performance of the Works

- 25.1. As from the issuance of the applicable Work Order, the Contractor shall commence the execution of the applicable Works and proceed continuously, industriously, efficiently, expeditiously and with all skill, care, diligence, professionalism, expertise and resources necessary and required to complete the Works and bring them to Final Acceptance in accordance and compliance with the Agreement.
- 25.2. Without derogating from the foregoing or from any other provision of this Agreement, the Contractor shall plan, design, execute and complete the Works:
 - 25.2.1. In cooperation and coordination with any and all agents and representatives appointed by or on behalf of ISR with respect to the Works; and
 - 25.2.2. In cooperation and coordination with any and all Direct Contractors; and
 - 25.2.3. So that all parts and aspects of the Works are fully and properly interfaced, integrated, compatible, functional, operable and maintainable; and
 - 25.2.4. In a manner that ensures that the completed Works are fit for the purposes for which they are intended; and
 - 25.2.5. So that the Works are fully and properly compliant with: (i) the Agreement; (ii) the applicable Work Order; (iii) all Standards; (iv) all Technical Specifications; (v) Good Industry Practices; (vi) all Permits; (vii) all applicable Laws; and (viii) all requirements of applicable Authorities.

26. Timelines and Milestones

The Contractor shall ensure that the Works are executed and completed in accordance and compliance with and that they meet and achieve each and all timelines, deadlines and milestones set forth in each and all Work Orders.

27. Option – SCADA Works

- 27.1. ISR shall have the option, at its sole discretion, to require the Contractor to execute the SCADA Works (either partially or wholly), all in accordance with the Agreement and in compliance with the Technical Specifications (the “**Option**”). However, the foregoing shall not limit or derogate from clause 20 (Direct Contractors) or any other provisions of the Agreement, including (without limitation) ISR’s rights and prerogatives pursuant thereto to appoint or engage any one or more third party or Direct Contractor to execute the SCADA Works (either partially or wholly).
- 27.2. **Scope of the SCADA Works.** Without derogating from the Contractor’s obligations and responsibilities to ensure and achieve the full, proper and complete design and construction of the Works in accordance with the Agreement, in general terms, the scope of the SCADA Works will be as specified in Appendix B of the Technical Specifications.
- 27.3. ISR may exercise an Option by way of at least six (6) months’ prior notice provided to the Contractor (an “**Option Notice**”).
- 27.4. An Option Notice may be provided to the Contractor at any time during the Term of the Agreement.
- 27.5. Together with the Option Notice, ISR shall notify the Contractor of all terms and conditions for executing the SCADA Works, including the detailed scope thereof, the applicable Network Section(s) for carrying out the SCADA Works, updated insurance requirements and timelines, deadlines and milestones for the commencement, execution and completion of the SCADA Works. Without derogating from the foregoing:
- 27.5.1. the Contractor shall: (i) be bound by the Option Notice (which shall be carried out subject to and in compliance with applicable Law); (ii) forthwith carry out the Option Notice; and (iii) have no right or entitlement whatsoever to refuse or omit to carry out the Option Notice, or to delay the carrying out of any Option Notice; and
- 27.5.2. The Contractor shall undertake and implement the SCADA Works without delaying, disrupting, hindering, impeding, obstructing or interfering with the works carried out for electrification of the ISR Network; and
- 27.5.3. The SCADA Works shall be considered and deemed be an integral part of the Project and all applicable provisions of the Agreement shall apply thereto; and

- 27.5.4. All provisions of the Agreement applicable to the Works shall apply and be applied, *mutatis mutandis*, to the SCADA Works (including, without limitation, with respect to the applicable Subcontracts which will need to be executed for the implementation thereof, the requirement to obtain a Notice to Proceed, the requirement to obtain notice(s) to commence work, insurance requirements, provision of performance guarantees, etc.); and
- 27.5.5. The Contractor shall, subject to the prior approval of ISR, enter into a Subcontract with the SCADA Contractor for the performance of the SCADA Works.
- 27.5.6. **Consideration and Payment.** The consideration for executing (pursuant to an Option Notice, if any) the relevant SCADA Works shall be agreed upon by the Parties in good faith based on the actual scope of the SCADA Works, applicable items in the BOQ and bills of quantities prepared by ISR with respect thereto (the “**Option Consideration**”).
- 27.5.7. ISR shall have the sole discretion whether to pay the Option Consideration: (i) as a lump sum following achievement of milestones as shall be determined by ISR; or (ii) pursuant to progress of the Works according to the bills of quantities agreed between the Parties.
- 27.5.8. **Payment Terms.** The Option Consideration shall, subject always to this clause 27, be paid in accordance with the provisions of the Agreement pertaining to payment of the Work Order Consideration. The terms and conditions of payment will be specified in the Option Notice.
- 27.5.9. The Option may or may not be exercised, at the sole discretion and at the sole option of ISR. The Contractor shall have no claims, demands or actions whatsoever against ISR with respect to ISR’s decision whether or not to exercise the Option.

28. Setting Out

- 28.1. The Contractor shall set out and position the Works properly, appropriately, correctly and accurately according to the Agreement.

29. Temporary and Ancillary Items

- 29.1. The Contractor shall plan, set out, position, coordinate, erect, install and maintain on the Site and Mobilization Areas all temporary and ancillary tools, special tools, plant, equipment, machinery and other facilities as may be necessary or required for it to execute and complete the Works in accordance with the Agreement, including (if and to the extent relevant) cranes, hoardings, gantries, fans, air-conditioners, safety screens, barriers, fences, access gates, covered gangways, consumables, goods, materials, property, parts, spares, systems, scaffolding, props, shoring, excavation support, falsework, formwork, sheds, enclosures, office accommodation, etc. (“**Temporary and Ancillary Items**”).

- 29.2. Without derogating from the generality of the foregoing, the Contractor shall be responsible for the dismantling, disassembly, re-positioning, re-erection and re-installation of Temporary and Ancillary Items as required to accommodate the execution, progress and completion of the Works.
- 29.3. Promptly following the issuance of the applicable Certificate of Final Acceptance, the Contractor shall remove all Temporary and Ancillary Items brought onto the Site and Mobilization Areas.

30. Authorized Equipment & Major Equipment

- 30.1. **Authorized Equipment.** Without derogating from any other provisions of the Agreement, if and to the extent required or specified in the Technical Specifications, the Contractor shall use and deploy only authorized equipment in and for the execution and completion of the Works.
- 30.2. **Major Equipment.** Without derogating from the foregoing, any and all Major Equipment shall be subject to the approval of ISR at each of the following stages of their procurement: (i) prior to placing the order for the applicable Major Equipment; and (ii) following the arrival of the applicable Major Equipment in the State of Israel.

31. Utilities for Construction

- 31.1. The Contractor shall procure, obtain and provide to the Site all electricity, water, gas, compressed air, communications, drainage, sewage, sanitary facilities and other utilities as may be necessary or required for the execution and completion of the Works in accordance with the Agreement.

32. Obstructing Infrastructure and Affected Infrastructure

- 32.1. Certain existing infrastructures within the Site may constitute an obstacle to the performance of the Works (“**Obstructing Infrastructures**”) and/or be affected by the Works (“**Affected Infrastructures**”). ISR may provide the Contractor with certain preliminary surveys with the mapping of certain existing underground infrastructures within the Site, as received by ISR from owners of certain Obstructing Infrastructures and/or Affected Infrastructures (“**Infrastructure Surveys**”).
- 32.2. The Infrastructure Surveys to the extent provided by ISR are provided to the Contractor “as-is” and ISR makes no representation, guarantee or warranty, express or implied, as to the accuracy, completeness, condition, suitability, sufficiency, non-infringement or performance of the Infrastructure Surveys. ISR shall have no responsibility and/or liability whatsoever to the Contractor and/or to any third party in connection with the Infrastructure Surveys and/or the use thereof. The Contractor shall review the Infrastructure Surveys and be responsible for updating them on a current basis with respect to all Obstructing Infrastructures and/or Affected Infrastructures (whether underground or not). The use of the Infrastructure Surveys by the Contractor shall be at Contractor’s sole cost, responsibility and liability.

- 32.3. **Allocation of Responsibilities.** The allocation of responsibilities between ISR and the Contractor with respect to the Obstructing Infrastructures and/or Affected Infrastructures is described herein. However, irrespective of whether any responsibility is imposed on ISR or on the Contractor, the Contractor shall be required to coordinate with ISR, and to cooperate with ISR, the bodies and entities to which the Obstructing Infrastructures and/or Affected Infrastructures belong and any third party on their behalf, regarding the treatment or relocation of the Obstructing Infrastructures and/or Affected Infrastructures, and to provide all required information and other assistance reasonably required by ISR in connection with such matter, for no additional consideration (such being included in the total Work Order Consideration to which Contractor shall be entitled to under the applicable Work Order).
- 32.4. **Contractor's Obligation to Avoid Interferences.** The Contractor is required to perform the Works such as to:
- 32.4.1. Avoid (e.g. by use of different materials, alternative designs, work arounds, etc.) the need for treatment and/or relocation of Obstructing Infrastructures; and
- 32.4.2. Avoid the need for treatment of Affected Infrastructures, or if not avoidable, to minimize expected effects of the Works on Affected Infrastructures (including those owned or under the control of ISR).
- 32.5. **Obstructing Infrastructures.** Prior to the commencement of the design of the applicable Works, the Contractor shall ascertain the location of all Obstructing Infrastructures (whether or not specified in the Infrastructure Surveys) by all available means, including but without limitation visual inspection, use of detection equipment, surveys by professional third parties, digging, etc.
- 32.6. In the event that the Contractor discovers any Obstructing Infrastructures that were not specified in the Infrastructure Surveys, the Contractor shall immediately notify ISR in writing and submit its proposal for the adaptation of the Works as required such as to avoid the need for the relocation of such Obstructing Infrastructures.
- 32.7. If it is not possible to perform the Works such as to avoid the relocation of such existing Obstructing Infrastructures discovered by the Contractor and not appearing in the Infrastructure Surveys, as shall be proven by Contractor to ISR's satisfaction, and ISR determines, after consultation with the Contractor that the Obstructing Infrastructures has to be relocated, the Contractor shall be responsible to ensure the relocation of the Obstructing Infrastructures (including but without limitation reaching an agreement with the owner thereof, subject to ISR's prior approval), and the provisions of clause 53 (Change Orders) below shall apply thereto, *mutatis mutandis*. Notwithstanding the foregoing, ISR may instruct that the relocation of the Obstructing Infrastructures be executed by the owner thereof or by another third party and in such case the Contractor shall coordinate and cooperate with such other parties as directed by ISR.

- 32.8. Without derogating from any other provisions of the Agreement, the Contractor shall obtain at its own cost and expense all Permits for the performance of the Works as required from all Obstructing Infrastructures' owners and from the owners of any other infrastructures (whether such owners have an agreement with ISR or not, whether any Obstructing Infrastructures was relocated or not, and irrespective of who was responsible for such relocation).
- 32.9. Without derogating from any other provisions of the Agreement, the Contractor shall be solely responsible and liable towards ISR and/or any third party for all damages to the Obstructing Infrastructures (and all damages in connection therewith) resulting from the Works, in which case the Contractor shall bear full responsibility and liability in connection with such Obstructing Infrastructures.
- 32.10. **Affected Infrastructures.** ISR shall be responsible at its own cost and expense for the performance of the works required for the relocation or treatment (i.e., by using a technological or professional solutions, including but without limitation earthing, cathodic protection, or physical protection, etc.) of the Affected Infrastructures, and the Contractor shall reasonably cooperate with ISR at no additional charge. In addition, ISR shall be entitled (but not obligated) to issue a Change Order for the performance of such works or any portion thereof by Contractor. Provided that, where the applicable relocation or treatment is necessary or required due to any act, omission, breach or default by or on behalf of the Contractor, the Contractor (not ISR) shall be responsible at its own cost and expense for the performance of the works required for the relocation or treatment (i.e., by using a technological or professional solutions, including but without limitation earthing, cathodic protection, or physical protection, etc.) of the applicable Affected Infrastructures.
- 32.11. However, any physical protection to be applied to bridges crossing over the Network is not the responsibility of ISR and the Contractor shall be responsible for, and shall bear the costs of, applying such physical protection to bridges.
- 32.12. Clause 32 above shall not apply in the event that the relocation or treatment of any Affected Infrastructure is required as a result of any act or omission of Contractor.

33. Quality and Safety Control and Assurance

- 33.1. The Contractor shall:
- 33.1.1. Execute the Works in accordance and compliance with all quality and safety requirements specified in the Agreement, the Technical Specifications and applicable Laws and as instructed by ISR; and
 - 33.1.2. Institute and maintain a quality and safety control system through an independent quality control company to monitor and control compliance with all applicable quality and safety requirements as specified in the Technical Specifications; and
 - 33.1.3. Institute and maintain a quality and safety assurance system to assure and demonstrate compliance with all applicable quality and safety requirements as specified in the Technical Specifications.

34. Supervision

- 34.1. The Contractor shall undertake all onsite monitoring, superintendence and supreme supervision, including (*inter alia*) by way of the deployment of the requisite onsite resident engineers, foremen and works managers, as necessary and required to ensure that:
- 34.1.1. The Works are executed and completed in accordance and compliance with: (i) the Agreement; (ii) all Standards; (iii) all Technical Specifications; (iv) Good Industry Practices; (v) all Permits; (vi) all applicable Laws; and (vii) all requirements of applicable Authorities; and
- 34.1.2. The Works are brought to Final Acceptance in accordance and compliance with this Agreement and by no later than the applicable deadlines specified in the applicable Work Order.

35. Weekly Progress Reports

- 35.1. For and in respect of each calendar week, commencing as of the calendar week in which a Work Order is issued and until and including the calendar week in which the Certificate of Final Acceptance is issued with respect to the Works applicable to that Work Order, the Contractor shall submit to ISR a weekly progress report within three (3) days following the end of the week to which the report relates (each, a “**Weekly Progress Report**”).
- 35.2. The format, contents, topics and level of detail required for the Weekly Progress Reports shall be as determined by ISR, at its sole discretion.
- 35.3. Without derogating from the foregoing, each Weekly Progress Report shall include at least the following documents, information feedback and updates for and in respect of the week to which it relates:
- 35.3.1. An executive summary of the report;
- 35.3.2. Works execution progress time schedules reflecting the actual current progress of the execution of the Works, including a detailed note regarding all tasks and activities that are in delay (if any), explaining the reason for the delay and indicating what action the Contractor is taking or will take to recover the lost time;
- 35.3.3. Works progress photography, in accordance with clause 38 (Progress Photography) below.

36. Time Schedules and Programmes

- 36.1. Any and all time schedules and programmes prepared or presented by or on behalf of the Contractor (whether pursuant to clause 35 (Weekly Progress Reports) above or otherwise) shall:
- 36.1.1. Be prepared and submitted to ISR in both digital and hard copy format;
- 36.1.2. Use and be compliant with critical path theory and critical path method (CPM);

- 36.1.3. Schedule, sequence, chart and model the planned performance, execution and completion of all events, items, tasks, activities, services and units of work necessary and required to be undertaken by the Contractor in order to complete each milestone and the Works as a whole in accordance with the Agreement and the applicable Work Order;
- 36.1.4. Include the sequence and timing of all Final Acceptance Tests specified in the Agreement; and
- 36.1.5. Include a supporting narrative that provides a general description of the methods which the Contractor intends to adopt in the execution of the Works.

37. Daily Site Diary

- 37.1. Throughout the execution of the Works, the Contractor shall prepare and maintain an electronic daily site diary documenting and recording any and all material activities, events and occurrences on Site and, in any event, each and all of the following (the “**Daily Site Diary**”):
 - 37.1.1. The number and categories of the Contractor’s personnel engaged on Site;
 - 37.1.2. Quantities of any and all goods, materials, tools, special tools, plant, equipment, machinery and other facilities delivered to or removed from the Site;
 - 37.1.3. Quantities of any and all goods, materials, tools, special tools, plant, equipment, machinery and other facilities utilized in the performance of the Works;
 - 37.1.4. Descriptions of any and all Works executed, indicating the exact location(s) within the Site and estimated quantities performed;
 - 37.1.5. Onsite weather conditions;
 - 37.1.6. A detailed list of onsite instructions issued to the Contractor by or on behalf of ISR (if any);
 - 37.1.7. A comparison between scheduled Works activities and actual Works activities performed at Site;
 - 37.1.8. All information required by Law;
 - 37.1.9. The occurrence of any accident at the Site;
 - 37.1.10. The occurrence of any health, safety, security or environmental-related incident at the Site and
 - 37.1.11. Any and all repair(s) to the Works performed at Site, including the details of the cause(s) and reasons(s) for the repair(s).

- 37.2. The Daily Site Diary shall comply with all applicable Laws.
- 37.3. The Daily Site Diary shall be signed by a duly authorized representative of the Contractor and shall be submitted to ISR at the end of each working week, or more frequently if required by applicable Law. Notwithstanding the foregoing, the Contractor shall ensure that the Daily Site Diary is available for inspection by or on behalf of ISR at all times.

38. Progress Photography

- 38.1. The Contractor shall take and produce high-definition digital color photographs of the progress of the Works at the Site and shall submit them to ISR together with each Weekly Progress Report.
- 38.2. Such photographs shall be taken in such number, from such angles and from such locations:
(i) as necessary or required to demonstrate the current and ongoing progress with and status of the Works; and (ii) as may be requested by ISR, at its sole discretion.

39. Progress Review Meetings

- 39.1. For and in respect of each calendar week, commencing as of the calendar week following the issuance of a Work Order and until and including the calendar week in which the Certificate of Final Acceptance is issued with respect to the Works applicable to that Work Order, the Contractor shall arrange and host progress review meetings with ISR (each, a “**Progress Review Meeting**”).
- 39.2. Progress Review Meetings shall be held at least once a week, at a date, time and venue convenient to ISR.
- 39.3. The Contractor shall procure the attendance at each Progress Review Meeting of any and all Contractor’s personnel involved in the matters on the agenda for the applicable meeting.
- 39.4. The Contractor shall prepare and provide ISR with the minutes of each Progress Review Meeting within seven (7) days after it was held. ISR may propose amendments to the minutes. In the event of discrepancies between the Contractor’s version and ISR’s version of the minutes, the final version of the minutes shall be as determined by ISR.
- 39.5. At least two (2) Business Days prior to the date of each Progress Review Meeting, the Contractor shall submit to ISR a proposed agenda for the meeting.

40. Record Keeping

- 40.1. Without limiting or derogating from any other or additional record keeping and/or reporting obligations and responsibilities under and pursuant to the Agreement, Law and/or requirements of applicable Authorities, including the requirements in the Technical Specifications, the Contractor shall prepare, produce and maintain true, up to date, accurate and comprehensive books, records, accounts, logs and timesheets of:

- 40.1.1. The undertaking and implementation by it and on its behalf of the Works, including as-build drawings, Operation and Maintenance Manuals, tests certificates and reports, training documentation, materials compliance certificates and regulatory approvals; and
- 40.1.2. The performance and implementation by it and on its behalf of its obligations and responsibilities under and pursuant to this Agreement.
- 40.2. The Contractor shall provide ISR with access to and/or copies of any or all such books, records, accounts, logs and timesheets as may be requested by ISR from time, at its sole discretion.

41. Ownership

- 41.1. Ownership in and of each aspect, part, portion, item and unit of the Works (each, a “**Part**”) shall pass to and vest in ISR on the earlier of: (i) payment for the applicable Part; or (ii) immediately upon the applicable Part being brought onto, attaching to, forming part of, being incorporated into or being rendered at the Site (as the case may be).
- 41.2. Once ownership has passed to and vested in ISR as aforesaid, the applicable Part shall not be removed from the Site without the prior written consent of ISR.
- 41.3. Notwithstanding the forgoing, the risk in the Works shall pass to ISR only upon issuance of the Certificate of Final Acceptance (subject always to all applicable provisions of this Agreement, *inter alia* clauses 46 (Warranty) and 72 (Liability of the Contractor) below).

42. Inspections, Interpretations and Comments

- 42.1. Without limiting or derogating from any other provision of the Agreement, at any time and any number of times during the Contractor’s execution of the Works or any part or aspect thereof, ISR may:
 - 42.1.1. Inspect the Works or any part or aspect thereof; and/or
 - 42.1.2. Provide the Contractor with interpretations or comments on the standard or quality of the Works or any part or aspect thereof and/or on the then current state of completion of the Works or any part or aspect thereof.
- 42.2. In no event shall any such inspections, interpretations or comments constitute or amount to, or be considered or deemed to indicate, ISR’s acceptance or approval of the Works or any part or aspect thereof.
- 42.3. Neither any such inspections, interpretations or comments undertaken or provided by ISR nor any decision not to undertake or provide any such inspections, interpretations or comments shall:
 - 42.3.1. Relieve or release the Contractor from properly and timeously performing and fulfilling all its obligations and responsibilities under and pursuant to the Agreement; or

- 42.3.2. Amount to or constitute, or be considered or deemed to be, a waiver of any one or more of ISR's rights and entitlements under or pursuant to the Agreement; or
- 42.3.3. Relieve or release the Contractor from its obligations to execute the Project and/or the Works and to remedy and repair any and all defects in the Works strictly according to the Agreement.

43. Acceptance Procedure

- 43.1. Subject to clause 43.9 (Additional Preconditions for Final Acceptance) below, for purposes of this Agreement, "**Final Acceptance**" shall mean the stage of completion of the Works where, except for Minor Matters, they have successfully achieved and complied with all Final Acceptance Tests to the satisfaction of ISR.
- 43.2. With respect to each Works Order, the Contractor shall notify ISR of its readiness to carry out the applicable Final Acceptance Tests.
- 43.3. The Parties shall cooperate and coordinate so as to determine a mutually convenient date and time (or dates and times, as applicable) on which to carry out the Final Acceptance Tests. The Final Acceptance Tests shall be carried out by the Contractor in accordance with the requirements and procedures for testing stipulated in the Technical Specifications.
- 43.4. The Contractor shall forthwith provide to ISR duly certified copies of the results of the Final Acceptance Tests (regardless of whether ISR was present or absent when the Final Acceptance Tests were carried out).
- 43.5. If, as evidenced in the certified copies of the results of the Final Acceptance Tests provided by the Contractor to ISR, the Works demonstrate successful achievement and compliance with the applicable requirements and procedures stipulated in the Technical Specifications, subject to compliance with clause 43.9 (Additional Conditions for Final Acceptance) below, ISR will forthwith issue the Certificate of Final Acceptance.
- 43.6. If, as evidenced in the certified copies of the results of the Final Acceptance Tests provided by the Contractor to ISR, the Works fail to demonstrate successful achievement and compliance with any of the applicable requirements or procedures stipulated in the Technical Specifications, the Contractor shall take any and all steps and measures as may be necessary and required to ensure that the Works successfully achieve and comply with all applicable requirements and procedures stipulated in the Technical Specifications. Thereafter, the Contractor shall repeat the Final Acceptance Tests in accordance with all applicable provisions of this clause 43 (Acceptance Procedure).
- 43.7. The procedures described above shall be repeated until Final Acceptance is achieved.
- 43.8. In no event shall the issuing of the Certificate of Final Acceptance relieve or release the Contractor from complying with any one or more of its obligations pursuant to clause 46 (Warranty) below, nor relieve or release it from complying with any of its obligations and responsibilities under this Agreement.

43.9. **Additional Preconditions for Final Acceptance.** Prior to and as conditions precedent for the commencement of the performance of the Final Acceptance Tests, the Contractor shall:

43.9.1. Provide to ISR all Operation and Maintenance Manuals as stipulated in the Technical Specifications; and

43.9.2. Provide to ISR the Warranty Guarantee in accordance with the Agreement; and

43.9.3. Provide to ISR all Spare Parts as stipulated in the Technical Specifications; and

43.9.4. Provide to ISR all signed original manufacturers' and suppliers' guarantees and warranties in respect of the Works; and

43.9.5. Undertake and complete all ISR Training in accordance with Technical Specifications.

44. Minor Matters

44.1. Together with issuance of the Certificate of Final Acceptance, ISR will issue a Minor Matters punch list to the Contractor:

44.1.1. Listing and describing any and all Minor Matters which the Contractor is required to complete and/or remedy; and

44.1.2. Stipulating the date(s) by which the Contractor shall complete and remedy the Minor Matter(s) listed in the punch list, which date(s) shall be reasonable in the circumstances.

44.2. The Contractor shall complete and remedy all Minor Matters listed in the punch list(s) by the date(s) stipulated therein.

45. Spare Parts

45.1. Prior to and as conditions precedent for the commencement of the performance of the Final Acceptance Tests, the Contractor shall provide to ISR (to a warehouse or storage place instructed thereby) all Spare Parts as stipulated in the Technical Specifications. The Contractor shall bear any and all transfer and transport costs associated with the supply of the Spare Parts to ISR.

45.2. Without derogating from any other provisions of the Agreement, all Spare Parts and all of their component parts shall be: (i) fit for the purposes for which they are intended; (ii) free from any defect, deficiency or non-conformity in design, material or workmanship; and (iii) fully and properly functional, operational and maintainable in accordance and compliance with this Agreement.

46. Warranty

46.1. For the purposes of this Agreement, "**Warranty Period**" shall mean a period of twenty four (24) calendar months following the issuance of the Certificate of Final Acceptance with respect to the applicable Works.

- 46.2. The Contractor warrants that, as at the commencement of and for the duration of the Warranty Period, the Works and all of their component parts shall be: (i) fit for the purposes for which they are intended; (ii) free from any defect, deficiency or non-conformity in design, material or workmanship; and (iii) fully and properly functional, operational and maintainable in accordance and compliance with this Agreement.
- 46.3. However, the Contractor shall not be responsible or liable for defects, deficiencies and/or non-conformities which are directly caused by:
- 46.3.1. Operation, maintenance or use by or on behalf of ISR which is not in accordance with the Operation and Maintenance Manuals provided by the Contractor; or
- 46.3.2. Alterations to the Works carried out without the Contractor's written consent; or
- 46.3.3. Normal wear and tear.
- 46.4. As from the commencement of and for the duration of the Warranty Period, the Contractor shall remedy and rectify the Works and all of their component parts so that they are: (i) fit for the purposes for which they are intended; (ii) free from any defect, deficiency or non-conformity in design, material or workmanship; and (iii) fully and properly functional, operational and maintainable in accordance and compliance with this Agreement.
- 46.5. Notwithstanding the foregoing, if the Contractor is requested by ISR to remedy or rectify defects, deficiencies and/or non-conformities described in clauses 46.3.1, 46.3.2 and/or 46.3.3 above, in consideration for doing so in accordance with the provisions of the Agreement, the Contractor shall be entitled to the consideration in accordance with **Appendix "E" (Service Level Agreement (SLA))** hereto.
- 46.6. Any and all defects, deficiencies and non-conformities shall be remedied and rectified within the maximum duration(s) specified in **Appendix "E" (Service Level Agreement (SLA))** hereto, failing which the Contractor shall pay to ISR liquidated damages in accordance with **Appendix "E" (Service Level Agreement (SLA))** hereto ("**SLA Liquidated Damages**").
- 46.7. The payment of SLA Liquidated Damages (including by way of setoff) shall not relieve or release the Contractor from properly and timeously remedying and rectifying any and all defects, deficiencies and non-conformities in the Works, or otherwise from complying with and fulfilling all of its obligations and responsibilities under and pursuant to the Agreement.
- 46.8. The levying and payment of SLA Liquidated Damages shall be in addition to and shall in no way negate, limit or derogate from any of ISR's rights and entitlements under or pursuant to the Agreement or Law.
- 46.9. ISR may recover payment of any and all SLA Liquidated Damages by way of setoff against any amount payable by ISR to the Contractor.

- 46.10. The Parties agree that the terms, conditions and amounts stipulated in this Agreement in respect of SLA Liquidated Damages are reasonable and that all SLA Liquidated Damages payable to ISR pursuant to this Agreement shall be paid as pre-estimated losses and/or damages and not as a penalty.

47. Design Defects Liability Period

- 47.1. Notwithstanding the provisions of clause 46 (Warranty) above, the Contractor shall remain liable for latent design defects in the applicable Works for a period of ten (10) years following the issuance of the Certificate of Final Acceptance (the “**Design Liability Period**”).
- 47.2. For purposes of this clause 47 (Design Defects Liability Period) “design defects” shall include:
- 47.2.1. Errors, omissions, inadequacies and/or non-conformities in: (i) design calculations, specifications and/or drawings; (ii) selection of equipment, materials or systems; (iii) application of design standards; (iv) load assumptions or operational parameters; and
 - 47.2.2. Non-compliance with applicable standards, including EN 50119, EN 50122, EN 50163, EN 50317, IEC 62128-1, Israeli Standards (SI) and/or any other standard referenced in the Technical Specifications; and
 - 47.2.3. Design resulting in: (i) premature failure or excessive wear; (ii) inability to meet performance requirements; (iii) unsafe conditions; and/or (iv) excessive maintenance requirements.
- 47.3. The liability of the Contractor for design defects shall not apply to the following:
- 47.3.1. Fair wear and tear from normal operations;
 - 47.3.2. Modifications or alterations by ISR which were not approved by the Contractor;
 - 47.3.3. Operation or maintenance not in accordance with manuals provided by the Contractor; and/or
 - 47.3.4. An Event of Force Majeure; and/or
 - 47.3.5. Changes in Law enacted after the issuance of the Certificate of Final Acceptance.
- 47.4. ISR shall immediately notify the Contractor in writing of any suspected design defect, and the Contractor shall review and issue to ISR its conclusions with respect to such design defect within thirty (30) days.

- 47.5. To the extent that the existence of a design defect is confirmed, the Contractor shall be obligated, subject to the approval of ISR, to rectify or remedy the design or prepare a remedial design, and implement and execute same, in accordance with the time schedules determined by ISR and the Contractor shall bear any and all costs and/or expenses associated with such remedial works and services.
- 47.6. The Contractor shall maintain the Professional Indemnity Insurance pursuant to Appendix “D” (Insurance Policies) hereto throughout Design Liability Period.

48. Extension of Time and Direct Costs

- 48.1. **Extension of Time.** Subject always to clauses 48.4 (Mitigation) and 48.5 (ISR’s Grace Period) below, the Contractor shall be entitled to an extension of time if and to the extent (and only if and to the extent) that any of the following causes an actual delay on the critical path of the execution of the Works (a “**Delay**”):
- 48.1.1. An Event of Force Majeure;
- 48.1.2. The execution of a Change Order;
- 48.1.3. A suspension pursuant to clause 65.2 (Suspension by ISR) below.
- 48.2. The extension of time shall be determined in good faith by the Parties, having regard to all relevant considerations and circumstances, provided however that the Contractor demonstrates that: (i) the Delay is/was the effective cause of an actual delay on the critical path of the execution of the Works; and (ii) the Contractor was, notwithstanding the applicable Delay, fully prepared, willing and able to execute the Works according to the Agreement. If the Parties fail to agree on the extension of time, the dispute shall be referred to dispute resolution in accordance with clause 75 (Dispute Resolution) below.
- 48.3. **Direct Costs.** Subject always to clauses 48.4 (Mitigation) and 48.5 (ISR’s Grace Period) below, where the applicable Delay (as defined in clause 48.1 above) exceeds an aggregate period of thirty (30) days, in addition to an extension of time as aforesaid, the Contractor shall be entitled to reimbursement by ISR of the Direct Costs incurred by the Contractor as a direct result of the Delay, as evidenced by supporting documents submitted by the Contractor;
- 48.4. **Mitigation.** The Contractor’s entitlement (if any) to an extension of time and reimbursement of Direct Costs shall be subject always to the Contractor’s duty to take all reasonable steps and measures to mitigate (and cause any and all persons on its behalf to mitigate): (i) any and all delays and disruptions to the execution of the Works, regardless of whether such delays and/or disruptions were caused by or on behalf of the Contractor, ISR and/or any third party whatsoever; and (ii) any and all cost increases in respect of the Works, regardless of whether such cost increases were caused by or on behalf of the Contractor, ISR and/or any third party whatsoever.

- 48.5. **ISR's Grace Period.** Notwithstanding any of the foregoing, the Contractor's entitlement (if any) to an extension of time and reimbursement of Direct Costs shall be subject always to an ISR's grace period of thirty (30) days, such that: (i) the Contractor shall not be entitled to any extension of time or reimbursement of Direct Costs unless and until the aggregate of all Delays (if any) exceeds thirty (30) days; and (ii) the Contractor shall not be entitled to any extension of time or reimbursement of Direct Costs for or in respect of the initial thirty (30) days of Delay; and (iii) any extension of time and/or reimbursement of Direct Costs to which the Contractor may be entitled pursuant to this clause 47 (Extension of Time and Direct Costs) shall only commence and be calculated as of the thirty-first (31st) day of Delay.

49. Liquidated Damages

- 49.1. ISR shall have the right to levy against and recover from the Contractor any and all of the liquidated damages, compensation, deductions and payment adjustments set forth in Appendix "G" (Liquidated Damages) hereto ("**Liquidated Damages**"); provided that, the the maximum aggregate amounts payable by the Contractor in respect of Liquidated Damages shall not exceed sixty million NIS (NIS 60,000,000).
- 49.2. In no event or circumstance shall the Contractor be absolved, excused or released from liability for payment of applicable Liquidated Damages.
- 49.3. The payment of Liquidated Damages with respect to a specific provision or event does not and shall not limit or derogate from ISR's rights to levy and recover Liquidated Damages with respect to another or a different provision or event.
- 49.4. The payment of Liquidated Damages (including by way of setoff) shall not relieve or release the Contractor from properly and timeously executing and completing the Works, or otherwise from complying with and fulfilling all of its obligations and responsibilities under and pursuant to the Agreement.
- 49.5. The levying and payment of Liquidated Damages shall be in addition to and shall in no way negate, limit or derogate from any of ISR's rights and entitlements under or pursuant to the Agreement or Law.
- 49.6. ISR may recover payment of any and all Liquidated Damages by way of setoff against any amount payable by ISR to the Contractor.
- 49.7. The Parties agree that the terms, conditions and amounts stipulated in this Agreement in respect of Liquidated Damages are reasonable and that all Liquidated Damages payable to ISR pursuant to this Agreement shall be paid as pre-estimated losses and/or damages and not as a penalty.

50. Management by ISR

- 50.1. **ISR's Project Manager.** ISR will appoint one person or entity, on behalf and as agent and representative of ISR, to administer, implement, manage and supervise: (i) the performance and implementation of this Agreement; and (ii) the execution of the Works ("**ISR's Project Manager**").

- 50.2. ISR may, at its sole discretion, remove such person or entity and replace him/her/it with any other person or entity.
- 50.3. ISR will notify the Contractor in writing of any and all such appointments and replacements.
- 50.4. Without derogating from any other provision of this Agreement, ISR's Project Manager shall, at ISR's sole discretion and on behalf and as agent and representative of ISR, be entitled to monitor, review, assess, audit and/or verify: (i) the execution of and compliance with this Agreement by and on behalf of the Contractor; and/or (ii) the execution of the Works by and on behalf of the Contractor.
- 50.5. **Instructions.** ISR may, through ISR's Project Manager or otherwise, provide or issue to the Contractor instructions concerning the execution of the Works and/or the performance of the Contractor's obligations and responsibilities pursuant to the Agreement (including, without limitation, with respect to reduction(s) and/or decrease(s) in the scope of the Works) (each, an "**Instruction**").
- 50.6. The Contractor shall (including in the event of or during the resolution of any dispute or disagreement between the Parties): (i) be bound by each and every Instruction (which shall be carried out subject to and in compliance with all applicable Laws); (ii) forthwith carry out each and every Instruction; and (iii) have no right or entitlement whatsoever to refuse or omit to carry out any Instruction, or to delay the carrying out of any Instruction.
- 50.7. **No Remedy.** Notwithstanding anything to the contrary in the Agreement, neither the provision or issuance by or on behalf of ISR of any one or more Instruction nor the carrying out by or on behalf of the Contractor of any one or more Instruction shall afford the Contractor any right or entitlement to claim or receive any remedy or relief (including any extension of time, remuneration, consideration, compensation, additional payment or reimbursement), unless the Instruction constitutes a Change in terms of this Agreement and then only to the extent (if any) provided in clause 52 (Change Orders) below.

51. Management by the Contractor

- 51.1. **Contractor's Project Manager.** The Contractor shall appoint one person, on behalf and as agent and representative of the Contractor, to administer, implement, manage and supervise: (i) the performance and implementation of this Agreement; and (ii) the execution of the Works (the "**Contractor's Project Manager**").
- 51.2. The Contractor's Project Manager shall be the Contractor's sole point of contact and communication with and on behalf of the Contractor for all purposes of and matters arising from or concerning the Agreement.
- 51.3. **Contractor's Staff.** Without derogating from any other provisions of the Agreement, the Contractor's personnel shall be and remain appropriately trained, qualified, licensed, skilled and experienced in their respective roles, trades or occupations (as applicable).

52. Change Orders

- 52.1. Without derogating from clause 50 (Management by ISR) above, at any time and any number of times during the term of the Agreement, ISR may provide or issue Change Orders to the Contractor pursuant to and in accordance with this clause 52 (Change Orders) and all other applicable provisions of the Agreement.
- 52.2. If a Change initiated by ISR constitutes a Change to the Works (each, a “**Change Order**”), then the following provisions shall apply thereto:
 - 52.2.1. For each item of work, the appropriate rate or price for the item shall be the rate or price specified for such item in the BOQ or, if there is no such item, the rate or price specified in the BOQ for similar work.
 - 52.2.2. If no rate or price is specified in the BOQ for the applicable item of work and no other rate or price specified in the BOQ is appropriate because the item of work is not of similar character, or is not executed under similar conditions as any item in the BOQ, then:
 - 52.2.2.1. Each new rate or price shall be derived from any relevant rates or prices in ISR’s price list applicable at the time of issuance of the Change Order, without any additions, multipliers or discounts; or
 - 52.2.2.2. If no rates or prices in ISR’s price list are relevant for the derivation of a new rate or price, it shall be derived from the price list of Netivei Israel – National Transport Infrastructure Company Ltd. (“**Netivei Israel**”) applicable at the time of issuance of the Change Order, without any additions, multipliers or discounts; or
 - 52.2.2.3. If no rates or prices in the Netivei Israel price list are relevant for the derivation of a new rate or price, it shall be derived from the “Dekel” price list for large works with a ten percent (10%) reduction, without the addition of main contractor profit and/or additions that may create duplication in the calculation of the unit price; or
 - 52.2.2.4. If no rates or prices in the Dekel price list are relevant for the derivation of a new rate or price, it shall be derived from the customary market prices for executing the applicable item of work, to be determined on the basis of a price analysis to be presented to and approved by ISR or at least two (2) arm’s length price proposals obtained by the Contractor from separate independent third parties reflecting the fair market value of the applicable item of work, plus a main contractor profit of twelve percent (12%).
 - 52.2.3. The Parties shall endeavor in good faith to agree upon the rate or price (as applicable) of the Change in accordance herewith.
 - 52.2.4. Payment terms of the Change Order will be agreed by the Parties on a case-by-case basis.

- 52.3. The Contractor shall (including in the event of or during the resolution of any dispute or disagreement between the Parties): (i) be bound by each and every Change Order (which shall be carried out subject to and in compliance with all applicable Laws); (ii) forthwith carry out each and every Change Order; and (iii) have no right or entitlement whatsoever to refuse or omit to carry out any Change Order, or to delay the carrying out of any Change Order.
- 52.4. **Savings.** In the event that any Instruction or any part thereof (and regardless of whether the applicable Instruction constitutes or amounts to a Change Order) entails or results in any savings or any decrease or reduction in the scope of the Works (including with respect to any Design Deliverable or any part thereof), the consideration to be paid to the Contractor shall be adjusted accordingly based on the principles set forth in clause 52.2 above.

53. **Work Order Consideration**

- 53.1. In consideration for the execution and completion of the Works in accordance and compliance with this Agreement, the Contractor shall, with respect to each Work Order, be paid the applicable Work Order Consideration in accordance with the rates and prices (if applicable) and the payment milestones set forth in the applicable Work Order and subject to the provisions of this Agreement.
- 53.2. The Work Order Consideration shall be calculated based on the “Price Proposal” (BOQ) (quantities and prices) submitted by the Contractor in the Tender, a copy of which is attached hereto as **Appendix “H” (Price Proposal (BOQ)) (“BOQ”)**, subject to the following:
- 53.2.1. A Work Order issued by ISR may be limited to supply only of items (equipment/spare parts) under Category B (Design & Construction Small Works) and/or Category C (Dismantling) of the BOQ (without performance of any design, construction, erection or dismantling works). In such case, the Work Order Consideration shall be determined on the basis of 50% of the respective prices per assignment/task indicated in the BOQ; and
- 53.2.2. The Work Order Consideration with respect to any OCS pole foundations design and/or construction works included in a Work Order shall be determined in accordance with the following:

Design Responsibility	Construction Responsibility	Work Order Consideration
Contractor	Contractor	BOQ prices (Category A (Design & Construction of Sections))
ISR	ISR	85% of BOQ prices (Category A (Design & Construction of Sections))

Contractor	ISR	87% of BOQ prices (Category A (Design & Construction of Sections))
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- 53.2.3. The Work Order Consideration shall be adjusted to reflect any Works (or part thereof) executed by any third party appointed by ISR prior to the commencement of the applicable Works by the Contractor. The reduction value of any Works executed by a third party shall be determined on the basis of 60% of the respective prices per assignment/task indicated in Category B (Design & Construction Small Works) of the BOQ.
- 53.3. ISR shall have the sole discretion whether to pay the Work Order Consideration: (i) as a lump sum following achievement of milestones as shall be determined in the Work Order based on the payment milestones set forth in **Appendix “I” (Indicative Payment Milestones)** hereto; or (ii) pursuant to progress of the Works according to the BOQ.
- 53.4. With respect to each Work Order, the applicable Work Order Consideration shall constitute the entire consideration to which the Contractor shall be entitled in respect of and in connection with the applicable Works, and shall be considered and deemed to include payment and reimbursement for and in respect of any and all costs, expenses, disbursements, fees, charges, remuneration, compensation, overheads, preliminaries and generals, profit, markup, taxes and all other amounts whatsoever regarding the full, proper and complete execution and completion of the applicable Works and performance and fulfillment of any and all applicable responsibilities and obligations under and pursuant to the Agreement.
- 53.5. Without derogating from the foregoing, with respect to each Work Order:
- 53.5.1. The Work Order Consideration shall cover and be inclusive of any and all direct and indirect taxes (including sales tax), withholdings, duties (including import duties, customs duties, excise duties, etc.), charges, fees, levies and other compulsory payments and dues; and
- 53.5.2. The Work Order Consideration shall cover and be inclusive of any and all profits, mark-ups, attendance costs, management costs and any other equivalent or similar amounts of the Contractor and its subcontractors and suppliers; and
- 53.5.3. The Work Order Consideration shall cover and be inclusive of any and all remuneration, compensation, benefits, contributions and taxes of the Contractor’s personnel, including payment and reimbursement for and in respect of any works performed on Fridays, Saturdays and holidays; and
- 53.5.4. The Work Order Consideration shall cover and be inclusive of any and all physical items, including (*inter alia*) their design, procurement, manufacture, packing, transportation, shipping, storage, customs clearance and delivery to Site; and

53.5.5. The Contractor shall not be entitled to any other or additional payment, reimbursement, remuneration, consideration, compensation, remedy or recourse due to or as a result of any change of or to any Law whatsoever, except as expressly provided in clause 77 (Change of Law) below.

53.6. However, the foregoing shall not derogate from any claim, remedy or relief to which the Contractor is entitled (if any) in accordance with clause 52 (Change Orders) above.

54. Advance Payment

54.1. With respect to each Work Order, ISR may make an advance payment to the Contractor in accordance herewith (each, an “**Advance Payment**”).

54.2. The Contractor may, by a request included in the Work Order Response, elect to receive an Advance Payment with respect to the applicable Work Order in an amount not exceeding ten percent (10%) (plus VAT) of the applicable Work Order Consideration.

54.3. Notwithstanding the foregoing, in no event shall ISR pay the applicable advance Payment to the Contractor unless and until the Contractor has provided to ISR an Advance Payment Guarantee in accordance herewith.

54.4. **Advance Payment Guarantee.** As a condition precedent for the payment of an Advance Payment with respect to a Work Order, the Contractor shall provide to ISR an Advance Payment Guarantee in an amount equal to the applicable Advance Payment (plus VAT) and in the form attached to this Agreement as **Appendix “C” (Proforma Guarantee)**. The provisions of clauses 60.7 to 60.15 (Guarantees – General) below shall apply *mutatis mutandis* to each Advance Payment Guarantee.

54.5. The Contractor shall ensure that the applicable Advance Payment Guarantee is valid and enforceable until the applicable Advance Payment has been repaid, but its amount may be progressively reduced by the amount actually repaid by the Contractor.

54.6. If the terms of the Advance Payment Guarantee specify its expiry date, and the applicable Advance Payment has not been repaid by the date thirty (30) days before the expiry date:

54.6.1. The Contractor shall extend the validity of the applicable Advance Payment Guarantee until the applicable Advance Payment has been repaid;

54.6.2. The Contractor shall immediately submit evidence of this extension to ISR; and

54.6.3. If ISR does not receive this evidence seven (7) days before the expiry date of the applicable Advance Payment Guarantee, IRS shall be entitled to claim under the applicable Advance Payment Guarantee the amount of applicable Advance Payment which has not been repaid.

- 54.7. **Repayment of Advance Payment.** The Advance Payment shall be repaid by the Contractor through equal percentage deductions from each of the Payment Requests until the full repayment of the Advance Payment by the Contractor. Each deduction shall be in the amount of ten percent (10%) of the respective Payment Request. In the event that the final repayment of the Advance Payment will be of a lower percentage than percent (10%) of the applicable Payment Request, the deduction will not be higher than the outstanding balance of the Advance Payment.
- 54.8. If an Advance Payment has not been repaid before the date of issuance of the applicable Certificate of Final Acceptance, or before termination of the Agreement for any reason, the whole of the balance then outstanding shall immediately become due and payable by the Contractor to ISR.

55. Currency of Payment

- 55.1. Any and all amounts and payments under or pursuant to this Agreement shall be payable in NIS.

56. Adjustment of Payments

- 56.1. The Work Order Consideration shall be linked to the PBI index as of the Bid Submission Date, to reflect the changes (lower and/or higher) in the value of the PBI index during the period between the Bid Submission Date and the date of the relevant Payment Request.
- 56.2. Following is the official PBI index rate, true to the Bid Submission Date:

Bid Submission Index	Rate*	Base	Index Month
PBI			

[The PBI Bid Submission Index to be completed prior to the Signature Date, in accordance with the Tender Committee's notice issued pursuant to the provisions of the ITB]*

- 56.3. Without derogating from the above, and unless otherwise stated in this Agreement, all other amounts, sums and payments under this Agreement, including (without limitation) any Liquidated Damages, One-off Payment, Track Availability Compensation, Monthly Payment, shall be linked and adjusted according to changes in the CPI from the Bid Submission Date.

57. Payment Procedure

- 57.1. By no later than the fifth (5th) day of each calendar month, the Contractor shall submit a payment request to ISR for approval in accordance with the provisions hereof (each, a “**Payment Request**”).
- 57.2. Each Payment Request shall:
 - 57.2.1. Be for and in respect of the calendar month preceding the month in which it is submitted to ISR as aforesaid; and
 - 57.2.2. Describe and reflect the amounts referred to in clauses 57.3.1 and 57.3.2 below, but only if and to the extent that the amounts are due, owing and claimable pursuant to this Agreement.
- 57.3. Each Payment Request shall separately detail and describe:
 - 57.3.1. Any and all amounts to which ISR is entitled pursuant to the Agreement, whether in respect of Liquidated Damages and/or SLA Liquidated Damages, or pursuant to clause 59 (Setoff) below, or otherwise pursuant to the Agreement; and
 - 57.3.2. Any and all amounts to which the Contractor considers itself entitled pursuant to this Agreement; and
 - 57.3.3. The aggregate and net total of all amounts referred to in clauses 57.3.1 and 57.3.2 above.
- 57.4. Together with each and every Payment Request, the Contractor shall submit to ISR all documentary and other evidence necessary and required to demonstrate and substantiate the amounts set forth in the applicable Payment Request.
- 57.5. Subject always to clause 59 (Setoff) below, by no later than the twentieth (20th) day of the month in which the Contractor submits a Payment Request as aforesaid, ISR shall:
 - 57.5.1. Inform the Contractor of the amounts (if any) that it agrees to pay to the Contractor, together with any comments thereon (if any); and
 - 57.5.2. Inform the Contractor of the amounts (if any) with which it disagrees, together with the reasons for such disagreement; and
 - 57.5.3. If applicable, request that the Contractor submit to ISR any additional information which it considers necessary or required for it to review, verify and/or evaluate the amounts set forth in the applicable Payment Request.
- 57.6. Within seven (7) days after receipt of ISR’s aforesaid comments and/or reasons for disagreement, the Contractor shall:
 - 57.6.1. Provide ISR with its response to ISR’s aforesaid comments and/or reasons for disagreement; and

- 57.6.2. Submit to ISR any additional information requested by it as aforesaid.
- 57.7. Subject always to clause 59 (Setoff) below, by no later than sixty (60) days from receipt of any Payment Request, ISR shall: (i) inform the Contractor of the amounts set forth in the applicable Payment Request which it disputes (if any); and (ii) pay the undisputed portion of the amounts set forth in the applicable Payment Request.
- 57.8. Without derogating from the foregoing, ISR may, at its sole discretion, approve partial payment with respect to a milestone that has been partially achieved, provided that the completed portion of the Works is functional, useful, and clearly separable, and that the Contractor has demonstrated significant progress towards full completion of the applicable Works. Such partial payment shall be paid pro rata to the percentage of the milestone achieved, as determined by ISR, and shall not constitute a waiver of any rights, entitlements, remedies, relief or recourse of ISR under or pursuant to this Agreement or Law with respect to the remaining portion of the Works (including any Liquidated Damages applicable thereto).
- 57.9. Subject always to clause 59 (Setoff) below, any and all amounts payable to the Contractor shall be paid:
- 57.9.1. Against presentation of an invoice prepared and submitted in accordance with applicable Laws; and
- 57.9.2. Into the Contractor's bank account, as follows:
[REDACTED]
- 57.10. In the event of a dispute between the Parties concerning any Payment Request, any amount set forth therein or any part or aspect thereof:
- 57.10.1. ISR shall pay the undisputed portion as aforesaid; and
- 57.10.2. If the dispute is settled or resolved in favor of the Contractor, ISR shall pay the remaining balance (if any) as part of the subsequent payment to the Contractor pursuant to the Agreement; and
- 57.10.3. Such remaining balance(s) shall not bear or accrue any interest.
- 57.11. Neither any approvals or disapprovals nor any payments by ISR as aforesaid shall:
- 57.11.1. Relieve or release the Contractor from properly and timeously performing and fulfilling all its obligations and responsibilities under and pursuant to the Agreement; or
- 57.11.2. Amount to or constitute or be considered or deemed to be a waiver of any one or more of ISR's rights and entitlements under the Agreement (including its rights and entitlements in respect of setoff).

- 57.12. **Discharge.** Without derogating from any other provisions of the Agreement, when submitting the final Payment Request, the Contractor shall submit a written discharge which confirms that payment of the net total of the applicable Payment Request represents and constitutes full and final settlement of any and all amounts, payments and moneys due to the Contractor under or in connection with the Agreement.

58. Default Interest

- 58.1. Where a Party does not receive payment of an undisputed amount within thirty (30) days after the applicable due date prescribed by this Agreement for payment thereof, any and all such outstanding undisputed amounts shall bear interest at the Accountant General's (ordinary) interest rate ("ריבית חשב כללי"), calculated from the thirty-first (31st) day until date of final payment.

59. Setoff

- 59.1. **Set off by ISR.** ISR may set off any sum, amount, payment, damages, losses, or debt which it is entitled to receive or withhold from the Contractor with respect to the Works (including with respect to any Works (or part thereof) executed by any third party appointed by ISR) from any amount payable by ISR to the Contractor pursuant to the Agreement. Without derogating from the generality of the foregoing, ISR may set off any sum, amount, payment, damages, losses, or debt which it is entitled to receive or withhold from the Contractor with respect to a Work Order: (i) from any amount payable by ISR to the Contractor pursuant to any other Work Order; and/or (ii) from any overpayment or excess payment made by ISR to the Contractor with respect to any Work Order (whether under the same Work Order or any other Work Order).
- 59.2. ISR will provide the Contractor with at least seven (7) days' prior notice of any such setoff.
- 59.3. **No Set off by Contractor.** The Contractor is not entitled to set off any sum, amount, payment, damages, losses, or debt which it is entitled to receive from ISR from any amount due, owing or payable by the Contractor to ISR pursuant to the Agreement, any other agreement and/or Law, unless with the prior approval of ISR with respect to the particular case of setoff.

60. Guarantees

- 60.1. **Performance Guarantee.** As a condition precedent for the signature of the Agreement, the Contractor shall provide to ISR a Performance Guarantee in an amount equal to twenty million NIS (NIS 20,000,000) (plus VAT) and in the form attached to this Agreement as **Appendix "C" (Proforma Guarantee)**.
- 60.2. The Performance Guarantee shall remain valid and in full force and effect until sixty (60) days after the end of the Term of the Agreement.
- 60.3. **Work Order Performance Guarantee.** As a condition precedent for issuance of a Notice to Proceed (Design) with respect to a Work Order, the Contractor shall provide to ISR a Work Order Performance Guarantee in an amount equal to five percent (5%) of the applicable Work Order Consideration (plus VAT) and in the form attached to this Agreement as **Appendix "C" (Proforma Guarantee)**.

- 60.4. The Work Order Performance Guarantee shall remain valid and in full force and effect until and including the later of: (i) the date that is one (1) month after the date of issuance of the applicable Certificate of Final Acceptance; or (ii) the date on which the Contractor provides the Warranty Guarantee to ISR in accordance herewith.
- 60.5. **Warranty Guarantee.** Upon receipt by ISR of a permit to operate from the Israeli Railway Authority for the integrated electrification system with respect to the applicable Network Section, the Contractor shall provide to ISR a Warranty Guarantee in an amount equal to two percent (2%) of the applicable Work Order Consideration (plus VAT) and in the form attached to this Agreement as **Appendix “C” (Proforma Guarantee)**.
- 60.6. The Warranty Guarantee shall remain valid and in full force and effect until and including the date that is one (1) calendar month after the expiry of the Warranty Period.
- 60.7. **Guarantees – General.** Each Performance Guarantee, Work Order Performance Guarantee and Warranty Guarantee (each, a “**Guarantee**” and, collectively, the “**Guarantees**”) shall be an independent, irrevocable, autonomous demand guarantee.
- 60.8. The Contractor waives and relinquishes any and all rights and entitlements to argue or defend against any forfeiture, exercise or call up of any Guarantee on grounds relating to the underlying cause or engagement.
- 60.9. Each Guarantee shall be issued by a major Israeli commercial bank that is licensed to do business in the State of Israel.
- 60.10. The Contractor shall take all steps and measures necessary or required to ensure that the Guarantees remain valid and in full force and effect for the respective periods mentioned above.
- 60.11. In the event that any Guarantee is due to expire or lapse prior to the period applicable to it as stipulated above, the Contractor shall renew and extend the relevant Guarantee at least thirty (30) days prior to the date on which it is due to expire or lapse, failing which ISR may exercise and call up the full amount of the relevant Guarantee and retain for itself the full benefit and proceeds thereof until a satisfactory replacement Guarantee has been furnished. In the event that ISR does so, the Contractor shall nevertheless replace the relevant Guarantee in accordance and compliance herewith and deliver it to ISR in consideration for the amount(s) retained by ISR.
- 60.12. The Guarantees shall be ISR’s security for the due and proper performance, fulfilment and satisfaction of the Contractor’s obligations, responsibilities and liabilities under this Agreement.
- 60.13. Where ISR has a right of recourse or recovery against the Contractor under or pursuant to the Agreement, ISR may, without prejudice to any and all other rights or entitlements available to it under this Agreement or Law, exercise or call up the relevant Guarantee in accordance with the terms and conditions thereof after providing the Contractor with seven (7) days’ prior written notice.

- 60.14. If ISR exercises or calls up a Guarantee (either in whole or in part) based on the terms of this Agreement, and on each occasion that it does so, the Contractor shall forthwith reinstate the applicable Guarantee to the original amount thereof as stated above.
- 60.15. Each Guarantee will be returned to the Contractor within seven (7) days after its expiry or replacement (as the case may be) pursuant to this Agreement.

61. Insurance

- 61.1. Without derogating from its liability hereunder or under Law, the Contractor shall procure and maintain the insurance policies as detailed in this clause 61 (Insurance) and in **Appendix “D” (Insurance Policies)** hereto (each, an “**Insurance Policy**” and, collectively, “**Insurance Policies**”).
- 61.2. The Contractor shall forthwith provide ISR with relevant information (including, without limitation, certificates of insurance and/or Insurance Policy documents signed by its insurer/insurance broker) with respect to any or all of the Insurance Policies mentioned in **Appendix “D” (Insurance Policies)** hereto, as may be requested by ISR at its sole discretion.
- 61.3. Breach of the terms of any Insurance Policy by the Contractor and/or anyone acting on its behalf shall not prejudice ISR’s indemnity in accordance with the Insurance Policies.
- 61.4. The obligations of the Contractor under this this clause 61 (Insurance) are material to this Agreement and any breach thereof shall constitute a material breach of this Agreement.

62. Confidentiality and Data Protection

- 62.1. **Confidentiality.** Each Party shall keep all Confidential Information of the other Party (the “**Disclosing Party**”) strictly confidential and shall not divulge or disclose the Confidential Information to any third party, make copies of material containing the Confidential Information, or use or benefit from the Confidential Information, unless expressly required or permitted pursuant to this Agreement or otherwise expressly required or permitted by the Disclosing Party in writing.
- 62.2. ISR or the Contractor, as applicable, may use and/or make copies of Confidential Information of the Disclosing Party only if and to the extent that it is necessary or required for the execution of the Works in accordance with this Agreement.
- 62.3. Immediately upon the expiry, termination or completion (as the case may be) of this Agreement, ISR or the Contractor, as applicable, shall, at the request of the Disclosing Party, either return all Confidential Information to the Disclosing Party or permanently delete or destroy (as applicable) all Confidential Information.
- 62.4. All Confidential Information shall be and remain the sole and exclusive property of the Disclosing Party and neither the other Party nor any person or entity on its behalf shall have any proprietary, ownership or other interest therein.

- 62.5. Each Party acknowledges that a breach of any obligations of confidentiality hereunder may cause irrevocable damage to the Disclosing Party and that, accordingly, the Disclosing Party shall be entitled to seek immediate injunctive, interdictory, mandatory and/or other equitable relief against the other Party and/or any person or entity on its behalf (as applicable) in addition to and without derogating from any other remedies and rights of recourse available to the Disclosing Party under or pursuant to this Agreement or Law.
- 62.6. The obligations of confidentiality hereunder shall not apply to any disclosure required or permitted by Law, provided however that the Party required to make such disclosure shall use its best efforts to object to any such disclosure, shall not disclose more Confidential Information than is strictly necessary and shall immediately notify the Disclosing Party of any such actual, potential or reasonably anticipated disclosure.
- 62.7. Notwithstanding the foregoing, the Contractor may, for (and only for) commercial tendering purposes, mention that it rendered services to ISR concerning the Project.
- 62.8. The obligations under this Agreement with respect to Confidential Information shall survive the expiry, termination or completion (as the case may be) of this Agreement and shall remain binding on the Parties for a period of seven (7) years following the expiry, termination or completion (as the case may be) of this Agreement.
- 62.9. **Data Protection.** Without derogating from any of the foregoing or from any other provisions of this Agreement (including the definition of “Confidential Information”), the Contractor shall comply with ISR’s rules, instructions and procedures applicable to or governing data protection, all as may be provided to the Contractor in advance and in writing (if and to the extent possible and practicable under the circumstances) and all as may be updated from time to time and adapted according to the progress of the Works and/or the evolving needs and requirements of the Project.
- 62.10. Without derogating from the foregoing and in any event, ISR and the Contractor shall comply with all applicable data protection Laws, including the Protection of Privacy Law, 1981 and its regulations.

63. Intellectual Property

- 63.1. Throughout the Term of the Agreement and at any and all times following the expiry, termination or completion (as the case may be) of this Agreement, ISR shall have unlimited, unrestricted, irrevocable ownership and use of and benefit with respect to any and all Project Documentation.
- 63.2. The Contractor shall be responsible and liable for and shall pay any and all royalties, commissions, fees, remuneration, consideration and compensation due, owing or payable to any third party for or in respect of the ownership, use of and/or benefit in the Project Documentation.

- 63.3. Throughout the term of the Agreement and at any and all times following the expiry, termination or completion (as the case may be) of this Agreement, ISR shall have (without the need to pay, compensate or remunerate the Contractor and without prior conditions) paid-up, non-exclusive, non-transferable and non-sublicensable license to use, solely for purposes of the Project and the Works and/or in connection therewith, any and all Intellectual Property: (i) owned by any third party and which is provided by the Contractor as part of the Works; and/or (ii) prepared or created by, for or on behalf of the Contractor specifically in connection with or pursuant to the Works.

64. Waiver of Liens

- 64.1. The Contractor shall not have and hereby waives all security interests, liens, rights of lien and rights of retention in and over the Site, the Project, the Works, the Project Documentation, the ISR Railway Network and any and all parts and aspects thereof.
- 64.2. None of the Contractor's Subcontractors and none of the Contractor's personnel shall have any security interests, liens, rights of lien or rights of retention in or over the Site, the Project, the Works, the Project Documentation, the ISR Railway Network or any parts or aspects thereof and the Contractor shall procure their waiver of any and all such security interests, liens, rights of lien and rights of retention.

65. Suspension

- 65.1. **No Suspension by Contractor.** The Contractor shall have no right or entitlement whatsoever to and may not suspend the execution or completion of the Works or any part or aspect thereof (including in the event of or during the resolution of any dispute or disagreement between the Parties).
- 65.2. **Suspension by ISR.** ISR may, at its sole discretion and without any obligation to provide any reasons or justification for doing so, suspend the execution of the Works or any part or aspect thereof, upon three (3) days' written notice to the Contractor. However, the suspension as aforesaid shall not apply to any obligations or responsibilities of the Parties due and owing prior to the date of notification of the suspension or relating to actions taken prior to such date.
- 65.3. Any such suspension shall cease and the Contractor shall recommence the execution of the Works in accordance and compliance with this Agreement upon: (i) three (3) days' written notice to that effect delivered by ISR to the Contractor in the case of a suspension of up to fourteen (14) days; and (ii) five (5) days' written notice to that effect delivered by ISR to the Contractor in the case of a suspension exceeding fourteen (14) days.

66. Breach and Remedies

- 66.1. Notwithstanding the provisions of any Law, under no circumstances shall the Contractor be entitled to terminate this Agreement except as expressly provided in clause 69 (Termination by the Contractor) below.

- 66.2. Without derogating from any other rights, entitlements, remedies, relief or recourse of ISR under or pursuant to this Agreement or Law, if, notwithstanding seven (7) days' notice by ISR to do so, the Contractor fails or omits to perform and/or implement any one or more of its obligations and responsibilities under or pursuant to this Agreement (a "**Breach**"), ISR may, at its sole discretion and at the sole risk and cost of the Contractor:
- 66.2.1. Itself perform and/or implement (as the case may be) the applicable outstanding obligations and/or responsibilities and otherwise remedy and rectify the Breach; and/or
- 66.2.2. Instruct or appoint any one or more third party to perform and/or implement (as the case may be) the applicable outstanding obligations and/or responsibilities and otherwise to remedy and rectify the Breach; and/or
- 66.2.3. In order to exercise its rights pursuant to clauses 66.2.1 and 66.2.2 above, take possession and assume ownership of all or any part of the Works, materials, tools, equipment, supplies, temporary buildings or temporary Works. Without derogating from the provisions of clause 66.4 below, to the extent ISR takes possession and/or assumes ownership of any tools or equipment owned by the Contractor pursuant to this clause 66.2.3, ISR shall pay the Contractor the fair market value of such tools and equipment based on the valuation of an appraiser to be appointed by mutual agreement of the Parties.
- 66.3. In no event shall any decision, action or conduct by ISR as aforesaid relieve or release the Contractor from complying with any one or more of its obligations and responsibilities under and pursuant to this Agreement.
- 66.4. In any event and regardless of any decision, action or conduct by ISR as aforesaid, the Contractor shall forthwith reimburse ISR for any and all costs, expenses, losses and damages incurred or to be incurred by ISR as a result of any and all Breaches. Without derogating from the foregoing, ISR shall be entitled to collect and recover any and all costs, expenses, losses and damages by any means available to it under this Agreement or Law, including, at its sole discretion, by way of setoff and/or by exercising or calling up any Guarantee (either in whole or in part).
- 66.5. **Extent of Remedies.** The rights, entitlements, remedies, relief and recourse of ISR under and pursuant to this Agreement are cumulative and are in addition to and do not derogate from any other rights, entitlements, remedies, relief and recourse available to ISR under and pursuant to this Agreement and/or Law.

67. Cancellation of a Work Order by ISR

- 67.1. Without derogating from any other rights, entitlements, remedies, relief and recourse available to it under and pursuant to this Agreement or Law, ISR may cancel any Work Order by issuing written notice to that effect, upon the occurrence of any one or more of the following events:

- 67.1.1. Any representation or warranty made by the Contractor in the applicable approved Work Order Response was false, materially misleading or inaccurate at the time when it was made, in a manner that materially impacted the ability of the Contractor to perform its obligations under the applicable Work Order; and/or
 - 67.1.2. The Contractor did not commence the execution of the Works by the date specified in the Work Order or has ceased its execution, and has not complied within fourteen (14) days with a written instruction from ISR's Project Manager to commence or continue the execution of the Works, or if the Contractor has withdrawn from the execution of the Works in any other way; and/or
 - 67.1.3. ISR's Project Manager determines that the pace of execution of the Works is too slow to ensure their completion by the deadlines specified in the applicable Work Order, or any extension thereof pursuant to this Agreement (if any) and the Contractor has not complied within fourteen (14) days with a written instruction from ISR's Project Manager to take the measures mentioned in the instruction aimed at ensuring the completion of the Works by the deadline specified in the applicable Work Order or any extension thereof pursuant to this Agreement (if any); and/or
 - 67.1.4. ISR's Project Manager determines that the Contractor is not executing or is unable to execute the Works in accordance with the specifications, plans, designs, schedules and other requirements of the applicable Work Order; and/or
 - 67.1.5. The Contractor breached, or is in breach (including any anticipatory breach or default under Law) of any material term, condition or provision of the applicable Work Order and/or the applicable approved Work Order Response; and/or
 - 67.1.6. The liability of the Contractor pursuant to clause 49 (Liquidated Damages) above exceeds sixty million NIS (NIS 60,000,000); and/or
 - 67.1.7. The liability of the Contractor exceeds any of the limitations specified in clause 72 (Liability of the Contractor) below; and/or
 - 67.1.8. The Contractor suspends or abandons the execution of the applicable Work Order or otherwise repudiates the applicable Work Order and/or the applicable approved Work Order Response.
- 67.2. Prior to exercising its aforesaid right to cancel a Work Order, ISR shall issue a written notice to the Contractor specifying the Contractor's breach or default and demanding that it remedy such breach or default within the period specified therein, which shall be no less than seven (7) days following delivery of such notice. If the breach or default is not remedied within the specified period, ISR may cancel the applicable Work Order by written notice to the Contractor.

- 67.3. If a Work Order is cancelled as aforesaid, the Contractor shall be entitled to (and only to) that part or portion of the Work Order Consideration which is due and owing but unpaid until the date of cancellation; provided, however, that from such payment ISR shall deduct and set off any and all costs, expenses, damages and losses incurred or suffered or to be incurred or suffered by ISR due to or as a result of such cancellation, including costs, expenses, damages and losses incurred or to be incurred due to or as a result of the replacement of the Contractor by a third party and the cost to complete the applicable Works by such third party. In the event that the aggregate of the amount(s) to be deducted as aforesaid exceeds the part or portion of the Work Order Consideration owing to the Contractor, the Contractor shall forthwith pay the balance to ISR.

68. Termination of the Agreement by ISR

- 68.1. Without derogating from any other rights, entitlements, remedies, relief and recourse available to it under and pursuant to this Agreement or Law, ISR may terminate this Agreement by issuing written notice to that effect, upon the occurrence of any one or more of the following events:
- 68.1.1. The Contractor failed to comply timeously with any of its obligations pursuant to clause 8 (Obligations of the Contractor prior to the Effective Date);
 - 68.1.2. Liquidation, insolvency, winding up, bankruptcy, administration, receivership, curatorship or reorganization proceedings are commenced against or in respect of the Contractor, unless such proceedings are discharged within sixty (60) days after their commencement; and/or
 - 68.1.3. The Contractor becomes insolvent or bankrupt, or admits in writing its inability to pay its debts as and when they become due, or makes an assignment or compromise for the benefit of creditors, or commits an act of insolvency or any similar act, or fails to pay or discharge any indebtedness upon lawful demand (including any lawful demand by ISR under this Agreement); and/or
 - 68.1.4. The Contractor and/or any of the Contractor's personnel breached, or is in breach of any one or more of the provisions of clause 15 (Anti-Bribery and Anti-Corruption) above; and/or
 - 68.1.5. Any representation or warranty made by the Contractor in this Agreement was false, materially misleading or inaccurate at the time when it was made, in a manner that materially impacted the ability of the Contractor to perform its obligations hereunder; and/or
 - 68.1.6. Cancellation of two (2) Work Orders by ISR pursuant to clause 67 (Cancellation of a Work Order by ISR) above; and/or
 - 68.1.7. The liability of the Contractor pursuant to clause 49 (Liquidated Damages) above exceeds sixty million NIS (NIS 60,000,000); and/or
 - 68.1.8. The liability of the Contractor exceeds any of the limitations specified in clause 72 (Liability of the Contractor) below; and/or

- 68.1.9. Replacement of the Major Subcontractor or termination of the [Subcontract therewith other than as permitted under this Agreement; and/or
 - 68.1.10. The Contractor or Major Subcontractor ceases to comply with the applicable requirements for enabling its qualification to participate in the Tender Process; and/or
 - 68.1.11. The Contractor breached, or is in breach (including any anticipatory breach or default under Law) of any material term, condition or provision of this Agreement.
- 68.2. Prior to exercising its aforesaid right to terminate this Agreement, ISR shall issue a written notice to the Contractor specifying the Contractor's breach or default and demanding that it remedy such breach or default within the period specified therein, which shall be no less than seven (7) days following delivery of such notice. If the breach or default is not remedied within the specified period, ISR may terminate this Agreement by written notice to the Contractor.
- 68.3. If the Agreement is terminated as aforesaid, the Contractor shall be entitled to (and only to) that part or portion of the Work Order(s) Consideration (as applicable) which is due and owing but unpaid until the date of termination; provided, however, that from such payment ISR shall deduct and set off any and all costs, expenses, damages and losses incurred or suffered or to be incurred or suffered by ISR due to or as a result of such termination, including costs, expenses, damages and losses incurred or to be incurred due to or as a result of the replacement of the Contractor by a third party and the cost to complete the applicable Works by such third party. In the event that the aggregate of the amount(s) to be deducted as aforesaid exceeds the part or portion of the Work Order(s) Consideration (as applicable) owing to the Contractor, the Contractor shall forthwith pay the balance to ISR.
- 68.4. Without derogating from any other provisions of this Agreement, the compensation payable to the Contractor pursuant to the provisions of clause 68.3 above shall be the Contractor's sole remedy, relief, recourse and compensation arising out of and in respect of the matters which are the subject of this clause 68 and the Contractor shall not be entitled to any other, further or additional remedy, relief, recourse or compensation (monetary or otherwise) arising out of or in respect of the matters which are the subject of this clause 68 (including (without limitation) specific performance and/or injunctive relief).

69. Termination of the Agreement by the Contractor

- 69.1. Without derogating from any other rights, entitlements, remedies, relief and recourse available to it under and pursuant to this Agreement or Law, the Contractor may terminate this Agreement by issuing written notice to that effect, upon the occurrence of any one or more of the following events:
- 69.1.1. Liquidation, insolvency, winding up, bankruptcy, administration, receivership, curatorship or reorganization proceedings are commenced against or in respect of ISR, unless such proceedings are discharged within sixty (60) days after their commencement; and/or

- 69.1.2. ISR becomes insolvent or bankrupt, or admits in writing its inability to pay its debts as and when they become due, or makes an assignment or compromise for the benefit of creditors, or commits an act of insolvency or any similar act, or fails to pay or discharge any indebtedness upon lawful demand.
- 69.2. Prior to exercising its aforesaid right to terminate this Agreement, the Contractor shall issue a written notice to ISR specifying ISR's breach or default and demanding that it remedy such breach or default within the period specified therein, which shall be no less than twenty-one (21) days following delivery of such notice. If the breach or default is not remedied within the specified period, the Contractor may terminate this Agreement by written notice to ISR.
- 69.3. If the Agreement is terminated as aforesaid, the Contractor shall be entitled to: (i) that part or portion of the Work Order(s) Consideration (as applicable) which is due and owing but unpaid until the date of termination; and (ii) expenses and costs incurred or to be incurred by it with respect to parts, items and/or units of the applicable Works which were approved in advance by ISR which could not be mitigated, avoided, reversed or cancelled following issuance of the notice of termination (provided that the ownership in such parts, items and units of the Works shall pass to and vest in ISR); and (iii) direct (but not indirect or consequential) costs, expenses, damages and losses incurred or suffered or to be incurred or suffered due to or as a result of such termination, as evidenced by supporting documents submitted by the Contractor.
- 69.4. Without derogating from any other provisions of this Agreement, the compensation payable to the Contractor pursuant to the provisions of clause 69.3 above shall be the Contractor's sole remedy, relief, recourse and compensation arising out of and in respect of the matters which are the subject of this clause 69 and the Contractor shall not be entitled to any other, further or additional remedy, relief, recourse or compensation (monetary or otherwise) arising out of or in respect of the matters which are the subject of this clause 69 (including (without limitation) specific performance and/or injunctive relief).

70. Termination of the Agreement for Convenience

- 70.1. ISR may, at its sole discretion and without any obligation to provide any reasons or justification for doing so, terminate this Agreement for convenience upon thirty (30) days' written notice to that effect, which notice shall be effective seven (7) days after delivery thereof.
- 70.2. If the Agreement is terminated as aforesaid, the Contractor shall be entitled to the following (and only to the following):
 - 70.2.1. If the notice of termination is issued prior to the issuance of the First Work Order Notification, a one-off payment of one million NIS (NIS 1,000,000); or

- 70.2.2. If the notice of termination is issued after the issuance of the First Work Order Notification but prior to the issuance of the first Work Order: (i) a one-off payment of one million NIS (NIS 1,000,000); plus (ii) direct expenses and costs incurred or to be incurred by the Contractor with respect to parts, items and/or units of the applicable Works which were approved in advance by ISR which could not be mitigated, avoided, reversed or cancelled following issuance of the notice of termination (provided that the ownership in such parts, items and units of the Works shall pass to and vest in ISR) less any payments made by ISR to the Contractor.
- 70.2.3. If the notice of termination is issued after the issuance of the first Work Order: (i) that part or portion of the Work Order(s) Consideration (as applicable) which is due and owing but unpaid until the date of termination; plus (ii) direct expenses and costs incurred or to be incurred by the Contractor with respect to parts, items and/or units of the applicable Works which were approved in advance by ISR which could not be mitigated, avoided, reversed or cancelled following issuance of the notice of termination (provided that the ownership in such parts, items and units of the Works shall pass to and vest in ISR) less any payments made by ISR to the Contractor.
- 70.3. Without derogating from any other provisions of this Agreement, the compensation payable to the Contractor pursuant to the provisions of clause 68.370.2 above shall be the Contractor's sole remedy, relief, recourse and compensation arising out of and in respect of the matters which are the subject of this clause 70 and the Contractor shall not be entitled to any other, further or additional remedy, relief, recourse or compensation (monetary or otherwise) arising out of or in respect of the matters which are the subject of this clause 70 (including (without limitation) specific performance and/or injunctive relief).

71. Force Majeure

- 71.1. For the purposes of this Agreement:
- 71.1.1. An “**act of war**” means the occurrence of any of the following in the State of Israel: war (whether declared or undeclared), an invasion or an armed conflict; and
- 71.1.2. An “**Event of Force Majeure**” shall mean an event which: (i) constitutes exceptional circumstances; and (ii) is beyond the reasonable control of a Party, including an act of war; and (iii) could not have been foreseen by such Party as at the Signature Date.
- 71.2. Where neither Party was able to mitigate, limit or minimize the implications of the above event, such event shall constitute an Event of Force Majeure only to the extent of the implications which they were unable to mitigate, limit or minimize.
- 71.3. The following (but not only the following) events shall neither constitute or amount to nor be considered or deemed to be an Event of Force Majeure:
- 71.3.1. Shortage of materials or employees, except a national general shortage;

- 71.3.2. Strikes, lock-outs, labor disputes, labor boycotts and other similar occurrences, except if part of a national general strike;
- 71.3.3. Inclement weather and other material disturbances which are foreseeable;
- 71.3.4. Physical conditions or obstacles (including, *inter alia*, aboveground, belowground, geotechnical, geological, hydrological, climatic, environmental and/or seismic conditions of the Site) encountered during the execution of the Works, unless they are the direct result of an event which would otherwise have constituted an Event of Force Majeure but for the provisions hereof;
- 71.3.5. Any expiration, cancellation, termination, suspension, invalidation, avoidance, repudiation, revocation, withdrawal, failure to obtain, failure to maintain or failure to renew any Permit;
- 71.3.6. Any breach or default of any Law by or on behalf of the Contractor, any of its Subcontractors, or any of the Contractor's personnel;
- 71.3.7. Any breach or default by or on behalf of the Contractor of any term, condition or provision of the Agreement;
- 71.3.8. Any failure or omission by ISR to make any payment to the Contractor under or pursuant to this Agreement;
- 71.3.9. Any failure or omission to obtain the required financing for the Project;
- 71.3.10. Lack of economic feasibility of the Project; and
- 71.3.11. The occurrence, existence, spread, mutation or reoccurrence of Coronavirus (Covid -19) and/or any strain thereof.
- 71.4. The inability of a Party to execute, implement or fulfill any of its responsibilities or obligations under or pursuant to this Agreement shall not be considered or deemed to be a breach or default under this Agreement insofar as (and only in so far as) such inability arises directly from an Event of Force Majeure, provided always that the Party affected by an Event of Force Majeure has: (i) taken all reasonable steps and measures to prevent, avoid and mitigate the effects of the applicable Event of Force Majeure; and (ii) taken all reasonable precautions, due care and reasonable alternative actions in order to carry out the responsibilities and/or obligations affected by the applicable Event of Force Majeure; and (iii) informed the other Party as soon as possible about the occurrence of the applicable Event of Force Majeure.
- 71.5. Any period within which a Party is required, pursuant to this Agreement, to complete any task, activity or action shall be extended for a period equal to the time during which such Party was unable to perform such task, activity or action as a result of the applicable Event of Force Majeure.

- 71.6. **Termination of a Work Order.** Either Party may, upon seven (7) days' written notice to the other Party, terminate any Work Order if, for a period exceeding a consecutive period of one hundred and eighty (180) days, the effects of an Event of Force Majeure render the continued performance of all responsibilities and obligations under the applicable Work Order impossible or so impractical as to be considered impossible under the circumstances.
- 71.7. If a Work Order is terminated as aforesaid, the Contractor shall be entitled to (and only to) that part or portion of the Work Order Consideration which is due and owing but unpaid until the date of termination and it shall not be entitled to any other or additional payment, reimbursement, remuneration, consideration, compensation, remedy or recourse due to or as a result of such termination less any payments made by ISR to the Contractor.
- 71.8. However, the provisions of clauses 71.1 to 71.7 above are subject to and shall not derogate from the following provisions:
- 71.8.1. For the purposes hereof, "**Emergency Situation**" means a situation in which the routine of life in Israel is disrupted due to one of the following: a state of war, military operation, riots and disturbances, natural disaster, special situation on the home front, mass casualty event, state of readiness in civil defense, period of activation of the air defense system, period of activation of the "emergency economy", state of alert, pandemic, or any other event on account of which the routine of life in Israel is continuously disrupted.
- 71.8.2. The Contractor is aware, and hereby confirms, that an Emergency Situation in Israel is not an unforeseen event and that it shall be required to continue with the execution of the Works and to comply with the provisions of this Agreement despite the Emergency Situation, all in accordance with the instructions of ISR and the instructions of the applicable Authorities, including the instructions of the security and defense Authorities and the Home Front Command.
- 71.8.3. The Contractor is aware, and hereby confirms, that the execution of the Works in an Emergency Situation as aforesaid shall not entitle the Contractor to any additional payment or compensation whatsoever.
- 71.8.4. Without derogating from the foregoing, in an Emergency Situation, the Contractor undertakes to provide its employees, its Subcontractors, or anyone on their behalf with all the means required for their functioning in an Emergency Situation, including personal and/or collective protective equipment, and to supply them continuously and immediately, at its sole expense.
- 71.8.5. Since the Contractor undertakes to prepare in advance to carry out the Works even in an Emergency Situation, the execution of the Works in an Emergency Situation - and a resulting shortage of manpower or equipment - shall not: (i) constitute a "Delay" pursuant to clause 48.1 above; nor (ii) be considered as factors justifying a delay in the execution of the Works.

72. Liability of the Contractor

- 72.1. Without derogating from the Contractor's liability under Law, the Contractor shall: (i) take any and all steps and measures necessary and required to prevent and avoid; (ii) bear full and sole responsibility and liability for; (iii) be accountable for; and (iv) indemnify ISR, its assigns, its agents and representatives and any and all third parties from and against, any and all damages, actions, claims, charges, costs, demands, expenses, judgements, losses, orders, proceedings, penalties and suits arising from, caused by or resulting from any performance, non-performance, fulfilment, non-fulfilment, breach, default or exercise by or on behalf of the Contractor of any one or more of its rights, entitlements, obligations and responsibilities under and pursuant to this Agreement.
- 72.2. With respect to each Work Order, the total liability of the Contractor to ISR under or in connection with the applicable Work Order shall not exceed an amount equal to one hundred percent (100%) of the applicable Work Order Consideration. However, this shall not apply to and shall not limit liability in any case of fraud, gross negligence, deliberate default or reckless misconduct by the Contractor, or in any case of bodily injury, sickness, disease or death of any person caused by the Contractor, or in any case where the applicable loss or damage is indemnified under any insurance policy/ies, or in any case of liability to a third party or under a third-party claim.
- 72.3. Without derogating from the foregoing, the total liability of the Contractor to ISR under or in connection with the Agreement shall not exceed an amount equal to one hundred million NIS (NIS 100,000,000). However, this shall not apply to and shall not limit liability in any case of fraud, gross negligence, deliberate default or reckless misconduct by the Contractor, or in any case of bodily injury, sickness, disease or death of any person caused by the Contractor, or in any case where the applicable loss or damage is indemnified under any insurance policy/ies, or in any case of liability to a third party or under a third-party claim.

73. Assignment

- 73.1. The Contractor shall not and shall not attempt to cede, assign, sell, delegate, transfer or pledge this Agreement or any one or more of its rights, entitlement, responsibilities or obligations under or pursuant this Agreement to any third party whatsoever, unless with the prior approval of ISR. Any cession, assignment, sale, delegation, transfer or pledge contrary hereto shall be null and void.
- 73.2. ISR may cede, assign, sell, delegate, transfer or pledge this Agreement or any one or more of its rights, entitlement, responsibilities or obligations under or pursuant this Agreement to any third party whatsoever, provided that such does not derogate from the Contractor's rights and entitlements under and pursuant to this Agreement. Without derogating from the generality of the foregoing, ISR may cede, assign, sell, delegate, pledge or transfer this Agreement or any one or more of its rights, entitlement, responsibilities or obligations under or pursuant to this Agreement to any Authority or other governmental entity or governmental company (hereinafter, collectively: a "**Governmental Entity**") provided that such does not derogate from the Contractor's rights and entitlements under and pursuant to this Agreement. In such case the provisions of this Agreement shall apply, *mutatis mutandis*, to the Governmental Entity and the Contractor and the Governmental Entity shall be entitled to issue a Work Order directly to the Contractor.

- 73.3. For the removal of doubt and without derogating from any other provision of the Agreement, no cession, assignment, transfer or pledge to a Governmental Entity pursuant to clause 73.2 above shall constitute or amount to, or be considered or deemed a change or variation or an addition to this Agreement, nor entitle the Contractor to any remedy or relief, nor to suspend the performance of the Works or any part or aspect thereof.

74. Claims Against ISR

- 74.1. The provisions of this clause 74 (Claims against ISR) are in addition to any and all other applicable provisions of this Agreement. Without derogating from the generality of the foregoing, the Contractor shall also submit any and all other applicable notices, particulars and information required under or pursuant to this Agreement.
- 74.2. Notwithstanding anything to the contrary in this Agreement, the Contractor shall not be entitled to any remedy or relief (including any extensions of time, remuneration, consideration, compensation, reimbursement or additional payment and whether pursuant to or in respect of a Change Order or otherwise) unless and until it has complied with the following claim processes and procedures and then only on condition that its claim is not time barred according to such claim processes and procedures.
- 74.3. **Notice of Claim.** If the Contractor considers itself entitled to any remedy or relief (including any extension of time, remuneration, consideration, compensation, reimbursement or additional payment and whether pursuant to or in respect of a Change Order or otherwise), the Contractor shall deliver a written notice to ISR detailing and describing the event or circumstances giving rise to the claim (each, a “**Notice of Claim**”).
- 74.4. A Notice of Claim shall be delivered to ISR no later than twenty-one (21) days after the Contractor became aware or ought reasonably to have become aware (whichever is the earliest) of the event or circumstances giving rise to the claim.
- 74.5. If the Contractor fails, omits or refuses for any reason whatsoever to deliver a Notice of Claim to ISR within twenty-one (21) days after the Contractor became aware or ought reasonably to have become aware (whichever is the earliest) of the event or circumstances giving rise to the claim: (i) the applicable claim shall be considered and deemed to be time barred; (ii) the Contractor shall not be entitled to any remedy or relief (including any extension of time, remuneration, consideration, compensation, reimbursement or additional payment and whether pursuant to or in respect of a Change Order or otherwise) in connection with the event or circumstances giving rise to the applicable claim; and (iii) ISR shall be released and discharged from any and all liability in connection with the applicable claim.
- 74.6. Without derogating from any other provisions of this Agreement, the Contractor shall retain and maintain and forthwith provide to ISR copies of any and all contemporaneous and other records and documents available to it as may be necessary or required to substantiate any claim and shall provide such additional information to ISR following the receipt of a request to do so.

- 74.6.1. **Claim Document.** Within twenty one (21) days after the Contractor became aware or ought reasonably to have become aware (whichever is the earliest) of the event or circumstances giving rise to the applicable claim, the Contractor shall deliver a claim to ISR fully detailing, describing, particularizing, quantifying and substantiating the claim (each, a “**Claim Document**”).
- 74.6.2. If the Contractor fails, omits or refuses for any reason whatsoever to deliver the Claim Document to ISR within twenty one (21) days after the Contractor became aware or ought reasonably to have become aware (whichever is the earliest) of the event or circumstances giving rise to the claim: (i) the applicable claim shall be considered and deemed to be time barred; (ii) the Contractor shall not be entitled to any remedy or relief (including any extension of time, remuneration, consideration, compensation, reimbursement or additional payment and whether pursuant to or in respect of a Change Order or otherwise) in connection with the event or circumstances giving rise to the applicable claim; and (iii) ISR shall be released and discharged from any and all liability in connection with the applicable claim.
- 74.6.3. If the event or circumstances giving rise to a claim has a continuing effect: (i) the initial Claim Document shall be considered as interim, (ii) the Contractor shall deliver updated Claim Documents to ISR at monthly intervals; and (ii) the Contractor shall deliver a final Claim Document within 21 (twenty one) days after the effect(s) of the event or circumstances giving rise to the claim has/have ceased.
- 74.7. **ISR’s Response.** Within 60 (sixty) days after receiving the Claim Document or the final Claim Document (as applicable), ISR shall review it and respond thereto by:
- 74.7.1. Accepting the applicable claim, either wholly or partially, with reasons; or
- 74.7.2. Rejecting the applicable claim, either wholly or partially, with reasons.
- 74.8. **Referral to Dispute Resolution.** If the Contractor disagrees with ISR’s aforesaid response, the Contractor may submit such matter to dispute resolution in accordance with clause 75 (Dispute Resolution and Jurisdiction) below within twelve (12) calendar months after receipt of ISR’s response.
- 74.9. If the Contractor fails or omits to submit the applicable matter to dispute resolution within the aforesaid twelve (12) calendar month period, the Contractor shall be considered and deemed to have accepted ISR’s response and to have waived all rights and entitlements to submit the applicable matter to dispute resolution.

75. Dispute Resolution and Jurisdiction

- 75.1. Any and all disagreements and disputes between the Parties shall be submitted to the exclusive jurisdiction of the courts of Tel Aviv, Israel, subject to the following:
- 75.1.1. Any and all disagreements and disputes between the Parties shall be settled amicably and with good intentions between the Parties, by means of good faith consultation and negotiation; and

- 75.1.2. Should such amicable settlement fail (as evidenced by a notice from one Party to the other with respect thereto), then either Party may refer the applicable disagreement(s) and dispute(s) to the courts of Tel Aviv, Israel.
- 75.2. The Contractor waives any objection and right of objection on the grounds of inconvenient forum to any disagreements, disputes and/or proceedings being submitted or brought to the courts of Tel Aviv, Israel.
- 75.3. During the dispute resolution process, the Parties shall continue performing their obligations under and pursuant to this Agreement in a diligent and proper manner and without delay.
- 75.4. Without derogating from the generality of clause 75.3 above, the Contractor waives all rights and entitlements to seek or obtain any interdict or injunction against ISR, the Project, the Works, the Site or any worksite.

76. Governing Law

- 76.1. This Agreement and the execution of the Works shall be governed by and constructed in accordance with the Laws of the State of Israel.
- 76.2. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

77. Change of Law

- 77.1. Without derogating from clause 14 (Laws and Requirements of Authorities) above, the Contractor shall have no claim, remedy, recourse or cause of action against ISR due to a change (including an enactment) of Law except if (and only if) the change of Law and the effects thereof satisfy all the following conditions:
 - 77.1.1. The applicable change of Law applies directly and solely to the Contractor or the Project;
 - 77.1.2. The applicable change of Law detrimentally affects the rights and entitlements granted to the Contractor under the Agreement, or imposes on the Contractor material obligations or responsibilities in addition to those that are imposed on it under the Agreement; and
 - 77.1.3. The applicable change of Law either materially adversely affects the financial position of the Contractor or renders impossible the performance of all or substantially all the Contractor's obligations and responsibilities under the Agreement; and

77.1.4. The change of Law first occurred or was first enacted (as the case may be) after Bid Submission Date and: (i) at no time prior to or during the Tender Process was the applicable change of Law reasonably foreseeable by the Contractor or by any persons or entities representing or participating in the Tender Process on behalf of or with the Contractor; and (ii) at no time prior to or during the Tender Process could the Contractor or any persons or entities representing or participating in the Tender Process on behalf of or with the Contractor reasonably have anticipated or expected the occurrence of the applicable change of Law,

(“Actionable Change of Law”).

77.2. For purposes of this Agreement, none of the following changes of Law shall constitute or amount to, or be considered or deemed to be an Actionable Change of Law:

77.2.1. The applicable change of Law was, either wholly or in part, due or in response to or a consequence of any act or omission on the part of the Contractor (including an agent or representative thereof) which is illegal or contrary to its obligations or responsibilities under the Agreement; and/or

77.2.2. The applicable change of Law amounted to or constituted the exercise by ISR of any one or more discretion permitted, allowed or afforded to ISR under or pursuant to the Agreement or Law; and/or

77.2.3. Changes in tax or revenue Laws; and/or

77.2.4. Judgments, orders or verdicts handed down or issued by a court or judicial agency in court or judicial proceedings to which the Contractor is a party.

77.3. If the applicable change Law is recognized by ISR or determined by a competent court as a Actionable Change of Law, then ISR shall issue a Change Order to alleviate the effects of the Actionable Change of Law and reinstate the Contractor’s situation to the position it would have been in had the applicable Actionable Change of Law not occurred.

78. Delivery of Documents

78.1. All acts carried out in writing pursuant to this Agreement shall be by way of a written document or communication delivered to the addresses of ISR and the Contractor respectively stated below.

78.2. Hand delivered and emailed written documents and communications shall be deemed to have been duly delivered on the day of delivery.

	For ISR	For the Contractor
Full Name and Designation of Addressee:		
Physical Address of Addressee:	1 Yoseftal St, Lod	

Email Address:		
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79. Language

- 79.1. The binding version of this Agreement, including all Appendices attached hereto, shall be in English.
- 79.2. The language of communication of this Agreement shall be English and all acts carried out in writing under or pursuant to this Agreement shall be in English.
- 79.3. However, notwithstanding the foregoing, if necessary pursuant to any Law, Permit or requirement of any applicable Authority, documents under or pursuant to this Agreement, or any part(s) thereof, may be in Hebrew.

80. Miscellaneous

- 80.1. Neither Party shall hold itself out contrary to the provisions of this Agreement. Neither Party shall become liable for the representations, acts or omissions of the other Party that are contrary to the provisions of this Agreement.
- 80.2. Unless otherwise expressly stated herein, this Agreement is intended for the sole and exclusive benefit of the Parties hereto and this Agreement does not and shall not create any legal relationship with or any cause of action in favor of any third party.
- 80.3. **Entire Agreement.** This Agreement sets out and expresses the entire agreement and understanding between the Parties concerning and in connection with the subject matter of this Agreement and replaces all and any former or other agreements, understandings, covenants, warranties and representations concerning or in connection with the subject matter of this Agreement.
- 80.4. **No Change and No Waiver.** No addition to, variation, consensual cancellation or amendment of this Agreement and no waiver of any right or entitlement arising from this Agreement shall be of any force or affect unless reduced to writing and signed by authorized representatives of both Parties.
- 80.5. No act of relaxation, indulgence or grace by or on behalf of either Party shall in any way operate as or be deemed to be a waiver or novation by such Party of any of its rights or entitlements under this Agreement, nor shall such Party be prevented or estopped from enforcing any and all of its rights and entitlements under this Agreement.
- 80.6. Each provision of this Agreement constitutes a separate and independent provision. If any such provision is held by any Authority of competent jurisdiction to be void or unenforceable, the remaining provisions shall continue in full force and effect.
- 80.7. The termination or cancelation of this Agreement shall not affect the provisions of this Agreement that expressly provide that they shall operate after any such termination or cancelation, or which of necessity must continue to have effect after such termination or cancelation.

80.8. **Execution in Counterparts.** This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A Party may execute this Agreement by signing any counterpart.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be signed by their duly authorized representatives as of the day and year first set forth above.

Signed for and on behalf of ISR:

Name:

Designation:

Signed for and on behalf of the Contractor:

Name:

Designation:

Appendix “A” (Definitions)

1. **“Agreement”** shall mean, collectively: (i) this Agreement document; (ii) each and all of the documents mentioned and listed in clause 3 (Agreement Documents) of the Agreement; and (iii) each and every annex, annexure, appendix, attachment, exhibit, schedule and form attached thereto, referred to therein and/or incorporated therein, all as amended from time to time in accordance with the provisions of the Agreement.
2. **“As-Built” Documents** shall mean drawings and other documents which accurately and comprehensively reflect the “as-built” conditions of the Works, prepared and completed in accordance and compliance with generally accepted international engineering and architectural practices applicable to the preparation of “as-built” drawings.
3. **“Authority”** shall mean any ministry, department, agency, authority, municipality or entity of the State of Israel and any other public authority, body, entity or person having jurisdiction under any Law(s) with respect to the Contractor, the Network, the Works or any person or entity carrying out actions on the Site, including any zoning or planning committee, other than ISR in its capacity as a Party to this Contract.
4. **“Bid”** shall have the meaning ascribed thereto in the ITB.
5. **“Bid Submission Date”** shall have the meaning ascribed thereto in the ITB.
6. **“Business Day”** shall mean any day other than a day on which banks in the State of Israel are required or authorized by Law to be closed.
7. **“Certificate of Final Acceptance”** shall mean a certificate issued by ISR confirming that Final Acceptance has been achieved pursuant to the Agreement.
8. **“Change”** shall mean alterations, deviations, modifications, supplements, additions, omissions, reductions or decreases to the scope of the Works which, as at the date of the applicable Work Order, was neither known to the Contractor nor reasonably foreseeable by a skilled, professional, expert contractor knowledgeable and experienced in executing works similar to the applicable Works; provided that, under no circumstances shall any one or more of the following be considered or deemed be a Change:
 - 8.1. Alterations, deviations, modifications, supplements, additions, omissions, reductions or deletions which are necessary or required in order for the Contractor to comply with its obligations and responsibilities pursuant to this Agreement or which are necessary or required in order to remedy or rectify any act, omission, breach or default by the Contractor; and/or
 - 8.2. Alterations, deviations, modifications, supplements, additions, revisions, omissions, reductions or deletions which stem merely from the development of the Design Deliverables; and/or
 - 8.3. Alterations, deviations, modifications, supplements, additions, revisions, omissions, reductions or deletions which are necessary or required to ensure that the applicable Works are fully and properly interfaced, integrated, compatible, functional, operable and maintainable; and/or

- 8.4. Immaterial or minor alterations, deviations, modifications, supplements, additions, omissions, reductions or deletions to the scope of the applicable Works.
9. **“Confidential Information”** shall mean: (i) all data and information, whether commercial, financial, technical or otherwise and whether written, electronic, tangible or intangible, which relates to a Party’s research, development, trade secrets, know-how, ideas, concepts, formulas, processes, designs, specifications, professional, scientific or technological information, business, prospective business, projects, prospective projects, products, services, internal management, information technology, infrastructure, finances, marketing, customers and/or employees; and (ii) all information belonging to third parties in respect of which the Disclosing Party owes an obligation of confidence as notified in writing to the receiving Party by the Disclosing Party; and (iii) any and all reports, records, documents, deliverables, information, data and other materials, including Project Documentation, procured, produced or prepared for purposes of or in connection with the Project or the Works; and (iv) all documents, information and data disclosed or provided to the Contractor during any discussions, negotiations or other interactions towards the entering into of this Agreement.
10. **“Core Management Team”** shall have the meaning ascribed thereto in Section 0.40 of the Preliminaries Section of the Technical Specification.
11. **“Design Deliverables”** shall mean any and all designs, drawings, plans, specifications, technical notes, technical descriptions, design reports and other design-related documents and submittals (whether in hardcopy, softcopy or electronic format) necessary or required to be procured or prepared (as applicable) by the Contractor, including (*inter alia*) conceptual designs, preliminary designs, general designs, detailed designs, designs for construction, shop drawings, etc., all as specified in the applicable Work Order.
12. **“Direct Costs”** shall mean actual additional costs reasonably and necessarily incurred as a direct result of the applicable Delay, less any actual savings directly resulting from the applicable Delay, excluding and disregarding any and all of the following: (i) costs which constitute loss of revenues, rate of return or income of the Contractor or of any Subcontractor; (ii) contractual fines or liquidated damages; and/or (iii) VAT payable by the Contractor, unless such VAT is not deductible, and less any insurance proceeds received by the Contractor.
13. **“Good Industry Practices”** shall mean the standards, practices, methods, techniques, skill, care, diligence, expertise, professionalism and prudence which are expected from a competent and experienced international contractor performing works similar to the Works, taking into account local conditions.
14. **“Government of Israel”** or **“Government”** or **“GoI”** shall mean the relevant organs and ministries of the Government of the State of Israel directing the Project.
15. **“Greenfield Area”** shall have the meaning ascribed thereto in Section 0.34 of the Preliminaries Section of the Technical Specification.
16. **“Greyfield Area”** shall have the meaning ascribed thereto in Section 0.34 of the Preliminaries Section of the Technical Specification.

17. **“Intellectual Property”** shall mean any patent rights, copyrights, copyright registrations, trade secrets, trade names, trademarks, service marks, moral rights, Confidential Information, know-how and any other similar rights, recognized under any applicable laws or international conventions, and in any country or jurisdiction in the world, as intellectual creations to which rights of ownership accrue, and all registrations, applications, disclosures, renewals, extensions, continuations or reissues of the foregoing rights which are currently or hereafter shall be in force.
18. **“Israeli Consumer Price Index (CPI)”** shall mean the Israeli Consumer Price Index, including fruit and vegetables, published from time to time by the Israeli Central Bureau of Statistics (table 5.1 including VAT, Code 120010). The CPI on any given date shall mean the effective CPI on the morning of such date.
19. **“ISR Obtained Permits”** shall mean the following permits to be obtained by ISR: (i) permit to operate from the Israeli Railway Authority for the integrated electrification system; (ii) system level operating licenses; and (iii) integrated system safety approvals. For the removal of doubt, work permits, work licenses, construction permits, environmental permits and any and all other permits, authorizations, approvals, consents and permissions shall not constitute ISR Obtained Permits and shall be obtained and maintained solely by the Contractor.
20. **“ISR Training”** shall mean training pursuant to the Technical Specifications.
21. **“ITB” or “Invitation to Bid”** shall mean “Invitation to Bid in Tender No. 226218 dated [✱] for the Electrification of Israel Railway’s Railway Network” issued by the Government of Israel, including each and every addendum, annex, annexure, appendix, attachment, document, exhibit and schedule in respect thereof, attached thereto, referred to therein and/or incorporated therein (i.e., Volume 1 (Invitation to Bid) of the Agreement).
22. **“Law”** shall mean the Hebrew language version of the law in force in the State of Israel, including any and all acts, by-laws, binding standards, codes, decrees, directives, judgments, laws, resolutions, orders, ordinances, permits, proclamations, regulations, rules, statutes, treaties, verdicts and administrative policy requirements determined, enacted, handed down, issued, passed or promulgated by any court or any national, local or municipal arm, agency or authority of the State of Israel, including any administrative, fiscal, revenue or judicial agency, authority, body, commission, department, entity, Ministry or tribunal of the State of Israel and all as amended, consolidated, replaced, supplemented and/or varied from time to time.
23. **“Local Offices”** shall mean offices to be established and maintained by the Contractor throughout the Term of the Agreement in Lod, Israel, at which the Contractor’s management staff (including all members of the Core Management Team) shall be based for purposes of carrying out their duties.
24. **“Local Procurement & Storage Center”** shall have the meaning ascribed thereto in Section 0.32 of the Preliminaries Section of the Technical Specification.
25. **“Major Equipment”** shall have the meaning ascribed thereto in Section 0.37 of the Preliminaries Section of the Technical Specification.
26. **“Major Subcontractor”** shall have the meaning ascribed thereto in the ITB.

27. **“Minor Matters”** shall mean insubstantial outstanding items, tasks, activities, units of work and/or services which: (i) neither adversely affect the safety of the Works or any part or aspect thereof, (ii) nor materially adversely affect the use, for their intended purposes, of the Works or any part or aspect thereof, either until such insubstantial matters are fully and properly completed and remedied or while such insubstantial matters are being completed and remedied.
28. **“Network”** or **“ISR Railway Network”** shall have the meaning ascribed thereto hereinabove.
29. **“Network Section”** shall mean the applicable part of the Network specified in a Work Order for carrying out the Works.
30. **“Operation and Maintenance Manuals”** shall mean the manuals containing all information necessary and required to enable the full, proper and safe use, benefit, operation and maintenance of the completed Works.
31. **“Paving and Bridging Input Price Index (PBI)”** shall mean the Index of input in Paving and Bridges published from time to time by the Israeli Central Bureau of Statistics (table 5.1 excluding VAT, Code 240010).
32. **“Permit”** shall mean any governmental (including municipal) or regulatory approval, authorization, decision, license, permit, permission or consent (including, without limitation, work licenses (רישיון עבודה), notifications (הודעה), permissions (הרשאה), building permits (היתר בנייה), working visas, etc.) as may be necessary or required for the undertaking and implementation by or on behalf of the Contractor of the Works and/or the Project according to the Agreement, or as may be necessary or required for the fulfilment of the terms, conditions and provisions of the Agreement applicable to the Contractor.
33. **“Project”** shall have the meaning ascribed thereto in the ITB.
34. **“Project Documentation”** shall mean all Design Deliverables and any and all other reports, records, documents, deliverables, information, data, submittals and other written and electronic materials which are procured, produced or prepared by or on behalf of the Contractor for purposes of or in connection with the Works.
35. **“SCADA Contractor”** shall mean an entity with the professional experience detailed in Appendix B of the Technical Specifications, engaged by the Contractor for purpose of carrying out the SCADA Works subject to the prior written approval of ISR.
36. **“SCADA System”** shall mean the supervision, control, data acquisition, communication, visualization and operational & energy management system for the Network, including but not limited to master units, RTUs, tags, HMI, field devices, field communication networks, software, licenses, maintenance services and updates.
37. **“SCADA Works”** shall mean the supply, installation, commissioning, operation and maintenance of the SCADA System, in whole or in part, in accordance with the Agreement and the Technical Specifications.
38. **“Site”** means the places where the Works are to be executed and any other places specified in a Work Order as forming part of the Site.

39. **“Spare Parts”** shall mean all spare parts stipulated in the Technical Specifications.
40. **“Standards”** shall mean any and all: (i) local and international norms, codes, standards and regulations mentioned in **Appendix “B” (Proforma Work Order)**; and (ii) Israeli norms, codes, standards and regulations that are applicable or relevant to the Works; and (iii) norms, codes, standards and regulations stipulated by ISR that are applicable or relevant to the Works.
41. **“Successful Bidder”** shall have the meaning ascribed thereto in the ITB.
42. **“Technical Specifications”** shall mean the specifications in Volume 3 (Technical Specifications) of the Tender Documents.
43. **“Tender”** shall mean “Tender No. 226218 dated July 2026” for the Electrification of Israel Railway’s Railway Network” issued by the Government of Israel.
44. **“Tender Documents”** shall have the meaning ascribed thereto in the ITB.
45. **“Tender Process”** shall have the meaning ascribed thereto in the ITB.
46. **“Track Possession”** or **“TP”** shall mean the period granted by ISR during which the Contractor has access to the rail track for the purpose of carrying out the Works under a Work Order.
47. **“Works”** shall mean any and all works, services, tasks, designs, activities and actions (both of a permanent and temporary nature) necessary or required to be performed, undertaken or executed pursuant to a Work Order, including in each case any and all works, services, tasks, designs, activities and actions (both of a permanent and temporary nature) which are: (a) necessary or required to satisfy the obligations of the Contractor as set forth in the Agreement and the applicable Work Order, or as are implied by the Agreement and the applicable Work Order, or as arise from any obligation of the Contractor, including (without limitation) any and all works, services, tasks, designs, activities and actions (even if not specifically mentioned in the Agreement or the applicable Work Order) which are necessary for the full, proper, reliable, timely, professional and efficient execution and completion of the Works in accordance with the Agreement and the applicable Work Order; and (b) necessary, required, connected with, ancillary to, complementary to or related to the full, proper, reliable, timely, professional and efficient execution and completion of the Works in accordance with Agreement and the applicable Work Order. Without derogating from the generality of the foregoing, whereas each Work Order is issued on a design-build (DB) basis, the term **“Works”** shall be considered and deemed to include all necessary and required design-related services, tasks, activities and actions, including (without limitation) the preparation and/or production (as applicable) of all necessary and required Design Deliverables.
48. **“Work Order”** shall have the meaning ascribed thereto in clause 89 (Work Orders) of the Agreement.
49. **“Work Order Consideration”** shall mean the consideration payable to the Contractor in consideration of the proper execution of the Works under a Work Order, in each case as shall be specified in the applicable Work Order.

Appendix “B” (Proforma Work Order)*

Line item #	Section number in the Agreement	Description of item	Information
1.		Specification and location of the Network Section for carrying out the Works	
2.		Length and characteristics of Network Section	
3.		Greenfield Area (km)	
4.		Greyfield Area (km)	
5.		Small works	
6.	9.12	Works to be carried out by the Contractor	
7.	9.12	Location and boundaries of the Site	
8.	9.14	Documentation and/or information to be submitted with Work Order Response	
9.	9.22	Works commencement date (Notice to Proceed (Design) date)	
10.	9.22	Notice to Proceed (Execution) date	
11.	14.2.4	Instructions with respect to Third Party Contractors	
12.	17.15	Appointed Subcontractor	
13.	18.3	Site availability date	
14.	18.4	Location and boundaries of ISR Arranged Mobilization Site(s)	
15.	23.1	Required Design Deliverables	
16.	26	Timelines, deadlines and milestones for the commencement, execution and completion of the Works	

Line item #	Section number in the Agreement	Description of item	Information
17.	53.1	Work Order Consideration – lump sum	
18.	53.1	Work Order Consideration – rates and prices (BOQ)	
19.	53.1	Payment milestones (as a lump sum following achievement of milestones or pursuant to progress of the Works according to the BOQ)	
20.	60.3	Work Order Performance Guarantee amount	
21.		Special technical data, specifications and instructions with respect to the performance of the Works	
22.	24	Instructions regarding performance of works on weekdays / Saturdays, including planned/anticipated Track Possession hours	
23.		Works executed by third parties	

Date of issue: _____

Name of ISR representative: _____

Signature of ISR representative: _____

* This Work Order is subject to all terms and conditions of the Agreement and such terms and conditions shall apply with respect to any Works executed by the Contractor pursuant to this Work Order.

Appendix “C” (Proforma Guarantee)

To:
Israel Railways Ltd. (“ISR”)

Guarantee No. _____ (**“Guarantee”**)

Agreement Dated _____ (**“Agreement”**)

Pursuant to the request of [name to be completed] (the **“Contractor”**), we hereby guarantee to pay you any sum, upon your demand, up to the overall amount of [amount to be completed in accordance with the Agreement] (the **“Principal Amount”**).

Linkage differentials shall be added to the Principal Amount or any part thereof, in accordance with the provisions set forth herein below (the Principal Amount together with linkage differentials shall hereinafter be referred to as the **“Amount of the Guarantee”**).

For the purpose of this Guarantee:

- The **“Index”** shall mean the Israeli Consumer Price Index, including fruit and vegetables, published from time to time by the Israeli Central Bureau of Statistics and the CPI on any applicable date shall mean the effective CPI on the morning of such date.
- The **“Basic Index”** shall mean the Index published in respect of the date on which the Signature Date occurs.
- The **“New Index”** shall mean the Index last published before actual payment under this Guarantee.
- If, at the time of payment of any amount under this Guarantee, the New Index shall be higher than the Basic Index, the Amount of the Guarantee shall be calculated as increased at a rate equal to the rate by which the New Index has increased in comparison to the Basic Index.
- If, at the time of payment of any amount under this Guarantee, the New Index shall be lower than or equal to the Basic Index, the Amount of the Guarantee shall remain unchanged.

We undertake to pay you any sum specified in your written demand up to the Amount of the Guarantee, immediately and no later than seven (7) calendar days after the date of receipt of such demand.

Your demand for payment of the Amount of the Guarantee may be affected in stages and payments shall be executed in accordance with your demands, provided that the overall total of the payments does not exceed the Amount of the Guarantee.

Each demand for payment under this Guarantee must be received by us in writing at our address as follows:

[Address to be completed]

Demand sent to us / received by us via facsimile or email shall not be considered as a demand in writing according to this Guarantee.

Our undertaking pursuant to this Guarantee is autonomous and unconditional and you shall not be obligated to explain, reason or prove your demand, or first to demand payment from the Contractor and/or any other person or entity.

We hereby waive any and all rights that we have or might have:

- To require that you first pursue your legal remedies against the Contractor; and/or
- To require notice of acceptance hereof; and/or
- In respect of any action taken or omitted to be taken in reliance hereon; and/or
- In respect of any failure to comply with the terms of the Agreement.

We hereby agree that our obligations under this Guarantee are autonomous, direct, primary, unconditional, irrevocable obligations.

We hereby further agree that the Agreement may be modified, amended and/or supplemented in any manner and without our consent and that no such modification, amendment or supplement shall release, limit or impair our liability under this Guarantee.

This Guarantee shall not be assigned or transferred by you without our consent and, in any event, this Guarantee shall not be assigned or transferred to any person, entity or body listed on a United Nations, European Union or United States of America sanctions list.

This Guarantee shall be in force until *[expiry to be completed in accordance with the validity periods prescribed in the Agreement]*.

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

Yours Sincerely

Guarantor

Appendix “D” (Insurance Policies)

1. Without derogating from the Contractor’s liability and/or obligations pursuant to this Agreement and/or any Law, the Contractor, at its own expense (including any deductibles), undertakes to effect and maintain, through a duly licensed Israeli insurance company, seven (7) days prior to commencement of any Works under a Work Order and issuance of a Notice to Proceed with respect thereto, the insurance policies set forth hereunder, which shall remain in full force and effect throughout and until issuance of a Final Acceptance Certificate with respect to such Works or for any further periods as set forth in clauses 1.2 and 1.3 below (hereinafter: the “**Contractor’s Insurances**”).
 - 1.1. **Contractors All Risks (CAR) Insurance** (hereinafter: the “**CAR Policy**”) that shall be maintained in accordance with the following provisions:
 - 1.1.1. The sum insured under Section A of the policy shall reflect the reinstatement value of the Works. If, during the period of insurance, any changes occur to the value of the Works, for any reason, the Contractor shall immediately update the said sum insured accordingly.
 - 1.1.2. The extensions on a “first loss” basis under Section A and the limits of liability under Sections B and C shall be arranged separately for each Work.
 - 1.1.3. The deductible amounts shall not exceed the following amounts: (a) Defective design, plan, specification, workmanship - NIS 2,500,000; (b) Natural Perils - NIS 2,000,000; (c) Earthquake - 10% of the value at risk at the time of the loss subject to a maximum of NIS 8,000,000; (e) Any other peril - NIS 1,000,000.
 - 1.1.4. The policy shall include ISR and/or contractors and/or Subcontractors (of any tier) as additional insured. Additionally, the following shall be added as additional insured: the State of Israel and/or the IPM and/or the supervisor on behalf of ISR and/or any other person or entity that ISR is obligated to include as an additional insured under the policy (all of the above shall hereinafter be referred to as: the “**Other Insureds**”).
 - 1.1.5. In case of loss or damage caused to the Works, the right to conduct negotiations with the insurer and receive indemnity payments without the right of set-off of any debts shall be reserved solely to ISR and this by irrevocable designation. The policy shall contain a “Loss Payee” clause on behalf of ISR (other than if ISR instructs otherwise).
 - 1.1.6. The insurance shall be noncancelable other than in the case of fraud and/or non-payment of premium by the Contractor.
 - 1.1.7. In the event that the limits of liability specified under the insurance are exhausted, in whole or in part (but not less than an amount equal to one quarter of the original limits of liability), due to the payment of a claim submitted against the Contractor and/or ISR and/or any Subcontractors (of any tier), the Contractor shall reinstate the said limits of liability to their original amount and bear the premium required.
 - 1.1.8. In the event that the engagement with the Contractor is terminated for any reason whatsoever, the insurance shall remain in force and shall continue to cover ISR and/or the Other Insureds, as well as any other contractor whose inclusion is requested pursuant to a written instruction to the Insurer from ISR, all subject to the continued payment of any remaining balance of the insurance premium (if applicable).

- 1.1.9. The insurance shall remain fully in force until the complete acceptance of all parts of the project to ISR, subject to the provisions of Endorsement MR116.
- 1.1.10. In the event of an extension of the duration of the Works, the Contractor shall extend the insurance period accordingly, subject to the payment of an additional premium by the Contractor for such extension.
- 1.2. **Professional Liability Insurance** - covering the legal liability of the Contractor due to acts, errors or omissions of the Contractor and anyone operating on its behalf arising out of rendering or failure to render professional services related to the Agreement. The insurance shall include coverage for pure financial loss. The retroactive date of the policy shall not be later than the commencement date of the Agreement and the policy shall be held in effect for at least ten (10) additional years following the date of termination of the Agreement. It is hereby clarified that the Contractor shall be entitled to obtain a combined insurance policy for Professional Liability and Product Liability, with combined limits of liability in the amount of NIS 20,000,000.
- 1.3. **Product Liability Insurance** - covering the legal liability of the Contractor in respect of bodily injury and/or damage to property including consequential loss thereof which is caused as a consequence of and/or in connection with the Works. The retroactive date of the policy shall not be later than the commencement date of the Agreement and the policy shall be held in effect for at least three (3) additional years following the date of termination of the agreement. It is hereby clarified that the Contractor shall be entitled to obtain a combined insurance policy for Product Liability and Professional Liability, with combined limits of liability in the amount of NIS 20,000,000.
- 1.4. **Motor Insurance** – for all motor vehicles (including mobile equipment) utilized by the Contractor or Subcontractors or anyone on their behalf for the performance of the Works whilst at or in the vicinity of the Site. Coverage shall include own damage, compulsory liability as well as third party property damage and non-compulsory liability for at least the equivalent of NIS 750,000 per occurrence per vehicle.

- 1.5. **All Risks Heavy Equipment Insurance** for heavy equipment used by the Contractor or Subcontractors or anyone on their behalf in the execution of the Works. Notwithstanding the foregoing, it is hereby agreed that the Contractor shall be entitled not to obtain the aforesaid insurance, in whole or in part, provided that the release as set forth in clause 2.13 below shall apply as if the insurance had been obtained.

2. Terms and Conditions applicable to Contractor's Insurances

- 2.1. The Contractor declares and agrees that the Contractor's Insurances will be subject to any future requirements and/or demands made by ISR due to requests made by any entity or body whose approval is required for the execution of the Works.
- 2.2. The Contractor's Insurances (except for those specified under clauses 1.4 and 1.5 above) shall:
- (a) include a waiver of any right of subrogation against ISR and/or the Other Insureds, provided that such waiver shall not apply in favor of anyone who maliciously caused the loss or damage;
 - (b) be primary and include a waiver of all rights of recourse against the Other Insureds' insurers;
 - (c) include a provision according to which the insurers shall provide ISR with a sixty (60) days written notice prior to the cancellation or material reduction of coverage during the insurance period;
 - (d) contain a clause stating that in circumstances of breach in good faith of any warranty or condition of policy terms committed by one insured shall not prejudice the coverage granted to any other insured who has not committed the said act;
 - (e) not be subject to a "gross negligence" exclusion;
 - (f) their scope of coverage shall be in accordance with the wording of the "BIT" Contractors' All Risks Insurance Policy, as updated at the commencement date of the insurance period, or any equivalent and/or earlier version thereof.
- 2.3. Irrespective of any demand by ISR, seven (7) days prior to the commencement of each Work under a Work Order and as a condition for issuance of a Notice to Proceed with respect thereto, the Contractor undertakes to provide ISR the insurance certificate attached as **Attachment 1** (herein: the "**Insurance Certificate**") duly signed by its insurer. Furthermore, the Contractor shall provide ISR with copy of the CAR Policy, within seven (7) days from the date of receipt of ISR's request. In the case of inconsistency between the provisions of the Insurance Certificate and/or the CAR Policy and the provisions of this Attachment, the Contractor undertakes to cause the Insurance Certificate and/or the CAR Policy to be amended to conform to the provisions of this Attachment. It is agreed that nothing in the furnishing of the Insurance Certificate and/or the CAR Policy and/or inspection and/or non-inspection thereof shall constitute confirmation that the Contractor's Insurances conform to that which is agreed, the quality, validity, scope or lack thereof, and/or shall not derogate from the Contractor's liability under the Agreement and/or under the Applicable Law and/or imposes any liability on ISR and/or on any person acting on its behalf.
- 2.4. The Contractor undertakes, prior to the expiration of the term of the Contractor's Insurances and/or any part thereof, to provide to ISR with a new Insurance Certificate for additional insurance term, (and so on consecutively) throughout all the duration of and until the expiration of the Term of the Agreement.

- 2.5. Whenever the Contractor's insurer gives notice to ISR that any of the Contractor's Insurances is to be reduced or cancelled, as set out in clause 2.2(c) above, the Contractor undertakes to take out the same policy once again and to provide a new certified evidence of Contractor's relevant insurance no less than seven (7) days before the date of such reduction or cancellation of the policies as aforesaid.
- 2.6. For the removal of doubt, it is hereby clarified that the limits of liability as set in clause 1 above and the Insurance Certificate are the minimum requirements imposed upon the Contractor, and the Contractor must examine its own exposure and determine its own limits of liability accordingly. The Contractor declares hereby that it will be barred from raising any claim or demand towards ISR and anyone acting on its behalf in connection with the limits of liability stated above.
- 2.7. The Contractor will strictly comply with all the conditions and instructions of the Contractor's Insurances, including explicitly all instructions and requirements of the insurers in relation to loss prevention and risk management of the Works.
- 2.8. The Contractor shall not at any time do (or omit to do) or permit any other person to do (or omit to do) anything (including failure to disclose any fact) whereby any insurance required to be maintained under the Agreement and/or this Appendix could be rendered void, voidable, unenforceable, suspended, impaired or defeated in whole or in part. The Contractor undertakes to indemnify ISR against all losses, costs, expenses, claims, demands, liabilities or proceedings which may be made or brought against or incurred by ISR as a result of any such act or omission.
- 2.9. The Contractor is required to notify ISR immediately of any event, which is likely to give rise to a claim under the Contractor's Insurances, as well as to cooperate with ISR as required in order to obtain settlement of any insurance claim under the Contractor's Insurances.
- 2.10. The Contractor shall bear sole responsibility for the full payment of the deductibles specified under the Contractor's Insurances.
- 2.11. The Contractor is required to ensure that the provisions of this Attachment are brought to the attention of the executives, employees and Subcontractors of the Contractor.
- 2.12. The Contractor hereby releases and exempts ISR and/or the Other Insured and/or anyone acting on their behalf from any liability in respect of any loss or damage to equipment of any type brought to the Site and/or designated for the execution of the Works owned by the Contractor and/or Subcontractors and/or anyone acting on the Contractor and/or Subcontractors' behalf. The said exemption will not apply in favor of someone who has maliciously caused damage.

Attachment 1- Certificate of Insurance – Contractors All Risks / Erection All Risks Insurance						Date of issue: ____/____/____		
This insurance certificate is a reference to the fact that the insured has a valid insurance policy in accordance with the information specified in it. The information detailed in this certificate does not include all the terms of the policy and its exceptions. However, in the event of a conflict between the conditions specified in this approval and the conditions outlined in the insurance policy, what is stated in the insurance policy will prevail, except in the case where a condition in this approval benefits the Certificate Holder.								
Main Certificate Holder*	Additional parties related to the Certificate Holder and will be considered as the Certificate Holder	The Insured		Address of the insured property / Address of execution of the works *		Certificate Holder Status*		
Name: Israel railways ltd.	and/or the project manager and/or the State of Israel and/or the supervisor on behalf of the Main Certificate Holder			Throughout the State of Israel		☐ Execution Contractor ☐ Subcontractors ☐ Landlord ☒ Principal		
ID: 52-004361-3		ID:						
Address: Insurance Department, Finance Division, 1 Yosseftal Street, Lod 7136801, P.O. Box 757		Address:						
Covers								
Policy chapters Division by liability limits or insurance amounts	Policy number	Policy version and Edition	Period of Insurance	Limit of liability / amount of insurance / value of work		Deductible There is no obligation to present this detail	C u r e n c y	Additional Coverage and Cancellation of Exclusions (according to the cover code in Attachment D)
				occurrence	aggregate			

All Risks Contractor Work						נ	309, 313, 314, 316, 317 (contractors and subcontractors of any tier), 318, 324, 328, 331, 334 (24 months), 345
Sample extensions (can be specified according to the policy chapters):							
property being worked upon and adjacent property				10% of the value of the Work, Minimum 1,000,000, Maximum 10,000,000		נ	
Faulty design, faulty materials, or faulty work				10% of the value of the Work		נ	
Removal of debris				10% of the value of the Work		נ	
Expenses for planning and supervision				5% of the value of the Work		נ	
Equipment, plant and auxiliary buildings which are not part of the final Project				2.5% of the value of the Work, Minimum 500,000, Maximum 4,000,000		נ	
Special expenses				5% of the value of the Work		נ	
Property in transit and/or in storage				2% of the value of the Work		נ	
Expenses for essential alterations and additions requested by Authorities				2% of the value of the Work			
Third Party Liability				20% of the value of the Work, Minimum 4,000,000, Maximum 40,000,000		נ	302, 317 (contractors and subcontractors of any tier), 318, 322, 328, 329, 340 (vibrations) – 20% of the Limits of Liability

							341 (Indirect damage) 20% of the Limits of Liability
Employers' Liability				20,000,000 (but in relations of Works which exceeds the value of NIS 150M – 40,000,000)		☑	317 - (contractors and subcontractors of any tier), 318, 328
Product Liability				15,000,000		☑	302, 304, 309, 328, 332 (12 months), 347
Professional Liability				15,000,000		☑	301, 302, 309, 321, 328, 332 (12 months)
Services Description* (with respect to the services specified in the agreement between the Insured and the Certificate Holder, according to the relevant "service" code as listed in Attachment C):							
009							
Cancellation / Alteration of the Policy*							
The policy shall not be cancelled and/or adversely altered prior to sending a 60 day's prior written notice to the Main Certificate Holder regarding the said cancellation or alteration.							
The Signing of the Approval:							
The Insurer:							

Appendix “E” (Service Level Agreement (SLA))

No.	Description	Maximum Duration	Unit for Measurement of Default	Liquidated Damages
1.	Arrival at site	One [1] hour for Major Fault Two [2] hours for Minor Fault	For each hour or a part thereof beyond the Maximum Duration	2,000 NIS/hour (Major) 1,000 NIS/hour (Minor)
2.	Detection of fault	Two [2] hours for Major Fault Two [2] hours for Minor Fault	For each hour or a part thereof beyond the Maximum Duration	1,500 NIS/hour (Major) 750 NIS/hour (Minor)
3.	Repair of fault	Twenty-Four [24] hours for Major Fault Forty-Eight [48] hours for Minor Fault	For each hour or a part thereof beyond the Maximum Duration	3,000 NIS/hour (Major) 1,500 NIS/hour (Minor)
4.	Submission of any required report	As detailed in the Technical Specifications	For each day beyond the Maximum Duration	1,500 NIS/day

For purposes hereof:

“**Major Fault**” shall mean any fault, failure or defect that causes interruption, degradation or unsafe operation of the railway system, affects train operation, safety systems, OCS energization, signaling interfaces or SCADA control, results in partial or full shutdown, or requires immediate intervention to prevent safety risk or service disruption.

“**Minor Fault**” shall mean any fault, failure or defect that does not affect safety or train operation, does not result in system shutdown, has limited operational impact, and can be deferred for planned maintenance.

If the Contractor is requested by ISR to remedy or rectify defects, deficiencies and/or non-conformities described in clauses 46.3.1, 46.3.2 and/or 46.3.3 of the Agreement, in consideration for doing so in accordance with the provisions of the Agreement, the Contractor shall be entitled to a lump-sum payment based on the applicable unit rates specified in Category B - Design & Construction small works, Category C – dismantling and/or Category D – Resources Category of the BOQ plus twelve percent (12%) to applied to the applicable unit rates to cover overheads, design works and mobilization under urgent conditions.

Appendix “F” (ISR Approval)

1. All references herein to “**Submittal(s)**” shall mean any and all: (i) Project Documentation (including Design Deliverables); and (ii) other reports, records, documents, deliverables, information, data, submittals and/or items which the Agreement stipulates shall be approved by or be subject to the approval or consent of ISR; and (ii) goods, materials, tools, special tools, plant, equipment, machinery and/or other facilities which the Agreement stipulates shall be approved by or be subject to the approval or consent of ISR.
2. Each Submittal and any draft, intermediate, interim, partial or provisional version thereof may, during the formulation thereof and prior to its completion, be submitted to ISR for comment. ISR may, at its sole discretion, provide comments or refrain from providing comments.
3. If a Submittal is assigned the category “SOR” or the category “SONOWC”, which requires submittal of a revised Submittal, the Contractor shall deliver the revised Submittal within fourteen (14) days after receipt of ISR’s comments. ISR shall review such revised Submittal within twenty-one (21) days and provide its response. The provisions of this clause 3 shall apply until the Submittal is assigned the category “SONO”.
4. Upon the completion of a Submittal, the Contractor shall submit such Submittal for approval by ISR in accordance herewith. After receipt by ISR of a completed Submittal, ISR shall review the Submittal and, within thirty (30) days, shall:
 - 4.1. Provide to the Contractor written comments on the Submittal; or
 - 4.2. Approve the Submittal without providing to the Contractor written comments thereon, in which event the approved Submittal shall be assigned the category “**SONO**” (Statement of No Objection); or
 - 4.3. Approve the Submittal and provide to the Contractor written comments thereon, in which event the approved Submittal shall be assigned the category “**SONOWC**” (Statement of No Objection With Comments); or
 - 4.4. Reject the Submittal or any part thereof if ISR is of the opinion that the Submittal or any part thereof fails to comply with or meet any one or more of the provisions of the Agreement, in which event the rejected Submittal shall be assigned the category “**SOR**” (Statement of Rejection) and ISR shall, within the aforesaid period, inform the Contractor in writing of the reasons for such rejection.
5. Subject always to paragraph 8 below, if ISR comments on the Submittal pursuant to paragraph 4.1 above or rejects the Submittal pursuant to paragraph 4.4 above, then:
 - 5.1. The Contractor shall forthwith furnish ISR with a revised Submittal incorporating and addressing ISR’s comments or reasons for rejection (as the case may be); and
 - 5.2. The provisions of paragraph 4 above shall apply with respect to each revised Submittal; and

- 5.3. The Contractor shall not act pursuant to or implement the Submittal, nor execute any of the Works or any part or aspect of the Works associated with the Submittal.
6. Subject always to paragraph 8 below:
 - 6.1. If ISR approves a Submittal without commenting thereon pursuant to paragraph 4.2 above, the Contractor shall act pursuant to and implement the Submittal according to its terms and shall execute the Works in accordance with the Submittal; and
 - 6.2. If ISR approves a Submittal and comments thereon pursuant to paragraph 4.3 above, the Contractor shall act pursuant to and implement the Submittal according to its terms and shall execute the Works in accordance with the Submittal, except that it shall do so subject to and in compliance with any and all such comments. In addition, the Contractor shall address and implement any and all such comments in all applicable subsequent Submittals; and
 - 6.3. Subject to and without derogating from any other, further or additional conditions or prerequisites set forth in the Agreement, in no event shall the Contractor act pursuant to or implement a Submittal, or execute any of the Works or any part or aspect of the Works associated with a Submittal, unless and until the applicable Submittal has been assigned the category “SONO” or the category “SONOWC”.
7. In no event shall any one or more timeline, deadline or milestone be considered or deemed to be completed, reached or achieved by the Contractor unless and until the applicable timeline, deadline or milestone has been completed, reached or achieved (as the case may be) by the Contractor pursuant to and in accordance with applicable Submittals that have been assigned the category “SONO” or the category “SONOWC”.
8. Notwithstanding any comments, decisions not to comment, approvals or rejections of or in respect of any Submittals:
 - 8.1. Neither any comments provided by or on behalf of ISR nor any decision not to provide any comments shall:
 - 8.1.1. Relieve or release the Contractor from properly and timeously executing and fulfilling all its obligations and responsibilities under the Agreement and Law; or
 - 8.1.2. Amount to or constitute or be considered or deemed to be a waiver of any one or more of ISR’s rights and entitlements under the Agreement or Law.
 - 8.2. Neither the approval nor the rejection by or on behalf of ISR of any Submittal shall:
 - 8.2.1. Relieve or release the Contractor from properly and timeously executing and fulfilling all its obligations and responsibilities under the Agreement and Law; or
 - 8.2.2. Amount to or constitute or be considered or deemed to be a waiver of any one or more of ISR’s rights and entitlements under the Agreement; or
 - 8.2.3. Derogate from or replace any other approval (if any) required under or pursuant to any applicable Law(s), Permit(s) or requirements of applicable Authorities; and

8.3. The Contractor shall be and shall remain liable and responsible:

8.3.1. For any and all ambiguities, errors, inadequacies, inconsistencies, omissions, deficiencies and defects in the Submittals; and

8.3.2. To remedy and rectify any and all ambiguities, errors, inadequacies, inconsistencies, omissions, deficiencies and defects in the Submittals and take all steps and measures necessary and required to render the Submittals fully compliant with the Agreement and any applicable Law(s), Permit(s) and requirements of applicable Authorities; and

8.3.3. To execute the Works in accordance and compliance with the Agreement.

9. Approval by ISR shall not be unreasonably withheld or denied.

Appendix “G” (Liquidated Damages)

No	Topic	Description of Event	Amount of LDs
1	Delays in achieving Final Acceptance under a Work Order	A delay of up to and including 20 days.	5,000 NIS per each calendar day of delay.
		A delay exceeding 20 days.	7,000 NIS for each calendar day of delay (in excess of the 20 days).
2	Delays in achieving a milestone deadline under a Work Order	A delay of up to and including 10 days.	2,000 NIS per each calendar day of delay.
		A delay exceeding 10 days.	4,000 NIS for each calendar day of delay (in excess of the 10 days).
3	Delays in submission of Project Documentation	A delay in submission of any required Project Documentation (RAMS, Designs, ITPs, QC forms, test certificates, DMS uploads, etc.).	2,000 NIS per document per each calendar day of delay per document.
4	Safety compliance	Breach of safety Laws, ISR safety rules or instructions, PPE violations.	PPE violation: 5,000 NIS per event
			Non specified safety violation: 10,000 NIS per event
			Work at height / electrical isolation breach: 15,000 NIS per event
			Life-threatening near-miss 50,000 NIS per event
5	Core Management Team	Non-appointment, non-availability, non-performance or replacement of a member of the Core Management Team without ISR's prior approval.	7,500 NIS per calendar day per each Core Management Team member.
6	DMS Maintenance	Incorrect file structure, missing uploads, non-approved access rights, outdated versions.	3,000 NIS per each calendar day of non-compliance.
7	Reinstallation due to work deficiencies	Reinstallation required due to incorrect OCS assembly, incorrect tensions, incorrect wiring, poor foundation execution etc.	Full cost of reinstallation works plus 10,000 NIS for each event.
8	Damage to ISR assets	Damage to tracks, signaling, cables, structures, OCS components or other railway components.	Full repair documented costs plus 15% overheads.
9	NCR	Failure to close a Non-Conformance Report (NCR) within the agreed closure timeframe, as classified by the ISR	1,000 NIS per level 1 NCR per calendar day of delay to rectify
			2,000 NIS per level 2 NCR per calendar day of delay to rectify
			3,000 NIS per level 3 NCR per calendar day of delay to rectify
			4,000 NIS per level 4 NCR per calendar day of delay to rectify
10	ISR access/traffic rules and procedures	Non-compliance with ISR rules and procedures pertaining to access and	Minor procedural breach – 10,000 NIS per event

No	Topic	Description of Event	Amount of LDs
		traffic (track entrance without permission, RRV misuse, incorrect isolation procedures).	Medium (RRV misuse / wrong isolation) – 50,000 NIS per event
			Severe (track entrance without permission) – 100,000 NIS per event
11	Manpower and equipment	Non-provision of minimal required manpower, RRVs, MEWP's or tools to work sites.	10,000 NIS per shift or part thereof.
12	Testing readiness	Outstanding works preventing commencement of static/dynamic testing on scheduled date, including failure to complete punch-list items that block testing	10,000 NIS per event.
13	Energization requirements	Non-submission of required documents or incomplete works preventing energization.	25,000 NIS per each failed energization window.
14	ISR/PMC meetings	Absence or non-participation of a Core Management Team member in mandatory meetings.	2,000 NIS per member per each meeting.
15	Environmental protection Laws and requirements	Non-compliance with environmental protection and preservation Laws and requirements (improper waste management, disposal manifests missing/incorrect spills, soil contamination, hazardous storage violations).	10,000 NIS per incident.
16	Planning and Building Law and requirements	Non-compliance with Planning and Building Law requirements, including unauthorized construction, deviations from approved plans, failure to obtain mandatory permits, or violation of zoning and land-use regulations.	10,000 NIS per incident.
17	Site Coordination	Construction progress delay due to on-site coordination failure with Subcontractors as determined by ISR	10,000 per calendar day of delay
18	TQS inspection	Failure in TQS / CTO inspection	5,000 NIS per failed inspection
19	As – Made drawings	Failure to produce “as-made” drawings as instructed	3,000 NIS per drawing per calendar week
20	Schedule Compliance	Failure to submit, update or comply with the approved project schedule (baseline or recovery schedule).	3,000 NIS per calendar week
21	Recovery Plan	Failure to submit recovery/mitigation plan within 10 calendar days after delay detection.	3,000 NIS per calendar week
22	Method Statements / ITPs	Work not in accordance with approved Method Statement or ITP.	10,000 NIS per event

No	Topic	Description of Event	Amount of LDs
23	Work Permits	Commencing work without required permits or approvals.	10,000 NIS per event
24	Interface Management	Failure in coordination between interfaces causing re-work.	5,000 NIS per event + documented costs of re-work
25	Key Staff Presence	Absence of required key personnel on Site.	5,000 NIS per person per shift
26	Quality System	Failure to implement approved QMS.	5,000 NIS per week
27	Training & Certification	Workers without valid training or certification.	5,000 NIS per event
28	Inspections Cooperation	Failure to cooperate or prepare for inspections.	5,000 NIS per event
29	False or Incomplete Reporting	Misreporting progress or readiness.	10,000 NIS per event
30	ISR Instructions	Failure to comply with written ISR instruction related to safety, quality or schedule	2,000 NIS per event
31	Availability of Authorized Representative	Failure of the Contractor to ensure availability of an authorized representative (OCS Construction Manager or Work Order Manager or other authorized personnel) during Track Possessions (TP), including 2 hours prior to the commencement of a TP and until 2 hours after its completion, as well as during testing/energization activities or emergency situations. A breach shall occur where neither the primary nor a designated backup representative responds to a call or returns it within 15 minutes. Routine calls outside such periods shall not constitute a breach.	3,000 NIS per event
	Availability of Authorized Representative – Warranty Period	Failure of the Contractor to ensure 24/7 availability of an authorized representative for emergency calls and fault reporting during the Warranty Period. A breach shall occur where neither the primary nor a designated backup representative responds to an emergency call or returns it within 30 minutes.	2,000 NIS per event

Appendix “H” (Price Proposal (BOQ))

[Incorporated herein will be the Bill of Quantities attached to Tender Form “9” of the Contractor’s Bid]

Appendix “I” (Indicative Payment Milestones)

PAYMENT MILESTONES FOR FULL DB		
No.	Milestone	Percentage
1	Topographical and control surveys	1.00%
2	Underground Utilities Detection	1.00%
3	Preliminary Design	2.00%
4	Detailed Design	3.00%
5	Temporary Traffic Arrangements Design and Approval as required	1.00%
6	Design Approval	5.00%
7	Obtaining all Excavation Permits	4.00%
8	Poles foundations	15.00%
9	Material purchase (wires, cantilever, poles, etc.)	17.00%
10	Pole Erection	10.00%
11	Earthing and Bonding	5.00%
12	OCS Wires (incl. Contact Wires) and SCADA (If Applicable)	15.00%
13	Acceptance Process (Final Acceptance Tests)	15.00%
14	Final Accptance	6.00%
	TOTAL	100.00%

PAYMENT MILESTONES FOR OPTION 1 (ACCORDING TO PARAGRAPH 2.8.5 IN VOLUME 3)		
No.	Milestone	Percentage
1	Topographical and control surveys, including Pre-Constructed Foundations	1.00%
2	Underground Utilities Detection	1.00%
3	Design due Diligence - ISR Documentation Review	1.00%
4	Preliminary Design	3.00%
5	Detailed Design	3.00%
6	Temporary Traffic Arrangements Design and Approval as required	1.00%
7	Due Diligence Assessment, Foundation Testing and Verification, Defect Identification and Rectification, Foundation Replacement (if required)	20.00%
8	Material purchase (wires, cantilever, poles, etc.)	20.00%
9	Pole Erection	10.00%
10	Earthing and Bonding	5.00%
11	OCS Wires (incl. Contact Wires) and SCADA (If Applicable)	14.00%
12	Acceptance Process (Final Acceptance Tests)	15.00%
13	Final Acceptance	6.00%
	TOTAL	100.00%

PAYMENT MILESTONES FOR OPTION 2 (ACCORDING TO PARAGRAPH 2.8.6 IN VOLUME 3)		
No.	Milestone	Percentage
1	Topographical and control surveys	2.00%
2	Underground Utilities Detection	1.00%
3	Preliminary Design	3.00%
4	Detailed Design	3.00%
5	Design Approval	2.00%
6	Temporary Traffic Arrangements Design and Approval as required	1.00%
7	Due Diligence Assessment, Foundation Testing and Verification, Defect Identification and Rectification, Foundation Replacement (if required)	20.00%
8	Material purchase (wires, cantilever, poles, etc.)	18.00%
9	Pole Erection	10.00%
10	Earthing and Bonding	5.00%
11	OCS Wires (incl. Contact Wires) and SCADA (If Applicable)	14.00%
12	Acceptance Process (Final Acceptance Tests)	15.00%
13	Final Acceptance	6.00%
	TOTAL	100.00%